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**GLOBALIZATION MITIGATED:
HUMAN RIGHTS, CORPORATIONS, AND THE NEW WORLD ECONOMY**

by

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Bachelor of Arts, York University, 1999

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DISSERTATION

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Abstract

In this thesis, I argue for a set of basic human rights to constrain the practices of corporate entities in the context of economic globalization. These basic rights are derived through a concrete interpretation of specific articles in the Universal Declaration of Human Rights. My focus is on constructing a middle-ground approach to economic globalization by building on the work of Peter Singer, Onara O'Neill, John Bishop, and Leo Groarke, but with particular emphasis on Groarke's notion of a mitigated capitalism. The underlying objective of the middle ground is to secure globalization's benefits and circumvent its harms. As I am concerned with the economic dimension of globalization, and not with its social and political aspects, the set of rights I advance addresses only those variables that are relevant to corporations, since corporations are the vehicles of globalization. As such, the set of rights I derive constitutes a subset of a more general minimal ethics. I claim that this subset of a general minimal ethics adequately captures the salient concerns of the relevant stakeholders, and that it is an ideal way to mitigate globalization. I support my position with two arguments: (i) basic human rights can effectively enable us to meet basic human needs, and (ii) the basic human rights I advance in the subset of a minimal ethics are a more substantive set of rights than property rights.

Dedication and Acknowledgments

I dedicate this dissertation to my late maternal grandfather, Mr. Muntiaz Ali of Stewartville, West Coast Demerara, Guyana – legendary tinsmith and one of the unsung heroes of the period of racial oppression against people of East Indian origins in the 1960s in Guyana, in his resistance against ethnic displacement from his rightful place of abode; and to my late maternal grandmother, Mrs. Zainab Izarali (a.k.a. Buck), whose economic poverty as a child of indentured labourers deprived her of basic literacy, but who, having raised me from infancy as an orphan, never lived to reap the joys of the humble heights I have climbed. So many struggles and heartaches, so much joy yet to be found. So much dies with the passage of time, and so much too needs to be remembered.

The pursuit of this Ph.D. was a struggle every step of the way, beginning with a serious automobile accident I suffered shortly before the commencement of my studies and the soft-tissue injuries that ensued from it in the years that followed. My survival came to depend on enduring and learning to endure, particularly as the effects of the injuries manifested differently from one season to another, one semester to another. In those dark and painful years I vowed to continue the pursuit of my Ph.D., all the way to the grave. The hardships were beyond words, beyond my comprehension, but would have been a lot more if it were not for the humanity of some people, and so upon this achievement my heart impels me to convey words of gratitude. I extend warm thanks to: Dr. Leo Groarke, who served as supervisor for my Ph.D. for quite some time before acceding to the post of academic vice president of the university, for his open-minded approach to scholarship, and his kindness during the exasperating period following the injuries I had suffered; Dr. Ashwani Peetush, who subsequently became my Ph.D. supervisor, for his vigorous stance as a human rights expert in championing the value and methodology of this project at various junctures, and for seeing the project through to its final oral examination; and Dr. Bob Litke, who served on my advising committee, for his continuous outreach. I am also grateful to Fazila Izarali for her patience during the laborious process of writing this dissertation, and to my friend Dr. Kadir Baksh for his continuous encouragement.

I am honoured that Dr. Randolph Persaud, an inspirational scholar on Caribbean and international affairs, and Director of Regional and Comparative Studies in the School of International Service at American University in Washington, agreed to serve as External Examiner; and that Dr. David Pfrimmer, Dean of Waterloo Lutheran Seminary and an expert on global economic and social issues, agreed to serve as the University's Internal Examiner for the dissertation defence.

Whatever its imperfection, may this dissertation serve as a testament to the virtues of perseverance, of being resolute in purpose, determined to stay with the fight until the battle is over, now and always, even in the most intense moments of adversities and tribulations – in much the same spirit of my forebears' struggle for a life of liberty and human flourishing.

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Introduction

“Linking human rights with ethics and globalization represents, I believe, a connection whose time has come.”

Mary Robinson, Former UN High Commissioner for Human Rights

1. Preliminary Considerations

This project is a response to my own inquiry, confusion, and scepticism over contemporary debates about socio-economic systems and the ideal society. These debates have been grounded on concepts such as capitalism versus communism and capitalism versus socialism. My own inquiry deepened as I examined the way in which the concept of globalization was entrenched in these debates.

In the course of my investigations, I have found it increasingly difficult to understand why debates about social theory pursue such extremes. On the one hand, the left/communist/socialist perspective does not appear to fully recognize the social benefits and individual rewards which may accompany a socio-economic system that fosters the pursuit of self-interest. On the other hand, the (so-called) right/capitalist/libertarian perspective does not seem to recognize the need to bracket self-interested activities within some set of moral principles that ensure that society is characterized by fairness, justice, stability, a social conscience, and human rights and the values we associate with them.

A commitment to either pole has seemed to me to overlook the possibility of a broader philosophical perspective that attempts to incorporate what seems correct about left and right perspectives. Such a position could provide a more defensible political perspective than the standard polarities. In my investigations, I have been preoccupied with the attempt to develop a middle-ground approach in philosophical debates about

socio-economic systems. Peter Singer's defense of globalization; Leo Groarke's account of a "mitigated capitalism"; John Bishop's analysis of property rights and free markets; and Onora O'Neill's focus on transnational economic justice strike me as attempts to push us in this direction.

2. Globalization

In keeping with current economic, political and social developments, my investigation of social and political debate has increasingly focused on globalization and its consequences. Here too I have found a great deal of polarized debate. On the one hand, the ardent proponents of globalization tend to idealize a laissez-faire economic model, with little regard to the moral issues it precipitates. On the other hand, vehement critics adopt a perspective which emphasizes the evil consequences of globalization without acknowledging the good that it makes possible.

At times, philosophers and other commentators who debate the issues fail to investigate, in any significant way, the positive and negative material conditions that characterize societies in which globalization occurs. In cases such as these, debaters are preoccupied with the attempt to rebut theoretical arguments from either pole, ignoring the possibility of a middle-ground approach that attempts to marry the concerns of both.

I believe that one can build such a position on a structure that accepts globalization, but constrains it within a framework that safeguards basic human rights to protect basic human needs. That is my aim in this dissertation.

3. Defining “Globalization”

A convincing account of the normative issues raised by globalization must be anchored in some clear understanding of its nature and its core elements. This is especially warranted given that there is no agreed upon definition of globalization; globalization is often understood in very different ways.

This lack of consensus on the basic elements of globalization is evident in the claims and observations of many thinkers, among them, Anthony Giddens, Jan Aarte Scholte, and Surjit Bhalla. According to Giddens, globalization is one of the most poorly conceived concepts in contemporary debates about social theory.¹ According to Scholte, it is a concept that is often used to redundantly refer to other notions that are already well defined (among them, liberalization, internationalization, universalization, and Westernization).² Scholte concludes that: “Many an author and publisher have put ‘globalization’ into the titles of writings that actually say little on the subject.”³

Communication theorists Tony Schirato and Jen Webb have complained that globalization is a concept which does not have any precise meaning: “Globalization is the ‘name’ that is often used to designate the power relations, practices and technologies that characterize, and have helped bring into being, the contemporary world. What it in fact means, though, is less than precise.”⁴ Schirato and Webb underscore this vagueness by citing many instances in which political considerations motivate the naming of processes and events that are classed as “globalization.”

¹ Giddens, in Scholte, “What is Globalization?” 1.

² Scholte, “What is Globalization?” 8.

³ Ibid, 11.

⁴ Schirato and Webb, *Understanding Globalization*, 1.

Schirato and Webb see globalization as a vague term exploited for the benefit of Western nations and economies. Writing from a contrary perspective, Bhalla agrees that the term is used in an arbitrary and ad hoc way, suggesting that many commentators vaguely define globalization as nothing more than “an undesirable force” or “a process that has been good for rich countries and bad for poor countries.”⁵

Academic arguments over the definition of globalization debate the politics of naming, the state of affairs that globalization encompasses, and its location in time and space. Allison Brysk claims that globalization is a “...growing interpenetration of states, markets, communication and ideas across borders.”⁶ In contrast, the anthropologist Michel-Rolph Trouillot criticizes ahistorical definitions of globalization, arguing that these definitions silence past instances of globalization which include the European conquests of indigenous societies.⁷ Trouillot’s critique resonates well with David Held when he claims, in his *Global Covenant*, that globalization is not new but has been happening for hundreds of years.

Other commentators have adopted an historical definition of globalization. The historian John C. Weaver defines it as an historical trend which is rooted in historical events like the rise of international laws of trade and property rights. According to his account, globalization is an historical phenomenon “with roots” and “uneven distribution,” but “with impetus in a grooved course.”⁸ In a more value-laden way, the philosopher Vandana Shiva emphasizes the historical aspects of globalization in her

⁵ Bhalla, *Imagine There’s No Country*, 4.

⁶ Brysk, *Globalization and Human Rights*, 1.

⁷ Trouillot, *Beyond Dichotomies*, 6-7.

⁸ Weaver, “History, Globalization, and Globality,” 1.

claim that globalization is the predation of one class and one race on all others, a predation which manifests in different waves over different historical epochs. In the current wave, she argues, “it is a normative process which replaces all value by commercial value.”⁹

4. Two Kinds of Definition

No generally accepted definition of globalization is evident in contemporary discussions and debates. This is in part attributable to a lack of consensus on the ethical value of globalization, a lack of consensus which may suggest that definitions and discussions are coloured by opposing ideological commitments. Such issues notwithstanding, there are definitions of globalization that give us a better understanding of how it is generally conceived, especially by some of the key players in the world’s economy (among them, contemporary politicians and corporate entities like the World Bank and the World Trade Organization). Some of these definitions are broadly stated. Others have been articulated in a way that emphasizes particular social, political or economic circumstances, events, patterns, and activities.

In considering current definitions of globalization, it is useful to divide them into two different categories: social definitions and economic definitions. Social definitions define globalization in ways that emphasize connections between people, that transcend national boundaries. These connections have been nourished and molded by the increased transnational interaction that characterizes social, political, and economic developments in the world today.

⁹ Shiva, *Global Ethics & Environment*, 47.

Stephen McBride adopts a social definition of globalization when he writes that: “Globalization refers to the increased levels of interaction and integration around the world.”¹⁰ Scholte offers another social definition when he conceives of globalization as “...the spread of transplanetary – and in recent times more particularly supraterritorial — connections between people.”¹¹ In keeping with this, Scholte’s discussion of globalization emphasizes the reduction of barriers to transnational contact, conceiving of the world as a single unit that all peoples occupy.

In some ways, Scholte’s definition of globalization is anticipated in Marshall McLuhan’s conception of the world as a global village. William Scheuerman proposes a similar account, defining globalization as a phenomenon characterized by deterritorialization, transborder social connectedness, velocity of social activity (through the internet, fax machines, telephones), a long-term process, and multidimensionality (such as around-the-world, around-the-clock financial markets, impact on political life, and transnational cooperation).¹²

Scheuerman’s claim is that globalization in the current times is multidimensional and simultaneous, in that it encompasses not only borderless trade, but also the globalization of communication because of advances in technology. It also encompasses a myriad other things including: the globalization of transportation because of advances in airplanes as well as competition and the growth of firms in this industry; the globalization in stock trading because of the computerization of commerce and the ability

¹⁰ McBride, *Paradigm Shift*, 13.

¹¹ Scholte, 13.

¹² Scheuerman, “Globalization,” *Stanford Encyclopedia of Philosophy*, 3-4.

to transmit information readily on a global scale; and the globalization of activism and political dialogue, since people not only communicate with others and travel elsewhere in the world, but are able to see, in large respects, what happens elsewhere in the world in a matter of minutes because of news technology.

Social definitions like Scholte's have been criticized by some commentators, among them, Justin Rosenberg and Weaver.¹³ Weaver argues that globalization is rooted in the development of property rights and international trade laws. Others have offered an alternative definition of globalization that focuses on its economic rather than its social features. Their economic definitions emphasize the role of transnational business activities and the elimination of barriers to inter-country trade. Definitions of this sort do not deny that globalization is associated with social integration, but see this integration as a phenomenon which is a symptom of a more fundamental economic reality that has as its core the liberalization of trade markets and international free trade.

Joseph Stiglitz, an academic who was the chief economist at the World Bank, articulates the economic account of globalization when he writes that:

Fundamentally, it is the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders.¹⁴

Bhalla offers a similar definition when he writes that:

Above all, globalization is a phenomenon, a sequence of events, a pattern of technological progress. In the main, this progress has meant a stupendous decline in transportation costs; a massive reduction in costs of communication; a lowering of production costs; a large increase in intercountry competitiveness, and a breaking down of barriers between countries – barriers of protection, of

¹³ See Rosenberg, *Follies of Globalization Theory*; see also Weaver, "History, Globalization and Globality," 1.

¹⁴ Stiglitz, *Globalization and Its Discontents*, 9.

the flow of knowledge, and of the transfer and absorption of culture.¹⁵

The economic definition of globalization articulated by Stiglitz and Bhalla is an especially important one, because it provides a practical account of globalization as it is understood by many of today's key players in international politics and the world's economy (among them, the WTO, the UN Human Rights Commission, the World Bank, the IMF, and many politicians). This is evident in the terms of reference and discussions on the subject in the WTO, in United Nations documents, and in debates in the legislative bodies of Canada, America, and Europe. In many such contexts, the economic definition of globalization may be normative as well as descriptive, proposing an ideal to which its adherents ascribe. It is used to identify empirical states of affairs while at the same time suggesting a pattern of economic and social life as a moral end.

In a philosophical context, it behooves us to note that the ideal that this implies is not new, and is clearly evident in thinkers like Adam Smith, John Stuart Mill, and Karl Marx. Perhaps the clearest statement of it is found in Mill, who writes that:

...it may be said without exaggeration that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the greatest permanent security for the uninterrupted progress of the ideas, the institutions, and the character of the human race.¹⁶

5. "Globalization" in this Dissertation

In the present dissertation, I will adopt an economic definition of globalization. On this account, its essential feature is the transformation of the world's economies into an integrated global union of commerce. This is accomplished through a fundamental liberalization of the trade markets and free trade which entails a global expansion of

¹⁵ Bhalla, 4.

¹⁶ Mill, *Principles of Political Economy*, 582.

property rights. This definition is intended as descriptive rather than normative. In the context of my attempt to morally evaluate globalization, a normative definition (which defines globalization as morally positive or negative) would beg the question, not allowing an open minded investigation of its moral benefits and shortcomings.

One could adopt a definition of globalization that emphasizes its social features, but there are a number of reasons why I favour an economic definition. First and foremost, the economic account highlights the aspects of globalization that are most relevant to modern and contemporary social, political, and philosophical debates – namely, the plight of poor countries in power politics of globalization, and social and economic inequality. Thus modern social and political theory tends to see economic issues as a vital component (and arguably *the* vital component) of justice and the good society, because economic issues often give shape to social life. In the discussion of globalization, this is a tendency evident in the work of diverse commentators who include Smith, Mill, Marx, John McMurtry, Peter Singer, Shiva, and John Bishop.

In such a context, it is not surprising that economic issues become the crux of moral and philosophical debate. Some philosophers might argue for a perspective that grants less weight to such issues, but I am myself committed to the common assumption that economic issues are key questions of justice and the good in the present time. Above and beyond this personal predilection, an economic definition of globalization will serve to situate my discussion near the centre of contemporary discourses on the subject of globalizing free markets and trade. One might adopt a social approach to understanding and addressing globalization, but a social approach has inherent limitations. It gives us a sense of the evolved social structures and relations and a sense of the plight of the

world's people; but it does not adequately capture the driving force of globalization, which is economic in nature, something which is evident in the discourse among the key players of globalization.

Putting aside questions of social and political theory, an economic definition of globalization focuses on the essential forces that have driven the process of globalization, among them the drive to maximize profits, the quest for economic and political hegemony in a global context (e.g., the U.S., Europe), and competing political paradigms (e.g., communism, capitalism, etc.). It is, of course, true that world health (the World Health Organization), international justice (the International Court of Justice), communication (the internet), and transcontinental travel (airplane travel) have global dimensions, but they are widely regarded as secondary elements in the process of globalization.

The focus of the debate is, therefore, the current trend toward freer markets and trade liberalization, trends that are making territorial borders largely immaterial to business activities. It is significant that such trends have been highlighted in international political action as well as political debate – for example, in the birth of the WTO in 1995.

Finally, I have adopted an economic definition of globalization because of its relevance to actions and discussions of the United Nations and other important players in international affairs. In a communiqué by the United Nations Economic and Social Council (issued by the Commission on Human Rights on 27 March 1998), for example, globalization is understood as an open-border concept in which “countries and individuals become more and more part of a single space in the facilitation of increased

world trade.”¹⁷ In a similar vein, a 2002 lecture on “Ethics, Human Rights and Globalization,” by the UN High Commissioner for Human Rights at the time, cites then United Nations Secretary General Kofi Annan’s report on the Millennium Summit, which suggests that: “Globalization has been made possible by the progressive dismantling of barriers to trade and capital mobility, together with fundamental technological advances and steadily declining costs of transportation, communication and computing.”¹⁸

The economic conception of globalization plays a central role in the policies and practices of the WTO, the IMF, and the World Bank, and in the rise of numerous free trade agreements since the 1990s (among them, NAFTA, Mercusor, CEFTA). Their accounts of globalization are very much in keeping with my own definition, which understands globalization as the integration of the economies of the world for the creation of one global union of commerce.

6. Globalization: Pro and Con

It hardly needs to be said that globalization as I have defined it is the focus of a great deal of controversy and debate. The idea that we should integrate the economies of the world into one global union of commerce is supported by many thinkers who believe this would promote the global good by promoting greater profitability for business, benefits for the consumer, and improved economic circumstances for poorer nations. This is a line of reasoning common to Bhalla, Stiglitz, and Milton Friedman. According to their accounts, increased international trade is to the advantage of every nation, and

¹⁷ United Nations, Economic and Social Council, “Financial globalization and human rights,” 27 March 1998.

¹⁸ Robinson, “Ethics, Human Rights and Globalization,” 21 January 2002.

will ultimately provide employment, better access to international markets, and a higher national income.

Bhalla is a Harvard professor of international economics who identifies globalization as a phenomenon of the last twenty years. He undertakes an extensive economic analysis of globalization, arguing that there is no indicator that suggests that the world economy has not done better in this period.¹⁹ As he puts it:

[P]oor people do better, much better than the average with globalization. They began the process of catch-up, and in 2000 mean incomes in the developing world were 14 percent of mean incomes in the industrialized world—up from a ratio of 12.6 two decades later.

Today, these poor nations account for almost 50 percent of world output, their education levels are reasonably high, and their wages relative to their productivity are relatively low... On virtually every measure, the past 20 years have witnessed tremendous progress, to great improvement for all, and especially for the world's poor people.²⁰

Bhalla offers his analysis in support of the claim that the world community is better off in a context of globalization than without it. Stiglitz expresses some reservations about the process of globalization, but he argues in favour of it, on the basis of the claim that it fosters a climate of increased international trade, jobs, and poverty reduction.²¹

The arguments against globalization might be separated into “committed free market defenders” and “anti-free market” lines of reasoning. Committed free market defenders complain that free trade does not, in the real world of power politics, mean trade that is truly free. For example, though Stiglitz supports globalization, he claims that the key players of the WTO work in the interest of large commercial powers; rich

¹⁹ Bhalla, 201.

²⁰ Ibid.

²¹ Stiglitz, chapter one.

countries, in particular the United States, are hypocritical insofar as they insist that poor countries remove trade barriers while they maintain their own.²² Thomas Pogge criticizes globalization in a similar way when he states: “My complaint against the WTO regime is not that it opens markets too much, but that it opens our markets too little and thereby gains for us the benefits of free trade while withholding them from the global poor.”²³ One might compare Bertrand Aristide’s thesis that free trade is neither quite free nor fair for poor countries because farmers in rich countries retain large subsidies (according to his analysis, the outcome in Haiti was that “a hungry nation became hungrier”).²⁴

Anti-free market critics of globalization object to it because it creates an environment that allows corporations to operate in ways that minimize their commitment and accountability to their host societies, by empowering them in a way that is disproportionate to other actors in the markets. Thinkers like Shiva, McMurtry, Brysk, and Michel Chussodovsky thus maintain that globalization is in reality a process that relinquishes ethical, jurisdictional, and political sovereignty to stateless transnational corporate entities. McMurtry, for example, rejects globalization on the basis of his claim that its current pattern represents a global expansion of a fanatic market paradigm that promotes corporate authority over the world’s people and resources. He thus states that: “Freedom is equated with ‘the free market’, and ‘globalization’ is, in turn, equated with transnational [corporate] rights to all of the world’s resources.”²⁵

²² Ibid.

²³ Pogge, *World Poverty*, 19.

²⁴ Aristide, *Eyes of the Heart*, 10-12.

²⁵ McMurtry, 52-3.

According to Shiva, globalization is a new system of value: “It is a normative process which replaces all value by commercial value. Free trade is in reality the rule of commerce.”²⁶ She argues that freedom is a human right. In this vein, the loss of freedom which accompanies economic globalization is evident in many attempts to naturalize globalization as an inevitable phenomenon. According to her analysis, human rights are not divisible in this way. Freedom from hunger is as much a human right as is freedom of speech, since the latter is dependent on the former.²⁷ As she puts it: “The primary human right is the right to life. First and foremost is the right to be free of hunger. But it includes the right to exercise a livelihood so that one’s entitlement to food is ensured.”²⁸

Sumner B. Twiss reaches a similar conclusion when he writes that:

One novelty spawned by globalization comes in the form of new actors on the international human rights scene which were likely not envisioned in the 1940s...the processes of economic globalization in particular have brought into being transnational financial institutions and corporations whose economic power exceeds that of many states. Setting aside the question of the intentions of these institutions and corporations, the manifest fact is that many of their policies have resulted in rather massive violations of human rights, particularly socioeconomic rights.²⁹

In Twiss’ view, the power enjoyed by globalized transnational corporations on account of the property, human, and monetary resources they control enables them to exert a great degree of negative effects on people’s livelihood.

According to these and other authors, globalization endangers fundamental human rights and freedoms. On most accounts, the mechanism by which violations of human rights occurs is tied to free trade and unmitigated transnational commerce. Forced to

²⁶ Shiva, “Food Rights, Free Trade and Fascism,” p.47.

²⁷ *Ibid.*, 88.

²⁸ *Ibid.*, 89.

²⁹ Twiss, “History, Human Rights, and Globalization,” 53.

compete in such a context, poor nations may be coerced into accepting paltry economic arrangements as the best bargain they can manage, even though these arrangements may undermine basic human rights — in particular, their ability to safeguard the right to security, food and water, and sleep and rest.

Whatever one's ultimate view of globalization, any open-minded person must concede that the emphasis that globalization places on profit raises obvious questions. Does this emphasis undermine moral values? Will it create a world economy which does not properly respect the environment, or which violates human rights? Will it foster justice and fairness in business activities with poorer nations and their citizens, and the global society? According to the *Human Development Report 2002*, more than one billion people lived on less than one dollar a day in 1999, while the income of the richest 25 million Americans (comparatively speaking) was equal to that of almost two billion people.³⁰ If this state of affairs is due to globalization, and if a more equitable share of the world's resources is possible, we may ask whether globalization is morally justified in the way it is presently carried out.

7. Forward

Considered from a moral point of view, the criticisms leveled at globalization do not show that globalization cannot, in principle, advance the global good or the good of those most in need. Most if not all societies desire meaningful employment, higher national income, access to markets, cheaper prices, and technology transfer. These items could improve the lot of the most disadvantaged individuals by increasing the resources available for social programs such as public education, pension, and basic health care. It

³⁰ *United Nations Human Development Report 2002.*

seems plausible to suppose that these could be achieved and promoted through globalization, but this is possible only if the advantages that globalization makes possible are not entirely dedicated to the gains and profits of wealthy individuals and entities.

In this dissertation, I address these issues by arguing for a globalization constrained by a set of concrete basic human rights that are derived from the generic list of rights in the Universal Declaration of Human Rights. As non-negotiable rights, these concrete human rights can safeguard our ability to effectively address basic human needs. They are prerequisites to any conception of the good life. Human rights are entitlements each person is said to have by virtue of being human. As Brian Orend states, being human "...is a reason to treat persons in certain ways."³¹ Human rights are classed into two categories, namely negative rights (which include the right not to be killed, liberty, security of person, the right not to be enslaved), and positive rights (which include the right to just and favourable conditions of work, and compulsory elementary education). Both categories of rights have, of course, correlative duties that require that one behave in a way that does not deprive others of their rights.

I argue that a good globalization is one in which corporations operate within a set of concrete basic human rights.³² Such human rights include the right to food, shelter, water, and clean air; the right to proper excretion; the right to proper sanitation and hygiene; the right to adequate sleep and rest; the right to liberty of person, expression, and conscience; the right to humane treatment and freedom from harm; the right to a

³¹ Orend, *Human Rights*, 18.

³² Of course, others have advanced different theories on managing economic issues to advance the cause of human happiness, notably, John Williamson's 10 policy elements of his "Washington Consensus." They are: fiscal discipline, privatization, deregulation, property rights, trade liberalization, tax reform, liberalizing interest rates, competitive exchange rates, reordering public priorities, and liberalization of inward foreign direct investment.

living wage in one's employment; and the right to due process and fair adjudication in matters of grievances and allegations. As such, I contend that human rights accountability ought to be extended to corporate entities. In making this argument, I will build upon the work of a number of philosophers who have addressed the issue of globalization, ethics, and human rights in one way or another (among them, Peter Singer, Onora O'Neill, John Bishop, and Leo Groarke).

The dissertation is divided into eight chapters. Chapter one gives an account of the benefits and harms of globalization. It claims that the benefits include a higher national income, higher levels of employment, and access to a greater range of markets to sell one's goods. It notes that the harms implied by globalization include damage to the environment, exacerbating the plight of the poor, and vested interests.

Chapter two tracks the literature for a middle-ground approach, and so provides an account of thinkers who have pushed us in this direction. It argues that while their analyses are fruitful, they do not provide us with anything concrete to mitigate globalization. The work of Peter Singer, Onora O'Neill, John Bishop, and Leo Groarke is examined. The chapter considers the prospects of the capability approach advanced by Amartya Sen and Martha Nussbaum, and argues that a rights approach is more robust, substantive, and practical from a normative and enforcement point of view than a capability approach.

Given that the dissertation argues in support of a rights approach to mitigate globalization, chapter three gives a conceptual account of rights. It provides an account of the underlying value of human rights, and of the political and legal contexts that culminated in the Universal Declaration of Human Rights. To this end, chapter three

highlights issues relating to the Magna Carta, the American Declaration of Independence, the French Declaration of the Rights of Man and of the Citizen, and the International Bill of Rights (which is comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights).

Chapter four gives an account of how notions of human rights converge in varying ways with some non-Western traditions. It argues that even though certain cultural traditions may not have an actual concept or term that translates to the term “human rights,” some aspects of the normative substance of human rights are embodied in their ethical framework.

Chapter five advances a subset of a general minimal ethics to constrain the operations of corporations. The subset of a general minimal ethics I advance is made up of very basic human rights that are derived through a concrete interpretation of certain articles of human rights in the Universal Declaration of Human Rights. The concrete interpretation of the generic rights in the Universal Declaration of Human Rights illustrates the way human rights can be applied in practical terms. I claim that the subset of a general minimal ethics allows us to salvage the benefits of globalization while circumventing some of its harms because: first, the subset of a general minimal ethics gives us a good normative basis to protect basic human needs in the unfolding world economy; and second, the rights embodied in the subset of a general minimal ethics are a more substantive set of rights than property rights.

Chapter six addresses critiques by Marx of certain conceptions of rights as innate. It also addresses critiques by cultural relativists who see the globalization of a Western

conception of human rights as culturally hegemonic, and libertarian critiques of positive rights and regulation of the market.

Chapter seven applies the theory to an empirical context, specifically, the Bhopal Disaster of 1984 involving the Union Carbide Corporation. It shows the ways in which Union Carbide Corporation violated the basic human rights of its employees and the people of the community where it was situated.

Chapter eight concludes the dissertation, arguing that in the course of the analyses and arguments in the preceding chapters, I hope to contribute a practical “middle-ground” approach in the debate about globalization. This middle ground improves upon current polarities by developing a position that accepts globalization as a potential good, but in a way that protects our ability to meet basic human needs.

8(a). Scope and Limits

In contributing such a middle ground, I need to make two important clarifications about the method and scope of my thesis.

Firstly, the purpose of my thesis is to construct a subset of a general minimal ethics in the context of economic globalization, so as to harness globalization’s benefits and, in some significant ways, circumvent its harms. In particular, the subset of a general minimal ethics is provided as constraints to impose on corporations, because corporations are the vehicles of globalization.³³ I am interested in a subset of a general minimal ethics that constrains corporations in contrast to a general minimal ethics because I am particularly concerned with the economic dimension of globalization and not its social and political contexts. The set of basic human rights I advance as a subset of a general

³³ Certainly, there are other issues pertaining to globalization, namely, international security. See Thomas Barnett’s *The Pentagon’s New Map*, 2004.

minimal ethics is thus compatible with the idea that certain minimal fundamental elements are required for the good. The subset emphasizes only those that are considered relevant in the context of economic globalization. I believe this is an important distinction, and an important limitation. It is an important distinction because it allows us to talk about globalization and means of mitigation without conceptual confusion. It is an important limitation because it allows us to confine our focus to particular aspects of globalization in a way that we can more meaningfully address.

Secondly, this thesis is not on meta-ethics, rights foundation, or foundationalism. This is an applied thesis that brings an account of certain basic human rights to bear on the global proliferation of property rights implied by the borderless freedom of corporations. It is therefore a thesis on rights application, and not on meta-level rights justification. As such, the issues I address are approached in a spirit of philosophical pragmatism.

8(b). The Pragmatic Approach

Historical Figures

The formation of American pragmatist philosophy is typically credited to Charles Peirce, William James, and John Dewey. Others, notably Richard Posner, claim one other important figure must be included in the historical account of pragmatism, namely, Oliver Wendell Holmes, Jr.³⁴ Of course, it must be noted that pragmatist thinking was not altogether something new that took root in America. As Posner and others report, pragmatist lines of reasoning are evident in the Pre-Socratic philosophers, the Sophists,

³⁴ Posner, "Legal Pragmatism," in *The Range of Pragmatism and the Limits of Philosophy*, 145.

Aristotle, David Hume, and J.S. Mill, among others.³⁵ In the contemporary context, pragmatism in American philosophy is championed by a range of thinkers – among them, Richard Rorty, Robert Brandom, and Hilary Putnam. At the same time, it must be said that differences exist among these thinkers in the strands of pragmatism that they defend. But these differences do not overshadow the underlying core issues that pragmatists see as their launch pad.

Issues with Traditional Philosophy

One good way to begin articulating the underlying core issues that characterize pragmatism is by highlighting their point of departure from what is usually referred to as “traditional philosophy.” The notion of traditional philosophy captures the idea that the dominant discourses in philosophy are embedded in a rationalist ontology, treating knowledge and matters of facts not as things we can know with certainty through experience or the senses; rather, their certainty is, according to traditional philosophy, knowable through reason. Certainly this line of thinking is evident in Rene Descartes when he claims that the senses can deceive us. The method of inquiry into truth, in other words, is significantly different between the rationalist and the pragmatist. As John Stuhr puts it: “Traditional philosophies have emphasized the eternal, the absolute, the fixed, the precise, the general, the common, the same, and the one. They have sought synthesis, completeness, finality, and system.”³⁶ In contrast, pragmatists treat experience and sense data as good tools to ascertain truth. So conceived, pragmatism is concerned with the practical world of affairs. One major influential factor in this way of thinking is the fact

³⁵ Posner, 144.

³⁶ Stuhr, *Genealogical Pragmatism*, 74.

that many of the early American pragmatist philosophers were very much immersed in a scientific way of analyzing and approaching issues. This is especially true of Peirce and James. Pragmatism is in this respect deeply anchored in empiricism.

Given their empiricist approach, pragmatists develop and evaluate theories on the basis of how well the theory can serve the task for which it is being contemplated. The theory, in other words, is not evaluated on the basis of how well it aligns with fixed or eternal laws or principles, but how effective it can be in practice. In this sense, a pragmatic approach is one that is focused on consequences. This understanding is certainly evident with pragmatism in the legal sphere. As Posner writes:

The core of legal pragmatism is pragmatic adjudication, and the core of pragmatic adjudication is heightened judicial awareness of and concern for consequences, and thus a disposition to ground policy judgments in facts and consequences rather than in conceptualisms and generalities...legal pragmatism requires the judge to consider systematic consequences and not merely case-specific consequences.³⁷

We can delineate from this that pragmatism is not a one-way street. What kind of theory we develop will depend on what kind of problem or issue the theory must address. Moreover, we do not attempt to force the problem or issue to align with the theory, but instead adjust or refine the theory to align with the issue.

It must be said, of course, that this does not make pragmatism utilitarian, for the theory need not focus on generating the greatest happiness for the greatest number. Rather, the focus on consequences or practical affairs is a way of assessing whether the theory can serve the task to which it is to be applied. Practice, in essence, is a good test for truth.

³⁷ Posner, 147.

Pragmatist Focus

It is in this vein that Charles Peirce and William James see the traditional way of doing philosophy to be defective. James, for example, resists the traditional way of doing philosophy in favour of what is concrete and empirical. Charles Morris sums up the preoccupation of the American pragmatists well when he writes: "...common, I believe, to all American pragmatists – is the view that every problem (whether philosophical or not) is specific and occurs in a situation many features of which present no problem, and which as unproblematic are taken for granted in attempts to solve the problem."³⁸

According to Morris, there are four key elements in the development of pragmatic philosophy: the respect for science and the scientific method in the 19th century; the vigor of philosophical empiricism at the time; the endorsement of evolutionary biology; and acceptance of the ideals implied by American democracy.³⁹ He writes:

These four background factors accepted by the pragmatists – scientific method, philosophical empiricism, evolutionary biology, and the democratic ideal – form the 'unproblematic' context in which the philosophical problems of American pragmatism appeared and the framework in terms of which proposed solutions were judged...These four factors influenced all the major pragmatists, but in varying degrees: the influence of scientific method is most evident in Charles Peirce, the impact of philosophic empiricism is strongest in James, the encounter with evolutionary biology is sharpest in George Mead, the imprint of the ideal phases of American democracy is dominant in John Dewey.⁴⁰

Building on Morris's account of the various influences on the development of American pragmatism, it need hardly be said that contemporary American pragmatism can take many forms. Putnam, Brandom, and others, for example, discuss pragmatism in a way that is somewhat different from Rorty. Indeed, the pragmatism defended by Rorty has

³⁸ Morris, *The Pragmatic Movement in American Philosophy*, 4.

³⁹ *Ibid.*, 5.

⁴⁰ *Ibid.*, 6-7.

invited criticisms even from fellow pragmatists. The unifying thread, however, is the need they all see to break away from “traditional philosophy,” which has Plato as its root. In the light of the pragmatist way of theory building, we can say that justifications offered by pragmatists are not rooted in foundational reasoning, but instead in practical affairs; the true test of the theory is, as I have remarked earlier, how well the theory is likely to work in practice. As Stuhr puts it:

For pragmatism, the justification of any philosophy is a function of the consequences – not before or in advance of the facts, but only after and in full view of the facts of practice. Pragmatism renders philosophy practical, then, only to the extent to which it renders practice – your life – more satisfactory.⁴¹

In the human rights context, it is significant that Rorty has advanced a strategy to promote a greater “human rights literacy”; his argument, built on Hume’s sentimentalism, essentially claims that a more effective way to convey the value of human rights is by telling sad stories of cases where people’s human rights have been violated so that people can, through their own sentiments, relate to the human suffering of others in a personal way. For Rorty, this approach yields more dividends than the foundationalist, “outmoded” a priori reasoning of Plato and Kant.

If the objective of human rights awareness is to convince a greater number of people that the person, the dignity, and the character of others should be respected simply because they too are of value, then, according to Rorty, one must rely on an approach to human rights which connects with their understanding of the world. Foundationalist justifications are esoteric and mysterious to those to whom human rights awareness should be directed. A more progressive approach, Rorty argues, can be rooted in sentiments because they are the most identifiable thread that connects across the human

⁴¹ Stuhr, 77.

landscape. Sentiments, the way he sees them, embody feelings such as sorrow, empathy, and care, which we all possess as human beings, and which can inform our moral treatment of others. As he puts it: “A better sort of answer is the sort of long, sad, sentimental story which begins ‘Because this is what it is like to be in her situation – to be far from home, among strangers,’ or ‘Because she might become your daughter-in-law,’ or ‘Because her mother would grieve for her.’”⁴²

Pragmatism in this Dissertation

Surely, there is some value to Rorty’s approach. My own approach in building on American pragmatist philosophy aims to highlight the salient aspects of human life that we all must, of necessity, attend to if we are to have any kind of meaningful life whatsoever. In particular, I advance an argument that calls for constraints on globalization in the interest of protecting basic human needs. There are certain basic biological, social, and psychological needs that we have as human beings, which must be attended to in order for us to have any kind of life of well-being or flourishing. We need food and drink, sleep and rest, and freedom to interact with others and to attend to our natural bodily functions, among other things. These needs are self-referential. We are not required to subscribe to deep foundational metaphysics to determine them. Thus the basic rights I argue for, to satisfy these needs, are founded on a pragmatic as opposed to a foundational line of reasoning. Taking this approach, I argue, will help us achieve a middle ground on the issue of globalization.

⁴² Rorty, “Human Rights, Rationality, and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures 1993*, 133-134.

Chapter 1

Globalization: Benefits and Harms

1. Introduction

Globalization is a pattern of integrating the economies of the world in order to create one global union for purposes of commerce. Free trade is the mechanism by which it is accomplished and sustained. Its advantages are argued in a utilitarian vein, as many proponents justify it on the basis that it promotes the greater happiness for the greatest number of people, in virtue of the aggregate benefits it makes possible through the operation of the “invisible hand” (the unregulated movement of supply and demand in the marketplace).

Many political commentators and theorists have debated the value of globalization. Ardent supporters of globalization emphasize its potential benefits for human society, without recognizing its possible harms. In a similarly narrow way, the ardent critics tend to emphasize its potential harms without acknowledging its benefits.

Others approach the issue in a more nuanced way that attempts to delineate the ideal way to respond to globalization. In his examination of globalization in its current phase, Peter Singer suggests that it is too early to make a conclusive claim as to whether it has made the world worse off or better off, and argues that the outcome will depend on how well we respond to it.⁴³ Thomas Pogge supports globalization in principle, but suggests that it must be pursued with some standard of fairness that addresses the predicament of the global poor.⁴⁴

⁴³ Singer, *One World*.

My own view is that globalization has not been without pain, in fact tremendous pain for many developing countries. But neither has it been without its benefits, as Joseph Stiglitz points out in his *Globalization and its Discontents*. Given this perspective, it is plausible to suppose that a good globalization might be achieved through a basic moral framework that allows us to harness the possible benefits globalization offers, and to circumvent its foreseeable harms. This chapter elaborates some of the possible benefits of globalization, and some of the issues it raises which must be addressed in order for us to achieve a good form of economic globalization.

2. The Benefits of Globalization

Globalization may be defended on the basis of the benefits it promises. Among other things, the benefits of globalization *may* include:

- higher levels of employment
- alternative supply sources to meet constant demands
- access to a greater range of markets to purchase a broader scope of goods and services that can promote desirable lifestyles
- access to a greater range of markets to sell one's goods and services, which facilitates higher levels of income
- the fostering of foreign competition so that local monopolies are not developed, promoting lower prices and production efficiency
- comparative advantage (specializing in production and service on the basis of what is most cost efficient among suppliers in the global marketplace)
- a broader geographical flow of technology on the basis of the transfer of technological resources, such as automated machines and computerization, that tends to accompany the movement of capital across borders

⁴⁴ Pogge.

- a greater prospect for consumer satisfaction by virtue of a larger basin of choices to accommodate preferences

In the right socio-economic system, these benefits may produce secondary benefits through the funds that taxation makes possible, and through various kinds of transfer payments. For example, increased transactions that generate more public revenues may in principle enable the state to provide social infrastructures such as education, pensions, proper roads, health care, and social assistance. For governments that are committed to the development of their countries, the revenues from the increased transactions globalization makes possible could be apportioned to social programs that benefit their citizens. Such an approach might be contrasted with a decision to allow unfettered business activity to widen gaps between the rich and the poor.

This line of reasoning assumes a focus that is intent upon steering globalization in a way that is broadly beneficial. The increased transactions among suppliers and demanders in the global union of commerce may, it suggests, forge transnational relations that foster global prosperity of a social kind. These may, as John Stuart Mill claims, pave the way for greater interactions among different cultures and societies in a way that is mutually beneficial, and thus foster a global environment of peace and harmony.⁴⁵

From this point of view, globalization benefits human society by facilitating greater happiness for a larger number of people; it allows a greater number of people to benefit from the economic and social profitability offered by increased transactions in a global context. If the particular communities and societies amalgamated globally have an improved lot in life by having markets in which to sell their goods or more of their goods, having access to a wider range of consumer items, or by having better roads or

⁴⁵ Mill, *Principles of Political Economy*, 582.

meaningful social programs, it is reasonable to believe that globalization entails greater happiness for a greater number of people. In this way, arguments for globalization are premised on utilitarian grounds; such happiness is derived through economic transactions which themselves can set the stage for cross-cultural respect and global co-operation on the basis of mutual benefits from good relations.

