GETTING IT RIGHT:

AN ACCOUNT OF THE MORAL AGENCY OF NGOS

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DECLARATION

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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ABSTRACT

This thesis provides an outline for how we should think of the ethics of Non-Governmental Organisations (NGOs) by giving sense to what it means to treat an NGO as a moral agent. That is, it aims to answer the following question: Which special moral obligations do NGOs have in virtue of the distinctive type of organisation that they are? In brief, the answer provided by this thesis is that NGO agency is defined by the multiple relationships that threaten to undermine its unity. Obligations are identified as what an NGO must do in order to maintain such a unified organisational self.

In Chapter 1, I define an NGO as an autonomous, norm-enacting organisation not motivated by profit and reliant on voluntary interaction. The idea of NGOs as unique agents is then developed indirectly in the middle four chapters. Each chapter engages with a central topic pertaining to NGO ethics, arguing for a particular position with respect to the topics of accountability (Chapter 2), resource allocation (Chapter 3), contributions to domestic and global justice (Chapter 4), and NGOs' impact on the viability of universal welfare rights (Chapter 5). The second task performed by each chapter is the identification of a particular ability, or power, possessed by NGOs as agents.

These four abilities characterise the moral agency of an NGO and form the basis for identifying four types of NGO obligation: 1) accountability, 2) acting consistently with organisational norms, 3) demonstration of positive social change, and 4) epistemic procedural virtue. In Chapter 6 I produce a basic framework for NGOs to use as a way of assessing themselves with respect to these four obligations. This framework is then connected to the findings from a 10-month qualitative research project, conducted from 2007-2008, on the ethical perspectives of NGO workers in Mongolia.

ACKNOWLEDGMENTS

If there is anything I have learned from years of researching NGOs, it is that projects cannot be measured only by their immediate outputs: they have stories, processes, and broader, deeper effects. In the process of creating this output, I have benefitted greatly from the support, guidance and collegiality of many.

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Taking ourselves seriously means that we are not prepared to accept ourselves just as we come. We want our thoughts, our feelings, our choices, and our behaviour to make sense. We are not satisfied to think that our ideas are formed haphazardly, or that our actions are driven by transient and opaque impulses or by mindless decisions. We need to direct ourselves—or at any rate to believe that we are directing ourselves—in thoughtful conformity to stable and appropriate norms. We want to get things right.

Harry Frankfurt, *Taking Ourselves Seriously & Getting it Right*

UFC is just so big. And, what, we target indirectly 50% of the population here. And we can have a huge impact. So I guess we're trying to get it right too. That responsibility to—you know, we have so many resources—let's get it right.

INGO worker, Ulaanbaatar, Mongolia

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LIST OF ACRONYMS

BONGO	business-organised non-governmental organisation
CSO	civil society organisation
GONGO	government-organised non governmental organisation
GRO	grassroots organisation
HRBAP/D	human rights based approach to planning/development
IEI	international economic institution
IGO	inter-governmental organisation
IMF	International Monetary Fund
INGO	international non-governmental organisation
NGO	non-governmental organisation
QUANGO	quasi-non governmental organisation
TNC	transnational corporation
WTO	World Trade Organisation

INTRODUCTION

Consider three stories of change:

In the period between 1796—1805, British slavers traded an average of 50,000 slaves per annum, the greatest level in the 300-year history of Britain's slave trade.[1] Yet, in 1808, this number dropped to zero with the abolishment of the slave trade.[2] Within 15 years, public opinion shifted from an acceptance of slavery as an entrenched institution to a rejection of the practice as "an Evil so derogatory to the dignity of Christianity and the true interests of a people who value themselves on their sentiments of Liberty."[3] Within another 15 years, slavery was abolished entirely.

Until the late 1970s, driving while intoxicated did not incur serious social or legal sanction in the United States. In the 1980s, the enforcement and severity of punishment for impaired driving increased significantly. Here again, public opinion had shifted to support the implementation of new, stricter legislation. One consequence of these changes was a 49% decrease in the number of deaths caused by drunk driving in the U.S. between 1980 and 2009.[4]

The Mt. Makiling Forest Preserve is one of the most significant ecosystems remaining in the Philippines. By 1960, 45% of the preserve had been logged and appropriated for farmland and settlements.[5] A decades-long engagement that provided livelihood assistance to forest dwellers, and granted access to forest resources in exchange for a commitment to principles of conservation, resulted in the reforestation of 45 hectres and a significant increase in biodiversity.[6] Mt. Makiling is today considered a prime example of successful locally-based forest management.[7]

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[1] Eltis et al., Slave Trade Database.
[2] Drescher (2009); C. Brown (2006); Hochschild (2005).
[3] C. Brown (2006, p. 412).
[4] Century Council (2010).
[5] Duthy & Bolo-Duthy (2003, p. 23).
[6] Ibid.; Lasco, et al. (2001).
[7] Duthy & Bolo-Duthy (2003); Lasco, et al. (2001); Chokkalingham (2006, chp. 2).

These disparate changes in the areas of economics, social policy, and environment share a common feature: they were realised largely through the activities of groups that have come to be known today as non-governmental organisations, or NGOs. British abolitionism was propelled at the turn of the 19th century by the Society for Effecting the Abolition of the Slave Trade[8] and several women's societies, which were instrumental in organising mass boycotts of slave-grown sugar.[9] It was the NGO, Mothers Against Drunk Driving (MADD), that Senator John Danforth spoke of when explaining how significant changes in drunk driving legislation and enforcement had come about during the 1980s: "This organization has made the public realize that drunk driving is not a victimless crime. This change in public attitude has made it possible for those of us in Congress and in state legislatures to pass stronger drunk driving laws."[10] And NGOs were the actors credited with fuelling the community-based approach to forest protection and reforestation that was integral to the successful conservation of the Mt. Makiling Forest Preserve.[11]

Those who work for NGOs aim to improve the world they inhabit. They pursue this aim through the collectively-created identity of an organisation defined by a set of values. In virtue of these characteristics, one of the classic monikers associated with NGOs is that of the "do-gooder."[12] But the label can be a curse as much as a compliment when NGOs are perceived as failing to live up to this reputation.[13] For example, INGOs[14] assisting victims of the 2004 tsunami in Southeast Asia came under fire for what many observers felt was a

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[8] This group arose out of joint discussions between the Society of Friends (Quakers) in the U.S. and U.K., but later included non-Quaker participants. See: Drescher (2009, p. 151); C. Brown (2008, chp. 7).

[9] Hochschild (2005, p. 327); Drescher (2009, pp. 220-1).

[10] McCarthy & Ziliak (1990, p. 1223).

[11] Duthy & Bolo-Duthy (2003).

[12] Fisher (1997).

[13] Ibid.; Gibelman & Gelman (2004).

[14] In this thesis, INGOs are regarded as a type of NGO, with differences between INGOs and domestic NGOs discussed where relevant.

mismanaged humanitarian effort that wasted funds and lacked sufficient coordination.[15] Greenpeace's successful campaign against plans to sink the Brent Spar oil rig off the U.K. coastline in 1995 was marred by the later revelation that their estimates of the oil on the rig were 55 times greater than the actual amount.[16] INGOs advocating a change in the policies of the World Bank, IMF, and WTO have long been criticised for their own perceived lack of accountability.[17]

NGOs' successes in achieving change highlight their power as social actors. At the same time, their perceived failures highlight questions about the moral justification of this power and what we can expect of such organisations. Together, the successes and failures of NGOs indicate the importance of exploring their ethical status and obligations.

This thesis aims to contribute to a better understanding of the moral obligations of NGOs. Its central claim is that such an understanding cannot be reached without an account of the moral agency of NGOs. An attempt to formulate a set of NGO obligations or guiding principles without attention to what characterises them as agents will fail to provide a full justification for the relevance of such requirements. This is because consideration of what NGOs ought to *do*, with respect to *whom*, and *how*, are necessarily grounded in a perspective on the kind of agents NGOs *are*.

We can illustrate the importance of agency by considering three main perspectives through which the topic of NGO ethics is currently problematized. These are:

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[15] Ossewaarde, et. al (2008, pp. 48-51); Logister (2007); Tsunami Evaluation Coalition (2006).
[16] Schoon, N. (1995 Sept 6). Greenpeace's Brent Spar Apology. *The Independent,* p. 16.
[17] *The Economist* (2000 Jan 21) "The Sins of the Secular Missionaries"; (2000 Sept 23) "Angry and Effective"; (2011 Jan 27) "Does anyone here speak NGO-ish?" See also Slim (2002).

(1) The perspective of the third sector and development literatures on the role and value of NGOs.

(2) The views on INGOs by moral and political philosophers working on topics pertaining to justice and obligations of assistance.

(3) The growing practical scrutiny of the justifiability and value of NGO activity by donors, governments, media, and the public.

(1) The perspective of the third sector and development literatures on the role and value of NGOs.

After ten years of positive characterisation, in the mid-1990s NGOs as research subjects began to be treated with greater scepticism within the fields of third sector/civil society research, political science, and development studies.[18] This critical stance has now become dominant, especially for NGOs engaged in development.[19] Much of this criticism stems from the perception that researchers had initially studied NGOs with too much optimism regarding their comparative effectiveness, their significance as social actors, and their ability to fulfil or promote certain values and norms.[20]

Taking a more realistic approach to the study of NGOs has led to an emphasis on three main normative issues.[21] First, a large sub-literature on empowerment and participatory methodology has emerged from the view that NGOs ought to address power imbalances and ownership issues within their relationships

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[18] Lewis & Opoku-Mensah (2006); Bebbington, et al. (2007).
[19] See, for example: Tvedt (2002; 2005); Chandhoke (2005); Bebbington, et al. (2007); Lewis (2005); Hilhorst (2005); Seckinelgin (2006).
[20] Bebbington, et al. (2007); Lewis (2005).
[21] Topics of research within the NGO literature are heavily influenced by current trends and issues pertaining to NGO practice; thus, the significance of these three topics was largely due to the attention they were receiving by donors and NGOs themselves.

to "beneficiaries," that is, those targeted by their projects.[22] Second, accountability has been addressed as a major issue for NGOs, with a central question being what model and mechanisms of accountability are most suitable for NGOs. Answers to this question range widely, from technical processes of reporting and accounting, to democratic modes of internal decision-making, or detailed self-regulation schemes. Finally, NGO effectiveness has risen to the fore in recent years, as several donors and academics have argued that performance measurement ought to be the primary standard used in identifying "good" NGOs.[23]

These are normative issues insofar as their discussion has involved a deep examination of the value of participatory methods, accountability, and performance for NGOs.[24] Rarely, however, are these topics addressed as truly ethical questions. When prescriptions are offered, they are couched in terms of organisational strategy or pragmatic choice, rather than as a matter of what NGOs are *morally* prohibited from doing or are required to do.[25]

This pragmatic perspective is embodied most strongly in discussions of NGO legitimacy. Legitimacy is the fundamental normative issue that underpins the discussion of participatory methods, accountability mechanisms, and

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[22] The term "beneficiaries" has fallen out of favour with some, as it is taken to imply a relationship in which the NGO worker sees herself as providing benefits to a passive recipient. My view is that the alternatives, such as "client" or "participant" or "target group," entail equally questionable assumptions. One might specify what is meant by opting for the term "intended beneficiaries," but this is cumbersome. Throughout the thesis I therefore simply use the term "beneficiary" as a technical term, not as a claim that NGOs in every instance provide benefits to those targeted by their projects.

[23] Ebrahim & Rangan (2010).

[24] See, for example: Cooke & Kothari (2001); Jordan & van Tuijl (2006); Ebrahim (2007); Ebrahim & Rangan (2010).

[25] The notable exceptions that make explicit reference to the ethical aspects of NGO work on the ethical dimensions of NGO work are: Taylor (1996); Atack (1999); Slim (1997; 2002). While Slim (2002) offers some substantive suggestions on accountability, much of this work engages in taxonomising or theorizing ethical issues for NGOs rather than offering specific solutions or answers. For example, Kantian and consequentialist approaches to ethics are described by Taylor (1996) and Slim (1997), but presented as different viewpoints the NGO can opt to use at its discretion.

improved performance: all three are cited as ways in which an NGO can legitimise itself. However, NGO scholarship tends to use a descriptive, instead of normative, conception of legitimacy: an NGO is legitimate insofar as others actually perceive (or believe) it to be justified in doing what it does.[26] This means legitimation can pose a significant operational challenge when different stakeholders demand different things from an NGO. In order to achieve legitimacy, it is argued, NGOs must attempt to navigate competing and contradictory sets of expectations, a task that in some cases seems impossible.[27]

An account of an NGO's moral agency can help resolve these issues by providing the basis for a normative account of NGO legitimacy. Others' expectations regarding what NGOs should be or do may be wildly inaccurate or unjustifiable. For example, it is not clear that emergency aid NGOs such as MSF should lose legitimacy if they concentrate on a fast distribution of life-saving care over processes of empowerment. While a descriptive conception of legitimacy explains the conflicts and tensions NGOs experience in attempting to meet the varied expectations of different stakeholders, a set of moral standards for NGO activities, supported by argument, gives these organisations an essential tool for resolving these conflicts. Armed with an account of what can be justifiably expected of them, NGOs can better respond to criticisms and questions regarding their legitimacy.

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[26] Descriptive legitimacy is often contrasted with the normative conception of legitimacy more commonly found in political philosophy. The former refers to the perception of appropriateness, while the latter refers to a set of standards that justifies a set of powers exercised by an agent, or, in other words, establishes the "right to rule." See: Beetham (1991); also Lister (2003); Vedder (2007).

[27] Vedder (2007, p. 207); Lister (2003); Ossewaarde, et al. (2008); Logister (2008).

(2) The views on INGOs by moral and political philosophers working on topics pertaining to justice and obligations of assistance.

Until recently, non-governmental organisations received little attention within moral and political philosophy. Political philosophy of the 1980s and 90s, heavily influenced by the work of John Rawls, focused on the concepts of justice and legitimacy as these pertained to the state. As voluntary organisations, NGOs qualify as "associations," a type of organisation Rawls and those who followed him explicitly excluded from the domain regulated by principles of justice.[28]

One might have expected to see NGOs attract greater attention in the field of applied ethics, which emerged during this same period as a prominent area of research within moral theory. However, no body of literature comparable to the work on bioethics, business ethics, or animal welfare developed around NGOs. The closest attention they received during this time was through Peter Singer's (1972) influential argument for obligations of assistance to the poor, which drew attention to the work of Oxfam International and similar organisations. However, since Singer's focus was on persuading individuals in the developed world to donate to NGOs, little attention was given to their inner workings or ethical obligations.

These matters have begun to change, due largely to the important debates concerning global justice and the moral imperatives elicited by the persistence of severe poverty. While institutional reform tends to be the favoured solution for rectifying global injustice, INGOs are seen as providing an opportunity for important medium-term assistance that can reduce suffering and improve the

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[28] Rawls (1971, p. 409; 1993, pp. 40-43).

livelihoods of the global poor.[29] They are also cited by some as possible players in bringing about long-term institutional reform.[30]

The influence of the ethics of poverty on philosophical approaches to NGOs is reflected in the three volumes that currently constitute the bulk of philosophical thinking on NGO ethics. All three focus on the ethical challenges and problems faced by INGOs working on emergency relief or development aid.[31] Many contributions to these volumes take a situation- or principle-based perspective to NGO ethics, classifying the field in terms of types of situations or decisions NGO staff face in their work. In these cases, the "NGO" in NGO ethics takes a back seat to a general moral analysis, and consideration of the NGO as a special type of moral actor is not given significant attention. Elsewhere, others have attempted to work INGOs into a framework of justice, arguing that the international aid system constitutes a "basic structure,"[32] or that we ought to take more seriously "non-ideal" theories of justice in which INGOs can play a significant role.[33] The most widespread perspective, however, is that INGO obligation ought to be understood through the obligations of their affluent donors.[34] INGOs are the "executors of the obligations of their contributors and supporters" and, therefore, are "constrained by the content of the obligations in question."[35]

Either implicitly or explicitly, these discussions of NGO ethics rely on premises concerning their roles and morally relevant functions. A more direct

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[29] For example, see Pogge (2005a; 2005b).
[30] O'Neill (2001).
[31] Bell & Coicaud (2007); Horton & Roche (2010). Both of these volumes were the products of separate workshops held between philosophers and NGO practitioners who then contributed chapters based on these dialogues. Illingworth, et al. (2011) also features contributions from multiple disciplines and includes several chapters on NGOs, though its overall theme is the ethics of philanthropy.
[32] Rubenstein (2009).
[33] Fuller (2006). Also O'Neill (2001)'s idea of INGOs as secondary agents of justice could fit this description.
[34] Horton & Roche (2010); Pogge (2007a); Wenar (2006); Illingworth, et al. (2011).
[35] Horton & Roche (2010, p. 220).

examination of NGO agency can be useful here, as it would allow us to work out which roles are most relevant to an NGO's obligations. Are INGOs indeed agents of justice? Or are they simply a group of individuals free to select and pursue their aims as they please, so long as they do so lawfully?[36] Should they be understood as agents acting on behalf of their contributors, or as agents acting on behalf of the poor? Or as a broker between the two? Without an argument for how NGOs ought to be understood as moral agents, the principles and obligations elicited by a particular account can be rejected by those who disagree fundamentally with the characterisation of NGO agency upon which they are based.

(3) The growing practical scrutiny of the justifiability and value of NGO activity by donors, governments, media and the public.

Finally, outside of academia, NGOs increasingly face scrutiny and criticism by their donors, members of the public, and sometimes even the intended beneficiaries of their projects. Organisations focused on aid and emergency relief are regularly entrusted with large pools of resources, prompting concerns over NGO executive pay, the lack of sufficient performance measurement, and the perceived mismanagement of funds in humanitarian emergencies.[37] Advocacy-focused NGOs enjoy access to the processes of policy making at both the domestic and global levels. The powers that they wield, however, are often informal and difficult to concretely identify, making it unclear who can make claims on an NGO, for what, and on what grounds. Publications such as *The Economist* have been particularly outspoken critics of such organisations, contending that they advocate policies that are not in the best interest of the global poor, that they are wasteful and too dependent upon

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[36] Charnovitz (2005).
[37] Gibelman & Gelman (2004).

governments for their funding, and that they use a lexicon of vague buzzwords to justify and guide their work.[38]

Part of what makes these criticisms so difficult for NGOs to respond to is that there is no broad consensus as to what can be justifiably demanded of them. This connects to the previous two points: an account of what NGOs ought to do must explain why a set of obligations or principles is relevant to an NGO, or, more strongly, why it has normative force for such organisations.

Reaching a better understanding of NGO moral agency is, therefore, a timely aspiration, as the topic of NGO ethics cannot adequately be addressed without considering what kind of agent an NGO is. Such considerations are morally relevant, as they reflect how an NGO relates to others in ways that can impinge upon its rights and responsibilities.

In pursuing an account of NGO moral agency, this thesis takes as a starting assumption the view that collective agents can and do exist, and that they can be held morally responsible.[39] My aim here is not to explore the intricacies of the nature of collective agency, but to examine how an NGO's collective agency differs from that of the state, the corporation, other civil society organisations, and international institutions of economic policy and governance.

With that in mind, Chapter 1 begins with the question, 'What is an NGO?' There, I provide an empirical definition of an NGO as *an autonomous, norm-enacting organisation not motivated by profit and reliant on voluntary interaction*. This empirical definition gives an idea of the type of organisation to which this thesis applies, and also forms the basis for a theoretical definition of NGO agency. I argue that, in virtue of the five empirical features

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[38] See above, ff. 17.

[39] For a detailed account of the possibility of group agents, and of holding them morally responsible, see Pettit (2003); List & Pettit (2010).

above, NGOs are distinguishable from other types of actor by their reliance on multi-party collaborative activity for the exercise of their agency. Specifically, this collaborative activity is shaped by the other parties' perceptions of the NGO as norm-enacting, that is, as identifying and justifying its activities through moral rules. This serves as the theoretical definition of an NGO: while states, corporations, other civil society organisations, religious institutions and individuals engage in types of collaborative activity that overlap with those of an NGO (e.g. provision of goods or services, joint voluntary action centred on a shared value), only NGOs utilise multiple types of activity with actors that perceive them to be norm-enacting.

