

Sustainability, Public Health, and the Corporate Duty to Assist

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Abstract

Several European and North American states encourage or even require, via good Samaritan and duty to rescue laws, that persons assist others in distress. This paper offers a utilitarian and contractualist defense of this view as applied to corporations. It is argued that just as we should sometimes frown on bad Samaritans who fail to aid persons in distress, we should also frown on bad corporate Samaritans who neglect to use their considerable multinational power to undertake disaster relief or to confront widespread social ills such as those currently befalling public health (obesity) and the environment (climate change). The paper concludes by arguing that traditional stakeholder approaches have not articulated this duty of assistance obligation, though a new utilitarian stakeholder theory (Jones & Felps, 2013) may be coextensive.

1. Defining the Duty to Rescue: Utilitarian and Contractualist Foundations

Several business ethicists have recently echoed and deepened the claim, popularized by celebrity philanthropist Bono Vox: “Because we can, we must” (2004). And polling increasingly indicates that consumers, shareholders, and the general public similarly expect corporations to act as good citizens (Howard, 2009; Kropp; 2010; Vogel, 2005). Exactly what it means to be a good corporate citizen remains a matter of debate. Still, there is growing consensus that corporations hold some degree of positive moral obligation to society. Specifically, some ethicists and political philosophers have begun to argue that corporations, such as pharmaceutical firms with unique competencies for rescuing victims of epidemic catastrophe such as AIDS must intervene to do so (Windsor, 2009; Dunfee, 2006; Hsieh, 2005, 2009). And many corporations have in fact done this at various times, for example Merck’s free distribution of river blindness medication in 1987, the petroleum industry’s recent and continuing efforts to eradicate Malaria, and FedEx, Office Depot, and Wal-Mart’s disaster relief initiatives in the wake of Hurricane Katrina in 2004, to name a few. This paper seeks to develop and extend such research beyond the model of near-term disaster relief expenditure to argue that corporations may have obligations to transform some of the products and services they provide in order to confront and inhibit chronic social ills over the long term.

Some theorists have argued that transnational corporations (TNCs) are in fact “private political authorities” by virtue of their widespread “perceived legitimacy” in developing countries, which thereby places associated positive public responsibilities upon them (Wettstein, 2010; Kobrin, 2009). This approach though fascinating and promising, is primarily taken in the limited context of developing countries with few existing government services. Furthermore, it brushes over the significant difference between so-called “private political authority” and genuine political authority, which is entirely public in nature given that it is authentically empowered by, of, and for a people. Conversely, corporations are fundamentally if not entirely moved by the private profit

motive. As such, they can never be expected to serve the public interest in a purely other-regarding fashion. This trait makes them more like powerful private organizations than public political institutions, especially in the context of developed countries with strong and well-functioning government institutions.

Nevertheless, private organizations though naturally self-interested, can and do regularly find themselves in contexts in which they arguably have a moral duty to come to the assistance of others. And if this normative claim is sound, then extremely powerful private organizations will at times have a greater extent of positive obligation to assist by virtue of their superior capabilities, be they physical, informational, or financial. It should then follow that corporations, especially those enjoying legal rights as artificial persons, also share certain positive rescue obligations given their great social, economic, and political reach.

This, in essence, is the argument I will develop and defend, by appeal to utilitarian and Rawlsian contractualist ethics. While this argument may be strengthened by a corporate ontology of personhood, it does not rely upon it. The corporate duty to assist applies sufficiently well to executive agents charged with managing corporations. Applications to stakeholder theory are addressed in part 3.

This novel approach to corporate social responsibility (CSR) contributes to the existing debate on sustainability by providing a strong legal and normative obligation to engage in sustainable business practices that safeguard environmental and public health. Prominent authors have argued that the larger the corporation, the less it can and should be expected to take strong leadership positions in CSR (Vogel, 2005; Reich, 2008). This is essentially because the demand for CSR remains a niche market and the larger a corporation is, the more competition it must contend with ultimately on a global scale. Vogel argues that large corporations are nevertheless all the more vulnerable to potentially embarrassing exposure of irresponsible business practices. Boatright thus recommends that large corporations take up CSR as a kind of risk management (2011). There is a growing sustainability literature arguing that acting beyond

regulatory compliance tends to make good business sense, namely that it lowers costs by increasing efficiency and thereby increases competitiveness (Porter & van de Linde, 1995). Unfortunately, conclusive empirical evidence of this business case is lacking (Salzmann, 2005). But ultimately, the cost-benefit approach can never ground sustainability as a *prima facie* moral duty since it cannot rule out cases in which it may be more advantageous to continue acting unsustainably.