Smith envisages globalization in this way when he conceives of the continents of the world as large provinces of one whole, being able to assist each other in times of famine or a dearth.⁴⁶ Mill conceives of it similarly when he writes that: “Whatever causes a greater quantity of anything to be produced in the same place, tends to the general increase of the productive powers of the world.”⁴⁷ Mill’s conviction of the capacity of globalization to contribute to human happiness is perhaps best characterized when he writes:

And it may be said without exaggeration that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the greatest permanent security for the uninterrupted progress of the ideas, the institutions, and the character of the human race.⁴⁸

Mill, in other words, sees the global expansion of trade as deriving other benefits.

3. The Problems of Globalization: Undermining Ethical Constraint

Globalization as it is presently carried out is not without problems, however. These problems include failure to constrain unethical behaviour by key market players such as rich states and powerful transnational corporations. Because globalization implies an international atmosphere of market freedom, it allows commercial activities to

⁴⁶ Smith, *Wealth of Nations*, Book IV.

⁴⁷ Mill, *Principles of Political Economy*, 580.

⁴⁸ *Ibid.*, 582.

be conducted in a manner that is insensitive to the welfare and dignity of host societies and distant strangers. To take but one example, the *UCLA Journal of Environmental Law and Policy* reports evidence that suggests that U.S. based chemical companies export pesticides banned in the U.S. to developing countries, in containers that are unlabelled and improperly handled; these containers are then subsequently used to transport drinking water by the poor in Central America and the Caribbean.⁴⁹

In other contexts, free trade agreements geared toward the proliferation of globalization impose limits on the ability of nation-states to take measures in securing the public good in matters of public health and safety. In two such cases, Canadian and Mexican authorities were successfully sued because they imposed ethical restraints on transnational corporate entities, even though their measures were implemented in the interest of public health.⁵⁰ The Ethyl Corporation sued the Canadian government under chapter 11 of the North American Free Trade Agreement (NAFTA) for its ban on the product, MMT, a gasoline additive considered to be a neurotoxin that is harmful to human health. The federal government was deemed in breach of the agreement (the out-of-court settlement included \$13 million compensation plus interest, and a formal apology in the national parliament – the House of Commons). Mexican authorities were deemed in breach of the same agreement when they prohibited MetalClad Corporation from reopening a toxic dump site that was considered harmful to public health. Mexican authorities were ordered to compensate the corporation in the amount of \$16 million plus interest for its losses. Certainly there are many more cases where primacy of trade and

⁴⁹ In Narayanan, "Processes of Economic Globalization," 175.

⁵⁰ "Free Trade Deals: What You Don't See May Be What You Get," *Global Economic Justice Report*, 1-12.

commerce undermine the ability of nation-states to protect the health and welfare of their people. A number of actual cases are reviewed by Peter Singer in his assessment of the General Agreement on Trade and Tariff (GATT) and the WTO.⁵¹

4. The Problems of Globalization: The Plight of the Poor

Globalization is said to be marked by the liberalization of the trade markets, creating a freer atmosphere for agents of the markets to move and operate across national boundaries. On the one hand, this liberalization is said to be more efficient and feasible, as an overly regulated trade market can hinder the prospect of economic prosperity. On the other hand, it can also exacerbate the mistreatment of people. A fully liberalized trade market can make it easy for corporate entities to exploit workers through various forms of maltreatment and by underpaying them for their labour. This prospect seems very probable, especially in places where people are poor and disempowered, and have little or no recourse because of their economic situation. In the context of the mistreatment in the workplace, it is true that we have seen some progress in the treatment of workers by employers since Marx's time, but it behooves us to remember that the exploitation and the gross mistreatment of labour remains a reality in contemporary times.

According to economist David Korten, about six million Chinese are employed in foreign-funded factories in the coastal provinces of China – factories in which avoidable industrial accidents are plenty and continuous, and in which factory workers are in some cases chastised, beaten, strip-searched, and are at times forbidden to use the bathroom

⁵¹ Singer, chapter two.

during work hours.⁵² In one factory in the Fujian province, forty workers (one tenth of the work force) have had their fingers crushed by obsolete machines.⁵³ According to his findings, official reports indicate the occurrence of 45,000 industrial accidents which claimed more than 8,700 lives in Guang Dong the previous year alone.⁵⁴

Korten's seminal study reports similar findings in Africa and South Asia. In Bangladesh, for example, an estimated 80,000 minors under age fourteen (most of them female) work at least sixty hours a week in garment factories. Their productivity is governed by a harsh and unrelenting regime: for miscounting or other errors they are whipped or forced to kneel down on the floor, or stand on their heads for periods ranging between ten and thirty minutes.⁵⁵ These situations may not be wholly attributable to globalization. But a fully liberalized trade atmosphere in which globalization seems to be able to restrict the measures that can be taken by nation-states to protect the public good could seriously exacerbate such issues.⁵⁶ At the very least, globalization means that the world's poor are not properly positioned to address issues of justice and human respect. These negative phenomena have an unfortunate analogue in the realm of international politics, where developing countries are disempowered in key global institutions. As the *Human Development Report 2002* accounts: "Although developing countries are deeply affected by the decisions of institutions such as the IMF, World Bank and WTO, they

⁵² Korten, *When Corporations Rule*, 231. See the section on "Foreign Investors in China".

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ This is especially so when, as the *United Nations Human Development Report 2002* reports, more than one billion people live on less than a dollar a day.

have little power in their decision making...”⁵⁷ In such a context, an unfettered market may worsen their situation.

5. The Problems of Globalization: Environmental Issues

Aside from human mistreatment and the plight of the poor, globalization has consequences for the environment. Taking down trade barriers implies liberating the trade market from regulations, and so a borderless context of deregulated trade leaves the environment open to both degradation and neglect by transnational corporate entities. As one example, consider the problem of shipping hazardous wastes. In the North American context, chapter eleven of NAFTA gives corporations the right to sue national governments for measures deemed to “expropriate” their earnings. Stephen Clarkson reports that Canada’s ban on the export of PCBs was in fact overruled by one such tribunal, despite the fact that the Canadian government was legally bound by international environmental agreement to refrain from the export of hazardous chemicals.⁵⁸ Vandana Shiva at the Research Foundation for Science and Technology in New Delhi, India, reports similar cases involving reckless exporting of hazardous wastes to India and Third World countries.⁵⁹ According to Shiva, toxic wastes such as lead, cyanide, mercury, and arsenic are shipped to India under the guise of “recyclable waste,” even though there is no demand or proper recovery process for these toxic wastes there. She argues that many of the enterprises to which these wastes are shipped do not have the

⁵⁷ *United Nations Human Development Report 2002*, 113.

⁵⁸ Clarkson, “Canadians Fooled by Trade Deals,” 8.

⁵⁹ Shiva, “Ecological Balance.”

technology or expertise to process them, and that this is known by the countries and enterprises from which the wastes are shipped.⁶⁰

Only countries that have ratified the Basel Convention can engage in the shipment of hazardous wastes among each other. Hazardous wastes, according to Shiva, are shipped to India from Australia, South Korea, Germany, the Netherlands, France, Japan and the United Kingdom, all of whose shipments comprise approximately 67% of total exports of lead wastes to India.⁶¹ Careless management of hazardous waste can have serious consequences for the environment. Since the environment is a vital part of maintaining healthy human living and the ecosystem, measures must be taken to safeguard it as the trade markets become more liberalized.

6. The Problems of Globalization: Global Health Concerns

Above and beyond the effects of globalization on the poor and the environment, the global proliferation of free markets and property rights raises issues about human health at the international level in regard to the spread of harmful diseases. Deregulation of the trade markets defines a borderless context of trade in the world economy. It also implies freer and more rapid movement of people and goods around the world. As people and goods move more freely and rapidly across the globe, the threat of spreading diseases from one country to another becomes imminent. In recent times, the world has awakened to this challenge with the possibility of the rapid spread of life-endangering communicable diseases such as Ebola, SARS, Bird Flu (H5N1), and Mad Cow Disease.

⁶⁰ Ibid., 57-8.

⁶¹ Ibid., 58.

To some extent, the world is fortunate that the Ebola virus of the 1990s, which impaired its victims with serious bleeding from all orifices and killed them within hours, was restricted to Uganda, where it is said to have developed. Other diseases such as SARS and Bird Flu have proved fatal, not just at their places of origin but in distant countries as well. SARS began as a fatal airborne pathogen in China, but took a serious toll in Toronto, Canada. As a result of the problems in Toronto, it triggered considerable social distress and led to sudden international precautions which included pre-flight screenings in many of the world's international airport facilities.

Currently, the H5N1 avian flu strain, typically referred to as Bird Flu, is a preoccupation of the World Health Organization, the United Nations and nation-states throughout the world – rich and poor. Reminiscent of the Spanish Flu of 1918, which killed more than 50 million people (it is estimated that between 50 million to 100 million people died from the disease), the fatal Bird Flu virus is found in poultry, such as chickens and ducks, and is said to have emerged in Asia.⁶²

Aside from the economic impact it has for livestock and poultry farming, the virus is said to jump species and infect humans, often killing them within a short time of their contracting it. Especially because we do not know whether it will become contagious within the human population, the World Health Organization estimates that a global pandemic resulting from the spread of the virus could kill between 180 million to 360 million people across the globe.⁶³ In the light of this prognosis, nation-states around the world began stocking up vaccines in preparation for the worst-case scenario.

⁶² Appenzeller, "Tracking The Next Killer Flu," 26.

⁶³ Ibid.

Such concerns highlight the health issues raised by globalization. Because the pathogens (both known and unknown) would be spread through the exporting of commodities and international travel, and because globalization entails increased transnational contact, cross-cultural transactions and trade, the potential spread of communicable diseases in a world of free markets and porous boundaries poses serious health threats that globalization must address if it is to address harm.

7. Vested Interests

In some ways, one might argue that some of the problems attributed to globalization are not solely caused by globalization itself, so much as by our failure to genuinely embrace globalization. Some states, notably the United States, argue vigorously for deregulated borders, but are quite reluctant to deregulate their own borders in the same way. In this way, the theorized and anticipated benefits of globalization are undermined on the basis of a lack of cooperation by the key players to do their part. What goes by “globalization” today allows states to enact policies that give their own jurisdictions an unfair advantage in the global market, or exert influence on the institutions of globalization to ensure that they are not neutral, but manage issues in favour of these states, without due regard for the situation of people in other societies.

The failure of states to fully embrace globalization is a case of vested interest – in which powerful states favour arrangements that serve their own interests. The structure of the International Monetary Fund and the World Bank, two of the key institutions of globalization that work in concert with the World Trade Organization, highlights the means by which vested interests are carried out. If the composition of these institutions is to be neutral, they should not be dominated by any particular state; but nearly half of the

voting power in these organizations is controlled by the world's seven most wealthy countries.

Vested interests and unbalanced approaches to globalization are also evident in the practices of the national governments of many developed countries, which provide substantial subsidies to certain segments of their industries, most notably agriculture. This practice is especially evident in the United States and the European Union. It permits states to undermine a genuine free market, allowing them to artificially acquire a greater share of the world's market in particular industries. In some cases, the consequences worsen the poverty of poor countries. The former President of Haiti, Jean-Bertrand Aristide, argued that America and Europe vigorously pushed for deregulation of borders and market liberalization on the basis that it would yield greater benefits to developing countries, but in reality, in the case of Haiti, it made a hungry nation hungrier.⁶⁴ The United States, one of the wealthy countries, undermined Haiti and other countries by paying high subsidies to its own producers in agriculture in an effort to undercut other suppliers in the world market, and thus acquire a greater proportion of the market share.

The objective of the U.S. in subsidizing its own producers is to undermine the ability of countries like Haiti to compete in the world market. When a country like Haiti is unable to compete on account of lower priced U.S. goods, Haitian producers are essentially driven into bankruptcy. The overall result is that U.S. producers gain competitive advantage and begin supplying the markets that were previously supplied by Haitian producers, including local Haitian consumers. A similar fate has been met in

⁶⁴ Aristide.

recent times by countries in Africa and the Caribbean as a result of the actions of the European Union with respect to the supply of sugar in the world market.⁶⁵

In other respects, a failure to truly embrace globalization is evident when wealthy countries maintain high tariffs on foreign imports, but at the same time demand the eradication of such tariffs on the part of poor countries. The aggressiveness that can characterize the desire to protect one's domestic industries is also evident in relations between rich countries – in, for example, the softwood lumber dispute between the U.S. and Canada. The philosopher Thomas Pogge underscores this problem well in arguing that the developed countries pressure poor countries to liberalize their trade market, but are themselves reluctant to do the same.⁶⁶ When this happens, the benefits that are expected for those in poor countries are undermined by protectionist tactics which do not allow them to supply their goods to markets in rich countries at a reasonable price. Consequently, they are unable to benefit from trade liberalization.

8. Conclusion

How, one might ask, can the good that globalization makes possible be achieved in a way that is not fraught with the issues I have outlined: the undermining of ethical constraints on business practices, the plight of the poor, environmental issues, global health concerns, and vested interests? As these issues strike at the heart of one's moral worth as a person, we cannot simply ignore them. The issue of vested interests might be overcome by a more resolute commitment to free markets (one which is difficult to

⁶⁵ Jessop, "The View from Europe," 5. See also "New EU Market Access Offer Unacceptable - Region's Sugar Group," *Stabroek News*, 30 May 2007, p. 5, author unlisted.

⁶⁶ Pogge, 19.

achieve in the real world, where power politics dominates international affairs). It is, however, difficult to see how the other issues I have outlined can be overcome without some constraints on the globalization of the world's economy.

If, as I have argued, globalization brings benefits and harms, how might one massage the benefits and constrain the harms? One might invoke the advice of Aristotle⁶⁷ and Confucius⁶⁸ some two thousand years ago and apply some principle of moderation in this context (what might, in the Confucian sense, be called the doctrine of the mean). It is reasonable to suppose that a good globalization is a mitigated globalization that has parameters which secure its benefits and minimize its harms. But such a globalization requires a middle-ground approach. A number of thinkers have attempted to move in this direction – among them, Singer, O'Neill, Bishop, and Groarke. In the next chapter I provide an account of their analyses, in my search for a middle-ground approach to globalization.

⁶⁷ Aristotle, *Nicomachean Ethics*, see Book Six on the doctrine of the mean.

⁶⁸ See Confucius, "Analects."

Chapter 2

Searching for a Middle-Ground Approach to Globalization

1. Introduction

I have already stated that this dissertation aims to provide a middle-ground approach to globalization, and have noted that such a middle ground has largely been absent in the literature. Some critics, I have argued, are too focused on the potential harms globalization has for the global society. In the same vein, zealous proponents of globalization underestimate its harms. The gap in these debates stems from the simple fact that only a few thinkers have attempted to carefully analyze contemporary globalization.

Thinkers such as Shiva, McMurtry, and Chussodovsky are correct in highlighting key deleterious implications of globalization, but they do not take us down the path to a middle ground that would allow us to harness its benefits and circumvent its harms. Each thinker points toward regulations of some kind, but none has sufficiently provided the kind of balanced analysis that would help achieve a feasible middle-ground approach. By “middle-ground” I mean an approach that captures the benefits of globalization but constrains its harms. A number of commentators have pushed us in this direction – among them, Singer, O’Neill, Bishop, and Groarke – but their views do not fully answer the ethical questions raised by globalization. In this chapter, I elaborate the arguments of these thinkers in detail.

2. Peter Singer

Singer emphasizes a focus on human well-being and extols the virtues of seeing ourselves as a global society with corresponding responsibilities to each other.⁶⁹ Like Shiva and McMurtry, Singer is keen to address our responsibilities to poor people and communities and the need to ensure fairness, but at the same time recognizes the benefits of free markets. He examines the prospects of globalization from the point of view of a global focus on such things as the environment, the economy, law, and the notion of one community. He suggests we think in terms of “One Atmosphere,” “One Economy,” “One Law,” and “One Community.”

Singer’s analysis is empirical, rigorous, and current, cutting to the heart of some of the key issues of globalization. In his chapter “One Atmosphere,” he asks us to:

Consider two aspects of globalization: First, planes exploding as they slam into the World Trade Center and the second, the emission of carbon dioxide from the exhausts of gas-guzzling sports utility vehicles. One brought instant death and left unforgettable images that were watched on television screens all over the world; the other makes a contribution to climate change that can be detected only by scientific instruments. Yet both are indications of the way in which we are one world, and the more subtle changes to which sport utility vehicle owners unintentionally contribute will almost certainly kill far more people than the highly visible one.⁷⁰

He continues:

When people in rich nations switch to vehicles that use more fuel than the cars they used to drive, they contribute to changes in the climate of Mozambique or Bangladesh – changes that may cause crops to fail, sea levels to rise, and tropical diseases to spread.⁷¹

His point is that we need to realize that, on the basis of the one atmosphere that we share, we are one world; our actions in one part of the world can affect distant strangers

⁶⁹ Singer, 13.

⁷⁰ Ibid., 1.

⁷¹ Ibid.

thousands of miles away, as well as ourselves. For example, our economies and food supply are interdependent on agriculture around the world, and not just on that of our own community. If actions in one part of the world result in the loss of crops in other parts of the world, this could cause a decline in food production. Thus not only would farmers in Bangladesh or New Zealand suffer, but so may places halfway around the world. In Canadian grocery stores, for example, we find bananas from Latin America, beef from New Zealand, coffee from Africa, sugar made from sugarcane plant in the Caribbean, and rice from India. This variety of goods in our grocery stores suggests that we interact with each other as part of a world community.

Reflecting on the extent to which globalization has already taken place, Singer writes:

The increasing degree to which there is a single world economy is reflected in the development of new forms of global governance, the most controversial of which has been the World Trade Organization.⁷²

This single world economy which is emerging is also accompanied by a reduction in the power of the nation-state. Singer points out that the WTO often adjudicates on trade matters; it makes decisions with which states must apparently comply. This decline in the power of the nation-state also implies that we have to think more in terms of global cooperation. Singer cites the chlorofluorocarbons (CFCs) threatening to the ozone layer that shields us from the direct ultraviolet radiation of the sun. Aerosols containing CFCs caused a hole in the ozone layer over Antarctica which affected people in the southernmost cities of the world. In the face of irrefutable scientific evidence that CFCs

⁷² Ibid., 10.

had contributed to the hole in the ozone, Singer notes that we took measures to put together the Montreal Protocol in 1985 and ban the use of CFCs worldwide.⁷³

From the scientific perspective CFCs were simple to manage; he warns us that climate change will prove otherwise.⁷⁴ In Singer's view, the findings and forecasts of the International Panel on Climate Change (IPCC), a scientific body that advises policy makers on climate change and its causes, point to very serious issues for human society and biodiversity as a whole. Some of the IPCC's findings in its *Third Assessment Report* are:

- Sea levels have risen significantly over the past 100 years, somewhere between 10 and 20 centimetres⁷⁵
- There have been more severe El Nino storms in the southern hemisphere over the past 30 years; this disrupts the rainfall pattern significantly, especially in producing greater variations⁷⁶
- Average global temperatures are expected to rise between 1.4 and 5.8 degrees Celsius between 1990 and the year 2100⁷⁷

These changes will have other troubling effects, among them:

- Rise in precipitation and extensive variations among regions⁷⁸
- More droughts and floods⁷⁹
- Increased spread of tropical diseases⁸⁰

⁷³ Ibid., 14.

⁷⁴ Ibid., 15.

⁷⁵ Ibid., 15-16.

⁷⁶ Ibid., 16.

⁷⁷ Ibid.

⁷⁸ Ibid., 17.

⁷⁹ Ibid.

- Major regional fluctuations in food production (rise in the northern latitudes and fall in sub-Saharan Africa)⁸¹
- Rise in sea levels, somewhere between 4 and 35 inches⁸²

Singer claims that rich nations will be able to cope, though at considerable costs. They are in a position to store food in anticipation of droughts, and are able to fight infectious diseases. But those in poor countries do not have access to such resources. He claims that about 70 million people in Bangladesh and another 70 million in China will suffer dire consequences.⁸³ According to Singer, millions of farmers could lose their land on the Nile delta in Egypt.⁸⁴ Climate change is a serious global issue which must be faced.

Singer's chapter on "One Economy" makes compelling arguments about the way globalization is handled. Commenting on the debates and protests about globalization, he writes:

As the protests at meetings of the WTO, the World Bank and other international bodies continue – from Seattle to Washington D.C., Prague, Melbourne, Quebec City, Gothenburg, Genoa and New York – genuine open-minded exploration of the crucial and difficult issues arising from globalization is losing out to partisan polemics, long in rhetoric and thin in substance, with each side speaking only to its own supporters who already know who the saints and sinners are.⁸⁵

He continues:

Endlessly repeated rituals of street theater do not provide opportunities for the kind of discussion that is needed. Economics raises questions of value, and economists tend to be too focused on markets to give sufficient importance to values that are not dealt with well by the market.⁸⁶

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid., 18.

⁸⁴ Ibid.

⁸⁵ Ibid., 54-55.

He claims that there are four principal charges that might be made against the WTO in relation to globalization. After careful assessment, he finds the WTO guilty of each. These charges are: (1) The WTO decisions on disputes place economic considerations ahead of concerns for the environment, animal welfare, and even human rights; (2) the WTO enforcement of trade agreements erodes national sovereignty; (3) the WTO's internal structure of governance is undemocratic; and (4) the WTO promotes inequality in that it makes the rich richer and leaves the world's poorest people even worse off than they would otherwise have been.⁸⁷ The key problem underlying these charges is that, as Stiglitz has argued, the WTO is driven by the rich nations whose vested interests work against the interests of the global good.⁸⁸ At the same time, Singer claims it is still premature to make judgements about the impact economic globalization has on the poor.

He writes:

With so many different ways of assessing inequality, and so many different findings, what is the ordinary citizen to think? No evidence that I have found enables me to form a clear view about the overall impact of economic globalization on the poor. Most likely, it has helped some to escape poverty and thrown others deeper into it; but whether it has helped more people than it has harmed and whether it has caused more good to those it has helped than it has brought misery to those it has harmed is something that, without better data, we just cannot know.⁸⁹

Our ignorance is no reason for business as usual. We must learn how to control for serious possible harms. In some ways, we might say that Singer's view is affirmed by

⁸⁶ Ibid., 55.

⁸⁷ Ibid.

⁸⁸ Stiglitz, chapter one.

⁸⁹ Singer, 89-90.

Held's claim that globalization does not have a uniform impact; in many cases it is good and in many cases it is bad.⁹⁰

Singer's overall conclusion is that the outcome of globalization will really depend on how well we respond to it. Singer is not opposed to globalization but is instead suggesting that we make efforts to steer it in a way that can benefit as many human beings as possible. All of us have something at stake in the environment and our interdependent economy. At the very least, he argues, we will benefit from global standards for the environment and the economy. He does not claim to have provided the solutions but instead offers a way of thinking about them.⁹¹

3. Onora O'Neill

Onora O'Neill considers an improved way of addressing globalization. She proposes a Kantian alternative of agency and need as the ideal approach to the issues raised by globalization, but offers nothing concrete to mitigate globalization. In O'Neill's view, there is need for a theory of transnational economic justice in light of the current pattern of globalization and the evolution of various transnational institutions – among them, corporations and NGOs. She claims that the deepest disagreement on the issue of transnational economic justice is found between the communitarian and cosmopolitan. The communitarian thinks that ethical concerns should be limited to one's borders and the cosmopolitan holds the view that duties can be extended beyond one's

⁹⁰ Held, *Global Covenant*, 1.

⁹¹ Singer's chapter on "One Law" discusses issues concerning genocide and the moral and legal basis of intervening in the affairs of another country. He argues for enforcement of criminal law at the international level.

borders.⁹² In O'Neill's view, the cosmopolitan notion of a world community or global village may appear as something emotional to those who think that the boundaries of communities or states are insurmountable, but one needs to awaken to the times in which we live. As she puts it: "Questions of transnational economic justice cannot now be ruled out of order."⁹³

O'Neill explores the prospects of various approaches to rights and justice – among them, consequentialist and libertarian – and argues that they are lacking. She thinks that among the consequentialist approaches, utilitarianism in particular embodies two advantages and at the same time two weaknesses. Its first advantage is that its calculating approach gives some hope to improve the living conditions of the bulk of people who are in "profound poverty." Its second advantage is that its focus on results may help to avoid questions about agency.

But in O'Neill's view, utilitarianism falls short in a number of ways. First, while it appears to substitute disagreements about the human condition with calculations, the algorithmic method implied by utilitarianism is cumbersome. At the very least, it requires us to generate a set of options to be compared. We must have sufficient knowledge of the causal link between these options and their outcomes before we can make proper predictions about each. She claims this is a defect that is internal to utilitarianism, simply because of the scope of knowledge required and the time and energy involved. In other words, it is mental and labour intensive. The second defect to the utilitarian approach is an external one, in that it turns a blind eye to much of what

⁹² O'Neill, *Bounds of Justice*, 119.

⁹³ *Ibid.*, 121.

others consider central to justice. Specifically, it is open to sacrificing some lives or “requires that some lives be used up” for the purpose of producing benefits for other lives, since its focus is only general welfare or happiness. In this way, utilitarianism is all too ready to compromise the few for the many.

O’Neill likewise rules out libertarianism as an adequate candidate to address the challenges raised for transnational economic justice. In her view, it relies on what she calls particularly “strong interpretations” of property rights and is delusional in viewing liberty rights as “protecting all outcomes of freely entered transactions.”⁹⁴ Strong interpretations of property rights, in her view, are blind to the larger scope of rights that are relevant to addressing human needs. It must be said that libertarianism does not preclude the idea of helping others, but views the state’s enforcement of help through positive rights and positive duties as an infringement on the rights of individuals. Libertarians think helping others should be left to the voluntary will or charity of individuals. But O’Neill argues that libertarians are “ill-placed” for arguing in favour of charity.⁹⁵ She writes:

This is only rhetorical flourish: since they offer and can offer no account of what makes action that goes ‘beyond’ the limited obligations which they recognize as morally admirable, libertarians would be accurate to describe charitable giving just as one possible expression of personal preference.⁹⁶

In O’Neill’s view, libertarians should treat actual states, none of which is minimal, as unjust because they impose limits on the freedom of individuals’ mobility such as moving across jurisdictions to live or work. As she puts it: “Work and residence permits, like protectionist trade barriers, violate libertarian rights. Yet libertarians are

⁹⁴ Ibid., 127.

⁹⁵ Ibid., 128.

⁹⁶ Ibid.

well known for advocating free trade and opposing wage regulation, but not for advocating the dismantling of immigration laws.”⁹⁷ O’Neill thinks that one explanation for this might be that the libertarian emphasis on property rights is too extensive, to the point that it infringes on the freedom of movement and rights of abode for those who do not have property, and that this applies even within national jurisdictions.⁹⁸

An adequate account of transnational economic justice, claims O’Neill, is one that incorporates human needs, both in the domestic context and those of distant strangers. The way to get at such a framework of justice is to focus on reforming existing institutions with a view to imposing and enforcing obligations. She claims that a Kantian approach that is focused on obligations is one way to develop solutions to improve existing institutions.⁹⁹ To make this intuitively plausible she insists on the following:

...the point is not to check whether principles incorporating every superficial and detailed act-description can be universalizable: they cannot. We cannot all of us eat the same grain, or share the same room. A Kantian approach aims only to identify fundamental principles for structuring lives and institutions, which can then be used to guide choice among the countless more specific principles that can be embedded in the laws, policies, practices and norms of social life. Although Kantian justice requires that actions, lives or institutions must not be based on principles that cannot be universally shared, it does not require uniform action.¹⁰⁰

In this way, she proposes a Kantian outlook. But she does not go on to provide any practical or specific ways of constraining globalization. O’Neill gives us nothing concrete.

⁹⁷ Ibid., 129.

⁹⁸ Ibid.

⁹⁹ Ibid., 136.

¹⁰⁰ Ibid., 137.

4(a). John Bishop

Some of the issues that preoccupy O'Neill are taken up in Bishop's analysis of capitalism. He gives a clear analysis of the ethical debates centered on capitalism and its proliferation in the new economy, pointing out that the key is to understand private property and free markets. Bishop distinguishes between private and personal property. Private property is the productive resources that are the means of production, distribution, and exchanges to make a profit. Some examples of private property include mines, factories, companies, stocks, bonds, patents, and trademarks. Personal property refers to non-productive things that individuals own such as clothes, a house, a car, a television, and a computer. When these distinctions are not made clear, debaters at times conflate personal property with private property, and in this way end up arguing about different things altogether. Such conflation can be a serious matter; it may result in misrepresentations of capitalism.

Bishop explains that the notion of free market presupposes that society is made up of an amalgam of individuals. Each individual has utility based on his own individual preferences, and each has the freedom to choose which exchanges to agree to as he pursues his own utility. Each person is assumed to be equal in the sense that each person has legal access to participate in the market. From this perspective, the idea of the free market is grounded in many other related concepts – among them, the individual, consent, choice, preference, utility, rational behaviour, and legal equality.¹⁰¹

Given that there can be confusion about private property and free market, Bishop claims that we also need to be clear about which capitalism we have in mind when addressing the debate. He distinguishes between abstract or ideal capitalism and what he

¹⁰¹ Bishop, "Ethics and Capitalism,," 5.

calls “actually existing capitalism.” Abstract models of capitalism, he claims, involve the use of mathematical functions and graphs to illustrate outcomes of certain supply and demand behaviours in the market under very narrowly defined conditions. Such models are used, for example, to talk about consumer behaviour under “perfect competition,” where there is equal and free access and exit in the marketplace.

Actually existing capitalism, by contrast, implies capitalism as it is functioning in the real world, with all its pros and cons. He claims that economists use an abstract model which is said to be morally neutral but when the economists’ model is used to guide policies it is unavoidably tied to normative values, thereby losing its neutrality.¹⁰² Libertarians think we should strive for an ideal model of capitalism, as one defence of the free market.¹⁰³ Others think a moral assessment of capitalism should be focused on capitalisms that actually exist, since the ideal or abstract model of capitalism is not the same as the capitalism people actually experience. Bishop thinks this distinction becomes increasingly important as “capitalism” goes global. He writes: “Increasingly, the free flow of capital and the development of the transnational corporation is creating a global capitalism.”¹⁰⁴

Bishop also addresses the moral justification of capitalism. He thinks the moral justification of capitalism has often taken an approach which assessed it in relation to communism or socialism.¹⁰⁵ Since the Soviet Union has collapsed, a second approach would be to justify capitalism’s two key elements – private property and free exchange.

¹⁰² Ibid., 6.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., 9.

According to him, there are generally two schools of thought where private property justification is concerned. One claims private property is a moral right. The other considers private property to be integral to institutions like democracy, freedom, and law.¹⁰⁶

Bishop claims moral justifications of free exchange emphasize the value of human freedom and expressions of it.¹⁰⁷ Justifications of free exchange also emphasize its useful traits, such as providing information on prices, that allow one to manage production resources in an economically efficient manner.¹⁰⁸ Investors as well as management are said to benefit from this kind of information.

It is commonplace for arguments supporting free exchange to make reference to the benefits of the natural function of the “invisible hand” theorized by Smith. Bishop argues that there are limitations to this concept which go unnoticed. The invisible hand is the mechanism by which the pursuit of self-interest on the part of individuals contributes to the overall good of the society, though in an indirect way.¹⁰⁹ Individuals pursue what is beneficial to them in the normal course of things, and this in turn has an aggregate contribution to the overall economy. According to Bishop, two conclusions are often inferred from this line of reasoning, which can mislead us. The first conclusion is that free markets are justified in virtue of the aggregate contribution.¹¹⁰ The second

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., 11.

¹¹⁰ Ibid., 10.

conclusion is that self-interest is moral as opposed to immoral in virtue of its aggregate effect.¹¹¹

According to Bishop, Smith was writing about the national economy, and so his concept of the invisible hand working for the common good was focused on the national market.¹¹² In this regard, it is not clear that the benefits of the invisible hand envisioned by Smith can be forwarded to the global level. Other concerns raised by Bishop about justifications along these lines include the fact that the invisible hand argument did not extend to certain other spheres of life, like family or running for public office; it was confined to free market economic behaviour.¹¹³ Thus, the invisible hand was conceived to operate within a limited scope. Bishop writes: “The invisible hand argument is strictly constrained to the honest pursuit of profit within free markets.”¹¹⁴ At the same time, Bishop does not rule out the possibility that there may be ways for it to operate beyond the national sphere. On the contrary, Bishop argues that:

The invisible hand may still operate in a global economy, and indeed global capitalism does seem to be so productive of goods and services that it can sometimes significantly raise standards of living, but reliance on the invisible hand in a global context will need new and convincing arguments to replace Smith’s.¹¹⁵

According to Bishop, the global context is far more complex. It involves so many economies and key players that the aggregate distribution of benefits theorized by Smith becomes unlikely. Moreover, while capital can now move transnationally with relative

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid., 11.

ease, the same cannot be said of labour.¹¹⁶ In Bishop's view, the invisible hand argument is invoked too liberally, and moral conclusions are drawn too frequently, because people simply assume that the invisible hand functions by fostering self-interests in deregulated contexts.¹¹⁷ They are often ignorant of the limited scope in which the concept was envisioned by Smith.

There are, of course, moral criticisms of capitalism as well, claims Bishop. Some focus on unequal distribution and alienation. Moral criticisms that are focused on unequal distribution see capitalism as embodying too much in the way of inequality. But Bishop advises that we must distinguish between inequality in the distribution of property – private and personal – and inequality having to do with social, political, and legal inequality.¹¹⁸ In his view, there is no theoretical assumption of equal distribution of property in capitalism; capitalism assumes equal access to the market and is not to be equated with such things as “feudal hierarchies, slavery, apartheid, caste systems, and exclusion of any group (such as women) from property ownership and the labour market.”¹¹⁹ Property, he claims, is not distributed equally under capitalism; equal distribution of property would stand opposed to the principles of capitalism. At the same time, a case can be made for it as a morally acceptable form of inequality.¹²⁰ This being said, Bishop argues that: “A moral commitment to free markets would imply a moral

¹¹⁶ Ibid.

¹¹⁷ Ibid., 12.

¹¹⁸ Ibid., 12-13.

¹¹⁹ Ibid., 12.

¹²⁰ Ibid., 15.

commitment to breaking up fortunes that are so large that they disrupt free markets.”¹²¹

Large concentrations of wealth in the marketplace can disrupt the market by virtue of the power they have to prevent competition by keeping out new entrants, and to influence political and law enforcement officials to act in their favour. In principle, free markets work when no one is able to monopolize the market.¹²²

Bishop claims that arguments that focus on alienation as a moral criticism of capitalism can be traced to Marx. According to Marx and his proponents, we have inherent desires as human beings, which include “to work together in meaningful, creative and cooperative production.”¹²³ These inherent desires are said to be obstructed by capitalism because capitalism transforms work into competitive labour. When this happens, the focus is shifted to obtaining money.¹²⁴ More importantly, Marx saw turning work into competitive labour as producing alienation, such as when parents are alienated from children, employees from employers, employees from their work environment as they have no control over it, and alienation on account of having “distasteful” jobs.¹²⁵

For Marx, alienation is a separation of people from one another or, in the case of labour and production, separation of the worker from the product of his labour. Competitive labour does all of these things by placing emphasis on individual gains as opposed to a cooperative, communal lifestyle. But Bishop claims there are objections that can be posed to these claims. He writes: “Nothing is morally wrong with people

¹²¹ Ibid., 15.

¹²² Ibid.

¹²³ Ibid., 17.

¹²⁴ Ibid.

¹²⁵ Ibid.

choosing to do something distasteful, such as working at a meaningless job, as a means to more worthwhile ends.”¹²⁶ Many people in the present time, he argues, are simply happy to have a job, and choices between distasteful and tasteful jobs are not so abundant as one might think (for professionals and non-professionals alike).¹²⁷ From this perspective, he tells us “alienation is not chosen as the means to valuable ends; for most people there simply is no alternative to meaningless work.”¹²⁸ For these kinds of reasons, Bishop calls for clarity.

According to Bishop, there are other issues that must be addressed in the present time. The presence of corporations is perhaps the most notable. As Bishop puts it, “in advanced capitalist countries, and in the new global economy, corporations are the most important institutions. They dominate many sectors of the economy and often rival governments in wealth and power.”¹²⁹ At the same time, he thinks it is reasonable to ask whether things would have been the same in the modern age without corporations. He writes:

The distribution of wealth and resources would be radically different without corporations. Since the unequal distribution of wealth under capitalism is a major moral concern, the existence of corporations substantially affects the moral assessment of capitalism. Whether there would be as much wealth and production without corporations, and what other effects might follow, is difficult to determine.¹³⁰

Given the possible harms of capitalism, it is natural to argue that capitalism should be constrained by government regulations. But the idea of regulation is not a

¹²⁶ Ibid., 18.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid., 23.

¹³⁰ Ibid., 24.

clear-cut issue. He writes: “One of the problems with this debate is that the issue is presented simply as *how much* regulation governments should impose rather than *what kind* of regulation.”¹³¹ According to him, there are many kinds of government regulations, each geared toward a different purpose. They can, for example, “have the intent and effect of either supporting, structuring, limiting, or controlling free markets.”¹³² Bishop explains each effect:

Supporting regulations protect private property, enforce contracts, and prohibit non-consensual exchanges such as violence and fraud. Structuring regulations define private property rights, permit the formation of corporations, and supply services to the market such as creating the central bank and monetary system. Limiting regulations try to remove certain transactions or sectors from the market; examples include medicare, public education, rent controls, public housing, construction of highways, and so on...Controlling regulations try to control the outcome of free markets; examples include corporate subsidies and development grants, duties and tariffs, taxes on specific goods and services, and direct regulation of certain industries such as airlines, telecommunications, or taxis.¹³³

The idea of *what kinds* of regulations notwithstanding, there are those who support regulation and those who reject the idea altogether. The most plausible argument supporting regulation of the market, according to Bishop, focuses on the lack of a guarantee that free markets will allow people to meet basic needs such as food, medical care, and shelter.¹³⁴ There are many people who lack anything to contribute to the market – among them, children, those with certain handicaps, and the elderly. Similarly, those whose labour is their only contribution have no guarantee that the compensation given for their labour will be enough to adequately provide for themselves and their families.¹³⁵

¹³¹ Ibid., 28.

¹³² Ibid.

¹³³ Ibid., 28-29.

¹³⁴ Ibid., 29.

Some arguments favouring government control of the markets have to do with externalities such as pollution and market failures (such as recessions and stock market crashes).¹³⁶ The general claim is that the people involved in the exchange and production of goods in the market are not the only ones affected. Others who are not a part of these transactions can be affected.¹³⁷ Perhaps one of the most dramatic cases is the Bhopal Disaster of 1984, where thousands of innocent people died and hundreds of thousands suffered permanent injuries as a result of a reckless spill of lethal gas at the Union Carbide factory in Bhopal, India.

Other examples of externalities would be pollution, noise, nuisances, and acid rain. Acid rain can affect people in places very distant from the source of the pollution.¹³⁸ In this regard, it is said that government regulation of the market can serve to ensure victims are compensated by imposing certain environmental taxes and even imposing outright prohibitions on the products or processes, as in the case of banning DDT.¹³⁹ Governments may also in this regard be able to physically separate businesses from people through zoning laws.¹⁴⁰ As Bishop explains, some proponents of government regulation are of the view that democratic governments have a moral responsibility to prevent these harms by regulating capitalism.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid., 30.

¹⁴⁰ Ibid.

The most important argument against regulation of the market is not quite a moral one: it argues that governments are unable to control the market and that they should not attempt to do so, since in trying they produce undesirable results.¹⁴¹ He claims the banning of narcotics as a way to prevent usage and addiction in people is an example. Banning leads to increased desire and even leads to the targeting of children by drug pushers.

In spite of the arguments against government regulating capitalism, Bishop claims: “The mood of anti-government scepticism should not blind us to looking at actual results; maybe we should conclude that governments ought to act with great care when trying to control capitalism, not that they cannot act at all.”¹⁴² Such scepticism, in other words, should not overshadow the possibility that governments may have a meaningful role to play. For Bishop, the ethical debate about government and the control of capitalism comes down to a foundational issue about the priority of moral values. The most direct moral arguments against regulating capitalism, he claims, appeal to the value of freedom and property rights, some arguing that negative rights should have full priority.¹⁴³ Libertarians usually advance such arguments, and I shall address them in a later chapter. According to Bishop, this focus does not help us engage in meaningful discussions about other significant issues. It misses key elements in cases of actually existing capitalism – among them, that private property and free markets require the

¹⁴¹ Ibid.

¹⁴² Ibid., 31.

¹⁴³ Ibid., 32.

support of government for their existence. Thus he concludes that: “Any morally legitimate capitalism will be a regulated capitalism.”¹⁴⁴

In another work, Bishop attempts to develop an argument for the inherent rights of corporations as a product of marrying utilitarianism and Hobbes’s social contract model.¹⁴⁵ In that work, Bishop emphasizes certain rights corporations should have in view of their role in society and the social contract that legitimizes them.

