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The Replicator And Scheffler's Distributive Hybrid: Deriving Moral Obligations From Ability To Aid

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CLAREMONT MCKENNA COLLEGE

**THE REPLICATOR AND SCHEFFLER'S DISTRIBUTIVE HYBRID:
DERIVING MORAL OBLIGATIONS FROM ABILITY TO AID**

SUBMITTED TO

PROFESSOR PAUL HURLEY

AND

DEAN NICHOLAS WARNER

BY

ADAM GRIFFITH

FOR

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To the family and friends that keep me sane.

To coffee.

Abstract

If one can do a good thing, ought one do it? In this paper, I argue that capability is a strong source of moral obligation that can, in proper doses, override things like property rights. I will build a hypothetical case based on a fictional invention called the Replicator with enormous potential for use as a humanitarian tool and I'll use it to display the way that capability to aid imposes powerful moral obligations on both individuals and organizations. Ultimately, I will use the model that I will develop to demonstrate that some real-world entities are not satisfying their moral responsibilities with regards to aiding the global poor, and will suggest ways in which they can fulfill those obligations.

Introduction

Life in today's developed countries would probably be unrecognizable to most of the human beings who ever lived. People live longer, eat better, and enjoy high-tech entertainment, often without considering just how lucky they are to live when and where they do. Meanwhile, in many less developed countries, the world's poor live in crushing poverty, resulting in a lower quality of life and, often, a premature death.

Such a claim is, I hope, uncontroversial, but I'll point to some supporting evidence to back it up anyway. The Food and Agriculture Organization of the United Nations estimates that one in eight people living today suffers from chronic hunger, meaning that they cannot access enough food to live an active life.¹ They point out, further, that the problem is worst in Sub-Saharan Africa, with Western Asia, Southern Asia, and Northern Africa close behind. Meanwhile, 22% of the world's population lives on the equivalent less than \$1.25 a day,² and more than ten million people are living as refugees.³ Such conditions make the lives of the global poor dramatically difficult and, for some, shockingly short.

Given the pressing nature of the issue, it is not surprising that many writers over the past five decades, including, just to name a few, Peter Singer, David Miller, Richard Miller, Dale Jamieson, and Andrew Kuper, have asked whether or not people in developed countries owe some level of assistance to the global poor. While some have

¹ "The State of Food Insecurity in the World." Food and Agriculture Organization of the United Nations. N.p., n.d. Web. 17 Apr. 2014. <<http://www.fao.org/docrep/018/i3458e/i3458e.pdf>

² "The Millennium Development Goals Report 2013." United Nations Millennium Development Goals. United Nations, n.d. Web. 17 Apr. 2014. <<http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf>>.

³ "Figures at a Glance." UNHCR News. United Nations Refugee Agency, n.d. Web. 17 Apr. 2014. <<http://www.unhcr.org/pages/49c3646c11.html>

concluded that, yes, they do, most examinations of this type have focused on monetary donations by individuals.

In this paper, I hope to expand on that idea and examine the products of human labor. Whenever material goods are considered by figures like Singer, the question is best described as whether or not people have the right to spend their money on luxuries rather than donate that money to aid the global poor. But, I'll point out, often times there are resources controlled by people and groups that would be more valuable to humanitarian efforts than money. The technological wonders of modern science, for example, present the possibility of revolutionary new inventions with tremendous humanitarian usefulness. I'll argue that, in some cases, the needs of one party can place moral obligations on another and, more specifically, that inventors or owners of machines and resources with potential humanitarian uses may be morally obligated to use them to aid the global poor rather than pursue personal material benefit.

This resource-centric frame also calls into question the moral obligations of organizations like corporations, which often hold patents and resources that could easily be used to benefit the global poor. Frequent arguments against the moral obligations of organizations call attention to the comparative responsibility of their component individuals. However, since corporations can control resources that their members and shareholders cannot, that standard argument fails, and I'll explore the implication to morality for groups.

I'll consider these points, and others, by using an account of a hypothetical invention called the Replicator. I'll describe this machine in detail shortly, and hope to use it to represent a machine of near-perfect humanitarian capabilities. My aim is to show

that, if moral obligations can be shown in the extreme case of the Replicator, then those moral obligations are real and relevant, although they may require particularly compelling circumstances.

In this paper, I'll start by outlining the hypothetical case of the Replicator that I've already mentioned. Then, in the first chapter, I'll consider the potential obligations of the inventor of such a machine. In the second chapter, I'll consider the way that a corporate business controlling the same machine also faces moral obligations, even if Western culture doesn't often view businesses in that light. In a third chapter, I'll consider the potential moral obligations of a government under which such an invention is patented and, in a fourth, I'll try to point to real-world circumstances that may be comparable to those described in the case of the Replicator.

The Replicator

A man, who will henceforth be known as the Inventor, builds a device known as the Replicator. The Replicator is capable of recreating any item of any form of matter by rearranging the ambient molecules and atoms present in the space before it. Once it has scanned an item, it can reproduce that item without any flaws. The food it produces is as edible as the food it copies, the water just as potable, and the mechanical devices fully functional. The Inventor recognizes immediately the value of the device, and patents it in the international realm.

Two different groups approach the Inventor. The first is a multinational technology company called Technodyne, and they offer to buy the rights to the Replicator for an extreme amount of money, an amount beyond the Inventor's wildest dreams.

Technodyne representatives explain to the Inventor that they want to buy the rights to build and use the Replicator to revolutionize their manufacturing and research processes. The second is a group of humanitarian organizations, and they ask that the Inventor make the procedure for building the machine publically available not to limit its use.

The Humanitarians point out that Replicators can be used to easily supply food and water to refugee camps, can easily bring sophisticated construction and farming tools to remote communities, and can provide medical supplies for struggling hospitals. They admit that they cannot afford to pay him anything substantial for these rights. While they recognize that he will be giving up a fortune, they ask him to think of the welfare of mankind, and hand the replicator over to the international community.

I acknowledge the many fantastical implications of a device such as the Replicator. While it has only so far been described as producing food or manufacturing materials, it's not hard to imagine ways in which the technology could be used for mischief. Such a machine could easily be used by warlords to produce infinite supplies of weapons and ammunition or even atomic bombs. It could also be used to print perfect forgeries of currency notes or mass-produce other rare materials to cripple industries like diamond mining.

I'll ask the reader to push such concerns from their minds for the purposes of this examination. This paper does not hope to explore all of the ethical and practical ramifications of the possible existence of such a machine but, rather, to establish a hypothetical, near-perfect tool of humanitarian aid, a machine that virtually banishes scarcity. This is a valuable tool for the assessment of the moral demands on people capable of helping others, particularly the global poor, because it is capable of alleviating

an astronomical amount of suffering. If it can be shown for this extreme case that morality compels the Inventor, Technodyne, or the government to act in some way, then it will have been shown that it is possible for such moral claims to exist on the possessors or controllers of some valuable things. Based on the insights gleaned by asking why that is so, I will also show that there are moral claims on the real-world entities in real scenarios that are not currently being acknowledged.

1. The Inventor and his Machine

It has been established that the Inventor holds the patent to the machine and controls its ultimate use. He faces the decision to sell his invention to Technodyne or to hand it over to global poor at the request of the Humanitarians.

This paper argues that the Inventor is morally required to give the Replicator to the global poor because the immense good that will result from this act outweighs any claims of the inventor to a right to do as he pleases with his machine, or to use it in a way that benefits him most. But, in order to demonstrate that connection, I'll consider contemporary thinking on the obligations of resource-rich people to those lacking resources.

The first premise is that the Replicator would alleviate a tremendous amount of human suffering if handed over to the humanitarians. Such a machine could easily mass-produce food and supplies in the neediest communities on Earth, and could provide an easy way to mass produce vaccines, medicines, and water purification supplies. It could even spread educational resources in the form of textbooks or school supplies.

So, having established this, the true question facing the Inventor is this: must he sacrifice his own material wellbeing to benefit the poor, or can he permissibly pursue his own interests without acting immorally?

1.1 How much is Owed?

To say that the Inventor is morally required to hand the Replicator over to the global poor is to say that he owes the suffering poor of the world that contribution. A number of writers have struggled for years to assess exactly what is owed by the haves of this world to the have-nots.

Peter Singer offered one of the more widely known arguments in favor of wealthy people owing something to the global poor. He argued, based on his famous example of a child drowning in a puddle, the following:

“First Premise: Suffering and death from lack of food, shelter, and medical care are bad.

Second Premise: If it is in your power to prevent something bad from happening, without sacrificing anything nearly as important, it is wrong not to do so.

Third Premise: By donating to aid agencies, you can prevent suffering and death from lack of food, shelter, and medical care, without sacrificing anything nearly as important.

Conclusion: Therefore, if you do not donate to aid agencies, you are doing something wrong.”⁴

On its face, Singer’s argument has broad appeal. It does seem that those who have much ought to be giving some of their wealth to those who have little.

But a closer examination raises questions. How can one define “nearly as important”? How much can morality require one to give up? Singer himself explains that he believes this demand to be very high when he writes:

“If the basic argument presented above is right, then what many of us consider acceptable behavior must be viewed in a new, more ominous light. When we spend our surplus on concerts or fashionable shoes, on fine dining and good wines, or on holidays in faraway lands, we are doing something wrong.”⁵

⁴ Singer, Peter. *The life you can save: acting now to end world poverty*. New York: Random House, 2009. Print, pg. 15-16

⁵ Singer 2009, pg. 18

Singer thinks that relatively wealthy people are not only required to donate something to the global poor, but that anytime a person spends money on something that is not “nearly as important” as the lives that could have been saved had that money been donated, they are committing a moral wrong.

Others argue that Singer’s principle asks too much. One line of objections argues that personal concerns can influence our duties to others. David Miller supports this line of thinking, for example, in his article “Distributing Responsibilities.” In it, he wants to outline a system of identifying those who are “remedially responsible” for the troubles of others, arguing that those who are morally or causally responsible for a bad situation have a larger commitment to remedy it than those who were uninvolved.⁶ This view differs from Singer’s account because it can assign responsibility to a party that is less-than-optimally capable of solving that problem. Singer, in contrast, would say simply that the people or persons most capable of quickly ending a bad circumstance are immediately responsible for doing so.

To develop his own model, David Miller describes what he calls his “Connection Theory.” People can be held responsible for another’s suffering in four ways, he says, based on Causal Responsibility, Moral Responsibility, Special Capacity, or Communal Relationship.⁷ These responsibilities operate on relatively equal footing, Miller thinks, in that a particularly large amount of one can override a lesser amount of any other.

David Miller’s account seems to track better with some considered judgments than Singer’s. For example, Miller’s principle better allows for people to give particular regard to people within their own families or communities, and holds those who caused a

⁶ Miller, David. "Distributing Responsibilities." *Journal of Political Philosophy* 9.4 (2001): 453-471. Print.

⁷ Miller 2001

person to come into danger to a larger level of responsibility than those who were uninvolved.

But Miller's model is also less applicable in large-scale situations than Singer's. With four different sources of responsibility that are all unquantifiable and can all compete against one another, the model gets complicated quickly. Miller seeks to find the person most responsible, not just responsible enough. He writes, for example, that if there are multiple connected people to the party in trouble, "we will choose the one whose link to [the Patient] is strongest, or else, depending on the circumstances, divide up the responsibility according to relative strength of connection."⁸ But when Miller talks about splitting up responsibility, he means it in a very limited sense. The largest group he ever mentions is "several agents"⁹ and notes later that this should only be the case if "the ties are of comparable strength."¹⁰

Miller also argues in that same article "Responsibility that is widely dispersed is no good, because then everyone will attempt to hang back in the hope that someone else will step in first, no-one will be particularly liable to censure if the bad condition is not remedied, and so on."¹¹ That is a plausible explanation for why more people do make larger efforts to help the global poor, but Miller's decision not to avoid this problem makes his model poorly suited for application to issues of global poverty. The blame for billions of people being poverty-stricken cannot be placed at the feet of just a few individuals, and even if it could, those individuals couldn't possibly have the resources to solve that problem.