Some prominent authors have attempted to offer arguments defending sustainability as a corporate moral obligation. Sudhir and Sen present a compelling case for including the sustainability obligation as part of a general obligation to effect the human development of future generations (2000). Unfortunately, the normative force of this appeal is blunted by confounding utilitarian questions on how much a current generation should be expected to sacrifice for the wellbeing of those born in the future. The advantage of the approach I defend here is that it need not rely chiefly on calculating the extent that future generations may be considered to be morally considerable at present. It merely requires knowledge of imminent danger within the lifetime of those currently living, namely, to occur to varying degrees from one year to roughly a century in the future. Given such knowledge and the corporate means—at manageable cost—to stem great imminent damage to environmental and public health, there is arguably a corporate duty to assist.

To fully develop this argument, we must begin by examining the nature of the duty of assistance obligation as it already exists at the interpersonal level. What duty, if any, may anyone have to come to the assistance of others? As it turns out, several states in the U.S., Quebec, and Europe have enacted duty to rescue laws requiring innocent bystanders to come to the assistance of persons in danger, with at the very least, a phone call to the police. France has perhaps the most stringent law. Under Article 223-6 of the New French Penal Code:

“Any person who, by his immediate action and without danger to himself or others, could have prevented either a felonious act or a

misdemeanor against the person, willfully fails to do so, shall be punished by jailing for five years and by fine of 75000 Euros. The same penalties apply to anyone who willfully fails to offer assistance to a person in danger which he could himself provide without risk to himself or to third parties, or by initiating rescue operations.”

France has a 5-year penalty with a fine of 75,000 Euros for this offence. The law is a holdover of the German World War II occupation intended to compel bystanders to assist German officers gunned down in public by the French resistance. Since 1941, the law was kept on the books and has been recently used for example to convict persons who flee the scene of an accident, leaving others behind in crucial need of medical assistance (Tomlinson, 2000). Jail sentences of at least 6 months are not uncommon in cases in which a victim died from lack of medical attention (Tomlinson, 2000). The crime is legally referred to as “non-assistance to persons in danger.” The French penal code states that a crime has been committed if any person “voluntarily abstains from assisting another person in peril” (Art. 223-6). One is obliged to intervene if:

1. A person is in danger.
2. One has knowledge of the danger.ⁱ
3. One is able to act either personally or by calling for aid.
4. Assistance presents no danger to oneself or to a third party.

Similarly, Quebec’s 1975 Charter of Rights contains the following provision:

“Every human being whose life is in peril has a right to assistance...Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.”

Such laws reinforce good Samaritan laws encouraging bystanders to intervene, protecting them from potential legal retaliation from the victims themselves in the case of gross negligence or incompetence. In contrast, U.S. Federal law and common law place no such obligation on individuals. The U.S. Supreme Court even ruled in *Warren v. DC* that police have no duty to protect any citizen not in custody, and cannot be sued for their failure to protect (2005).

However, this precedent may be changing. For example landlords may now be liable for failing to protect or rescue a tenant from danger inflicted by a felon. Similarly, a psychiatrist might be subject to liability for failure to protect or rescue a "foreseeable victim" from the potential conduct of the psychiatrist's patient (Groninger, 1999). Such statutes are written specifically to address circumstances in which the potential victim is not aware of the danger. Thus, the claim is that one may have a duty to rescue others from dangers particularly when they may not be aware of them.

These U.S. Federal rules are thus far limited to contractual and licensing obligations. Some authors have tried to use Rawlsian contractualist justice theory to defend a corporate duty to assist on an international scope (Jackson, 1993). As Rawls himself states, such a duty may in fact exist via this approach. Rawls' theory roots duty in a Kantian social contract, in which rights are rationally determined by a system of collective reciprocity maintained by government or some similar form of social contract. Thus on this view, the people of a given state have a much greater duty to assist each other than to assist citizens of a foreign state outside their social contract (Friedland, 2005). Rawls allows for an international duty of positive obligation only on a strictly temporary basis, namely, in rescue cases such as genocide and mass starvation in which the victims lack the ability to help themselves either individually or collectively through their own government (Rawls, 1999).

This seems like a reasonable standard. However, I intend, for the purposes of this paper, to go beyond it. For, as utilitarians often remark, its contractual constraints seem moot in many cases in which a person or organization might be

reasonably expected to come to the assistance of another or others regardless of any social contract between them. For in this current globalized business context, there are precious few even implied social contracts binding the peoples of one nation to another. With great power comes great responsibility, and this is a value perhaps best expressed by the utilitarian approach that focuses on the obligation to produce the greatest good for the greatest number.

This brings us to the problem of how to distinguish one's duty from what goes beyond it. This question is particularly relevant to business ethics since for-profit corporations cannot be expected to devote their efforts entirely to the public interest as that mission is undertaken by the non-profit sector, which as a result pays no income tax, as it is essentially fulfilling a social service. The same is true of ordinary—as opposed to corporate—persons, who must pay income tax to support essential services and infrastructure they depend on as members of society. Following this logic, if one devotes oneself to the public interest, one may then have the same moral claim as a non-profit company against paying any income tax at all. Following this reasoning, members of the U.S. armed forces are already in this category while serving in combat zones.