4(b). Assessing Bishop’s Analysis

Bishop’s analysis of the global proliferation of capitalism is both wide and deep; it fleshes out some of the key elements that tend to be lacking in discussions of capitalism, such as the different kinds of regulations and the different kinds of capitalism. It is also realistic in the sense that he sees benefits to capitalism, but recognizes harms that are inherent to it, that can impede the good life or, in many instances, one’s chance at the good life. Thus, he advocates a regulated capitalism.

At the same time, although his analysis is focused on the globalizing pattern of property rights and free markets, and although he argues in support of a regulated capitalism, he does not provide an outline of actual regulations. As with O’Neill, he only offers a perspective, a way of thinking about capitalism as it goes global. In some ways, this lacuna must be understood in context, as Bishop’s analysis was also aimed at introducing a slate of other works on capitalism in the anthology in which his assessment of capitalism is presented. In much of the analysis discussed here, Bishop extends the focus of Dan Usher and Leo Groarke. In this regard, it would be of some value for us to

¹⁴⁴ Ibid., 41.

¹⁴⁵ Bishop, "Inherent Rights of Corporations," 121-133.

elaborate the focus of Usher in order to understand the context of Bishop's discussion (I shall address Groarke at length in another section).

Usher argues in favour of private property on the basis of the claim that we need

it. As Usher himself puts it:

Virtually everything we value in society – prosperity, progress, democracy, freedom to conduct our lives as we please, and even such equality as is attainable in this imperfect world – is dependent on the private ownership of the means of production. Life without private property would be dreadful.¹⁴⁶

Usher does not mean by this that all property must be private property before there can be human flourishing. Rather, he has the more modest view in mind, namely, that some property must be private property if things like prosperity, democracy, and freedom are to have effect. In fact, he claims "...there has never been and cannot be a society where all property is private."¹⁴⁷ Institutions like police stations, courts, and legislatures are not private and ought not to be private. Usher's argument in favour of private property is founded on the idea that the alternatives to a system of private property are not desirable, as was evident in the former USSR. He argues that we do not have to care about private property for its own sake but that private property is nevertheless indispensable for the good life for free people in a free society. In his view, it helps to set and provide information on prices; it eliminates the need to gather information on the entire economy that is typical of centrally planned economies; and it fosters the basis of competition, among other things. At the same time, Usher cautions that private property is not a self-contained institution. It needs state protection from its own limitations, as it does from thieves. In Usher's view, property rights have to be

¹⁴⁶ Usher, "Justification of Private Property," 49.

¹⁴⁷ Ibid.

constrained by boundaries so that other things that are essential to the good life are not arbitrarily compromised or undermined. But exactly how to constrain these rights is an issue.

Bishop captures the essence of Usher's argument in discussing the arguments and issues surrounding private property, but he does not give us anything concrete. Nor does Usher. In foreshadowing and at the same time extending the focus of Groarke, Bishop simply alludes to the need for a regulated capitalism. And even though he elaborates the different types of regulations and their effects, he does not advance any type of regulation that should be applied to constrain globalization.

Bishop's emphasis on the theoretical assumptions of capitalism also warrants some discussion. He claims, as does Usher, that there is no equal distribution of property in capitalism, and that capitalism is incompatible with such things as slavery, apartheid, caste systems and the exclusion of any group from owning property. Indeed, the unequal distribution of property is characteristic of capitalism. But Bishop's claim that, theoretically, capitalism is incompatible with slavery, apartheid, and the exclusion of any group (such as women) seems implausible. If profits or a market can be generated from any of these things, there is nothing in capitalism that rules them out of the equation. Slave traders, for example, had their heyday not long ago when it was lucrative for them to acquire Black Africans from Africa and transport them to Europe, North America, and the Caribbean to work on cotton and sugarcane plantations as slaves for White plantation owners.¹⁴⁸ This practice allowed empires like Great Britain to flourish, and White

¹⁴⁸ Augier et. al., *Making of the West Indies*, and Williams, *Capitalism & Slavery*.

plantation owners to live comfortably. After all, once acquired, slaves provided a lifetime of free labour.

Some arguments might advance that slaves took away jobs that White citizens could have had, and so deprived Whites of an income; but it must be said that slaves did the jobs that Whites found to be too arduous, and jobs for which Whites were viewed as unfit. Viewed in this light, slavery was a market for national prosperity and especially during the era of colonization. Slaves were used to cultivate crops in colonies such as Barbados, Jamaica, and Guyana, and the wealth derived from these operations was channelled back to the mother country of the colonizer. The practice of making human beings property in bondage, while at the same time restraining them from owning property as part of the economic order of the day, paved the way for intense conquests and domination of countries that were not as fortified to combat the forces of colonization.

The maltreatment meted out to slaves was another story. As slaves were the property of their masters, they were also subject to the arbitrary treatment their masters thought necessary to achieve discipline and productivity. Alvin Thomson elaborates the treatment of slaves:

Slaves were frequently whipped, and were given several hundred lashes with horse-whips or similar instruments. They were also hanged on meat hooks, burnt slowly at the stake, raped, placed in stocks, worked on tread mills, forced to wear iron collars with protruding spikes around their necks and branded.¹⁴⁹

In sum, slavery was a market by itself to which other markets were attached. The slave trade was conceived of on the basis of profiting at the expense of the labour and lives of people who were deemed unequal in moral status, and as property of Whites who had the

¹⁴⁹ Thompson, *The Haunting Past*, 76.

money to buy them. As Karl Polanyi points out, “In America the South appealed to the arguments of laissez-faire to justify slavery.”¹⁵⁰ Given this reality, it is difficult to see plausibility in the claim that capitalism is incompatible with this practice.

Perhaps what Bishop has in mind are economic arguments as to why it is not profitable to have slaves. Such arguments advance the claim that it is more expensive to own slaves than to hire people to work for you. The idea is that by owning slaves one has to provide them with accommodations, food, and clothing, and providing these things is more burdensome than simply hiring workers. But even so, arguments that advance this claim overlook the fact that slaves did not enjoy accommodations that were anything like what their masters enjoyed, nor did they work fixed shifts with humane treatment. They worked from dawn to dusk and were treated as subhuman. The cost to maintain them could not have exceeded the gains had from their labour, since their labour was free and their productivity was enforced with the whip. In the face of these situations, Bishop’s claim that capitalism is incompatible with slavery seems tenuous, and especially so in the face of the barbaric system of indentured labour to work the plantations after slavery was abolished.

Similar arguments can be made to refute the claim that capitalism is incompatible with the exclusion of any group, such as women. From the point of view of capitalism operating in a context of free markets, a *prima facie* case can be made to support this claim on the basis that agents of the market must be free to participate in the marketplace. But all that is needed to refute the claim is to show, from a capitalist standpoint, that there can be economic gains from excluding a particular group. We already do this in our

¹⁵⁰ Polanyi, *The Great Transformation*, 149.

system of border patrol to keep certain kinds of foreigners out, so that our own labour force is not compromised and wages do not significantly decline as a result of illegal immigrants being willing to work for less pay to do the same job.

Imagine for a minute how academics would feel in Canada or the U.S. if university administrators were free to import professors from eastern Europe, China, or India to work in Canadian and American universities for half the wages that Canadian and American professors earn. In this context, both the state and private firms engage in providing security measures intended to keep illegal immigrants out, and this is a market for private firms under capitalism. They provide monitoring devices, weapons, labour, and whatever else is deemed necessary to maintain the exclusion of illegal immigrants.

Capitalism may well require that agents be free to participate in the market, but if there is a profit-oriented justification to ensure that only a select group of people are free to participate in the market, capitalism as a system is not opposed to this. Certainly contemporary experience of existing cases of capitalism is replete with examples of this situation – where, for example, significant efforts are expended to exclude Third World countries from the world market and any meaningful participation at the WTO. To conclude our discussion of Bishop's analysis, then, we may say that rather than claiming that capitalism is incompatible with apartheid, slavery, and the exclusion of any group, it is perhaps more appropriate to claim that these things are not necessary for capitalism to function.

5. Leo Groarke

Groarke emphasizes the need for a capitalism that is in keeping with moral and other values as opposed to one that strictly emphasizes monetary values. Groarke refers

to such a capitalism as a “mitigated capitalism,” arguing that an unmitigated capitalism will lead to its own demise.¹⁵¹ He basically urges us to rescue capitalism since, according to his analysis, it appears to be *the* economic system of our time that generates the kinds of benefits that allow us to prosper – benefits that, whether we are conscious of them or not, we would be hard-pressed to do without. Groarke’s appeal for a mitigated capitalism is motivated by the lessons learned from the rival socio-economic model embraced by the now collapsed Soviet Union – communism. Thus, his analysis begins with the following recognition:

At the beginning of a new millennium, American-style capitalism has emerged the victor. Soviet communism is, in marked contrast, of interest only to historians. In the wake of its demise, the world economy is characterized by frontier capitalism in the former Soviet states; by the rise (and sometimes fall) of free market economies in East Asia and the developing world; by global markets; and by increasingly powerful multinational corporations. Capital and investment flow around the world with an ease and speed which was previously unimaginable. Globally and nationally, capitalism has become the socioeconomic order of the day.¹⁵²

In appealing for a mitigated capitalism, Groarke at the same time advises that although capitalism has emerged the victor in contemporary times, this victory is no indication that the capitalist economy will be permanent. In his view, many of the people who lived in the heyday of tribal societies, Greek city states, and feudalism in its many forms thought that their social, economic, and political structures were inevitable, permanent, and unassailable; but they all evolved to accommodate new realities.¹⁵³ In the same way, he argues, capitalism might one day yield to another socio-economic paradigm and we must be open to this possibility.

¹⁵¹ Groarke, “Can Capitalism Save Itself.”

¹⁵² *Ibid.*, 196.

¹⁵³ *Ibid.*, 196-197.

This being said, Groarke suggests that we need to mitigate capitalism in a way that secures its benefits and constrains its weaknesses. He writes:

We might do better to compare the unregulated market to a spoiled child who lacks discipline or a fruit tree which must be pruned regularly if it is to bear good fruit. Left to their own devices with no guiding hand to direct them, there is no reason to believe that such a child or tree will turn out well. Something similar holds of capitalism, which can bring about substantial good, but only if it is disciplined, directed, and not allowed its natural excesses. Properly constrained, capitalism is our best hope for the future. But an unconstrained capitalism is, in the long run, likely to be the cause of its own undoing.¹⁵⁴

From this viewpoint, capitalism will only bear good fruit and prosper in a disciplined way when mitigated. If its weaknesses are not adequately addressed they will bring capitalism to an end: “As ironic as it may sound, it is the most strident defenders of capitalism who are most likely to sow the seeds of its demise.”¹⁵⁵ Strident defenders of capitalism are giddy about its benefits and blind to its evils. They often base their view on the idea of an inalienable right to private property, claiming that individuals are entitled to whatever private property they accumulate, and consequently have a right to trade it as they see fit in a free market.¹⁵⁶

Groarke thinks such arguments do not justify the values inherent in capitalism, but instead assume them. In his view, one can also argue that rights to private property are not self-evident. Thus, for Groarke, those without rights to property can simply and justifiably reject such rights, on the basis that those rights are an attempt to rationalize a particular viewpoint geared at promoting the rich and undermining the poor.¹⁵⁷ At the

¹⁵⁴ Ibid., 213.

¹⁵⁵ Ibid., 197.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

same time, he does not think this should imply that property rights and free markets cannot be justified in “a less contentious manner.”¹⁵⁸ We might begin by laying bare the strengths and weakness of capitalism.

5(a). Strengths of Capitalism

One might begin to demarcate the strengths of capitalism, claims Groarke, by noting that, from an ethical point of view, the benefits private property makes possible stem from a clear acknowledgement that at a material level human beings are driven by economic self-interests.¹⁵⁹ As Groarke puts it: “The very success of capitalist economies thus shows that most humans are motivated by their own economic interests, which serve as a catalyst for the transactions which have made capitalist markets the economic engine of the world.”¹⁶⁰ Some might bemoan this aspect of human nature, but in capitalism it is put to work because of its economic utility.¹⁶¹ Individuals are motivated to advance their lot, and capitalism clearly recognizes this. It is, as Smith theorized, their self-interests that drive them to maximize gains or seek ways to generate returns on their actions, as opposed to a spirit of goodwill to others. This aspect of human psychology need not be viewed as negative since it leads to prosperity at a macro level.¹⁶²

The idea is that when individuals act in this way, society benefits overall. First, this drive leads them to engage in innovative ventures to improve their skills or their

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 197-198.

¹⁶⁰ Ibid., 198.

¹⁶¹ Ibid.

¹⁶² Ibid.

ways of doing whatever it is that they reap returns from. This drive also leads people to try to invent things to sell in the market, with the hope of generating large scale returns from offering something new which consumers see value in and demand. For example, the invention of computers has certainly revolutionized the way we do things in our personal lives and in business. The improvement of features in computers, such as making them faster, lighter, and easier to operate, has also generated significant demands from consumers of all age groups. It is plausible to think that one of the key motivating factors was to find ways to generate economic returns for oneself, rather than altruism.

Smith himself puts it in the following way:

Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of society, he has in view. But the study of his own advantage naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to society.¹⁶³

Thus we find in Groarke the reiteration of a foundational principle theorized by the father of capitalism, Adam Smith. Groarke argues that the competitive nature by which capitalism functions is not only an engine for innovation but also for cost efficiency, because it ensures that players lose competitive advantages if their goods and services are not of good quality or are overpriced.¹⁶⁴ The outcome is that consumers are the recipients of better quality and/or lower prices. From this point of view, argues Groarke, competitive markets can promote a very efficient system of production and exchanges. They can mitigate against aggrandizing greed and monopolistic behaviour in the marketplace, thus serving as a safety check for consumers.

¹⁶³ Smith, *Wealth of Nations*, 198.

¹⁶⁴ Groarke, 198.

Given that market transactions are characteristic of capitalism, Groarke claims that capitalism foregoes the need for costly state planning that is typical of command/communist economies. According to Groarke, planning an entire economy requires an incomprehensible range of knowledge and an exceptional ability to predict human wants, needs, and preferences.¹⁶⁵ It is also very costly, as it requires many levels of management and people to coordinate them. There would have to be people to continuously research wants and preferences as well as people to arrange supplies, not to mention production facilities themselves. There would also have to be people to distribute goods. State planning of an entire economy would be an onerous task. Thus capitalism, claims Groarke, leaves these issues to be determined by autonomous agents of the market, since production and distribution are sensitive to their needs and preferences.¹⁶⁶ Suppliers tend to supply what people demand.

The rationale is, as Friedman expounds, that people get into business to make a profit, not to lose money. In this way, sellers/suppliers in the market are keen to observe consumers' choices and spending patterns, and facilitate the market with items that best address these choices and spending patterns. Aside from the benefits competition yields for consumers, there are other benefits to not having intense government involvement in the marketplace. Groarke claims that capitalism itself implies a certain restraint on government in the marketplace. In some ways, the restraints it implies for governments cultivate benefits for both the individual and society, in that they limit the extent to which

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

governments can interfere with their lives and choices.¹⁶⁷ The state, for example, cannot tell the individual how to spend his or her money or when to spend it.

In elaborating the strengths of capitalism, Groarke also claims that capitalism acknowledges the moral equality of individuals.¹⁶⁸ Like Bishop, he argues it is not predicated on marginalizing people, nor is it compatible with slavery, apartheid, and the exclusion of any group of people. The focus is on generating returns on one's efforts or investments, rather than on promoting social and political inequality. Like Bishop, he agrees that inequality is inherent to capitalism, but this inequality has to do with the distribution of property. Groarke writes: "At the very least it can be said that capitalism honestly recognizes that individuals are equal only in a moral sense, and not in the sense that they have equal abilities, drive, and intellect, and not in the sense that they can equally contribute to the common good."¹⁶⁹ I shall address this claim shortly. Needless to say, capitalism's ability to generate great prosperity and wealth, and the accommodation it provides to autonomous agents to supply and distribute commodities and services, could be a significant contribution to human happiness.¹⁷⁰ Thus, capitalism has significant strengths in terms of its prospect to contribute to the public good.

5(b). Weaknesses of Capitalism

Groarke cautions that the benefits that ensue from an unfettered capitalism also have inherent negative companions. Among capitalism's most serious weaknesses is the

¹⁶⁷ Ibid., 200.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., 201.

extent to which it undermines the cultivation of a moral character of society and in the lives of individuals.¹⁷¹ This shortcoming is the consequence of promoting a consumer lifestyle that is focused on the acquisition of wealth.¹⁷² It turns a blind eye to other things that are of great moral value – among them, love, friendship, families, and parenting, as already elaborated by Bishop. Ignoring such things is problematic for a number of reasons. First, it may produce situations in which it is difficult to develop the trust and genuineness that are vital to love and human relationships in general. Second, it may cause one to easily overlook the essential elements of raising good families and building a good society.

For example, children are important to the future of any society. Their contribution to society and their ability to flourish at a psychological level crucially depend on being nurtured with care and affection by their parents during their tender years and even during adolescence. Poor self-esteem arising from a poverty of affection during childhood can lead to poor performance in school and even to violence, as one seeks a sense of belonging elsewhere that one did not get in one's home. If the emphasis of parents is on material wealth as opposed to the affectional needs children have of their parents, such as love and a sense of belonging, this can lead to a rise in dysfunctional children and families in society. As Singer notes, things like love, friendship, and family are at the core of anything that approximates to the good life.¹⁷³

¹⁷¹ Ibid., 201-202.

¹⁷² Ibid., 202.

¹⁷³ Singer, 162.

The prospect of turning a blind eye to these harms is real, Groarke insists, because capitalism justifies things in monetary terms. He argues that this characteristic is perhaps capitalism's worst aspect, because it advances a world view of its own that emerges from a monetary focus. In other words, it shapes a vision of the world in which money is the ultimate value. Thus when we look at others and the world generally, we look at them in terms of monetary value alone.

Groarke also claims that this element of capitalism can seriously affect social life and the environment; it can overlook how we are embedded in the communication and cultural contexts of human life that extend beyond the bounds of consumerism.¹⁷⁴ Money is not the sole basis of value, and should not be the sole basis of relating to people and life. But when the only lens through which we see is a monetary one, we will miss most of what is going on around us.

Other negatives also attend such an approach to life, according to Groarke. For example, rationalizing life and activities only in monetary terms can deteriorate the rationality of the market in a way that distances it from its theoretical foundation.¹⁷⁵ In other words, using money as the basis of worth and for interpreting social life can result in corruption in the marketplace to an extent that undermines the true nature of market activities. By the "true nature of market activities" I mean the natural interaction of supply and demand by consumers and suppliers in the marketplace. When this interaction gets thwarted by corruption and greed, the market can be disrupted through things like price manipulation and artificial decline in supply. They also widen the gap in

¹⁷⁴ Groarke, 205.

¹⁷⁵ *Ibid.*, 206.

unequal concentrations of wealth, because those who have money and property are in a stronger position to control the market.¹⁷⁶ This phenomenon allows those with significant concentrations of wealth to exert “tremendous influence” on the market, with concomitant influence on the legal, political, and cultural environment in which the market is situated.¹⁷⁷

For example, those who are very wealthy and exert significant control on the market can fund large lobby groups to pressure government officials to implement policies that are favourable to them. They can sway voters in a democracy to vote for a particular party or individual by funding expensive television campaigns that present such a party or individual as a more worthy choice. In the current time, we saw this tactic at work in the United States presidential primaries between Barack Obama and Hilary Clinton. The more money the candidate can amass for campaigning, the more likely his/her success. As David Copp notes, money can go a far way toward buying votes and altering the perception of voters in democracies to see things a certain way.¹⁷⁸

Of course, this practice is nothing new, and has been widely addressed by thinkers. But this awareness has not made its impact any easier to manage. In fact, the practice can be difficult to escape, given that wealthy people or groups can not only control the way society functions, but also shape the way people come to see themselves and their cultural environment. Those who control the mass media, for example, can manipulate the perception of the public into seeing issues in a particular way. When this

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Copp, “Capitalism versus Democracy,” 84.

happens, it may be appropriately said that the masses have become the pawns of the power elites, and democracy is an illusion. It is for this reason that Copp claims: “Capitalism spawns inequalities in economic power, and inequalities in economic power produce inequalities in political power of a kind that is undemocratic.”¹⁷⁹ Economic power can affect the elements of political power in deleterious ways. Groarke sees this condition as being potentially harmful to the poor and to those who do not directly participate in the market. It can only be exacerbated in the context of globalization.

In sum, Groarke gives a good analysis of the strengths and weaknesses of capitalism. His analysis outlines the difficulties an unrestrained capitalism has in fostering moral characters and social well-being in society. His account of the strengths of capitalism contributes to a practical understanding of some of the important things we enjoy on a day-to-day basis as a result of capitalism. His account of the weaknesses of capitalism likewise gives a good sense of the harmful effects of capitalism, and resonates well with Copp’s claim that an unmitigated capitalism can undermine the essence of democracy in fundamental ways.

In Groarke’s view, capitalism has done us well overall, but at a significant price; since capitalism is now the dominant order, it is more feasible to try to find ways to fix the problems that are inherent to it as opposed to dedicating our energies to extreme alternatives. In this vein, he argues for a mitigated capitalism to circumvent capitalism’s potential harms and to harness its benefits.

¹⁷⁹ Ibid., 82.

5(c). Assessing Groarke's Analysis

Although Groarke calls for a mitigated capitalism, he does not elaborate an outline of how a mitigated capitalism might be achieved. He does not spell out how harms can be avoided. In particular, he does not take up the issue of how to prevent a globalized capitalism from embedding a monetary world view in the minds of global citizens. Such a world view could make us blind to these issues and deaf to the following questions: How is the welfare of the poor, the infirm, and children who do not have much to contribute to the market attended to in the global proliferation of free markets and property rights? How do we ensure that there are employment standards, workplace safety regulations, health care, and consumer safety regulations? How do we safeguard the environment which can affect us all? These questions demand answers if we are to enshrine a moral capitalism at the global level. Groarke did well to outline the major fault lines of capitalism, but has left questions like these unanswered.

Furthermore, Groarke's claim that "capitalism honestly recognizes that individuals are equal only in a moral sense" seems unwarranted. Capitalism, as Bishop has argued, functions on the basis of two key elements – free markets and private property. Free markets in a simple sense allow for liberty to participate in the market as one sees fit to one's advantage, to put it in the language of Hayek.¹⁸⁰ The system of private property extends rights to individuals and parties, to engage in productive activities for the purpose of making a profit. When combined, these two elements foster a climate of producing, owning, selling, and buying in the marketplace that allows the parties involved to seek returns on their efforts and activities as they see fit. My concern is that they may adopt morally harmful means to their ends. Capitalism itself does not

¹⁸⁰ See Hayek, *The Fatal Conceit*.

prevent racism, sexism, the violation of truly basic human rights and other serious moral harms. Those whose abilities produce a good or service for which there is a high demand by consumers in such a social context are likely to be better rewarded than those whose abilities or skills do not capture much demand by consumers.

In capitalism, both abstract or existing cases of capitalism, there is no requirement that people be acknowledged as moral equals. Rather, if people see they can make some gains in the market by behaving a certain way, doing a certain thing, or producing something, and if they can get past the hurdles of initial investments, competition or barriers posed by existing merchants and political institutions, then they are free to pursue their endeavours. In actually existing capitalism – to use Bishop’s expression – the usual requirements are money and an ability to influence others to help one get a start. Essentially, if one sees a market for a certain venture one is contemplating, capitalism allows for one to seek ways to make that a reality. In the same vein, like the case of slavery, if one sees a market in others, capitalism allows for one to seek ways to make that a reality.

Such a reality is already evident in many late night television programs. The multitude of weight-loss infomercials we find on late night television broadcasts in North America prey on overweight people; the commercials urge them to buy a certain product in order to become slim or to change their appearance so as to keep with the status quo of beauty. Weight-loss infomercials leave one the impression that being “overweight” is a matter of public scorn, and that one who is overweight is less worthy of the admiration of others or is less suitable for a date.

Capitalism itself as a socio-economic paradigm does not recognize or treat individuals as moral equals, nor is it focused on this. It facilitates markets and transactions, and rationalizes them through an emphasis on property rights. The slave trade is perhaps the most illustrative of this feature of capitalism. Moral equality is facilitated through systems of morality and positive law. I do not mean that all systems of morality and positive law in fact do facilitate this, since a good bit of conquest, exploitation, and barbaric domination in human history have themselves been accommodated by positive law. I simply mean that this is the basis by which to achieve it, and that capitalism in and of itself should not be expected to necessarily deliver in this way.

Given this line of reasoning, it follows that the good life cannot be attained by an unconstrained capitalism. Nor can an efficient capitalism be wholly attained in this way, for that matter. Getting people to honour contracts and to deliver on their promise about the quality of the goods they sell, for example, requires some kind of regulation in place. The only way to deal with such matters is by instituting and enforcing laws promoting fulfilled promises and contracts. Bishop refers to them as “supporting” regulations that are aimed at ensuring that the moral fabric does not get soiled. Such regulations may take the form of constitutional rights with an appropriate system of law enforcement to maintain them, as is the case with the Charter of Rights and Freedoms in Canada – a very different scenario from the one suggested by “capitalism honestly recognizing individuals as moral equals.”

6. Towards a Mitigated Globalization

I have already noted at the outset that the objective of this dissertation is to develop a middle-ground approach to globalization. In this regard, I develop my moral framework to mitigate globalization by expanding on the analyses offered by Singer, O'Neill, Bishop, and Groarke. I do not treat these theorists as opponents to my approach. Rather, I consider them to be thinkers who began the task of considering ways of approaching the issues raised, but who have not committed themselves to furnishing a concrete plan of action.

I am particularly focused on responding to Groarke's call for a mitigated capitalism, but with a view of extending its reach to the global level in concrete/practical ways. My fundamental assumption is that Groarke's analysis of capitalism can be extended to the trend toward a global union of commerce, especially by building on the insights and issues raised by Singer and Bishop about globalization. Like Singer, Bishop, and Groarke, I think there are practical benefits and advantages to capitalism. Many of these advantages and benefits have already been sketched in Groarke's outline of the strengths of capitalism.

Of course, it would not be redundant to note that capitalism benefits human society by way of the level of productivity it engenders; the inventions and innovations it fosters; the opulence it generates; the drive to be productive and increase one's stock of wealth that it facilitates; the checks and balances it maintains on prices through competition; the vast range and quantity of goods it makes available in the marketplace; the various types and amount of employment it generates through specialization and industrialization; and the level of autonomy and opportunities it promotes for those in the

market. This aspect of capitalism stems from both private property and the so-called free market. It is difficult to deny that these are indicators of the success of capitalist economies, as they are very much evident in the Western capitalist societies.

At the same time, as Groarke, Singer, Bishop, and Usher each points out, these outcomes do not imply that an unfettered capitalism helps us achieve the good life. They simply claim that there can be significant individual and social prosperity from a free enterprise system. Capitalism offers no guarantee for an equitable distribution of these benefits. That they can be had does not mean that they can be had by everyone. Nor does it mean that capitalism is without downsides. Abstract as well as existing cases of capitalism show that there can be, and are in fact, many downsides to capitalism.

Abstract models of capitalism highlight the prospect of there being losers in the marketplace on account of their not being able to compete. Abstract models of capitalism only focus on active agents in the market and not on those who do not actively participate, such as the infirm, the elderly, and children who are too young to contribute anything to the market. Abstract models of capitalism also function on the basis of a wide array of assumptions, what is usually referred to as *ceteris paribus*, which means “all other things held constant.” Looked at in this way, abstract models of capitalism give results that are a product of assessing only the variables in question, while all other factors are treated as unchanging.

Cases of existing capitalism reveal a lot more. In cases of existing capitalism, we can see the hardships created by a disproportionate spread of wealth in the society. America, for example, still has over 30 million poor people, yet capitalism is the reigning order of the day. We can also see the weaknesses Groarke outlines in his critique of

capitalism – among them, the harms to the environment from reckless mass production and mass waste; the challenge to fostering moral character necessary for raising the next generation; the disproportionate level of control exerted by the major players (companies and countries) in the market; the disregard for certain fundamental rights of people who especially lack the resources to resist; the neglect of the needy and the dying locally and beyond one's borders; and the perpetuation of exploitation and greed. Thus, the outcome of capitalism can very much range from a flourishing society to a morally undesirable one; those who are giddy with excitement about the value of capitalism are, as Groarke has noted, no doubt the ones least likely to notice the range of outcomes. If the negative elements are allowed their excesses, the benefits of capitalism may very well fall by the wayside.

Whatever our view of capitalism, the outcome of the rivalry between capitalism and communism, among other things, does indicate to a significant extent that capitalism can foster industry and prosperity on a grand scale in spite of all the miseries it has effected. Capitalism's success in that rivalry is, of course, due as much to politics as it is to its economic viability as a paradigm. But this aspect should not overshadow the fact that it has great utilitarian appeal, and that great benefits can be reaped from it. The negative elements to which it has given rise highlight the point that capitalism should not be left free-roaming. To get capitalism to function in a way that works to our advantage, morally as well as economically, implies that we have to implement the kinds of constraints that minimize, if not eliminate altogether, the harms it tends to bring about when it is unfettered. These harms are not insurmountable. They have ensued largely as a result of capitalism operating without sufficient safeguards to ensure that other

considerations of human life and flourishing are not compromised. Such considerations include ensuring that people are not deprived of food to eat and water to drink; that there is proper sanitation for healthy hygiene; that people have adequate time to sleep and rest; and that people are paid a living wage.

There are a number of ways one might contemplate constraining capitalism so that other considerations that are vital to human life and flourishing are safeguarded, but my own view is that a morally desirable capitalism can be achieved through an enforced rights approach – specifically, very basic human rights. These human rights embody the core elements for us to meet our basic needs, and are a prerequisite for human flourishing. They provide the basis for us to provide ourselves with food and water, to secure the welfare of our family, and to make moral demands against harms. Of course, aside from very basic human rights to meet basic human needs, human rights also provide the basis for such things as freedom of speech, freedom of conscience, and the right defend oneself against criminal accusations before an impartial judicial body. These elements of human rights are necessary as a minimal framework of ethics for the good in any society.

That human rights establish the floor upon which human flourishing can take place is no coincidence. The existing framework of human rights underwent rigorous and extensive scrutiny before it was put in place, and the objective was/is to promote human flourishing and happiness by putting in place the core elements of basic human morality. This point does not mean human rights cannot be improved upon; it is conceivable that improvements in human rights may be needed fifty or two hundred years from now, to align with the times at that point. Nevertheless, it suffices that the evolution of human

rights is a milestone achievement in human progress, and can serve as the basis to protect basic human needs in globalizing times.

6(a). The Capability Approach

The search for a middle-ground approach to mitigate globalization should not limit us to the literature on capitalism or globalization. Other discussions that focus on ameliorating the human condition can also shed light on important things that must be considered. Such discussions are evident in Amartya Sen and Martha Nussbaum.

Over the past decade, efforts aimed at improving the human condition have focused on what is known as the capability approach, developed by Sen and Nussbaum. The capability approach emphasizes people's basic capabilities and functioning so they may have a materially decent life. By "basic capabilities" Sen means "a person being able to do certain basic things."¹⁸¹ By focusing on and enabling basic capabilities, Sen argues, we can achieve more in the way of promoting human flourishing, because such an approach helps to promote things like individual mobility on account of getting food; helping oneself on account of having the means to do things for oneself; enjoying some of the good things in life because one's needs will have been addressed, and so on. This approach, claims Sen, is more culture-dependent and so does not amount to applying one solution to a multitude of different people whose contexts vary.

Sen claims that: "Capability is not an awfully attractive word. It has a technocratic sound, and to some it might even suggest the image of nuclear war strategists rubbing their hands in pleasure over some contingent plan of heroic

¹⁸¹ Sen, "Equality of What?" 218.

barbarity.”¹⁸² He continues: “The expression was picked to represent the alternative combinations of things a person is able to do or be – the various ‘functionings’ he or she can achieve.”¹⁸³ In Sen’s view, “capability” captures the essence of what is required to satisfy our basic needs and basic goals, and by directing our social policies toward enhancing capabilities, we can effectively address the elements of human functioning and well-being at the most elementary level.

Nussbaum extends the focus of Sen, but builds on what she claims to be certain essential elements that, in her view, can be traced all the way back to Aristotle. In making the case for the capability approach, she writes: “The idea is that once we identify a group of especially important functions in human life, we are then in a position to ask what social and political institutions are doing about them. Are they giving people what they need in order to be capable of functioning in all these human ways?”¹⁸⁴ Nussbaum claims her conception is not “metaphysical” and “aims to be as universal as possible, and its guiding intuition, in fact, directs it to cross religious, cultural, and metaphysical gulfs.”¹⁸⁵

Nussbaum distinguishes two levels from which to focus on capabilities, namely, the shape of human life and basic human functioning capabilities. The first looks at addressing things that characterize us as a distinct species.¹⁸⁶ The second looks at ten key elements – among them, being able to form a conception of the good, the ability to

¹⁸² Sen, “Capability and Well-Being,” 30.

¹⁸³ Ibid.

¹⁸⁴ Nussbaum, “Human Functioning,” 214.

¹⁸⁵ Ibid., 215.

¹⁸⁶ Ibid., 217-220.

maintain good health, being able to live a complete life, having relationships, and being able to live one's own life.¹⁸⁷ Nussbaum considers these elements to be essential for the good life, and thus argues that the amelioration of the human condition can be best achieved when these elements become the objects of focus in our social policies. She claims that the capability approach is practical, deliberately vague, and has real prospects of improving the human condition. It is deliberately vague in the sense that Nussbaum tries to capture the characteristics of human life in the broadest way possible and in a way that can adjust to cultural differences.

6(b). Human Rights

In light of the popularity of the capability approach in recent times, it is reasonable to ask, why opt to constrain globalization with human rights and not the capability approach? It must be said that the capability approach has merits in that it is focused on making a material difference in people's lives. It pays attention to the contexts of particular societies and localities, with a view to understanding what can best enhance their capabilities. One might even say it is rooted in microeconomic theory, as a good bit of it seems to be centred on providing the economic means that are seen as enhancing the various capabilities and functionings that can be derived. This is fleshed out in Nussbaum's example of the role of cooperatives in helping women in certain villages contribute meaningfully to their independence, and their role in advancing small scale sewing businesses run by women.¹⁸⁸ I have, however, chosen to take a human rights approach to constraining globalization for three significant reasons.

¹⁸⁷ Ibid., 222.

The first reason for adopting a human rights approach is that human rights imply that a particular kind of treatment is owed to people simply because they are human beings. Such treatment includes treating all people as moral equals, ensuring that they have the means of subsistence, and refraining from harming them. The idea that people are entitled to such treatment simply because they are human beings suggests that people are morally justified in demanding it. It is not something that ought to be done simply on the basis of charity. It is something to which they have a claim. This entitlement, in turn, implies that there are obligations on the part of others to provide and even guarantee the treatment implied by human rights.

Unlike human rights, the capability approach does not oblige anyone to provide the means to enhance the various capabilities required for human functioning. Nor does it provide people with a basis by which they can morally demand any such means to enhance their capabilities. Rather, the capability approach simply asks that our social policies be focused in this direction. The capability approach may be a practical way to achieve many of the same things implied by human rights, but a human rights approach gives people some basis to compel others to treat them a certain way.

The second reason for adopting a human rights approach is that it allows us to take a concrete, uniform approach as opposed to a purely empirical, relative approach to constraining globalization. In claiming that it allows us to take a uniform approach, I do not mean to dismiss the empirical aspect of globalization. Human rights are conceived on the basis of a uniform way in which we ought to be treated. The capability approach, on the other hand, seems largely to describe empirical things from a relative standpoint. I do not mean by this that it is blind to the normative. Anchoring the constraints of

¹⁸⁸ Ibid., 235.

globalization in a uniform framework allows us to make certain moral evaluative claims about the state of affairs in the human condition and the moral necessity to address them.

The third reason for adopting a human rights approach as opposed to a capability approach is a practical one: Human rights will have a broader appeal than capability. Human rights are already enshrined at the United Nations as a model for societies to incorporate in their systems of morality and law. Moreover, human rights have already been adopted by much of the world's society as a legitimate moral framework for human behaviour, and for engagement in discourses on social justice. Discourses framed in the language of capability have some appeal, but such discourses are largely confined to scholars and people who work in the field of development. In recent times, human rights have become an increasingly popular and well-received way to address and resolve international conflicts, because human rights embody a shared understanding about the ways in which human beings ought to be treated. From this point of view, it is not culture dependent but instead spans the scope of human society.

Above and beyond the reasons outlined for adopting a human rights approach over a capability approach, it needs to be said that human rights can actually translate to capabilities. The rights and obligations implied by human rights set the basis for general capability enhancement. Providing primary education, for example, serves to develop capabilities to read and write, enter into contracts, travel beyond one's locality without the aid of someone to read directions, and pursue a career. Providing basic health care helps to develop capabilities in children to live healthier and longer lives, and helps to ensure that people in general are not taken over by diseases that limit their ability to work or move around freely. What is unique about human rights is that they embody the

normative underpinnings for capabilities, in that they outline obligations to do these things from the point of view of values.

7. Conclusion

In this chapter, I have reviewed the arguments advanced by the thinkers who have pushed us in the direction of a middle-ground approach to globalization. I have elaborated the issues they raise for consideration and have noted that, overall, none has provided a substantive practical framework. I do not mean to imply that their analyses are fruitless. Rather, they have focused on ways to conceptualize the issue, as we consider an ideal way to approach it. I have argued that we can achieve a mitigated globalization if the globalization of property rights and free markets is constrained by human rights. Looked at in this way, the thinkers reviewed in this chapter are not viewed as opponents in my endeavour, but as building blocks toward the cause.

In the next chapter, I distinguish human rights from other kinds of rights (since I am arguing for a rights approach), and elaborate their legal and political development in an effort to underscore their value and their vital link to basic human needs. My goal in the next two chapters is to set the basis for a subset of a general minimal ethics to constrain corporations. The subset of a general minimal ethics I am working towards is made up of basic human rights that are derived through a concrete interpretation of particular articles of the Universal Declaration of Human Rights. These basic human rights, I argue, are sufficient to constrain capital in the new world economy because they protect basic human needs. I advance the subset of a general minimal ethics as a middle ground. I now turn to the conceptual and historical dimensions of human rights in the next chapter.

Chapter 3

Human Rights: Conceptual Distinctions and Historical Development

1. Introduction

The very idea of human rights is a milestone in human progress, though one that is the centre point of a great deal of debate. According to some scholars (notably political theorist Jack Donnelly), the notion of human rights has evolved with the globalization of the world's economies.¹⁸⁹ Some (especially jurist Michael Perry) argue that the notion of human rights is inescapably religious.¹⁹⁰ Others suggest that the "true" origins of the idea of human rights are unknown. Locating the ultimate origins can thus be an onerous undertaking. But the onerous challenge to locating their ultimate origins need not overshadow their value and nature. Nor should it inspire one to turn a blind eye to the bitter struggles in human history to secure the objects of human rights.

In the present chapter, I will attempt to elaborate the value and nature of human rights by providing an account of their moral underpinning; I will also sketch an historical overview of the political and legal contexts that culminated in the Universal Declaration of Human Rights as a global ethical framework. The moral underpinning helps us understand the substantive value of human rights; the historical overview highlights the long evolved struggles in human society to safeguard the substantive value that is the essence of human rights. But since I propose a rights approach to mitigate

¹⁸⁹ Donnelly, *Universal Human Rights*. See also Donnelly, "Human Rights, Globalizing Flows."

¹⁹⁰ Perry, *The Idea of Human Rights*.

globalization, I begin with an account of rights and rights distinctions, to highlight the primacy and pedigree of human rights.

2. Rights

The idea of rights may be both simple and complex, depending on how deeply one wants to engage the issue. David Ozar nicely captures the practicality of rights in everyday life when he writes: “Rights talk is one way of trying to talk, think, and reason about what individuals and communities ought and ought not to do.”¹⁹¹ Orend argues that rights, at their core, are justified reasons to treat people a certain way. In a similar vein, Henry Shue argues that rights are essentially justified demands.

For the present purpose, rights might be understood as instruments that a person uses to make certain justified or justifiable claims against others about the way he or she ought or ought not to be treated. The term rights or a right in this sense implies a correlative duty of some kind on the part of others toward the individual who asserts a right or certain rights. At the very least, this duty involves respecting the particular right or set of rights asserted by the right-holder. To illustrate, if I claim I have a right to life, this implies that others have a duty to refrain from killing me. I have a duty to refrain from killing them in the ordinary course of things too, as others have a right to life as well.