⁸ Miller 2001, pg. 469

⁹ Miller 2001, pg. 469

¹⁰ Miller 2001, pg. 471

¹¹ Miller 2001, pg. 471

Some might argue that the connection of special capacity, which identifies the ability to help as one of the connections in Miller's theory, solves this problem. Look, they'd say, Miller tells us that you are connected if you have the ability to help, and he could just keep adding people to the list of connected agents until there are enough people to make a difference. But, first, if the prioritization of who needs to help is based primarily on capability, then Miller's theory starts to look a lot like Singer's with a few pieces of unnecessary baggage thrown on and, second, his theory provides no way of measuring the level of moral obligation created by a special capacity when compared to, say, a causal responsibility for the bad situation.

There is an intuitive value to the notion that an individual can have special obligations to people they are more connected to. The intuitive principle, it seems, would be one that shares some characteristics of both Singer's and Miller's, that requires people to prevent bad things from happening, but that also makes allowances for personal priorities and concerns.

1.2 Samuel Scheffler and the Distributive Hybrid

Such a system is laid out by Samuel Scheffler in *A Rejection of Consequentialism*. Scheffler explains his dissatisfaction with both consequentialist and non-consequentialist (what he calls agent-centered) depictions of one's responsibility to others. He writes,

“As I have constructed it, that objection arises in response to the discrepancy between the way in which concerns and commitments are naturally generated and sustained from a person's point of view quite independently of the weight of those concerns and commitments in an impersonal ranking of overall states and affairs,

and the way in which the consequentialist conception of the right requires agents to allocate energy and attention to their projects and commitments in strict proportion to the weight from an impersonal standpoint of doing so.”¹²

In other words, Scheffler has a problem with the way that a non-partial view weighs different states of affairs differently than any individual person would. People, Scheffler argues, weigh their own projects and concerns more highly than an outside party might.

For example, parents will place far greater weight on the concerns of their children than an unrelated person would for those same children. Recognizing this, Scheffler offers what he calls an “agent-centred prerogative.”¹³ He outlines his principle this way:

“If the unrestricted responsibility for producing optimal outcomes that consequentialism assigns to individuals is thought to be objectionably demanding, then the natural solution is to allow agents not to promote such outcomes when it would be unduly costly or burdensome for them to do so. On a plausible view of this kind, the answer to the question of whether an agent was required to promote the best overall outcome in a given situation would depend on the amount of good he could thereby produce (or evil he could thereby avert), and on the size of the sacrifice he would have to make in order to achieve the optimal outcome.”¹⁴

Here, Scheffler is describing an account of what is owed by one person to others, similar to that of Singer’s, but with the important caveat that a person is allowed to prioritize

¹² Scheffler, Samuel. “The rejection of consequentialism: a philosophical investigation of the considerations underlying rival moral conceptions”. Oxford: Clarendon Press ;, 1982. Print, pg. 14

¹³ Scheffler 1982, pg. 17

¹⁴ Scheffler 1982, pg. 20

their own concerns and projects. This alteration, he argues, gets around the argument that a responsibility to create optimal outcomes is unduly demanding.

Scheffler's tweak, which he calls an "agent-centered prerogative," tracks well with what other ethicists observe about the nature of the relationship between an individual and society. For example, in *The View from Nowhere*, Thomas Nagel spends a chapter discussing his view on ethics, and notes the multiple reasons one might have for acting in certain ways. These include, in his words, "autonomous, obligatory, neutral, and deontological reasons." He notes that, while people have reasons to do the things that fulfill their purposes and goals (autonomous reasons), these can be interfered with by reasons related to special commitments (obligatory reasons). While Singer's model doesn't reflect these personal concerns well, Scheffler's prerogative takes into account autonomous reasons and obligatory reasons that a person might act in a certain way by allowing personal concerns to take weight over the concerns of others.

Objectors to Scheffler's principle as I've put it might point out that people can have very skewed perspectives on the relative importance of things. A sociopath, for example, might not value the needs of others very highly at all, and therefore might choose not to sacrifice things which ought to be sacrificed in order to help others. Later in this chapter, I'll add my own clarification to this model that I hope will get around this objection. To do that, I'll use a concept that I'll call the Coefficient of Self.

Scheffler adds more caveats to his principle. Specifically, he places greater weight on the suffering of the less privileged than on the wealthy. He builds this into his model through the inclusion of a principle that he calls "distributive consequentialism."¹⁵ Under

¹⁵ Scheffler 1982, pg. 31

this view, he writes, “the claims of those who are worse off often take priority over the claims of those who are better off, even if a higher total utility could be achieved by benefiting the latter.” Scheffler worries that a model that holds the concerns of the poor as equal to those of the rich will produce troubling implications, and will not properly uphold a moral state of affairs.

Consider this example: I’m told that, if I give Warren Buffet \$1, his amazing investment skills will turn that dollar into a trillion dollars of his own fortune, but he will give none of that money to me or to a worthy cause. Even though Warren Buffet stands to gain a lot from my dollar, a reasoned consideration of this situation doesn’t seem to indicate that I *owe* Warren Buffet that dollar, even if a strict utilitarian might argue otherwise.

On the other hand, if I’m faced with a starving person who I can save with my dollar by purchasing something from the McDonalds dollar menu, it seems that I am at least *far more* required to help the starving man, because I will lose little but will stop him or her from losing very much. Even if the reader doesn’t believe I would be required to give my dollar to the starving person, they must at least grant that, if required to give the dollar to someone, I ought to give it to the starving person rather than Warren Buffet. I argue that this demonstrates the way that the concerns of the less fortunate tend to be more morally pressing than those of the hyper fortunate. I don’t think that this is because one group is more or less valuable than the other, but rather that the marginal benefit that the less-fortunate normally get from small levels of aid is dramatically larger than that gained by the wealthy. A cheeseburger might mean more to a starving person, in other words, than a trillion dollars to Warren Buffet.

This exact type of situation is covered by Scheffler's principle of distributive consequentialism. I owe my dollar more to the starving man than Warren Buffet, under this model, because the needs of the less-fortunate are given greater weight, even if this decision doesn't lead to the absolutely optimal state of affairs.

1.3 Seeing the Model

Scheffler combines his two principles, the agent-centered prerogative and the principle of distributive consequentialism to create what he calls his "Distributive Hybrid."¹⁶

Scheffler's hybrid combines the authoritative demands of Singer's model with the personal considerations of Miller's. It allows individuals to prioritize their own concerns without running into issues of unclear and weak responsibility,

Scheffler does fail to overcome one particular weakness in Singer's formulation. Specifically, it doesn't help to specify the "nearly as important" clause in Singer's argument. Scheffler says that a person is allowed to prioritize their own concerns and projects, but to what extent? He simply says that his principle would "not permit one to pursue one's own projects at all costs."¹⁷ Singer's model has this problem too, although Singer tries to describe it as an integral characteristic. He writes:

"'Nearly as important' is a vague term. That's deliberate, because I'm confident that you can do without plenty of things that are clearly and inarguably not as valuable as saving a child's life. I don't know what *you* might think is as important, or nearly as important, as saving a life. By leaving it up to you to

¹⁶ Scheffler 1982, pg. 32

¹⁷ Scheffler 1982, pg. 21

decide what those things are, I can avoid the need to find out. I'll trust you to be honest with yourself about this."¹⁸

Singer implies that the moral demands of his argument depend on the individual. That gets him out of needing to draw hard lines, but it also leaves many questions. If one doesn't believe that a human life is worth very much at all, does that excuse one from moral requirements to aid others? This is the problem of the sociopath I mentioned earlier.

Allowing for objective prioritization also makes it very difficult to judge the morality of the actions of others. If one cannot peer into the mind of another and determine how important a human life is to them or how important that which they might give up to save a human life is to them, how can one judge the morality of a choice by another not to offer aid? Although Scheffler has solved many of the problems with Singer's model for us, he doesn't draw out a clear way around this issue either.

This is a key problem for this paper, which seeks to determine whether morality requires the Inventor to hand his Replicator over to the Humanitarians or not. Therefore, additional pieces must be laid in place. In order to clarify this issue, I'll interpret Scheffler's Distributive Hybrid into a graphic form:

Distributive Hybrid

If **(Sacrifice of party A) x (The Coefficient of Self) < (The Benefit to Party B)**,

then Party A is required to aid Party B

¹⁸ Singer 2009, pg. 17

In this equation, Party A represents the group that could help Party B, and the Coefficient of Self represents that amount by which Party A is allowed to value their own interests over those of Party B. It multiplies the first value by an unclear amount, so that the sacrifices of Party A can still sometimes outweigh the needs of Party B even when Party B stands to lose more than Party A.

Some will object to the depiction of this moral analysis as a scale, in which the needs of Party A or Party B will eventually outweigh the other as they keep growing. Strong supporters of private property rights, for example, may take issue with this, arguing that no one can be compelled to do anything with their property by the needs of others. Objections of this kind can be put into two categories. First, one could argue that, because of property rights, one cannot be forcibly compelled to do anything with property that one rightfully owns. Second, one could argue that claims to some property (like one's life) could never be outweighed by the needs of others

The first group of objectors would include those who argue that a right to property is all-authoritative. But rights and moral requirements have little to do with one another. One might have the right to speak publicly in favor of ethnic cleansing, but such an action is certainly morally wrong. In the same way, one can have the right to certain property but can still be morally required to use that property in a certain way. As Peter Singer points out in another book of his, *Rich and Poor*, "A theory of property rights can insist on our *right* to retain wealth without pronouncing on whether the rich *ought* to give to the poor."¹⁹

¹⁹ Singer, Peter. "Peter Singer." *Ethics: the essential writings*. Modern Library pbk. ed. New York: Modern Library, 2010. 517. Print, pg. 523

But it is not quite right to claim, when the scale comes out in favor of Party B, that Party B therefore has a right to the good that Party A could sacrifice. Or, in other words, the world does not have a right to the Inventor's Replicator. To say that Party B has claims on Party A is to say that Party B can seize the good in question from Party A without their permission. This goes much too far. Instead, I argue only that the Distributive Hybrid can show where an individual has a moral responsibility to others. They can choose to ignore this responsibility, but doing so is immoral.

The second group of objectors might accept the points I've just made, but will say that some possessions, like one's own life, could never be outweighed. David Hume famously said in his *A Treatise of Human Nature* that "It is not contrary to reason to prefer the destruction of the whole world to the scratching of my finger."²⁰ While that may be true of reason, it is certainly not true of morality. It seems that one could very easily be called morally bankrupt for allowing the world to die in order to avoid receiving a scratch to one's finger. Surely no reader can imagine such a circumstance and feel convinced that the person who let the world die did the right thing, or even a morally permissible thing.

I'll take that premise even further. Imagine that a person is told they must sacrifice their life in order to save the entire Universe. Unless they cast themselves to into a sacrificial pit, then all that is, all life on Earth and elsewhere, will be obliterated instantly. All future civilizations, all future peoples and cultural, will never exist. With such an enormous weight on Party B's side, it's hard to say that the would-be sacrifice could decline without committing some moral wrong.

²⁰ Hume, David. *A treatise of human nature*. 2d ed. Oxford: Clarendon Press ; 1978. Print.

Having addressed concerns about the depiction of the Distributive Hybrid as a scale, I'll move on to explain the inclusion of the third variable that I've said Scheffler doesn't do enough to explain: the Coefficient of Self.

1.4 The Coefficient of Self

The third variable, the Coefficient of Self, represents the undetermined amount by which an individual is allowed to value their own projects over those of others. Scheffler leaves this variable indeterminate, and Singer wants to leave it up to the individual. Because I don't find either of these solutions to be helpful, I'll attempt to provide some clarification.

It seems logical to say that there is some threshold below which Party A is not required to act, and above which they are. By this I mean to say that there is some ratio of sacrifice of Party A to benefit of Party B that is the turning point between a moral obligation to aid and no moral obligation to aid. But this threshold surely rises and falls depending on the circumstances and on the relationship between the two parties. Also, it seems doubtful that the threshold is a stark line, but rather ought to be a gray area that fades to black the farther one travels from it. In other words, the moral weight on Party A probably grows stronger as the prospective benefit to Party B grows larger.