Utilitarian moral theory, while tending to avoid talk of contractualist moral constraints (as those might be outweighed at times by some greater good), still distinguishes between the moral minimum and the moral maximum, that is, between duty and what goes beyond it. At the very least, if one ignores a great need while showering luxuries on one's already comfortable life, one is acting unjustly. St. Thomas Aquinas, who is quoted by the utilitarian Peter Singer, perhaps put it best when he said "whatever a man has in superabundance is owed, by natural right, to the poor for their sustenance" (Singer, 2002; Aquinas, 1925). This argument hinges on the moral maxim that when one can, at little personal cost, do great benefit to others in great need, one must act accordingly. This is often referred to as the principle of Equal Consideration of Interests (ECI) (Singer, 1999).

A favorite example of Singer's is that of the duty to assist a drowning child. If I, say, on my way to give a class lecture, pass a shallow pond in which I observe a drowning child with no parent or guardian in the vicinity (let's assume he is an orphan and not, say, the Prince of England, whose death might actually engender significant loss to others) and I look at my watch and realize that I am already running late and that if I wade in to save the poor child, I would get soaking wet and have to cancel class. At that point, I might choose to fulfill my contractual obligation to my students—who would no doubt experience great loss were class to be cancelled—by pressing onward to my lecture. After all, there are many more of them, and only one drowning orphan, who won't likely be missed much by anyone (Singer, 1999).

Utilitarians such as Singer seem to have a point when they argue that to press on to class here would be wrong, indeed gravely wrong. So wrong that we might choose, as a society, to require people to go out of their way to intervene in such cases if it had been tragically observed that many don't usually rise to this obligation on their own. And this is precisely what many states have legislated out of a sense of outrage after the fact. However, such laws are rarely enforced in the U.S. as police and judges have tended to ignore them except for cases of gross parental negligence (Wash. 2006).

In such cases, even if the law does not require it, the utilitarian cost-benefit aim of maximizing happiness for all concerned provides good ethical reason for upholding the assistance to persons in grave danger as a basic duty. Furthermore, since utilitarianism includes the principle of equal consideration of interests, namely, that equal interests should be treated equally, this obligation extends beyond societal boundaries. Conversely, the Rawlsian social contract system prioritizes interests between agents bound within the social contract. But as the drowning child example seems to show, to utilitarians at least, "it makes no moral difference whether the person I can help is a neighbor's child ten yards away from me or a Bangladeshi whose name I shall never know, ten thousand miles away" (Singer, 1999). So if the welfare of persons living halfway across the

globe can be affected by one's actions, the interests of those persons should be considered equally with the interests of those living within our social contract.

This view is somewhat resisted by Rawlsian theory, which only upholds temporary disaster relief obligations to residents of foreign states that lack the ability to help themselves. And this discrepancy is the reason why utilitarianism provides perhaps the most demanding moral argument for a corporate duty to assist, since all equal interests must be treated equally—arguably including those of future generations. Global warming is a case in point, since greenhouse gas emissions seem already to have started gravely affecting certain parts of the Earth's climate much more than others. Yet, one might reasonably argue on contractualist grounds that persons and organizations including for-profit corporations have the greatest obligation to come to the assistance of persons with which they already have some contractual agreement, either rationally implied via a social compact if not an explicit legal contract. Here we might think of the duty to aid local victims of natural disasters such as floods and hurricanes. Indeed several large U.S. firms provided relief aid in the aftermath of Hurricane Katrina in 2005, and after the U.S. World Trade Center bombings of September 11, 2001.

In many such cases, the distinction between relief assistance and rescue can be difficult draw. Governments and corporations providing disaster relief are not usually rescuing victims per se. Rather, they tend to provide certain essential services required to maintain basic health, shelter, or safety. But such basic services are in such desperate need that they amount to what can be reasonably considered a rescue. Thus, when FedEx goes out of its way to provide emergency communications, or Wal-Mart distributes bottled water, or Office Depot sends relief funding to the Red Cross, these can all be reasonably considered as much relief as rescue.

2. Applying Duty of Assistance Obligation: Sustainability and Public Health

At this point, the corporate duty to assist can be defined as proportional to the extent to which an organization is uniquely positioned to effectively assist without putting itself at undue risk. Indeed, this is the very principle contractually applied to ordinary individuals by myriad states and rooted in the moral intuitions widely elaborated by such influential ethicists as Scanlon and Singer (Scanlon, 1999; Singer, 1999). As such, it should also apply to relieving such social ills as global warming and the obesity epidemic now overtaking the U.S. and much of the developing world, in which large food suppliers, distributors, and purveyors may shirk their social responsibility to assist in resolving this national problem by providing more wholesome foods derived from sustainable production practices. The interests of public health and ecological sustainability are often intertwined in such cases, thereby providing a doubly strengthened moral obligation. Globally, increasing consumption of unhealthy food and sedentary lifestyles have created a world in which excess weight and obesity now surpass under-nourishment as the world's leading nutrition problem. Furthermore, developing countries are predicted to increasingly share this burden looking toward 2030 (Schmidhuber & Shetty, 2005).