We can deduce from this that there are rights-holders and there are duty-bearers. Rights-holders are those who have or assert the right. Duty-bearers are those who are obliged to observe the right. We might say that, in some basic ways, we are all rights-holders and duty-bearers: we have rights that we may or may not assert and we have

¹⁹¹ Ozar, “Rights: What They Are,” 3.

duties to respect the rights of others who may or may not assert their rights. In a society where rights are constitutionally guaranteed, this hybrid package of being rights-holders and bearers of duties is underscored in the harm principle. According to the harm principle, the limit of my right is the extent to which it interferes with the right of others. As Ashwani Peetush puts it: “My freedom and right to own private property does not mean that I am free to steal your stuff; my right to mobility does not mean that I can walk into your house uninvited; my freedom of conscience does not mean that I can use you as a sacrifice, and so on...Limits are defined in terms of interference in others’ freedoms, or harms caused.”¹⁹² Mill has done much to elaborate this idea. Given this reciprocal relation between rights and duties, we might, following Ozar, say that rights are relational.¹⁹³

In discussing rights, it is important to note some distinctions made by jurist Wesley Hohfeld, who has been very influential on the issue. He distinguishes between four types of rights that can help us understand human rights.¹⁹⁴ They are: liberties, powers, immunities, and claim-rights. Liberty rights imply certain freedoms but impose no correlative duties on others.¹⁹⁵ One may have the right to go fishing or to run in a race, but no one has a duty or is obligated to make sure that one’s fishing is bountiful or (as Lawrence Becker points out) that one wins the race.¹⁹⁶ The same applies with rights to abortion, argues Becker.¹⁹⁷

¹⁹² Peetush, “Caricaturizing Freedom.”

¹⁹³ Ozar, 4.

¹⁹⁴ See Hohfeld, *Fundamental Legal Conceptions*, 36. I am indebted to Lawrence Becker’s clear explication of Hohfeld’s taxonomy of rights. See Becker, “Individual Rights.”

¹⁹⁵ Hohfeld, 43.

Power rights include such rights as making a will or making someone a beneficiary to your insurance policy.¹⁹⁸ Hohfeld himself claims that such rights can include "...the power to discharge a debt owing to [some person or institution] P, the power to 'receive' title to property so that it shall vest in P, and so forth."¹⁹⁹ So conceived, power rights are characterized by corresponding liabilities or duties imposed on specific individuals. When writing a will, one is said to be exercising a power right because one imposes a lawful liability on the executor in the form of certain responsibilities.

Immunity rights identify certain limits on the power others have to override one's privileges. As Hohfeld puts it, "immunity is the correlative of disability ('no-power'), and the opposite, or negation, of liability."²⁰⁰ Becker explains Hohfeld's idea of immunity nicely when he claims that one's right to remain silent implies, from a legal standpoint, that others cannot make one speak.²⁰¹ This is a right that is typical of heads of states on matters of national security, and is reflected in basic courtroom affairs that do not allow the court to compel a person to give self-incriminating evidence.

Claim-rights differ from other rights insofar as they imply that other people have duties correlative to my rights. My right to vote imposes a correlative duty on the state – a duty to make sure that I am not prevented from doing so. My right to freedom imposes

¹⁹⁶ Becker, "Individual Rights," 201.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Hohfeld, 52.

²⁰⁰ Ibid., 60.

²⁰¹ Ibid., 201.

on others in society a duty to refrain from impeding it. Claim-rights entail entitlements that imply justified moral demands we may make against others. At times, claim-rights are thought to imply liberty rights, but they in fact differ in that liberty requires no dedicated effort by others to achieve the goal toward which the right is exercised, whereas claim-rights at least require that of the state. Claim-rights capture the normative essence of human rights.

The concept of rights and the use of this concept are quite notable in the times in which we live. It is common for us to hear talk about one's right to dress a certain way, one's right to practice one's religious beliefs, and so on. In this sense, rights are a set of moral instruments we rely on for social interaction and the pursuit of our own good (whatever that may be), because they embody certain fundamental demands or claims we can reasonably make of others. As such, rights are seen as integral to human interaction and the good life. Looked at in this way, it seems defensible that constraining globalization with duties to respect certain rights might contribute to the likelihood that many may enjoy a minimally decent life. This will mean constraining the behaviour of some of the key players in the global marketplace, by imposing duties on them.

What set of rights is to be used to constrain globalization can be a matter of heated debate. This is particularly so as rights are distinguished categorically as negative rights and positive rights, a distinction that generates a good bit of division and faction in intellectual and political circles.²⁰² Negative rights are said to require no active effort

²⁰² Rights may also be classed as *general* rights and *special* rights. *General* rights are, in Latin, rights *in rem*. They refer to claims we may impose globally. Wherever in the world I go, I may assert a right not to be enslaved or murdered. General rights are a category of rights that apply to all human beings. In contrast, *special* rights are classed as rights *in personam* and are claims made to particular agents, as Lawrence Becker points out. Special rights are characteristic of contractual agreements, promises, friendships and relationships of care (e.g., doctor/nurse-patient, teacher-student, lifeguard-swimmer, etc.).

from others for them to be exercised. They imply a context of freedom which does not require active effort on external parties for the enjoyment of such rights to materialize. Examples of negative rights include the right not to be murdered, the right not to be interfered with regarding one's liberty, free speech, and self-governance.

In contrast, positive rights require active efforts or resources from others for them to be enjoyed. Positive rights thus imply a context that relies on the active assistance of an external party. Some examples of existing cases of positive rights include socially guaranteed access to basic health care, primary education, and food. Positive rights can at times be seen as welfare oriented. Thus not everyone is convinced that positive rights are legitimate or acceptable. Libertarians such as Maurice Cranston, Robert Nozick, and Jan Narveson, for example, deny that "positive rights" are rights at all, arguing that they are in fact gross violations of one's liberty on the basis of the claim that so-called positive rights lead to a forcible extraction of resources from others.²⁰³ Liberal thinkers such as Donnelly, Orend, and Shue reject the libertarian view of positive rights, arguing that such rights are legitimate and integral to the good life, and ought to be furnished if they can be afforded.²⁰⁴

²⁰³ See Cranston, *Human Rights To-day*; Nozick, *Anarchy, State and Utopia*; and Narveson, *The Libertarian Idea*.

²⁰⁴ Even political parties are ideologically distinguished on the basis of this division. The Conservative Party of Canada and the Republican Party of the United States are ideologically grounded in a view that emphasizes negative rights. The New Democratic Party of Canada is grounded in a view that emphasizes positive rights as well as negative rights. From this point of view, what set of rights to use to constrain globalization is not an easy subject.

3(a). Human Rights as Natural Rights

In earlier debates, thinkers have discussed some of the kinds of rights and freedoms embodied in human rights as natural rights. In *The Rights of Man*, Thomas Paine conceives of natural rights as those which “appertain to a man in right of his existence” and are the “foundation of all his civil rights.”²⁰⁵ Paine’s definition might not be the clearest expression of natural rights. But then again, as Wayne Sumner argues, between the Classical and Modern schools of natural rights theory, there is no agreed account of the nature of such rights.²⁰⁶ Natural rights are essentially treated as rights that are inherent to us. Certainly this line of thinking preoccupies philosophers like Thomas Hobbes, John Locke, and Jean Jacques Rousseau.²⁰⁷ Hobbes deduces such rights from the prepolitical state of human life, what he calls the state of nature. Notable among these rights are the right to self-preservation and the right of nature (having unlimited

²⁰⁵ Paine, “The Rights of Man,” 134.

²⁰⁶ Sumner, *Moral Foundations of Rights*, 64.

²⁰⁷ It must be said that there is a rich debate among Michel Villey, Richard Tuck, and Brian Tierney about the evolution of human rights from the natural law and natural rights discourse. This debate is centred on the history of the term *ius naturale* which, for our purposes, is focused on the idea of subjective rights. In their view, the debate over rights and duties predates Hobbes, even though it is fashionable among intellectuals in contemporary times to identify the origin of “rights talk” with these thinkers. While there are contentions among Villey, Tuck, and Tierney as to the actual origins of rights, they are agreed that the general absence of a focus on much earlier traditions for an understanding of the origins of subjective rights has to do with much of those works being written in Latin. Tierney, for example, claims that natural rights first grew in the works of the medieval Decretists and came to be asserted in the work of the canonist Gratian in his *Concordantia Discordantium Canonium*, commonly known as the *Decretum*. As Hobbes was quite fluent in Latin, among other languages, he was able to build on the debate taking place before him. Thus, although the contractarian thinkers play a key role in expounding the idea of natural rights as they are entrenched in our time, it is debatable as to whether they, and especially Hobbes, should be treated as the origin of natural rights. Hobbes’ natural rights focus, Tuck points out, expanded on the ideas developed by Hugo Grotius and John Seldon, which themselves grew out of an earlier discourse involving thinkers such as Francisco Suarez, Jean Gerson, and Luis de Molina. For a detailed discussion on this debate, see Tierney’s *Idea of Natural Rights* and Tuck’s *Natural Rights Theories*.

liberty).²⁰⁸ In Hobbes's view, the prepolitical context of man lacks any basis for sustained security because of man's atomistic greed. Hobbes conceives of men as being in a state of war with each other.²⁰⁹ In virtue of this trait, he sees the need for a powerful Sovereign to maintain security and stability, otherwise everyone will be in constant fear of death.

The Sovereign (which is the result of an initial compact among men to establish a sovereign, followed by a subsequent compact to surrender their right to unlimited liberty in return for protection) marks a turning point from the prepolitical to civil society. The so-called laws of nature (laws of God that are understood through reason) that apply to man in the state of nature are thus to be enshrined in civil law. Without a powerful Sovereign to enforce these laws, Hobbes thinks the life of man will be solitary, short, nasty and brutish.²¹⁰ Thus, he proposes a Sovereign that is not limited by law but is nevertheless there to enforce it.

This idea of a prepolitical state of man is revisited by Locke, who does not see the state of nature in quite the grim manner as does Hobbes. Like Hobbes, Locke conceives of a condition of equality of man in the state of nature, one having to do with liberty. He writes:

To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.²¹¹

²⁰⁸ Hobbes, *Leviathan*, 91.

²⁰⁹ In Hobbes's view, there are three causes for quarrel and tension among men, namely, competition, distrust, and glory. Man by nature is atomistic, greedily looking out for his own self-interest, and will do so at the expense of others.

²¹⁰ Hobbes, 89.

²¹¹ Locke, *Second Treatise of Government*, 8.

But Locke is quick to caution that this context of liberty is not a “state of licence” to destroy oneself or any creature in one’s possession. It is, in his view, governed by a law of nature – reason – which teaches everyone that the exercise of their liberty should not cause harm to others. For Locke, the turning point from the prepolitical to civil society is a move to protect property – in one’s person and one’s ownership. Like Hobbes and Locke, Rousseau takes a similar approach in making a foundational claim for natural rights and freedom, where he writes: “Man is born free; and everywhere he is in chains.”²¹²

It is worth noting that the essence of natural rights was discussed in the Medieval period in terms of natural law (which emphasized duties as opposed to rights). Today, we take up the same kinds of issues but discuss them in terms of human rights. The history of such a discussion highlights, in some ways, a move by these thinkers to address certain core elements in human life – the elements that are vital for the preservation of human life and flourishing. Looked at from this perspective, the thinkers have been preoccupied with certain matters of fact about human nature. My own undertaking in this dissertation is not different; it is to underscore some core elements as things that must be safeguarded in the present era.

The concept of natural rights was later criticized. Some criticized it as opening the floodgate to rights claims for non-human animals. Others criticized it on the basis of the claim that it anchored such rights in a supernatural being, thus making it a theistic account of human life. The concept of human rights evolved to neutralize some of these

²¹² Rousseau, “The Social Contract,” 165.

criticisms, since the focus was in fact on human beings and not the world of all living species.²¹³ Today, it does not need to be said that by “human beings” one does not merely mean men, or a particular privileged group of people – the term applies literally to all human beings. This is an important point because, as Orend notes: “For the longest time, a person was considered a right-holder only if possessed of certain select characteristics, like being an able-bodied, land-owning adult male.”²¹⁴ Slaves were not seen as persons but as property, and so they would have been denied claims to such rights and freedoms if the concept applied to a limited range of people.

There are many contemporary thinkers who still ground their arguments in support of such rights and freedoms in the idea of certain natural rights. But these entitlements we are said to have in virtue of being human are still identified as human rights. Underlying their universality is the principle that as human beings we all have a certain basic moral worth, and the protection of this basic moral worth is vital to living a minimally decent life, or as Alan Gewirth argues, a life of freedom and well-being.²¹⁵ Rights are said to be the best way to protect this moral worth because, as James Nickel points out, among other things “they provide a normative category that is binding, high-priority, and definite” and they “provide a normative vocabulary that allows for ‘claiming’ in a variety of senses, by either right-holders or interested parties.”²¹⁶

In the face of this turning point, it must be said that human rights as they are presently enshrined are really conventional and not natural. Although we treat them as

²¹³ Ozar, 8, 10.

²¹⁴ Orend, 15.

²¹⁵ Ibid., 16; Gewirth, *Human Rights*, chapter one.

²¹⁶ Nickel, *Making Sense of Human Rights*, 26.

rights everyone has in virtue of being human, such rights are in a practical sense what are considered important for human survival, flourishing and happiness. As Bentham argues, they are not innate rights.²¹⁷

3(b). Human Rights are a Special Class of Moral Rights

The vital nature of human rights implies that such rights must be of a certain rank in the class of rights generally, otherwise one might argue there is nothing stopping us from claiming that these are simply moral rights. Rights, as Shue puts it, are certain justified rational demands we can make of others.²¹⁸ Human rights, in particular, are rights in the moral sense but of a certain rank – they are treated as high priority moral rights. Gewirth, for example, claims that human rights are a species of moral rights which everyone must have because they are of supreme importance and vital to all other moral considerations, since they are necessary for human action.²¹⁹ Orend claims that: “A human right is a high-priority claim, or authoritative entitlement, justified by sufficient reasons, to a set of objects that are owed to each human person as a matter of minimally decent treatment.”²²⁰ Thus, human rights are not merely moral rights but moral rights of a certain high rank.

Human rights are enshrined in legal codes in many countries, but they need not be for one to claim their existence. Because they are a type of moral rights, human rights

²¹⁷ Bentham, “Anarchical Fallacies,” 53. See also Bentham’s “Supply Without Burthen,” and his “Pannomial Fragments.”

²¹⁸ Shue, *Basic Rights*, 13.

²¹⁹ Gewirth, 12.

²²⁰ Orend, 34.

can be asserted as part of “actual moralities.”²²¹ If, as we have said, rights are, among other things, reasons to treat people a certain way, surely those reasons do not have to exist in a system of positive law before people can be so treated. Certainly this is an issue that inspires a great deal of controversy, but the point presently is simply to identify the way human rights are viewed by their proponents.

3(c). Human Rights and Their Underlying Value System

At their core, human rights assume an underlying value system that ascribes a certain moral worth to every human being. This ascription of moral worth thus implies that persons must be treated in a certain way. One might compare Kant’s claim that we are obligated to treat humans, in virtue of being human, as ends in themselves. As Kant puts it, “he who transgresses the rights of men, intends to use the person of others merely as means, without considering that as rational beings they ought always to be esteemed also as ends, that is, as beings who must be capable of containing the very same action.”²²² This reference to Kant is not to identify him as a rights-theorist (since he is a duty-theorist), but rather to capture the idea of moral worth that individuals are said to embody. His statement presupposes that a certain moral status pertains to every person, and that this moral status is characteristic of one’s worth as a human being. Conceiving of a person in this way suggests that a person must not be treated as having merely instrumental worth, but must also be seen in a moral context as valuable in and of his or herself.

²²¹ Nickel, 40. Nickel distinguishes between actual moralities and justified or critical moralities. Actual moralities are part of the practice of existing cultures whereas justified or critical moralities need not be accepted or practiced by anyone or institutionally situated. Utilitarianism would be an example of a justified or critical morality.

²²² Kant, *Metaphysic of Morals*, 59.

The value system that is the basis of human rights rests on the assumption that human dignity embodies some core elements of social respect -- respect which takes the form of certain treatment toward the individual human being. In many instances we might, following Mill, say that such respect requires that we refrain from certain ways of treating others.²²³ The rights and freedoms that this respect implies are said to be fundamental elements of human development. Human development is morally relevant because morality is concerned with how people ought to act. If their physiological and psychosocial development is not properly addressed, this situation may induce undesirable behaviour in them. It may have other implications concerning the way they conceive of their purpose in life.

The right to religious freedom, for example, implies that we must not persecute individuals for their religious beliefs, as this freedom is a central aspect of one's moral, psychological, and social development. This claim is often justified by many on the basis that adhering to the maxims of one's religion is important, because many people see their social and personal morality as well as their purpose in life as grounded in religious metaphysics. Doing good, for example, is a matter of pleasing God; pleasing God is a way to avoid the wrath of hell. Hence, social and moral development for such persons is linked to particular theological concepts of life. Not having the freedom to live according to these theological concepts of life is thus said to prevent them from attaining the good life, because religion is the basis upon which many create their purpose in life.

The right not to be tortured or inhumanely treated is another human right that is said to be essential to human development. While one might plausibly argue that many

²²³ See Mill's *On Liberty*.

societies have justified torture to extract confessions and the like (as in cases involving terrorism, which are notable in the present time with U.S. detainees at Guantanamo Bay, Cuba), it is equally plausible to suppose that many societies, ancient and modern, have moral value systems that elaborate some type of prohibition against human maltreatment. This is not to say that this prohibition would have applied to or protected everyone. This much can be inferred on the basis that a harmonious social order is difficult to achieve in a context that leaves one's person exposed to undue harms. A moral system which permitted torture and maltreatment of all innocent people as a social norm would conflict with human flourishing and assault one's sense of dignity as a human being. This is said to be the genesis of Paine's attacks on slavery in 1775.²²⁴

4. Historical: Human Rights Development in the West²²⁵

4(a). The Magna Carta

The Western precursors of human rights must be seen in an historical context. Some writers link human rights to Roman Stoicism, which views the world as an organic whole organized according to the laws of a rational God.²²⁶ This tradition is said to have given rise to early natural law thinkers such as Cicero, himself an exponent of Plato. Most, however, trace the West's formal development of human rights to the Magna Carta or Great Charter of 1215.²²⁷ The Magna Carta emerged as a concession made by King John of England to wealthy barons in the English countryside in exchange for much

²²⁴ Ishay, *The Human Rights Reader*, 134.

²²⁵ I am heavily indebted to Orend's and Weston's historical accounts for my understanding of the evolution of human rights in the West. See Weston, "Human Rights."

²²⁶ Orend, 195.

²²⁷ Weston, 13.

needed funds to replenish his insolvent treasury. His treasury was exhausted battling the encroachment of Islam from the Middle East. The English barons saw his predicament as a good opportunity to broker a legal instrument that would protect their property and person from unreasonable interdiction by the monarch.

In exchange for the financial resources he requested, the barons required him to enact certain rights in their favour. These included: rights as property owners whose property the king must restrain himself from; the right to move freely into, out of, and about England as commerce and trade required; entitlement to due process, such as not being unlawfully held in jail; not being arrested without a credible witness to the offence; the right to an impartial trial by a jury composed of their fellow property-owners; and the right to be punished only in proportion to the offence.

In signing the Magna Carta, King John formally enacted these rights. But they were not universal. They applied only to a particular class of people. Charles E. Wyzanski, Jr. describes the Magna Carta well when he writes that: “No one who has studied carefully the Magna Carta has any doubt that what it actually represents is a baronical restriction upon the King, requiring him to adhere to ancient custom and due process as established previously.”²²⁸ The Magna Carta established the basis of what would later be demanded by others, and the entitlements it elaborates are incorporated in practically all human rights documents today.²²⁹ Other developments include the passage of the Habeas Corpus Act of 1679 and the English Bill of Rights of 1689. The Habeas Corpus Act rules against arbitrary arrest, and established a milestone for due process.

²²⁸ Wyzanski, “Philosophical Background,” 13.

²²⁹ Orend, 102.

In England, the development of human rights which began with the Magna Carta ultimately gave rise to the English Bill of Rights. The Glorious Revolution of 1688-1689 that brought an end to the abusive authoritarianism of James II and empowered William and Mary as constitutional monarchs was a major event that gave rise to the English Bill of Rights. The English Bill of Rights elaborated a series of rights, among them political participation and free speech on political issues. It lifted restraints that prevented wealthy nobles from running for office.

4(b). The American Declaration of Independence

Almost one hundred years later, hostility against England's colonization of the United States reached its climax. Many disenchanted people in America congregated to share their discontent at England's neglecting to address their public welfare. This discontent led to the American Revolution, which saw the amalgam of such people successfully sever ties with England and assert themselves as a sovereign people who were born free and equal. It gave birth to America as a sovereign nation comprised of thirteen states, and put an end to England's legal claims over them.

The American Declaration of Independence of 1776 elaborated with majestic language the causal factors that inspired the revolution, emphasizing the claim that: "The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states."²³⁰ Perhaps the most memorable and most relevant human rights utterance in the American Declaration of Independence is the claim that: "We hold these truths to

²³⁰ *The American Declaration of Independence.*

be self-evident, that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.”

The emphasis on “unalienable rights” was carried forward in the French Declaration of the Rights of Man and of the Citizen, and in the United Nations Universal Declaration of Human Rights in its opening text. The subsequent American Bill of Rights of 1789 proclaimed rights to due process, self-protection, religion, free speech and freedom of the press, among others. It was not intended as an instrument to empower individual rights. Rather, the move for a Bill of Rights was advanced as a way to prevent the federal government from having too much control over the individual states that comprised America at the time.²³¹

4(c). The French Declaration of the Rights of Man and of the Citizen

Inspired by the American Revolution, French discontent with the monarchy of Louis XVI grew and fostered the French Revolution in 1789. In this case, revolution did not produce the short-term and long-term successes that characterized the American Revolution. Rather, the revolution, as Orend explains, spurred on by radical extremists, spun out of control and produced a state of public chaos. Napoleon, a military general who declared himself an emperor, was successful in restoring order.²³²

The French Revolution produced the French Declaration of the Rights of Man and of the Citizen. This historic political proclamation of rights is arguably the most influential rights document in Europe.²³³ Like Rousseau’s *Social Contract*, its first

²³¹ For a good discussion on this issue, see Ackerman, *We the People*; Glendon, *Impoverishment of Political Discourse*; and Sandel, *Democracy’s Discontents*.

²³² Orend, 206.

enumeration emphasized the freedom and equality of man: “Men are born and remain free and equal in rights. Social distinctions may be found only upon the general good.”²³⁴ Its proclamation of the rights to political participation and the right to equality highlights its distinct contribution to human rights in the contemporary context. For example, Article Six states: “Law is the expression of the general will. Every citizen has the right to participate personally, or through his representative, in its foundation.”

Although these political documents were majestic in language on the rights and freedom of human beings, human rights still had to come of age; for example, these political documents did not say anything direct about issues such as race, religion, and class. The French were still coping with the social instability created by the revolution and the subsequent military dictatorship. In America and Great Britain, class and race waited to be dealt with. Slavery was still in full force in both countries. Between the period of 1680-1786 alone, over two million Black persons were transported to the western hemisphere as slaves by British slave traders.²³⁵ In the early days of America, only property owning men were allowed to vote.²³⁶ Proclamations on human rights did not yet reflect reality.

4(d). Precursors to the Universal Declaration of Human Rights

The social and political situations in Britain, America, and France were important factors in the development of human rights, but were by no means the sole factors. Other

²³³ Ibid., 106.

²³⁴ *The French Declaration of the Rights of Man and of the Citizen.*

²³⁵ Weissbrodt, “An Historical Perspective,” 3.

²³⁶ Orend, 103.

contributing factors included the 1926 codified prohibition of slavery by the League of Nations Convention to Suppress the Slave Trade and Slavery; the International Committee of the Red Cross by the Geneva International Conference in 1863 (which produced the Geneva Convention of 1864), and the establishment of the International Labour Organization in 1919 (which sought to protect the dignity of workers).

In our own times, notions of human rights are often associated with the Second World War, which vividly displayed the horrors of genocide and human torture, and the impact they have on the human psyche. Efforts were already in place after World War I to establish some global framework to enshrine the dignity and moral worth of individuals.²³⁷ But outrage at the torture associated with World War II helped expedite a global consciousness of the need to assert values that recognize universal characteristics that are fundamental to human freedom and well-being, and to enshrine them as a minimum set of international standards. This endeavour resulted in the approval of the Universal Declaration of Human Rights by the United Nations in 1948.

4(e). The Universal Declaration of Human Rights

The Universal Declaration was a milestone in the history of human rights, for it epitomized the purpose of the United Nations (established just four years earlier), and is said to have marked the first time that the concept “human rights” was used in an international instrument. In the words of Eleanor Roosevelt, chairperson of the organizing commission, “it was the Magna Carta of mankind.”²³⁸ The final draft of the Universal Declaration of Human Rights was approved by the United Nations General

²³⁷ Sweet, “Introduction: Theories of Rights,” 6.

²³⁸ Lawson, *Encyclopedia of Human Rights*, xil.

Assembly on 10 December 1948. Its approval followed an arduous review period that occupied 81 meetings in which 56 member states reviewed and disposed of 168 proposals for amendments.²³⁹ It was described in the 1968 Proclamation of Tehran as “a common understanding of the peoples of the world concerning the inalienable and unviolable rights of all members of the human family.”²⁴⁰

But the Universal Declaration was not without its imperfections. It is said to have lacked, at this time, a suitable provision for minorities, and in 1978 the United Nations Commission on Human Rights empowered a group to draft a declaration on minority rights. Furthermore, the initial Human Rights Committee disclaimed any power to take action against complaints, especially since the Universal Declaration was not a legally binding instrument. It was not until 1970 that the Commission on Human Rights adopted a resolution (1503) — Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms — that this defect was corrected.

Setting aside its imperfections, the Universal Declaration of Human Rights has proved to be an important moral instrument in international affairs. It was developed to fulfil the Charter of the United Nations, which aims at the prevention of war, the preservation of peace, and the affirmation of the “dignity and worth of the human person” and their “fundamental human rights.” This is clearly outlined in the Charter’s preamble and Articles One and Five. It is no coincidence that the Universal Declaration’s preamble begins by affirming that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom,

²³⁹ Ibid.

²⁴⁰ Ibid.

justice and peace in the world.” It further acknowledges the barbarism that results from disregard and contempt for human rights, and suggests that human rights be protected by the rule of law if rebellion arising from tyranny and oppression is to be averted.

In order to promote this objective, the General Assembly proclaimed the Universal Declaration of Human Rights consisting of 30 articles. Foremost among them is the declaration that every human being is born free and equal in dignity and rights, and is endowed with reason and conscience, as stipulated in Article One. Thus, from the outset a moral assumption on the nature of human life is declared. The Universal Declaration enumerates a series of civil and political rights, advocating that they hold without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Among these rights are the right to life, liberty, and security of one’s person – outlined in Article Three. Consistent with civil and political rights, the Universal Declaration emphasized the right not to be enslaved or bound in servitude as well as the prohibition of the slave trade; the right not to be tortured or subject to degrading inhuman treatment; and the right to be recognized as equal before the law and have the enjoyment of its protection.

Reflective of the Habeas Corpus Act, the Universal Declaration proclaims the right not to be subjected to arbitrary arrest, and exhorts the entitlement each person has to a fair trial by a competent judge and to due process. It declares the right to participate in public affairs such as governance, and the right to free movement into, out of, and within one’s country; and it clearly defines the right to practice one’s religion, entitlement to property rights, nationality, and equal access to public service. But the Universal Declaration also contains articles that outline certain positive rights as human rights, such

as rights to just and favourable conditions of work (for example, a livable wage), and compulsory elementary education.

The controversy that attends such rights raised serious concerns, especially in light of the ideological divide during the Cold War. Since the Universal Declaration did not have legal effect on its signatories, it was left up to each state to promote these rights. Some, most notably the United States, emphasized the civil and political rights while others such as the U.S.S.R. at the time emphasized the economic, social, and cultural rights.

Fearful that ratification might not be achieved on a proposal that included both civil and political rights and economic, social, and cultural rights, the Human Rights Commission developed two separate international covenants. In 1966 there emerged, in the General Assembly, the International Covenant on Civil and Political Rights and, separately, the International Covenant on Economic, Social, and Cultural Rights for ratification. As Julia Hausermann explains, the two covenants were made to reflect divergent opinions on the difference in rights and the social persuasion characterized by the Cold War.²⁴¹

By this time the United Nations' membership grew from 51 to 119, consisting of 36 states from Africa, 16 from Asia, 10 from Western Europe, five from Eastern Europe, and one from Latin America.²⁴² Despite tension and fear, the Covenant on Economic, Social, and Cultural Rights was adopted in 1966.²⁴³ The covenants were approved by the UN's General Assembly in 1966, but had to get the signatures of 35 countries before they

²⁴¹ Hauserman, "Myths and Realities," 127.

²⁴² Lawson, xii.

²⁴³ Hauserman, 129.

could have legal effect or be binding on the parties to them. In 1976, the signature of the 35th nation was attained, thus setting the covenants in force as international law.²⁴⁴

Together with the Universal Declaration they comprise the International Bill of Rights.

4(f). Covenant on Economic, Social, and Cultural Rights

The Covenant on Economic, Social, and Cultural Rights is focused on positive rights, and incorporates many of the rights noted in the Universal Declaration. Its drafting, according to B.G. Ramcharran, was based on two premises. First, some rights differ in character because some can be guaranteed and some can only be achieved over time.²⁴⁵ Second, it acknowledges a difference between obligation of conduct and obligation of result.²⁴⁶ These distinctions, in Ramcharran's view, imply that some of the rights contained in this covenant can be worked towards and aspired to, depending on the available resources, but cannot be assured. The uncertainty of their outcomes is especially manifest in the state's stock of financial and non-financial resources. Third World countries, for example, are unlikely to be able to provide the same level of material resources to ensure economic rights as are rich industrial countries. Consequently, inability to exercise all economic rights might not necessarily be a reflection of the conduct of the state. But states are obligated to pursue them as their resources permit, and, according to the covenant, are required to give account to the Secretary General on the steps taken to achieve them.

²⁴⁴ Nickel, 6.

²⁴⁵ Ramcharran, "Human Rights and Law," 120.

²⁴⁶ Ibid.

4(g). Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is focused on negative rights and likewise incorporates some of the content of the Universal Declaration of Human Rights. It emphasizes the right to self-determination and the freedom to pursue economic and cultural development. According to the covenant, people are free to use and dispose of their own resources and must never be deprived of their own means of subsistence. The covenant outlines the equal rights of men and women in the enjoyment of all civil and political rights. The exception where these rights may be suspended is in times of emergency. At the same time, the covenant prohibits member states from derogating some rights, even in emergencies, namely, Articles Six, Seven, Eight (paragraphs 1 and 2), Eleven, Fifteen, Sixteen, and Eighteen. Some concern the inherent right to life, with the exception of death sentences for serious crimes; and freedom from torture, cruelty, or inhumane treatment. They also include prohibition of slavery, servitude, and the slave trade; prohibition of compulsory labour, except where issued by a competent judge for a crime; the right to be recognized as a person before the law; the right not to be imprisoned merely for failing to meet a contractual obligation; and freedom to a religion, conscience, or thought not injurious to others.

Thus, although the Universal Declaration is not a legally binding instrument, its core contents have been incorporated into two international covenants that are legally binding on states that accede to them.²⁴⁷ In other words, such states are obligated to uphold them.

²⁴⁷ Orend, 103.

5. Conclusion

In this chapter, I have provided a conceptual account of human rights, distinguishing it from other types of rights. I have argued that the elements of human rights have been discussed in different ways by different thinkers over time, but that these thinkers have all been, in some way or another, preoccupied with addressing certain facts about human preservation and flourishing. I have also outlined the moral underpinnings of human rights. To highlight the struggle to enshrine human rights as core elements of morality, I have elaborated the evolution of human rights in the context of political and legal developments in England, America, and France, and the drive for a universal set of standards after World War II that gave rise to the Universal Declaration of Human Rights. The point in elaborating all of these aspects of human rights is to emphasize their moral value and utility to human survival and well-being, and the struggles to canonize them on this basis. My objective has also been to emphasize the significance of human rights as an ideal way to mitigate globalization. To emphasize the convergence of the core underlying values of human rights in the world context I elaborate, in the next chapter, a brief account of concepts of human rights ethics in some non-Western traditions.

Chapter 4

Normative Values of Human Rights in Non-Western Traditions

1. Introduction

It is often thought that human rights are a product of the West and unique to this part of the world. Two elements are significant to this view. First, such a view overlooks the normative links human rights have to non-Western traditions, ancient and modern. Second, it is sympathetic to arguments that claim that the implementation of human rights values outside the West is culturally hegemonic. Of course, the concept of human rights has roots in the West. But the normative values underlying the concept also have origins elsewhere. In the present chapter, I highlight some of these values in Confucius and Mencius of ancient China; in Ashoka, Kautilya, and Akbar in the ancient and early modern period in India; and in the moral system of Islam. My aim is to show that there are convergences in terms of the underlying values of human rights in some non-Western traditions.

2. Human Rights: Cross-Cultural Normative Convergences

Other ethical traditions are said to lack a concept of human rights. Julia Ching claims their ancestry goes back to the Stoic concept of natural law and Roman civil law.²⁴⁸ David Weissbrodt claims that “one can trace the origins of human rights back to early philosophical and legal theories of the natural law, a law higher than the positive

²⁴⁸ Ching, “Valid Chinese Concept,” 69.

law of states.”²⁴⁹ Elaine Pagels claims: “As we consider human rights policy, then we may be deterred from ‘moral arrogance’ if we remember that it represents a recent development in social and political theory and, I would suggest, primarily a Western tradition.”²⁵⁰ Evidence supporting this claim, she argues, can be found in Judaism, Christianity, and Islam, but these traditions are said to lack the contemporary concept of human rights. Donnelly claims that the notion of human rights is a Western concept, arguing that non-Western value systems address moral worth but differ from our concept of rights because they are grounded in religious ethics.²⁵¹

In the context of this debate, it needs to be said that, according to received accounts, a lexicon to translate “human rights” was not available in many ancient civilizations. Neither was there a lexicon that translated to “human dignity.” According to Irene Bloom, the modern Chinese word *zunyan* that correlates to “dignity” does not exist in the *Analects* of Confucius or in the *Mencius*.²⁵² Nor does *pingdeng*, she argues, which translates to “equality.” The Greeks are also said to have lacked a term for “dignity”.²⁵³ The German term *Menschenwurde*, used to signify human dignity, is said to have appeared as late as the eighteenth century.²⁵⁴ The absence of such lexicons does not, however, show that these traditions lacked a concept of what they entail. Otherwise,

²⁴⁹ Weissbrodt, 1.

²⁵⁰ Pagels, “Roots and Origins,” 6.

²⁵¹ See Donnelly, *Universal Human Rights*.

²⁵² Bloom, “Mencius and Human Rights,” 104.

²⁵³ Ibid.

²⁵⁴ Ibid.

we may say that because other cultures lacked a term for love they must be ignorant of its qualities.

Seung-Hwan Lee makes a compelling case to show that the absence of a lexicon does not imply an absence of what it is to which the lexicon corresponds. Lee quotes Mencius, who says: “Here is a man who is entrusted with the care of cattle and sheep of another man. Surely he is obliged to feed the animals. If he found that this could not be done, should he return his charge to the owner or should he stand by and watch the animals die?”²⁵⁵ According to Lee, the owner mentioned here has some form of power to expect the care of the animals, regardless of whether it is a contract between two contractors or a promise between two friends. This power, argues Lee, entitles him to have them returned when the promise cannot be fulfilled. The person entrusted to care for the animals thus has a corresponding obligation to do so, and a duty to return them to the owner. In effect, there is a right-holder and a duty-bearer. While the word “right” is not used, it is nevertheless implied in the relation.²⁵⁶

This illustration suggests that the absence of a particular word or concept in a language or tradition does not necessarily imply that the language or tradition lack a corresponding normative understanding of the concept. At least this is the point Lee attempts to convey. The Western tradition is distinct insofar as it expresses rights in terms of demands – namely individual rights claimed against the state. In contrast, other ethical traditions articulate expressions of dignity differently, often in reference to the edicts of their moral community. The absence of an explicit discourse of demands or

²⁵⁵ Lee, “Confucian Virtue-Based Morality,” 247.

²⁵⁶ Ibid.

claim-rights does not logically entail the absence of some normative notion of it. That there is not a word to identify a sense of wrong in a police officer trying to kill me does not mean that I cannot have a normative sense of certain claim that I am justified in making or expecting, namely, that I have a right to live and he does not have a right to try to kill me. Absence of the lexicon does not close the curtain to the normative substance.

Jeanne Hirsch, a philosopher and former director of the philosophy division of UNESCO, makes the point very clearly when she summarizes a world survey, stating: “These [cultural] texts demonstrate that, although there may not be a universal concept of human rights, all people in all cultures nevertheless need, expect and are conscious of these rights. They may be not be the same rights everywhere, just as the need for them may not be expressed in the same way.”²⁵⁷ Extending John Rawls’ notion of “overlapping consensus,” Charles Taylor attempts to make a similar argument. Commenting on the convergence of human rights with the Thai Buddhist tradition, he writes:

To an extent, Westerners see their human rights doctrine as arising simply out of the falling away of previous countervailing ideas – such as the punishment scenarios of the ancient regime – that have now been discredited to leave the field free for the preoccupations with human life, freedom, the avoidance of suffering. To this extent they will tend to think that the path to convergence requires that others too cast off their traditional ideas, that they even reject their religious heritage, and become ‘unmarked’ moderns like us. Only if we in the West can recapture a more adequate view of our own history, can we learn to understand better the spiritual ideas that have been interwoven in our development and hence be prepared to understand sympathetically the spiritual paths of others toward the converging goal.²⁵⁸

One finds normative elements of human rights in Confucius, where recorded history claims that he said: “A resolute scholar and a man of humanity will never seek to live at

²⁵⁷ Hirsch, “Human Rights in Western Thought,,” 132.

²⁵⁸ Taylor, “Unforced Consensus,” 143-144.

the expense of injuring humanity. He would rather sacrifice his life rather than injuring humanity.”²⁵⁹ “Humanity” is here conceived of as a sacred and inviolable value in moral relations, and is derived from the principle of *jen* (human heartedness). As well, Confucius states: “In education there should be no class distinction,”²⁶⁰ making him, according to Wing-Tsit Chan, the first person in Chinese history to exhort such a principle.²⁶¹

Other indications of a belief in some kind of human rights and human dignity are found in ancient Chinese ethics. Mencius conceives of all persons as born originally good – Chan claims he is the first thinker in the history of Chinese thought to assert such a claim.²⁶² For Mencius, deviation from one’s moral nature is always due to environmental contexts and influence. According to him:

Although there may be a difference between the different stalks of wheat, it is due to differences in the soil, as rich or poor, to the unequal nourishment obtained from the rain and the dew, and to differences in human effort. Therefore all things of the same kind are similar to one another. Why should there be any doubt about man? The sage and I are the same kind.²⁶³

Mencius underscores the value of the human person, whose preservation requires nurturance in both a socio-economic and socio-moral context, for the moral order to be maintained. This implies a notion of equality and human worth as well as an understanding of inequality and social disparity, which would be consistent with the values enshrined in the International Covenant on Economic, Social, and Cultural Rights.

²⁵⁹ Confucius, “*Analects*,” 15:8.

²⁶⁰ *Ibid.*

²⁶¹ Chan, *Chinese Philosophy*, 44.

²⁶² *Ibid.* 55

²⁶³ *Ibid.*

Sen and others have argued that elements of human rights are also evident in Indian thought -- in Ashoka, Kautilya, and Akbar. Sen claims expressions of human rights are clear in Akbar, a Moghul emperor who reigned from 1556-1605. Akbar was not a democrat, argues Sen, but the policies he enacted to foster tolerance of diverse social and religious behaviour were inconceivable in parts of Europe at the time.²⁶⁴ To highlight evidence for this claim, Sen points to a tension in Delhi and Agra over the approaching 1000th year in the Muslim Calendar, where Akbar made the following enactment:

No man should be interfered with on account of religion, and anyone [is] to be allowed to go to a religion he pleased. If a Hindu, when a child or otherwise, had been made a Muslim against his will, he is to be allowed, if he pleased, to go back to the religion of his father.²⁶⁵

This enactment was made in the heyday of the European Inquisitions, a clear contrast with the celebrated notion that the West has been the sole champion of liberties and their attendant rights.

Sen similarly outlines Ashoka's undertakings. According to Sen, Emperor Ashoka, who reigned in the third century B.C.E. in India, commanded an empire larger than any other king, including that of the Moghul and the Raj. It is said that after winning the battle against the Kalinga Kingdom, in what is now Orissa, Ashoka was disheartened at the large number of human fatalities and casualties caused by his own victory.²⁶⁶ As a result, he converted himself and the royal kingdom to Buddhism and

²⁶⁴ Sen, *Development as Freedom*, 238.

²⁶⁵ Ibid.

²⁶⁶ Bresnan, *History of Eastern Thought*, 190.

began writing on the need for tolerance and egalitarianism.²⁶⁷ It is significant that King Ashoka influenced a similar turn of events in Sri Lanka, through Tissa, King of Sri Lanka at the time. King Tissa tried to befriend Ashoka, in virtue of Ashoka's power and influence, and to stay on Ashoka's good side so as to avoid an annexation of Sri Lanka. As a result, he too converted his royal kingdom to Buddhism after receiving Ashoka's acceptance of friendship and Ashoka's message, which essentially proclaimed Buddhism as the most praiseworthy thing he encountered.²⁶⁸

In the Islamic tradition, normative elements of human rights can be found in the tradition's principal source of morality, the Quran.²⁶⁹ Islamic cultures also draw on Shari'a (commonly understood as Islamic Law) which records the *Sunna*, or practices of the prophet Muhammad (uwbp).²⁷⁰ The latter is widely reported to have taken more than two centuries after Muhammad's death to compile. The Shari'a represents interpretations of Muslim jurists at the time, and, according to Abdullahi An-Na'im, it took about three centuries of Islamic history before that law became a "comprehensive ethical doctrine."²⁷¹

The expression "comprehensive" should not imply that it takes the place of the Quran; the Quran remains the chief source of authority. An-Na'im points out that not

²⁶⁷ Ibid.