The idea of NGOs as unique agents is then developed indirectly in the remaining chapters. The middle chapters 2, 3, 4, and 5 may be read as performing two tasks. Each chapter engages with a central topic pertaining to NGO ethics, arguing for a particular position with respect to the topics of accountability (Chapter 2), resource allocation (Chapter 3), contributions to domestic and global justice (Chapter 4), and NGOs' impact on the viability of universal welfare rights (Chapter 5). The second task performed by each chapter is the identification of a particular ability, or power, possessed by NGOs as agents.

As I argue at the end of Chapter 5, and summarise in the interlude preceding Chapter 6, these four abilities characterise the moral agency of an NGO and form the basis for identifying four types of NGO obligation: 1) accountability, 2) acting consistently with organisational norms, 3) demonstration of positive social change, and 4) epistemic procedural virtue. In Chapter 6 I produce a basic framework for NGOs to use as a way of assessing themselves with respect to these four obligations. This framework is then connected to the findings from a 10-month qualitative research project, conducted from 2007-2008, on the ethical perspectives of NGO workers in Mongolia.

I will now describe the main points of each chapter in greater detail.

In Chapter 2, I examine the concept of accountability, one of the most common normative requirements applied to NGOs. Both academics, such as Leif Wenar (2006), and NGO practitioners have largely considered accountability to consist in a set of control mechanisms that are valuable only in so far as they contribute to further goals such as effectiveness or improved public trust. Opposing this view, I argue that accountability can have intrinsic value for an NGO, and outline a conception of accountability as the responsibility to create opportunities for the moral appraisal of oneself by others.

The need for accountability is triggered, I argue, by an NGO's ability to affect the abilities of other agents to act and pursue their own goals and projects. Some contend that NGOs do not need to be accountable to corporations or states whose harmful activities they attempt to limit. Against this, I argue that, if we understand accountability as a form of moral appraisal instead of as an evaluation coupled with the ability to sanction, then NGOs can indeed be accountable—even to those with whom they have an adversarial relationship—without exposing themselves to material loss or punishment. Moreover, this form of accountability possesses value for an NGO as an end in itself, as it is constitutive of the relationships that comprise an NGO's own agency.

In Chapter 3, I examine Thomas Pogge's assessment of the moral priorities of INGOs engaged in relief and development. Pogge has argued forcefully that the current global distribution of wealth and resources is unjust, on the basis that it has been created, and is sustained, through rules and institutions that impose severe deprivation on the global poor to the benefit of citizens of affluent nations. He outlines several institutional reforms that can alter the global system to better realise the demands of justice. However, in the meantime, he believes that individuals reaping the benefits generated by this global injustice owe compensation to the global poor for their part in

supporting the institutions that violate the latter's negative rights. The primary means by which private citizens can provide this compensation is through donations to INGOs. These considerations, Pogge argues, support the conclusion that INGOs have a moral obligation to systematically prioritise certain projects over others.[40] He then contends that these priorities should be directed by a consequentialist concern for maximising cost-effective harm reduction.

I argue in Chapter 3 that Pogge's approach to INGO moral priorities is multiply flawed. First, his deontic argument for the obligation to assist is in tension with his consequentialist principle for the guidance of INGO resource allocation. The consequentialist principle can direct INGOs away from helping those most seriously harmed by unjust global institutions, as the latter may suffer from harm that cannot be reduced cost-effectively. Second, Pogge's claim that INGOs act as intermediary agents for their donors is not sufficient to ground a transfer of obligation from donor to INGO simply via a transfer of funds. Unless the INGO makes a *promise* to the donor, it is under no obligation to spend the donation in a manner that provides a maximally effective fulfilment of the donor's obligation. Drawing on the discussion from Chapters 1 and 2, I argue that Pogge's view of INGOs as intermediary agents incorrectly assumes an economic model of agency, in which NGOs are generally compared to private companies acting on behalf of shareholders. I argue that this model of agency is inadequate because, as discussed in the previous two chapters, the economic model of agency ignores some of an NGO's relationships and distorts others.

As an alternative, I argue that the particular abilities an NGO draws on in its relationships should serve as the basis for considering their obligations. As an example, I discuss Pogge's problem of the "discriminating contributor"—what

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[40] Pogge (2007a).

an NGO ought to do when faced with a potential contribution from a racist individual—and argue that the relevant ability here is an organisation's power for altering the moral beliefs of others and creating new norms. To the extent that an NGO relies on this ability for the exercise of its agency, it ought not to engage in collaborations, such as the acceptance of funding, with actors that espouse values inconsistent with those the NGO advocates.

Chapter 4 engages with the statist positions of Thomas Nagel (2005) and Saladin Meckled-Garcia (2008) in order to examine whether it is appropriate to assign responsibility to NGOs for fulfilling principles of justice. Nagel contends that justice is limited to the domain of domestic state institutions in virtue of the special nonvoluntary manner in which they engage with citizens' wills. I argue that an appeal to nonvoluntary relations in-and-of-itself is not sufficient to preclude the possibility of applying similar principles to voluntary associations such as NGOs. Nagel, I suggest, may be arguing that the *grounds* for political legitimacy—state coercion and imposition onto citizens' wills— also serves as the necessary *means* for justice.[41] However, he does not make this line of argument explicit. Therefore, I turn to Saladin Meckled-Garcia, who offers a statist argument similar to the one Nagel requires for his view to succeed.

Meckled-Garcia's argument ties the means for justice to the grounds for justice through an appeal to agency and agential capacity: only agents with the necessary capacities to satisfy principles of justice can be responsible for justice, he claims. He then argues that the key necessary capacity for justice is the ability to assign rights and duties, something which only state institutions can do, and only with respect to domestic distributions.[42] Therefore, he concludes that justice is limited to individual states.

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[41] Nagel (2005, p. 115).
[42] Meckled-Garcia (2008, p. 257).

While the notion of agential capacity is important, I believe Meckled-Garcia is unclear on his definition of this term, and ultimately conflates two different conceptions of capacity. Therefore, I distinguish between capacity as a *causal power,* i.e. the ability of an agent to bring about an effect in the world, and capacity as a *moral power,* i.e. the ability of an agent to alter the normative status of others.[43]

In the remainder of Chapter 4, I focus on capacity as a causal power, arguing there is no institution-based distinction between the causal powers of states and NGOs to effect a just distribution. Rather, the powers of both vary drastically based on the surrounding institutional environment. However, states do uniquely possess the moral power to assign and enforce rights and duties. In contrast, the comparable causal power of an NGO is to manipulate and use material resources to achieve positive normative change. The measurement of NGO performance ought to emphasise the "theory of change"[44] an NGO uses to justify and explain its projects, and the degree to which this theory is sensitive to changes in the NGO's environment. NGOs, I argue, also possess a moral power comparable to that of the state, insofar as they can alter the status of rights-holders in a given institutional setting and enable others to act more capably as duty-bearers.

The impact of NGOs on the ability of others to act as duty-bearers is further developed in Chapter 5. There, I identify a final NGO ability: the ability to increase citizens' awareness of facts relevant to rectifying institutional injustices and meeting the welfare rights of others. To introduce this topic, I examine the role of epistemic conditions in setting the stringency of obligations by reviewing Onora O'Neill's critique of universal welfare rights.[45]

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[43] This phrasing is borrowed from Raz (1986, chps. 2 and 3), who uses it to describe in general terms the powers exercised by an authority.
[44] Connell, et al. (1995, p. 11); Weiss (1995).
[45] O'Neill (1996, 2005).

O'Neill argues that, without institutions that recognise welfare rights, such rights are not claimable by those who hold them because it is unclear which duty-bearers are morally responsible for providing specific recipients with access to basic goods and services.[46] She concludes that welfare rights are not universal, and that, therefore, the corresponding duty to provide assistance is, without institutions, an imperfect obligation that individuals owe to no one and may exercise great latitude in fulfilling.

I then introduce two cases presented by Elizabeth Ashford (2006; 2007) to refute O'Neill's account of rights. Ashford discusses two types of complex causal chains, in which large groups of people collectively cause serious harms to others in a manner that is foreseeable and avoidable.[47] In such cases, where moral responsibility for a rights violation is shared by many perpetrators, it is impossible to link the harm suffered by any individual victim to the actions of any individual perpetrator. Therefore, victims cannot make the claims against specified others that O'Neill says are necessary for the establishment of a universal right. Ashford's cases pose a dilemma for O'Neill: either she can accept that they qualify as rights violations, in which case her basis for distinguishing between liberty and welfare rights disappears, or she can claim, implausibly, that such cases do not qualify as human rights violations, despite the foreseeable and avoidable cause of serious injury to others.

While I agree that Ashford's examples of complex causal chains can undermine O'Neill's account, I argue that they require further modification in order to do so. O'Neill provides multiple characterisations of her claimability condition for the existence of a right. Specifically, she discusses claimability in terms of both antecedent and *post hoc* perspectives; Ashford's cases address only the latter. I therefore modify Ashford's cases to defeat O'Neill's antecedent version of her claimability condition, showing that complex causal

[46] O'Neill (1996, chp. 5).
[47] Ashford (2006, pp. 224-7; 2007, pp. 195-7).

chains can obscure both the content of our obligations and to whom they are owed *before* any violation or harm occurs. In such cases, foreseeing and avoiding the violation is still possible, thereby allowing us to maintain the position that our actions constitute a rights violation.

NGOs, I argue, can assist duty-bearers in navigating complex causal chains to meet the universal liberty and welfare rights of others. A primary way in which they do so is to convey necessary information across epistemic boundaries and raise awareness of how we can contribute to beneficial causal chains and reduce our contributions to those that cause serious harm. Chapter 5 concludes with a discussion of the abolitionist movement as an example of the potential impact of exercising such an ability, and of the importance of exercising it with honesty and accuracy.

Following Chapter 5, I present a brief 'Interlude' that summarises the four key NGO abilities identified in the previous four chapters, and I argue that these abilities generate four corresponding obligations: 1) accountability, 2) consistency across actions and norms, 3) building a theory of positive normative change, and 4) implementing internal procedures to ensure accurate collection and transfer of information (epistemic procedural virtue).

While the literature on NGOs is immense and detailed, most research on NGOs does not provide an idea of the day-to-day experiences and broader system of relationships within which NGOs constantly operate.[48] Nor was there, in 2007, much of a literature identifying ethical challenges and problems faced by NGOs. In order to understand what issues constituted real ethical problems for NGO staff, I conducted a 10-month interview-based research project in Mongolia, using the method of grounded theory. Grounded theory methodology was selected in view of its goal of "discovering"[49] an

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[48] A notable exception to this is Hilhorst (2005).
[49] Glaser & Strauss (1967, p. 1).

explanatory or predictive theory through deep, systematic analysis of qualitative data. The data for my study consisted of transcripts from 38 interviews conducted with staff from Mongolian and foreign NGOs and a handful of executives from donor organisations, as well as field notes from observations of NGO projects and workshops. Early transcripts were coded while still in the field. These codes were grouped and connected in initial theoretical models using nVivo7 software, and then tested through further rounds of interviews.

Using a grounded theory approach maximises the informative potential of qualitative research for a philosophical account of NGO moral agency, as it pushes the researcher to go beyond mere description to arrive at a more abstract understanding of key concepts and meanings that are conducive to generalisation. In brief, the findings I discuss in Chapter 6 identify two core phenomena that explain the ways in which NGO staff experienced the topics of ethical obligation, accountability, and organisational value: 1) the process of validation, and 2) the framing of relationships with others.

Throughout conversations on what they considered to constitute right action, NGO staff characterised the moral justification of their activities by reference to an overarching assessment of their organisation's validation as a social actor. Ethical problems were constituted by scenarios or conflicts that threatened this organisational validity. The three main sources of validity were: process (method, or, "how" the NGO worked), consequences (the effects or outcomes of the NGO's activities), and, most importantly, their relationships with other actors, which impacted validity through the concept of obligation. Therefore, NGO staff perceived their organisation as valid if they 1) achieved the "right" process, 2) achieved the "right" consequences, and/or 3) fulfilled their obligations to others. These obligations in turn were defined, not on the basis of a moral theory or worldview, but rather, in terms of how the NGO staff viewed their organisation's relationships with other actors. NGO

staff identified these obligations to others by characterising, or framing, their relationships based on two factors: the focus of the relationship (process or consequences), and the relationship base, namely, whether the relationship was personal or professional.

Using the framework presented in the Interlude, I conclude with two frameworks that I suggest can help NGOs navigate their relationships by better orienting NGO staff with respect to what their activities and collaborations obligate them to do.

While the qualitative research is discussed primarily in Chapter 6, the impact of this study on my thinking about NGOs can be found throughout the thesis. The importance of engaging directly with the realities through which problems in applied ethics are experienced cannot be understated. A persistent methodological concern amongst those working on practical or applied moral issues is locating right principles or actions along a range between what is possible and what is best.[50] One of the main purposes of engaging in inter-disciplinary research was to identify how NGO staff themselves draw 'best' or 'right' principles or actions out of a set of possible activities, and what strategies they use when faced with their own limitations. This, I believe, has afforded my analysis in this thesis a better appreciation of the difficulties of finding a justified path of action in contexts that are subject to swift changes, interference from other actors, and internal conflict.

In considering the problems that constitute "NGO ethics," particularly in light of how NGO staff spoke of these problems, it became clear that their solution is precluded by questions regarding what, morally speaking, NGOs are perceived as being. Therefore, this thesis provides an outline for how we

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[50] For example, see the growing literature on the distinction between "ideal" and "non-ideal" theory: Stemplowska (2008); Valentini (2009); Farrelly (2007). Also, this matter has been raised in the literature addressing the nature and methodology of applied ethics as a field. See: O'Neill (2009); Buchanan (2009); Archard (2009).

should think of applied NGO problems by giving sense to what it means to treat an NGO as a moral agent. In brief, the answer provided by this thesis is that NGO agency is defined by the multiple relationships that threaten to undermine its unity. Obligations are identified as what an NGO must do in order to maintain such a unified organisational self.

As for why employees of an organisation would (or should) be compelled to seek such unity, Harry Frankfurt's comments on the agency of individuals provide a compelling answer: engaging in reflective self-direction and seeking coherence in an organisation's activities and values is what it means for NGO staff to take their organisation seriously as a social actor. Frankfurt talks of the stability and sense-making sought by individuals in the avoidance of haphazardly-formed ideas and actions "driven by transient and opaque impulses or by mindless decisions."[51] Similarly, NGOs must seek a similar stability in order to ensure that their activities and relationships with others are not simply a hodgepodge of *ad hoc* decisions, but instead reflect a thoughtful and responsible attempt to engage positively with the world. That is, NGOs should care about their agency in so far as they care about getting things right. I turn now to considering what this entails.

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[51] Frankfurt (2006, p. 2).

CHAPTER 1   WHAT IS AN NGO?

Introduction

Non-governmental organisations are a major topic of interest across policy and legal settings, as well as several academic disciplines including development theory, organisational management, political science and social policy. Because the type of actor identified by this term can vary significantly, "NGO" has enjoyed wider use than any of its particular definitions, threatening to render it "a virtually meaningless label."[52]

This issue has not gone unnoticed: the "definitional problem" and/or the "classificational"[53] problem have received considerable scrutiny in the NGO literature. NGOs, it is said, "remain terra incognita; the term NGO has become a commonly accepted phrase within the academic world, but it is unclear what this phrase actually encompasses."[54] This analysis has led to a further debate over what exactly the absence of a consensus on what is an NGO portends for the vitality of NGO research. Discussions about definitions[55], about the discussions about definitions[56], and about the discussions about the discussions about definitions[57] overlay and nest into one another like Matryoshka dolls. Some find the absence of a unified definition to be a threat

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[52] Lewis & Wallace (2000, p. x).
[53] Lester Salamon and Helmut Anheier (1992a; 1992b) distinguish between the two, with the definitional problem being that of defining the sector as a whole in terms of commonalities, and the classificational problem being that of distinguishing or classifying particular types of organizations within the sector.
[54] Martens (2002, p. 272).
[55] Ibid.
[56] Vakil (1997).
[57] Martens (2002).

to the possibility of any meaningful, rigorous study of NGOs.[58] Others, taking a more optimistic view, point to the broad interest in NGOs across many disciplines as a testament to their importance as objects of inquiry which unfortunately, but necessarily, acts as a detriment to any shareable definition.[59] Still others contend that NGOs are more the products of specific institutional settings than an important category of social actor.[60]

The aim of this chapter is to provide a characterisation of an NGO that will serve as a foundation for the remainder of the thesis. Section 1.1 identifies three primary factors that explain why there is no common definition of an NGO at present: its use of definition-by-negation, the diversity of charitable associations produced by different cultural and historical traditions, and the multi-disciplinary nature of NGO research that uses different types of definition. Each of these factors both explains why there is a lack of consensus on a definition, and poses a challenge for what a successful definition must accomplish. I suggest these challenges may be met if we maintain a clear distinction between an empirical and a theoretical definition of an NGO. This way, we may be able to both pick out actual organisations in the world that qualify as NGOs, as well as provide a theoretical account of what it means to be an NGO, which will, in turn, be instrumental for developing an account of NGO moral agency.

Section 1.2 begins with an overview of the early work of Lester Salamon and Helmut Anheier in their research on defining what they called the "third sector"[61]: organisations that were neither part of the market or the government. While Salamon and Anheier were interested in identifying a broader group of actors than the ones that are the focus of this thesis, I

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[58] Edwards & Hulme (1997, pp. 3-4).
[59] Bebbington, et al. (2006, p. 327).
[60] Tvedt (2002; 2006).
[61] Salamon & Anheier (1992a).

develop my account in contrast to theirs because their definition has since become the paradigmatic characterisation of "third sector" organisations, NGOs included. Moreover, their approach was rigorous, using a set of criteria to assess proposed definitions. I therefore adopt their criteria-driven approach in order to develop a new working empirical definition of an NGO. I present both this definition and a theoretical characterisation of NGO agency at the end of 1.2.

Finally, in 1.3, I demonstrate the explanatory strength of both definitions by illustrating how they distinguish an NGO from five other types of agent: the state, market, religious institutions, other civil society/nonprofit organisations, and the individual.

1.1 Why there is no simple answer to 'What is an NGO?'

I believe the definitional problem is the product of three primary factors hindering consensus on what counts as an NGO:

1) The term itself is vague and defined negatively;
2) Different cultural and historical traditions produce a diverse set of associations which are difficult to generalise and categorise systematically;
3) Research interests in NGOs employ definitions for divergent purposes, and these differences are not often clearly indicated.

Many acknowledge (1) and (2) as hurdles for resolving the definitional problem. However, the implications of (3) for the viability of a meaningful, uniform characterisation of an NGO have not been fully recognised. I will first discuss the challenges posed by (1) and (2). I then provide a brief sketch of the

multi-disciplinary research interests in NGOs, and highlight recent scepticism regarding whether a meaningful solution to the definitional problem can be identified. The challenge posed by (3) to a unified definition is fortified by the use of separate types of definition in the literature. Consensus is inhibited not simply out of disagreement over what is an NGO, but also different ideas about what we mean when we ask this question.[62] Distinguishing between different types of definition can, I argue, point the way to overcoming the challenges posed by each of the above factors.

1.1.1   Nature of the term

The term 'NGO' has its origins in the 1947 charter establishing the United Nations. At the behest of the American delegation, Article 71, included in the chapter laying out the function and powers of the Economic and Social Council, designated a unified consultative status for a variety of international groups and organised social movements. These groups were referred to under the general label, "non-governmental organization":[63]

"The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations, which are concerned with matters within its competence. Such arrangements may be made with

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[62] To use Rawls' (1971, pp. 5-6) terminology: there is disagreement over both the conception of an NGO (a particular characterisation) and the concept of an NGO (the role that this characterisation plays, or, the problem that a conception is supposed to solve. See also: Korsgaard (2003, pp. 116-7).