With respect to climate change, it is important to recognize that global warming as a result of increased CO₂ emissions is a clear and present danger that is no longer entirely avoidable (Hale, 2011). For example, a recent climatology review article by David Archer and colleagues on the atmospheric lifetime of fossil fuel carbon dioxide indicates that 20-35% of the CO₂ generated by burning fossil fuels remains in the atmosphere after equilibration with the ocean for 2-20 centuries (Archer, Eby et al. 2009). That is to say, only between 65 and 80% of carbon released into the atmosphere is reduced by the natural feedback loops of the global ecosystem in the first 200 to 2000 years. After that, there is a slight reduction over the next 3,000 to 7,000 years. Whatever else remains, hangs in the

air for tens to hundreds of thousands of years (Hale, 2011). As a result, atmospheric concentrations of CO₂ will most likely bring natural disaster if emissions continue unabated, creating hundreds of millions of climate refugees worldwide within the foreseeable future (EJF, 2009). Thus under present conditions, a utilitarian would consider it immoral and a Rawlsian consider it irrational—and thence unjust—for corporate actors to unabatedly continue emitting greenhouse gases or worse, lobby governments for continuing, if not increasing rights to do so.

Various forms of mitigation are required over the longer term, namely, to counteract environmentally unsustainable business practices that collectively impact some regions of the planet more negatively than others. As a result of global warming for example, regions in Alaska mostly populated by Eskimos, are sinking into the permafrost and the floating ice at the North Pole is now completely melted during the summer months, making survival for endangered species such as Polar Bears increasingly difficult (DeWeaver, 2009).

With respect to obesity, the U.S. Center for Disease Control and Prevention (CDC) study from 1985-2010 shows that only two U.S. states now have an adult obesity rate lower than 20% of the population. And 33 states have obesity rates that equal or exceed 25%, 9 of which exceed 30%, thus representing roughly one in three persons (CDC, 2010). Furthermore, obesity can be lethal as it tends to significantly reduce life expectancy in myriad ways such as heart disease and type-2 diabetes. Perhaps most disturbing are national statistics showing obesity in preschoolers 2-5 years of age now at 10.4% and hovering just below 20% for those aged 6-19. In most of these cases, obesity will become more severe in adulthood (CDC, 2010). Yet this epidemic already represents roughly \$147 billion per year in associated medical costs, or 9% of the yearly total (Cawley & Meyerhoefer, 2010). While most of these costs are covered by the obese themselves, all medically insured Americans must pay higher premiums as a result.

The obesity crisis has reached such epidemic proportions that the city of New York recently attempted to institute a ban on sugary soft drinks at convenience stands and movie theaters in containers larger than 16 ounces (Saul, 2012).

Essentially, since too few businesses and consumers were acting responsibly on this issue, new regulatory constraints have become necessary to guard against this unsustainable commercial activity. Though a judge rejected the ban as unconstitutional, governments are still free to levy taxes as they have on cigarettes.

Corporations that mass market inexpensive heavily-processed foods high in dangerous fats, salts, and carbohydrates are beginning to take responsibility for their role in contributing to this epidemic. A high-profile example of this heightened moral awareness is Walmart's new plan to make thousands of its packaged foods lower in unhealthy fats, salts, and sugars, and to reduce the price of fresh fruits and vegetables. ConAgra has also pledged to reduce the sodium content of its foods by 25% by 2015. Walmart even pledged to cover the associated costs itself and is doing so essentially because it says it is moved by the appeal of Michelle Obama's public-interest campaign against obesity. It hopes to recoup the added expense over the longer term in increased sales. Presumably, this means attracting more educated health-conscious consumers to its shelves.

Hence, this is a perfect example of enlightened self-interest. But I would go further to argue that it is also a basic moral obligation. For as the New York Times reports:

"Some say the company has almost as much power as federal regulators to shape the marketplace.

"A number of companies have said they are going to make voluntary reductions in sodium over the next several years, and numerous companies have said they are going to try to get trans fat out of their food," said Michael Jacobson, executive director of the

Center for Science and the Public Interest. “But Walmart is in a position almost like the Food and Drug Administration. I think it really pushes the food industry in the right direction” (Stolberg, 2011).

Walmart is a corporation uniquely positioned, indeed so uniquely positioned that its monopsonistic power rivals the very regulatory system’s ability to transform the market. And obesity has already become a national epidemic. As such, the business has a moral obligation to intervene without putting itself at undue risk. Though the company is presumably acting in a way as to minimize or avoid stricter government regulation, this should not be taken merely as a case of acting beyond compliance. It is in fact a kind of public assistance tantamount to rescue. For the clear and present danger obesity now represents, together with the overwhelming monopsonistic power this company holds, creates a direct obligation to assist for the same reasons an MNC might be obliged to engage in relief aid operations in a developing country in which it operates.