²⁶⁸ King Tissa had sent with daughter Princess Sangamita a treasured pearl that was found in the deep ocean in Sri Lanka, to King Ashoka, claiming that it was the most beautiful and prized thing he came upon, and would like for Ashoka to have it as a gesture of friendship. Hence Ashoka's reply about Buddhism. Hence also Sri Lanka being the great archive for Buddhist literature, as Princess Sangamita began among other things the first female order of Buddhism starting in Sri Lanka.

²⁶⁹ Ishay.

²⁷⁰ The expression "uwbp" stands for "upon whom be peace."

²⁷¹ An-Na'im, "Rights in the Muslim World," 3.

everything in Shari'a entirely aligns with human rights as we currently conceive of them. But in An-Na'im's view, many of the economic, social, and cultural rights align with Shari'a.²⁷² Shari'a, for example, condemns torture and violation, and speaks of the right to fair trial and due process of law, which are required by the Covenant on Civil and Political Rights.²⁷³ It is also said to protect the rights of the child, to stipulate protection of privacy and treatment of refugees, and discourage slavery.²⁷⁴

An-Na'im claims that the notion that human beings are born equal in worth and dignity irrespective of their gender and race is also evident in the Quran. For example, it speaks of dignity for humankind and the children of Adam without distinction of race, color, gender or religion, in verses 17:17 and 49:13.²⁷⁵ It is in this regard significant that Quranic ethics advocated rights of women and moral equality between women and men in an era when women were victims of much oppression. It clearly represents an historic moment in the moral recognition of women. As An-Na'im puts it: "In relation to the status and rights of women...equality between men and women in the eighth and ninth centuries in the Middle East, or anywhere else at the time, would have been inconceivable and impracticable."²⁷⁶ In other words, the Islamic tradition embodies an important moment for the human rights of women.

Other revelations of the Quran resonate well with the normative substance of human rights. For example, the Quran explicitly states that to kill an innocent person is

²⁷² Ibid.

²⁷³ An-Na'im, "Islamic Law and Human Rights," 5.

²⁷⁴ An-Na'im, "Rights in the Muslim World," 3-6.

²⁷⁵ Ibid., 47.

²⁷⁶ Ibid., 46-47.

like killing all of humanity. It also states that in religion there must be no compulsion; in other words, people must not be coerced into joining a religion. This revelation is a clear expression of freedom to live as one sees fit; the idea is that in the end, according to the religious edict, everyone will be accountable to God for their conduct towards each other and their obedience to God's ethical revelations. The Quran also stipulates that one must give one fortieth (approximately two percent) of one's savings annually to the poor and needy, what in the scriptural language is called *zakaat*. The idea is that living well with each other in society (and being humane to non-human life) is in keeping with the desire of God; that to live well is to recognize and respect certain basic principles of human respect and care.

These Islamic ethics differ in some important respects from the European inquisitions, colonization, and slavery carried out during the period of the natural rights philosophers in the West. They also differ from 20th century apartheid policies in America.²⁷⁷ Sen describes it best: "The valuing of freedom is not confined to one culture, and the Western traditions are not the only ones that prepare us for a freedom-based approach to social understanding."²⁷⁸

Sumner Twiss makes the same point when he writes: "No one cultural tradition is the sole source of human rights concern. Human rights are, from this point of view, the expression of a set of important overlapping moral expectations to which different cultures hold themselves and others accountable."²⁷⁹

²⁷⁷ Sen, *Development as Freedom*, 240.

²⁷⁸ Ibid.

²⁷⁹ Twiss, "Confucianism and Human Rights," 32.

Like others, non-Western traditions are not without shortcomings. This is evident in Confucius' chauvinism towards women. Other issues such as orthodox expressions of caste, or the criterion by which a woman's testimony may stand in the place of a man's in Islamic jurisprudence of the past, make it difficult to rely solely on theological doctrines for human rights. These doctrines no doubt have resonating features to human morality in the present time but still need to be understood in the context of the times of their own beginnings. As Rawls claims, these hurdles of the past should not discourage us.²⁸⁰ It is significant that the normative substance of human rights is also evident in non-Western traditions. As we contemplate mitigating globalization with human rights, it is noteworthy that individuals in traditions outside the Western world aspire to the ideals of human rights. This factor ultimately reinforces the claim that human rights constraints are not only appropriate but are an ideal way to mitigate globalization.

3. Conclusion

In this chapter, I have argued that some of the normative elements of human rights are also evident in non-Western traditions in some basic ways and to varying degrees. Specifically, I have tried to show how they are embodied in the Chinese, Indian, and Islamic contexts. In the course of this brief cross-cultural survey, I have shown that while we may not hear or see the term "human rights" in other traditions, we need to avoid hasty conclusions that claim that other traditions do not value the ethics underlying human rights or their normative substance. In the next chapter, I advance a subset of a general minimal ethics to constrain corporations in the new world economy. This subset of a general minimal ethics is made up of basic human rights that are meant to protect our

²⁸⁰ Rawls, *The Law of Peoples*, 22.

ability to meet basic human needs. The idea is that basic human rights are valued by all cultural traditions.

Chapter 5

Mitigating Globalization: A Theory of Human Rights

1. Introduction

I have already argued that globalization amounts to a deregulation of the trade markets, to promote a global expansion of property rights and free markets as one global union of commerce. Some thinkers and stakeholders are adamant about the benefits it promises. Others are not convinced about the proposed benefits, arguing that globalization is a force to be reckoned with; that it is premised on and fuelled by a logic aimed at rationalizing instruments that enhance the wealth of owners of significant amounts of property at the expense of the poor. There are yet others who agree that globalization is a force to be reckoned with but, from a more pragmatic and open-minded point of view, claim we cannot ignore its good nor the extent to which it has pervaded the human landscape. Thinkers like Singer, Bishop, Groarke, Pogge, and O'Neil have all been preoccupied with ways to conceptualize the issues raised for us in this regard. In their view, the good that globalization brings is not something we should underestimate. But the same applies to its harms.

There are different ways in which one might go about mitigating globalization, but an ideal way should be simple and comprehensible. I have already stated that one way to go about mitigating globalization is through an enforced globalization of basic human rights. In the present chapter, I argue that enforcement of certain basic human rights on corporations can effectively enable us to meet basic human needs, and that they constitute a more substantive set of rights than property rights. These basic human rights are a subset of a more general minimal ethics, and are not themselves a minimal ethics.

As I have noted in the Introduction, the scope of my thesis is limited to the practices of corporations, and so the constraints I propose are conceived as an ethics for corporations. Although I have provided a broad survey of the various harms globalization can effect on human society, it would be unrealistic to attempt to provide a system of constraints for the wider aspects of globalization within this thesis in a way that does justice to them. I am concerned with economic globalization, and not the social and political aspects of globalization. The subset of a general minimal ethics I propose might be viewed as what Rawls calls “urgent rights” in the context of economic globalization, because of their vital importance to human life.²⁸¹

For my part, I treat the subset of rights I advance herein as non-negotiable items because they are safeguards for meeting basic human needs. I believe such an approach helps us to capture the concerns of both sides of the debate on economic globalization in a way that can meaningfully shape a middle ground. If we are to break the impasse from the polarized extremes to the debate on globalization, we must start with a thin set of constraints that can invite the cooperation of both sides. At the end of the day, we want corporations to operate in a way that is mindful of certain aspects of human life. I consider the set of basic human rights I propose as thin, and as requirements for all human beings. Of course, proposing a subset of a general minimal ethics requires one to show that there is ground for such a thing as a minimal ethics. It also requires one to show how the basic rights proposed are relevant. In this context, an outline of the structure of my arguments in this chapter would be helpful. The chapter is structured according to the eight-fold road map below.

²⁸¹ Rawls, 79.

A Road Map of This Chapter

First, I begin by addressing methodological concerns about the moral justification of human rights. My objective in doing so is to acknowledge the different methodological approaches in the attempt to bring an account of philosophy to bear on real world issues, and to make clear where I stand in relation to such methodologies. In particular, I argue that the differences in the various methodologies I outline are all focused on emphasizing the substantive nature of human rights as a moral good. My own approach is anchored in American pragmatist philosophy and not in meta-ethics, as my project is focused on rights application and not rights justification.

Second, I elaborate the arguments made by two influential contemporary thinkers – Walzer and Bok – who claim that the idea of a minimal ethics has concrete ground and is necessary for the survival of any society. Such elaboration allows me to properly situate the subset of a general minimal ethics that I advance.

Third, given that the ethics I propose are aimed at protecting basic human needs, I address the issue of needs at a conceptual level by (1) providing a general definition of need, (2) highlighting the distinct features of the human form of life, by building on the work of Nussbaum, (3) outlining the needs that are relevant to the human form of life, by incorporating the analysis of Nussbaum, Braybrooke, and Shue, (4) providing a pragmatic justification of these needs to show why they are basic, and (5) deriving a set of basic human rights from the generic list of rights in the United Nations Universal Declaration of Human Rights (UDHR) to protect these needs. The basic human rights I derive are essentially a concrete interpretation of the UDHR's list of rights. A concrete interpretation shows their value in practical terms.

Fourth, I proceed thereafter to illustrate to the reader how my subset of a general minimal ethics might differ from a general minimal ethics itself. I do so by highlighting some of the elements a general minimal ethics might include, and why those elements do not quite apply to corporations.

Fifth, I elaborate some of the ways in which the ethics I propose can be implemented by corporations. I, in essence, show some of their applications.

Sixth, I provide my second argument for the basic human rights I propose by outlining the ways in which they are distinguished as a more substantive set of rights than property rights.

Seventh, being mindful of contemporary structural challenges to human rights accountability, I provide an account of the existing structure of human rights and those who have duties to protect and respect them. I argue that the controllers of power have expanded since the implementation of the Universal Declaration of Human Rights, and this expansion of power implies that human rights need to be enforced on corporate entities.

Eighth, I outline some considerations about the ways we might go about enforcing the theory of basic human rights I propose. I make clear that providing a detailed framework of enforcement is a project by itself, and leave that for others to take up. At the same time, I note that we already have analogous cases of how human rights are enforced.

I now proceed according to the road map provided above.

2. Human Rights: A Word on Justification

Advancing a theory or even an outline of a theory of human rights can invite concerns about methodology. Pragmatists will support what is realistic. Foundationalists will demand a meta-ethical approach to justify human rights. There are many directions one might go in trying to provide grounds for human rights. For example, Orend argues that rights are reasons to treat people a certain way and claims that: “A human right is a high-priority claim, or authoritative entitlement, justified by sufficient reasons, to a set of objects that are owed to each human person as a matter of minimally decent treatment.”²⁸² In his view, human rights are not material things like houses or oil paintings, nor are they immaterial things like psychological dispositions.²⁸³ For Orend, we do not have to think of human rights as metaphysical objects or as things we can only accept if there is a metaphysical basis for them. Thus he tells us: “A simpler and sounder strategy, it seems, would be to decline the metaphysical option and to accept instead one rooted in moral reasoning...”²⁸⁴ Justification of human rights, like the justification of anything, he claims, comes down to a task, literally, of fleshing out their “justice,” their “rightness,” or their “correctness,” so that sufficient reasons are given in support of the claim that they ought to be accepted and treated seriously.²⁸⁵

The idea of rooting a justification in some kind of moral reasoning seems to resonate well with Nickel. Nickel claims:

A justification needs to originate somewhere, a chain of reasons eventually has to go back to something that is accepted without argument. A justification for

²⁸² Orend, 18.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid., 67.

human right (R) must show the reader or listener that some acceptable proposition, or group of propositions, provides substantial or conclusive support for R.²⁸⁶

Nickel seems to have a Cartesian notion of justification in mind, that regressing through a chain of reasons must eventually take us to a proposition that is self-certifying, otherwise we will be faced with the problem of infinite regression.²⁸⁷ Nickel explores a justificatory account that is prudential, grounded in the idea of certain common fundamental interests among human beings. At the same time, he notes that such a justification may be biased by dominant interests or groups who have the political, authoritative, or economic resources that can allow them to emphasize the primacy of their interests above those of others.²⁸⁸ He identifies the apartheid rule in South Africa as a good example. One long-term consequence of this effect, he claims, is that over time it may come to be seen as a norm, and so accommodating the interests of others, particularly where there is a diverse range of people, may not be seen as morally desirable by the dominant group. Considered from this point of view, J.S. Mill may have been right when he claimed that: “Mankind speedily become unable to conceive diversity when they have been for some time unaccustomed to it.”²⁸⁹

Arguing from a somewhat different vantage point while commenting on Michael Ignatieff’s “Human Rights as Politics and Idolatry,” Anthony Appiah writes:

We should be able to defend our treaties by arguing that they offer people protections against governments that most of their citizens desire – protections important enough that they also want other peoples, through their governments, to help sustain them. Once we defend these rights in this pragmatic way, we can appeal to a very diverse set of arguments: perhaps some rights – to freedom of

²⁸⁶ Nickel, 82.

²⁸⁷ See Descartes, *Discourse on Method*.

²⁸⁸ Nickel, 90.

²⁸⁹ Mill, *On Liberty*, 71.

expression, for example, are not only necessary for dignity and maintenance of respect but also helpful in the development of economies and the stabilization of politics. And all of these things are wanted by most people everywhere.²⁹⁰

Appiah's push to conceptualize human rights in this way stems from his view that human rights are already deeply bound up in a multitude of metaphysics. He writes: "In effect, for many of our human rights, the reason why we do not need to ground them in any particular metaphysics is that they are already grounded in many metaphysics and can already derive sustenance from those many sources."²⁹¹

Others disagree with the approach taken by Appiah, arguing that one's methodology must be grounded in a foundational justification. In emphasizing the need for a foundational justification of human rights, Gewirth argues that: "For human rights to exist there must be valid moral criteria or principles that justify that all humans, qua humans, have the rights and hence also the correlative duties."²⁹²

Gewirth posits a complex foundationalist theory of human rights justification, arguing that actions are the essence of rational agency, but that freedom and well-being are prerequisites to action. In other words, human life and activity are reduced to carrying out certain acts. This may involve speech acts, physical acts, and acts of conscience. We are a distinct species in so far as we have reason, and reason guides us to act in a certain way. Action is therefore the underlying purpose to human life. Moreover, we undertake the actions that we do because we conceive some good in them. We may be wrong and have regrets after, but we nevertheless, at the time of

²⁹⁰ Appiah, "Grounding Human Rights," 108.

²⁹¹ Ibid., 106.

²⁹² Gewirth, *Human Rights*; see also his *Reason and Morality*.

contemplating them, conceive some value in acting the way we do. It is for this reason Gewirth claims that everyone acts conatively towards some good. But acting as rational agents has prerequisites, namely, freedom and well-being. Morally speaking, we must have the basis to freely engage in the actions we are contemplating. Gewirth claims the basis for freedom and well-being is embodied in human rights. Since human rights contain the basis for freedom and well-being, and since these are the basis for human action, there is a meta-ethical justification for human rights.

Despite the myriad ways one might go about ascribing legitimacy to human rights qua human rights, it is important to note that their destinations are all the same – to show that human rights are substantively good. In view of this confluence, I shall not preoccupy myself with tensions in respect to methodology or justifications. Addressing such tensions is a project by itself. My aim is not rights justification but, rather, rights application, and so I shall leave disputes of methodology for others to take up. My philosophical approach to applying human rights resonates most closely with American pragmatist philosophy; my approach shows how human rights can be of significant value as moral constraints in mitigating the harms of globalization and securing its benefits.

3(a). Human Rights Comprise a Minimal Universal Ethics

The very idea of a minimal universal ethics can at times invite criticism. Cultural relativists argue that ethics is relative to culture, and so the idea of a universal ethics is implausible.²⁹³ Such criticism overlooks the fact that universalist ethics are widely evident – in, for example, the major world religions in prescribing goodness over evil. How developed such ethics are is another issue. Certainly, some things vary from one

²⁹³ I address critiques by cultural relativists in the next chapter.

culture to another. But there are some things, too, that are paramount to human life, regardless of culture – food, security, family. We have to be careful that we do not impose the various forms some elements might take from one culture to another as a complete narrative about ethics and human society.

Some ethics that are universal in scope are already evident. In advancing a universal ethic grounded in human nature, the moral philosopher Adam Smith argues in the *Wealth of Nations* that everyone is motivated by the pursuit of their self-interest. Smith claims that the aggregate of this benefit has proven to be in the interest of the common good; hence this common feature should be enshrined in official policy as an ethics for social and economic life.²⁹⁴

In his *Theory of the Moral Sentiments*, Smith advances the psychology of a universalist morality when he argues that sympathy for others is a common thread among human beings, and is the basis of morality.²⁹⁵ Indeed Smith may have taken part of the story and made it the whole. At the same time, the idea of sentiments/sympathy cuts across cultural boundaries in human society. Many philosophers and non-philosophers alike have been preoccupied with outlining a minimal ethics to show that commonalities and differences in human society can be properly accommodated when constrained by a core set of principles. Some offer a more detailed account of a minimal universal ethics.

²⁹⁴ Smith, *Wealth of Nations*, Book IV, Chapter II.

²⁹⁵ Smith, *Theory of Moral Sentiments*.

(i) Michael Walzer

Michael Walzer makes compelling philosophical arguments for the need to conceive of thin moralities, which are to be distinguished from thick moralities.²⁹⁶ Thin moralities for Walzer capture a certain essence, a certain common thread that pertains to all societies, without which it would be hard for them to survive and progress.

In our own context, we might think of the value of truth telling, justice, keeping promises, fulfilling basic biological needs, and preventing harms to innocent people. It might be hard to imagine that we can flourish or be sustained in any stable way if these things are not given due attention. If we could not distinguish in the normal course of life when people lie from when they tell the truth, language might be devoid of meaning.²⁹⁷ Thus truth is a necessary value for any society, since the notion of society implies coexisting interactively with others; interaction requires some form of language communication that we can rely on. In other words, we need to have some basis of reposing faith and being certain about what people tell us to be true.

Indeed, truth telling is a necessary structural component for society, because it is the basis by which law and punishment can be administered if their application is to be consistent with what is fair and just. It is the basis by which democracy can be fostered and enforced as social governance according to the will of the people. It is the basis by which we can educate the young, operate schools, and produce professionals in various

²⁹⁶ Walzer, *Thick and Thin*.

²⁹⁷ There is in fact a larger structural need for truth telling in order for society to function properly and for language itself to exist. At a basic level, language must have definite meaning. If words do not correspond to some definite frame of reference, we cannot begin to teach others or cultivate a shared system of communication. This means that the thing to which the word refers, the point of reference, cannot be in a state of flux. There must be stability of the meaning of words before language can exist. Verbalized language, after all, is constitutive of words organized according to a certain syntactical structure. Thus truth as a need is embedded in language itself.

occupations. Imagine if every time you visit a doctor, you never have a way of knowing whether he/she is telling you the truth about your condition. Now, imagine if everyone in society is in the same predicament. In such a context, we will have no form of certainty that what we are told is true. It would make more sense to simply refrain from going to the doctor.

In a similar vein, imagine that a judge tells me that I am innocent of some charges that were levied against me, and that I am free to go home. Yet upon leaving the court room the judge instructs the bailiff to imprison me, even though there is no other charge against me. In such a situation, I would be faced with an epistemic difficulty; I would have no way of knowing whether the judge is being truthful. Truth telling is therefore structurally necessary for any community or society, as part of a minimal ethics. It follows that there are some minimal requirements every society must meet in order for them to function effectively. If some kind of order and moral rectification is not in place to address issues like deceit and aggression, then we could end up with the sort of society that Callicles seeks in Plato's *Gorgias*, and that Glaucon seeks in Plato's *Republic*. These characters see the aggressive gains by the strong over the weak as just (might makes for right, in other words).

The logic that underpins the need and value of truth telling and justice extends to bodily needs and physical security as well. If we cannot get food and clean drinking water to keep our bodies alive, morality may be said to be the talk of delusion. Life and its maintenance are, in other words, empirically prior to all other things. In this vein, if innocent people are always at grave risk of being harmed while in their homes or in their interactions with others in the normal course of life, then stability and human happiness

will be nothing but a utopia. From this point of view, Walzer is right in claiming that there are certain things that are vital to all human life and so we can surely, on this basis, conceive of a universal minimum – a thin morality as he calls it.

Thick moralities are more developed moral systems that incorporate the broader elements of particular cultures and ethical traditions. In some ways they may include rules on matters like marriage, methods of settling disputes, religion, who we allow in our society and who we restrict, and the form that respect should take. Thick moralities are in this sense “maximalist” for Walzer, as they identify the broader scope and constituents of particular ethical traditions. A minimal morality at the universal level allows individual cultures to live according to different conceptions of the good, because a minimal morality preserves certain basic elements that most societies treat as means to a good life.

(ii) Sissela Bok

One finds good applied arguments for discussions on a minimal ethics grounded in common values in human society from Sissela Bok.²⁹⁸ She tells us:

We must draw on the traditions of morals as well as strategic reflection to consider how individuals, groups, and nations can best protect common goals of survival and flourishing, in the face of shared risks of unprecedented magnitude; and we can only do so on the basis of fundamental values recognized in both traditions [of morals and strategic reflection].²⁹⁹

Bok makes the above remarks in the face of extensive human atrocities we have already witnessed from war, and the widened gap between the haves and the have-nots. Annoyed at the lip service that has been given in addressing the human condition, she writes: “Too

²⁹⁸ Bok, *Common Values*.

²⁹⁹ *Ibid.*, 5.

often in the past, those who have spoken of universal values have intended to impose their own religious and political value systems coercively as a pattern for all to adopt.”³⁰⁰

While Bok does not see common values as a panacea for all social and economic problems, she thinks they set the stage to advance the case for a minimal ethics at the global level. Survival, according to Bok, has obliged all societies to develop duties that address mutual support, loyalty, and reciprocity, and to have these duties inculcated in children, so that they may be carried forth in order to preserve stability and order.³⁰¹

These variables of a minimal ethics are the underlying focus in what Bok treats as four fundamental propositions. These propositions are:

1. Certain basic values necessary to collective survival have had to be formulated in every society. A minimalist set of such values can be recognized across societal and other boundaries.³⁰²
2. These basic values are indispensable to human coexistence, though far from sufficient, at every level of personal and working life and of family, community, national, and international relations.³⁰³
3. It is possible to affirm both common values and respect for diversity and in this way to use the basic values to critique abuses perpetrated in the name either of more general values or of ethnic, religious, political, or other diversity.³⁰⁴
4. The need to pursue the inquiry about which basic values can be shared across cultural boundaries is urgent, if societies are to have some common ground for cross-cultural dialogue and for debate about how best to cope with military, environmental, and other hazards that, themselves, do not stop at such boundaries.³⁰⁵

³⁰⁰ Ibid., 11.

³⁰¹ Ibid., 13.

³⁰² Ibid., 12-13.

³⁰³ Ibid., 13.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

Bok claims that all societies emphasize the need to have rules against wrongdoing toward other people – among them, rules against violence, fraud, and deceit – and have incorporated such rules in legal systems because of their importance.³⁰⁶ All societies value rudimentary fairness and procedural justice in some form.³⁰⁷ For Bok, these variables underpin the social fabric of any society as a minimal ethics.

If we extend the focus of Walzer and Bok to the strides we have made as a global society, we will observe that the minimal ethics to which they point are in some significant ways already embodied in the Universal Declaration of Human Rights. They are outlined as a normative core set of rights (which others must dutifully respect) to both guide human behaviour and safeguard a sense of dignity, in a way that allows us to live a minimally decent life. I have already outlined the evolution of the Universal Declaration, which begins by recognizing a certain inherent worth and moral status of the human person, as is articulated in Article One. It specifically states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This is important, as it enshrines a foundational proposition about moral equality. Article Two protects the human person and identity from maltreatment motivated by dislike for one’s race, colour, sex, language, religion, birth and other characteristics. This article in effect is cognizant of the form maltreatment has taken in history (e.g., physical abuse, harassment, deprivation of opportunities to participate in social life), and so reinforces the essence of moral equality.

³⁰⁶ Ibid., 15.

³⁰⁷ Ibid., 16.

Article Three declares in no uncertain terms that: “Everyone has the right to life, liberty and security of person.” This article captures the wider scope of freedom and everyone’s interest in self-preservation. Article Four is cognizant of the barbarism greed can effect, and the history of human subjugation. It specifically declares that: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” This article is essentially an affirmation of the value of the previous three, but with a deliberate stipulation against heinous practices of human subjugation of the recent past. Article Five outlines rights against torture, cruelty, and degradation in stating: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This article is essentially emphasizing the principle of human respect qua human beings.

Article Six likewise reinforces one’s moral equality in stating that: “Everyone has the right to recognition everywhere as a person before the law.” This article sets the stage for equitable forms of procedural justice. The substance of justice is preserved for the individual and for society by Article Ten, which states: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any obligations and any criminal charge against him.”

In all these articles of the Universal Declaration we have precepts about how human beings must be treated. In this way, core values for human survival and a minimally decent life are already embodied in the Universal Declaration. We can discuss their merits from all kinds of intellectual points of view. Whatever our perspectives, the rights outlined in the Universal Declaration cut to the heart of human life and happiness,

and are expected to be facilitated by the state as rights all people have simply because they are human beings. Surely, some are vague and even controversial, but the vagueness is what anchors them as minimal and universal.³⁰⁸

It is significant that human rights have been the subject of extensive scrutiny before their approval, and that human society at large aspires to their objects in the pursuit of well-being and happiness. From Iraq to Cuba, North Korea to China, Canada to Zimbabwe, enforced human rights in the present time have been seen as containing the seeds of human happiness; people assert themselves in relation to these rights in one way or another. They do so because such rights are both integral and sufficient to capture the essence of their cultural and human contexts in whatever society they may live. Hence, human rights enshrine a solid framework for a minimal ethics, as they comprise a valuable set of principles/objects that facilitate achieving the good life.

3(b). Basic Human Rights Can Protect Basic Human Needs

The idea of enforcing human rights in corporate practices is appealing for the simple fact that it enshrines certain fundamental ways of treating human beings, treatment that is conducive to the good life. But as a theory of human rights to constrain globalization should be simple, comprehensible, and achievable, one cannot ignore practical issues that may make such a theory a utopia. On the one hand, the objects of some rights are costly to achieve in some societies, thus making them impractical. On the other hand, since globalization emphasizes a corporate dimension of human

³⁰⁸ The vagueness of some rights in the Universal Declaration allows us to interpret those rights in a way that relates to our social context – what Nussbaum would call “local specifications.” Bok also emphasizes the value of vagueness in this regard, arguing that for a minimal ethics to apply on a universal scale, it cannot be too specific.

interaction on an international scale, an enforced rights approach to constrain it might likewise be viewed as impractical if the list of such rights is extensive.

In the face of these two considerations, we might create a practical and realistic view of mitigating globalization by focusing on certain basic human needs, with a view of deriving a framework of rights that can protect them in corporate practices. This is not to say that other needs and rights are not important. Needs and rights that extend beyond meeting our basic needs are important. But if we are to make some headway in constraining globalization, we must be cautious in how much we demand of corporations. A focus on basic human needs allows us to anchor constraints in concrete elements that apply to all human beings, which we hope would be difficult even for corporate administrators to deny. It also avoids falling into an abyss of discourses regarding what is important and what is not. We must start with what is most basic and achievable to meet basic though vital needs in life.

Certainly discussions focused on human needs are replete in the literature – from political science to economics to sociology to philosophy. And we should expect there to be a plethora of such discussions. Such discussions are evident directly and/or indirectly in thinkers like Plato, Aristotle, Bok, Rawls, McMurtry, Marx, Smith, Mill, Orend, Nussbaum, Sen, Shue, Gewirth, Braybrooke, and a slate of others. They are also discussed in different ways from one tradition to another – from the natural law to the natural rights tradition through to contemporary times. Some – notably Nussbaum,³⁰⁹

³⁰⁹ Nussbaum, “Human Functioning.”

Shue,³¹⁰ and Braybrooke³¹¹ – have actually specified a list of human needs that they consider relevant for the good.

Nussbaum and Braybrooke discuss their lists of needs in the context of promoting human functioning. As I have already noted in chapter two, Nussbaum pushes us in the direction of the capability approach, which focuses on enhancing human capabilities and functioning in practical ways at a micro level. Shue discusses needs in terms of what is required for survival and a minimally decent life. He shows how a set of basic rights can serve as effective instruments in the fulfilment of such needs. While discussions on needs are abundant in the literature, it is surprising that no one has advanced a basic human needs-based rights approach as the limiting condition for globalization. This lacuna is surprising because if there is anything we ought to have learned from the history of human struggles throughout time, it is that people strive to satisfy their needs – for themselves and their families.

People migrate from one country to another to escape violent persecution or starvation. They escape in search of places where the social context is more hospitable to their basic needs. Individuals work sometimes two or three jobs just to make sure they can make ends meet. People in Asia work in sweatshops for long hours and little pay in order to meet the most basic needs of themselves and their families.³¹² In times like the crisis brought on by the Tsunami of 2004, the most pressing concern was to make sure those affected by the disaster had food and shelter, and were protected from the spread of life-disabling diseases. The underlying current in all such efforts is to meet basic human

³¹⁰ Shue.

³¹¹ Braybrooke, *Meeting Needs*, especially 35-38.

³¹² Of course, we ought not to be blind to the fact that this takes place in North America as well.

needs. Whatever we do, wherever we go, whoever we are, whatever our station in life, we cannot ignore certain basic human needs. This is common ground we all stand on. Hence, a good form of economic globalization is one that does not impair our ability to effectively attend to basic human needs. It therefore makes practical sense to impose constraints on corporations so as to safeguard our basic needs.

We can be adamant about protecting a richer set of elements in constraining globalization, but as a starting point in projecting a moral framework to invite the cooperation of corporations, a richer set of elements would be viewed as trying to hang our hats where our hands cannot reach; it will also make the attempt to impose moral constraints on corporations more vulnerable to scepticism. Corporations are the vehicles of globalization (they influence the WTO and rich states) and, as such, their participation is crucial. By focussing on basic human needs, we will be addressing the elements that are a prerequisite for any richer conception of human living. We might think of it in the following way. Children cannot focus well in school if they do not have food to eat. Adults cannot function well at work if they are deprived food and sleep. Basic human needs must be met before individuals can meaningfully pursue any goal they may have or be functional in any other way. In the context of constraining globalization, a short list of basic human rights can be used to keep a moral focus on precisely these basic human needs.

Defining Needs

The concept of needs can itself provoke controversy at a conceptual level, even if we claim that we are focusing on very basic human needs. Some might argue that what is a need for one person is a luxury for another, and in this way the concept of need is

ambiguous. The idea behind such logic is that need is not a clear-cut issue. In one respect, a person might say that the need for protection from harsh Canadian winters is non-existent for someone who lives in a tropical climate. One might respond by saying that we simply have a need for adequate clothing and shelter. What is required is for us to demarcate needs from wants or desires. If the two are conflated then we will necessarily be faced with the problem of ambiguity. Such a demarcation is not onerous; it simply requires us to ground our discourse in a concrete definition of need.

In a simple sense, we can define a need as that which is vital to our life. A general philosophical definition of need is provided by John McMurtry:

N is a need if and only if, and to the extent that, deprivation of N always leads to a reduction of organic capability.³¹³

By “organic capability” McMurtry means a person’s organic abilities to move, think, and feel. In this sense, a need represents a certain threshold. Deprivation of the object/objects of a need defines physical, mental, and psychological limits on a person’s life, and can result in death. Thus, we already have a conceptual basis by which to distinguish need from mere wants, desires, or goals. We therefore have no reason to be overwhelmed or discouraged by the concerns of a needs-sceptic.

At the same time, outlining a list of basic human needs relies on some conception of what characterizes human life, in contradistinction to other species. After all, there is a world of species, and human life is supposedly distinct from other species. This view is usually supported with reference to our ability to reason, our advanced development of language, and our evolved systems of archiving knowledge. We are also sentient beings; but then again, so too are many other creatures. In some ways, we might say human

³¹³ McMurtry, 164.

beings have a higher form of life, and morality is the way we protect this form of life. Morality is concerned strictly with how human beings ought to behave. Thus, whether or not other creatures share some human traits does not obscure our attempt to impose certain moral constraints on human beings and the institutions they operate. Human life is distinct at least, in part, because we have the capacity to reason.

Nussbaum has provided an outline of what she considers to be distinguishing elements of the human form of life. She claims to be advancing a defense of Aristotelian essentialism. Nussbaum acknowledges that the concept “essentialism” has come under harsh attacks from various schools of thought, but argues that such attacks do not show that all forms of essentialism are tenuous or without ground. She writes: “Many essentialist conceptions have been neglectful of choice and autonomy. And some have been prejudicially applied – sometimes even by their inventors (as in the case of Aristotle and Rousseau). But none of this, it seems to me, shows that all essentialism must fail in one or more of these ways.”³¹⁴ Nussbaum claims to be imparting an “internalist essentialism” that captures what is most deep and indispensable to our lives.³¹⁵

Essentialism, for her, therefore underscores certain core elements that distinguish human life from other life, and the variables that allow us to determine the lack of humanness.

As she puts it:

For it begins from two facts: first, that we do recognize others as human across many divisions of time and place. Whatever the differences we encounter, we are rarely in doubt as to when we are dealing with a human being and when we are not. The essentialist account attempts to describe the bases for these recognitions, by mapping out the general shape of the human form of life, those features that constitute a life as human wherever it is. Second, we do have a broadly shared general consensus about the

³¹⁴ Nussbaum, 214.

³¹⁵ Nussbaum, 208.

features whose absence means the end of a human form of life.³¹⁶

The core elements she outlines as characteristics of the human form are: morality, the body (with its physical needs for food, shelter, drink, sex, and mobility), the capacity to experience pleasure and pain, early infant development and the care it requires, humour and play, relatedness to other species and to nature, cognitive capability (sense perception and imagination), practical reasoning ability, affiliation with other human beings (like intimate family and personal relationships), and separateness of our individual experience.³¹⁷ She considers her outline to be a thick and vague one, in which some elements overlap. They include physical and non-physical elements of the human form.

Nussbaum claims her outline includes both limits and capabilities. In other words, if we do not get food or drink over a period of time, we will die. As she puts it: “The experience of the body is, to be sure, culturally shaped, but the body itself, not culturally variant in its nutritional and other related requirements, sets limits on what can be experienced, ensuring a great deal of overlap.”³¹⁸ We have the capacity to feel pain, to laugh, and to play; the absence of play and laughter during childhood is usually (in her view, rightly) an indication that there is something abnormal about us or that something has gone wrong. It is obvious that other creatures share many of the elements Nussbaum outlines as human characteristics, and it should be obvious as well that there are some things that humans have developed more richly than other creatures (like practical reason and affiliation). In light of these elements, Nussbaum claims that our public planning and legislation should focus on nurturing our capability to function (as opposed to actual

³¹⁶ Nussbaum, 215.

³¹⁷ Nussbaum, 217-220.

³¹⁸ *Ibid.*, 217.

functioning). In this way, she advocates policies that promote human capabilities to function as human beings.

In this regard, Nussbaum outlines a list of elements to promote what she calls “The Thick Vague Conception: Basic Human Functional Capabilities.”³¹⁹ In her view, an Aristotelian essentialist will treat the absence of any of the elements as a void in humanness. I provide her thick list of basic human functional capabilities verbatim:

Martha Nussbaum’s Thick List of Basic Human Functional Capabilities

1. Being able to live to the end of a complete human life, as far as is possible; not dying prematurely, or before one’s life is so reduced as not to be worth living.
2. Being able to have good health; to be adequately nourished; to have adequate shelter; having opportunities for sexual satisfaction; being able to move from place to place.
3. Being able to avoid unnecessary and nonbeneficial pain and to have pleasurable experiences.
4. Being able to use the five senses; being able to imagine, to think, and to reason.
5. Being able to have attachments to things and to persons outside ourselves; to love those who love and care for us, to grieve at their absence, in general, to love, grieve, to feel longing and gratitude.
6. Being able to form a conception of the good and to engage in critical reflection about the planning of one’s own life.
7. Being able to live with and for others, to recognize and show concern for other human beings, to engage in various forms of familial and social interaction.
8. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. Being able to laugh, to play, to enjoy recreational activities.
10. Being able to live one’s own life and nobody else’s; being able to live one’s own life in one’s very own surroundings and context.³²⁰

Nussbaum agrees that the capabilities on her list do not warrant universal “actual agreement” before they can be applied in moral and political ways.³²¹ For her part, she tries to outline a list of elements for basic human functional capabilities that would have wide universal consensus.³²² In favour of Nussbaum, it must be said that the list depicts critical elements that are relevant to human functionality and happiness. Certainly, other

³¹⁹ Ibid., 222.

³²⁰ Ibid.,

³²¹ Ibid.,

³²² Ibid.

species share many of these features. The larger point to the aspects of human life and functioning that Nussbaum provides is that, as human beings, we have a structured life in which we place value on these elements and expect them to be promoted as the norm of human life and value; thus our social policies ought to be focused on safeguarding this norm as human society.

As we are seeking to constrain corporations in the global proliferation of property rights, it must be said that the elements outlined by Nussbaum cannot all be incorporated in a short list of very basic human needs. To begin with, some may not be as practically relevant to the global spread of capital. It is a natural thing to have a desire for sex but it is not clear that this is significantly relevant to corporations. The desire for physical sex might be viewed as a “liberty right” and as such, corporations do not have to ensure that one has sex. In some sense, one might be able to make a case that enslavement of human labour can deprive a person of fulfilling this desire. But perhaps a good way to address such an issue is to argue that corporate practices at times undermine human freedom. In another vein, one might argue that the appetite for sex can be forgone at certain times. Sex is a thing we can forego for a period of time without there being any life-disabling consequences.

The outline of the salient aspects of human life provided by Nussbaum is an important contribution to a philosophical understanding of human life. While I do not disagree with her account of the fundamental elements that distinguish the human form of life, my project is different from hers in some significant ways. First, Nussbaum gives a thick list of elements that legislation and public planning ought to capture; in contrast, my aim is to develop a thin list because my focus is on a thin set of moral constraints that can

be applied to corporations. While I am not in principle opposed to a thick list, I do not think a thick list will be effective in getting corporations, or capitalists in general, to cooperate. For effectiveness in this regard, we must start with the basics – a thin list.

Second, Nussbaum focuses on empowering capabilities and functioning, which can be varied and many, as she herself has claimed. My theory is confined to the most basic human needs, which are prerequisites for any kind of human functional or capability empowerment.

Third, Nussbaum, as she declares herself, provides a vague list (though some elements are quite precise), whereas my aim is to focus on very concrete needs. If we are to address basic human needs, we have to explicitly identify these needs in as concrete terms as possible.

Fourth, Nussbaum treats her list of elements as thresholds, but this idea of threshold is marred in virtue of the vagueness she identifies in them. My focus on threshold sees very basic needs as the floor for all constraints to which any human person should be readily able to relate.

Above and beyond these considerations, there is much to be gained from Nussbaum's account of human life by crystallizing the underlying needs-related variables upon which they rest. One way to crystallize the underlying needs-related variables is to focus more directly on needs than on human functioning (for functioning itself relies on certain needs being fulfilled). David Braybrooke has mapped out a list of what he calls "Matters of Needs" from which we can delineate those which are to be treated as basic human needs. His list captures in a more concrete way some of the salient features of Nussbaum's concern. The list is produced verbatim:

David Braybrooke's List of "Matters of Needs"

1. *The need to have a life-supporting relation to the environment*
2. *The need for food and water*
3. *The need to excrete*
4. *The need for exercise*
5. *The need for periodic rest, including sleep*
6. *The need (beyond what is covered under the preceding needs) for whatever is indispensable to preserving the body intact in important respects*
7. The need for companionship
8. The need for education
9. The need for social acceptance and recognition
10. The need for sexual activity
11. The need to be free from harassment, including not being continually frightened
12. The need for recreation³²³

Braybrooke distinguishes between physical needs and those required for functioning as a social being. The needs itemized in numbers one through six inclusively represent physical needs, and the rest represent those required for social functioning. I have distinguished them above by italicizing the first category. Braybrooke agrees that the connection the second category has with the first makes it impossible to give a clear-cut differentiation between the two categories, though he thinks some in the second can be merged with some in the first.

Shue, for his part, has provided three categories as a broad outline of needs (and rights to accompany them) that captures some of the most urgent needs on Braybrooke's list. He claims subsistence, security, and liberty are the basis of enjoying all other things in life, and are the basis for a minimally decent life. Shue treats certain physical needs – such as our requirement for food, water, adequate clothing, basic health care, and a reasonably clean environment – as subsistence. For Shue, subsistence is of utmost importance; if people are unable to provide for themselves, society has an obligation to do so. He therefore argues in support of positive rights to protect subsistence. He writes:

³²³ Braybrooke, 36.

No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or deaths can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution. Indeed, prevention of deficiencies in the essentials for survival is, if anything, more basic than prevention of violations of physical security. People who lack protection against violations of their physical security can, if they are free, fight back against their attackers or flee, but people who lack essentials, such as food, because of forces beyond their control, often can do nothing and are on their own utterly helpless.³²⁴

For Shue, subsistence, security, and liberty are basic requirements for any society.