[63] The Roosevelt administration, aiming to avoid the fate that befell the League of Nations two decades before, considered such non-state groups to be valuable allies in stoking public support for the creation of the United Nations. Thus, interestingly, NGOs were seen early on as key players in the establishment of IGOs, and in return received the trappings of legitimacy in the form of recognition in UN charter (Charnovitz 1997, p. 252 ff); (Russell 1995).

international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."[64]

As such, the term had a broad scope and narrow use: within a prescribed institutional setting it gave recognition to a wide variety of organisations grouped under a catch-all phrase that defined them only in terms of what they were not: representatives of states.[65] This definition by negation allowed the term to be easily extended beyond its original use, with different parties left to fill in additional, mutually exclusive, characteristics.

The type of organisation now called NGOs have a longer history than the term itself. Given a rather generic account of NGOs as forms of socially-minded associational activity, they have their roots in the labour unions and abolitionist and peace movements of the 18th and 19th centuries, and further back to the church and traditional practices of charity and alms-giving.[66] Before the invention of the NGO moniker, such organisations existed under other terms, including "international organizations,"[67] "associations,"[68] "voluntary agencies,"[69] and "private organizations."[70]

Since the U.N. convention, however, NGO has become the common term used to refer to this broad class of associational, charitable organisations. A notable exception is the counterpart term, "non-profit organisation." While "NGO" tends to be the term used for non-profit organisations engaged in international development and relief or advocacy, NPO, or non-profit, is more frequently used in the U.S.[71] Elsewhere, NPO is also used interchangeably with

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[64] Charter of the United Nations, Chapter X, Article 71.
[65] Martens (2002, p. 15).
[66] Charnovitz (1997); Lewis (2005).
[67] Charnovitz (1997, p. 190).
[68] Ibid.
[69] Martens (2002, p. 272).
[70] Ibid.
[71] Lewis & Kanji (2009, p. 7). The Oxford English Dictionary lists the genealogy of "Not-for-profit" as "originating from and chiefly U.S" (OED 2000). The degree to which American

the term "charity," to describe non-governmental, non-profit organisations operating domestically within a given country.

As discussed in 1.2, I identify a non-profit-making motivation as one of the defining features of an NGO. One could presumably take the opposite approach, using the term NPO and including a non-governmental attribute as one of its defining features. However, since this term is less common overall, particularly with respect to international types of such organisation, I have opted to use "NGO" for the purposes of this thesis. Regardless, both terms face problems stemming from their definition by negation.

1.1.2 Different cultural and historical traditions

Whereas "Northern" NGOs have their roots in centuries of associational activity and Euro-American social movements, NGOs of the developing world draw from their own culture-specific histories of charitable giving and association. Examples include the peasant movements and church-based charitable projects in South America, shared-household credit groups in South Asia, burial societies and self-help groups based on kinship ties in Africa, almsgiving as a core Islamic practice in the Middle East, and anti-communist, pro-democratic grassroots organisations in Eastern Europe.[72]

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concerns with private property have influenced the development of U.S. charity law is interestingly complex. Charitable trusts, a well-established legal entity in England since the 17th century, were regarded with hostility by the 18th and 19th century American judicial system, and as a result, private gifts to such trusts were often ruled as invalid transfers of property in court. This was due to the belief "that charities, religious or otherwise, trampled individual rights by depriving future heirs of property to which they were entitled" (Fishman 1985, p. 626). Charitable giving therefore became increasingly directed towards not-for-profit *corporate* actors in U.S. law.

[72] Lewis & Kanji (2009, pp. 32-4); McCarthy, et. al. (1992, chps. 1 and 23); Opoku-Mensah (2009, p. 3); Smillie (1995, pp. 22-4).

This presents a challenge similar to the one mentioned above. Just as definitions based on negation allow for a term's overextension to a variety of organisations, the diversity of associational and charitable enterprise across cultures leads to even further disparities amongst the organisations and groups that the term "NGO" is often meant to capture.[73] Some suggest that the notion of an NGO is an organisational model particular to western, developed democracies and, as such, its application to associational movements in other cultures is ill-suited.[74] Still others charge that the application of the NGO model to groups in the developing world through foreign-financed "civil society building" contributes to an "NGO-ization" of local grassroots initiatives which weakens their closeness to the people with whom they work.[75] Therefore, like the issues addressed by current research on NGOs discussed below, cultural diversity challenges the idea that a unified characterisation is something we ought to aim for.

1.1.3   Differing research interests and their definitions

Research on NGOs is represented in a large body of literature that spans multiple disciplines. Because NGO research is a relatively new subject, there has been very little time for taking a systemised look at the voluminous amount of empirical data, case studies, frameworks, and conceptualisations that have been offered in the past three decades. That said, greater strides have been made recently in taking stock of the original aims of NGO research and how these aims, as well as the mainstream assumptions and ideas of NGO researchers, have evolved over the decades. Here, I am unable to give the kind of detailed account that would do justice to this complex history. Rather, I

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[73] Lewis & Kanji (2009).
[74] Jad (2004). This sentiment is expressed even more strongly with respect to the general notion of civil society (Parekh 2004, pp. 23-4).
[75] Alvarez (2009).

shall summarise briefly what has been given greater attention elsewhere, focusing on two broad areas of research: technical-legalistic and social scientific. Each employs their own type of definition of an NGO. As I argue below, social scientific research on NGOs employs two types of definition, leading researchers in some cases to talk past one another.

1.1.3.1 Technical-legalistic

For technical-legalistic definitions, the meaning of a term lies in how it is defined and used within a legal and/or policy-related context. It is technical in so much as the term operates as nomenclature for a specific linguistic community, and is legalistic if the community in question is defined by a bounded system of law. In the technical-legalistic sense, "what an NGO is" comprises both the set of criteria an organisation must meet to be considered by law to be an NGO, as well as what privileges, protections, responsibilities, etc. accord to such a legal standing—in short, its legal status. Issues pertaining to the technical-legalistic study of NGOs can be grouped according to whether they arise in reference to domestic charity law or the international legal system.

At the domestic level, a primary topic of interest is how the state defines its non-profit or charitable sector and relates to it through law, giving way to questions regarding the function, content and effects of such laws.

One can inquire about how charity law *functions*: what are the conceived purposes of the law?[76] Generally, what does charitable status consist in? Specifically, what sort of special relationship to the state is being established,

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[76] O'Halloran, et. al (2008).

e.g. tax exemption?[77] In what way is the law regulatory versus facilitative of charitable activity?[78]

Attention is also drawn to the *content* of charity law: what demarcations, if any, are made between different forms of charitable giving?[79] If charities are defined, and thus allocated tax exempt status, on the basis that they serve a "public benefit," what constitutes such a benefit? This last question is of considerable importance. Recent revisions of centuries-old charity law in Europe and North America have raised questions regarding what social topics and activities should be considered as contributing to the public benefit and which criteria the state should use in classifying a gift as under charitable giving. An interesting aspect of this second question that is relevant to our later discussion is whether such gifts should be judged objectively or subjectively. Legal systems using an objective determination of public benefit must include an official list of sanctioned causes towards which donations count as charitable gifts. Systems in which subjective determination is used instead will base the classification of the gift as charitable on the proven intention of the donor—if it can be shown in court that the donor gave the gift with the intention and belief that it was for a charitable cause, then it qualifies as charitable giving under the law.[80]

Finally, the *effects* of different types of charity law are important areas of research, particularly in the form of cross-country comparisons. Charity law has been studied to understand its effects on perceptions of social justice and

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[77] O'Halloran (2007).
[78] Lee (2009, pp. 347-78).
[79] For example, in British charity law there has historically been a distinction between philanthropy, charity, and benevolent giving, though the actual difference between these three categories has not always been clear. See: O'Halloran, et al. (2008, pp. 9-11).
[80] O'Halloran (2007).

charity,[81] on the level of social inclusion of disadvantaged groups within a society,[82] and on the level and quality of NGO activity in general.[83]

At the international level, the main concern is not with how boundaries are drawn, but rather with their absence. Individual Intergovernmental organisations (IGOs) engage in consultative and classificatory activities through which they define an NGO for their own purposes. As such, there is no coherent, internationally recognised "legal personality" or status for non-governmental organisations.[84] NGOs instead continue to be defined based on the law of the state in which they originated or are registered. This creates some difficulties, most evidently the lack of any clear understanding of exactly what kinds of powers are being accorded to which unelected agents and on what basis. There are also complications associated with the schizophrenic legal personalities of INGOs, whose individual branches are defined differently across different countries of operation.

Here, a desire to have a clearer and more centralised standing laid out for NGOs in their international activities is balanced against the view that the absence of any such definition is ultimately a boon, allowing for greater diversity and freedom in global civil society. On one hand, the flexibility that the lack of a definition affords not only NGOs, but also IGOs and other actors that relate to them is highly valued by all actors[85] On the other, this same flexibility allows for a variety of questionable organisations—such as Government-Organised-NGOs (GONGOs)[86], or NGOs set up by businesses (BONGOs)[87] to lobby governments for corporate interests—to "hide behind an

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[81] O'Halloran (2007); O'Kelly, (2004/05, pp. 2437-2500).
[82] O'Halloran (2007).
[83] Lee (2009); O'Halloran, et al. (2008); Wiktorowicz (2002).
[84] Martens (2003); Merle (1995).
[85] Bakker & Vierucci (2008, p. 12).
[86] Vakil (1997, p. 2059).
[87] Najam (1996, p. 206).

NGO façade."[88] An answer to the definitional problem for NGOs in international law must find some balance between these two concerns.

1.1.3.2 Social Scientific

Concerted interest in the "nonprofit sector" within the areas of sociology, political science and organisational management, amongst others, arose in the early 1980s.[89] The aim was to better understand associational organisations and their impact, based on the idea that such organisations, comprising a "third sector," had been significantly under-researched (or, as some saw it, completely ignored) in comparison to the two other main sectors of politics and the market.[90]

Later in the same decade, NGOs emerged as a major topic of interest within development studies, a phenomenon that ran in tandem with their dramatic rise in popularity as the "magic bullet"[91] or "favoured children"[92] of donor states and organisations. This popularity was based on the view that NGOs were more effective "development alternatives,"[93] facilitating successful aid through close relationships to the poor and disadvantaged. Research questions came packed with weighty assumptions about NGOs. If they were viewed as complementary to the neo-liberalism favoured by many donor organisations, the question was how to confirm that NGOs were in fact more effective than the state. If they were taken to be outspoken critics of such donor

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[88] Lindblom (2005, p. 45).
[89] Anheier (2005, pp. 10-15). Since the 1990s, other fields have also turned their attention to NGOs, including accounting, anthropology and environmental science, each offering their own interpretation of what an NGO is and what are the most relevant issues to understanding them and how they ought to operate. Here, however, I focus primarily on the sociological and development literatures on NGOs.
[90] Salamon & Anheier (1992a).
[91] Edwards & Hulme (1996).
[92] Lewis & Opoku-Mensah (2005, p. 666), paraphrasing Hulme & Edwards (1997a).
[93] Brookes (1987) quoted in Bebbington, et al. (2007, p. 1699).

organisations and states, the question was how they had such authority, and whether NGOs were as close to the disadvantaged as they claimed.[94]

Both lines of research intersected in the revival of the concept of civil society in the 1990s.[95] From the perspective of third sector researchers, civil society could operate either as a competing or a complementary concept to the notion of a third sector.[96] Within development studies, conceptualising NGOs as civil society actors accompanied an interest in how development work could strengthen democratic processes and empower people at the grassroots level.[97]

Recently, NGO scholarship, particularly within the field of development studies, has reflected critically on the trajectories of NGO research, in particular taking issue with how NGOs have been portrayed as social actors.

One of the most widely cited problems is the prevalence of "normative assumptions" amongst researchers that has allegedly affected how NGOs are approached as objects of study. This worry arises almost exclusively in the development literature, in part because there is sufficient evidence there for the charge that researchers were too close to development practices, resulting in bias. Many researchers conducted their work as consultants with NGOs or on grants from donor organisations.[98] Others working within NGOs left to pursue PhDs, after which they published material as they returned to work with their organisation.[99] Thus, much research, particularly in the 1980s and 1990s, has been entangled with assumptions about the positive value of NGOs—as development "alternatives"[100] or efficient agents of empowerment,

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[94] Bebbington, et al. (2007).
[95] The definitive publication on civil society research, the Global Civil Society Yearbook was launched in 2001. See: Anheier et al. (2001).
[96] Anheier (2005); Morris (2000).
[97] Lewis (2005).
[98] Lewis & Opoku-Mensah (2006, p. 669).
[99] Lewis (2005).
[100] Bebbington, et al. (2007, p. 1699).

for example—or has drawn conclusions with respect to this value with very little supporting evidence. [101]

David Korten's early and influential work on NGOs has been singled out as a particularly unabashed example of this kind of research.[102] His characterisation of NGOs as agents of positive change evolving through different 'generations' of social action, was typical of the glowing views of NGOs and their special abilities in development research in the 1990s. Accounts such as Korten's have in recent years been dressed down as "the NGO community's imagined past."[103] Terje Tvedt has been particularly vocal in pushing this objection generally, and using Korten as an example specifically, charging Korten's history of NGOs with being at best myopic: "This story about NGOs is in reality only about the 'good,' 'progressive,' and 'humanitarian' NGOs, as if they alone constitute the NGO scene, or transnational civil society, or global civil society."[104] The upshot of Tvedt's criticism is that there are a number of examples of NGOs failing to meet minimal performance standards, or engaging in outright illegal or wrongful activities, events which a normatively-laden framework such as Korten's is incapable of recognising, let alone explaining or analysing.

Tvedt espouses what David Lewis and Paul Opoku-Mensah have called a "new research agenda" for NGOs that emphasises the need for empirical research to be more realistic and sensitive to the actual ways in which NGOs operate and are constrained.[105] This, in turn, leads to a more critical perspective on what NGOs are capable of achieving as solitary actors.[106] Several authors advocating for a more realistic approach have questioned the very idea of NGO agency,

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[101] Tvedt (2006); Lewis (2005, pp. 210-12).
[102] Korten (1990).
[103] Tvedt (2002, p. 365).
[104] Ibid.
[105] Lewis & Opoku-Mensah (2006).
[106] Tvedt (2006); Seckinelgin (2006); Lewis & Opoku-Mensah (2006); (Nelson 2006).

arguing that what NGOs are and what they do depends greatly on the abilities that other institutional actors attribute to them.

Here, I follow the literature in understanding agency as "both an individual and a collective concept referring to freedom and capacity to act in pursuit of self-perceived interest."[107] An NGO is an agent in so far as it can engage in a "reflexive monitoring of action"[108] and "is organized so as to seek the realization of certain motivations in the world and to do so on the basis of certain representations about what that world is like."[109] The idea of an account of NGO agency rests on the premise that actors identified as NGOs have a shared set of abilities and processes that constitute their agency.

Against this assumption, Dorothea Hilhorst, in her influential study of the day-to-day activities of NGOs in the Phillipines, argues "the real world of NGOs"[110] reveals a considerably more fractured and particularistic portrait of the abilities and processes constituting NGO agency. Hilhorst expresses agreement with Tvedt's critical approach, but claims he does not go far enough, as "his work is limited by the implicit assumption that NGOs constitute a single reality."[111] Instead, Hilhorst argues, what an NGO is and does depends on the particular actors with whom NGO staff interact, and the discourses within those interactions. NGOs use "different faces"[112] when relating to donors, other NGOs, or beneficiaries. This means, she says, "that

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[107] MacDonald (2007, p. 268). MacDonald extrapolates her discussion of agency from a number of sources, including Giddens (1984), which is the most widely-cited account of agency in the NGO literature. An important exception to this is Seckinelgin (2006, pp. 717-8), who contrasts Giddens' definition with that of Donald Davidson's (1980, p. 65).
[108] Giddens (1984, pp. 3-6).
[109] List & Pettit (2010, p. 32). List and Pettit's work addresses group agency specifically. They identify organisations such as NGOs as examples of this type of agency (p. 40).
[110] Hilhorst (2005, p. 1).
[111] Ibid. (p. 3).
[112] Ibid. (p. 4).

there is no single answer to the questions of what an NGO is, what it wants and what it does. NGOs are many things at the same time."[113]

Hilhorst's perspective is one of several examples of researchers aiming to reach a more "nuanced understanding of NGO agency … [b]y embedding research on the NGO phenomenon more tightly within these wider aspects of institutional systems, policy discourses and organisational politics."[114] Just as different cultural histories of charitable association hinder consensus as to what is an NGO, the present-day institutional settings in which different organisations operate imply that what it means to be an NGO will vary from context to context.

1.1.3.3 Distinguishing between types of definition

I believe this challenge can be resolved by identifying the different types of definition used for various research purposes in the literature. It is this third factor—the various uses of a definition of NGOs—that, together with the definition-by-negation and diverse cultural and historical backgrounds, inhibits consensus around a single characterisation.

We can identify three distinct uses for the term "NGO" in descriptive NGO research. These are: technical-legalistic, empirical, and theoretical.

Recall that, in legal literature, which operates with a technical-legalistic definition of an NGO, the meaning of a term lies in how it is defined and used within a legal and/or policy-related context. Originally, 'NGO' was coined as a technical-legalistic term for the purposes of guiding consultative relations between the U.N. and a group of non-state social movements and organisations.

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[113] Ibid.
[114] Lewis & Opoku-Mensah (2006, p. 671).

As the use of the term expanded, it acquired a second sense: an empirical definition that reached beyond its original technical-legalistic use to select a set of organisations based, presumably, on certain structural or organisational features they possessed. While the aim of a technical-legalistic term is to articulate a legal status or a role in policy, an empirical definition is used to identify and describe specific actors or entities in the world. For example, "marriage" as a technical-legalistic term is defined by the conditions and specifications laid out in actual law, whereas "marriage" as an empirical term may involve conditions that go beyond the technical-legalistic definition, depending on what kind of relationship or phenomenon a researcher is trying to examine. For instance, a cultural minority may engage in marriage practices that are not recognised legally by the state, but which are equivalent to, or share the same key features as, "official" marriages, such as co-habitation, exclusive sexual behaviour, etc.

A third type of definition, currently overlooked, is a theoretical definition, one that characterises in abstract, though still descriptively, what it *means* to be an NGO: what distinguishes it as an agent, what types of normative considerations might apply to it, and what meaning it has as a social entity.[115] Whilst empirical definitions give "thin" descriptions, e.g. "to wink" means "to close and open one eye," or an NGO is "a non-for-profit entity separate from the state with a certain organisational structure"; theoretical definitions give what Ryle (and more famously, Geertz) called "thick descriptions," e.g. "to wink" means "to convey a message surreptitiously," or an NGO is "an agent of change."[116] To recall the example of marriage used above, a researcher may define marriage empirically in terms of a closed sexual relationship or co-habitation, and then offer a theoretical definition of marriage as a psychologically and emotionally intimate partnership, or, to put a different

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[115] Weber's notion of an ideal type also captures the idea of a theoretical definition: Weber (1981, originally 1897).
[116] Ryle (1968); Geertz (1973).

spin on it, perhaps as a state of perpetual conflict mitigated by conditions requiring necessary cooperation.[117]

A good example of how these different types of definition can create confusion can be seen in the widely-cited article by Adil Najam (1996), which advocated an approach to the definitional problem that would give more emphasis to identifying similarities across, instead of differences within, the sector. There, Najam takes issue with Salamon and Anheier's definition of the non-profit sector. Salamon and Anheier use a structural-operational approach to defining the non-profit sector, which bases a definition of the non-profit sector on organisational structure. According to Najam, "The purpose of the [definitional] exercise is to outline the dominant and preferred characteristics of each sector rather than to fit the peculiarities of all the outlying entries within each."[118] Najam therefore finds Salamon and Anheier's structural-operational approach insufficient for identifying a meaningful definition: "Even where such an approach is able to tell us *which* organization is a nonprofit, it tells us nothing about *what* a nonprofit is and *why* it is so."[119]

This remark starkly highlights the contrasts between empirical and theoretical definitions. Najam seeks an understanding of what it means for an organisation to be nonprofit, i.e. what kind of special perspectives, skills, prerogatives, responsibilities, and powers is entailed. In contrast, the empirical definition provided by Salamon and Anheier is designed to list a set of observable features, with corresponding indicators, in order to identify

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[117] Definitions of a democratic society provide another illustration. Empirically, a liberal democracy may be defined as a "multiparty political system" in which there are voting rights for all adults, regular elections and access for political parties to the public via a sufficiently free media (Freedom House Index 2010). Theoretically, a liberal democracy may be defined as a fair system of social cooperation over time, in which its basic structure is publicly known, there is full compliance with societal institutions and laws, and each citizen, possessing two moral powers and acting as a free and equal person, accepts the same principles of justice (Rawls 1971, pp. 1, 35, 43, 447-9).
[118] Najam (1996, p. 212).
[119] Ibid. (p. 219).

existing organisations and analyse these in terms of their roles in causal processes, much like the creation and use of a taxonomical chart.