This paper doesn't pretend to offer some hard and fast rule for that amount, but a reexamination of Peter Singer's classic Baby-in-a-Pond example offers some insight. I'll let him sketch it out himself:

“On your way to work, you pass a small pond ... The weather's cool today, though, and the hour is early, so you are surprised to see a child splashing in the

pond ... You look for parents or babysitter, but there is no one else around. The child is unable to keep his head above water for more than a few seconds at a time. If you don't wade in and pull him out, he seems likely to drown. Wading in is easy and safe, but you will ruin the new shoes you bought only a few days ago, and get your suit muddy. By the time you hand the child over to someone responsible for him, and change your clothes, you'll be late for work. What should you do?"²¹

Singer argues that one is morally required to help the child, and from this draws the second premise of the argument described earlier in this paper, "If it is in your power to prevent something bad from happening, without sacrificing anything nearly as important, it is wrong not to do so."²²

But why? It seems fair to say that it is wrong to allow another human being to die unnecessarily, but even Singer's demanding account implies that morality permits one to do that if the price would be much greater than that which is gained. He would likely agree, for example, that one doesn't have to save the baby in the pond if it means two other babies will die. The difference, then, isn't in the death of the baby in the pond, but rather in the thing which is to be given up. Specifically, Singer's example seems to show that it is impermissible to allow a baby to die to save a pair of shoes.

This example fits nicely with the Distributive Hybrid equation depicted above. In order to assess the morality of the possible choices of the individual standing by the pond, one must compare that which is to be sacrificed by Party A (shoes, clean suit, time) to that which is to be gained by Party B (life). Since, from a non-partial standpoint, a life is

²¹ Singer 2009, pg. 3

²² Singer 2009, pg. 15

clearly more valuable than a pair of shoes, the only possible way to justify leaving the baby to die is to multiply the Coefficient of Self to such an extreme degree that the individual who could save the baby can proclaim that, to them, a pair of shoes outweighs the value of a human life.

This insufficient regard for the value of the humanity of the baby is the ultimate source of the wrong in Singer's hypothetical. Based on this line of thinking, a direct appeal to Kantian ethics, it is immoral to assume for oneself a Coefficient of Self that fails to respect the humanity (assuming they are human) of Party B. When I say respect, I refer to the type referred to by Stephen Darwall in his article "Two Kinds of Respect" as "recognition respect." He writes, "To respect something is ... thus to regard it as requiring restrictions on the moral acceptability of actions connected with it. And crucially, it is to regard such a restriction as not incidental, but as arising because of the feature or fact itself."²³

The Coefficient of Self cannot be pegged to whatever value the individual wants or believes it to be. Instead, the proper Coefficient of Self demonstrates a sufficient level of regard for the humanity of those in Party B. If an individual's decisions can only be justified by a Coefficient of Self that does not properly respect the humanity of those in Party B in order to pass the Distributive Hybrid scale, that decision is immoral.

Other writers have pointed to similar, if not identical, concepts. Consider, for example, Richard Miller's Principle of Sympathy from his essay "Moral Closeness and World Community."²⁴ In that work, Miller argues that people ought to be allowed not to

²³ Darwall, Stephen L.. "Two Kinds Of Respect." *Ethics* 88.1 (1977): Print, pg. 40

²⁴ Miller, Richard. "Richard W. Miller." *Global ethics: seminal essays*. St. Paul, MN: Paragon House, 2008. 507-529. Print.

aid those in need if the aid would seriously endanger their major purposes in life. To avoid giving on lesser grounds, he says, “expresses the attribution of lesser importance to others’ lives,”²⁵ and to do so is not in keeping with a sympathetic view of others and is therefore immoral.

The Coefficient of Self improves the Distributive Hybrid by taking it out of the realm of the unbounded. It is not, as Scheffler argues, an irrelevant or arbitrary amount, nor, as Singer argues, up to personal perspective. Even if the Coefficient of Self cannot be given a number value, understanding where it comes from, and what limits morality places on it, better allows one to assess the decisions of others and oneself

1.5 The Inventor and the Replicator

Now, I’ll turn to the question of the Inventor. Can he permissibly sell his invention to Technodyne, earning himself a fortune but failing to aid the world’s poor and starving?

It is easier to assess this question after feeding it into the Distributive Hybrid model. The Inventor is Party A, which means that the fortune he stands to gain by handing his Replicator over to the Humanitarians is the sacrifice of Party A, while all of the benefits that the global poor would experience with the help of the Replicator are the benefit to Party B. The Coefficient of Self lacks a numerical value, but is limited by the Kantian principles described above, that is to say, by the level of regard that the Inventor must give to the intrinsic value of the global poor as human beings.

²⁵ Miller 2008, pg. 520

If the Sacrifice of Party A outweighed the Benefit to Party B, the scale would fall in the Inventor's favor regardless of the size of the Coefficient of Self. But that is not the case. The Replicator could save millions of lives, billions even, over the course of time. Not only that, but it would improve the quality of life for billions more by providing nutritious food, educational materials, shelter, and medicines to the global poor. To say all that good could be outweighed by one man's fortune is simply inconceivable under any widespread school of thought.

Therefore, the Inventor could only permissibly sell his Replicator if setting the Coefficient of Self high enough to compensate for the enormous weight on the side of Party B to be outweighed properly respected the humanity of those within Party B. Unfortunately, there is no mathematical calculation to provide us this answer, and one must deal with this question using only reasoned judgment and reflection.

I argue that setting the Coefficient of Self that high shows disrespect for the humanity of the global poor. It is equivalent to saying that one is allowed to pursue one's own ends without any regard for the welfare of others, and that view would run counter to virtually all but the most extreme of ethical systems. It seems clear that ranking the value of a fortune over the value of a billion human lives does indeed insufficiently acknowledge the intrinsic value of humanity and, therefore fails to respect it. If that is the case, then the Coefficient of Self for the Inventor cannot be morally set so high, and the scale tips in favor of the global poor.

Therefore, this line of thinking indicates, morality does indeed require the Inventor to give the Replicator to the global poor, and does not permit him to sell it to Technodyne. By developing this model for application to the individual, I've built a tool

for assessing the morality of the actions of ourselves and others. In the next chapter, I'll seek to use this model to consider the actions of groups, specifically corporations, which have often been viewed as not having moral obligations in the same way that individuals do.

2. The Moral Responsibilities of Corporations

In the previous chapter, it was argued that morality sometimes requires individuals to sacrifice certain things in order to help others. I attempted to clarify the mechanics of this obligation by offering Samuel Scheffler's Distributive Hybrid as a supportable model for showing when morality requires a charitable action by one party to help another party. I then applied the Distributive Hybrid to the case of the Replicator, and argued that a moral requirement that the Inventor properly respect the humanity of the global poor also strongly indicates that he has a moral responsibility to donate his machine to the global poor.

But, let's assume that the Inventor chooses to sell his invention. Some might say that, in that action, the moral responsibilities tied to the Replicator die away, but it also might be said that the Inventor passes those moral obligations right along to the buyer. In this case, that's the corporation who offered to buy it: Technodyne.

In this chapter, I will show that a corporation is subject to moral obligations and attempt to outline what exactly those obligations are in relation to duties to the global poor. I will first seek to address some arguments against the capacity of corporations to bear moral responsibilities and, after attempting to mount counterarguments to those points, I will seek to clarify the moral responsibilities of corporations to help others based on the Distributive Hybrid mentioned in the previous chapter.

2.1 What Changed?

First, I ask what the difference between Technodyne and the Inventor is. The most obvious difference is that one is a group and the other is an individual. However, the

simple fact that Technodyne is an organization of more than one person doesn't seem to be a reasonable justification for saying that they aren't under the same obligations as the singular Inventor. If we were to say that the Inventor was actually a husband-and-wife team, rather than one person, it seems that one could easily apply the Distributional Hybrid to the team with just a few tweaks

So the simple fact that Technodyne represents a group doesn't seem to automatically rule out potential moral obligations. However, Technodyne isn't just a group of roughly associated persons. Instead, it is a corporation, a legally recognized entity with numerous managers and an obligation to provide some residual earnings to shareholders. For many observers, this particular status is the reason that they say it is more difficult to attribute moral responsibility to corporations. These include supporters of Milton Friedman and another group who support the Nexus of Contracts theory of corporations.

2.2 Friedman and Contracted Obligation

Some thinkers sharply contest the claim that corporations are subject to any but the most basic moral obligations. Milton Friedman, for example, advocates against the "social responsibilities" of corporations in his essay "The Social Responsibility of Business is to Increase its Profits." In it he states, outright, that "Only people can have responsibilities. A corporation is an artificial person and in this sense may have artificial

responsibilities, but 'business' as a whole cannot be said to have responsibilities, even in this vague sense."²⁶

Friedman also addresses the relationship of individual executives with the business they work for. He explains:

"A corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."²⁷

Based on this, Friedman argues that neither corporations nor business executives can be bound by "social responsibility." The corporation cannot have responsibilities because it is not a person and, meanwhile, the employee is bound to serve the interests of his employers. The interest of these employers, according to Friedman, is normally to make money.

Friedman argues instead that "social responsibility," applies only to private individuals. He writes, "The stockholders or the customers or the employees could separately spend their own money on the particular action if they wished to do so."²⁸

Friedman thinks that the people earning wealth through operation or ownership of a corporation may be required to spend some of that personal wealth on charity, but that the

²⁶ Friedman, Milton. "The Social Responsibility of Business is to Increase its Profits, by Milton Friedman." University of Colorado Boulder Website. 13 Sept. 1970.
<<http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>>.

²⁷ Friedman 1970

²⁸ Friedman 1970

corporation itself is not required to do anything, and might even be committing wrong by using the resources of its shareholders to perform charitable acts.

2.3 The Nexus of Contracts Theory

Like Friedman, proponents of the Nexus of Contracts Theory also argue that corporations cannot hold moral responsibilities. Unlike Friedman, though, they base their argument on a claim that corporations are not real entities, but, rather, are just symbolic representations of networks of contracts and commitments. This view, commonly attributed to Michael Jensen and William Meckling,²⁹ holds, according to Grant Hayden and Matthew Bodie, “that the firm – and by extension the corporation – is merely a central hub for a series of contractual relationships.”³⁰ In other words, a corporation is not really its own entity, but is simply a reflection of a series of agreements and contracts, like those between shareholders and boards of directors.

Jensen elaborates on the specific implications of the school of thought he and William Meckling founded in his paper, “Organization Theory and Methodology:”

“The behavior of the organization is the equilibrium behavior of a complex contractual system made up of maximizing agents with diverse and conflicting objectives. In this sense, the behavior of the organization is like the equilibrium behavior of a market. We do not often characterize the steel market or the wheat market as having preferences and motives or making choices like an individual, but this mistake is commonly made about General Motors, Peat, Marwick, Mitchell & Co., and so on. Construction of a theory of organizations involves

²⁹ Hayden, Grant M. and Bodie, Matthew T., The Uncorporation and the Unraveling of 'Nexus of Contracts' Theory (10 Dec. 2010). Michigan Law Review, Vol. 109, 2011; Hofstra University Legal Studies Research Paper No. 10-4. Web. <<http://ssrn.com/abstract=1723170>>

³⁰ Hayden and Bodie, 2010

creating a theory that describes the equilibrium behavior of these complex contractual systems where the individual agent is the elementary unit of analysis.”³¹

Organizations (including corporations) are really just like small markets, Jensen says, constructed by a network of contracts. Attributing things like motives to corporations is like trying to attribute them to the wheat market. Jensen would say the same thing, I think, of moral obligations.

Opponents of the Nexus of Contracts theory point out that corporations often act with intentions and motives that are distinguishable from their constituent members, and this seems to indicate that there really is such thing as a corporate entity that exceeds the minimal picture painted by Jensen. Consider the argument made by Peter French in his article “The Corporation as a Moral Person”:

“We can describe many events in terms of certain physical movements of human beings and we also can sometimes describe those events as done for reasons by those human beings, but further we can sometimes describe those events as corporate and still further as done for corporate reasons that are qualitatively different from whatever personal reasons, if any, component members have for doing what they do.”³²

In other words, some actions are taken by corporations, not just the individual component people who make up a corporation, and since those actions are undertaken for reasons

³¹ Jensen, Michael C.. "Organization Theory and Methodology." *The Accounting Review* 58.2 (1983): 319-339. Social Science Research network.

³² French, Peter. "The Corporation as a Moral Person." *American Philosophical Quarterly* 16.3 (1979): 207-215. Print.

that are independent of each individual's motivations, there must be some distinguishable corporate entity.