People therefore have rights to them – what he calls basic rights. The sustainability of any human society depends on its ability to facilitate such rights.

As I am concerned with basic human needs in the context of corporations and not with the family of needs, I have derived a short list of needs from Braybrooke's list; it incorporates some aspects of his second category with the first category, and captures the absolute minimum required for any of the human functioning outlined by Nussbaum and Shue. My short list of concrete basic human needs is as follows:

A List of Concrete Basic Needs

- Need for adequate food, clean drinking water, clean air, clothing, and shelter
- Need to excrete waste (feces and urine)
- Need for proper sanitation and hygiene to prevent harm from the outbreak and spread of disease
- Need for adequate rest and sleep
- Need for liberty of person (i.e., freedom from slavery and bondage), expression, and conscience
- Need for security against standard threats and mental abuse

³²⁴ Shue, 24-25.

Others might ask for a longer list, but I am only concerned with the bare bones that are relevant in the context of corporate entities. Of course, I am not opposed to a richer list, as I believe a thicker set of needs fulfillment makes for a richer life experience; my aim is to derive a subset of a minimal universal ethics that can be marketed not just to those whose needs must be fulfilled, but also to those whom we wish not to infringe on them. The idea is not to set oneself too far adrift with moral spirits from what is likely to be achieved on a global scale. In this way, at least the world's poor can have the basis to meet their basic needs.

One is reminded of a reflection of one of the great pioneers of the environmental revolution, David Suzuki: he notes that in their push to protect the natural environment, environmentalists focused too much on the environment and its science, and too little on people who are to materialize the revolution. In the same vein, we have to be cautious to manage the economy of moral demands we impose, so as not to push away the very people and institutions whose cooperation we are seeking, as a starting point. Thus the list of needs I have delineated above contains the most basic human needs. They are not mere biological needs. They are needs that capture the basic characteristic requirements of human life, and are relevant to the global union of commerce that continues to take shape in the present time.

Justification of the Basic Needs

I shall now proceed to give an account of why I see these needs as basic. Let me begin with numbers one through three in the list of needs. The human body carries out many functions, but relies on the intake of food and reasonably clean fresh water (as opposed to salt water), clean air, and the discharge of its waste. The matter can be

elaborated in a number of ways, but all reduce to certain basic traits: everyone has to eat in order to get the required level of energy for the functioning of their body, for mobility, and to avoid starvation; everyone requires drinking water for body hydration; everyone requires clean air in order to oxygenate the body as a matter of necessity; and everyone has to excrete waste wastes so that the body can continually process new intakes of food and water, and carry out its natural function of ridding itself of harmful waste. These are the bare-bones requirements for any motor skill development and daily living. Deprive a person of attending to the function of his bowel or urinary system, or of air, food, and water over a period of time, and that person will die. These are, fundamentally, the bio-mechanical needs of the body. They are apparent from the moment a child is born and only cease when life ceases to exist in that individual.

We might appreciate the point more by noting that whatever one's metaphysical account of one's existence – whether God's creation according to a particular religious account, or evolution – every human being has certain minimal needs for survival. A baby has no chance at survival if it does not get adequate nutrition. For its organs to grow, for its complex machinery of nerves and senses to develop and interact properly and bloom into a rational entity, it must have the right nutrition, otherwise it may grow psychologically abnormal or may soon reach its own demise.

Of course, we should not be blind to the need for clothing and shelter as essential elements to individual and collective survival and sustainability. Some individuals or groups who are stateless live as nomads without much garment, but on the whole there is a need to be adequately clothed and sheltered. Living in Canada, for example, requires certain types of clothing and shelter to guard against the inclemency of nature's elements.

The Inuit who roams the Arctic tundra as part of his way of life requires certain garments to prevent hypothermia. To maintain oneself in some minimally healthy way, to sleep, to provide for oneself or to care for a family, one requires some kind of protection from weather and wild beasts. Without something of this nature, one and one's family may be subject to threats from the wild and the harms from nature's seasons. We might therefore say that there is an internal and an external element to our biological functions and the preservation of our lives.

In light of the fact that defecation and urination are fundamentally inherent to human life as part of our bio-mechanical nature, the epidemiological factors that attend these functions cannot be ignored. Epidemiology has to do with causes and outbreak of diseases. Human feces and urine can be major breeding grounds for disease, directly and indirectly. When improperly managed they can develop airborne pathogens in virtue of the stench and harmful bacteria. They can also trigger cholera outbreaks if they enter the water supply system. Whether airborne or through the water, they can introduce harmful agents into the human body that can seriously undermine its proper functioning, or even be fatal. Proper sanitation and hygiene are preventative measures against such epidemiological effects. Thus we can deduce from these considerations that the biological functions of the human body rely not just on being fed, the supply of oxygen, and the carrying out of its natural disposal of waste but also, crucially, on proper sanitation and hygiene. This consideration is relevant both for the individual and for public health. In the same vein, it is intuitive that general disease prevention is vital to sustaining good health and survival.

The need for adequate rest and sleep has to do with mental health. The human body requires a certain amount of rest in order to perform properly at a mental and physical level. If it does not get the required rest it can become (sometimes extremely) dysfunctional, suffering a loss of focus and reduced to, in psychological terms, irrationality.³²⁵ The lack of adequate sleep and rest is conducive to high levels of stress, hypertension, and debilitating factors that undermine one's ability to perform or function properly. In some ways too, lack of adequate rest will impede certain cognitive abilities, preventing one from having a sound quality of life or self-actualization (to put it in the language of Health and Welfare Canada's characterization of mental health). The important point is this: everyone (human and non-human animal) requires sleep and rest for self-sustainability, mental health, and proper functioning. The body's nervous system can become erratic when adequate sleep and rest are lacking.

The need for liberty of person, expression, and conscience captures a number of important attributes that distinguish us as a species. The need for liberty of person might best be understood in the following way. We must by necessity be able to live autonomously if we are to live a life that is individually ours (what Nussbaum calls separateness of our individual experience). The notion that we have, and act on, free will implies some degree of rational agency – to build on Gewirth's analysis. But free will has no substantive meaning if we are coerced into acting a certain way, or are enslaved. Free will only has substantive meaning when we are masters of our own lives. This notion of free will implies being free from bondage so that authorship of our actions and lives is not exclusively determined by someone else or some institution. If we are subject

³²⁵ In a Marxian sense, if the human body is put to work like a robot without due regard for its psychological faculties or physical limits, the person can become wretched, miserable, and alienated.

to such things as slavery, serfdom, and forced occupation, then we are no different from non-human species like herds of cattle or flocks of birds that are captured, caged, and commanded to function in a certain way. What would be the difference between me and the buffalo that is put to plough the rice fields in India, if I can be enslaved or coerced into working on an assembly line for the rest of my life? As Rawls puts it: “A slave society lacks a decent system of law, as its slave economy is driven by a scheme of commands imposed by force.”³²⁶

It is important to remember here that the two distinguishing features between human beings and animal species are practical reason and affiliation with others, as Nussbaum has plausibly argued. Neither of these two elements can have substantive meaning when I am enslaved or placed in forced occupation. Even Aristotle would agree, because while he argues for slavery (he, of course focuses on the idea of natural slaves) and the subjugation of women in his *Politics*, he does so on the basis that they lack reason. Those who are said to possess reason, in other words, should not be subjected to a life of slavery. We have only recently broken away from Aristotle’s conception of slavery and women, in accepting that human beings – male and female – possess reason; slavery has only recently been abolished, and women have only recently been seen as having certain capacities that are equal to men’s – at least in the West. But it is an important breakaway.

The need and value of liberty of expression might be understood in a similar way. Liberty of person epitomizes the need and value of self-governance. But if my practice of self-governance is repressed or discriminated against in harmful ways, I need some liberty to respond, some freedom to file complaint or make my concerns known. In other

³²⁶ Rawls, 65.

words, I have a need for free speech. Liberty of expression/speech is, of course, not confined to expressing oneself in the face of harms or conflicts; it is also important for social interaction as human beings. Nussbaum, for example, claims that we are a distinct species because we possess reason and have a need to affiliate with others. Affiliating with others implies social interaction, but social interaction lacks substance if, in our freedom to interact, we are deprived of the freedom to speak or otherwise express ourselves. In what way do we express feelings of remorse, disagreements, or support for something? In what way do we inform others of harm? Liberty of expression in the form of freedom of speech, in other words, is embedded in human life as a fundamental psychosocial need. It is the basis by which we can meaningfully participate in social life and contribute to shaping the rules that govern us.

Liberty of conscience is likewise an important psychosocial need. As Rawls argues, people need a sufficient degree of freedom of conscience, thought, and religion.³²⁷ Some may question this notion of liberty as a need, on the basis that we can survive without freedom of religion or thought. But it must be reiterated that my focus on basic human needs is not to imply mere biological needs. On the one hand, meeting mere biological needs can be done even if we imprison the entire society. Meeting basic human needs, on the other hand, must take account of the shape of human life as distinguished from other species. I have already argued in chapter three that many people see their lives and purpose as a creation of God according to the edicts of their religion. Living according to what they consider the moral life bestowed upon them by God is a necessary component of their lives, because it is viewed as the way of the good. For

³²⁷ Ibid.

some, religion is a source of salvation, a basis from which to draw strength to rise above their miseries. Depriving them of living according to their religious conscience can lead to depression and other forms of ailment. We have already seen some evidence of this in the “scientific approach” to governing human life under communism. Of course, there are those who do not see their life as created by a supernatural being, and so they do not subscribe to the idea of a religious morality as the way of the good. Forcing them to live according to particular religious edicts incurs the same effects as depriving a person of his religious practice – continual reduction in their organic capability.

The case of residential schooling for Aboriginal children in Canada is perhaps the most recent and immediate example of the extent to which people’s organic capability is diminished because they lacked liberty of conscience. Many Aboriginal elders are still struggling to overcome the experience they have had in residential schools; the Canadian Government sought to rid them of their Indianness at the level of thought, by forcibly Christianizing them, and by imposing a European conception of life and education on them.³²⁸

In sum, liberty of person, expression, and conscience are important and necessary elements of freedom for human life; they are treated as paths to the good. Their inclusion in a list of basic human needs is justified on the basis that they manifest the features that characterize us as a distinct species. It is for this reason Rawls treats them as urgent rights we must have. Looked at in this way, they are needs that must be protected in the new world economy.

³²⁸ Kevin Annett, Louie Lawless, and Lori O’Rourke, *Unrepentant: Kevin Annett and Canada’s Genocide*, Documentary, directed by Louie Lawless (Annett-Lawless, 2007) (Accessed at www.hiddenfromhistory.org).

The need for security against standard threats and mental abuse is connected to the need for the liberties I have discussed above. It has to do with the fact that we all need (and want) social interaction that is free from harm. Through social interaction with others we learn language and skills, and fulfill other basic needs. Children interact with adults to learn the basics of life. We plant and harvest crops and seek markets in which to sell them, in order to generate an income. We sell our labour or intellectual capital in factories, offices, and elsewhere – we work for others in order to generate an income. With this income we attend to our basic necessities and acquire chattels that, by definition, become our property. These undertakings can be made perilous if we lack some kind of basic security.

Greed and envy, competition and spite can motivate others to harm us or dispossess us of our belongings, including our lives. The reverse may also be true, as passions and appetites could drive us to do likewise to others. These characteristics are at the heart of the constant need for law and order and of discourses of good versus evil – from religious to secular. Underlying all of this is the claim that there is a need to be able to live one’s life free of harm. As social creatures, interaction is important to our mental health, to our ability to acquire the means to survive, and for general well-being. Looked at from this perspective, there is a need for some basic safeguard against “standard threats” (to use Shue’s expression) and abuse in the age of globalization.³²⁹ Standard threats encompass threats to one’s physical security, such as murder, rape, and assault, which are common to all societies.

In a crucial sense, this need is a defining factor of the extent of one’s liberty. The prospect of surviving and living a meaningful life hinges on some ease and freedom to be

³²⁹ Shue, 21.

mobile and interact with others, and not having to be constantly worried about the safety of one's property, one's person, or one's family. The lack of such ease due to, in the Hobbesian sense, an unlimited liberty of all, can turn out for the most part to be a context of living under siege; only the strong, the dominant, or the despotic would feel some ease of mobility to carry out their undertakings. The necessity to fulfil basic needs may compel others who are not as strong or dominant or not despotic to interact socially, but they would do so under a terrible sense of fear. Hobbes has certainly conceived of the dangers that characterize a society that has no safeguard for basic human interaction, hence his push for a powerful Sovereign; security is vital for peaceful coexistence, basic safety, and also for morality – especially as the powers of corporations have become deeply entrenched in society.

Our own experiences in contemporary times are enough to comprehend the need for security, and so we need not revert to the philosophers of the past for justification. The news media are often filled with reports of people being harmed. Some are harmed because of the values they hold, some because of their ethnicity or tribal alliance; others are harmed because harming and subduing them would allow the assailant to relieve them of their possessions. Such realities highlight a number of things: some groups of people may be physically insecure simply because of who they are as a people; some people are physically at risk because of their station or achievements in life; or some are unable to exercise autonomy in living according to their particular moral outlook because others are not tolerant of them. In yet other situations, people are harmed because they are viewed as trespassing on others' turf.

Awareness of the dangers of physical harms, and responses to such dangers, are found almost everywhere in human societies. In our own contexts, we not only close our doors when in our own residences, we also ensure that the doors are locked, and that the windows are securely shut in such a way that strangers or even familiar people do not make their way in. These measures are taken not merely for purposes of privacy, they are taken essentially in the interest of preserving our lives. They are taken by the strong and by the weak, by men and by women. For those who are not as physically strong, the issue of safety may be of even greater concern.

We can look at the matter from the other way around. Not having physical security may impose serious limits on the quality of one's life. If one is at constant risk of harm or death because no system of protection is in place, one might be restricted in the number of times one leaves one's home or the times one does so. At the same time, some form of protection is needed for dangers within one's home from such things as domestic violence/abuse. Such harms could impede one's ability to go out to work for a living. They could also seriously obstruct social prosperity.

In the face of such realities, we might, following Shue and Mill, say protection against standard threats is vital. Hobbes captures the incommensurable predicament the lack of such protection implies for society when he writes:

Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withal. In such condition, there is no place for Industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, Continuall feare, and danger of violent death...³³⁰

³³⁰ Hobbes, 89.

Security against standard threats is a necessary aspect of human living and survival. It cannot be absent from an ethics that is aimed at protecting basic human needs against the tide of corporate profit maximization.

In sum, the basic human needs that I have outlined are vital. Five things are relevant in this regard:

- a) My list of human needs is meant to describe certain basic requirements of life; others might demand more on the list of needs but I am only concerned with the most basic of needs, and those that I have outlined fall within the boundaries of the definition of need I have provided and within the context of corporations.
- b) If anything should be safeguarded by moral or legal arrangements, these needs should be.
- c) One way to accomplish this is with the claim that one's ability to meet their basic human needs should not be undermined or overridden.
- d) We must declare that all persons have basic human rights to address these needs as a matter of moral necessity and moral equality, which at the very least implies non-interference with individuals' ability to meet their basic needs; the notion of moral equality is inherent to the whole concept of human rights, and the basic needs I have outlined highlight the practical elements for why we should all have these rights.
- e) This proposal is useful because the concept of human rights is, as I have already argued in the preceding chapters, well entrenched in most systems of basic law.

Interpreting Concrete Basic Human Rights to Protect Basic Human Needs

Having outlined these basic human needs, we now have to specify the human rights that can protect them. In a broad sense, the basics we are seeking to safeguard are implied by Articles Three, Four, Five, Ten, Eighteen, Nineteen, Twenty-three (subsection three), and Twenty-four of the Universal Declaration of Human Rights. They are:

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 18

Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 23(3)

Everyone who works has the right to just and favourable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

These articles cover a broad scope of things. In fact, for the present purpose they are too broad. Article Twenty-four is itself controversial, since it is a matter of argument whether everyone actually has a right to periodic holidays with pay (certainly this has attracted criticisms from thinkers like Maurice Cranston). Nevertheless, these articles come closest to what aligns with my list of basic human needs, and so what is required is a narrow interpretation of them. In fact, their applicability can only yield gains in a practical sense if we explicitly articulate the actual rights they embody for basic human needs. This means we must derive a concrete set of rights from these articles as rights to

impose on corporate entities, rather than attempting to directly enforce them as they are listed in the Universal Declaration of Human Rights. To do this, we must first highlight the objects implied by each article.

Let us begin with Article Three. The right to life crystallizes the essence of self-preservation. It implies a social condition in which one is not undermined or prevented from preserving one's life. This entails not interfering with one's activities to address his basic needs, and not treating him in a way that endangers his life. From this point of view, the right to life implies access to food, clean drinking water, shelter, and clean air. To put it another way, the right to life implies a right to subsistence. Both Rawls and Shue interpret it in this way.³³¹ It also implies the right to carry out one's natural bodily functions such as excretion. The right to liberty is a clear indication that human beings ought to be treated as autonomous individuals; they ought to be free to carry out their pursuits according to their own choice. It implies self-ownership, and freedom of mobility to exercise one's individuality. One can argue on this basis that others should not interfere with one's decision to live a certain way. The right to security of person implies freedom from harm and thus imposes duties upon others not to harm me; the same duty applies to me in relation to others (for as we have noted in chapter three, rights have correlative duties). Article Three thus constitutes a master moral and political principle that sums up the basis of protecting many of the needs I have outlined as basic human needs.

Article Four explicitly fleshes out the essence of human liberty enshrined in Article Three. It is cognizant of the maltreatment meted by entire societies of people

³³¹ Rawls, 65. Actually, Rawls sees the right to life as including both subsistence and security.

through official practices of slavery and serfdom in the recent past, and the impact such practices have in denigrating the human elements that characterize us as a distinct species. Especially because slavery and serfdom are recent phenomena, Article Four aims at cementing a boundary in the form of a right to protect human beings from a life of enslavement and servitude.

Article Five incorporates the virtues of Articles Three and Four regarding the sanctity of the human person and moral worth. It essentially proclaims that human beings must be protected from barbaric treatment or treatment that otherwise overrides their moral worth as persons. Human rights are, after all, reasons to treat people a certain way, and this article fleshes out boundaries for such treatment.

Article Ten canonizes an outline of procedural justice. It suggests that individuals should not be arbitrarily deprived of their rights, nor should they be judged unfairly in the face of allegations against them. As equal persons before the law, they are entitled to due process without prejudice in the determination of their case. Such a process is consistent with natural justice, and is the basis by which rights protection, law, order, and moral worth can be sustained in a substantive and uniform way.

Article Eighteen fleshes out in a concise way certain dimensions of liberty that must be equally extended to all – freedom of thought, conscience, and religion. I emphasize “certain dimensions of liberty” as opposed to all forms of liberty because ensuring equality of liberty in all its forms is unrealistic. To do so would put us in a quandary of having to ensure such things as economic egalitarianism. These concerns certainly posed problems for Marx’s conception of equality. This article instead underlines certain liberties that must necessarily be ensured as a good, available to all

individuals.³³² Freedom of thought, conscience, and religion are important for human life at a psychosocial level in a deep way. As I have noted earlier, thought, conscience, and religion are conceived as defining sources of one's purpose, creation, and the way of the good. Article Eighteen thus protects these objects as essential rights that we must have.

Article Nineteen emphasizes the value of free speech on one's own, and in association with others. It accommodates a crucial way of safeguarding other rights because it provides the basis to express oneself. This right also allows one to openly participate in social life and to provide inputs into social policies, because it enshrines the basis to express dissent or support for social programs and the way society is managed. Fundamentally, it is an important right at an individual level because it captures the essence of liberty of person – self-governance – and the myriad forms liberty of person can take.

Article Twenty-three (subsection three) essentially builds on the focus of Articles Three, Four, and Five in legislating a framework of treatment for human beings in their occupational life. Its essence is in paying employees a living wage, so that they live and provide at least the minimum for themselves and their families that is consistent with some basic form of a dignified human life. According to the article, society (i.e., the state) has an obligation to provide subsistence for individuals if they lack the basis of doing so. The idea is that to maintain human integrity and moral worth, we should not allow human life to fall below a certain threshold. Of course, provisions of this kind by the state will depend on whether the state can afford them. But here too, it will also depend on prevailing political perspectives on positive rights to subsistence.

³³² The caveat of course is that such freedoms must not be harmful to others.

Article Twenty-four captures the essence of the physical and mental need human beings have for rest and sleep, and especially in the context of occupational life. It implies that our bodies have limits, and our ability to reason, to function, and even to feel in a way that we can sensibly relate to our environment could be significantly diminished or damaged if these limits are not heeded. Conducting ourselves as rational agents has psychophysical requirements – adequate sleep and rest. We need time to socialize with others as human beings as well – family, friends, and community. The idea of periodic holidays with pay may have stemmed from a concern that there are special times when gestures in the form of absence with pay should be extended to employees. It need hardly be said that this issue can be controversial, depending on one’s political perspective and the economic context of the corporation or country.

I have already noted above that attempting to enforce these articles directly, by simply imposing them on corporate entities, will invite more criticisms and hurdles than the gains it may yield. Article Three itself is somewhat broad. Article Twenty-four might be met with hostility in certain places, simply because of the demands it places on corporate entities to offer periodic holidays with pay. We therefore need to derive a concrete set of rights from these articles that would be considered reasonable and plausible to constrain corporations in our effort to protect basic needs. In other words, we need to show in a thin, concrete way how they apply in practical terms in the context of corporations, so that they may be enforced as robust constraints. Such a move should not be viewed as deviating from human rights. It is in fact a practical way in which many countries apply human rights. In Canada, we outline a set of rights in the Charter of Rights and Freedoms, as our frame of reference and as non-negotiable items, although

one of the aims of the Charter is to apply the rights implied by the Universal Declaration of Human Rights. Now then, what should these concrete basic rights be, to protect basic human needs? I argue that the list of basic human rights I derive below is sufficient to protect these needs.

A List of Concrete Basic Human Rights

1. Everyone has the right to food, shelter, clean drinking water, clothing and clean air.
2. Everyone has the right to proper excretion and urination.
3. Everyone has the right to proper excretion.
4. Everyone has the right to adequate sleep and rest.
5. Everyone has the right to liberty of person, expression, and conscience.
6. Everyone has the right to humane treatment and freedom from harm.
7. Everyone has the right to a living wage in their employment.
8. Everyone has the right of full equality to due process and fair adjudication in addressing grievances and defending their character against allegations.

It should be evident that the rights on the list above are derived directly from existing universal human rights; they are not new discoveries. What I have done is to show how universal human rights can be interpreted in practical terms in the context of economic globalization. Let us now revisit the list of basic needs I have outlined to see how these rights compare. They are:

A List of Concrete Basic Needs

- Need for adequate food, clean drinking water, clean air, clothing, and shelter
- Need to excrete waste
- Need for proper sanitation and hygiene to prevent harm from the outbreak and spread of disease
- Need for adequate sleep and rest
- Need for liberty of person (i.e., freedom from slavery and bondage), expression, and conscience
- Need for security against standard threats and mental abuse

The need for things like food, clean drinking water, clean air, clothing, and shelter are captured by the right that everyone has to these items for their self-preservation

(identified as number one on the list of rights). The need to excrete as human beings is facilitated by the right to proper excretion and urination. I emphasize “proper” here since, as human beings, we do not ordinarily exercise our bodily functions in the same way animals do. We do so with a degree of privacy through special facilities, as part of public morality and as part of a sense of individual dignity and hygiene. The need for proper sanitation and disease prevention is captured by the right to proper sanitation and hygiene.

The need for adequate sleep and rest is protected by the corresponding right to adequate sleep and rest. This implies that corporate practices and policies should be mindful of the natural physical and psychological limits of the human person regarding the need for sleep and rest for recuperation. The need for liberty of person, expression, and conscience now has a corresponding right specifically for them. This right implies that workers and people in general should be treated as autonomous beings with rights to free speech. It also implies that they ought to be free to observe the edicts of their faith. The need for security from standard threats and mental abuse is protected by the right to humane treatment and freedom from harm. By interpreting it to prohibit inhumane treatment and harm, I have made this right applicable to maltreatment and harms in the workplace as well as to harms corporations can effect beyond the site of their operations.

The list of needs now has corresponding rights that protect them. But there are two additional rights in the list of basic rights I have derived, namely, rights identified in the list as numbers seven and eight. These rights concern being paid a living wage – that is, a wage that one can reasonably survive on – and procedural justice. It is not sufficient that the needs on the list are matched by corresponding rights. That alone cannot seal

their protection. One way to conceive of the issue is by trying to answer the following questions: what value does a right to food and other necessities have if the wage for a full day of hard work cannot buy me the most basic meal? What value are rights that protect my needs if I have no just procedure of seeking protection of my person or addressing violations of the rights themselves?

In respect to the first question, it is obvious that wages vary from one society to another (even within society). But despite such differences across economic units or jurisdictions, there is general knowledge within each unit/jurisdiction regarding what constitutes a decent or living wage. If, on average, the poorest of society requires a minimum of \$10 a week to meet their most minimal of needs (i.e., food, drink, and shelter), paying a wage of \$5 for a full week of hard work is an obvious case of not paying a living wage. While a right to a living wage is in some ways vague, in practical terms it does empower an individual to justifiably demand a minimal wage that is relevant to their social context. In a capitalist sense, one might object on the basis that the person can simply go look somewhere else for a job. This is true to a certain extent, but in so far as people are confined to a corporation at hand, the capitalist's objection is simply a way to divert attention from exploitation. Such a wage, in other words, would be consistent with exploitation of labour. Hence, a right to a living wage is an important constraint to impose on corporations, because a living wage defines one's ability to meet important basic needs.

In answering the second question, it is important to note that a system of constraints needs to include some procedural form of fairness to address violations of the constraints. In other words, there must be some framework for conflict resolution. It is

also an important way to capture the fact that we are dealing with human beings, both on the side of corporations and on the side of employees and communities of individuals. As such, imperfections will surface as will unforeseen elements. Such issues may not (or may) be embodied in the set of basic needs I have outlined. Nevertheless, they may threaten our ability to protect basic needs or may constitute an assault on the moral worth of a person. Lacking a stipulated right to a just form of dispute settlement may lead to a collapse of the system of constraints itself. From these perspectives, a rudimentary outline of procedural justice in the form of due process and fair adjudication is necessary for the constraints that protect needs to be carried out, and for the integrity of their application. Due process is deeply entrenched in most systems of positive law and morality.

In sum, we have derived a concrete set of rights from the Universal Declaration of Human Rights that seems reasonable to enforce on corporations in the interest of protecting basic human needs. We now have one task remaining, namely, to show how the set of rights applies. Before I proceed to that, however, it is important to distinguish the needs-based rights constraints that I have proposed, as a subset of a minimal ethics, from what a minimal ethics itself might look like.

The Subset and a Minimal Ethics

It is natural to argue that the list of needs I have outlined are too thin and do not capture the scope of objects that are important to human life. For example, an objector might argue that a more reflective account of human needs must include such things as basic primary education, basic health care, social assistance for the poor, and social interaction and companionship. I see no reason to object to the claim that these things are

important to human life. In fact, they are very important. But it is not clear to me that they are relevant to corporations. Let us briefly examine them. Basic primary education itself is the basis by which we inculcate vital basic literacy and life skills in children, so they may live a life in which they may be better able to relate to their social environment and expand their range of autonomy.

Some might object to the claim of basic literacy as a need on the basis that one could survive without it. This is true. Basic literacy is not absolutely necessary. Mentally handicapped children do survive and grow to become adults. But the objection may be anchored in an ambiguity too. A critic might point to stateless people who live in the jungle as people who are uneducated but survive. Such evidence does not refute the fact that even without formal education we need to have basic functional knowledge to distinguish some things from others (such as what is harmful or poisonous from what is not). We need basic arithmetic skills to take stock of what we have and to enter into barter and different forms of exchange with others; we need to know how to differentiate between different locations, and so on. The stateless person can learn to do these things through visual training or may be taught dialectically or through some other way by elders. But this is not a claim against the need for basic literacy. It is in fact evidence in support of the need for basic literacy. The training itself by the elders of such a stateless person signifies an important value that is placed on acquiring certain basic skills for survival. So understood, the training is a form of basic educational development in much the same way as learning which animals and plants are edible.

Above and beyond such objections, we would do well to recognize that many of the world's people are not stateless but are part of organized social structures in which

basic literacy defines such things as: the extent of one's mobility; the exercise of liberty; the ability to broker property arrangements (entering into contracts); and the probability of acquiring employment to attend to one's basic needs. Besides, basic primary education could ensure that individuals are groomed from childhood with basic literacy skills so they can understand their rights and freedoms; so that they can develop their rational faculties; and so that they can avoid endangering themselves and others by being able to read warnings about things like hazardous chemicals and other dangers. Basic literacy can liberate and empower a person in much the same way as being freed from blindness. It is instrumental in helping one see and understand one's environment and one's self better.

In contemporary times, illiteracy can define serious limits on one's ability to attain the objects of one's liberty. Inability to read and write, for example, prevents one from entering into certain contracts, on the basis that one is unable to read or sign the contract. Lacking the ability to read significantly limits one's ability to travel, or to learn about basic health issues in a way that helps one to decide, in a more informed sense, how to live. In some situations, it may limit one's ability to shop for basic goods, on the basis that one cannot read labels. In these ways, liberty is underpinned by many other factors, many of which are vital to a minimally decent life and one's capacity to flourish. Basic primary education is one such factor. Of course, it need hardly be said that basic education defines progress, not just for an individual person but for society itself. Producing practitioners of medicine, law, teaching, and engineering are important to carry society forward from one generation to the next. Such training starts with access to basic primary education.

The other variables of human needs – basic health care, social assistance for the poor, and social interaction and companionship – may similarly be defended as needs. The lack of basic health care leaves us vulnerable to harmful diseases, which may seriously diminish our ability to function and attend to the basic needs of ourselves and family. Some forms of sickness may be easily remedied. Other forms may require the skilful attention of someone who is adequately trained in medicine. Moreover, basic health care is necessary to be able to deal with disasters and health pandemics.

Social assistance for the poor is an important safeguard for preventing members of society from sinking below a certain threshold – what is ordinarily referred to as the poverty line.³³³ The general philosophy that underpins social assistance, which perhaps stems from the times of the Poor Laws in England or the Great Depression of the 1930s, is that people may be impoverished as a result of structural barriers like: discrimination in hiring practices; unforeseen misfortune in their own circumstances or economic situation; handicaps they suffer as a result of an accident; poor agricultural yields because of damage to one's crops by bad weather; and a general collapse of the economic system – recession. In these circumstances, individuals are placed in situations that are beyond their control. At the same time, they still require food and shelter, among other needs. If we agree that there should be moral worth ascribed to human beings because we are distinct from animal species, it follows that there ought to be some collective basis by which to prevent their moral worth from being overridden by circumstances that are at least beyond their control. Human dignity, in other words, has no meaning when

³³³ The poverty line income is usually based on certain indices of consumer expenditures and what is required for them to meet the bare minimum of needs.

people's lives are pushed into a trajectory of starvation and beggary while we have the means to prevent it.

Underlying all of this is the idea that any one of us can at some point become a victim in that way. Given this prospect, there is value in implementing systems of mutual aid to protect the moral worth of human life. There is also value in doing so for the survival of society. Hence, social assistance to the poor and otherwise disadvantaged who are in need is important. The wisdom of this philosophy has been emphasized by the great sages of all the major religions.

Social interaction and companionship are important components of human life simply because we are social creatures. Our psychological development gets stultified when we are forced to live in isolation. For example, children cannot grow to live normal lives if they are raised in isolation from others, if they are caged and just fed daily like chickens. We dread the idea of imprisonment because, aside from moral conscience, it isolates us from our natural world of interacting in a variety of ways with others. Interaction of course is not the same as companionship. But companionship emerges from, and entails, interaction. Companionship is the basis for affectional relationships. It shapes character and a sense of belonging among people. It is important for the upbringing of children, for the bonds of kinship, for friendship, and for the psychological health of individual persons. As Singer puts it: "If loving relationships, and relationships of friendships, are necessarily partial, they are also, for most people, at the core of anything that approximate to a good life."³³⁴

To summarize, basic primary education, basic health care, social assistance for the poor, and social interaction and companionship are important for human life and should

³³⁴ Singer, 162.

be included in a minimal ethics. In fact, they are a key reason why I conceive of the Universal Declaration of Human Rights as a minimal ethics; they are embodied in the Declaration as rights each individual has as a human being. The need for basic primary education is protected by subsection one of Article Twenty-six when it states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.” Subsection two of the same article underscores the essence of basic education when it states: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.” The need for basic health care and for social assistance to the less fortunate is protected by Article Twenty-five when it states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The article is actually quite comprehensive in capturing the broad scope of things that could negatively impact moral worth and one’s ability to live in a way that is consistent with the human way of life. The need for social interaction and companionship is protected by the right to liberty in Article Three, and by the right to enter into marriage and found a family as outlined in Article Sixteen. As subsection three of Article Sixteen puts it: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Companionship is, in other words, embedded in the family unit.

Although these needs and rights are important to human life, they have been excluded from my list of constraints because, as I have noted at the outset, I am concerned with economic globalization and not the social or other dimensions of

globalization. In this regard, I have focused on a subset of a minimal ethics as opposed to a more general form of a minimal ethics. Corporations, as I have already noted, are the vehicles of economic globalization and in view of this, I have sought to constrain the practices of corporations to protect basic human needs. The needs I have outlined in my list of basic human needs are those which apply to corporations, and which we can enforce upon them through the set of basic rights I have outlined.

While the right to basic primary education, basic health care, social assistance, and social interaction and companionship should be constituents of a minimal ethics, it is not clear that such rights can or should be enforced on corporations. Hence, this is why I have delineated a subset of a general minimal ethics. Some things that are vitally important to the individual or society do not fall within the scope of duties for corporations. In what way, for example, should we enforce the right to education on corporations? My objective is to ensure that the rights I have outlined as constraints are not compromised by corporations because: (1) they are basic and vital, and (2) they fall within the scope of duties for corporations, as rights they should respect. I now proceed to elaborate how the constraints I have proposed apply to corporations.

How Basic Human Rights Apply to Globalization

Constraining globalization in the interest of human needs implies imposing limits on corporations (essentially property rights-holders). This means constraining their operations so that profit maximization is not done at the expense of basic human rights. The basic rights that I have outlined will serve as the limiting condition for their operations. There is both a simple and a somewhat elaborate answer to the question of how the rights apply to corporate entities. The simple answer is that these rights are non-

negotiable items, and corporations should not interfere with them. This means that corporations should not jeopardize the lives of people through such things as harmful pollution to the water or the air, and not jeopardize their ability to feed and clothe themselves (certainly I do not mean by this that corporate entities have to feed or clothe people). It also means not interfering with people's need to excrete, to get adequate sleep and rest, and not exposing them to harmful diseases through experiments or reckless management of potent chemicals (like carcinogens and toxic gases). In other words, corporate entities must constrain their operations in a way that dutifully avoids interfering with people's basic human rights.

The more elaborate answer to the question of how the rights I have outlined apply to corporate entities is this: corporate entities should not merely refrain from interfering with these rights, since some of the rights in particular require that measures be taken for them to have any practical meaning. The first in the list of rights I have outlined should not be interpreted as expecting corporations to provide people with food or shelter. At the same time, the list of basic human rights does imply that corporations should do the following:

- pay workers a living wage (naturally this will vary from one place to another)
- provide workers with adequate facilities for excretion, and excuse them to do so
- ensure proper sanitation and hygiene in the work place
- take measures to avoid causing harm to the sanitation and hygiene of people outside the work place
- take active measures to safely manage and handle hazardous materials that are their property
- devise a work regime that respects the need for workers to have adequate rest and sleep
- provide adequate security for people within their domain

- respect the autonomy and value system of individuals, and thus take measures to ensure people are not enslaved, held in bondage, suppressed, or discriminated because of their religion
- implement policies to ensure that people are not dehumanized, mentally abused, and harassed within the scope of the corporation's operations
- do not prohibit people from practicing free speech
- implement a system of due process and fairness to address complaints and allegations

In this way, reasonable measures can be actively taken to ensure that corporate practices do not conflict with people's basic human rights. Such active measures in fact affirm a commitment to respect basic human rights.

A sceptic might exaggerate some of the challenges to implementing measures in respect to these basic rights, but it needs to be remembered that the demand for such measures is in keeping with basic standards of human treatment. Thus a good globalization starts with non-interference, and efforts on the part of corporations to prevent harm to people's basic human rights. This demand seems reasonable because the basic human rights I have outlined are those which any open-minded person would like to have safeguarded for him or herself.

3(c). Human Rights are a More Substantive Set of Rights

The second argument for claiming that human rights are a good way to mitigate globalization is that human rights are a more substantive set of rights than property rights. Property rights emphasize rights in the acquisition, holding, and movement of property.³³⁵

But they also emphasize rights in the operational control of property – whether the property is a factory, a mine, or a certain equipment. Since human beings fill the role

³³⁵ I, of course, do not mean to suggest that there cannot be other definitions or concepts of property.

of labour in the operational aspects of property, and since communities of people make up the surroundings in which the operational aspects of property are conducted or focused on, it is not difficult to imagine property rights holders aggressively disregarding the welfare of human labour and communities and their environment, in favour of profit maximization and cost minimization. The ability to do so in the era of globalization can be especially energized by deregulated markets and porous boundaries – to use O’Neill’s expression.

The extent to which vested political interests have permeated economic activities in global settings suggests that such disregard can easily materialize with political blessings from powerful regimes in developed countries, and with the cooperation of corrupt or otherwise handicapped political regimes in poor countries. Significant evidence already exists to confirm that this is so – for example, in decisions taken by transnational corporate entities like the World Trade Organization, the World Bank, and the International Monetary Fund; and trade policies and practices implemented by the United States.

The consequences include increased impoverishment for many societies that were already poor, significant harms to human health because of lax safety standards in factories of transnational corporations, and in some significant ways an imprisonment in the sphere of poverty. Property rights holders and those with vested interests in property rights have historically looked upon human communities as there to be used, and especially as disposable exploitable items where poor societies are concerned. Lawrence Summers, former Secretary to the U.S. Treasury, is clear about this perspective in a memorandum written while he was chief economist at the World Bank. He points out the

logic and profitability of directing polluting industries to the Third World because, in his view, they are under-polluted. He writes:

Shouldn't the World Bank be encouraging more migration of the dirty industries to the less developed countries? The measurement of the costs of health-impairing pollution depends on the forgone earnings from increased morbidity and mortality. From this point of view, a given amount of health-impairing pollution should be done in the country with the lowest wages. I think the logic behind dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that.³³⁶

Thus unmitigated property rights and vested interests can undermine people's basic human rights in the less developed countries. It follows that the globalization of property rights is insufficient for a good globalization. We might do well here to point to an observation Hume makes of his own time. He writes:

It is sufficiently understood that the opinion of right to property is of moment in all matters. A noted author has made property the foundation of all government, and most of our political thinkers seem inclined to follow him in that particular. This is carrying the matter too far, but still it must be owned that the opinion of right to property has a great influence in this subject.³³⁷

Hume no doubt has John Locke in mind here as the thinker who has made property the foundation of government. But Hume's point on the matter is that rights to property do not comprise the whole picture. Other rights are relevant to human life.

A more substantive set of rights is embodied in the set of concrete rights that I have derived from the Universal Declaration of Human Rights. Since human rights include the core basic rights to effectively address basic human needs, a good globalization is one in which the global proliferation of property rights is accompanied by an enforced globalization of the specific basic human rights I have proposed.

³³⁶ Quoted in *Economist*, "Let Them Eat Pollution," 66.

³³⁷ Hume, "Essays, Moral and Political," 308.

4. Human Rights and Accountability in the Current Times

In claiming that human rights (and especially those that I have outlined) are ideal to mitigate globalization, one must be cognizant of the challenges globalization poses for human rights. We know from our earlier discussion that the rights-holders of human rights are human beings – every human being. Everyone has human rights. But the fact that human rights are claim-rights applicable to all human beings raises the question as to who really has correlative obligations to one's human rights. Since the approval of the Universal Declaration of Human Rights by the United Nations, this obligation has been placed on national governments. National governments are said to be protectors of their states and guardians of the people within their jurisdictions. Through various social institutions such as a police force, courts, a military, hospitals, and social service units, as Shue has argued, national governments promote the objects of human rights.³³⁸

A police force is used as a lawful authority with legitimacy over the use of coercion, to provide and enforce security rights against standard threats from within the national jurisdiction. A military is used to ensure security rights against external threats. Courts are used to assess claims of allegations, violation of one's rights, and matters of justice. Hospitals are used to provide aid to those who are sick. Social service units, wherever they are available, provide certain subsistence aid to those who are unable to do so on their own. In these ways, the state is said to carry out certain obligations in the provision and protection of human rights. States acquire the financial resources to carry out these obligations through taxation and other means of generating funds from the

³³⁸ Shue, 61-64 and 35-40.

general public to finance the maintenance of human rights. Surely, not all national governments live up to this duty, but this is the manner in which it is done.