Thus, while his concerns for a higher-level theorisation of NGOs is valid, because he does not recognise that Salamon and Anheier are engaging in a different type of definition, Najam's criticism talks past them. Their process is intended to be inductive, and yet this is precisely what Najam seems to take issue with: the attempt to formulate a definition by looking at the set of individual organisations one wishes for it to cover. In general, this kind of tension is generated by the different disciplinary backgrounds that motivate NGO research. Third-sector researchers were attempting to classify and define the contours of a given set of social organisations, while researchers coming from within development studies, like Najam, are interested in questions that centre on what NGOs are uniquely good for and how they should be understood as a specific type of development actor.

This distinction between theoretical and empirical definitions and the frequent lack of its recognition by theorists is, I suggest, one of the main reasons why some view NGO research as making little progress towards answering key questions about NGOs. It also fuels scepticism regarding NGO agency: authors argue that general empirical definitions of NGOs are not useful, since both the features themselves and what they allow an NGO to be or do in a given setting will vary significantly.

1.1.4   Re-framing the definitional problem

In sum, the task of reaching a versatile and general definition of an NGO has faced three barriers that we can take into account as we pursue a characterisation of NGOs as agents.

First, the NGO sector has often and primarily been defined in terms of what it is not, leading to broad characterisations that lack specificity.

Second, it is questionable to what extent a definition of an NGO can apply cross-culturally while still remaining meaningful. The cross-cultural differences in the evolution of charitable associations and grassroots groups may be more significant than their similarities for the purposes of empirical research and theories of agency.

Third, research on NGOs is multi-disciplinary, making use of technical-legalistic, empirical and theoretical definitions. Distinguishing between the latter two types is of particular importance, as failure to do so can contribute to the perception that a useful general definition is impossible to reach. With respect to this aim, recent scholarship on NGOs in development has argued that the institutional contexts in which NGOs operate shape their agency to such a degree that general definitions or accounts of their agency are inaccurate and unhelpful.

These issues indicate that what we require for a theoretical account of NGO agency is an empirical definition that uses positive, not negative, characteristics, is flexible across different institutional and cultural contexts, and at the same time can explain why the ways in which organisations in different contexts relate to others is significantly similar. I turn now to the task of outlining such a definition.

1.2   NGO: A working definition

1.2.1   The standard account: Salamon and Anheier

1.2.1.1   Criteria and approaches to defining

In their landmark research on empirically defining the non-profit sector, Lester Salamon and Helmut Anheier stated that the aim of their cross-national study was to develop "a general definition of the sector that can be used in comparative research."[120] To guide their analysis, Salamon and Anheier draw on the work of social scientist Karl Deutsch to outline three criteria against which they will assess the strengths and weaknesses of different definitional approaches:

Economical: The model abstracts from and simplifies reality in a way that emphasises "the truly critical aspects of a phenomenon or process."[121]

Significance: It identifies qualities that are neither "already obvious" nor "trivial."

Explanatory or predictive power: The model is *rigourous*, i.e. can be used by different researchers and research programmes, possesses *combinatorial richness,* i.e. can generate a large pool of hypotheses, and has *organising power,* i.e. can be used to explain phenomena outside its original intended purpose.[122]

Salamon and Anheier identify four approaches to defining the nonprofit sector, two of which reappear as features in their final definition of a nonprofit

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[120] Salamon & Anheier (1992a, p. 125).
[121] Ibid. (p. 136).
[122] Ibid

organisation: an 'economic' approach that defines them based on their differences from corporations is incorporated as a 'non-profit distributing' condition; and a 'legal' approach, identifying NGOs based on legal status is brought in as a 'formal' condition. The more significant divergence lies between a 'functional' versus a 'structural-operational' approach.

Functional definitions denote organisations by reference to their purpose or activity, in other words, by what they do. As an example, NGOs would be defined as value-driven organisations or those that work to serve "the good of society" or a "public purpose."[123] Salamon and Anheier note that an advantage to this approach is that it allows us to reach beyond the legal status of an organisation to pick out meaningful features of its activities that make it adjudged eligible for such a status, thus avoiding the aforementioned problems (1.1.3.1) with technical-legalistic definitions.[124] However, after citing issues with a functional approach that will be discussed in detail below (1.2.3.6), Salamon and Anheier opt for a structural-operational definition.

Structural-operational definitions pick out features of the basic structure of an NGO and its operation as its essential, defining characteristics. While a specific definition of this "basic structure" is never provided, based on the features offered under structural-operational definitions, we could say, generally, the basic structure of an NGO is the set of features that constitutes the form, as opposed to the content, of their activities. Rather than looking at the purpose or the activity in which an organisation is engaged—which may be very similar or identical to that of another type of organisation—a structural-operational definition looks at the organisational features shaping how that activity is pursued. For example, such a definition may consider decision-making structure, how resources are acquired and distributed within

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[123] Ibid. (p. 138).
[124] Ibid.

the organisation, or how NGO members or staff become part of the organisation. [125]

1.2.1.2 *Salamon and Anheier's definition*

In the years since Salamon and Anheier's original work, it has been most common to adopt either their definition or a structural-operational definition similar to theirs, often along with some added reference to function (particularly in the development literature on NGOs). Therefore, most definitions given in the literature follow along the lines of those of Salamon and Anheier (1992a and 1992b), as well as the later adaptations provided by Vakil (1997), and Edwards and Hulme (1992, 1996, 2002). [126]

Salamon and Anheier's original structural-operational definition of the nonprofit sector gives five distinguishing features. For them, NGOs are:

> *"formal, private, non-profit distributing, self-governing and voluntary."* [127]

I begin with these five, and then address the functional condition that is frequently attached to different interpretations of this definition.

1.2.2 Additional criteria for a definition

I shall continue to use Salamon and Anheier's original three criteria. However, since the aim is to produce an account of NGO agency to serve as the basis for an understanding of an NGO's moral standing, I will require two further criteria:

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[125] Ibid. (p. 135, pp. 139-140); Martens (2002, p. 282).
[126] Edwards and Hulme rarely give a specific, direct definition of an NGO, however their prolific writings are often quoted in definitions and therefore their characterizations will be referred to throughout.
[127] Salamon & Anheier (1992a, p. 125).

Uniqueness: A definition must give sense to the idea that it means something to be an NGO, by sufficiently distinguishing such organisations from other types of social actor.

Throughout this section I assume that there is some sense in which NGOs are a distinctive kind of agent. While this is a defeasible assumption, my enquiry will adopt it for the sake of assessing possible features for an empirical definition. The revised empirical definition produced at the end of this section will therefore constitute the best possible definition under the assumption that NGOs are a distinctive organisational type. This assumption is then supported indirectly by the theoretical characterisation of NGO agency that results from the revised definition, as well as by the arguments of section 1.3., where the revised definition is used to illustrate how NGOs are importantly different from other types of social agent.

Explanatory power: A definition must make sense of the problems and questions being asked of it.[128] In other words, it must give an account of an NGO that also has the resources to explain why problems arise in its usage (why there is debate as to what counts as a token NGO).

The necessary conditions identified in an empirical definition should be considered as attributes which an organisation can possess in degrees. The problems presented with "outlying"[129] cases or grey areas should then be explicable by pointing to how a particular organisation is either missing one condition or fulfils one or more conditions to a lower degree.

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[128] Rawls (2003, p. 3)
[129] Najam (1996, p. 212).

1.2.3 An alternative definition

1.2.3.1 Formal

The argument for including "formality" as a condition is best seen in light of the short-comings faced by the aforementioned legal approach to defining an NGO. Recall, first, that there is no legal consensus beyond the boundaries of a particular country on the definition of an NGO. At the international level, NGOs occupy a "non-status," and domestically, legal identities vary from country to country, making a coherent characterisation impossible.

Second, even if there were a legal consensus, it may, in fact, offer a poor definition, as is the case according to critics of the current ECOSOC definition, which allows GONGOs to function ostensibly as voices of civil society.[130] Taking any legal definition at face value begs obvious and important normative questions as to what factors *should* be taken into account in determining non-profit law and when decisions made by the state to refuse non-profit status are unjustified.

Taking NGOs to be formal provides a way of capturing the focal point of the legal approach without tying a definition to actual laws. The conferral of legal status requires some degree of formalisation in an organisation, but conversely, a given legal system may not have yet caught up to the task of giving such formalised groups a full and detailed definition. Including a formal condition allows for the identification of a particular type of social actor, leaving it as a separate issue how such organisations are (or should be) represented in law.

To say that NGOs are formal, then, is to give meaning to the sense in which they are an 'organisation' as opposed to a loose collection of individuals or *ad*

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[130] Lindblom (2005).

hoc activities. As to what constitutes formality more specifically, "meaningful organizational boundaries,"[131] such as "an awareness of the distinction between organizational and individual responsibilities"[132], but also "regular meetings, officers, rules of procedure" can be sought to identify organisations meeting this condition.[133] Even more specific versions of this condition are the requirement that NGOs have "a formal existence with a statute and a democratic and representative structure,"[134] or that they be "professionalized" with "paid staff."[135]

Problems

On the one hand, the formal condition helpfully separates NGOs from "voluntary activities and helping behaviour within private households and neighbourhoods."[136] However, as mentioned above in 1.1.2, it also excludes "informal, often community-based organizations of the Third World," which are typically taken to be a main form of non-governmentalism in the South.[137] For example, a grassroots women's organisation may provide small loans to its members, or counselling and advice on domestic or career issues, without having a headquarters, paid staff, written statutes, or legal identity.

What reason do we have to group these grassroots organisations from non-western contexts with those that are significantly more formal and professionalised? For many studies with a social scientific, classificatory purpose, a distinction between these two groups is arguably more useful, and certainly more common, with GRO (GrassRoots Organisation) or CSO (Civil Society Organisation) referring to the informal groups and NGO referring to

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[131] Anheier (2005, p. 47).
[132] Salamon & Anheier (1992a, p. 147).
[133] Anheier (2005, p. 47).
[134] Lindblom (2005, p. 52).
[135] Martens (2002, p. 282).
[136] Ibid.
[137] Vakil (1997, p. 2059).

larger, typically Northern-based, organisations.[138] Presumably, the level of formalisation has a significant effect on how a given organisation operates— both as a cause and an effect—in whatever process or part of the social environment that is being examined, making this sort of distinction important for empirical explanation and prediction.

But, since our aim is to support a definition that will be useful for understanding the normative status of such organisations, there is more reason to relax the formality condition to include informal organisations. Because they operate in different social contexts, with different historical backgrounds regarding nonprofit and associational life, the structures of professionalized northern NGOs and grassroots southern NGOs[139] as *organisations* diverge, giving the former more of the trappings of formality. But they share an organisational nature, or personality, that is, within the context in which they operate, how they are taken by others to be different from individuals (because they are collective) and from *ad hoc* activities (because they are long-term and/or intentional).

It is this latter factor—the organisational personality that they share—that best meets the criterion of uniqueness for my definition. What makes formality a useful defining feature with respect to uniqueness is that it separates a particular collective agent from individuals as well as from short-term or unintentional group activities. This separation applies just as much to small grassroots organisations with medium- or long-term goals as it does to larger NGOs operating in the U.K. The particular trappings of formality, e.g. headquarters, staff, are different across contexts, but these are inconsequential to *what it is* about the formality condition that contributes to an understanding of an NGO as a unique agent within a given environment. In

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[138] Ibid.

[139] This is not meant to imply that all Northern NGOs are professionalized and all Southern NGOs are informal.

other words, formality is more useful when it is conceived of as more of an operational than structural feature. Collectivity and long-term, intentional action are qualities that can be possessed by grassroots organisations, despite differing greatly from international NGOs in terms of structure.

In sum, the structural condition of formality, particularly when it is defined rigidly in terms of the presence of a statute, "a fixed headquarters" or even "paid staff", is not as useful for explaining how the similarity shared by a variety of organisations is more important to how people relate to them than the differences in their structures.

Revised condition: ***Organised***

Thus, just as a legal definition was passed over for a more encompassing formal condition, I suggest a loose interpretation of the formal principle, requiring only that there be some "institutional reality"[140] to an organisation, specific to a particular institutional system and cashed out, perhaps, in the most general of the terms quoted above. That is, there should merely be some recognition of a difference between an individual's personal relationships and obligations and those that the individual experiences as a member or employee of the organisation.[141] A simpler way of putting this, which maintains fidelity to the words in the term NGO itself, is that there must be some sense of centralised *organisation*—implying collectivity and intentionality with respect to long-term aims—to the efforts and activities of the group in question. For many NGOs, this level of organisation may reach a highly professionalised stage, with headquarters, official budgets and paid staff. But it is importantly not the only form of 'institutional reality' an NGO may assume. Such a revision makes the formal condition more flexible, in the

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[140] Salamon & Anheier (1992a, p. 143).
[141] Anheier (2005).

same spirit of the original move towards a general notion of formality away from the more rigid condition of legal status.

1.2.3.2 *Private*

"Private" means "institutionally separate from government,"[142] in other words, the non-governmental nature of NGOs. Most generally stated, this condition implies that an organisation cannot be "part of the apparatus of government nor governed by boards dominated by government officials"[143] in order to count as an NGO.

While Salamon and Anheier's classification allows for organisations that receive financial support from a government, the issue of how much funding NGOs may receive from the state before they compromise their identity has been a matter of intense debate elsewhere.[144] In particular, the question of the extent to which GONGOs and Quasi-NGOs (QUANGOs)[145] "count" as NGOs is one of the main reasons why the definitional problem is taken to be of considerable practical importance, and not just a matter of interest only to social scientists. The trend of Northern NGOs (in particular, international development organisations) receiving significant grants from states has given rise to discussions of what exactly constitutes non-governmentalism with respect to such organisations.[146]

Funding-related issues aside, this non-governmental condition is also sometimes specified in order to distinguish NGOs from political parties or interest groups. Not only are NGOs not part of the state apparatus, it is also not their goal to acquire or control state powers. While advocacy may be an

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[142] Salamon & Anheier (1992a, p. 135).
[143] Ibid.
[144] Edwards & Hulme (1997a).
[145] QUANGOs refer to organisations that rely heavily or solely on governments or governmental donor agencies for their funding (Vakil 1997, p. 2059).
[146] Edwards & Hulme (1997a).

important role and policy change a widespread interest shared by many NGOs, "direct control" over major social and political institutions is not one of their aims.[147]

Problems

On one hand, this condition is quite clear-cut—NGOs must in some way be non-state actors. At the same time, it is so broad and unspecified, it is often unclear when this condition is being met or not. In terms of our criteria, it is not strong with respect to establishing uniqueness or explaining why some organisations seem to be non-governmental to a greater or lesser degree than others. In seeking out a definition that better satisfies these criteria, we will do better with a more specific, positively expressed (as opposed to negative, 'non'-type) feature.

While it is not a definition by negation, "private" does not offer much advantage over non-governmentalism as a way of explaining what it means for NGOs to be independent from state institutions. Understanding what is meant by "private" requires an account of the private/public distinction, a conceptual categorisation that has a very long, contested, and central place in political and social theory. With respect to our discussion, a survey of the different theoretical cuts between the private and the public realms either find NGOs straddling both,[148] or leave us no better off than we were with the broad language of non-governmentalism. Just a sampling of the definitions of the "public" sphere are: "sharing common ends"[149] or in particular "the end of supporting just institutions and of giving one another justice accordingly,"[150]

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[147] Uvin & Weiss (1998); Martens (2002, p. 281); Peruzzotti (2006, p. 57, ff).
[148] The most prominent account that conceptualises voluntary associations such as NGOs as playing an important straddling role between the public and the private is that of Habermas (1996, esp. chp. 8).
[149] Rawls (1993, p. 202).
[150] Ibid.

open and accessible activity of a collective nature,[151] and civil society conceived of as various associations jockeying to bring different viewpoints and interests into the political process. A similar sampling for "private" yields: civil society conceived of as a "system of needs" and "contractual relationships",[152] community, sharing the same "comprehensive doctrine"[153] (i.e. set of particular moral values and aims), familial and friendly ties, what is "hidden or withdrawn."[154]

Taking these in view, how might we place what are considered to be archetypical NGOs—Oxfam, BRAC, Greenpeace, Habitat for Humanity, CARE International—within this distinction? These organisations are open and accessible and often claim to work on issues of public concern, yet they also espouse values that would qualify as comprehensive doctrines. Thus, they fall under both characterisations to some respect, with greater compatibility going to the side of 'public', if anywhere.[155]

Revised condition: **self-mandated**

Another way of capturing NGOs' independence from the state without relying on negative terminology or a theory-laden account of the private/public distinction is to say that NGOs are self-mandated. Elsewhere, (i.e. not in relation to this non-governmental condition) NGOs are often described as operating without any "statutory authority to act."[156] This refers to the idea that the existence and agenda of an NGO is not mandated or necessitated by anything other than the decisions of freely-acting individuals.

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[151] Weintraub (1997, p. 5).
[152] Cohen & Arato (1996); Weintraub (1997, p. 13).
[153] Rawls 1993, (p. 202).
[154] Weintraub (1997, p. 5).
[155] One might suggest the following compromise: that NGOs are privately formed, yet publically oriented. But this still rests on an account of what it means for an interest or issue to be 'public' as opposed to 'private.' I therefore believe that if we can arrive at a feature that does not rely on such a contested distinction, our definition will be stronger.
[156] Edwards & Fowler (2002, p. 4).

Such a feature of NGOs, which is usually expressed informally and not as a defining condition, is a suitable candidate for a non-negative version of "non-governmental." NGOs identify causes (which may or may not be classed as "public"—see 1.2.3.6) that purportedly serve as the justification for their own existence. They, in turn, issue a mandate for themselves to pursue a course of action as a response to such a problem, and then enlist and incite others to help them realise that course of action. While they may form close relationships with the state, being self-mandated in this sense rules out the possibility that they could function *as a part of* the state.

Like Salamon and Anheier's version, a new working definition will be aided if there is no stipulation regarding the funding relationship between NGOs and the state. This is because we are interested in meeting the criteria of uniqueness and explanation, the latter of which leads us to look, not only for empirical adequacy, but also for a definition that can help us explain why definitional problems arise with regards to NGOs in practice. That is, we want to be able to explain what is problematic about QUANGOs or why more independent NGOs wrestle with decisions over how much funding they will accept from the state. We do not want to adjust our definition so as to include such groups. These struggles and problems arise because significant financial reliance on another agent undermines the *autonomy* that is implied by being self-mandated. The non-governmental condition is meant to contribute to an understanding of an NGO as a unique agent by distinguishing it from another main type of agency. Thus, it is not the case that NGOs receiving significant funding from the state no longer "count" as NGOs, but, rather, that one of the defining features of their agency is being subverted. In a way, this captures the complaint about GONGOs perfectly: they operate under the mantelpiece of being an NGO while lacking a central determining feature of NGO agency.