One might fairly object that in the obesity case, consumers aren’t being forced to engage in unhealthy nutritional behavior. They engage in it willingly, though many may have few affordable more wholesome options, as Walmart acknowledges. Still, this objection is rather moot. For the epidemic is upon us. And to sit idly by as the national public health crisis worsens—even victimizing children—is beyond callous. What’s more, numerous unhealthy products are being aggressively marketed, as a recent study shows that myriad MNCs are advertizing junk food in free online video games for children, often while taking CSR pledges to stop marketing foods that turn out to be only slightly less nutritious to them (Richtel, 2011). This is particularly callous given the fact that the more economically disadvantaged children tend to be the most at risk of obesity to begin with, and they are thus more likely to take advantage of these free online games (Richtel, 2011).

Corporate agents thus commonly find themselves in positions of shared moral responsibility akin to the following thought experiment. Imagine a study where

10 people are placed side by side in a room for 1 hour and each told that he or she will gain \$1 per minute that he or she holds down a lever. At the same time, they are told that for every 3 minutes that they all keep their levers down, one seriously overweight 10 year-old child will consume 16 ounces of Pepsi. If they all do what is most self-interested, they will all earn \$60 by holding down their levers for the full 60 minutes. But that will also make sure that the already obese 10 year-old will drink 20 consecutive unhealthy drinks—roughly the equivalent of drinking nothing else for three days straight. For dramatic effect, a time-lapse video of those three days would be shown, as the child reaches for another consecutive soda for every 3 minutes that all 10 levers are held down.

To add a further level of complexity, each subject is told that for every minute all levers are *not* held down, instead of drinking a Pepsi, there is a 50-50 percent chance the child will either drink a glass of water or exercise. And a video would be shown of that too. And if only up to half the levers are held down, then there is a 50 percent chance the child will drink another Pepsi, a 25 percent chance it will instead drink water, and a 25 percent chance it will exercise instead. It would be interesting to see what would occur in such a study on shared moral responsibility. There have been similar studies indicating that persons within a group will voluntarily undergo a certain amount of pain in order to come to the aid of a stranger in accidental distress (Batson, 1995). But in the imaginary Pepsi experiment—unlike in the Batson study—the harm is facilitated by the subjects themselves instead of by accident or a third party. So this adds an extra layer of responsibility. I would expect that moral consciousness and group shaming would at the very least compel no subject to earn the full \$60. Most likely, the majority would choose to divide the time somehow so that each lever were left up for at least one out of every 3 minutes. Whether any institutional review board would permit such an experiment given the evident harm to the child is an open question.

Regardless, just as we would frown on the test subjects who did nothing to mitigate the negative consequences of their own actions, we should also frown on corporate agents who effectively do the same. For the degree to which we are

all dependent on what major multinational corporations do—or fail to do—to avert great harms currently befalling the global climate and public health is embarrassingly evident. Yet the duty of assistance need not rest on an ontology of corporate personhood to obtain. It need only rest on the shoulders of the executive class empowered as agents of the corporation to uphold fiduciary and stakeholder interests.

Consequently, corporations uniquely positioned to promote greater energy efficiency on a broad scale (and thus significantly reduce global warming emissions) with relatively little effort, have a moral obligation to do so. Indeed, they often have an added fiduciary obligation to act as sustainability practices tend to increase efficiency, thereby lowering expenses. To take another example from Walmart, the company has forced its suppliers to reduce packaging by 5% from 2008 to 2013 and expects to be fully packaging neutral by 2015 (Walmart, 2011). This of course tends lower costs, and this is beneficial not only to the environment but to the bottom line. However, the company has also dedicated itself to environmental leadership by promoting fluorescent light bulbs in its stores, often against the wishes of its suppliers, who gain a higher financial return from selling more standard incandescent bulbs. In 2007, Walmart compelled General Electric (GE) to convert a number of its plants from producing incandescent to fluorescent bulbs. And while consumers are often reticent to buy fluorescents, which have an odd appearance, tend to produce harsher light, and cost roughly 5 times more, Walmart gave the product prime shelf placement with information on how much the bulbs save consumers on their energy bills. It also convinced Phillips to change the name of its fluorescent bulb from “Marathon” to “Energy Saver.” As a result, sales have soared. Osram Sylvania had to start filling entire planeloads of the product from Asia to the United States (Barbaro, 2007).