Wesley Cragg plausibly argues that there was a fashioning of a new social contract after World War II.³³⁹ In this social contract, states were seen to have certain responsibilities in preserving human rights whereas private sector entities like corporations were not seen as having a role to play in that regard. They saw their roles as working in the interest of profit (in the way Friedman outlines in his free enterprise paradigm) and saw the government as having duties to matters relating to public morality and law. Cragg suggests that such conception of the private sector should be reconsidered, as the promotion of human rights by firms can be profitable, and the failure to do so can have the opposite result.

States were seen as obligation-bearers of human rights at the time the Universal Declaration of Human Rights was passed in 1948, because of their extensive power. Arguably, states were at that time the most powerful entities in the social fabric. The degree of power that others like transnational corporate entities presently possess was not anticipated by the architects of the Universal Declaration of Human Rights, as human rights scholar Twiss points out.³⁴⁰ The revenues of many transnational corporations, individually, far exceed that of some states. Wal-Mart and Exxon Mobil are two examples.

There are also world financial institutions such as the World Trade Organization and the International Monetary Fund (all of which I treat as transnational corporate entities), whose decisions and policies undermine the extent of state power, and in some

³³⁹ Cragg, "New Social Contract," 205-214.

³⁴⁰ Twiss, "History, Human Rights, and Globalization," 53.

cases even override certain state decisions. We have already seen the evidence of this in the WTO's rulings in regard to the Ethyl Corporation and the Canadian state, and MetalClad Corporation and Mexico, both concerning harms to public health. The level of power held by such non-state entities can pose serious challenges in attending to basic human needs.

Accountability to human rights should apply not just to states but to these non-state entities as well. Corporations have been known to emphasize primacy of property rights at the expense of basic human rights of many people and societies. The case of the Bhopal Disaster in Bhopal, India in 1984 saw aggressive profit maximization initiatives by the Union Carbide Corporation, and their disregard for the health, life, and safety of the workers and neighbouring communities to the factory. The disaster resulted in the deaths of several thousands of people in a matter of a few days. An estimated 200,000 people literally continue to suffer serious life-disabling permanent injuries in the present time, along with serious traces of disfiguration and ailments in their offspring. The Bhopal Disaster is a stark indicator that transnational corporate entities, left to their own discretion, cannot be relied on to respect human rights.

Summers, chief economist at the World Bank at the time of his notorious memorandum, still sees fit to rationalize an economic logic of directing polluting industries to the less developed countries on the basis of the relative cost of human labour and lives in those places. If anything, his rationale reinforces the idea that entities like the World Bank and the WTO ought to be constrained by explicit limiting factors that safeguard our ability to address basic human needs. In the face of these relatively new

and major structures of power, all corporate entities ought to be accountable to human rights and especially those I have outlined.

Certainly, how we go about globalizing the enforcement of human rights will depend a great deal on what role we see corporate entities as playing, or how these rights apply to them. To begin with, objections could be raised along the lines that some human rights can only be enforced by governments. In some respects, this is true. The state has a police force, the state facilitates courts, and the state is signatory to the United Nations Universal Declaration of Human Rights. But if we focus on the concrete basic human rights that I have outlined, this possible confusion about who has duties to human rights can be circumvented.

Fundamentally speaking, everyone has human rights duties, but we do not tend to think of human rights in this way. We have duties to respect the human rights of others – not interfering with other people’s human rights, in other words. In this regard, it is wrong to act on a whim to kill people, simply because they have a right to life. We do not think of the matter in terms of human rights. Instead, we think of such fatalities as homicide. We do so because laws are in place that explicitly outline punishment for acting in this way.

In most systems of positive law, human rights are treated as constitutional or civil law, ensuring certain fundamental rights people have, and specifying how violations of those rights should be handled. This embodiment of law is essentially a statement that we must all dutifully respect the rights of others. Applying law to protect people in this way could be viewed as an Aristotelian or Hobbesian approach to the use of authority to

enforce elements of morality. Certainly, we are not accustomed to thinking of human rights in this way.

So how then do we go about promoting these basic human rights as duties to be respected in the age of globalization? Richard Rorty argues that the best way to promote human rights is not to tell people that reason dictates that we all have rights – that is, not by approaching it from a rationalist ontology as Plato or Kant would.³⁴¹ Rather we will gain more by appealing to their sentiments, by telling them sad stories about those who have been violated, and getting them to think of being violated in these ways in the context of their own lives. Rorty takes a pragmatic Humean approach, one that can yield many dividends in the way of human rights respect. I am not opposed to this view. Since our focus is on globalization, we are largely dealing with holders and controllers of property rights – corporations. We need to show how the human rights I have outlined place responsibilities on corporate entities.

Basic human rights could be easily incorporated in codes of ethics or mission statements of corporations, and promulgated as a criteria set to qualitatively assess company performance from a human resource and ethics point of view. These rights could also be used as an external criteria set, to evaluate corporate compliance to human rights, to evaluate international and national trade treaties, policies and practices to determine whether they undermine the capacity of communities or people to effectively address basic needs. Moreover, these rights could be used as a litmus test in doing quality control to determine whether the quality of certain goods and services

³⁴¹ Rorty, 111-134.

produced/rendered jeopardizes people's basic human rights. In these ways, the relevance of the set of basic human rights I have outlined should be evident.

5. Moral Agency and Corporations

The argument that the practices of corporations ought to be constrained by a set of basic human rights certainly raises questions of moral agency in relation to corporations, or, put another way, questions of collective agency and responsibility. Depending on one's approach to the issue, it may be natural to ask whether corporations can be held accountable in the same way as real/natural persons. One obvious reason for such a question is that corporations are recognized as juristic persons. That is, they are treated as artificial persons, being legal entities but with many of the same rights and privileges as natural persons nonetheless. At a deep philosophical and even practical level, the idea of treating corporations as moral agents has been criticized by many thinkers.

Treating corporations as moral agents implies holding them responsible for their actions. Some considerations advanced against treating them in this way point to the idea that corporations lack the intentionality of humans, that they are not sentient, and that they are made up of many different human beings who operate on many levels. Those who argue in favour of treating corporations as moral agents whose rights imply corresponding obligations point to the idea that corporations may indeed be artificial, but they are operated by rational human beings who can and do form intents to achieve the overall goals of corporations.

Many philosophers have attempted to resolve this issue. Goodpaster and Matthews, for example, argue that we can project the same responsibilities on corporations that we extend to human beings because, like human beings, corporations

can and should have a conscience. They write: "If we can say that persons act responsibly only if they gather information about the impact of their actions on others and use it in making decisions, we can reasonably do the same for organizations."³⁴² From this point of view, "...corporations that monitor their employment practices and the effects of their production processes and products on the environment and human health show the same kind of rationality and respect that morally responsible individuals do."³⁴³ Nani Ranken agrees that corporations should be held responsible, but disagrees with the principle of moral projection advanced by Goodpaster and Matthews.³⁴⁴ She argues that a corporation lacks motivation and that "it has no inner springs of change analogous to the motives of natural persons."³⁴⁵

The problem of deriving moral agency for corporations gets muddy when we try to give metaphysical accounts; for we may easily say, at a practical level, that the corporation came into being, legally, by registering to have certain rights and privileges and accepting certain responsibilities that accompany those rights and privileges. As a point of fact, it must be noted that corporations are organizational/institutional entities which lack the psychological capacity to experience pain, remorse, and pleasure. And as Thomas Donaldson points out, they have not come into being from human parents.³⁴⁶ It follows, as Donaldson argues, that "...the mere fact that corporations share

³⁴² Goodpaster and Matthews, "Can a Corporation Have a Conscience?" in *Business Ethics*, 46.

³⁴³ Goodpaster and Matthews, 47.

³⁴⁴ Ranken, "Corporations as Persons: Objections to Goodpaster's 'Principle of Moral Projection'," in *Business Ethics*, 52-58.

³⁴⁵ Ranken, 53.

³⁴⁶ Donaldson, *Corporations and Morality*, 20.

characteristics with human persons is inadequate to establish moral agency, since they also fail in this regard.”³⁴⁷ Corporations, for example, have the right to free speech, but not the right to vote. Looked at in this way, we might say that being a juristic/legal person is not sufficient reason to attribute moral agency.³⁴⁸ We might even go so far as to say that being a person is not a sufficient condition for attributing moral agency. A person can be imbecile or otherwise insane, and so lack the requisite conditions for moral agency. A person may be dead though not yet disposed of (through cremation/interment), and so moral agency for such a person would not have meaning. Perhaps this raises a deeper philosophical question, namely: when does an individual cease to be a person?

In the light of these considerations, and particularly because we are focused on the issue of collective agency and responsibility, it may not be fruitful to talk about moral personhood, but to speak instead about moral agency. Hence my avoidance of the term “moral person” thus far. The term “moral agency” gives us the latitude to impute culpability beyond the human person. In Donaldson’s view, there are two conditions that must be met for moral agency, namely:

1. The capacity to use moral reasons in decision-making.
2. The capacity of the decision-making process to control not only overt corporate acts, but also the structure of policies and rules.³⁴⁹

These conditions seem plausible, particularly insofar as our aim is to establish moral agency for a non-human entity. On the surface, we can say that the corporation is managed by rational agents, and in this way its institutional structure embodies the

³⁴⁷ Donaldson, 20.

³⁴⁸ Donaldson, 21.

³⁴⁹ Donaldson, 30.

capacity to use moral reasons in decision-making. The same logic applies in meeting the second condition.

A similar but more robust account of moral agency is already provided by philosopher Peter French. While French treats his account as a metaphysical basis of accounting for moral agency on the part of corporations, his frame of reference is in fact quite pragmatic. According to French, “What needs to be shown if there is to be corporate responsibility is that there is sense in saying that corporations and not just the people who work in them have reasons for doing what they do.”³⁵⁰ French is essentially focused on showing that there is a way of demonstrating intentionality of corporations. Corporations have goals, and so these goals and the pursuit to achieve them characterize one way in which we might approach the issue. Goals and the pursuit of them at the very least underscore intention at some level. If we can track the structure through which this intention operates, then we will make some headway in establishing a sound case for corporate social responsibility.

French claims this source of intentionality is to be found in the Corporation’s Internal Decision Structure (CID Structure). In other words, the entity operates on the basis of a structured scheme of decision making in which particular people or units at various levels are endowed with responsibility to act in a certain way on behalf of the entity. When they make decisions for their own personal gains and not for the entity, they cannot be said to be acting on behalf of the entity. But insofar as they are acting according to the decision structure, and for the entity, there is a basis to claim that their actions represent the intentions of the entity. French refers to this transposition of

³⁵⁰ French, *Collective and Corporate Responsibility*, 40.

intention as redescriptions. The description and actions of these key decision makers according to the decision-making structure can be described as those of the corporation.

He writes:

Every corporation has an internal decision structure. CID Structures have two elements of interest to us here: (1) an organizational or responsibility flowchart that delineates stations and levels within the corporate power structure and (2) corporate-decision recognition rule(s) (usually embedded in something called corporation policy). The CID Structure is the personnel organization for the exercise of the corporation's power with respect to its ventures, and as such its primary function is to draw experience from various levels of the corporation into a decision-making and ratification process. When operative and properly activated, the CID Structure accomplishes a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision. When viewed in another way, as already suggested, the CID Structure licenses the descriptive transformation of events, seen under another aspect of the acts of biological persons (those who occupy various stations on the organizational chart), to corporate acts by exposing the corporate character of those events. A CID Structure incorporates acts of biological persons.³⁵¹

The CID Structure thus allows us to claim that a vote by a set of key decision makers of the corporation, for example the board of directors or the corporate executives, to execute certain actions can be described as an intention on the part of the corporation. The CID Structure thus embodies the key for moral culpability, as the corporation's governance is structured by it. More importantly, it embodies the machinery of intentionality, which is a vital property of moral agency and responsibility.

French's argument makes a justifiable and sufficient case for the moral agency of corporations. I have adopted this line of reasoning in arguing for the enforcement of certain obligations on corporations to respect basic human rights. While corporations may not have all the rights that a human person has, the actions they undertake in the course of their operations impact on various human and non-human constituents. Since moral persons are held accountable to similar actions, the fact that there is an internal operating decision structure that defines actions on behalf of the corporation suggests that

³⁵¹ French, 40.

corporations should be held similarly accountable. At the extreme, we might not be able to incarcerate corporations because they are not natural persons; but the internal operating decision structure does give a basis for actions to be taken against biological persons who are entrusted to act in the name of the corporation. It is in this vein that I see corporate entities as moral agents upon whom enforcement of certain obligations to respect basic human rights is justified.

6. Enforcing the Theory

The idea of applying human rights in this way to achieve a mitigated globalization may leave one to wonder how these human rights would be enforced, especially since I have argued that transnational corporate entities could not be relied on to carry out such duties if left to their own discretion. Some such entities might see the promotion of human rights as having a strong positive link to productivity and profitability. But on the whole, history suggests that there is a greater prospect of their pushing in the direction of profit maximization in a rather slanted way when it comes to morality and law. Certain moral education and practice are at times made more effective when legislated into law. As Aristotle puts it: “Law...has the power that compels; and law is reason that proceeds from a sort of intelligence and understanding. Besides, people become hostile to an individual human being who opposes their impulses even if he is correct in opposing them; whereas a law’s prescription of what is decent is not burdensome.”³⁵²

Applying human rights to mitigate property rights has the advantage that human rights are already enshrined in the International Bill of Rights. Since the rights outlined in the Universal Declaration of Human Rights are incorporated in the twin covenants, and

³⁵² Aristotle, *Nicomachean Ethics*, 294.

since the twin covenants are legally binding on their signatories, there is a pre-existing basis for taking recourse against human rights violation. Enforcing the theory I have advanced simply requires that we take a vigorous stand on protecting and respecting the concrete human rights I have outlined. Some might be tempted to treat this as a monumental task, but there are analogous cases where we already carry out the objectives human rights imply, in many local settings, from the point of view of moral and legal duty. In many universities, there exists an office or a unit that has the responsibility of receiving and adjudicating in a fair way on complaints concerning harassment and human rights. In many companies, there exists a human resource department. In many societies there exists a human rights commission or several such commissions. They are there to ensure that steps are taken to address violations, and to oversee that the institution/state adheres to the principle of respecting rights to which it has committed itself.

Of course, in many corporations the human resource department may be slanted in favour of the company, and not necessarily stay committed to impartiality. Such a slanted approach naturally inspires scepticism. But there are ways through which such entities may be pushed in the direction of compliance. I shall leave the task of developing a detailed framework on enforcement for a separate project, or for others to take up. But I will outline a few considerations about the way enforcement may be approached.

Since human rights already exist as established international law, and are embodied in the basic law of many societies, we might start with the task of promoting these rights as instruments that corporate entities ought to respect simply because they embody the elements of attending to basic human needs. If they are found to be in violation of these rights and are stubborn about fulfilling their duties, there ought to be a

higher body through which victims' cases/complaints can be heard, assessed, and addressed.

In many societies, there are human rights commissions that act in this capacity. There are, for example, the Ontario Human Rights Commission, the Indian Human Rights Commission, the Guyana Human Rights Association, and so on. These bodies are not perfect. Nor are they ineffective; they accomplish major gains in the context of championing human rights enforcement and bringing matters before the courts for deliberation. Their objectives are informed by local constitutional law and by the United Nations Human Rights Commission. In contemporary globalizing times, we might find it feasible to build on this framework, pushing vigorously for such bodies to oversee the fulfillment of human rights duties. Where violations are difficult to address with local resources, such bodies can appeal to regional institutions (such as the European Court of Human Rights, the Inter-American Court of Human Rights, etc.) and to international institutions like the United Nations and the International Criminal Court (ICC). Certainly, the ICC was envisioned as a major accomplishment for human rights advancement. As Marlies Glasius puts it:

Human rights organizations were particularly predominant within the campaign for an international criminal court. After decades of building an international human rights system at the regional and global levels, human rights experts began to realize that while the body of law on human rights had become substantial, the scale of human rights violations in the world was not actually declining...holding only states responsible, obscured the complexities of internal and external power structures, and stood in the way of human rights enforcement...Thus, the idea of taking recourse to an international criminal court came to be embraced by human rights groups.³⁵³

We can thus say that human rights have pre-existing bearings in law and morality in the current times, and an existing framework through which they may be enforced or deliberated upon. In enforcing the set of basic human rights I have argued for in this

³⁵³ Glasius, *The International Criminal Court*, 29-30.

dissertation, it might be advantageous to focus on ways to empower these bodies to oversee and deliberate on human rights affairs as economic globalization continues in full force.

7. Conclusion

I argue in the preceding chapters that the benefits of globalization should not be overlooked simply because there are noticeable harms in the way globalization is presently carried out. In life, some good comes with initial harms. This applies to the sphere of morality as well. Moreover, at times, what seems theoretically unappealing may be correct or plausible in a practical sense. This logic seems applicable to globalization. States – rich and poor – are forced to acknowledge globalization as a reality and not simply something about which they have a choice. For many, if they do not open their doors to it they become marginalized in the world market and in the realm of power politics, and so suffer all the same. As globalization is here, there is a need to unmoor ourselves from ideological commitments and activist frenzies. There is an imminent need to find ways to deal with the harms that are associated with globalization, so that these harms do not overshadow or undermine its benefits.

After carefully considering the pros and cons of globalization, and the extent to which it has become entrenched, I argue in this chapter that we can accommodate globalization by constraining corporations to observe certain basic human rights. In particular, these rights are: the right to food, shelter, clean drinking water, clean air, and clothing; the right to proper excretion and other natural bodily functions; the right to proper sanitation and hygiene; the right to adequate sleep and rest; the right to liberty of person, expression, and conscience; the right to humane treatment and freedom from

harm; the right to a living wage; and the right to due process and fairness in the face of complaints or allegations against one's character and actions. I make it clear in this chapter that these basic human rights constitute a subset of a more general minimal ethics (which would include political and social contexts), but are sufficient to protect our ability to meet basic needs in the new world economy.

I also argue that these basic human rights are a more substantive set of rights than property rights. The objects to which they point connect across cultural and geographical boundaries, and have been expounded in different ways by traditions ancient and modern. Moreover, since safeguarding the basis of attending to basic human needs is a prerequisite for any conception of the good life, it is plausible to suppose that the constraints I have proposed in the form of respecting basic human rights will invite support from across the human landscape. The constraints are simple, comprehensible, and realistic. They are achievable if the political will is there to marshal their cause. As corporations are the vehicles of economic globalization, it is reasonable to limit their operations in a way that makes them respect the list of basic rights I have proposed.

Chapter 6

Critiques of Natural Rights, Cultural Hegemony, and Regulation

1. Introduction

The enshrinement of human rights as certain rights each individual has in virtue of being human is an important achievement. But it can easily invite criticism, from many angles. Some might view it as another way to express a perspective of innate rights, and critique it on this basis. Karl Marx was hostile to the idea of such a conception of rights, understood in his context as natural rights. According to Marx, natural rights are a bourgeois concoction invented to distract the masses. More recently, cultural theorists – notably Adamantia Pollis and Peter Schwab – have criticized the prevailing account of universal human rights, arguing that it is imperialistic and subverts local cultural practices that recognize human dignity through clan membership. The practices these theorists highlight predate any talk of human rights. Considered from this point of view, human rights promote the hegemony of Western value systems at the expense of other systems, especially those that are indigenous to impoverished developing countries.

There are yet others who, although they support the idea of human rights, consider only certain rights as legitimate – notably, negative rights. This is the view of libertarians, who see liberty rights as tantamount to property rights and all other rights as a violation of one's liberty. Libertarians are hostile to the idea of positive rights and so, for them, so-called positive human rights are not rights at all. Libertarians thus consider regulations to market and redistribution of wealth as an impediment to individual liberty. I shall address this diverse range of critiques in the present chapter. I argue that the

concerns raised by Marx do not undermine the theory of human rights I propose; that the conception of human rights I advance is accommodating of multicultural issues; and that regulation of global capitalism is justified on the basis of the claim that regulations are embedded in markets. The arguments I advance are essentially responses to the specific critiques I address.

2(a). Karl Marx's Critique of Natural Rights and Private Property

Marx opposed the idea of natural rights, and especially those enumerated in the French Declaration of the Rights of Man and of the Citizen. His arguments against such rights are intertwined with his broader arguments against private property. In practice, natural rights are, he argues, the rights of property owners.

According to Marx, property owners are the oppressor class in society, as they are owners of economic capital, and the coordinators of political authority. In contrast, the working class are the masses. The working class do not own private property or the means of production, but work in the service of the property owning class. In multiple ways, they are inhumanely exploited for their labour (even more so as capitalist industrialists chase after an ever expanding global market).

The mistreatment of the working class is unrelenting, and often alienates them from family and social life. Because the workers do not belong to the property owning class, they are not recipients of so-called natural rights like the right to liberty. Their exploitation overtly exposes the myth embodied in the mantra that natural rights are fundamental entitlements consistent with the laws of nature. In the midst of the realities of power politics, rights are conferred on the basis of property.

Marx states his view very explicitly in “On the Jewish Question” where he writes that: “The practical application of the right of liberty is the right of private property.”³⁵⁴ In sum, those who lack property lack rights, while those who have property enjoy rights. Claims of universal natural rights are, in effect, a concoction to distract the masses from this reality, and in this way interfere with the greater objective of emancipation.

Marx’s position on rights needs to be understood in the context of his philosophy of society and the nature of human beings, in which it is embedded. According to Marx, there are immutable laws of history that determine social development, which progress through a series of stages characterized by class conflicts.

The famous *Communist Manifesto*, co-authored with Engels, states that the history of all societies hitherto is a history of class conflicts between the oppressed and the oppressor. This is described as evident both in feudalism, with feudal lords and serfs, and in capitalist societies, where the owners of the means of production exploit the working class. Each successive stage of development represents a triumph over the previous. Eventually, the stages will culminate in the public ownership of property, which will formally establish the equality of all by dismantling the medium of oppression – private property.

The way in which these developments conclude plays a key role in Marx’s critique of rights and his theory of human nature. The collapse of capitalism, he argues, will conclude the final stage of class conflicts and will give rise to the emancipation of the working class. In doing so, it will establish the equality of persons through a revolution that overthrows the ruling class and replaces it with the dictatorship of the proletariat.

³⁵⁴ Marx, “On the Jewish Question,” 42.

Only such a revolution can establish the equality of persons because only it can dismantle the root of class conflicts – private property. Through the establishment of the public ownership of property, all are said to have a fair share in the social pie, and the welfare of each is treated without preference or inclinations associated with economic wealth. Because moral equality and human dignity are incompatible with private property, public ownership is the only way to establish them. As Marx puts it:

When a great social revolution shall have mastered the results of the bourgeois epoch, the markets of the world and the modern powers of production, and subjected them to the common control of the most advanced peoples, then only will human progress cease to resemble that hideous pagan idol, who would not drink the nectar but from the skulls of the slain.³⁵⁵

According to Marx, the transformation of society by means of the revolution restores the dignity of man. But what, one might ask, is Marx's notion of dignity? To understand it, we need to understand the theory of human nature he develops in the *Economic and Philosophic Manuscripts of 1844*. He there claims that humans are by nature a "species being." By "species being" he seems to have in mind humans living as social creatures with a need to interact amongst each other as a community of people, and it is from this that they gain fulfillment and satisfaction and attain the good life. It follows that their emancipation must be married to communal relations.

The flourishing of families, of psychological and social life, rely, on this account, on an underlying social structure that is characterized by interrelationships in a community of one species. The alienation of man is, in contrast, a product of separating man from communal life. According to Marx's account, such a separation is inherent in capitalism, in view of its atomistic nature. It is evident in the alienation of man from the

³⁵⁵ Marx, "Journalism of the 1850s," 336.

product of his labour, in the alienation of man from inner life, and in the corresponding alienation of man from family and communal life as a species being.

According to Marx, the essence of human life is fundamentally misconceived when man's individuality is seen as his essence. Yet claims of natural and inalienable individual rights are committed to such a position. Thus they assert the rights of the individual man and his right of property, above the economic structure and cultural developments.³⁵⁶ Marx tells us: "The right of property is, therefore, the right to enjoy one's fortune and to dispose of it as one will; without regard for other men and independently of society."³⁵⁷ In such a context, the propertyless masses are in practice excluded from the realm of rights, and only natural necessity, need, private interests, and preservation of property and egoistic persons distinguish between one and one's fellows.³⁵⁸ By implication, the concept of natural rights catapults the indignity of human beings by articulating their displacement from communal life. The dignity and flourishing of human beings are not, this suggests, to be achieved through rights, but by the emancipation of man from capitalist inhumanity and atomistic greed. Marx states this very clearly when he writes that:

Human emancipation will only be complete when the real, individual man has absorbed into himself the abstract citizen; when as an individual man, in his everyday life, in his work, and in his relationships, he has become a species-being; and when he has recognized and organized his own powers (*forces propres*) as social power so that he no longer separates this social power from himself as political power.³⁵⁹

³⁵⁶ See Marx, "Critique of The Gotha Programme," 564-570.

³⁵⁷ Marx, "On the Jewish Question," 42.

³⁵⁸ Ibid.

³⁵⁹ Ibid., 46.

2(b). Response to Marx

Let me first reiterate my position on natural rights in this dissertation: I do not treat rights as natural in the sense that they are inherent to us, but as conventional in the sense that they are useful moral instruments to preserve a certain way of life; they allow us to make justified demands on others. Having said that, whatever one's position on Marx's philosophy of human beings, his arguments must be understood in light of the context in which he wrote, and his arguments are important for any rights approach to address. Two considerations are relevant in this regard.

First, Marx was writing in the heyday of the Industrial Revolution, a time which exacerbated poor conditions for workers by means of long working hours, increased demands for productivity, and poor wages. This was a time when it was not uncommon for children to be working under inhumane conditions. In such a context, the practical value of evangelizing rights as endowments of nature was, in Marx's eyes, dubious because it ignored the entrenched system of exploitation and human bondage.

Second, Marx's writing assumes the so-called "laws of history" which, he believes, dictate social relations. The revolution he prophesied relies, for example, on the underlying assumption that, according to historical processes, the antagonism generated by the exploitation of the workers will forge a unity – what he calls a "class consciousness." This class consciousness, in turn, will result in a coup which takes control of the political machinery of government. Because this revolution was his ultimate ideal, Marx had no way to entertain other possibilities.

Because the historical movement toward his ultimate ideal depends on the exploitation of the workers by their oppressors, Marx was quite willing to forego the

worker's immediate welfare and rights for the sake of the revolution. He makes this claim quite explicitly in *The Poverty of Philosophy*, in a scathing assessment of international free trade, which he nevertheless supported: "It breaks up old nationalities and pushes the antagonism of the proletariat and the bourgeoisie to the extreme point. In a word free trade hastens the social revolution."³⁶⁰ Considered in this vein, Marx could not support a thesis which claimed inalienable or natural rights, because it would derail the focus on the revolution he prophesied. More importantly, it would undermine his theory of the laws of history. It was, therefore, vital that autonomy and equality be understood as outcomes of historical processes rather than inherent to the human species.

Considered as a critique of human rights as they are proposed in this dissertation, it hardly need be said that there are many problems that attend Marx's views. In contemporary times, his belief in immutable laws of history which will produce a social utopia not only seems naïve, but unfounded. The progression Marx predicted has not come to pass, and one can only say that history is an evolved state of affairs shaped by human beings and their natural environment.

One might even contrast natural history with human history. The former encompasses the evolved pattern of planetary life (the biosphere, species and their extinctions, the physical properties of celestial bodies, and the natural environment they define). The latter embodies events and patterns as defined by political and cultural life (such as war, genocide, social conscience). Such processes are so complex that it seems doubtful to imagine that history can be characterized by immutable laws which define human struggles and progress. How then can a vision of human flourishing and dignity as conceived by Marx be justified on the dictates of laws of history?

³⁶⁰ Marx, *The Poverty of Philosophy*, 224.

Taking Marx's outlook to its logical conclusion, one might ask whether the ideals for human dignity and flourishing can be met with the social revolution that should have happened (and many committed Marxists still await). For many reasons, the radical social revolution Marx imagined does not seem a viable way to improve conditions for the underprivileged. Arguably, the egalitarian ideals Marx champions foster other problems through the equalization of wealth and identity. Among other things, they turn a blind eye to the capacity for privilege such ideals can rationalize; they ignore the value in rewarding special talent, drive, and intellect with just compensation; they naively dismiss the extent to which humans seem motivated by the prospect of personal gain; and they exaggerate the extent to which the achievement of each individual can be focused on the benefit of the community.

From this standpoint, Marx's perspective is at best unproved, and at worst naïve and implausible. In the contemporary world, such views have, in consequence, lost much of their influence and are in the popular mind often seen as a relic of the past. In such a context, the attempt to improve the lot of the underprivileged by waiting for (or promoting) a Marxist revolution seems implausible. In a world in which human rights law and theory have gained ascendancy, human rights seem a wiser and more practical path.

This does not mean that Marx's views are, in every respect, to be disregarded in favour of rights theory. There remains much to be said in favour of Marx's emphasis on property rights, but it is very much in keeping with the conception of rights advanced here. To say the least, I am not opposed to his emphasis on protecting the salient elements of human life. In this regard, the conception of rights I advance includes rights

to food, clean water, sleep and rest, and freedom from harm. In this and many other ways, the issues of injustice that motivate Marx's theories will not be ignored if one pursues the kinds of rights this dissertation advocates.

Above and beyond these considerations, it is worth noting that Marx's notion of "species being" does, in particular, support the idea that there are certain elements that are vital to human life, including a social condition which fosters certain freedoms and protection of person. Marx's vision of some form of eventual moral equality, and what he sees as the need for certain socio-economic support structures as the basic framework by which it may flourish, in this way implies an ideal that supports the values behind current conceptions of human rights.

3(a). Pollis and Schwab on Cultural Hegemony

Contemporary discussion is characterized by greater sensitivity to multicultural issues. In this context, a number of commentators have criticized the idea that the existing body of universal human rights is universal in character. Pollis and Schwab are perhaps the two most referenced proponents of this line of argument. They support the idea of human rights, but criticize the existing body of universal human rights, arguing that it is Eurocentric.

Pollis and Schwab ground their criticisms in history, arguing that the 1945 San Francisco Conference of the United Nations and the drafting of the Universal Declaration of Human Rights were dominated by the West. On that basis one cannot, they claim, logically deduce a universal morality of rights. Rather, the values enshrined by the Universal Declaration of Human Rights epitomize particular political experiences of England, America, and France, and do not encompass values of other cultural traditions.

To take but one example, they argue, it does not embrace the values of the Gojami Amhara of Ethiopia, who emphasize liberty and identity as embedded in communal life within a social system that predates Marx.

According to Pollis and Schwab, the Universal Declaration emphasizes an atomistic notion of rights that is distinct from communal rights of the sort assumed in non-Western traditions. The latter conceive of rights as part-and-parcel with one's cultural community (as the Gojami Amhara treat land as communally owned and do not recognize "autonomous" individuals as possessing rights that are above and prior to society). While it is plausibly said that the Holocaust of World War II precipitated a need to formally recognize a universalist ethic, the individualistic assumptions the Universal Declaration articulates, they claim, assume Western values as *the* world view.

As Pollis and Schwab put it: "...the Universal Declaration of Human Rights is a document whose underlying values are democratic and libertarian, based on the notion of atomized individuals possessed of certain inalienable rights in nature... The Declaration is predicated on the assumption that Western values are paramount and ought to be extended to the non-Western world."³⁶¹ In view of this conclusion, they hold that: "If the notion of human rights is to be a viable universal concept it will be necessary to analyze the differing cultural and ideological conceptions of human rights and their impact on one another."³⁶²

³⁶¹ Pollis and Schwab, "A Western Construct," 8.

³⁶² *Ibid.*, 15.

3(b). Response to Pollis and Schwab

There is much to be said in favour of the argument advanced by Pollis and Schwab. The hegemony of Western values which causes them concern is reflected in much of the literature on human rights. In addition, it can be said that the values of the West which have been infused in the Universal Declaration have been reinforced in many ways. Many representatives of non-Western countries who deal with rights issues were, for example, educated in the West and are, in virtue of this, a product of Western education and the values it assumes.

In answer to such concerns, it is important to note that the values enshrined in human rights are defensible even if the value system of the West prevailed at the San Francisco Conference, or if foreign representatives were in some way a product of the West. Whatever produced current conceptions of rights, it is difficult to take issue with the claim that human dignity and the capacity to flourish – and in view of this, basic needs and freedoms -- must be enshrined as a basic feature of any moral system. Looked at from this point of view, human rights can appropriately be adopted as a basis to ensure freedom from harm in our effort to protect basic human needs.

Recent appeals for human rights observance in China, Cuba, North Korea, South Africa, Iran, Iraq, and Latin America reinforce the view that an enforced universalist ethic that protects basic rights and freedoms is vital, but suggest that Western conceptions of human rights are not universal. This is demonstrated by the many nationals of those regions who, aside from incentives such as economic opportunities, wish to migrate to the West. Whether the design is Western or not, the focus on human rights ought to be approached from the standpoint of what is practical, realistic, and necessary.

4. Libertarianism and the Problem of Positive Rights

I have already argued that a good globalization, one that offers a middle ground in social and political debates, is a globalization that functions within a framework that observes certain rights, notably human rights (which are themselves claim-rights that encompass positive and negative rights). Such an approach, however, immediately clashes with zealous proponents of the free market, those who see constraints on the market and positive human rights as evil. The strongest proponents of globalization claim that globalization and regulation are inconsistent, and that one denies the other. The essence of globalization is, they argue, deregulated borders and individual and market freedom through the globalization of property rights. How then can it be combined with regulation? How can the benefits of deregulation be gained by regulating? Libertarians in particular advance such claims, and in this way my thesis essentially clashes with that of the libertarians. I shall address the more general argument libertarians launch against regulation and positive rights, and their emphasis on liberty as the supreme and only legitimate right.

4(a). The Libertarian Perspective

Libertarians contend that regulations are unjust because they amount to a violation of one's liberty. Libertarians hold the view that we have a negative duty to refrain from causing harm to others because others have negative rights not to be harmed. In contrast to negative rights, positive rights require the active effort or resources of others, which means taking from others through forms of regulation and transfer payments, or constraining the freedom of others. Libertarians do not object to the idea of helping others, but, rather, to the idea of being required to do so in a manner enforced by

the state. They tout a voluntarist approach to aiding others. Looked at in this way, regulations and so-called positive rights, for libertarians, do not foster individual liberty but instead constrain it, which is said to be the same as a violation of liberty. Libertarians will therefore object to regulation on the basis of the claim that liberty rights are the only plausible rights, and any constraints on them are thus a violation of one's rights.

(i) Robert Nozick

Nozick assumes that: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)."³⁶³ He claims that the world of people is really a world of individual people having individual lives, and so from this standpoint "the rights of others determine the constraints on your actions."³⁶⁴ Thus in the business of living our individual lives and aspirations, we have to observe what he calls "side-constraints," which in essence are the basis of protecting the rights we have by recognizing that others have such rights too.

This perspective of morality and justice leads Nozick to argue for a minimal state, claiming that: "The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights."³⁶⁵ This is so because the only morally justifiable purpose of the state is to protect people from fraud and force – to protect property, in one's person and acquisition – as these things impede liberty. Nozick's work is inspired by Locke's theory of property.

³⁶³ Nozick, *Anarchy, State and Utopia*, ix.

³⁶⁴ *Ibid.*, 33.

³⁶⁵ *Ibid.*, 149.

(ii) Jan Narveson

Narveson, an exponent of Nozick and a key contemporary libertarian figure, has done much to flesh out the libertarian focus on rights and property. In underlining libertarianism's emphasis on liberty, he writes: "Liberty has to do with the relation between a person's ends and the means by which they are to be attained: it obtains when no outside interference exists to prevent the person's own actions from carrying out his ends."³⁶⁶ Any outside interference is thus a violation of one's liberty. He builds on Mill's principle of liberty to justify the claim that liberty is really nothing more than property rights. He writes:

To see the connection of liberty and property, consider this: to say that Jones should be at general liberty to do as he likes, as the Principle of Liberty has it, is to say that Jones is to decide what is to happen to Jones: Jones's life is to be run by Jones, not someone else, insofar as that can occur without Jones violating the like liberty of anyone else. To say that is precisely to say that Jones belongs to Jones. A general right to liberty, therefore, is equivalent to an assertion of self-ownership.³⁶⁷

Narveson's basic claim, then, is that self-ownership identifies property in one's person, and a general right to a liberty in oneself is tantamount to a general right of property. Indeed he spells it out quite clearly when he writes: "The title of this paper might well have been not just Libertarianism and Property Rights but indeed, Libertarianism = Property Rights." His conclusion here gives insight into what he means when he argues that "defense of the market is defense of private property."³⁶⁸ Thus for Narveson, a substantive set of rights is a non-starter.

³⁶⁶ Narveson, "Libertarianism: A Philosophical Introduction," 15.

³⁶⁷ Narveson, "Libertarianism and Property Rights," 2.

³⁶⁸ Narveson, *The Libertarian Idea*, 190.

4(b). Assessing Libertarianism

(i) From a Deontological Perspective

An assessment of libertarianism might be best carried out by trying to determine whether it could be justified by deontological and teleological conceptions of rights, as these are the leading schools of thought on morality and rights. The deontological perspective holds that there are certain attributes to human beings that warrant ascribing rights to them, and to make respect for those rights a matter of moral duty. Libertarians often rely on deontological claims, most notably, the claim that everyone has rights. As Nozick claims, every individual has rights that no one can interfere with without violating these rights. The basic tenet of this claim is that certain rights are inherent to us, and it is obligatory on the part of others not to violate them. The essence of these rights is liberty, which for Narveson is tantamount to property. Negative duty on the part of individuals is the way to avoid violating them. But it is questionable whether libertarianism can actually be sufficiently defended on deontological grounds as the model for globalization. The reason for this concern is that there are other rights than the negative rights that libertarians believe in that are essential to meeting basic needs. The right to food and water in particular must be satisfied before any other rights can be enjoyed. Liberty is insufficient for basic survival.

The point may be exemplified with reference to the intellectual property rights instrument of the World Trade Organization, when the United States and large transnational pharmaceutical corporations sought punitive measures to inhibit South Africa from helping its dying poor. As Singer reports, in 2001 some 20% of South

Africans (more than 4 million people) were diagnosed with HIV.³⁶⁹ According to him, there were drugs at the time that could help suppress the virus from materializing into AIDS, but the drugs had cost roughly \$10,000 per person per year. According to his analysis, this price was quite beyond the reach of most of the infected Africans. Responding to the social condition of poverty, and with a sense of obligation to help its nationals preserve what we might call their right to life, the South African government, according to Singer, tried to license the drug in South Africa for local generic production through a process known as compulsory licensing; this process would reduce the cost of the drug to about \$350 per year.³⁷⁰

This price was still expensive considering that the per capita spending on health care in South Africa at the time was \$10, claims Singer.³⁷¹ Despite this fact, President Bill Clinton sought through the World Trade Organization to stop South Africa from taking such a route, on the basis of the claim that it violated the intellectual property rights of key patent holders of his country.³⁷² He later reneged on this move on account of public pressures, but the pharmaceutical corporations took South Africa to court. They too were later embarrassed by the global public's outcry of gouging the dying and the downtrodden. Of course, South Africa was not the only country in this predicament. Brazil was too.³⁷³

³⁶⁹ Singer, 71-2.

³⁷⁰ Ibid., 71-1.

³⁷¹ Ibid., 71-2.

³⁷² Ibid.

³⁷³ Narayanan, 179.

The moral of the story is that in practical life, we have witnessed already some of the negative consequences of a disproportionate emphasis on property rights, by affluent property rights holders, on those who have very little, if any, property at all, except the ailing bodies they are struggling to maintain, let alone cure. If we consider their bodies their property, then they should each have a right to protect them. If we think of them as having liberty rights, then their government has an obligation to preserve their enjoyment of those rights. The way to preserve their enjoyment of them is to facilitate emergency measures that can override existing arrangements that apply to normal times. Certainly we have seen this kind of accommodation applied in the spirit of national security in the United States following the 9/11 tragedy.

In the South Africa context, such an override would ensure that South Africans are not denied the right to produce and promote the life-saving drug that is within their means of purchase, given the tragic consequences HIV AIDS implies for such a large segment of its population. The vigorous pursuit to protect the rights of the pharmaceutical corporations infringed the rights of South Africans to preserve their lives and liberty. From a deontological point of view, the South African government is justified in intervening to take measures to protect the lives and urgent needs of its nationals. Negative duty in this case would have simply amounted to leaving them to die. What meaning can “morality” and “civilized” have when negative duty in this way is considered right or good, when we in fact have the means to prevent or ease such situations?

(ii) From a Teleological Perspective

The teleological perspective of rights is focused on outcomes/consequences. The dominant teleological perspective is utilitarianism, which is focused on generating the greatest happiness for the greatest number of people. This school of thought thus focuses on the instrumental value of rights in shaping the good society. Though libertarians tend to rely on deontological claims, one might try to justify libertarianism in a teleological way, by arguing that a libertarian model of society is the best way to maximize the good and benefits available to everyone. Certainly libertarians lean in this direction when they claim that interference by the government in the market undermines its ability to establish and reward the most efficient ways of producing goods. Authors like Hayek, Narveson, Ayn Rand, and Friedman thus claim that interference in the market typically distorts the market in a manner which makes the poor worse rather than better off.