The way to understand the problem of state-NGO donor relationships, then, is to recognise that what originally defined the organisations as NGOs remains

unchanged, but their ability to act appropriately as that type of agent, to be an NGO in a meaningful sense, can be compromised depending on the extent to which their funding relationships adversely affect their autonomy. Being self-mandated is one component of an organisation's autonomy. Below we turn to the second component: self-governing.

1.2.3.3 Self-governing

By "self-governing" Salaman and Anheier mean "able and equipped to control and manage its own activities."[157] They include this condition in addition to the non-governmental "private" condition above, on the basis that "some organizations that are private and nongovernmental may nevertheless be so tightly controlled, either by governmental agencies or private businesses, that they essentially function as parts of these other institutions."[158]

Problems

It would seem that reformulating "private" to "self-mandated" as we did above already implies the self-governance condition. While there are organisations that meet Salamon and Anheier's original condition of private—i.e. not part of the apparatus of the state—and yet fail to meet the condition of self-governance, there is no organisation that would meet the condition of self-mandated but not the condition of self-governance. The former entails the latter, but not vice versa (for example, the BBC is arguably self-governing but not self-mandated). An organisation that was self-mandated but not self-governed, were it to exist, would have to be self-created and structurally independent, and yet managed in its affairs and projects by the state; the existence of such an organisation is highly implausible, if not conceptually impossible.

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[157] Salamon & Anheier (1992a, p. 135).
[158] Anheier (2005, p. 48).

Nonetheless, it is useful to retain Salamon and Anheier's self-governance condition as an explicit reminder of what is required for an organisation to be sufficiently independent from the state. It seems most parsimonious to combine self-governing and self-mandated into a single umbrella concept of *autonomy*. Self-governing refers to autonomy in the day-to-day operations and projects of an organisation, while self-mandated refers to autonomy with regards to the organisation's further, long-term strategy.

An important final question here regarding the condition of autonomy is, "with respect to what or whom?" We have, so far, been discussing the autonomy of an NGO with respect to the state, but in fact the features of self-mandated and self-governing can apply to the relationship between an NGO and any institution or organisational body. For instance, "NGOs" established and managed by corporations can reasonably be considered NGOs only by name and not by any substantive definition of an NGO, since they are not autonomous from the corporate agent. They are, therefore, best regarded as the charitable arm of a corporation.

Also, these two components of autonomy helpfully explain how religiously affiliated organisations can be situated along a sliding scale of NGO-ness. On one side there are faith-based organisations: full-fledged NGOs that are motivated by religious beliefs, but entirely self-mandated and self-governing with respect to an established religious institution. Examples of this type of group include the international aid NGOs World Vision and Muslim Hands. In the middle there are NGOs that are mandated by a particular religious institution, but are entirely self-governing, such as the Norwegian Lutheran Mission. Finally, on the other end are the non-NGO charitable projects mandated and managed by the Catholic Church or particular synagogues or mosques.

Features that further distinguish NGOs from corporations or religious institutions are discussed below in 1.2.3.4 and 1.2.3.6. While autonomy is

primarily intended to distinguish NGOs from state institutions, it is important to note that this also helps to differentiate them from charitable enterprises that operate under the auspices of other types of non-state institutions.

*Revised condition: **Autonomous** (self-governing and self-mandated)*

1.2.3.4 Non-profit distributing

A partner condition to non-governmental," "non-profit," or "non-profit-distributing" is the other core defining feature of an NGO. Being non-profit can mean that an organisation does not engage in profit-generating activities, or that, if it does, such profits are used solely for the purposes of organisational projects and are not re-distributed to members. Another way of putting this is that NGOs do not have a "single bottom line"[159] or profit-making objective, regardless of whether they do indeed make and distribute profits to their members.[160] This is because they at the same time are pursuing other aims deemed important by them as well as their stakeholders, such as empowerment or fulfilling accountability requirements for donors or state agencies.[161]

Problems

The issues here mirror those that arise with the non-governmental condition. To say that an NGO is nonprofit is to give a broad, negative definition that is difficult to apply usefully to contemporary NGOs and the variety of fundraising strategies they pursue, as well as membership-based cooperatives that distribute profits across their members. Attempts to specify exactly what

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[159] Edwards & Hulme (1995a, p. 11).
[160] Vakil (1997, pp. 2059-60).
[161] Edwards & Hulme (1995a); Fowler (1995).

profit-related activity is allowable by the condition run a wide gambit. Even in legal contexts where this condition is most common and most important for defining an NGO, interpretations of the non-profit feature vary widely.[162]

In order to gain ground on uniqueness and explanatory power, we can describe NGOs as aiming for profit only instrumentally, if ever, and never as a final end-in-itself. This seems to be what is intended by the widely-adopted phrase "not-for-profit," but the terminology is not well suited to this idea. NGOs may be "for-profit" in the sense that they aim for profit in order to satisfy another objective. The idea that the phrase is meant to capture—that NGOs do not exist solely for profit or that they do not aim for profit as a goal in and of itself—is perhaps better cast in terms of motivation, rather than intention. One might aim *for* something without being motivated *by* it. Instrumental goals are only ever aimed for in virtue of a final end, which serves as the source of motivation.

A more accurate formulation of the relationship of NGOs and profiteering activities is to say that NGOs might aim for profit, but they are never motivated by it. This captures membership-based groups as well, given that the motivation in such contexts is typically some deeper value such as self-reliance or rising out of poverty.[163] So-called "socially-oriented" or "green" businesses, however, are distinguished from NGOs by their dual motivations of profit and fidelity to certain social or moral values.

Revised condition: **not motivated by profit**

1.2.3.5 Voluntary

In its original articulation, voluntariness as a defining condition referred to the individuals working within an NGO. A distinguishing feature of NGOs was

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[162] Limbold (2005).
[163] Morris (2000).

that such organisations "cannot rely on hierarchy or coercion, or financial rewards and material incentives as the means to obtain the compliance of staff towards organisational goals."[164]   Rather, successful organisational activity comes about through the "self-motivation" of staff and volunteers "responding to the personal value base that persuades an individual to work in and for the third sector."[165]

Voluntary can be taken in this original sense, as the empirical requirement that there be some minimal voluntary contribution within the organisation, either in the form of staff, board members or financial donations. But it can also be connected to a feature that appears frequently in other definitions, namely the *non-coercive* nature of NGOs.[166] The lack of a coercive apparatus does not apply only to the organisation's internal structure: voluntariness also describes something important about how an NGO relates to the outside world. Donors are not obligated to give an NGO their money as they are obligated to pay their taxes, and those who participate or assist in the organisation's projects do not do so under direct coercion or legal requirement. NGOs are both internally voluntary in their construction, but also externally voluntary, since they are collective agents that rely on the voluntary cooperation of others for their capacity to act successfully.

Problems

The first, internal, version of the voluntary condition has dropped off in the past decade, due to the fact that many NGOs have indeed become more professionalized, with most staff on paid salary.[167] This is just as well, given that defining an NGO in language that construes its staff as self-sacrificing

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[164] Edwards & Fowler (1999, p. 4).
[165] Ibid. Edwards and Fowler are summarising the more detailed discussion of motivation provided in Lewis (2001, pp. 67-70).
[166] Lindbold (2005); Martens (2002).
[167] Martens (2002, p. 279); Vakil (1997, p. 2059).

volunteers rallying around a moral aim does not provide a particularly useful definition. First, it requires one to get "inside the heads" of the people who work for such organisations in order to determine their underlying motivations. Second, this kind of language tends to paint NGO workers in an overly positive light, as "saints" and is closely tied to the idea that NGOs themselves are by definition good-making or righteous organisations (see 1.2.3.6).[168]

Finally, for our purposes, the motivations of individuals within an organisation are largely irrelevant. While of course it cannot (and should not) be denied that those who work in NGOs make a number of personal sacrifices out of their desire to satisfy a moral aim and change the world for the better, such a feature is not central to a definition of an NGO as a collective agent. An organisation as a whole may operate with the same agency, even when the individuals who comprise it are motivated by a diverse set of reasons, including highly self-interested ones.[169]

*Revised condition: **relies on voluntary interaction***

The second, external version of the voluntary condition is worth maintaining, as it is apt for capturing their non-coercive or associational nature (empirical adequacy), and explaining how calls for their legitimacy and self-justification arise. That they receive support and build relationships based on consent and

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[168] Leat (1993) provides an interesting account of how these assumptions regarding staff motivation can make intra-staff conflicts more difficult to resolve in non-profit as opposed to for-profit workplaces.

[169] There is also the further, interesting issue of what voluntarism really means in contemporary contexts. It is common for 'volunteers', particularly those that relocate to a foreign country, to be provided with housing and given a basic income for living costs. A major example of this is the Voluntary Service Organisation, which places volunteers in developing countries and pays them a monthly stipend. While in some sense it is clear that skilled individuals who give up higher salaries to work in placements arranged by the VSO are making some sort of sacrifice, it raises the question of whether volunteerism is more of a sliding scale than a firm category, and to what degree Western conceptions of a good life affect whether a person's actions for an organisation are deemed 'voluntarism' versus 'working for low pay.'

agreement bears direct relevance to how NGOs relate to others as agents and, thus, is important for constructing a characterisation of an NGO that speaks to their particular obligations and guiding principles. As Edwards and Hulme remarked in the early literature on NGOs, "their calling is voluntary and self-chosen, so [they] must continually justify their presence in, and value to society."[170] It is this process of justification that will be explored as the source of normative demands on NGOs later on. Maintaining a voluntary condition is important for explaining why this process of justification arises in the first place and how it is different from other forms of justification, for example, that which is demanded of coercive institutions like the state.

1.2.3.6   Values: the functional feature

Salamon and Anheier originally used the structural-operational definition as a way of identifying the non-profit sector as a whole, classifying NGOs as the subset of this sector that is specifically geared towards development. In other words, they classified NGOs as a subset by adding a functional feature.

In this fashion, other definitions of NGOs, primarily in the development literature, but also elsewhere, have presented some combination of the above-described structural-operational conditions, along with a sixth condition that refers to the purpose or function of such organisations. This latter feature is where definitions are most likely to diverge from one another, as authors have offered a variety of interpretations of NGOs' *"raison d'être."*[171]

Problems

Because the goals and mission statements of NGOs play such a significant role in defining individual organisations, it seems these should also have some part

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[170] Edwards & Fowler (2002, p.4).
[171] Ibid.

in characterising NGOs as a group. And yet, it has been extremely difficult to generalise across the various values and missions of NGOs.

Salamon and Anheier recognised this difficulty as well, citing two problems with a functional definition of organisations that are relevant to our discussion: its lack of parsimony, and its ambiguity.

Defining NGOs based on their purpose can lead to a laundry list of functions that complicates a definition.[172] As an example, Vakil (1997) attempts to capture the functional dimension of NGOs by defining them as organisations "oriented" towards "welfare, development, advocacy, development education, networking and research."[173] Such an account is already a hodgepodge, but it is common to find longer and more complicated lists elsewhere in the literature.

One way to avoid this problem is to abstract from the variety of NGO missions and to generalise the type of function that these missions serve. Vakil (1997) again, offers a broader definition of NGOs as "geared to improving the quality of life of disadvantaged people."[174] While this definition may be suitable for Vakil's development-focused audience, it excludes environmental groups such as Greenpeace or World Wildlife Federation and also, arguably, human rights advocacy organisations such as Human Rights Watch or Amnesty International, whose aims are better described as rights protection and promotion.

Other common attempts at identifying a general NGO function include "working towards a common goal,"[175] working with a '"social vision,"[176] or "for the public good."[177] While much easier to work with than a list, one purchases

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[172] Salamon & Anheier (1992a, p. 138).
[173] p. 2063.
[174] Vakil (1997, p. 2060).
[175] Martens (2002, p. 282).
[176] Charnovitz (1997, p. 186).
[177] Martens (2002, p. 282).

parsimony at the cost of clarity; as Salamon and Anheier (1992a, pp. 138-9) point out, "common goals" or "the good" are highly ambiguous categories:

> Serving the public good...is a difficult concept to define with precision and may depend on the eye of the beholder...The Weeks organisation may have been considered charitable in medieval England for its work in distributing 'faggots' used in burning heretics, but only a few die-hards would consider this a valid charitable purpose today.

Through a combination of factors—their historical origins, their mission statements, the activities and issues in which they are engaged—there is something value-laden about the agency of NGOs that all definitions of the term attempt to capture. While making attempts to incorporate this important feature, the functional condition, as well as the less rigorous story-telling portraits of NGOs as "idealist" "do-gooders" who work for "the disadvantaged", the "powerless" and the "voiceless", risk running afoul of a conflation of description and evaluation.

As reflected in Salamon and Anheier's comments, the main weakness of the functional feature is that it seems to invite positive normative assumptions regarding the aims and activities of an NGO. The worry is that it is impossible to describe the values aspect of NGOs without implicitly affirming those values or making positive assumptions about NGOs as social actors. Hence the oft-expressed sentiment that, while these values seem so central to these organisations' identity, a functional definition must be abandoned. Such definitions are, ultimately, "in the eye of the beholder" and "unanswerable outside a particular scholar's own political leanings."[178]

And yet, this problem can be reduced to a conflation that suggests a rather straight-forward resolution. It seems clear that there is a distinction between describing an organisation as oriented towards a set of values and actually *affirming* those values. One can speak of NGOs as "do-gooders" without

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[178] Murdock (2003, p. 507).

asserting that they *do* good, or that what they are aiming to do *actually is* good. In saying that they are do-gooders, we are saying something about the way in which NGOs identify themselves, and this does not commit us to affirming the value of that identity, nor to claiming that the NGO successfully lives up to it through its activities.

*Revised condition: **norm-enacting***

The best way to describe these organisations' orientation toward values without endorsing those values, I suggest, is to describe NGOs as norm-enacting. By "norm," I mean what others might specify as a "moral norm"[179]: a rule that guides action based on a conception of right action or morally required states of affairs. An NGO's norms constitute its vision for how the world ought to be, or what actions or processes ought to take place within it. Its activities or programmes then constitute enactments of these norms.

This is an observable, empirical feature that refers to the structure of NGO identity statements. The norms that NGOs enact may not be "true" norms (i.e. they may be rules based on erroneous judgements about what is good), but they still posses the structure of a norm insofar as they express a belief about what ought to be the case. This structure creates the basis for a unified definition, as it is shared by all NGOs, regardless of the content of their particular norms. In this way we can avoid laundry lists of causes as well as evaluative assumptions about the goodness of NGOs, while still capturing what it means for them to be organisations defined in some way by values. As an illustration, consider the following self-identifying statements from several NGOs:

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[179] Bicchierri (2006; 2008); Elster (1989; 2009).

BRAC is "dedicated to alleviating poverty by empowering the poor to bring about change in their own lives."[180]

Here, the norm enacted is: Poverty should be alleviated through the empowerment of the poor.

Greenpeace "champion[s] environmentally responsible and socially just solutions, including scientific and technical innovation."[181]

Here, the norm enacted is: Solutions to the management of our natural resources should be environmentally responsible and socially just, and be amenable to scientific and technical innovation.

Médecins Sans Frontières "are committed to providing medical aid where it is most needed, regardless of race, religion, politics or gender and also to raising awareness of the plight of the people we help."[182]

Here the norm enacted is: Medical aid should be provided based on level of need, and the injustices that cause this need ought to be better and more widely known.

Dogs for the Disabled "is a life-transforming charity, creating exceptional partnerships between people living with disability and specially trained assistance dogs. Through practical assistance a dog can offer freedom and independence to children and adults with physical disabilities and children with autism."[183]

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[180] BRAC, http://www.brac.net/.
[181] Greenpeace, http://www.greenpeace.org.uk/about.
[182] MSF, http://www.msf.org.uk/.
[183] Dogs for the Disabled, http://www.dogsforthedisabled.org/.

Here, the norm enacted is: It is valuable and important to transform the lives of children and adults with physical and developmental disabilities by helping them gain greater freedom and independence.

Our fifth and final defining condition, then, is whether an organisation is *norm-enacting*: whether it identifies itself as following a rule that guides action in light of a judgment about what is good.

1.2.4 NGO: a working empirical definition

From the above discussion, the resulting characterisation is as follows. **An NGO is an autonomous, norm-enacting organisation that is not motivated by profit and is reliant on voluntary interaction.** An **organisation** consists of more than one person, acting collectively and with long-term intentionality. An organisation is **autonomous** with respect to other agents, in particular the state, if and only if it is both self-mandated (sets its own mandate and charters its own creation) and self-governing (sets its own projects and is responsible for its own funding, though it may receive grants from the state). An organisation **is not motivated by profit** if it pursues profit only as an instrumental aim, if ever, and never as an end-in-itself. It **relies on voluntary interaction** if other agents are not under legal requirement or directly coerced to interact with it. Finally, and most importantly, an organisation is **norm-enacting** if it defines itself through activities that are enactments of rules that prescribe a valued outcome or action.

Different NGOs will meet these conditions to various degrees. Therefore, while this set of conditions is necessary and sufficient for classifying an organisation as an NGO, each condition can be understood as a continuous

scale. NGOs that are lower on certain conditions therefore share greater overlap with the agency of the organisational type from which that condition distinguishes it: an organisation that is low on autonomy and voluntary interaction may be more like a state agent, whereas an organisation that aims to sell products and distribute profits among its members may be more like a firm.

1.2.5 Theoretical definition

Because an NGO is not defined by its generation of profits or its provision of religious or spiritual services, and because it is autonomous from state institutions and relies on voluntary interaction, such organisations must engage with motivations of other agents that are not related to profit, spirituality, or fear of punishment. Because they define themselves by activities that are enactments of certain norms, or by their claims that they are uniquely positioned to deliver on a given goal, it is through recognition and acceptance of such claims that NGOs are capable of interacting with others, and thus capable of exercising their agency. Without these collaborative interactions, NGOs are impotent, would-be actors. Therefore, it is this collaborative nature of an NGO's exercise of it own agency that is the focal point for understanding them as a unique theoretical subject, that is, as a normative agent within their own right:

> An NGO is defined theoretically as an agent whose existence and agency is predicated entirely by collaborative activities with other agents that perceive it to be norm-enacting.

This theoretical definition accommodates the critique of NGO agency mentioned earlier, which holds that: "While there can be no doubt that NGOs

participate in the creation of agreed conventions involving multiple social actors and sites, such participation—which takes place on the basis of capability attribution—takes place within a policy field-specific set of justificatory norms, values and knowledge claims."[184] Complementing this, the above understanding of NGO agency acknowledges the importance of the influence of other actors and institutions on NGO agency. At the same time, it recognises the active role NGOs themselves can play in defining and shaping other agents' perceptions and abilities, via the same shared system of justificatory norms, values and knowledge claims.

Hilhorst herself draws attention to the idea that "NGO" has a general meaning, insofar as organisations use it as a label to identify themselves:

> What is important is that they adopt the label of NGO. This label is a claim-bearing label. In its most common use, it claims that the organization is 'doing good for the development of others.' The label has a moral component. Precisely because it is doing good, the organization can make a bid to access funding and public representation.[185]

My two definitions provide a versatile and yet general answer to the question that Hilhorst claims cannot be answered: What is an NGO? Empirically, it possesses the five organisational characteristics listed above (1.2.4). Theoretically, I agree with Hilhorst that the term "NGO" is a "claim-bearing label" with "a moral component." However, my account differs importantly from Hilhorst's on the implications of this moral component of NGO identity. An NGO is an agent that claims to enact certain norms, and relies on collaborations with other parties who interact with it largely on the basis of these claims. This, as I will argue throughout the remainder of the thesis, triggers obligations that apply to any organisation operating under the claim-bearing label of "NGO."

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[184] Seckinelgin (2006, p. 720).
[185] Hilhorst (2005, p. 7).

1.3   Establishing uniqueness

I will now take the working definition offered above and explore how it works to distinguish NGOs from five main other types of agents: individuals, broader civil society/nonprofit actors, firms, religious institutions, and the state.

1.3.1   Individuals

Nonshared features: organised.