And yet, Walmart and its suppliers are actually making substantially less money by doing this than by continuing to sell more incandescent bulbs. Fluorescent lights can easily last 10 years, which is about 10 times the life of a standard incandescent. But they only cost roughly 5 times more. This is the main reason

why Walmart had to flex its monopsonic muscle to compel suppliers to change. At Wal-Mart in 2011, an incandescent 40w bulb costs \$1.20, and the fluorescent version is \$4.22. Hence the fluorescent costs less than four times the price, yet lasts roughly 10 times as long (Barbaro, 2007). So as a result of this socially-responsible initiative, Wal-Mart is selling fewer bulbs overall, thus profiting less than it would otherwise. Yet it is doing so for clearly ethical reasons. For the financial loss is minimal and more than compensated by the greater social value created. Furthermore, the company is thus better positioned to attract more socially-conscious consumers prepared to lower their carbon footprint to help avert or at least minimize natural disasters widely predicted to result from global warming over the coming decades.

This is why Walmart is not merely internalizing externalities but engaging in a duty to assist because it is mobilizing its vast supply chain resources in a manner that has a significant market impact on the price and accessibility of energy saving light bulbs for consumers nation-wide. So when an MNC such as Walmart flexes its considerable economic muscle to make such products more widely present in the marketplace, it is indeed consciously engaging in a social assistance operation. That said, I am not arguing that Walmart has hereby fulfilled all its social duty of assistance obligations. I am merely pointing out that it has accepted a normative obligation, and arguing that this and other corporations similarly positioned to make substantial positive impacts to alleviate major public crises such as obesity and global warming—at minimal costs—are morally obliged to do so.

This moral obligation is further reinforced by the current U.S. status of corporations as legal persons. Indeed, the recent *Citizens United v. FEC* decision of the U.S. Supreme Court (2010) maintains that corporations have unlimited rights to fund political speech—even anonymously. This conception of corporations as persons logically implies that they are rational agents. And on utilitarian grounds, any rational agent with great power to influence public discourse and opinion naturally has a correspondingly great obligation to use that power in the service of the greater good. Even from a more limited Rawlsian

contractualist perspective, it would be irrational to grant such sweeping rights to anyone without corresponding obligations to the society granting them. This is why governments may compel corporations to assist in various ways, say, to provide supplementary shipping or telecommunication services during national emergencies. Both theoretical traditions maintain that any person, natural or artificial, with power to impede, minimize, or reverse major harms to others at minimal personal cost, may be morally obliged to do so.

3. Applications and Limitations of Traditional Stakeholder Approaches to Assessing Positive Moral Obligation

Stakeholder theory is perhaps the most well known theoretical approach to date arguing for positive corporate social obligations. There also is a growing political philosophy approach (Wettstein, 2010; Kobrin, 2009; Hsieh, 2009, 2004), in which this paper is partially embedded. The arguably most influential stakeholder approaches fall into two broad categories. There is the deontological approach (Arnold, 2010; Gibson, 2000), and the libertarian (Freeman & Phillips, 2002). Interestingly, there is a relative dearth of systematic research on the expressly utilitarian foundations of stakeholder theory. There is however a new movement in this direction in Jones and Felps (2013) who present a novel neo-utilitarian approach advocating happiness maximization for all stakeholders. Prior to that, there is only Freeman (2010), and the treatment cursory. The previous dearth of research in this direction is perhaps best explained by utilitarianism's highest bar of concern for the greatest good for the greatest number, which may seem like too much to ask of profit-driven organizations. Should Jones and Felps' neo-utilitarian approach take hold, it may prove coextensive with the corporate duty to assist.

In aiming to realize the optimal or optimific outcome, utilitarianism mostly strives to tell us what to aim *for*. And this is precisely the attitude MNCs must take if they are to rise to the great social responsibility they have, given the great

social, political, and economic power they hold. Otherwise, management may be too focused on harm avoidance to develop an ethical vision directed at achieving the greatest positive results. Utilitarianism asks us to consider the interests of others equally with our own. As such, it is an ethical approach that places altruism at its core. And this is precisely the kind of attitude that will make MNCs most likely to seek to help achieve the best possible future for all concerned. This will make them motivated to better anticipate and counteract the future negative social outcomes of their current business practices.

However, two significant difficulties with a purely utilitarian stakeholder approach are 1. How to assess general happiness to begin with and 2. How to determine the cutoff between the duty to assist and the supererogatory level of assistance that goes over and beyond the call of duty. Unlike Jones and Felps, I do not defend a purely utilitarian stakeholder theory. Rather, I advocate a hybrid theory blending utilitarianism and contractualism. One that expands the circle of concern beyond strict contractual boundaries while resisting a full-blown utilitarianism in which the interests of all stakeholders must be considered equally. Corporations on this model may remain primarily profit-driven and need not be chartered to maximize general stakeholder happiness. Nevertheless, they still have moral obligations to intervene to help avert major public crises as described in parts 1 and 2 above. Following this reasoning, they need not become experts at defining happiness and identifying all aspects and levels of moral and social import. They need only stay abreast of major current issues of public concern. For they are only called to act when a public crisis is confirmed by overwhelming scientific consensus and when they are uniquely positioned to intervene at marginal cost. When all three elements are present, the corporate duty to assist obtains.