But proponents of the Nexus of Contracts Theory have a response to this claim. They argue that, just because a corporation acts in ways that none of its individual employees act, that does not mean there is some distinguishable entity of any substance. For example, Manuel Velasquez argues in his essay "Debunking Corporate Moral Responsibility" that "although it may be true that a collection of objects has properties that cannot be attributed to its members, it does not follow that the collection is a real individual entity."³³ Velasquez refers to this as the "fallacy of division" and relies on a pile of sand to prove his point. He argues that a pile of sand has some characteristics not shared by the individual grains of sand, for example, that a pile may be big but the individual grains are not. That does not mean, he says, that the pile of sand is a distinguishable object from a simple gathering of individual grains. The corporation, in his view, is no more a "new real individual entity ... than any random collection of objects."³⁴

If, as Friedman argues, employees cannot be held responsible for the actions of corporations and, as the supporters of the Nexus of Contracts theory argue, neither can corporations themselves, then who is to be held responsible? Velasquez says, "When an organization injures someone and no human individual is morally responsible for the action ... Barring negligent behavior on anyone's part, the obvious answer, I think, is: no

³³ Velasquez, Manuel. "Debunking Corporate Moral Responsibility." *Business Ethics Quarterly* 13.4 (2003): 531-562. JSTOR. pg. 540

³⁴ Velasquez 2003, pg. 540

one. Cases like these are cases where the concept of accident applies, not the concept of moral responsibility.”³⁵

It’s unclear what Velasquez means by responsible. Taken one way, his argument could be taken to mean that corporate actions should be treated as accidents when no one intended to cause them and no one could have avoided them, that is, when they are the literal definition of accidents. Taken another way, Velasquez seems to say that when corporate actions cannot be attributed to a specific person, a “human individual,” they ought to be treated as accidents.

That second understanding seems to be the one Velasquez is endorsing. He identifies a concept earlier in his article which he calls “as-if” intentionality, which is applied to inanimate objects. It is a nonliteral intentionality, applied when one says things like “The car is trying to start.” Velasquez applies this sort of intentionality to corporations, saying in the second of two of his theses that, “Where X is an intentional state that is attributed to a collection of people and X cannot be attributed to any of the individual members of the collection, the attribution of X is always either a descriptive or a prescriptive attribution of “as-if” intentionality.”³⁶

In other words, unless one can point to the specific person in an organization who is to blame for a given state of affairs, the corporation can be said to be responsible for the circumstance in a nonliteral sort of way, like one might blame a kitchen table leg for being responsible for a stubbed toe. But, because the corporation is not actually an entity, it can’t be blamed. The state of affairs, Velasquez thinks, came up by accident because no

³⁵ Velasquez 2003, pg. 550

³⁶ Velasquez 2003, pg. 548

individual agent intended it to happen.

2.4 Responding to Friedman

So far I've noted two of the major objections to the notions of the "social responsibility" of corporations, and I've taken those to be the basic objections against corporate moral obligations. I will argue that the views of Friedman and supporters of the Nexus of Contracts Theory fall apart upon closer inspection, and that the flaws in their arguments help to reveal larger obligations of corporations.

Let's begin with Friedman, who says that individuals in a corporation should not use the corporation's resources for charitable reasons because the resources do not belong to them, but rather belong to the corporation's investors. This argument fails to disprove the existence of moral responsibilities for corporate agents. To understand why, consider the following points. Friedman claims that:

“In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to their basic rules of society, both those embodied in law and those embodied in ethical custom.”³⁷

The wording is a little unclear here, and Friedman could mean one of two things. Taken one way, he is saying that employees must conduct business in accordance with the desires of their employers, and therefore should conform to “ethical custom”, which

³⁷ Friedman 1970, pg. 211

surely includes moral responsibilities, only if the employer actually wants them to. In other words, Friedman thinks their responsibility to act morally only comes from the employer's desire that they act moral. That's a very problematic viewpoint, and I'll show that employees can't be contracted out of moral responsibility.

Imagine that two people work at a business: an employer and an employee. The employer tells his or her employee to murder a rival storeowner in order to decrease competition. It is still certainly morally wrong for the employee to follow through on that request, even though it is the desire of his or her employer. If the employee refuses to follow through on the order, he or she is refusing to use the employer's resources in the way the employer wants, and is therefore in violation of his or her duties in Friedman's eyes. But both a considered judgment and a quick examination of the law books tells us that it would be both morally wrong and illegal for the employee to kill the competitor. Clearly, contracted obligations do not override moral obligations.

I will admit that contracted obligations may weigh in on moral decision-making. For example, if one signs a non-disclosure agreement about an upcoming product release, it seems immoral to violate the agreement in exchange for money. I argue, however, that such considerations are easily outweighed when matters such as human life enter the mix. The first interpretation of Friedman says that contracts always override moral obligations, but I've shown that this is clearly not the case, but, rather, that contractual obligations to a corporation are just another component of the moral calculus, one that can easily be overridden by more pressing concerns.

Because morality cannot override moral obligations this first interpretation of Friedman seems rather indefensible, so perhaps he meant it a second way: that employees

ought to do what their employers ask so long as the employer's directions conform to the "basic rules of society, both those embodied in law and those embodied in ethical custom." In other words, employees are not obligated to follow orders that command immoral action, even if they are contractually obligated to follow orders.

If that's the case, then Friedman shouldn't have a problem with saying that individuals within corporations have moral responsibilities. He explicitly states that orders to perform immoral orders are not binding, indicating that employees are allowed to let morality guide their actions with relations to the corporation.

If employees shouldn't follow orders to act immorally, then it also seems that employers have a responsibility not to issue orders to act immorally, whether or not that order is ultimately followed.

In commanding his or her employee to commit a morally wrong action, the employer does wrong on his or her own. Attempting to use one's power over another to get them to perform morally wrong actions seems like a clear wrong in and of itself. The employee might be the agent in that relationship, but the employer is the principle and, therefore, responsible for making use of his or her agent in a moral way.

What if the employer asked the employee to commit some action that will kill the competitor, but only the employer knows this will be the outcome? This would be the case, for example, if the employer told the employee to mix a special sauce (which the employer knows to be poison) into the competitor's dinner. Intuition tells us that this is wrong because the employer is intentionally using his or her means to bring about the death of the competitor, but it doesn't necessarily seem that the employee has done wrong if they did not know that the special sauce contained poison. Regardless of the moral

obligations of the agent, there are strong moral obligations on the principle to use their resources, including human resources, in moral ways

From this examination, I've reached two important conclusions:

1. Contracted obligations do not override moral obligations, although contractual obligations may weigh in on those moral considerations.

2. Principals have moral obligations that are independent of their agents. In other words, a principal seeking to use an agent to perform an immoral act has committed a moral wrong whether or not the agent does indeed perform the act and whether or not the agent bears any moral responsibility.

2.5 Passage of Moral Responsibilities from Principles to Agents

I have argued that it is immoral for an employer to use an employee to pursue some immoral action. But, in a corporation, managers control much more than just a few employees. They often sit at the helm of large organizations with significant properties and powers on an international scale. Top managers can be said to be in control of these large organizations in that they can order other employees to act in certain ways, or to do certain things with the corporation's resources. So, if a principle cannot use their resources to perform immoral acts, it seems that a manager of a corporation must not use the corporation at their control in order to perform immoral acts.

I foresee two objections to this claim. First, one might argue that a manager who is employed by a corporation's owners is obligated to pursue the owner's goals, not to use

the corporation however he or she might see fit. Second, supporters of the Nexus of Contracts theory might argue that the corporation is not a tool to be wielded, but rather that it is a simple representation of an abstract entity, a network of commitments.

In order to respond to the first objection, I'll briefly discuss the separation of ownership and control in large, modern corporations.

For a sole proprietorship, defining ownership and control is easy. The single individual owns the business and operates the business, giving them both ownership and control. In a public corporation, however, those who most directly control the corporation do not own it in the same way that a sole proprietor does. Instead, much of the equity is often sold off to shareholders in exchange for capital or as an incentive to join the company. These individuals are often given some powers of control, but not always, and those powers of control are often very much diluted by large numbers of shareholders and by the unilateral power of the management team. This is a phenomenon noted by Michael Jensen himself in the paper he co-wrote with Eugene Fama, "Separation of Ownership and Control."³⁸ It is similarly noted by Harold Demsetz in "The Structure of Ownership and the Theory of the Firm," in which he explains, "The holder of corporate stock experiences a loss of control over his resources because ownership is so broadly dispersed across large numbers of shareholders that the typical shareholder cannot exercise real power to oversee managerial performance in modern corporations."³⁹

According to these theories, the shareholders still technically own the firm but they don't really control it because it is so difficult for them to make real changes to the

³⁸ Fama, Eugene F., and Michael C. Jensen. "Separation Of Ownership And Control." *The Journal of Law and Economics* 26.2 (1983): 301-325. Chicago Journals. Web. 27 Apr. 2014.

³⁹ Demsetz, Harold. "The Structure Of Ownership And The Theory Of The Firm." *The Journal of Law and Economics* 26.2 (1983): 375-390. JSTOR. Web. 27 Apr. 2014. Pg. 375

day-to-day practices of the managerial staff. So, an opponent to my argument might say, the management staff is not allowed to use the resources of the corporation against the will of its owners, as Friedman argues. But, based on arguments already presented, those contracted agreements can either be superseded by moral obligations, or may be immoral in the first place if they call for immoral action.

If one says that managers have a moral responsibility to use their resources in a certain way, then those obligations outweigh the contracted demands of the owners. Viewed another way, the managers are a resource of the owners, who pay them to run a corporation and represent their interests. If that's the case then, much like the manager's, the owners have a responsibility to use their resources in a moral way, and are morally obligated not to express demands that they act in immoral ways. Either way you look at it – by focusing on the conduct of managers or on the expectations set by owners - a corporation is not excused from the moral wrongs it has committed.

There are, I concede, a wide variety of corporate structures and many types of legally acknowledged businesses that do not fall under the corporate designation, but I believe that my argument for moral obligations that descend from the top of the chain of command can apply equally well for most of them. The underlying point is simply that some individual or some group usually has control over the rest of the organization, and that they have a moral responsibility not to use those resources to pursue immoral actions. I acknowledge that I am talking about a wide variety of types of controllers, so I'd like to refer to this group from here on out simply as Controlling Members (CM) of those organizations.

Now I'll respond to the second objection to my claim that CMs have a responsibility not to use the resources they have power over to pursue immoral states of affairs: the claim by supporters of the Nexus of Contracts theoreticians that corporations are not real entities at all, and should be treated more like markets than resources. Because of this fact, this group argues, corporations cannot have responsibilities or moral obligations, and it is not possible for CMs to use their corporate power in immoral ways.

This argument is easily defeated by pointing out that my account does not rely on corporations being entities, but requires only that it be shown that some individual or group is in control of the organization and that individuals should use the things they have control over in moral ways. But the Nexus of Contract account is still descriptively inaccurate, and I'd like to point to some reasons why.

As already mentioned, Michael Jensen wants to see organizations like corporations as comparable to "the steel market or the wheat market," but that's simply not accurate. For one thing, Corporations can be sued and can own property.

One cannot sue the wheat market, nor attribute to it negligence. Likewise, wheat markets cannot own anything, but corporations can. When Jensen says that corporations cannot have "preferences or motives," he is making the same mistake. The wheat market might be an intangible concept that is governed in part by random chance (but also by a hefty portion of government oversight and the organized contributions of wheat farmers), but corporations are not. Corporations often have mission statements, as well as stated goals and preferences. Unless Jensen is claiming that these public statements are somehow disingenuous, or that corporate leaders are misguided when they explain the goals of their organizations, his account seems to be descriptively false.

Another argument in support of the Nexus of Contracts theory, presented by Manuel Velasquez, posits that organizations like corporations are not distinguishable from a collection of their members, in the same way that a pile of sand is not a real entity outside of the collection of its individual sand grains. But that comparison is inaccurate. A pile of sand does not have any particular real entity because one can't remove the grains of sand and then add them again to reform the same pile. It has no persistent elements. The same is not true of a corporation, which has practices, goals, and systems that persist even when its constituent employees and agents are replaced. A corporation might fire its Chief Financial Officer, but it will almost surely rehire another person to play the same role with the same title. That person might be slightly different, but the fundamental role and responsibilities of the office will not have changed because they are integral to the operation of that corporation. A corporation could even fire every single one of its employees, with the exception of one remaining hiring officer, and then refill each of those positions without changing in any significant way its aims or practices.