As organisations, NGOs stand apart from **individuals** insofar as they are constituted by a collective effort of several people who set long-term goals, give reasons for those goals, and create detailed plans to realise them. Their collectivity distinguishes them as normative agents in virtue of the fact that collectives are able to exert greater influence on others through the multiple individuals that comprise them, enjoy a special identity—and thus, certain privileges and opportunities—under law, and also possess a greater degree of informal power in the eyes of others.

The nature of collective agency, particularly the ability to ascribe moral responsibility to collective agents, is a subject of contentious debate. Defending a general account of collective agency is outside the scope of this thesis. Therefore, I assume throughout that it makes sense to speak of collective agents as being intentional, responsible and accountable.[186]

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[186] For a recent and detailed account of how collectives can operate as agents, see List & Pettit (2010).

1.3.2 Civil Society

Non-shared features: norm-enacting.

My analysis here parallels Salamon and Anheier's construal of the relationship between NGOs and the nonprofit sector: the former is a sub-set of the latter. However, whereas they defined NGOs more narrowly as nonprofit organisations engaged specifically in development and poverty relief, the definition I have constructed allows for a greater diversity of organisations, all of which are united in virtue of their perceived enactment of certain action-guiding rules.

NGOs differ from *ad hoc* and casual social interactions by way of being organised. They differ from other parts of civil society or the nonprofit sector in so far as their collaborations rest on the perception of their activities as norm-enacting. This separates NGOs from, for example, bowling clubs, unions, museums and professional groups like lawyers' associations.

We can distinguish between NGOs and other civil society actors by distinguishing between the kind of value entailed within a norm, as opposed to an interest. Norms and interests both entail evaluative judgments, but these judgments are importantly different with respect to their direction of fit, that is, how they relate to states of the world. The values that comprise an individual's interests have a world-to-value direction of fit. We are presented with activities, products or opportunities, and fit our judgments of what is good based on what is on offer. Norms, on the other hand, have a value-to-world direction of fit: we seek to shape and change the world to meet our norms, not the other way around.

Bowling clubs and professional associations may be enactments of certain values, namely, the value of bowling or the value of horticulture, but these are interest-values: they are judgments of value that select from an available set of

activities or subjects in the world.[187] Such associations could be thought of as interest-enacting: hubs where individuals that value a particular activity or profession, such as bowling, may coordinate their shared interests.[188] In contrast, the perception of NGOs as norm-enacting implies they are organised around values to which the world must conform, not vice-versa: poverty ought to be reduced, the environment ought to be protected in a responsible manner, etc.

This is what makes professional associations in the developing world somewhat of a grey area: in one sense, if one is not a lawyer, one does not have a reason to support or engage with a lawyer's organisation, and such associations are part of the civil society of the country in which they are formed. But if one ascribes to the norm that an orderly system of law is important for the development of an impoverished country and that supporting a professional lawyers' association assists towards realising that end (bringing the world closer to fulfilling that value), then foreign donors or supporters may engage with that association in a manner similar to the way in which they would engage with an NGO.

In sum, all civil society actors define themselves by reference to some kind of value. The difference between NGOs and other third sector organisations rests on the direction of fit that value has with respect to the world.

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[187] While these associations can produce social cohesion or "social capital" (Putnam 2000) as a side-effect, this is typically not their explicitly intended purpose.

[188] Another way of thinking of this is in terms of conditional and unconditional motivation. For clubs, their values are expressed hypothetically: if you enjoy bowling, then you should have an interest in our club. In comparison, NGOs identify themselves by unconditional norms, e.g. "poverty ought to be reduced," "the rainforest ought to be protected." Cf. Bicchieri (2008) on distinguishing between types of norm based on conditional versus unconditional motivation.

1.3.3 Firms

Nonshared features: norm-enacting, not motivated by profit.

The distinguishing features between NGOs and firms are in some ways clear-cut: NGOs only ever seek profit as a means to a further end that is selected on the basis of a certain set of values, whereas firms have a single bottom line of profit, which is the sole necessary and sufficient condition for their activities.

As greater work has been done on corporate social responsibility and the place of market-based agents within theories of global justice, and as more attention has been drawn to the values of efficiency and effectiveness in the work of international development and aid NGOs (and their alleged failure to live up to those values), tighter analogies have been drawn between NGOs and corporate bodies. From the NGO side, these organisations have been compared to corporations that have public or social benefit as their bottom line instead of profit, and thus, should adopt similar instrumental strategies and maximising principles in their work regarding morally good outcomes.[189]

As will be argued in chapters 2 and 3, the way in which NGOs collaborate with others does not lend itself to an interpretation of NGOs as economic agents. Very briefly, one main reason why this is so is that the structure of an NGO's relationships is fundamentally different: the "principal" that provides funding to an NGO is not identical to the parties who benefit from the NGO's "product." Insofar as this leads NGOs to engage with those parties in a manner that differs from the way corporations engage with shareholders and customers, they operate as theoretically distinct agents.

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[189] Ebrahim (2007).

1.4.4 Religious institutions

Nonshared features: autonomous

If we attempt to define NGOs by the structure of their values instead of their content, then it becomes difficult to distinguish them from religious institutions, since the latter are also feasibly interpreted as norm-enacting organisations. Further problems ensue if one attempts to base this distinction on a notion of religious practice. Defining religious from non-religious practice does not necessarily lead to a neat dividing line between religious institutions on one side and NGOs on the other. It is perhaps for these affinities that NGOs have been described often by critics as "secular missionaries."[190]

My definition provides a better way to draw the distinction by highlighting how religious institutions lack one of the two components that comprise the autonomy condition. NGOs, it was said, are both self-mandated and self-governed. While an organisation cannot be self-mandated if it is not self-governed, there *are* organisations that are self-governed but do not qualify as self-mandated: religious institutions are such a type of organisation. Religious institutions are not self-mandated because they are considered by their practitioners to be mandated by a higher power or spiritual dimension. They therefore lack the autonomy that characterises an NGO.

Recall the contrast between religious institutions and faith-based NGOs discussed in 1.2.3.3. Faith-based NGOs are not only autonomous from religious institutions themselves, they are also sufficiently autonomous from the spiritual framework that mandates a religious institution. Those who create and work for faith-based organisations are motivated and inspired by their religious practices and their self-identification as believers; however, their

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[190] *The Economist* (2000 Jan 21) "The Sins of the Secular Missionaries"; Anderson (2010); Anderson & Rieff (2005).

organisational mandate is represented as a self-originating enactment of their religious values and beliefs. This mandate is not depicted as issuing directly from a higher power or spiritual framework. To the extent that some organisations do view and portray their mandate in this manner, they move further away from the agency of an NGO towards a charitable form of religious institution.

1.4.5 The state

Nonshared features: norm-enacting, voluntary

One of the key features of the state is its non-voluntary nature: interaction between individuals as co-citizens is taken to be coercive, with the nature of that coercion interpreted in a variety of ways. The tradition of political philosophy in the West can be viewed as a series of attempts to reconcile this non-voluntary feature of the state with the preservation of human freedom. How is the existence of the state possible, that is, how is it rationally justifiable to those who submit to it, and how is it normatively justifiable, i.e. legitimate?

While their inability to coerce does not exempt NGOs from justifying their activities, it does shape their relationships to others in such a manner as to be sufficiently distinguishable from government institutions. While the problem of normative justification for the state rests on justifying their coercive powers, this problem for NGOs rests on their being able to deliver on the assumptions others must make in order to be motivated to interact with them. This provides a significant dividing line between the agency of state institutions and that of NGOs. States are not "norm-enacting" in the same manner as NGOs. States may be required to follow or enact norms as a way of establishing or justifying their coercive power. Defining NGOs as we have here—as agents that rely on collaborative engagement with others who

perceive its activities to be norm-enacting—presents us with a different type of agency. NGOs gain their abilities, or powers, through others' recognition of them as norm-enacting agents. As discussed in the following chapters, their standards of assessment will rest on the implications of this recognition.

Conclusion

Based on the discussion of this chapter, I can now provide a brief list of organisations that illustrate the type of agent discussed throughout the remainder of this thesis:

- INGOs, such as Amnesty International, BRAC, Greenpeace, World Wildlife Federation, Oxfam, CARE International, World Vision;
- Domestic charities in 'Northern' nations, such as the British Legion, United Way, Shelter UK, Harlem Children's Zone;
- Domestic NGOs in 'Southern' nations, such as the People Engaged in People Projects Foundation (Philippines), the Mongolian Center for Gender Equality (Mongolia), and the Uganda Child Rights Network (Uganda).

Here, I have argued that the current debate over the definition of an NGO is caused by problems inherent in the term itself and the extended use of the term across diverse cultural and research contexts. With respect to the latter, the use of the term in social science has been frustrated by the lack of recognition of three different types of definition: technical-legalistic, empirical, and theoretical.

With this distinction in hand, I set out an empirical definition of an NGO as an autonomous, norm-enacting organisation not motivated by profit and reliant on voluntary interaction. Particular organisations can fulfil these conditions to varying degrees, however all must be met to qualify as an NGO. These empirical features shape the way in which an NGO relates to others. In other words, they shape the way it operates theoretically as an agent. The resultant theoretical characterisation of an NGO is as an agent whose existence and agency is predicated entirely by collaborative activities with other agents who perceive it to be norm-enacting.

I then briefly reviewed the ways in which this theoretical definition distinguishes NGOs from individuals, other civil society organisations, economic agents, religious institutions, and the state. However, the case for distinguishing NGOs from economic agents and the state was not fully developed, as this will come in greater detail in Chapters 2 and 4.

CHAPTER 2   THE VALUE OF NGO ACCOUNTABILITY

Introduction

In March 2010, the UK-based New Philanthropy Capital launched a manifesto calling for a more uniform, sector-wide approach to charity evaluation. The purpose of the suggested reforms was to reduce the costs incurred by UK charities through their efforts to meet an assortment of accountability requirements, each specific to a different donor agency.[191] New Philanthropy Capital is a type of organisation that has grown in number and in prominence in recent years: a charity founded for the purpose of monitoring and evaluating other charities. Other such groups include the U.S.-based GiveWell, whose efforts to measure charity effectiveness were discussed in detail in Peter Singer's 2009 *The Life You Can Save*, and Giving What We Can, an Oxford-based group started by British Academy postdoctoral fellow Toby Ord, which enlists individuals to pledge 10% of their lifetime salary to charity, while providing statistics and recommendations on which NGOs would use their donation most effectively.[192]

Organisations such as New Philanthropy Capital or GiveWell reflect the growing view that service-providing NGOs ought to embrace stronger

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[191] Brooks (2010 March 16). "Third sector can't run on goodwill alone." *The Guardian online*
[192] Singer (2009, Chapter 6). See also www.givewell.net; www.givingwhatwecan.org.

practices of accountability. This concern encompasses organisations working domestically for public benefit, as well as larger NGOs engaged in international development and aid. From the perspective of these third sector monitors, accountability allows for better dissemination of information concerning how aid is administered, and can incentivise organisations to perform more efficiently with the funding they receive. This performance-driven concern for accountability is, in part, a response to the strident criticism that NGOs—in particular development and aid INGOs—have failed to produce any measurable, positive change after decades of activity.[193]

These voices join a long-running chorus that has questioned the accountability of NGOs for nearly two decades.[194] Advocacy-focused NGOs face similar demands for accountability due to the collection of formal and informal powers they wield with respect to the activities of other social actors such as corporations, states, and international institutions of governance. These organisations are asked to demonstrate "voice" accountability by providing evidence for their empirical claims and claims of representation.[195] The expectation to demonstrate voice accountability has become particularly acute for NGOs lobbying the WTO, IMF and World Bank on development and global economic policy. Some charge that these organisations campaign against policies that would help the poor, while providing no means of demonstrating that they adequately represent the interests of the poor.

Within these contexts of performance and voice, accountability is deployed only as a specific instrument for a specific purpose. Service-providing NGOs are asked to demonstrate measurable success to actual or potential donors and to provide detailed information on the costs of achieving such success

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[193] The criticism directed towards INGOs is part of a broader critique of foreign aid. See, for example: Moyo (2009); Easterly (2006); Riddell (2007); Collier (2007).
[194] Ebrahim (2003).
[195] Slim (2002).

primarily for the purpose that donors may direct their funds most effectively towards beneficient goals. This view of accountability is aptly captured by Leif Wenar (2006): "Greater accountability is not always good and when greater accountability in development agencies would be good, its value is only instrumental, not intrinsic."[196] Similar observations are made regarding voice accountability. Holding NGOs accountable for their campaigns can improve NGOs' credibility and their potential to democratise political processes, but at the same time accountability is not "an absolute value,"[197] as there are costs attached to increasing transparency or adopting labour-intensive democratic decision-making processes within an organisation.

Many of those writing within the NGO literature may agree broadly that charities need to know more about what is working and what is not, and about the long-term impacts of their projects. More commonly, research on NGOs endorses the view that accountability can, in theory, be useful for improving an NGO's public reputation.[198] However, based on case studies and cross-country comparisons, many NGO researchers have outlined reasons for doubting that accountability can deliver improved performance or accurate accounts of success and failure. The type of information that websites such as GiveWell ask for in order to evaluate an organisation's impact requires intensive measurement and research, which each individual NGO is expected to undertake and fund itself. Moreover, those writing on advocacy-focused NGOs have expressed concern over whether it is constructive or even fair to ask NGOs to be accountable when the powers of advocacy they wield are already so informal and weak compared to other types of actor.[199]

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[196] Wenar (2006, p. 23).

[197] Kahler (2005, p. 18).

[198] Jordan (2007); L. D. Brown (2010). For the remainder of this chapter, I refer to L.D. Brown simply as 'Brown', as no works by C. Brown are cited in this chapter.

[199] Charnovitz (2006, pp. 35-8).

While she does not discuss specific organisations like Givewell or New Philanthropy Capital, Lisa Jordan has highlighted the strains that such quantitative performance-focused accountability requirements place on the already restricted resources of NGOs:

> What's wrong with all this activity? Plenty. There is nothing inherently wrong with these accountability mechanisms and in some circumstances they can be quite helpful. But in other circumstances they are inadequate, they do not address the needs of the NGOs, they are divorced from missions, they do not address moral obligations, they prioritize some relationships over others, they are quite often punitive and controlling in application...and often fail to recognise the context within which NGOs operate.[200]

Jordan concludes with an expression of scepticism that has become representative of the views of many on contemporary accountability practices across the NGO sector: "No one has really made a positive argument as to why NGOs should undertake a risky, expensive, difficult exercise to create meaningful and concrete accountability mechanisms."[201]

This chapter attempts to build such a positive case for accountability. Current concerns over accountability's value arise out of the prevailing view that if accountability is good, it must be good *for* something, such as performance improvement or verifying NGOs' claims. Accountability is merely an instrument through which other valued ends are realised. This view is articulated in 2.1, and revealed to be defeasible based on further information regarding what constitutes an accountable relationship. The case for accountability is then built on the position that accountability has intrinsic, in addition to instrumental, value for NGOs. Sections 2.2, 2.3, and 2.4 discuss three distinctions that characterise different conceptions of accountability. In each case, I show how failing to recognise these distinctions lends support for

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[200] Jordan (2007, p. 153).
[201] Ibid. (p. 154).

the argument that accountability is only an instrument for reaching other ends. At the same time, I argue for an alternative definition of accountability as an obligation to structure a relationship so as to enable moral appraisal of one's actions. Under this conception of what I call *moral appraisal accountability*, accountable relationships can be good for their own sake, regardless of what outcomes or ends they produce. This is because accountability is an embodiment of respect between an NGO and the parties whom it affects, and this show of respect is expected of an NGO by those who agree to collaborate with it. Thus, accountability is valuable for its own sake, as a constitutive element of the relationships that support an NGO's agency. Section 2.5 concludes by arguing that *moral appraisal accountability* is more important for NGOs than a close alternative, known as *mission accountability*, because it provides a stronger justification for the actions of organisations that fulfil its conditions.

2.1 Accountability and value: the instrumental view

2.1.1 A working definition of accountability

Accountability is sometimes described as an "expansive", "chameleon-like"[202] term that defies a single, shared definition.[203] I will not discuss here the various ways in which accountability is conceptualised, nor summarise the thorough taxonomies of others.[204] Rather, my aim is to look at one prominent

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[202] Mulgan (2000, p. 555). Also cited in: Dubnick & Justice (2004, p. 7).
[203] Ebrahim & Weisband (2007); Mulgan (2000); Dubnick (1998); Dubnick & Justice (2004); Jordan & Tuijl (2006); Unerman & O'Dwyer (2006).
[204] Dubnick (1998); Bovens (2009); Ebrahim (2007).

understanding of NGO accountability, which treats it as an instrument for procuring certain ends.

The broad contours of this account are as follows: accountability is a process[205] or interaction[206] between two agents, thereby implying the presence of two actors: an accounting agent and an account holder.[207] These actors have a relationship in which one agent provides, or is expected to provide, an account of some event or action to another.[208] Moreover, on most definitions the term implies that the account holder has capabilities such that it can act so as to "hold the other agent responsible,"[209] although this is a contested issue.[210]

To capture this broad sketch more succinctly, we can use this initial working definition:

> Accountability[1]: an interaction between two agents, the accountable (A) and the account holder (H), in which A acts, or is expected to act, to meet the standards or expectations of H, and provides an account of her actions to H, and H has some ability to affect A's interests based on H's determination of whether such standards have been met.

A's providing an account to H can be fulfilled in a variety of ways: by providing evidence or giving a justification, for example. As already mentioned, the stipulation that H have the ability to affect A, that is, reward or sanction A depending on whether standards are met, is an issue of debate. However, by and large, many seem to adopt the position reflected in Diane Leat's comment

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[205] Mulgan (2000 p. 555), Ebrahim (2003, p. 884).
[206] Mulgan (2000 p. 555); Peruzzotti (2006, p. 45).
[207] Mulgan (2000).
[208] See above, ff. 2; Lloyd, et al. (2008).
[209] Jordan (2007); Wenar (2006); O'Neill (2002); Gray & Bebbington (2006); Ebrahim & Weisband (2007); Mulgan (2000); Dubnick & Justice (2004).
[210] D. L. Brown (2007); Ebrahim & Weisband (2007).

that accountability is only 'real' if there exists the possibility for sanctions.[211] We will return to this issue in 2.4.

2.1.2 The argument against intrinsic value

On this initial understanding, the interaction between A and H is generally taken to have merely instrumental, as opposed to intrinsic, value.[212] What authors mean by this is unclear, as intrinsic value can be construed in several different ways. Given the emphasis on whether accountability's value is dependent or independent of other entities or states of affairs, it seems that most discussants mean what is more commonly referred to in value theory as "final" value.[213] Accountability, if it were to have such final value, would be worth pursuing for its own sake, regardless of its connection to other goals, simply on the basis that having accountable organisations is a good thing in itself.

But this is not the conclusion drawn by many who endorse accountability[1]. The reason for this is not immediately clear, as neither instrumental nor final value is entailed by the above definition, and arguments against the final value of NGO accountability are rarely laid out in detail. The clearest articulations of

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[211]Those writing in the NGO literature have problems with the requirement of sanctions because it means that NGOs cannot be accountable to stakeholders who do not have the capacity to sanction them, namely beneficiaries. This issue is discussed in the second and third distinctions made in 2.3 and 2.4.

[212] This is not to say that this standard conception construes accountability as instrumentally valuable *by definition*. Rather, those who hold the standard view also tend to hold that accountability is instrumental. This is due to the descriptive framework they use to understand an NGO and its key accountability relationships. These frameworks are discussed below in 2.4. For examples of those who hold something similar to the above understanding, and also view accountability as instrumentally valuable, see: Peruzzotti (2006, p. 45); Held (2005); Wenar (2006); Ebrahim & Weisband (2007), Lewis (2007); Philp (2009); Jordan (2007).

[213] Rabinowicz & Rasmussen (2000, p. 33); Korsgaard (1983).

such a view are presented separately by Mark Philp and Leif Wenar.[214] Wenar acknowledges the instrumental benefits of accountability in virtue of its role in bringing about other valued ends. For instance, A's actions and decision-making process are in some degree made *transparent* to H, such transparency increases *knowledge* and *information-sharing*, and being held to H's standards provides *incentives* for A to be responsive to external expectations.[215] In less abstract terms, requiring NGOs to adhere to external standards in evaluating their performance presumably leads to an improvement in that performance, by forcing them to achieve measurable results in a cost-effective manner.