A weakness of more traditional non-utilitarian stakeholder models is that they run the risk of tying CSR too closely to stakeholders' perceived needs and wants for them to offer a complete account of positive corporate moral obligation. For many if not most stakeholders may not be aware or fully aware of the impending

dangers they are in, nor of the great power corporations hold to help stem their risk of incurring untold future pain or even death. And when they are aware, at least partially, they may not be in any economic position to express their concerns by avoiding doing business with them. Traditional stakeholder models tend to rely on stakeholder voices and exits to effect change (Hirschman, 1970). But if Walmart had waited to act only on such responses from consumers, suppliers, and the community at large, it may not have taken such a leadership role to increase energy-saving light bulb usage. Furthermore, global MNCs now have such broad influence that it is hard to know exactly whom does not at least in some loose sense, qualify as a stakeholder. For we are all influenced by their decisions whether we engage with the company or not. Yet at the same time:

“People cannot be deemed stakeholders simply because they have problems. Stakeholder theory is not intended as a comprehensive moral theory. It merely describes the obligations that result from a special organizational relationship. Those outside these special relations should look elsewhere for relief” (Phillips, 2003, p. 142).

However, it is not because Walmart stakeholders looking for climatological- or conscience-relief wanted the company to prod its light bulb suppliers to increase production of longer-lasting and energy-saving bulbs that the company decided to do so. In fact, few if any stakeholders voiced this desire. Rather, the CEO and a handful of executives took an ethical leadership position entirely of their own volition. The company even went so far as to generate increased demand by informing its customers on the wisdom of greener lighting options. And this benefitted even distant stakeholders who rarely if ever interact with Walmart since it resulted in making greener lighting more cheaply and more widely available to consumers throughout the global marketplace while protecting the global environment in which everyone holds a stake. And the company took pains to push consumption in this socially responsible direction despite the knowledge that it would likely result in lower bulb sales over time. Good

corporate citizens must look to a future beyond the more immediate perceived needs and wants of their stakeholders if they are to be genuine ethical leaders.ⁱⁱ

At this point, a libertarian might argue that unlike contractualist, deontological, or even utilitarian approaches, the libertarian stakeholder model provides greater managerial flexibility to engage in just these kinds of altruistic practices. Freeman and Phillips advance such an argument in their defense of a libertarian stakeholder theory:

“We are not just narrowly self-interested economic maximizers. The discussions of self-interest vs. altruism, which seem embedded in literatures such as corporate social responsibility, as well as finance, simply miss the mark. Sometimes we are selfish and sometimes we act for others. Many of our values are jointly determined and shared. Capitalism works because of this complexity, rather than in spite of it. A central task of managers and entrepreneurs is to determine an answer to fundamental values questions that may bind together a business entity. There are no obvious "right" answers here. There are many different ways to engage in value creation and trade and also be ‘an ethical person’” (Freeman & Phillips, 2002, p. 343).

Freeman and Phillips argue that we are perfectly free to act selfishly or altruistically, depending on our inclinations. So on their view there is nothing keeping corporations from thinking more or less altruistically if they so choose. As such, they may very well anticipate the social interest before their stakeholders do, and choose to apply their market influence in service of that greater good. This is offered as a more dynamic approach to corporate moral agency that exceeds the more limited stakeholder-response paradigm. Indeed, a libertarian might uphold the Walmart examples above as illustrations. One could even argue, perhaps convincingly, that a virtue of capitalism is that it provides business with greater opportunity to engage in altruistic social leadership than

government, which must secure majority consent of the governed before initiating progressive change.

The trouble with this view is that it considers positive moral actions entirely optional. That is to say, any action that does not harm anyone directly, including harm to property, is acceptable. Agents are free to go beyond this moral minimum if they so choose, but it is never a moral duty. Outside of a contractual agreement to do so, no one is ever obligated to come to the assistance of anyone else. And this is why many have taken libertarianism to be an inadequate or incomplete theory of justice. This criticism by extension undermines the libertarian conception of corporate moral obligation, as corporations tend to have great power and are thereby often able to offer crucial assistance in averting myriad public crises, be they imminent or already occurring. Indeed, they may even be able, in certain instances, to act more swiftly and effectively than governments themselves, for example by harnessing their own supply chains and communication systems to provide essential goods and services in the wake of natural disasters. Yet according to libertarianism, such interventions are always entirely optional.