That noted, I would not go so far as to say that a corporation is morally identical to a person. Stephen Wilmot reaches some compelling conclusions on this subject in his essay "Corporate Moral Responsibility: What Can We Infer from Our Understanding of Organisations?" In it, he points to what he calls the Kantian problems with this notion. Specifically, he writes, "Organisations are not ends in themselves. All organisations, even the most powerful, exist for a purpose. That purpose is the purpose of those who create the organisation, or those who control it." However, he expands, "organisations differ from other non-persons in that they can have powers of reasoning attributable to them,

along with reasoned choices as to how they pursue their allotted purpose, even though they cannot choose what purpose that shall be.”⁴⁰

But, as I said, the moral responsibilities of individuals within corporations do not originate in the structure of their organization, but simply from their own individual moral responsibilities. I have shown, therefore, that CMs of corporations can face authoritative moral obligations, but I have yet to show any evidence about why those moral obligations might obligate charitable action. Next, I will show, the fact that organizations have more charitable power than their individual components creates new obligations.

2.6 A Requirement to Give

If CMs have a moral responsibility to use the resources they control in the corporation morally, just as individuals have a responsibility to use their personal resources in moral ways, then it seems that Scheffler’s Distributive Hybrid, described in Chapter One, can be applied to corporations by focusing it on the CMs in their official capacity as representatives and controllers of the corporation. In order to understand how this might work, I’ll apply the model to Technodyne in the case of the Replicator, but first, there are clarifications to be made.

Remember that the Distributive Hybrid I described in the first chapter requires a Party A to do the sacrificing and a Party B in need of assistance. Party B is still clearly the global poor, and Party A seems to be Technodyne, but this is a little more complicated for two reasons. First, it has already been established that corporations are

⁴⁰ Wilmot, Stephen. "Corporate Moral Responsibility: What Can We Infer from Our Understanding of Organisations?." *Journal of Business Ethics* 30.2 (2001): 161-169. JSTOR. Web. Pg. 165

non-persons that don't hold responsibility directly, but rather that CMs hold indirect responsibility to use corporate resources morally. So, then, when saying that Technodyne is party A, who does that include?

Second, it is a little unclear whose concerns ought to be taken into account when trying to calculate the sacrifice made by Party A. The initial inclination is to say that Party A ought to be those individuals who would make choices for the corporation to make charitable contribution, that is to say, the CMs of a firm. But many more people have a stake in that decision, even if they no control or ownership. Low-level employees often fall into this category, for example. So, when talking about the sacrifices made by Party A, there likely exists a large network of people whose stakes must be counted.

To address the first concern, it is important to remember who exactly bears moral responsibility when a corporation acts immorally. The moral duties of a corporation, I have argued, don't arise from within the corporate entity itself, but rather from the individual moral responsibilities of the CMs. When one says that a corporation commits a moral wrong, then, one is actually saying that the CMs committed a moral wrong by supporting, or refusing to prevent, that course of action. However, it seems unfair to proclaim simply that if a corporation commits an immoral act all the CMs must be equally to blame. If one of its board members did everything in his or her power to prevent that course of action, it seems unfair to say that he or she is equally guilty as the board members or managers who supported the immoral act. When talking about applying the Distributional Hybrid to a corporation, then, I am really applying the Distributional Hybrid to all those individuals with the capacity to control that corporation's course of action, and saying that morality can only require them to do what

is in their power to pursue the moral course of action. The aggregate moral responsibilities of the CM s, then, ought to lead to general moral action by the corporation.

This leads to the second concern: it is unclear whose concerns ought to be considered when attempting to weigh the size of a sacrifice that a corporation might be making. Clearly, a CM cannot only consider his or her own concerns. They are still acting as a representative of the corporate entity, and are making decisions that affect many to whom the corporation is responsible. Some parties, like the employees of a corporation are directly connected to the actions taken by a corporation but others are less so.

For example, the child of the butcher that the employee of the corporation visits might benefit from the corporation distributing a pay raise to its employees because that employee can then afford to buy more meat from the butcher, who might then be able to afford a new bike for the child. But, because of the tangential nature of that connection, and because of the lack of foreseeability (who's to say if the employee will actually use his or her pay bump to buy more meat?) the child of the butcher seems to have a far less legitimate claim on the actions of the corporation than the employee him or herself. Furthermore, it should be noted, the same sort of connections could exist with the Inventor, who also needs to buy meat from somewhere, and we did not take into account those disconnected concerns when assessing his case.

A fair compromise, it seems, is to allow CMs to take into account the concerns of the people that the corporation has clear responsibilities to. There are two primary schools of thought on whom, exactly, corporations have a responsibility to consider the

concerns of: Shareholder and Stakeholder theory.

2.7 Shareholder and Stakeholder Theory

Both theories attempt to identify the groups to which corporations are responsible. Shareholder theory emphasizes the responsibility of a corporation's managers to its shareholders. It holds that, since the capital to run corporations is provided by shareholders, the corporation should only consider the interests and desires of those shareholders.⁴¹ Stakeholder theory, on the other hand, observes that many more people than just the shareholders of a corporation can be affected by that corporation's actions. R. Edward Freeman explains in "Stakeholder Theory of the Modern Corporation" that, "Corporations have stakeholders, that is, groups of individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions ... Just as stockholders have a right to demand certain actions by management, so do other stakeholders have a right to make claims."⁴² Stakeholders who are not normally taken into account under the shareholder theory include individuals like employees, customers, and people living near factories or stores owned by a certain corporation.

This paper will proceed from the standpoint of the stakeholder view of corporate responsibility for a few reasons. First, I have already argued that the leaders of corporations have a moral responsibility to consider the interests of others while directing their corporations, and so it only seems fair to allow corporations to consider the interests

⁴¹ Smith, H. Jeff. "The Shareholders vs. Stakeholders Debate." MIT Sloan Management Review. N.p., 15 July 2003. Web. 24 Mar. 2014. <<http://sloanreview.mit.edu/article/the-shareholders-vs-stakeholders-debate/>>.

⁴² Freeman, R. Edward. "Stakeholder Theory of the Modern Corporation." University of Dayton Faculty Server. <<http://academic.udayton.edu/lawrenceulrich/Stakeholder%20Theory.pdf>>. pg. 41

of its stakeholders when deciding whether or not to pursue a charitable act. It is not consistent, in other words, to say that corporations must regard the interests of those other than its core leadership and owners when deciding how to pursue its purposes, but then may not consider the interests of people like its employees and customers when assessing their obligation to perform charitable acts.

Second, it seems reasonable to consider the interests of those shareholders for their own sake. Often times, employees are nearly as strongly affected by the actions of a corporation as the shareholders are. An increased requirement to give to charity might hamper a company from hiring more employees, for example, which certainly hurts the interests of those who could have had those jobs. Likewise, many customers rely on the goods created by companies for very important matters. Drug companies, for example, perform research on products that help to improve the lives or save the lives of many of their customers. If a company needed to cut back on research into new diabetes medicine in order to perform charitable works, that would have a tangible impact on the lives of those who could have benefited from the medicine.

So, I have argued, applying the Distributional Hybrid to a corporation means applying it to each of the CMs of that corporation but allowing them to consider the interests of its stakeholders when considering their responsibilities to the global poor.

2.8 Positive Duties from Capability

Corporations are not typically viewed as having positive duties to the poor or underprivileged. Many would likely agree that corporations have a negative duty not to harm the innocent, but it seems less clear that they could actually be required to *give*

anything to people who are not directly associated with the corporation. Or, to put it another way, if the CMs of a corporation are required to consider the needs their stakeholders in addition to their own, they should be thinking of their own employees far before giving things to the global poor. While I disagree, I can think of two major reasons for this prevailing way of thinking:

1. The corporation exists to produce profits. Giving away profits or tools to gain profits goes against their central purpose, their very reason for existing.
2. As Freidman argues, Charity is the responsibility of individuals. While people who make money from corporations may be required to donate that money, saying that the group shares the same obligation imposes a double duty.

To the first objection, I'd point to the previously made argument that contractual obligations to pursue profits cannot obviate moral concerns. But, on top of that, saying that corporations exist to pursue their own purposes doesn't necessarily distinguish them from individual persons. Most people don't work for a salary in order to donate it; they work for a salary in order to use it pursue their own purposes, whatever they might be. In some cases though, the obligations of morality supersede individuals' rights to use those resources for their own purposes. If that is the case for individuals, then simply saying that a corporation exists to pursue its purposes, or rather the purposes given to it by owners, doesn't create a large distinction between the responsibilities of individuals and the responsibilities of corporations.

The second objection makes some sense. If we were talking about simple money donations, demanding that corporations donate a sum of money, and then that their employees donate a sum of money does impose a double duty because much of the disposable income of corporations eventually ends up in the hands of those employees. Taking money from the corporation lessens the amount available for beneficiaries and therefore lessens those beneficiaries' capacity to donate.

But, corporations have a power to aid people that individuals do not, and that has little to do with direct cash infusions. Consider the Replicator case. If Technodyne were able to buy the rights to the Replicator, the corporation could hand that invention over to the global poor, but Technodyne's individual beneficiaries could not. That's because no specific individual has the right to make that decision, and because no specific individual owns the patent to the device. Technodyne owns the patent to the device, and while shareholders own a portion of Technodyne's equity, that does not mean that they own some portion of the patent. This idea is equally true of real world companies.

Pharmaceutical companies, for example, can dedicate medicines and research resources to the problems of the global poor in a way that none of their employees could. The drug company owns research laboratories and holds patents on certain processes. Each of its shareholders could use their private funds to build a research lab on their own dime, but that lab would still be less useful than the corporately-owned lab because it would lack the resources – like patents and distribution channels – of the corporate lab.

Corporations have powers that their beneficiaries and owners do not have, even when they are considered as a group, and therefore those who control the more powerful entity that is the corporation face extra moral obligations. This stems from the

observation that those with extra powers have responsibilities to use those powers in moral ways. Vanessa Carbonell points to some justifications for this idea in her essay “What We Owe and What We Know,” which posits that a person who obtains extra knowledge sometimes absorbs additional moral responsibilities because of it. To support her proposal, Carbonell creates a hypothetical surgeon who she names “Roz” and who she says is the “most talented surgeon in her geographic area” and who is a specialist in fixing a specific congenital heart defect found in children.⁴³ Next, Carbonell says that Roz considers quitting her job to pursue a doctorate in French literature. However, she argues, because of her technical expertise and the harm that would come to many if Roz quits, Roz faces a certain level of moral responsibility not to quit her job.

Carbonell calls this a “knowledge-based obligation” and argues that the extra knowledge “triggers” certain obligations for its possessor.

Carbonell speaks specifically about knowledge, but I argue that the foundation for her point rests in the importance of capability. Knowledge imparts burdens because it gives extra abilities. For example, if an individual knows that a glass of milk is poisoned, it seems that they would commit a moral wrong by letting an innocent bystander drink the milk without warning them. But, if the observer didn’t know that the milk was poisoned, they do not commit a wrong by failing to warn the drinker because they could not have foreseen the poisoning. The extra knowledge gives extra power (the ability to foresee the poisoning) which brings with it extra responsibilities.

Combine this observation with what has been noted about corporations: if having partial ownership or control of a corporation gives one the ability to influence its actions,

⁴³ Carbonell, Vanessa. “What We Know and Who We Owe” *Oxford Studies in Normative Ethics* Volume 3. Oxford: Oxford University Press, 2011. 235-259. Print. Pg. 244

then it also gives extra powers and therefore extra responsibilities. These obligations, furthermore, center around what a group *can* do, not what it was created to do.

In order to understand this last point, consider the example of the extra obligations placed upon a powerful country. Countries have resources and powers that far outstrip the combination of their citizens even though their primary source of capital comes from those citizens in the form of tax revenue. They have embassies and armies that can perform actions that private citizens, even while working together, never could. There is a strong argument to be made that this imparts moral obligations on countries to do more than the inward-looking tasks that they were created for, like maintaining lawfulness and providing social safety nets.