While it contributes positively to other valued ends, Wenar insists this is as far as accountability's value goes:

> There is nothing intrinsically valuable about making one institution more accountable to another. Increasing accountability between institutions always involves costs, and these costs should only be born when they are outweighed by the benefits.[216]

This does not constitute an argument for accountability's instrumental value, as the second sentence does not support the conclusion offered in the first. Acknowledging that a practice or goal has costs does not mean that it is only instrumentally valuable. Its final value may be outweighed by a consideration of costs; however this does not support the conclusion that no such final value exists in the first place.[217]

Why might Wenar be drawn to such a view? An initial reason lies in his further remark: "Reducing severe poverty is by far the most urgent goal of

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[214] While Philp and Wenar are motivated by different problems—for Philp, it is the ambiguity of accountability's meaning in democratic theory and for Wenar it is the lack of accountability in aid and development NGOs—both argue that accountability does not possess intrinsic value and is to be valued as an instrument only. Wenar (2006); Philp (2009).

[215] Wenar (2006); Ebrahim &Weisband (2007).

[216] Wenar (2006, p. 11).

[217] Alternatively, something may have final value that is worth promoting despite any costs.

development aid, so increasing accountability between institutions will be important primarily insofar as this leads to more effective poverty relief."[218] The corollary to this is that introducing an accountability mechanism does not always contribute positively to poverty reduction; as an illustration Wenar refers to the maladroit operations of USAID, the primary agency in the United States government responsible for distributing foreign aid. USAID's budget is determined yearly by Congress and the Department of State, who are also able to specify in detail how USAID spends its money.[219] Budgetary reports and program evaluations from USAID are frequent and detailed, with these accountability mechanisms filtering down to the local civil society groups and NGOs that USAID partners with in host countries. Such groups must in turn provide USAID with extensive reports on their projects and demonstrate success through purportedly rigorous and reliable measurements.[220]

Despite strong accountability channels, USAID and its projects perform poorly in terms of creating sustainable, long-lasting benefits for developing countries.[221] This is because, Wenar says, such mechanisms make USAID accountable to the foreign policy interests of the State Department, as well as to the special interest groups—namely, domestic agri-business and manufacturers—who place pressure on US congressmen and women. Catering to these interests allocates aid money in a way that does not significantly reduce poverty or assist the worst-off in the developing world. The operations of USAID demonstrate that, without adequate design, strong accountability mechanisms can create more harm than good with regards to poverty reduction.[222]

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[218] Ibid.
[219] Ibid.
[220] Interview with USAID personnel, Mongolia, 5 September 2008.
[221] Wenar (2006, pp. 11-3).
[222] Ibid.

While this illuminates the angle from which Wenar views accountability, he does not offer enough detail regarding what it means for a thing to be intrinsically valuable in order for a premise stating the urgency of poverty reduction to make the argument valid. Even if poverty relief is of utmost value when it comes to the operations of development and aid NGOs, this does not mean that all other aspects of such operations are valuable only with respect to how they service that aim. There may be multiple bearers of intrinsic value. Moreover, the same bearer of value may be both instrumentally valuable and valued in its own right. For example, a rare stamp may have value both instrumentally, due to its function as postage, and intrinsically (for its own sake), due to its artistic qualities, historical significance, or rarity.[223] Analogously, a participatory method of accountability may both improve NGO performance and, at the same time, be of value to both the NGO and its beneficiaries in and of itself.

The instrumental approach to accountability is ultimately shaped by the view that some specified end has a value with respect to the operations of NGOs that outweighs all else. For Wenar, this specified end is the alleviation of severe poverty. This is motivated by his conviction that the wealthy have a stringent moral duty to aid the poor. For those writing on NGO accountability, effectiveness is still an important specified end, even if one does not think this end is an important *moral* aim: if NGOs are going to do anything, several NGO researchers believe, they ought to (at minimum) be effective at doing what they say they will do. In terms of voice accountability, improved credibility or the fulfilment of democratic principles can operate as the ultimate source of value.[224]

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[223] Beardsley (1965), cited in Rabinowicz & Rasmussen (2000, p. 40 ff).
[224] Philp (2009).

In all cases, while the specified end may vary, accountability is viewed "as instrumental to the independently specified normative goal,"[225] not as a normative goal itself. Insofar as accountability is seen as failing to deliver on such specified ends, there is motivation for Lisa Jordan's question: Why should NGOs consider accountability practices worth pursuing at all?

But again, this view rests more on stipulation than on argument to support the conclusion that accountability's value is measured only in terms of its instrumental role in procuring other ends. Citing examples of how accountability fulfils an instrumental role and arguing for the importance of the ends that it achieves, while leaving unexplored accountability's possible intrinsic value, is a weak argumentative strategy. I now turn to three distinctions relevant to a better understanding of accountability in sections 2.2, 2.3, and 2.4, which will form the basis of my defence of an alternative position.

2.2 Mechanism and relationship

The USAID case is meant to demonstrate how mechanisms of accountability can be insufficient for reducing poverty if they are poorly designed. While USAID is a government agency, there are analogous examples from NGO practice. In 2000, for example, a consortium of humanitarian aid organizations initiated work on a new self-regulatory framework based on their observation that successful accountability practices with donors and international institutions had not contributed positively to their abilities to service crisis-

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[225] Ibid. (p. 31).

affected populations.[226] The way in which they viewed their relationship to those affected by disasters parallels Wenar's assessment of the relationship between USAID and the global poor: their accountability mechanisms had negatively impacted their effectiveness.

However, a vital reason explaining why these mechanisms are insufficient is omitted in Wenar's diagnosis. The mechanisms that hold USAID or humanitarian aid NGOs accountable are counter-productive with respect to aid because they create relationships of accountability with the wrong parties. The upshot of this is not simply that the mechanisms have failed to reduce suffering, but rather, that the mechanisms have failed to reduce suffering because they *failed to create the right kind of accountability relationships*. The problem does not lie with accountability as such; it lies with the fact that USAID isn't being held accountable for poverty relief, and isn't accountable at all to the poor. The mechanisms of accountability are the culprits in both cases, and the failure of mechanism can be explained via a failure to create the kind of accountability relationships necessary for making USAID accountable for poverty relief, or for making Oxfam's delivery of emergency aid transparent and effective.[227]

Bringing in mechanisms to point to the precariousness of accountability's value occurs elsewhere when Wenar cites elections as an example of how more accountability may not always lead to a greater overall benefit. U.S. presidential elections are an important feature of an accountable government, he points out, but not one we would wish to implement quarterly instead of quadrenially.[228] Yet, this tells us little about the value of *relationships* of accountability, as elections are mechanisms, and an increase in mechanism is

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[226] This led to the creation of one of the most high-profile NGO self-regulatory accountability frameworks: the Humanitarian Accountability Project, now called the Humanitarian Accountability Partnership (HAP). Jordan (2007, pp. 160-1); http://www.hapinternational.org/.
[227] Oxfam is a member of HAP. See previous footnote.
[228] Wenar (2006, p. 8).

not on par with an increase in accountability. Increasing their frequency could give political officials less time and opportunity to reflect on their actions or to work constructively towards meeting expected standards. In other words, the type, quantity and frequency of the use of mechanisms of accountability can make agents less capable of being held to account.[229]

The distinction between mechanisms of accountability and accountability as a relationship between two parties is often elided when authors speak of accountability's instrumental value. It may be difficult to see the difference at first, given the language in which the accountability relationship is often described. For example, thinking of accountability as an "interaction," as many do (and as it appears in our working definition),[230] lends itself to a reduction into mechanisms, since an interaction typically implies a concrete event or series of events between two parties (literally, "reciprocal action"[231]).

But we can think about the relationship of accountability less in terms of an interaction and more as a structural feature of the interaction that conveys the meaning of the relationship to the parties involved. The significance of that structure for the two parties is distinct from the significance of the specific activities they engage in that constitute their relationship. To use an analogy: friendship can involve many combinations of joint activities, the provision of emotional support, regular communication, or shared past experiences, and thus, can vary widely from one set of friends to the next. The common strand uniting these different sets of activities under the category of friendship is that two individuals stand in a particular kind of relation, one of mutual good will,

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[229] Philp (2009) seems to recognize this distinction and makes a point similar to that of O'Neill's (2002) with regards to the counterproductivitiy of many accountability mechanisms. However, because he supports a definition of accountability that conceives of it exclusively as an instrumental mechanism, Philp draws a conclusion directly opposite to the view defended in this chapter.

[230] See above, ff. 212.

[231] "Interaction," OED (2000).

trust, and support to one another, that is constituted by concrete particulars, but not reducible to them.

The distinction between mechanism and relationship structure[232] is reflected in Onora O'Neill's comments on accountability and trust in public institutions. Trust involves placing faith in an institution's capacity and commitment to perform its purpose to the highest relevant standards, without relying on a guarantee that they will do so[233]. Accountability mechanisms attempt to implement guarantees. However, O'Neill notes, if they were successful at doing so, we should see a decrease in the mistrust of such institutions. Instead, public mistrust of its institutions is on the rise. This occurs, in part, because accountability practices create a multitude of unrealistic and sometimes mutually conflicting expectations for institutional performance while also crippling the ability of institutions to meet such expectations.[234] In other words, the mechanisms serve to undermine the relationship between the public and its institutions.

I highlight O'Neill's work on trust because the upshot of her discussion is often overlooked due to the general conflation between mechanism and relationship.[235] The counterpart to trust is not accountability, but heavy-handed mechanisms of oversight. Keeping mechanisms separate from the relationship they constitute is important, because elsewise there is no way to identify the difference between a mechanism that fails to bring about accountability and a mechanism that succeeds, but is costly. If accountability is taken to be synonymous with its mechanisms, there is no conceptual space for engaging critically with mechanisms in terms of whether they count as adequate practices and procedures for interactions of accountability.

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[232] From now on I will use 'structured relationship' as short hand for: 'structural feature of a relationship.'
[233] O'Neill (2002, pp. 5-6).
[234] Ibid. (p. 54); Ebrahim (2007, pp. 194-7).
[235] Philp (2009).

The NGO literature cites many examples in which engaging in accountability diverts attention from project objectives, negatively affects which projects are pursued (e.g. being forced to establish measurable baselines and indicators for change can turn NGOs away from projects less conducive to being evaluated in such a way), emphasizes short-term over long-term planning, and is costly in terms of staff time and finances. All of these are likely examples of how mechanisms can go wrong. But rather than conclude that accountability's value is questionable, we can instead question whether these mechanisms really do structure relationships in a way that makes an NGO accountable to its stakeholders.

One might question the degree to which a relationship of accountability remains uniform across the varied contexts in which NGOs act. David Lewis (2007) and others[236] have highlighted the contingencies of accountability: how it varies from context to context, culturally and institutionally. In support of these claims, numerous case studies have shown that accountability practices can produce different effects, are subject to different conditions, and can express different values in different countries and institutional environments.[237] Yet, here too the examples cited are often audits and communication or human resources procedures, which, like elections, are mechanisms.[238] This does not support the conclusion that the structured relationship of accountability holds different meanings across different contexts. The meaning of the relationship can remain constant as a relation of equality between the account-giver and holder. However, context ought to be taken into account in developing and selecting the appropriate mechanisms for creating this kind of relationship when environments vary. For example, mechanisms that involve written reports by account givers or written feedback from account holders may be well-suited for NGOs in developed countries,

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[236] See also: Dubnick (2002); Dubnick & Justice (2004); Weisband (2007); Slim (2002).
[237] Hilhorst (2002; 2005).
[238] Jordan (2007). Slim (2002) makes a similar point.

while face-to-face consultations will contribute more to instilling egalitarian relationships in contexts with low literacy rates.[239]

Where do these considerations leave the value of accountability? The contention that accountability is contextually variant, has negative side-effects, and is costly, applies primarily to mechanisms, not to the relationship that NGOs can create with other parties when they are accountable. *Mechanisms* of accountability are instrumentally valuable, insofar as they, in the first instance, succeed in supporting relations of accountability between agents, and secondarily prove useful for other valued aims, such as improved performance or an increase in public trust and confidence toward NGOs. The particular costs of individual mechanisms and their appropriateness for use in different regions requires closer attention, as the above authors have suggested. But this should be pursued in light of the general aim to establish a certain type of a structured relationship between an NGO and its stakeholders.

At the same time, some mechanisms may also be valued for their own sake. Examples of these mechanisms include the participatory methods mentioned above, or processes of organisational learning that allow members of an institution to reflect on their work and its long-term effects. Regardless of how they affect an NGO's performance and accountability relations with other agents, opportunities for reflection can be a final end, valued for the sake of the reflection itself. In this way, mechanisms of accountability have the potential for both instrumental and final-end value.

Now we are in a position to revise our original definition to specify the accountability relationship in terms of its structure, rather than by reference to its mechanisms (the bolded sections reflect changes made to the original):

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[239] Slim (2002).

Accountability[2] is: **a structured relationship** between two agents, the accountable (A) and the account holder (H), in which A acts—or is expected to act—to meet the standards or expectations of H and provides an account of her actions to H, and H has some ability to affect A's interests based on H's determination of whether such standards have been met.

Accountability as a type of relationship structure may have more than mere instrumental value. But to establish this, we must understand what this structure consists in. Sections 2.3 and 2.4 aim to provide this required detail.

2.3   Ability and responsibility

2.3.1   The Directionality Paradox

If the source of the problem with USAID and the humanitarian NGOs was that they had accounting relationships with the wrong account holders, then it seems we ought to alter mechanisms so as to improve the relationship that NGOs and agencies like USAID have with the poor and disadvantaged. Those who are best positioned to hold NGOs accountable for their efforts at reducing suffering are reasonably those who stand to benefit the most from their successful accomplishment.

In practice, however, NGO accountability remains strongly oriented towards donors.[240] In part this is because the nature of the relationship bends power asymmetrically in favour of donors: it is easier for a displeased donor to find a new NGO to fund than for an NGO to find a new donor.[241] We will return to this consideration below. But the emphasis on donor accountability rests also on perceived problems with implementing accountability to those people targeted by aid projects. While many voices have advocated for greater accountability toward NGOs' intended beneficiaries, this call for change has been hampered by the acknowledgement that such accountability is, at best, extremely difficult to implement and, at worst, conceptually incoherent.[242]

For many writing in the NGO literature, the difficulty with increasing beneficiary accountability is considered a serious problem, since many NGOs stake their identity and authority on their ties to the poor and disadvantaged.[243] If accountability to such people seems impossible, then it is unclear on what basis NGOs may claim to be adequate advocates of, or providers to, the poor. An organisation may be able to advocate for wildlife or for children without being expected to be directly accountable to animals or five-year-olds; however, to treat full-grown adults in the same way is to place them on par with children or with persons who lack the ability to make choices for themselves, a message that development and aid NGOs would prefer to avoid conveying to, or about, their beneficiaries.

Those writing within the literature on global justice and duties of aid tend to conclude that, given that aid is a moral priority, if NGO accountability can make aid more efficient and effective, then accountability to donors or other

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[240] A fact that is a source of significant concern amongst NGO practitioners. See, for example: Kilby (2006); O'Dwyer et. al (2007); Ebrahim (2009).
[241] Ebrahim (2006); Edwards & Hulme (1996b).
[242] Ebrahim (2009); Ebrahim & Weisband (2006); Ebrahim (2003); Kilby (2006); Edwards & Hulme (1996b); Najam (1996); Peruzotti (2006).
[243] Kilby (2006); Slim (2002).

equally powerful regulatory bodies must be emphasized.[244] Accountability to beneficiaries, while perhaps more desirable, is more difficult to achieve. Thus, the focus ought to be on strengthening donor accountability for improved poverty relief. It is better that NGOs be accountable to someone, the idea goes, rather than to no one at all.[245]

The reasoning behind these views—that accountability to beneficiaries is extremely difficult or even conceptually incoherent—can be expressed in an argument I term the Directionality Paradox, named after the way in which accountability relationships for NGOs are often characterised in terms of an "upwards" "downwards" or "horizontal" framework.

While the directions are not given a clear definition, NGOs are widely said to have "upward" accountability towards donors and states, "downward" accountability towards those targeted by their projects, as well as sometimes members, and "horizontal" accountability towards other NGOs and private institutions.[246] Based on this, it can be inferred that accountability runs *upward* when it is directed to an account holder that has greater power over the agent or a greater opportunity to leave the relationship than the agent. Accountability runs *downward* when this asymmetry runs in the opposite direction: the agent has greater power over the account holder or greater opportunity to leave the relationship, at least prior to the point at which mechanisms are put into place.[247]

If accountability requires the threat of sanctions in order to secure compliance, then, in order for accountability to work it requires the account

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[244] Pogge (2005a); Wenar (2006).
[245] Peruzotti (2006); Wenar (2006); Spiro (2002).
[246] Edwards & Hulme (1996b, p. 967).
[247] Some have offered an alternative definition, where 'upwards' is defined as the parties that give money to an NGO and 'downwards' is defined as those affected by an NGO's projects. But this version does not explain the language of directionality: what is really doing the work here is the notion that, by giving money, this places donors and states in a higher position of power, and by being affected by projects, this places beneficiaries in a lower position of power.

holder, H, to have certain powers over the accountable agent (A). As Wenar puts it: "Only power balances power, and it is in general only the rich and their agents who will be able to hold the rich and their agents to account."[248] On this basis, the notion of downward accountability seems conceptually confused: "we are... confronted with a situation that is the very opposite of an ideal accountability relationship... Accountability, to use the same metaphor, is always 'upwards'."[249]

In other words, downward accountability results in a paradox:

> D1. A ought to be accountable to those affected by her actions.
>
> D2. H is affected by A's actions.

Therefore: D3. A ought to be accountable to H.

> D4. A can be accountable only to those who have the power to hold A accountable.
>
> D5. H does not have the power to hold A accountable.

Therefore: D6. A cannot be accountable to H.

> D7. Ought implies can.

Therefore: D8. A ought not be accountable to H.

> D3. $\perp$ D8.

The contradiction produced by D3 and D8 arises out of an agent being directed to act in a way that is impossible for her to act, on the basis of two conceptions of accountability that are at odds with one another, expressed in D1 and D4. The Directionality Paradox rests on two assumptions: the first is the assumption, noted just above, that accountability is defined by the

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[248] (p. 17).
[249] Peruzotti (2006, pp. 54-5).

presence of sanctions. The second assumption is that the ability to hold to account is a *necessary* condition for the *initiation* of any accountability relationship. This first assumption will remain unquestioned until the next section. It is the second assumption that I wish to challenge here.

2.3.2 The distinction defined

The paradox arises out of the ambiguous phrase "can be accountable" in D4. Depending on how this is read, accountability can be conceived of either as an *ability-based responsibility* which A has to H in virtue of H's abilities, or as a *responsibility to recognise or create an ability* that A has towards H in virtue of other substantive moral reasons, in this case, in virtue of what A has done to H (as expressed in D 1). This produces the paradox, since A both can, and cannot, be held to account by H (she can, in the sense that she has a responsibility to create an ability in H in virtue of her affecting H, and yet cannot, in the sense that H currently lacks the power or ability to hold her to account). The first reading of accountability, as an ability-based responsibility, is considerably more popular, but it is the one I argue we ought to drop.

The notions of moral responsibility, accountability, and ability (or capacity[250]), can connect in various ways, particularly when it comes to the responsibilities of institutional agents.[251] In this context, to say that accountability is an ability-based responsibility means that an agent has a responsibility to provide an account of its actions, and this responsibility is justified by appeal to the abilities possessed by that agent and its account-holder. Ability-based approaches to accountability rely on separate accounts of independently-

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[250] Capacity is a tricky term because it can be defined in a variety of ways. See: Green (2005); O'Neill (2001); Meckled-Garcia (2008). Agential capacity is discussed in chapter 4; to avoid confusion I instead use the term 'ability' throughout most of this chapter.