As I have argued, corporate intervention in such instances is a basic moral duty, very much like the widely recognized duty to wade into a shallow pond to save a drowning child. Still, strict libertarian adherence to negative rights against harm cannot admit the existence of any positive obligation to come to the rescue of another. It may not be the kindest thing to do, the argument goes, but it certainly is not unjust to act selfishly even in such desperate circumstances as the pond example. Indeed, most U.S. law still doesn't sanction it (Groninger, 1999). A libertarian would no doubt counter with respect to corporate activity, that ignoring public crises may prove unwise purely from a business perspective, as effective CSR programs can help create and strengthen bonds of loyalty to the company both from consumers and suppliers. Furthermore, there is nothing keeping the agents of corporations from acting purely altruistically if they so chose. So if we accept, along with Freeman and Phillips, that human beings

including top corporate officers “are not narrowly self-interested utility maximizers,” that they actually “are complex psychological creatures capable of acting from many different points of view,” the free market may very well bring out the best in them.

The trouble is, if we simply leave all positive moral action to personal preference, many if not most people will fail to rise to the occasion. History is littered with shocking examples of bystander apathy. Simply trusting that people will generally step in to do the right thing is at best naïve and at worse callous. And it reflects an incomplete account of justice. Businesspersons such as Oskar Schindler who saved numerous Jews from the holocaust of World War II by employing as many of them as he could afford, redeem our humanity by their examples of selflessness. But if we look back at history and even into the present time, we can observe countless cases in which human beings did not, nor do not, act from a considered ethical point of view of the interests of others. This is of course why numerous states have made the duty to rescue a legal obligation.

And this is where utilitarianism shines. For it provides an optimistic standard for determining the extent of positive moral obligation between oneself and others, namely, the equal consideration of interests, which requires that when a person or corporate person can, at little cost, come to the aid of another or others in great need, it must. In fairness, a deontological stakeholder approach would likely agree given its espousal of the “golden rule.” But utilitarianism also advocates doing so in less dire circumstances, though the obligation will naturally be lower. Here is an important difference with deontology, which generally provides little guidance for sorting through opposing consequential concerns. A person or corporation may also choose to act heroically at great cost, though that would go above and beyond the call of duty. However, this is where personal and corporate ethics diverge since the agents of a publically traded corporation may not be able to justify to shareholders a decision to risk the company’s survival for purely altruistic reasons. Here we might imagine the example of a pharmaceutical company freely providing such vast amounts of life saving drugs

during a foreign epidemic that it runs the risk of bankruptcy. The corporate duty to assist, as defended here, does not extend this far. Nevertheless, principals—like their agents—are human too and thus “complex psychological creatures capable of acting from many different points of view.”

Conclusion

Anyone may be confronted with the choice of whether or not to come to the aid of another. But corporations will naturally find themselves in such positions much more often given their great social, political, and economic influence. Up to now, most individuals in the U.S. have been given broad legal discretion in such circumstances. Some nations have gone further to require that individuals come to the rescue of others in distress in any way they are able, without putting themselves or others at undue risk. If they do not, they may face steep penalties such as fines or jail time or both. Several U.S. states have enacted duty to rescue laws as a result of alarming reports of bystander apathy while a person is raped, beaten, or suffering from a serious accident.

Hence, the duty to assist (if not to rescue) is widely and increasingly recognized as a basic or *prima facie* moral obligation. Corporations however are not yet held to this same standard. Nevertheless, governments could very well decide to require them to do the same when they have the power to assist in confronting disasters and major social ills at little cost to themselves. For instance, governments already encourage or require improved environmental practices across entire industries, thereby avoiding placing more virtuous businesses at a competitive disadvantage. They may also employ the power of eminent domain to serve the public interest in myriad cases involving the use or transfer of private property. And it is surely in part to stave off increased regulation that many large food companies are now taking steps to decrease their sales and marketing of unhealthy foods particularly to children.

But regardless of what governments decide to do, or not to do in this regard, corporations uniquely positioned to supply disaster relief or to counteract developing public crises such as obesity and global warming have a moral duty to act. For turning a blind eye could very well mean becoming an accessory to widespread tragedy. The corporate duty of assistance approach stakes out a middle ground between the purely optional realm of libertarian supererogation and the potentially overwhelming stakeholder demands of full-blown utilitarianism. At this point in time, it articulates a strong moral imperative to undertake sustainable business practices that stand to launch a rising tide of positive externalities safeguarding public health and the natural environment.

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ⁱ It should be noted that the language does not exclude the possibility of protecting another from impending harm, in such cases in which the potential victim is not yet aware of it. We can imagine for example knowledge of a bomb set to explode at a later time.

ⁱⁱ If we accept the view of TNCs as private political authorities (Wettstein, 2010; Kobrin 2009) then there may be good reason to argue that just as genuine political authorities may have obligations to lead and protect their peoples even from their own ignorance, via education and paternalistic policies, then so do TNCs operating in developing countries. But this argument is less forceful when applied to the context of developed countries where corporations do not hold nearly as much de facto political authority. However, as previously mentioned, there is moral and legal precedence on utilitarian grounds for upholding the obligation to rescue others from dangers they may not be aware of, in any social context.