Consider, for example, severe cases of human rights abuses and racial killings. The Rwandan Genocide, for example, cost hundreds of thousands of lives, and American leaders at the time estimate now that they could have saved at least 300,000 through a military intervention.⁴⁴ Some countries, the United States for example, certainly had the military capacity to intervene in that conflict and save many lives. Many people, including former President Bill Clinton,⁴⁵ who was in his first term at the time, believe that the US government should have intervened. One might say that, because of their ability to do an immense amount of good for a comparatively small cost, they had a moral responsibility to do just that.

But a government, at least in a system defined by a reasonable degree of

⁴⁴ Moodley, Kiran. "Bill Clinton: we could have saved 300,000 lives in Rwanda." CNBC. N.p., n.d. Web. 22 Apr. 2014. <<http://www.cnbc.com/id/100546207>>.

⁴⁵ Hughes, Dana. "Rwanda, and What Bill Clinton Left Out When He Criticized Obama on Syria." ABC News. ABC News Network, 13 June 2013. Web. 22 Apr. 2014.

democracy, is in many ways like a corporation whose shareholders are its taxpayers. Governments use the resources provided by these taxpayers to pursue their projects, and, at least in democratic societies, many government officials can be removed from their position if voters choose not to support them.

What's more, in democratic states, the government is not an independent entity. Its voters elect people into office and, in most systems, can remove them from office by voting for someone else. Voters in such a country have partial legitimate control over their government and its actions. The second a person gains the ability to vote, they have new powers, based on their association with the powerful government, and therefore gain a moral responsibility to use those resources in moral ways.

Consider a historically inaccurate scenario in which the Rwandan genocide begins in the October of an election year in the United States, and one presidential candidate supports intervention while the other does not. If, for the purposes of this example, we say that the government does indeed have a responsibility to intervene, I argue that this translates into an obligation for voters to support the pro-intervention candidate. The voters have partial control over a resource that is more powerful than them individually (or even collectively) and must use their influence to help bring about the morally right state of affairs. It is also important to note the way that democratic governmental power originates in the mandate given to a state by the people, similar to the way that corporate power stems from the investments and ownership of shareholders.

While a citizen may have the moral responsibility to vote for a pro-intervention candidate, that does not mean that they must intervene directly. By that I mean to say that a responsibility to vote for intervention is not the same a responsibility to fly to Rwanda

and fight against the agents of genocide. Likewise, it is not the same as grabbing one or two thousand of close friends and forming an anti-genocidal militia. Not only does this seem infeasible and ineffective, but it doesn't follow from the argument that citizens have a responsibility to use their voting power in moral ways

The same applies to corporations. There are things that corporations can do that their shareholders cannot do. Because of that, the individuals who have legitimate control over the corporations have additional powers granted to them and this creates moral obligations to try to operate the corporate entity in a moral way.

Those obligations cannot be simply farmed out to the individuals in the way that Friedman suggests. Saying that duties to the global poor rest only on the shoulders of individuals would deprive the global poor of many of the resources they need most dearly. Both individuals and corporations can have moral obligations to help the global poor, but those obligations might be different in character. The responsibilities of those in charge of organizations like corporations or governments stem from the additional powers that are granted to them by their partial control.

2.9 Filling in the Model

Now that it has been established that corporations can have moral responsibilities (at least through their CMs) and that there is a way for the Distributional Hybrid to be applied to them, it is possible to fill in the model using the case of the Replicator. Party A, in this case, is Technodyne viewed through the lens of whatever CM is being considered, and the sacrifice of Party A is the combined losses of the stakeholders in

Technodyne if it were to give away the Replicator. Party B is the global poor, and their gains include all of the benefits that they would experience if given access to Replicators.

But what about the Coefficient of Self? To be sure, the individual CM would be allowed to weigh their own interests over those of others in the same way that the Inventor was allowed. On top of that, it seems that a corporation ought to be allowed to consider the interests of their stakeholders over those of unrelated persons. Under such circumstances, it seems possible that the Coefficient of Self could be higher than for the Inventor.

But, then again, it seems unlikely that any of those individuals would have as much at stake as the Inventor did in his decision. Even for the CMs at Technodyne, the sacrifice they would be making by supporting the donation of the Replicator would almost certainly not equal the billions that the Inventor needed to give up in order to donate his Replicator to the global poor.

I cannot offer a clear prediction of how the Distributive Hybrid would rule on the moral responsibility of Technodyne because it depends on too many technicalities that stretch the bounds of this sort of hypothetical and are really only determinable in real-world situations. What sort of products does Technodyne produce? How important is its continued growth to the welfare of its customers? How many customers are there? How many employees? How large is the board, and how important is this new technology to the survival of the firm? Even matters like how much each individual decision-maker might need a raise could influence the results because those owners/managers are the conduits through which the Distributive Hybrid operates on Technodyne.

Instead, I argue only that there are believable circumstances in which the vast need of the global poor would override the sacrifices Technodyne would need to make in order to donate the Replicator to them. This follows from the observation that, a) CMs of corporations and similar organizations of have moral responsibilities to use their resources in certain ways; b) the Distributive Hybrid depicts real moral responsibilities; and c) the Distributive Hybrid can be applied to corporations after properly noting the differences between individuals and groups. If Technodyne can be inserted into the Distributive Hybrid, its nature as a scale indicates that eventually a large enough weight on the global poor's side of the equation will outweigh the sacrifice to be made by Technodyne, and morality will require that they hand over the Replicator to the global poor.

3. Coercing Moral Action and Government Involvement

So far I have tried to show that, despite the right of the Inventor and Technodyne to do with their legitimate possessions whatever (legal) thing they choose, they may have a moral obligation to use the Replicator to alleviate the suffering of the global poor.

But, the reader will note, never has it been said that the Inventor or Technodyne have any sort of legal obligation to act in that way. The Inventor and Technodyne are protected from people copying the Replicator or from the government seizing the machine for themselves by patent law. This system effectively allows the respective parties to wield significant power while in control of the Replicator. The Inventor is only able to sell his invention for a high price because he has a legal monopoly over its construction and use. Meanwhile, the Replicator has the most value to Technodyne when they are the only ones allowed to use it. If their competitors had equal access, there would no longer be a competitive advantage to using Replicator technology and the machine would be less valuable.

Both parties are incentivized not to hand the Replicator over to the global poor by the legal monopoly that the patent system gives them. So, if the patent system incentivizes immoral action, how can such a system be justified? And, even if the system itself could be justified, might the government have a moral responsibility to temporarily ignore it and seize the rights to the Replicator in order to ensure that it be shared in a moral way? In this chapter, I'll consider the implications of these observations and will ask whether or not governments have responsibilities to pressure other groups to behave morally with assets of potential humanitarian good.

3.1 Justifying Intellectual Property Protection

It has been noted that the protection of intellectual property can potentially permit people to perform immoral actions, but it's hard to imagine a world without them. Intellectual property laws, which include patent laws as well as other sorts of legal restrictions on the freedom of use such as copyrights and trade-secret law,⁴⁶ are justified in a number of ways. William Fisher explains in his "Theories of Intellectual Property," that "Most of the recent theoretical writing consists of struggles among and within four approaches."⁴⁷

The first of these is based on a "utilitarian guideline." Supporters of this line of thought, Fisher says, argue that intellectual property laws encourage innovation and creative work by ensuring that creators are properly rewarded with the help of a temporary monopoly. If, this line of thinking says, the inventor of a machine is given exclusive rights to sell that machine for a while, they will earn more money than they would have in a perfectly competitive market place. The promise of this monopoly encourages other inventors and therefore produces a more creative and innovative market.⁴⁸

The second approach that Fisher identifies "springs from the propositions that a person who labors upon resources that are either unowned or 'held in common' has natural property rights to the fruits of his or her efforts – and that the state has a duty to

⁴⁶ Fisher, William. "Harvard Law School Faculty Publications." Theories of Intellectual Property.. <<http://www.law.harvard.edu/faculty/ffisher/iptheory.html>>

⁴⁷ Fisher

⁴⁸ Fisher

respect and enforce that natural right.”⁴⁹ In other words, simply taking the fruit of one person’s labor violates their right to property.

A third approach identified by Fisher, which he attributes to the followers of Kant and Hegel, argues that “private property rights are crucial to the satisfaction of some fundamental human needs...” Without the ability to control their intellectual creations, this line of thought argues, people are denied the “social and economic conditions conducive to creative intellectual activity,” and therefore have less access to “human flourishing.”⁵⁰

Finally, Fisher points to a fourth school of thought which praises the capacity of intellectual property law to promote positive social engineering. This idea, he says, “is rooted in the proposition that property rights in general – and intellectual-property rights in particular – can and should be shaped so as to help foster the achievement of a just and attractive culture.”⁵¹ In other words, intellectual property law not only creates strong market conditions, but also contributes to the creation of the type of society that human beings ought to rightly pursue.

Fisher points out that existing legal codes across multiple countries are littered with ideas from all four of these theories, not just one. As a result, he suggests that comprehensive considerations of intellectual property law issues ought to draw on all four theories and consider the ways in which they weigh against one another.⁵² Taken in conjunction, these four theories offer a number of compelling practical and moral reasons in support of intellectual property laws.

⁴⁹ Fisher

⁵⁰ Fisher

⁵¹ Fisher

⁵² Fisher

In addition, the note that a type of laws permits people to perform immoral acts does not in itself seem to present a significant problem for justifying those laws. Consider, for example, the broad protection of freedom of expression in the United States. Some groups take advantage of such laws to protect their ability to spread hate speech or to preach violence, as I discussed earlier while examining the relationship of property rights to moral obligations. The laws themselves allow that behavior, but that doesn't seem to make the laws immoral. Rather, the individuals themselves bear moral responsibility for their actions.

To point to another example, I argued earlier in this paper that there is a general moral responsibility for many people to donate goods or resources to those in need based in Scheffler's Distributive Hybrid. But even if it is accepted that some level of charity is morally required, it does not follow that there must be a law that forces people to act in that way, but simply that people ought to act charitably without the coercion of the law.

While I accept the value of general intellectual property laws, I am not endorsing (or directly criticizing) the current international intellectual property regime. A number of writers, like Thomas Pogge and Aidan Hollis,⁵³ have pointed to the ways in which overzealous protection of intellectual property rights as a cause of significant deprivation for the global poor. To correct this problem, Pogge in particular has advocated changing international intellectual property laws to better incentivize actions that will help the global poor and allow businesses to be more profitable while doing it. Perhaps, one could argue, that world governments ought to do set up systems that incentivize international

⁵³ Hollis, Aidan, and Thomas Pogge. The health impact fund: making new medicines accessible for all : a report of Incentives for Global Health. New Haven, CT: Incentives for Global Health, 2008. Web. 5 Apr. 2014. < http://healthimpactfund.org/wp-content/uploads/2012/11/hif_book.pdf>

charity, as Pogge suggests. In this paper, though, I am exploring the requirements of morality to act on groups within their control, and questioning whether governments might be obligated to force companies within their borders to act morally. Therefore, the practical questions of improving intellectual property laws are not going to be here considered, although they may be worth consideration by other writers.

3.2 Responsibilities of Governments

So far, I have talked of the moral obligations of governments, and here I'll describe how they work or where they come from.

The international community, a community of states, demands certain commitments to human and economic rights. Consider, for example, the United Nations (UN) Universal Declaration of Human Rights (UDHR), signed in 1948.⁵⁴ The document, signed by dozens of the original members of the UN, describes a long list of rights that should be afforded to all persons.

Many of those rights are not enjoyed by millions of people around the world today, but could be provided for through the application of the Replicator. Consider, for example, Article 25, which 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..."⁵⁵ With its ability to produce unlimited food and

⁵⁴ "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." UN News Center. UN, n.d. Web. 7 Apr. 2014. <<http://www.un.org/en/documents/udhr/history>>

⁵⁵ "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." UN News Center. UN, n.d. Web. 5 Apr. 2014. <<http://www.un.org/en/documents/udhr/index>>

clothing, the Replicator could certainly help the international community to better meet the obligations outlined in Article 25 of the UDHR.