But it is naive to suppose that an unfettered free market will produce poor who are better off, rather than a class of entrepreneurs who indulge in greed with little care for others and with negative consequences for the poor. On the world stage, negative consequences to the poor and developing countries which make up about two-thirds of the world are already evident in corrupt practices, mistreatment, and greed on the part of transnational corporations and many rich developed countries. These negative consequences have actually been reported by analysts who favour free markets as the preferred economic paradigm (though a responsible kind of free market) – among them, Stiglitz (someone who served on the council of economic advisers to president Bill Clinton) and Pogge (who argues that staunch practice of negative duty is a principal underlying factor behind these things happening). The gist of their arguments is

teleological in nature, claiming that the greatest happiness is undermined because of greed and exploitation in the marketplace among the key players – which worsens rather than improves the situation of the poor.

In focusing exclusively on non-interference in the market and property rights as the principal object of morality and justice, libertarians assume that all individuals are inherently capable of exercising and enjoying the rights they tout. They fail to adequately consider the prospects of individuals who lack the material base of an adequate income that would enable them to assert any kind of justified demand on others, such as purchasing food or entering into an agreement to rent a place to avoid the bitter cold. Nor do libertarians consider cases such as orphan children in a context where there is no one to provide for them. The libertarians simply assume that absolute negative duty is *the* solution.

Certainly this approach is impractical if one really wants to promote the virtues of globalization that the zealous proponents tout, such as increased incomes across the world, higher levels of productivity, and an amelioration of the human condition. According to development reports by the United Nations and the World Bank, in the current times, 1.2 billion people in the world live on less than \$1 U.S. a day.³⁷⁴ According to these findings, of this 1.2 billion people, about 826 million do not have adequate nutrition, over 850 million of them are illiterate, and almost all of them lack access to the most basic sanitation.³⁷⁵ It is hard to imagine that by not rendering some

³⁷⁴ Singer, 79.

³⁷⁵ Ibid.

kind of assistance to these people, such as imposing rules against harm and the exploitation of labour, we are maximizing the good or even helping them a little.

How, one might ask, would negative duty enable these people to meet their basic needs? On what basis can these people be said to be free or at liberty, when on a daily basis they are not sure whether they can meet nature's most basic demands of food and clean water and decent excretion for their survival? To tell these people that they are free, and that globalization will let them enjoy this kind of freedom, seems to defeat the purpose of morality altogether.³⁷⁶ What future can the children aspire to as they grow? What meaningful liberty can they exercise in a life-context in which they are mendicants, whose daily existence is uncertain and subject to the pity of others and whatever morsel they can find?

A deeper examination of the consequences of absolute practice of negative duty suggests that situations where people have no food or money to sustain themselves could, in the long term, engender criminality such as stealing to feed oneself, destruction to the property of others because of animosity that has developed as a result of income/resource gaps, and social upheavals. And since, as O'Neill points out, "The central demand of libertarian justice, whether national or transnational, is: do not redistribute," it is hard to see how libertarianism can be used to justify maximizing the good, when in the long term, criminality of such kinds poses serious threats to liberty itself.³⁷⁷ It may well be the case that we can address any such crime or threat to liberty through law enforcement

³⁷⁶ Will Kymlicka makes a very strong argument against the libertarian doctrine in arguing that self-ownership means nothing much if one has to depend on others for vital resources to exercise the kind of liberty championed by libertarians. According to Kymlicka, libertarians confuse self-ownership for self-determination. The latter requires a lot more than mere liberty and negative duty for it to have any kind of substantive meaning. See his *Contemporary Political Philosophy*.

³⁷⁷ O'Neill, 127.

officials and the courts, but this would only be addressing the consequences and not the causal factors. These considerations should give us pause and leave us to wonder whether the poor and the forgotten can expect any progress from a morality in which rights claims to food, development, and the sort are treated as an assault on human liberty altogether, especially when 2.8 billion people in the world live on less than \$2 a day. The disproportion of income and wealth among the people of the world certainly leaves a lot to consider. According to Singer:

...the average per capita income of the world's wealthiest nations (which contain less than 15 percent of the world's population) is \$27,500. This 15 percent of the population divides among itself almost 80 percent of the wealth that the world produces, whereas the assets of the poorest 46 percent of the world's population amount to just 1.25 percent of the world's wealth.³⁷⁸

Clearly, exclusive emphasis on liberty implies an unlevel playing field to begin with.

This situation suggests that libertarianism is not justifiable on teleological grounds.

In marshalling the cause for liberty rights as the only rights, the essence of libertarianism's theory of justice and morality can be captured by imagining a race in which there are two contenders. One is poor and handicapped, and moves at a snail's pace. The other is someone who is fully able-bodied, has time and resources for training, and is able to buy all the right kinds of vitamins and protein-rich food for healthy living. It is probable that the latter will win because of the advantages he/she enjoys. So, when the former loses the race on account of his/her social and physical condition, that person is still, by libertarian standards, said to have had a just beginning and was at liberty because no one interfered with his or her rights.

³⁷⁸ Singer, 81.

Drawing on the gross disparities in the human condition, McMurtry gives a fruitful illustration of rights and freedom under libertarianism:

If I say to you, 'We are both free to disagree, and that is our shared principle of freedom,' you may understandably concur. As long as both of our lives are such as to enable us both to speak, this rhetorical principle may suffice. But if I own all that can broadcast and reproduce speech, and you work a 12-hour day with a family you can barely feed, then this principle of our mutual freedom which has no qualification or definition or circumstantial substance to keep its bearings can mislead us into thinking we are in fact both free when, in truth, you are silenced and I am mega-volumed by our actual social conditions.³⁷⁹

McMurtry's point is that we cannot rightly be characterized by the same principle of freedom when our material contexts put us at a gross disadvantage. If property rights are left unfettered in the global union of commerce, and nothing is done to ameliorate the conditions of those in abject poverty or those who are sick, infirm, or who have had total misfortune in the market, it seems plausible to suppose that libertarian justice paves the way for these people to live their liberty as a life in bondage. If they are dispossessed and disempowered, and the prospects of emancipation through some kind of entrepreneurial luck in the marketplace is bleak, then they are more so subject to the whims and control of those who have a greater degree of property rights. And as Groarke notes, those with significant concentrations of wealth in an unmitigated capitalism can exert tremendous influence on the social, cultural, and legal environment of the market. Consequently, libertarianism fails to facilitate an adequate basis for people to have a chance at meeting basic needs, because property rights themselves can infringe on other fundamental basic rights.

One might say that libertarianism might well be viewed as the morality only of those with property, to exercise the liberty it promotes as the sole basis of justice. It is far

³⁷⁹ McMurtry, 46.

too minimal for the basics of life in the complex and disparate world of economic globalization; it points to a more inegalitarian set of morals than egalitarian ones, in that its starting point is bent in the direction of those with property. Liberty/Property rights need to be accompanied by a more substantive framework of rights in order for individuals to meet basic needs; libertarianism is reducible to what Louis Pojman calls an “ultra-minimalist morality” in that, as Pojman argues, it takes part of the story and makes it the whole.³⁸⁰

4(c). Regulations are Embedded in Markets

It needs to be said that criticisms against regulating corporations or the market as a whole generally ignore the extent to which corporations and the market rely on certain constraints. This reliance on certain constraints is especially relevant to a global context characterized by free markets and free trade. For example, some measures are required to ensure that agents of the market honour their contractual commitments, otherwise there would be no basis by which agents can rely on each other in transacting business. In this sense, constraints are not simply implied in market activities, they are embedded in them.

We may elaborate the idea by noting that:

- Courts are required to make judgements about non-compliance of contracts;
- Monitoring bodies are required to ensure product standards, especially when goods are transported to distant parts of the world. One might say free market defenders would simply say caveat emptor, but in a global competitive market where each is trying to undersell the other, caveat emptor entails too much risk, in that dissatisfaction with goods and services could result in the demise of one’s business.
- Health regulations are required and must be enforced to prevent the spread of communicable diseases (especially as the regulations are too costly for any

³⁸⁰ Pojman, “Equal Human Worth,” 610.

one company to undertake and maintain), and to ensure that products are not endangering public health. The liberty itself of individuals to pursue their lives could be seriously undermined through contagious life-disabling diseases like SARS, and so structural mechanisms must be put in place to screen for such harms, since each individual does not possess the kind of technical knowledge needed to guard against this scenario.

- Environmental standards need to be implemented and enforced to guard against things such as: toxic water supply (which is not only harmful to the public but also bad for business) which could injure marine industries; acid rain, which could devastate agricultural crops; and respiratory harms emanating from high level pollution (which could make for an unstable labour force). Again, individuals do not each have the kind of knowledge to determine the effects of environmental harms on them. To be able to live a quality life in which one can exercise meaningful liberty, individuals would need some kind of protection from the elements that can hinder their ability to exercise liberty, with effects such as respiratory diseases and brain damage from lead poisoning.

Shue has done much to point out the inherent contradictions of an exclusive focus on negative rights and negative duty, in his defense of positive rights and positive duties.³⁸¹

According to Shue, much of what is treated as negative rights and negative duties actually depends on a lot of positive duties on the part of others. His contention is that libertarians' objection to rights that require active effort on the part of others tends to be blind to the active effort required to maintain even negative rights. The preservation of liberty itself, in his view, requires courts and police systems to oversee non-violation of liberty, and to make just judgements where any such violation takes place. These efforts are to maintain the system on a continual basis, and so entail regulations of some kind.³⁸²

³⁸¹ See Shue.

³⁸² Shue's emphasis on the three correlative duties to human rights resonate here again, namely: (1) a negative duty not to deprive rights holders of their rights; (2) a positive duty to protect right-holders in their possession of the object of their right; and (3) a positive duty to aid right-holders when their rights are still violated.

Thus, the enforcement of negative duty on duty-bearers requires some kind of regulatory system.

From this point of view, laissez-faire arguments against regulations are inherently contradictory, as are laissez-faire arguments against positive duties and positive rights. The enjoyment of negative rights, even in the context of the globalization of property rights, is embedded in certain positive duties, some of which are already described in outline above. It is for these reasons that I propose an enforced globalization of a basic set of human rights as the mitigating basis of economic globalization.

5. The Cost of Regulation

It is to be expected that some critics or even concerned analysts may wonder about the cost to implement regulations according to what I have proposed, especially since globalization is focused on deregulation, on the premise of relieving society of costs. Life itself comes with a certain cost because it has material prerequisites for its survival. From this point of view, it should not be surprising that a certain basic quality of life would have some costs. But that these are inordinate or impractical because they are thought to impede the function of markets is without basis. As Groarke has rightly observed, zealous pursuit of materiality can blind us to other essential elements of life.

We might do well to observe that a poor society like Cuba can still, in spite of the U.S. embargo, ensure that its citizens have adequate nutrition, literacy, and basic health care. The same applies to the state of Kerala in India, which carried a literacy rate of 90% in 1991, as Sen and Dreze point out.³⁸³ As they state in their analysis:

We cannot, for example, altogether ignore the fact that Kerala, despite its low income level and poor record in generating economic growth, has a higher

³⁸³ Dreze and Sen, *India: Economic Development*, 65.

life expectancy at birth (about 72 years) than what can be found in some of the more economically successful countries further east, such as Indonesia (60 years), or Thailand (69 years), or even South Korea (71 years), despite per-capita income being a great many times larger in these other countries than in Kerala³⁸⁴

Their analysis compares India and certain states of India with other societies that are economically rich, and points out that the wealth of the rich societies does not always correlate strongly to things like literacy, health, and life expectancy. That places like Cuba and Kerala are poor is one thing, but their emphasis on ensuring key variables like literacy, basic health care and other basic elements for a minimally decent life despite their poverty casts doubt on any criticism that the constraints I propose are too costly. The subset of a general minimal ethics I propose to constrain corporations embodies basic human rights that are necessary for the survival of any society. This is so because they are the basis of protecting basic human needs. They are, on this view, vital even without the advent of economic globalization.

6. Conclusion

This chapter has considered major criticisms advanced by some important thinkers on matters concerning innate rights, cultural hegemony, positive rights, and regulating capitalism. In particular, I have addressed concerns raised by Marx, Pollis and Schwab, and Nozick and Narveson. I have argued that the theory I develop accommodates some of these objections to human rights, and rejects others. One might summarize the key aspects of my theory in relation to these thinkers as follows.

³⁸⁴ Ibid., 34.

6(a). Human Rights Must Include Positive Duties

I reject the libertarian claim that positive rights are not legitimate. I also reject their claim that regulation is inconsistent with the concept of a free market. My theory treats regulations as embedded in markets, and argues that this characteristic is evident in the positive duties required to keep markets functioning.

6(b). Human Rights Countenance Multiple Ways of Life

The theory of human rights I propose accommodates a variety of conceptions of the good life by virtue of projecting the elements of basic human needs as the mitigating norm of value. In this way, it accommodates the concerns raised by commentators like Pollis and Schwab. I empathize with their concerns and agree that a viable concept of universal human rights must pay due attention to the myriad value systems among the world's people, and the notions of identity and rights they articulate. Such a view is an especially sensitive one in the globalizing times in which we live. At the same time, I suggest that human rights ought to be pursued from the perspective of what is practical, realistic, and vital. Looked at from this vantage point, it matters little whose notion of human rights is projected, so long as it safeguards our ability to meet basic human needs.

Though my theory of human rights tries to accommodate Pollis and Schwab's concerns about multiculturalism, it rejects their claims that human rights are not an effective means (or even undermine attempts) to promote justice and equality. Rather, I see them as the most effective means, because human rights can inscribe into enforceable law a universalist morality that can in fact circumscribe justice and equality, while respecting the general tenets of a variety of value systems. Human rights ensure each person a set of claim-rights that are morally demandable simply because one is human,

and they are in keeping with the idea that there are certain basic moral and material requirements to life.

In the course of addressing the concerns that I have taken up in this chapter, I hope to have shown, as my contribution to the debate on globalization, that an enforced human rights approach to mitigating globalization is robust, simple, and defensible. In the next chapter, I provide an empirical account of the theory of human rights I have argued for, by examining the case and role of the Union Carbide Corporation in the Bhopal Disaster of 1984 – the world’s worst industrial accident to date.

Chapter 7

The Bhopal Disaster: Context and Issues

A Case Study³⁸⁵

Part I: A Descriptive Account

1. Bhopal

Bhopal is a city located in central India in the state of Madhya Pradesh.³⁸⁶ It is about 500 metres above sea level and covers about 285 sq. km.³⁸⁷ In 1984, it had a population of about 800,000 people, of which 38% were said to be in the age group of 0-14 years.³⁸⁸

On the night of 2 December 1984, there was a major leak of Methyl-Isocyanate gas (MIC) at the Union Carbide pesticide factory located in Bhopal, killing thousands of people and permanently injuring an estimated 200,000. The accident is said to be the result of reckless cost cutting measures and negligent corporate management, at the expense of the health and lives of the employees and the community. More specifically, the disaster at the Union Carbide factory in Bhopal is said to have been caused by lethal liquid methyl isocyanate (MIC) coming into contact with water in an underground storage tank (identified as E610) on the night of 2 December 1984. This situation,

³⁸⁵ In preparing this case study, I have relied heavily on the works of Morehouse and Subramanian, Ingrid Eckerman, Brojendra Nath Banerjee, and the International Trade Union Mission Study – both in terms of providing the descriptive account of the disaster and the scientific analyses of the issue. I have also visited the Union Carbide factory at Bhopal in 2005 for a visual assessment of the context and geography of the factory and community.

³⁸⁶ Eckerman, *The Bhopal Saga*, 12.

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*, 13.

science analysts argue, would have created a violent chemical reaction, leading to a major leak of the resultant MIC gas, because of the poor functioning condition of the safety mechanisms that were designed to trap and neutralize the gas – namely, the vent gas scrubber and the flare tower.³⁸⁹ When MIC is introduced to water, it is said to react violently and release carbon monoxide. According to Brojendra Nath Banerjee, aside from water, it also reacts violently with elements like iron, copper, and certain salts.³⁹⁰ Some analysts have claimed that some such debris would have likely been mixed in the water at the time of contact because of rust in the line, causing an exacerbation of the reaction.

On living organisms, MIC blisters the skin, and inflames air fumes and the lungs.³⁹¹ According to Ingrid Eckerman, a Swedish medical doctor who sat on the International Medical Commission on Bhopal, the situation posed by the accident was nothing less than a nightmare turned real. She writes:

Many of those who lived nearest to the plant died in their sleep. Most woke up because they were coughing and suffocating. Then they felt as if they had swallowed something like 'burned chilli'; their eyes started to burn as well as their respiratory passages, and they began to vomit. When they looked outside, they saw a white mist. Some stayed in bed under a blanket, but most people went out, scared and angry, and tried to get away from the cloud. Some died instantaneously. The others ran, or used vehicles if possible, and moved away from the factory, following the direction of the cloud. Being blinded, they shouted for their family members – but soon their throats were constricted by the gas, their lungs choked. As they ran, they inhaled larger amounts of the gases. Later they tried to get to the hospitals. Many never reached them.³⁹²

³⁸⁹ Fink, *Crisis Management*, 173.

³⁹⁰ Banerjee, *Bhopal Gas Tragedy*, 58.

³⁹¹ *Ibid.*

³⁹² Eckerman, 85.

It need hardly be said that this was a catastrophe for the community and the workers. According to a study conducted by Eckerman, more than 500,000 people were exposed to the gas.³⁹³ She estimates that between 3000 and 10,000 people died within the first weeks, and between 100,000 and 200,000 are permanently impaired. Further, she estimates that about 200,000 children between the age of 0-14 were among those affected.

Other analysts provide different numbers. Banerjee claims the disaster resulted in 15,000 corpses, 50,000 crippled or maimed and 250,000 badly affected.³⁹⁴ Amnesty International claims that in the immediate two to three days following the accident, over 7000 died, many others were injured, and that over the twenty year period following the accident a minimum of 15,000 others died from related accidents, while over 100,000 still suffer serious injuries.³⁹⁵

A definite figure for the number who died was and is not possible, claims Eckerman, simply because of the sheer magnitude of the disaster, and the immediate need people saw at the time to get rid of the bodies. Many are reported to have been either interred or cremated in large groups. Many were also dumped into rivers. Among those dumped into rivers, some were still alive, claims Eckerman; some awoke in the cold water while some in effect drowned. Those thrown into the river were presumed dead because of their apparent inactive state. Given this turn of events, it remains difficult to know exactly how many people were actually buried or burned alive.³⁹⁶

³⁹³ Ibid., 13.

³⁹⁴ Ibid., 114.

³⁹⁵ Amnesty International, "Clouds of Injustice."

³⁹⁶ Eckerman, 86.

It is significant that other long-term effects prevail in the present time. In some of the worst affected areas, "...survivors complain of breathlessness, coughing, chest pains, fatigue, body aches, abdominal pain, numbness and tingling in the limbs, weak sight and runny eyes, anxiety attacks, bad memory, concentration difficulties, irritability, headache and mental illnesses."³⁹⁷ Aside from these harms, women who were children at the time of the disaster, and were exposed to the gas, are reported to have serious menstrual dysfunctions up to the present time, and their offspring are born with various abnormalities. Thus, consequences of the disaster continue to be borne out in Bhopal two decades later.

2. The Impact on the Environment

Aside from the harms to humans, there were notable immediate and long-term harms to the environment which, in turn, bear a reverberating long-term impact on human health and the ecology in general. The colour of the trees around the Union Carbide factory, according to Eckerman, changed after the accident took place, and the leaves fell off within a matter of days. Harms to vegetation were noticeable 1.5 kilometres away from the Union Carbide plant.³⁹⁸ Even the grass was said to have been discoloured. As Banerjee puts it: "What was once a lush-green lawn had turned sickly yellow. It's as if someone had put a herbicide into an acetylene torch and fired it at every form of plant life there."³⁹⁹

³⁹⁷ *Ibid.*, 106.

³⁹⁸ *Ibid.*, 88.

³⁹⁹ Banerjee, 57.

Visible signs of chemical contamination to vegetables were observed. The soil and water supply were, and continue to be, contaminated.⁴⁰⁰ Reports claim that the texture of the water in the rivers and streams changed. It became covered with a layer of white powder, which eventually turned green. Hundreds of animals were also reported as having died as a result of the disaster. Even in the present time, the underground water remains seriously contaminated. From this point of view, the gas leak at the Union Carbide factory translated to an environmental nightmare as well.

3. Previous Leaks

One way or the other, the evidence indicates that the disaster was inevitable. Above and beyond the actual context at the Union Carbide plant in Bhopal on the night of December 2, there is significant evidence from previous warnings, workers' complaints, and safety inspections that underscored the Bhopal plant as a disaster in waiting.⁴⁰¹

Evidence of an inevitable disaster at the plant is provided separately by the *Report of the ICFTU-ICEF Mission*,⁴⁰² Morehouse and Subramanian,⁴⁰³ Eckerman, and Banerjee. An account is also provided by Alfred De Grazia.⁴⁰⁴ In some respects these analysts have relied on data provided by one another. Among the evidence offered are:

- Minor leaks were taking place at the MIC plant in the same year it was established – 1980

⁴⁰⁰ Amnesty International.”

⁴⁰¹ Evidence of workers' complaints is found in a letter by R.K. Yadev, General Secretary of Union Carbide Karmchari Sang, dated 24 August 1984, to which the company's Works Manager of Union Carbide India Limited, J. Mukund, replied in a letter on the company's letterhead on that same day. Copies of these letters were obtained from the Sambhavna Trust.

⁴⁰² Author(s) unlisted, *Report of the ICFTU-ICEF Mission*.

⁴⁰³ Morehouse and Subramaniam, *The Bhopal Tragedy*.

⁴⁰⁴ De Grazia, *A Cloud Over Bhopal*, 88.

- Death associated with phosgene leaks already took place there on December 26, 1981 – the death of plant operator Mohammed Ashraf
- 25 workers were affected in January 1982 from a phosgene leak arising from a damaged seal in the pipeline
- 24 people were seriously affected on February 9, 1982 because of another phosgene leak
- There was a leak of MIC at the plant at midnight on October 5, 1982, which resulted in respiratory problems and watering of the eyes in those who were affected. It caused an uproar for residents in six municipalities; thousands fled to other municipalities and were allowed to return about eight hours later.
- There were two other accidents at the plant, in 1983, one involving serious injuries to a worker

Aside from this poor track record, there were said to be three vital instruments in the MIC area that were faulty – the temperature indicator alarm (TIA), a pressure indicator/control (PIC), and the level indicator (LI) – for the MIC tanks. The TIA was designed to sound an alarm when the tanks' temperatures exceeded 15 degrees Celsius, according to Banerjee. But on the night of the disaster, there was no indication in the control room of the rising temperature emanating from the MIC's reaction with water.

Reports indicate that MIC operators claim the TIA was faulty for years. The PIC and the LI were also known to be faulty. This is said to be the reason, according to Banerjee, why when the PIC indicated a tank pressure of 10 psig – five times the normal rate – around the midnight hours, operators did not pay immediate attention to it. In other words, given the unreliability of the instruments, MIC operators developed a less serious attitude towards them. Thus, Union Carbide was negligent in failing to maintain safe and proper functioning instrumentation for an operation of that kind and magnitude.

In the ordinary course of things, it is crucial for a factory of this nature to ensure properly functioning instruments, claims Banerjee. In the Bhopal context, however, all signs point to cost cutting as the major mitigating factor. It is also evident in the fact that there was a lack of backup alarm systems and indicator instruments at the factory. A factory of this nature, Banerjee argues, is supposed to be equipped with multiple backup systems. Union Carbide failed to ensure there were backup alarm systems.

The push to cut costs came from the company's head office in the U.S. As Eckerman reports:

...in 1983, there was great pressure from the Danbury head office in the U.S.A. to cut expenses. Decisions were made to prolong the time between certain checks from six to 12 months, and to replace damaged stainless steel pipes with ordinary [carbon] steel pipes. Items that should have been replaced every six months were used for more than two years. Faulty instruments were not replaced.⁴⁰⁵

The cost cutting syndrome is said to have extended to work assignments as well.

Between 1983 and 1984, the company reportedly laid off about 300 workers, and 150 workers were placed in a pool to be assigned jobs wherever workers were needed in the plant. Workers were thus assigned to jobs that they were not qualified to perform. This was even noted by a company inspection audit in 1982.

At the MIC facility, manpower was said to have been reduced from 12 (11 operators and one supervisor) to six (five operators and one supervisor). The maintenance crew was reduced from six to two. Reports indicate that on 26 November 1984, the maintenance supervisor position on the second shift was eliminated. That person's responsibilities were delegated to a production supervisor who was himself transferred from a battery plant only one month prior to the accident. The production

⁴⁰⁵ Eckerman, 32.

supervisor was not qualified for the position to which he was assigned, nor was he made aware of the dangers associated with the chemicals. This kind of problem was not confined to him.

Reports indicate that the work crew in general was not adequately informed of the dangers associated with their work, let alone the appropriate way to respond to emergencies. As the *Report of the ICFTU-ICEF Mission* indicates:

The workers said that they had been given little or no training about the safety and health hazards of MIC or other toxic substances in the plant; they thought the worst effect of MIC was irritation of the eyes. Even a maintenance worker who had been assigned to the MIC facility since it first began operation in 1980, stated that he had been given virtually no training about the safety and health hazards of MIC.⁴⁰⁶

4. Prior Warnings

There was a safety audit in May 1982 in which a team made up of three persons from Union Carbide's American division traveled to Bhopal to inspect the plant. Their findings distinguished between issues of "major" and "less serious" concern. There were apparently 10 "major" concerns, among them:

- Risk of escaping toxic chemicals in the phosgene/MIC area because of poor equipment and problems with operation and maintenance
- There should have been fixed water spray protection devices installed in many key areas of the plant, but this was not the case
- The safety valves and instrument maintenance programs were bad
- The company had too much staff turnover, particularly in areas of operation

On the basis of these findings, Union Carbide had reasons to act swiftly against potential accidents. But Union Carbide Corporation is said to have given a pat on the back to its

⁴⁰⁶ *Report of the ICFTU-ICEF Mission.*

India subsidiary in a report that addressed the findings of the inspection team. The report is said to commence with the following opening remarks:

The team was very favorably impressed with the number and quality of operating and maintenance procedures that had been developed and implement [sic] in the past 1-2 years. These procedures together with the job safety analyses detailed for most operations, constitute a major step for all concerned...No situation involving imminent danger or requiring immediate correction were [present] during the course of the survey.⁴⁰⁷

On the basis of this report, one might conclude that the company was not alarmed at the “major” concerns noted by the inspection team, or, as many analysts have noted, perhaps it did not want to alarm Indian authorities by delivering a report that identified operational problems.

It needs to be said that the Bhopal tragedy was not the first, nor the last.

Eckerman reports that more than 700 people died in Union Carbide factories in the U.S.A. and Europe; those injured range in the hundreds, and accidents have forced the evacuation of more than 17,000 people away from Union Carbide’s operations.⁴⁰⁸

Banerjee reports that the company had told the U.S. Environmental Protection Agency that in five years, they had 190 small gas leaks at the factory in Virginia, 61 of which involved MIC and 107 phosgene (a lethal gas). The other 22 leaks were a combination of MIC and phosgene.⁴⁰⁹

Following the Bhopal Disaster, the Virginia plant was shut down for five months in order to allow for proper safety measures to be put in place to avert a similar disaster to Bhopal’s. But in spite of this, argues Eckerman, even after a new safety system was installed at the Virginia plant in 1985, there were still 135 injuries reported. In short, one

⁴⁰⁷ Ibid.

⁴⁰⁸ Eckerman, 10.

⁴⁰⁹ Banerjee, 120.

might conclude that accidents involving toxic chemicals have been a legacy at Union Carbide factories, and the lives of its workers and the communities in which the factories operate were treated as insignificant.

To add injuries to existing wounds, the company never accepted legal responsibility, but instead tried to avoid liability by trying to get the case heard in a U.S. court (in which there was some initial success, but the case was deferred by a New York District Court to India).⁴¹⁰ The company fought vehemently through the courts to avoid compensation payment, and after prolonging the case for a number of years, Union Carbide finally struck a deal to pay \$470 million compensation to the victims (which, according to Eckerman, was really \$350 million plus the interest from insurance payouts).⁴¹¹

In Eckerman's assessment, the amount was insufficient compared to the harms to the victims, the environment, the community, and the cost incurred by those who still suffer long-term injuries and cannot work for an adequate living. She claims that when divided among the total number of victims, and taking all harms into consideration, the compensation of \$470 million turned out to be a paltry sum.

Finally, the perseverance of Union Carbide Corporation to cut costs added more injury to existing wounds. Union Carbide was ordered by Justice Keenan in the District Court of New York in 1985 to pay US \$5 million to the American Red Cross Society.⁴¹² That money, reports Eckerman, would then be passed to the Indian Red Cross Society to set up community clinics to help the surviving victims of the disaster. Union Carbide

⁴¹⁰ Lepkowski, "Bhopal Sabotage Theory," 8.

⁴¹¹ Eckerman, 132.

⁴¹² *Ibid.*, 133.

Corporation did issue the money and clinics were established, but in 1989 it made the Indian Red Cross Society return whatever was left of the funds, thus forcing the closure of the clinics.⁴¹³ From this point of view, one might say the company had little, if any commitment at all, to help bring its host society back to some kind of normalcy.

Part II: Applying Basic Human Rights Constraints

In applying the constraints I outline in chapter five, it might be useful for us to first reiterate the list of constraints. The constraints take the form of basic human rights, which are as follows:

A List of Concrete Basic Human Rights

1. Everyone has the right to food, shelter, clean drinking water, and clean air.
2. Everyone has the right to proper excretion.
3. Everyone has the right to proper sanitation and hygiene.
4. Everyone has the right to adequate sleep and rest.
5. Everyone has the right to liberty of person, expression, and conscience.
6. Everyone has the right to humane treatment and freedom from harm.
7. Everyone has the right to a living wage in their employment.
8. Everyone has the right of full equality to due process and fair adjudication in addressing grievances and defending their character against allegations.

The leaked gas was the property of Union Carbide, and so on the basis of the responsibilities associated with property rights alone, given the dangers associated with the gas, Union Carbide had an obligation to ensure its operations were done in a way that kept the gas safely contained. But this was not the case. Its failure to fulfill the responsibilities associated with its property led to gross infringement of basic human rights. Aside from the direct responsibility associated with property rights, we can note that Union Carbide's operations at Bhopal were in clear violation of three basic human rights. They are: the right to food, shelter, clean drinking water, and clean air; the right to

⁴¹³ Ibid.

liberty of person, expression, and conscience; and the right to humane treatment and freedom from harm.

We might view the first basic human right (i.e., the right to food, shelter, clean drinking water, and clean air) as people's right to self-preservation. The violation of their right to self preservation is, in one instance, clearly evidenced in the fact that thousands were killed by the drive to maximize profit, and by the reckless management of the potent MIC gas. In another instance, impeding people's ability to preserve their lives is evidenced by the fact that the thousands who were wounded in both the short and long term suffered severe physical disabilities to provide themselves and their families with such things as food, clean air, and drinking water; the kinds of health damage they suffered, in large respects, severely undermined their ability to provide for themselves, in another words. Besides, many people were displaced from their homes because the mixture of the unfiltered gas with the atmosphere made the air toxic to breathe. The supply of drinking water was/is contaminated by the gas. The soil that was used for agricultural purposes became instantly polluted from the residual effects of the gas as it mixed with the atmosphere. Crops were destroyed at the time, and planting new crops was made difficult in virtue of the contaminants that settled in the soil. The stock of animals that were raised for human consumption also died. In sum, the drive for profit maximization and the reckless management of the toxic MIC gas on the part of the Union Carbide Corporation directly destroyed, and in other cases undermined, people's ability to provide themselves and their families with the necessary objects for self-preservation.

Union Carbide violated the employees' right to liberty of person, expression, and conscience in so far as it tried, through its management, to undermine complaints about

safety that were made by the workers' committee at the factory – the Karmchari Sang. The company, in other words, undermined free speech. The Karmchari Sang in particular informed the company in writing (in a letter by its General Secretary, R.K. Yadev, on 24 August 1984) about operational conditions that posed serious harm to the health and safety of employees; these complaints were disputed and downplayed by Union Carbide's Works Manager, J. Mukund, on the company's letterhead, the same day they were received.⁴¹⁴ Often, the Karmchari Sang was silenced. Among the issues raised by the Karmchari Sang's general secretary were:

- implementing cost cutting measures at the expense of workers' safety
- assigning employees to work on and around machines that had faulty and defective valves, which essentially exposed them to serious potential hazards, given the possibility for leaks and accidents involving life-endangering chemicals
- failing to properly train employees to the level required for the jobs to which they were assigned, and assigning employees to jobs involving dangerous contexts without sufficiently informing them of the magnitude of the danger they faced
- assigning employees to operations on and around machines and processing units of hazardous chemicals, without facilitating sufficient backup and backup alarm systems to alert them of critical developments, such as unusual temperature and pressure increases in the processing units, as is required for such an operation
- assigning employees to operations involving hazardous chemicals, with insufficient manpower to carry out those operations

Freedom of speech to raise concerns about harms to human life is an important right that employees should have, especially in an operation as volatile as Union Carbide's. The company's operations involved handling hazardous chemical agents. The actions taken

⁴¹⁴ See Appendix of dissertation for a copy of the letter.

Further testimony is provided by a former worker of the plant in his book on the Union Carbide factory. See Chouhan, *Bhopal: The Inside Story*.

by Union Carbide to undermine employees' liberty to express their concerns in the face of major risks to human lives, and to express their dissatisfaction at the negligent behaviour the company took toward known hazards, mark a serious violation of free speech. In this case, if the corporation had paid careful attention to the concerns of the employees as opposed to silencing them, thousands of people would have been spared from death or long-term injuries.

The employees' right to be humanely treated and to be free from harm was explicitly violated by Union Carbide's recklessly exposing them to an inordinate level of dangerous chemicals without proper safeguards firmly set in place. Employees at the plant were insufficiently trained, and improperly assigned to tasks that involved handling life-endangering chemicals. Furthermore, they were assigned to work on and around dangerous machines and instruments that were improperly serviced (or in some cases were not serviced at all). In the same vein, the community around the vicinity of the Union Carbide factory was exposed to life-endangering chemicals that were not handled with the degree of care that is required on the part of public and private enterprises to ensure public safety. The harms imposed on employees and to the affected communities outside the factory resulted in a human catastrophe, where thousands died and tens of thousands continue to suffer serious permanent injuries.

As I have already noted, some of these harms are evident in succeeding generations – the offspring of survivors are born with various forms of abnormalities. Union Carbide has, in essence, failed to take the required measures to prevent harms to its employees and the neighbouring communities of its factory at Bhopal. Union Carbide knew, from a prior safety audit, about the potential for a disaster. The company,

however, downplayed the significance of the audit and its recommendations. It undertook a few cosmetic measures to give the appearance that all was well. In virtue of the available knowledge the corporation had about the imminent harms its operations posed to human lives, while at the same time taking no substantive measure to address them, Union Carbide violated people's basic human right to be free from harm.

5. Conclusion

It hardly need be said that the tragedy at the Union Carbide factory in Bhopal is a permanent scar for the victims and the community, and a painful event in the history of Bhopal. The tragedy underscores the vulnerabilities of human, social, and environmental life, and the repercussions of a zealous emphasis on profit maximization. Much is still left to be done in the way of helping the victims and, indeed, in terms of rebuilding the community to a healthy status. But perhaps above all else, if we are to avert disasters the like of Bhopal's, much more needs to be done in the way of ensuring that corporate operations are not carried out at the expense of basic human rights.

In the current chapter, I have shown that Union Carbide was in violation of three basic human rights. In so doing, I hope to have shown that basic human rights constraints can help us appropriately fetter capital in the context of globalization, in a way that safeguards our ability to meet basic human needs. Moreover, I hope to have shown that the subset of a general minimal ethics I advance to constrain the operations of corporations can be easily applied to empirical contexts.

Chapter 8

Conclusion: Globalization Mitigated

Globalization is often vigorously defended by zealous proponents who see it as the ultimate path for the global good. In a similar vein, vehement critics who see it as a source of exploitation and oppression often deplore the idea of globalization. These polarized views do a great deal to animate extreme approaches to the issue, and very little to foster useful debates on how the individual and global good might be best achieved in the times in which we live. It is not coincidental, therefore, that commitments of these kinds (often anchored in ideological roots as opposed to the material contexts of society) serve largely to divide the public on the issue in an unfruitful way. A more viable approach is one focused on achieving a middle ground, one that can help to circumvent the harms of globalization and maximize its benefits.

I have attempted to furnish such an approach in this dissertation by arguing that enforcing certain basic human rights on corporations is an ideal way to mitigate globalization. The approach is premised on the idea that economic globalization entails a global expansion of property rights and free markets, and that the multitude of economic rights implied by property rights at a global level could infringe on other rights, notably, basic human rights. As human rights embody the core elements to meet basic human needs, a moral globalization is one in which, among other things and above all else, corporations operate within the confines of an enforced set of basic human rights. These rights are: the right to food, shelter, clean drinking water, clean air, and clothing; the right to proper excretion and other necessary bodily functions; the right to proper sanitation and hygiene; the right to have adequate sleep and rest; the right to liberty of

person, expression in the form of free speech, and conscience in the form of being able to practice one's faith; the right to be treated as a human being and to be free from harm; the right to be paid a living wage; and the right to fairness and justice in the form of due process in the face of complaints and allegations. I have argued that these rights ought to be enforced on corporations as non-negotiable items, as corporations are the vehicles of economic globalization.

In my Introduction, I provided a broad account of the conceptual aspects of globalization. Chapter one outlines the benefits and harms of globalization. It elaborates the issues of harms to the environment, vested interests, the plight of the poor, and the concerns for human health on a global scale.

Chapter two looks at the analyses of some of the thinkers who have pushed us in the direction of a middle ground. These thinkers include Bishop, Singer, O'Neill, and Groarke. The chapter also examines the focus of the capability approach, in search of ways to construct a middle ground. It argues that while these thinkers have all made major contributions in social and political debates, they offer nothing concrete to mitigate globalization.

Chapter three highlights the conceptual, historical, and moral significance of human rights, beginning with an account of rights and the distinction between natural rights and human rights. Its focus is on illustrating the historical and moral value of human rights, as embodying moral instruments to vital objects of human needs that human society has long been preoccupied in achieving and safeguarding.

Chapter four elaborates the normative convergences of human rights in non-Western traditions, to emphasize the claim that the normative substance of human rights

is valued across the human landscape. The chapter advises that we ought to refrain from hasty conclusions which claim that other cultural traditions do not value the objects of human rights.

Chapter five features my contribution to the debate on economic globalization. It provides a subset of a general minimal ethics which embody the rights I have outlined above. The principal arguments of the chapter are: (1) respect for certain basic human rights must be imposed on corporations because these rights are the basis of our ability to meet basic needs, and (2) the basic human rights I advance constitute a more substantive set of rights than the property rights that characterize economic globalization. In making these arguments, I acknowledge different methodological approaches to human rights, show that the idea of a minimal ethics is justified, and outline the ground for a subset of a general minimal ethics by building on the work of Nussbaum, Braybrooke, and Shue. Moreover, in chapter five, I address concerns about human rights accountability in contemporary times, arguing that there are good reasons to hold corporate entities accountable to human rights.

Chapter six addresses possible critiques to the proposal I advance – among them, those criticizing the idea of innate rights and private property, those criticizing the application of human rights as cultural hegemony, and those criticizing positive rights and regulation of the market. In this vein, I discuss the work of Marx, Pollis and Schwab, Nozick, and Narveson.

Chapter seven applies the theory to an empirical context, namely, the Bhopal Disaster of 1984, to highlight the theory's relevance, viability, and simplicity. It claims that avoiding the calamities brought on by the reckless and inconsiderate drive for profit

maximization on the part of the Union Carbide Corporation necessitates some basic moral constraints on the practices of corporations.

In the course of all these chapters, I have provided, in essence, a globalization in which corporations are constrained by a set of basic human rights. In so doing, I have brought a practical account of philosophy to bear on globalization in a way that weaves together ethics, human rights, and globalization – one that I believe makes a meaningful contribution to social and political debates on globalization in the current times.

Some might question our ability to undertake the measure I have proposed to mitigate globalization. We need to be reminded that we have managed to bring an end to slavery, which had become quite ingrained. Such an initiative, as McMurtry rightly points out, entailed regulating the market. Through the practice of non-violence, Mahatma Gandhi has managed to disgrace one of the world's most powerful colonizers, Great Britain, and have it cede control of India back to Indians. The now sage of freedom, President Nelson Mandela, has managed under tremendous misery to liberate South Africa from the shackles of apartheid, and the logic and power that enforced it. We have managed as a world community to establish the Nuremburg Tribunal, the Rwanda Tribunal, and the Yugoslavia Tribunal to bring perpetrators of genocide to justice.

As a global society we just most recently managed to arrest Radovan Karadzic of Serbia for killing more than 7500 Bosnians and Croats. We have also managed to establish the International Criminal Court and the World Health Organization (WHO). With the SARS outbreak we witnessed the ways in which the authority of the WHO was invoked, and the extent to which the global society paid attention to it, all in the name of

public health and safety. It is hard to imagine that we as a global society, with so much already established in the way of human rights awareness and international law, cannot achieve something that is so basic and necessary to the human condition, an enforced globalization of basic human rights in the interest of safeguarding the elements of basic human needs. What we now need is the political will to marshal the cause for the subset of a general minimal ethics that I have proposed.

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APPENDIX