So, if it were said that the UDHR is an authoritative document that all private persons must seek to enact, then it would seem that such a law would create an obligation for the Inventor or for Technodyne to donate the Replicator to the global poor. Such a view would also place heavy demands on many other people until the rights were satisfied for all people. But that's not the way that international law works. The UN explains this themselves in their description of the intended application of the Universal Declaration of Human Rights:

“International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.”⁵⁶

In other words, international agreements about the rights of people place obligations most directly on states. While an individual within a country might have a moral responsibility not to violate those rights, the current understanding of international law places obligations on countries to protect those rights within their own borders and

⁵⁶ "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." UN News Center. UN, n.d. Web. 8 Apr. 2014. <http://www.un.org/en/documents/udhr/hr_law.sht>

internationally, and does not hold individuals responsible for ensuring their protection. So, in practice, that might mean that each country that signed the Universal Declaration of Human Rights has a responsibility to make slavery illegal in their country and to prosecute individuals that violate that law. It should also be that the UDHR includes several positive obligations as well as negative ones, meaning that it calls upon states to act proactively to protect those rights beyond their own borders.

So, it seems, based on existing international agreements, governments like that of the United States have responsibilities to help enact the Universal Declaration of Human rights across the globe. Some might say that they might have a moral obligation to do whatever is within their power, including seizing the property of their own citizens. But, as I'll argue next, such proclamations are problematic.

3.3 The Problem with Government-Mandated Morality

Intellectual property laws in general, it has been said, are both necessary and morally permissible. But, that does not mean that governments enforce them in every instance. For example, the United States Government generally protects the private property, but reserves the right to seize private property through eminent domain law if it is deemed that it will serve the public interest to put that property to some use for the public benefit, like the construction of a freeway.

There is a similar concept for patents known as breaking a patent or sometimes compulsory licensing.⁵⁷ Daniel Cahoy points to one example of patent breaking, albeit accidental, by the United States Federal Government during the 1990s. He explains in his

⁵⁷ Cahoy, Daniel. "Breaking Patents" Michigan Journal of International Law 32 (2011): 461-509. Michigan Journal of International law.

essay “Breaking Patents,” that Lockheed Martin accidentally used a process patented by Boeing in the construction of materials for NASA. Once this was discovered, Boeing won a settlement from the government, but “Because U.S. law does not allow patent injunctions against the government, Boeing must settle for damages, which will likely be a reasonable royalty.”⁵⁸ In other words, at least in the United States, the government can use patented processes and designs against the will of the patent-holder and, while they may have to pay something for having breached the patent, there is no legal function for stopping the government from using the patented good or process.

Imagine, for example, that the United States issues a compulsory license for the Replicator with intentions of using the technology in its own humanitarian efforts, and then turned the resulting machines or tools over to the general humanitarian community. Very likely, the US government would have to pay some hefty fines or royalties to the patent-holder, but such an action would be well within its powers.

Viewed one way, it seems like the government might have a moral responsibility to undertake this action. In particular, adherents to Peter Singer’s principle which says that if one can prevent something bad from happening, one ought to do it. Distributing the Replicator to the global poor would certainly prevent a lot of bad things from happening after all.

But it has not been shown that such an action is morally required for several reasons. To begin, adopting the principle that a government should do all things that can prevent bad things from happening produces some questionable implications. The government could prevent a lot of harm, for example, by seizing billions of dollars from

⁵⁸ Cahoy 2011, pg. 462

the savings of American citizens and sending that money to support humanitarian efforts. Alternatively, they could seize control of all the country's toy companies and compel them to manufacture mosquito nets instead. A mosquito net is more likely to save a life than a toy, but the discomfort readers might feel with this situation is a strong indicator that it doesn't seem clear that the government ought to do anything that prevents bad things from happening. This discomfort arises, I argue, because of a disconnect between acting morally and coercing moral action. It might be within the government's power to perform that act, but the government does not actually own the resources to be given. This seems analogous to a boss forcing his or her employees to perform a charitable act or face liquidation, or to a man forcing another to donate some money to charity at gunpoint. The net result of the action might be a good one, in that some charitable act has been performed, but that does not automatically mean that the coercing agent performed a moral act or had a moral responsibility to act in that way.

Opponents of corporate social responsibilities might argue that this observation clashes with the arguments made in the previous chapter. They might say that, if it is wrong to compel others to do things with their resources, then it is wrong for a Controlling Member (CM) of a corporation to use the corporation's resources, owned in part by shareholders, for charitable purposes. This is a faulty comparison because, in that case, I was talking about a moral obligation that flowed down from the shareholders themselves. The shareholder, as an owner of the corporation, has a responsibility to make use of the resources they own in moral ways. Since demanding a hired manager not to donate something, when morality requires its donation, is immoral, the owner cannot morally make that demand.

The owner not only has control over the resource, but has legitimate control based on ownership. One might say that I “control” a bank full of people by holding it up with a team of armed robbers, but that in no way means I own the bank or have a legitimate right to say how the bank’s resources ought to be used. In a similar way, a government might be able to control corporations by virtue of their strong coercive powers, but that control is not of a similar type to the way a CM controls a corporation. Since the tie is not the same, the corporation is not a resource of a government in the same way that a corporation is a resource of one of its top executives.

So, while a government might have large obligations to aid the global poor, based at least in past international agreements and likely in its great capacity to help as well, that obligation only goes so far as to say that a government must use the resources it legitimately controls to accomplish those goals, not all of the resources it could feasibly force into the service of the global poor.

So, while I argue that possessions like the Replicator, which have powerful capacities to aid the global poor, do impart some moral responsibilities upon the groups that have legitimate control based on ownership, that same capacity for good does not empower non-owners, like governments, to compel moral action by the owners.

4. The Distributive Hybrid in the Real World

So far in this paper, I have worked to establish a model for showing when the needs of one party can create moral obligations for another party to act in a certain way. Based on my interpretation of Samuel Scheffler's Distributive Hybrid, I have argued that there can exist circumstances in which one party can be morally obligated to hand over some resource to another party that will benefit significantly from having access to it. I then applied this model to individuals in chapter one and corporate organizations in chapter two to show how both can face these obligations. However, I noted in chapter three, a group only faces this responsibility if they have legitimate ownership over the resource in question, or if they are agents of individuals who do.

The discussion so far has focused on a hypothetical invention (The Replicator) and used it as a framing device. In this chapter, I'll seek to apply the model that I have built to real-world scenarios in order to demonstrate that current groups might not be fulfilling their obligations to the global poor. The pharmaceutical industry is a particularly useful place to consider because of the profound suffering caused by curable diseases on the global scale. As such, I'll consider recently released medicines with the power to cure Hepatitis C .

4.1 A Cure for Hepatitis C

Hepatitis C, a blood-borne virus that can cause liver cirrhosis, liver cancer, and liver failure.⁵⁹ Around the world, around 185 million people suffer from the disease,⁶⁰ including millions in both developed and less-developed countries. For example, more than two million people in both Uganda and Cameroon are infected with the disease, around three million in Nigeria, four million the Democratic Republic of Congo, nine million in Pakistan, and eighteen million people in India.⁶¹ Worldwide, an estimated 500,000 people die from Hepatitis C–related causes every year.⁶²

But new drugs are offering the hope for a cure. Specifically, two drugs, called Sovaldi and Olysio (also known as sofosbuvir and simeprevir, respectively) have been shown to cure about ninety percent of Hepatitis C patients over the course of 12-week daily regimens.⁶³ Sovaldi is owned and made by Gilead Sciences Inc. while Olysio is owned and made Janssen Therapeutics. But, for now, the cure comes at a high price. Twelve weeks of Sovaldi will cost patients an estimated \$84,000, while a full course of Olysio is projected to cost \$66,000.⁶⁴ Both drugs are also protected by patents that will hold out until at least 2025,⁶⁵ and perhaps much longer if patent extensions are pursued.⁶⁶

⁵⁹ "What Can Happen – Complications of Chronic Hepatitis C." American Liver Foundation. N.p., n.d. Web. 15 Apr. 2014. <<http://hepc.liverfoundation.org/what-is-hepatitis-c/what-can-happen-complications-of-hep-c/>>.

⁶⁰ Hill, A., S. Khoo, J. Fortunak, B. Simmons, and N. Ford. "Minimum Costs for Producing Hepatitis C Direct-Acting Antivirals for Use in Large-Scale Treatment Access Programs in Developing Countries." *Clinical Infectious Diseases* 58.7 (2014): 928-936. Oxford Journals. Web. 15 Apr. 2014.

⁶¹ Hill 2014

⁶² Hill 2014

⁶³ Mintz, Zoe. "New Drugs May Eradicate Hepatitis C, But Are They Worth It?." *International Business Times*. N.p., 11 Apr. 2014. Web. 15 Apr. 2014. <<http://www.ibtimes.com/cost-cure-new-drugs-may-eradicate-hepatitis-c-are-they-worth-it-1570671>>.

⁶⁴ Mintz 2014

⁶⁵ Hill 2014

⁶⁶ Hill 2014

Needless to say, drug costs in the tens of thousands of dollars are very far out of the reach of the global poor, many of whom suffer and die from Hepatitis C. Those costs could be driven far down if either Gilead Sciences or Janssen Therapeutics did not have a patent on those medicines. A team from the Infectious Diseases Society of America points out that generic competition, which also allowed for increased purchase volumes, and better manufacturing techniques, caused a 99% decrease in the price of HIV retrovirals by the late 1990s.⁶⁷ A full regimen of Olysio, were it to experience such a significant cost reduction, would cost less than \$700. That's not cheap, but it is certainly more affordable than the drug is today.

4.2 The Gains and the Losses

Consider, now, the good that could be done if either Gilead or Janssen publically released the design or formulation process for their Hepatitis C cures. In the ideal circumstance, in which generic companies step in to produce cheaper versions and in which the governments of less developed countries or non-governmental organizations help to sponsor treatments, similar to Brazil's sponsored HIV antiretroviral program,⁶⁸ tens of millions, even hundreds of millions of people currently suffering from Hepatitis C could be cured. That would not only alleviate current suffering, but also prevent other people from ever getting the disease at all. On top of that, tens of thousands, or even hundreds of thousands, of lives could be saved every year.

⁶⁷Hill 2014

⁶⁸ "Brazil pioneers treatment for everyone."UNAIDS. N.p., 18 Oct. 2013. Web. 28 Apr. 2014. <<http://www.unaids.org/en/resources/presscentre/featurestories/2013/october/20131018brazil/>>

Meanwhile, the losses sustained by the pharmaceutical companies would not be terribly harmful. Gilead sciences, for example, earned \$11 billion in revenue in 2013, and more than \$3 billion of that was net income.⁶⁹ They control and sell nineteen different products, including Tamiflu and a number of HIV antiretrovirals. While research and development costs are very expensive for a company like Gilead, it should be noted that they reached only \$2.12 billion in 2013, a slight decrease from \$2.59 billion in 2012, meaning that Gilead's profits could eat all of their R&D budget for both years,⁷⁰ and then some. As of the end of 2013, Gilead's equity was split into a little over 1.5 million shares, although most shareholders probably own at least several, and some probably own thousands.⁷¹

Janssen therapeutics, on the other hand, is a subsidiary company of Janssen Pharmaceutical, which is in turn a subsidiary of Johnson & Johnson.⁷² In 2013, Johnson & Johnson earned nearly \$32 billion in revenues, and \$12 billion of that was net earnings, or profit.⁷³

It's unclear how much it cost to produce Sovaldi or Olysio specifically, but a study conducted at the Tufts Center for the Study of Drug Development called "The Price of Innovation New Estimates of Drug Development Costs" projected costs of a little

⁶⁹ Gilead Sciences, Inc., 31 Dec., 2014 Form 10-K (Filed 25 Feb., 2014), via Gilead Investor Relations, accessed 15 Apr. 2014.

⁷⁰ Gilead Sciences 2014

⁷¹ Gilead Sciences 2014

⁷² "Our Companies." Janssen. N.p., n.d. Web. 28 Apr. 2014. <<http://www.janssen.com/our-companies.html>>.

⁷³ Johnson and Johnson, 29 Dec., 2013 Form 10-K (Filed 21 Feb, 2014) via Businessweek, accessed 15 Apr. 2014

under two billion dollars to bring a new drug to market around this time.⁷⁴ But even a generous adoption of a \$2 billion dollar figure means that the development costs for either drug could be absorbed easily by either company. Plus, development takes place over a decade or more, and these costs were spread out over time.

After considering these factors, it is possible to apply Scheffler's Distributional Hybrid to these new Hepatitis C drugs. While the corporations stand to see their profits diminished by a few months' worth, which likely translates to a few dollars per share, giving up the patents on Sovaldi and Olysio could save a hundred thousand lives and improve the quality of life for many more. Meanwhile, the material losses of the Controlling Members (CMs) at either Johnson & Johnson or Gilead Sciences would be insignificant: the loss of sales on one product of more than two dozen at Gilead, and the loss of one product of a subsidiary of a subsidiary for Johnson & Johnson. Since the losses to both the managers and shareholders of both companies is hardly comparable to the saving of thousands of lives, it seems likely that morality could require them to give up their patents in order to help the Global Poor.

But, some might point out, the primary consequences for either company undertaking such an action would not be in the simple form of dollars and cents, but rather would take the form of a strong reaction from shareholders. If they got the idea that the management of the companies were about to give away all their holdings, they would likely start dumping stock or, worse for the managers, fire much of the executive staff.

⁷⁴DiMasi, Joseph, Ronald Hansen, and Henry Grabowski. "The Price Of Innovation: New Estimates Of Drug Development Costs." *Journal of Health Economics* 22.2 (2003): 151-185. Columbia School of Law. Web. 15 Apr. 2014. Pg. 181

So, one might argue, a proper calculation of the sacrifices to be made by CMs would take into account the likelihood that they might lose their jobs.

But that fear stems from the existence of an immoral system. Shareholders typically expect that the executives at their companies will not start donating valuable pharmaceutical processes and product to help the global poor. Adding the risk to the livelihoods of corporate executives might skew their obligations in the same way that it seems more permissible for people to perform what would normally be seen as an immoral action if they were forced to do so at gunpoint.

But, again, the responsibility to do what morality requires stems from the shareholders themselves, and the shareholder's ignorance of their responsibilities does not remove the moral obligation that trickles down to their employees. When executives feel the need to act in what I am arguing is an immoral way in order to avoid being fired by their shareholders, they might be morally permitted not to pursue the release of the drugs, but that does not mean that no moral wrong has taken place. Instead, the wrongdoer is the person or group holding the gun. There is a strong case that Johnson & Johnson and Gilead Sciences have a moral obligation to hand the design of their Hepatitis C cure, and if the executives that run the company feel strong pressure not to do that from the shareholders, then those shareholders are doing something immoral by creating that pressure.

4.3 Fixing an Immoral System

It might help to pursue legislation that helps to change the existence of such an immoral system. In his paper "Social Norms and Social Rules," Cass Sunstein points to

the problems created by immoral social norms. He points to the large role that social norms, or “social attitudes of approval and disapproval,”⁷⁵ have on the way that people act. For example, it is difficult to demand that corporate executives pursue certain kinds of charity because such actions violate standard business practices and would likely result in severe consequences, even if they are morally required. However, there is a collective action problem: unless all businesses accept the view that they have some obligations to the global poor, and that they ought to act on those obligations, the businesses who choose not to use resources for this purpose have a competitive advantage. A social norm in favor of corporate charity can solve this problem because customers will look askance at those corporations that do not seem to be fulfilling those obligations, similar to the way that current consumers often choose not to shop at stores that sell products manufactured using slave labor. So there seems to be compelling reasons to try to spread a social norm in favor of corporate responsibility in regards to aid to the global poor, but this is easier said than done.

Sunstein points to a number of tools that might be used to achieve this goal, and emphasizes the role that governments can play. Specifically, he explains that governments can educate, persuade, use taxes and subsidies, place manner restrictions, or coerce their citizens into changing behavior that is brought about by perverse social norms.⁷⁶ He points to the example of educational programs meant to demonstrate the harms of smoking to the American public as an example of a governmental attempt at a changing of social norms that has been beneficial to society. Perhaps, for example, the

⁷⁵ Sunstein, Cass. "Social Norms and Social Rules." John M. Olin Law & Economics Working Papers 36 (1995): n. pag University of Chicago School of Law. Web. 21 Apr. 2014. Pg. 11

⁷⁶ Sunstein 1995

government could apply regulations that required corporations with patents that could easily be used for humanitarian purposes to license those patents to humanitarian groups. While the law would start as a coercive measure, it may someday create an expectation among consumers that corporations act in that way, similar to the way that child labor laws and work safety regulations created expectations of the way that companies treat their employees.

4.4 Practical Problems

Others might argue that such a moral requirement will discourage companies from pursuing innovation. Why create new products, they might say, if it is possible that one might need to simply give them away after building them. I would point out, first, that the potential inconvenience of moral obligations does not mean that they do not exist. If you walk down the street in New York City in December, you are likely to run into men and women dressed like Santa Claus gathering donations for the Salvation Army, and you might say that some people in some cases are morally obligated to donate the change in their pocket. Pointing this out as an obligation might encourage some people to take the subway rather than walk in order to avoid the obligation, but that is not considered evidence that the moral obligation does not exist.

But, if the objector wants to talk about practical problems, it is worth noting that the scenario so far discussed does not accurately reflect reality anyway. I have talked about the Hepatitis C cure as if the drug companies would be losing all of their control of these drugs and their investment, but that is not actually necessary. It was said that the drug companies have a responsibility to pass along the information about how to make

and use the drug to developing countries whose populace cannot afford it, and that they ought not let their patent of the product stand in the way of the global poor having access to it. But such a requirement says nothing of a need not to sell the drug at full price to those who can afford it.

A patent system doesn't simply ban all groups who don't hold the patent from using a process or product. Rather, patents let the group holding them *control* who is using it and how. That means that they could license the product to generic drug companies in developing countries for the expressed purposes of supplying it to poor communities with high rates of hepatitis C. Meanwhile, they could maintain their temporary monopoly in developed countries, charging full price to those who can afford it. Because the individuals being benefitted (mostly the desperately poor in developing countries) would almost surely not have been able to afford the drug in the first place, the drug companies would lose few sales, and might even benefit from a significant public relations bump. There might also be a strong obligation for drug companies to make sure that the poor in developed countries ought to have access to cheaper medicines, but I leave that consideration for another time.

To understand the distinction I'm highlighting, consider the case of Monsanto and golden rice. At the turn of the millennium, a number of groups of scientists were working to engineer vitamin A-enriched rice, called golden rice, to help poor communities with no access to vitamin A-rich foods. Monsanto, an agricultural and biotech giant, owned a number of patented processes needed to make create the new strain, and offered to

provide free licenses to researchers working on golden rice.⁷⁷ They didn't offer free access to their patented materials to the entire world, or even to all researchers, but only researchers working in this specific field. In this way, Monsanto was able to facilitate the research of a product with the potential to do a lot of good for the global poor, even if it was only as a part of a campaign for better public relations, without losing control of their intellectual property in any significant way.

However, I have argued that these sorts of contributions are moral obligations, not actions of great beneficence. Monsanto probably would have been committing a moral wrong if they withheld the rights to use those patented process. In allowing researchers access to them, they only did what they should have done.

4.5 Benefits to the Giver

Not only might charitable acts have a relatively minor impact on corporations' bottom lines, but they can actually lead to some long-term benefits. Consider, for example, that employees place a lot of weight on the morality of a company or a line of work, and are more willing to work for companies that they view as meeting their moral obligations.

Economist Robert Frank examined this phenomenon in his essay "What Price the Moral High Ground?" In that summary of research conducted by others, Frank pointed to strong evidence that a company with a reputation of ethical behavior sees benefits in the form of easier talent acquisition. He uses a study showing that, when graduating college

⁷⁷ Pennisi, Elizabeth, and Dennis Normile. "Monsanto Waives Fees on Golden Rice." American Association for the Advancement of Science. N.p., 4 Aug. 2000. Web. 28 Apr. 2014. <<http://news.sciencemag.org/2000/08/monsanto-waives-fees-golden-rice>>.

students were asked to rank ten things they were looking for in a job, the fourth highest rated category was “give me an opportunity to be helpful to others.”⁷⁸ That category beat out the desire to “earn a great deal of money,” to acquire a powerful leadership position, and to acquire high social status.⁷⁹ Frank points also to the great difference in pay between first-year public interest lawyers and corporate lawyers. While high-status public interest firms, like the ACLU, and prestigious private corporate law firms both attract lawyers of equal caliber, the public interest firms are able to attract their applicants while offering salaries tens of thousands of dollars less than those same lawyers could earn at a corporate firm.⁸⁰ Examining this evidence, as well as other studies conducted by Frank himself, the economist argues “the evidence paints a picture that is strongly consistent with the claim that unselfish motives figure prominently in economic behavior.”⁸¹ In other words, when employees believe that they are serving some ethical purpose in their careers, talented individuals will happily work for lower salaries.

Consider also the findings of the 2009 National Business Ethics Survey, a combined project of the Ethics Resource Center and the Hay Group commissioned by Lockheed Martin, which found that “strong scores on the ethical culture indices are also linked to stronger employee engagement scores. The actions of management are especially powerful.”⁸² Perception by employees that they are working for an ethical company not only saves on labor costs, but also produces a more engaged, productive workplace.

⁷⁸ Frank, Robert H. "What Price the Moral High Ground?." *Southern Economic Journal* 63.1 (1996): 1-17. Virginia Commonwealth University. Web. 21 Apr. 2014. pg. 2

⁷⁹ Frank 1996, pg. 2

⁸⁰ Frank 1996, pg. 11

⁸¹ Frank 1996, pg. 16

⁸² "Supplemental Research Brief." 2009 National Business Ethics Survey. Ethics Resource Center, n.d. Web. 21 Apr. 2014. <<http://ethics.org/files/u5/NBESResearchBrief2.pdf>>.

I have argued in this chapter that there exist real world scenarios, like the case of new Hepatitis C drugs, which, when applied to the Distributive Hybrid, render the conclusion that those companies ought to be donating some of the resources they control to the betterment of the global poor. But, if the reader agreed with me there, or at least nearly agreed with me, surely they will also agree that the company has a moral obligation to perform lesser tasks, like providing special licenses to researchers who can use their patents for humanitarian purposes. I argued, furthermore, that such acts are often minimally damaging to these companies and may even help them in certain ways, such as by attracting talented labor for cheaper wages. In such cases, I argue that there is a clear moral obligation of corporations to provide access to their resources of high humanitarian potential to the global poor.

Conclusion

In this paper, I've sought to explore the way that ability to aid creates moral obligations. I started by describing a theoretical invention, the Replicator, which I used to represent a near-perfect humanitarian tool. I showed that the great potential of such a machine to provide benefits to the world's most beleaguered peoples would create significant moral obligations to aid on the party that controls it. If I have shown that such obligations can exist in the extreme case, then I have also shown that there is a very real threshold over which the controllers of tools with humanitarian applications will face moral obligations to aid. I also explained why appealing to concepts like property rights does not disprove those moral obligations.

In the first two chapters of this paper, I demonstrated the way that capacity to provide benefit can create obligations to aid for both individuals and corporate entities because of the principles outlined in Samuel Scheffler's Distributive Hybrid. In the third chapter, I considered the limits of these responsibilities, and argued that moral obligations stem from the capabilities given by legitimately held resources, and not anything one could possibly control. More specifically, I argued that governments do not have a moral responsibility to compel other parties to aid the global poor, and often have moral reasons specifically not to coerce moral action. They might, however, have moral responsibilities to use the resources that they do control (like tax revenues) to aid the global poor in some ways, and may have good reasons to try to incentivize moral action through non-coercive means.

After building the framework for my model of moral obligations based on capacity, I tried to show a real-world application of the model. In chapter four, I referred

to a new generation of Hepatitis C drugs that cure the burdensome disease. Citing the drugs' capacity to aid millions of people and prevent thousands of deaths, as well as the capability of their corporate owners to sustain the losses they would experience without the drugs, I argue that the two companies (Johnson & Johnson and Gilead Sciences) have a moral obligation to provide access to those drugs to the global poor. Following this, I pointed out a number of ways in which that act would be minimally damaging to a real-world company, and might even help them in some ways.

If a person or group can provide significant aid to the global poor without doing significant harm to any other parties, there exist strong obligations to aid. This obligation applies to corporations in much the same way that it applies to individuals. If society today acknowledged these obligations, corporate assets would be viewed in a very different way and the global poor would have many more allies in the campaign to improve the average quality of human life.

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