[251] These connections are explored further in Chapter 4.

specified ends, such as those discussed at the end of 2.1. For instance, NGOs have the ability to alleviate poverty and donors are presumably best able to hold them accountable for doing so. If poverty alleviation is the specified end that has moral priority, then the abilities of the NGO obligate it to alleviate poverty to the greatest extent possible, and the ability of the donor obligates the NGO to be accountable to the donor.

The ability-based approach to the grounds of accountability is part of a broader capacity-based approach to the grounding of all agent responsibilities.[252] Those who advocate basing responsibilities on capacities consider this approach to be 'forward-looking': it asks what the agent is capable of doing in the future with respect to a set of moral priorities, rather than basing obligations on attributive responsibility for what the agent has done in the past.[253] Given a group of bystanders seeing someone drowning in a lake, it is reasoned, the bystander who is by far the strongest swimmer has a greater responsibility to jump in and save the victim.[254] Similarly, if an institution or organisation has the capacity to act in a way to protect or realise human rights, then this can ground an obligation for it to do so.[255]

We can identify how this differs from treating accountability as a responsibility to create abilities by highlighting the different ways in which they approach the accountability obligation. A relationship that has an accountable structure is one in which an agent is expected or required to provide reasons for its actions to another. We can understand this expectation or requirement in terms of an obligation. An accountable agent, therefore, is one that has an obligation, or substantive responsibility, to provide reasons for its actions to another, and to respond in some way to the account holder's

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[252] For example, see O'Neill (2001); Green (2005); Fuller (2006).
[253] Green (2005, p. 128).
[254] Ibid. (p. 129).
[255] Ibid.

evaluation. If this is the case, then in order for the agent to fulfil her responsibility, the account holder must have the ability to understand the account provided, the ability to evaluate, and, since we are still assuming that sanctions are a necessary feature of accountability, the ability to sanction or reward.

The ability-based approach reads this set of abilities as a necessary condition: the account holder must have these abilities in order for the account-giver to be obligated to provide an account. But this approach ignores the fact that abilities may not be necessary as the *grounds* of accountability; rather, they may instead be necessary as the *content* of the responsibility. The trust shared with a friend can be the grounds of your obligation to not have an affair with your friend's spouse. Trust can in other cases be the content of a responsibility: one ought to maintain a certain level of trust with one's romantic partner by refraining from reading his or her private correspondence.

To say that accountability requires H to have the ability to hold A to account provides a *directive* for what the accountable agent must do: she must ensure, in order for her account-giving to be authentic, that H has the ability to understand her account, that H has sufficient information available to evaluate the account, and that she (A) has made herself available to sanctions, where deemed appropriate by H.

Therefore, we can resolve the Paradox in the following way:

> D1. A ought to be accountable to those affected by her actions.

> D2. H is affected by A's actions.

Therefore: D3. A ought to be accountable to H.

> D4. A can be accountable only to those who have the power to hold A accountable.

D5.* H does not **currently** have the power to hold A accountable.

Therefore: D6.* A cannot **currently** be accountable to H.

D7. Ought implies can.

Therefore: D8.* **A ought to create H's power to hold A to account**.

If we read D4 as describing the content instead of the grounds for an accountability obligation, then instead of eliciting the conclusion that A ought not be accountable to H, we can conclude that H's current inability to hold A accountable gives A *a reason to instil that ability in H*.

This perspective emphasises the active role of the agent (A) in ensuring her own accountability, by structuring her relationships in a way that allows for her to be held to account. Which account holders are selected and on what basis—in other words, on what grounds the responsibility to give an account rests—is a further question.

However, before we address this question, we must further establish the advantages of understanding accountability as a responsibility to recognise or create abilities in others. We can do this by highlighting a significant problem with the conception of accountability as a responsibility based on the pre-existing abilities of the account holder.

2.3.3   A problem for accountability as a responsibility derived from abilities

Using an ability-based notion of responsibility to argue for increased accountability to donors is flawed insofar as it may be targeting the wrong

ability. D5 leaves unspecified which power H lacks that prevents her from holding A accountable. It is presumed that the most important ability is the ability to sanction, but other powers can be required in order to hold an agent to account.

To return to the bystanders at the pool, it may be the case that the stronger swimmer has the worst eyesight. In this case, another bystander with less swimming strength, but a better ability to spot the drowning swimmer while in the water, would be a better candidate. Arguments for greater accountability to donors emphasise, first, NGOs' poor abilities to provide rigorous evaluations and measurements of the successes and failures of their projects and, second, donors' capacities for delivering sanctions. But such arguments rarely, if ever, mention the donors' capacities for properly evaluating NGO success and failure or dictating the terms of such evaluations. The empirical evidence suggests that this ability can be severely limited: donors often have a short-term outlook for project success that forces NGOs to plan in 2-5 year cycles rather than consider long-term solutions.[256] They may ask that NGOs use certain means in achieving projects that are later determined to be ill-suited for the cultural context, or ask for reports that are detached from capturing what real success would entail.[257] They may place an overemphasis on measurable results when the goals concern highly qualitative and process-related or structural phenomena, such as a strengthened civil society or democracy, women's empowerment, or changing perceptions of the disabled or outcast minority groups.[258] If capacities are the basis for establishing the responsibility of accountability, it is not evident that donors satisfy all the requirements for holding NGOs to account.[259]

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[256] Ebrahim (2007, p. 195).

[257] Edwards & Hulme (1995a); Kilby (2006).

[258] However, the donors themselves may see their abilities quite differently.

[259] A further problem, highlighted by Ebrahim (2003) and Philp (2009), is that there is something odd about the idea that those who already have the power to hold A to account are

2.3.4 Accountability as a responsibility to recognise and create abilities

Our revised conception of accountability is now as follows:

> Accountability[3]: a structured relationship between two agents, in which the accountable, A, (i) **fulfils an obligation** to ensure that H is in a position to hold A to account, (ii) gives an account to H for a set of actions; (iii) **recognises** H's determination of whether H's standards have been met, and (iv) complies with H's exercise of its ability to affect A's interests.

While we have been speaking of accountability as a responsibility, it ought to be understood more precisely as the *fulfilment* of an obligation. A may have the obligation to ensure H is in a position to hold her to account, yet fail to fulfil it; in such a case, A is not accountable.

I argued above that the ability-based approach to accountability fails to provide a way of identifying the abilities relevant for picking out account-holders. If the ability-based approach to establishing responsibilities is unsuccessful at clearly identifying the grounds for accountability obligations, then we must ask: On what other substantive reasons can the obligation of

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those towards whom A should be accountable. If H can already hold A to account, there is no need for establishing accountability mechanisms, and if H cannot hold A to account, then H is ruled out as a possible account holder. It is often remarked that, within the natural relationship between a donor and an NGO, donors possess an "exit" (Hirschman 1970) form of accountability, because they can withdraw their funds if they are displeased with how the organisation is performing. This means that the relationship between an NGO and its donor is *defined* by a mechanism of accountability: having exit control over an NGO is constitutive of being a donor, because to be a donor is to provide funding for services that do not return financial or material benefits. If the reason why donors are the best account holders is because they already have the means to hold NGOs accountable, then it is not clear why that should be the basis for arguing that NGOs have a *further* responsibility to be accountable to their donors: no such further mechanism is required when donors already have the opportunity to exit.

accountability rest, if not the abilities of individual and collective actors to sanction? An immediate possibility is that this responsibility is triggered by the ways in which NGOs interact with other actors. A key question, then, is what kind of NGO interactions ground the responsibility to recognise and create abilities in others. We turn now to three different frameworks that offer answers to this question. There, I will argue for a framework that best explains why accountability holds intrinsic value as a structured relationship based on obligation.

2.4   To control and to appraise

Sections 2.2 and 2.3 aimed to show that accountability can be understood as a responsibility that an NGO has to establish a type of structured relationship with another agent. However, the specific nature of this relationship and the grounds on which this responsibility are based were not detailed. In this section, I provide answers to both, discussing the kind of evaluation that can obtain between the account holder and the account giver, and the basis on which an NGO has a responsibility to create the opportunities for this evaluation. Until now we have maintained the assumption that accountability necessarily involves the capacity of the stakeholder to sanction the NGO. Against this, I will argue that sanctions are not necessary in the evaluative relationship that constitutes accountability, and that accountability without sanctions still has intrinsic value.

Definitions of accountability are based on descriptive frameworks that give an abstract description of the relationship which motivates the request for accountability. At the same time, they provide a perspective from which the

value of accountability can be assessed. Such frameworks have been called 'models'[260] or 'normative logics'[261], and they do three things:

- Describe how the relationship came about.

- Attribute motivations to the agents involved.

- Identify a source of value.

The two most common frameworks applied to NGOs are the principal-agent framework, borrowed from economics, and the democratic framework, borrowed from politics.

An initial problem with these frameworks is that each emphasises one particular stakeholder relationship—donors for the former, beneficiaries and the public for the latter—and therefore offers an incomplete picture of the relationships that can serve as the grounds for NGO accountability. NGOs have "multiple bottom lines"[262] when it comes to accountability: multiple parties to whom they are expected to be responsive for different objectives. As mentioned in 2.1, NGOs are expected to be accountable for effective performance, as well as for the authenticity of the claims they make. Other examples of objectives NGOs are expected to meet include empowerment, financial probity, and a commitment to their own mission and values. The parties to whom they are expected to be accountable are multiple: IGOs, donors, state agencies, beneficiary groups, and other NGOs. The principal-agent and representative frameworks fail to capture all of these varied, important, relationships.

Yet problems with these frameworks reach even deeper. Not only do the principal-agent and democratic frameworks limit their foci to single parties: as I argue, the starting points offered by each model fail to accurately depict an

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[260] Brown (2007).
[261] Ebrahim (2007; 2003).
[262] Slim (2002).

NGO's relationship to even *these* stakeholders. While they identify relationships that are morally important for an INGO, the principal-agent and representative frameworks do not capture what is relevant about these relationships for establishing relationships of accountability. I will instead argue that accountability based on a modified version of L. David Brown's (2007) multi-party social action framework, which does not include the condition of sanctions, provides a better alternative.

2.4.1 Principal-Agent framework

By far, the most dominant descriptive framework in the discussion and practice of NGO accountability is the principal-agent framework, which casts NGOs as agents entrusted with resources who are enlisted to act on behalf of a principal.[263] Under the principal-agent framework, the core relationship is formed when a principal contracts an agent to act on its interests. It attributes to the principal the motivation of having its interests met by the actions of the agent and attributes to the agent the motivation of opportunism, a tendency or interest to act in ways outside of, or contrary to, the interests of the principal. Accountability, on this view, is thus designed to restrain the opportunism of the agent and ensure that it acts in accordance with the principal's goals, which operate as the source of value in the principal-agent framework. Hence the centrality of sanctions: the agent's opportunism is constrained by clearly-defined incentives and the threat of punishment.[264] In the principal-agent relationship, accountability cannot be a source of value itself, since it is only a solution to the principal's problem of ensuring the agent realises her desired ends.

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[263] Brown (2007); Ebrahim (2007; 2009); Edwards & Fowler (2002).
[264] Brown (2007, pp. 91-2).

There are a number of shortcomings in motivating NGO accountability based on a principal-agent description of their relationships to others. For one, this framework posits only one relationship between two parties, yet NGOs have multiple relationships, in which they sometimes occupy the role of an agent and on other occasions the role of the principal.[265] Advocacy-focused NGOs can operate as principals for political officials and policy-makers by applying high-profile, critical pressure.[266] By adopting codes of conduct and accreditation schemes, Ebrahim (2007) says NGOs can also operate as principals to the broader non-profit sector, creating and enforcing a set of standards. At the same time, NGOs can be construed as agents for various principals, such as the poor in their interactions with governments, or donors in their interactions with both the poor and government officials.[267] The principal-agent framework provides no resources for dealing with multiple, sometimes conflicting, bases for accountability, and therefore, does not seem capable of accurately capturing all relationships for which an NGO is expected or required to be accountable.[268]

The framework is also descriptively inaccurate regarding the motivations of NGOs. The need for accountability does not primarily arise from opportunistic NGOs attempting to direct resources towards the self-interest of its employees.[269] While this may occur in some instances, ineffectiveness in NGOs is for the most part attributed more to well-intentioned efforts that face difficulties in their execution.[270] Sanctions and incentives designed to buffet against malign intentions are not only insulting, but fail to have any positive impact since they do not treat the actual causes of ineffectiveness. In fact, in

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[265] Ebrahim (2007, pp. 198-202).
[266] Ibid. (p. 201).
[267] Ibid.
[268] This point is also made by Brown (2007); Ebrahim (2009).
[269] Ebrahim (2009).
[270] Wenar (2006); Riddell (2008).

some cases they exacerbate them. This may be why many in the NGO sector find such processes tedious, pointless, and wasteful.

A more significant worry for the principal-agent framework is that it describes a relationship quite different from the NGO-donor interaction to which it is applied. According to this framework, the morally relevant starting point is the principal's decision to give money to the agent. It is this act that establishes the relationship and creates the expectation that the agent use its funds in a manner congruent with the principal's interests.

But the relationship between donors and NGOs does not necessarily begin with the former deciding, on their own initiative, to donate to the latter. Rather, NGOs engage in extensive awareness-raising campaigns, informing citizens of affluent nations on how they can have a positive impact on the lives of the poor, as well as on how their practices or their governments' policies may be causing harm to distant others. They do so not only by appeal to facts, but by articulating moral arguments and ideas of social justice, and tying these to the concrete aims of individual projects and programming. By taking the act of donation as the starting point of the relationship, the principal-agent framework cuts out this important earlier stage, in which NGOs are engaging in activities—fundraising, advocacy, moral argument—that are of equal importance.[271]

Thus, even the NGO-donor relationship diverges significantly from the principal-agent framework. In the former, there is an additional, initial stage, prior to the exchange of monies, in which the NGO initiates contact with the

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[271] One might point out that this advocacy does not effectively distinguish NGOs from economic agents, since a company can also take it upon itself to convince potential customers to employ their services—a practice otherwise known as advertising. The difference between the two comes down once again to the motivations of NGOs versus private companies. Private companies will engage in an informative campaign only in so far as the costs of their advertising lead to greater profits, and do not exceed those profits. Thus, the difference between private advertising and NGO advocacy is that the former is geared towards a profit, and the latter towards a social goal.

donor and attempts to persuade and engage them. Not only does this engagement go beyond the provision of funding (they may be soliciting public support, or encouraging ethical consumerism), but even in cases where money is the object of solicitation, the understanding is not that the NGO will show a return to the donor on their money specifically (since the aim is not profit), but that it will put that funding towards the successful achievement of a general goal.

The descriptive inaccuracy of the principal-agent framework leads to the development of conceptions of accountability for NGOs that are heavily technocratic, emphasize control, and are heavily weighted towards the viewpoints and values of donors, given that they possess the greatest ability to exercise sanctions. While this inaccuracy is noted by those critical of current accountability practices in NGOs, they often conclude that accountability's value is, at best, still only instrumental and negotiable, turning a critical eye to calls for greater accountability.[272] In such attitudes, there still appears to be some implicit acceptance of the principal-agent based definition of accountability, as a tool of governance[273] and control towards independently specified ends. Instead, I argue we should seek to build a new conception, based on a more descriptively accurate framework. Toward that end, there is a second framework we can consider.

2.4.2 The democratic framework

The other main framework applied to NGOs is the democratic or representative model of agency, which describes NGOs as acting on behalf or

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[272] Ebrahim & Weisband (2007).
[273] Ibid. (p. 15).

in the interest of a constituency as it engages in advocacy and other political processes.

Sometimes a principal-agent framework is applied to the relationship between elected officials and their constituents. When this occurs, there is very little difference between the economic model discussed above and the political model of agency. A second version of the democratic framework, however, offers a distinct alternative. We can highlight the difference by comparing the two models in terms of the three questions answered by any framework for accountability.

Within both versions of the democratic framework, the relationship arises when a constituency elects an individual to public office in order to represent their views in the political process and serve the public interest.[274] The democratic framework then splinters into two types based on different descriptions of the actors' motivations.

On one description, the motivations of the public official and the electorate are identical to the principal-agent model: the public wants its ends met, and there is a problem of opportunism in the public official. The official must be constrained by the public in order to ensure she is using the powers of her office appropriately and not for her own self-interest.[275] The purpose of accountability is to provide such a constraint.[276]

Under the second version of the democratic framework, the public official is motivated to serve the public interest and to fulfil the responsibilities of her office. However, because political decision-making involves making hard choices, often on the basis of arguments for which there may always be room for reasonable disagreement, accountability is still important as it requires the

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[274] Ebrahim (2003, pp. 196-7); Brown (2007, p. 92)
[275] Philp (2009).
[276] MacDonald (2007, chp. 7).

public official to justify her decisions to her constituents. This version of the democratic framework places less emphasis on incentives and sanctions, and greater emphasis on trusting public officials to perform their role with integrity.[277]

The source of value also differs in this type of interaction, reaching deeper than simply the satisfaction of the electorate's interests. The meeting of the "principals'" ends by their "agent", the public official, at the same time satisfies the goal of adequate democratic representation of the people within the political institutions that govern their lives. This deeper source of value is what ties democratic accountability to questions of political legitimacy, i.e. the justification of the state's right to rule, and also fully differentiates the second version of the democratic framework from economic principal-agent frameworks. On this second version, accountability can be construed as intrinsically valuable, on the basis that it is constitutive of citizens' exercise of their autonomy.

The democratic framework is assumed by those who demand NGO accountability through the question: "who do you represent?"[278] NGO stakeholders in this framework are project beneficiaries or the public, and mechanisms of accountability tend to be modelled after features of democratic governance, most notably participatory methods that involve stakeholders in the design and evaluation of projects.[279] While fitting NGOs into a democratic framework resonates with many current practitioner perspectives,[280] neither version of this framework accurately captures what it is about an NGO's relationships that ground obligations of accountability.

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[277] O'Neill (2002); Philp (2009).
[278] Brown (2007, pp. 92-3).
[279] Ebrahim (2007, pp. 196-8).
[280] MacDonald (2008) points to this widespread acceptance in support of her argument for NGOs as democratic representatives in her theory of "global stakeholder democracy" (pp. 7-10).

While some NGOs may make claims of representation, the relationships created through these claims differ significantly from those between constituents and their representatives, regardless of whether those representatives are elected.[281] Therefore, while NGOs can be expected to justify these claims, it does not follow that the best way for them to do so is by meeting standards of *representative* accountability. Considering the second version of the democratic framework first (the one that treats accountability as intrinsically valuable), there are two ways in which the relationship it describes differs significantly from an NGO's.

First, within a political model of agency, the powers and prerogatives come first, thereby giving cause to the political agent's obligation of responsiveness towards its constituents.[282] In the case of NGOs and their beneficiaries, the NGO identifies its aims and principles first. Through these self-identified aims, it then receives powers and privileges, however, *not* strictly, or even predominantly, from those considered to be its constituents. Instead, an NGO exchanges claims of representation for greater powers and privileges provided to it by donors and international organisations such as the U.N., which reward NGOs considered close to the poor and marginalised with funding and a stronger voice in the shaping of global public policy. Therefore, the party who is represented is not the same party providing NGOs (the "representative") with the main powers and privileges exchanged for that representation. While this may call for justification, it is distinct from the need for justification

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[281] The question of whether NGOs can be considered representatives or not often focuses on the fact that they are unelected. Arguments for NGOs as representatives then take the form of arguing for the possibility of unelected representation (e.g. Saward 2008; MacDonald 2008). My point is that the normatively important relationship that constitutes representation—both in its elected and unelected form—is not as descriptively accurate as the multi-party social actor framework discussed below in 2.4.3. Thus, my criticism here does not depend in any way on a view regarding whether representation can occur through unelected agents.

[282] Some might argue that what comes first in this model is a process of authorisation by which powers and prerogatives are delegated to a representative and given approval (MacDonald 2008, chp. 7). This still, however, does not provide an accurate description of how NGO powers and prerogatives are instilled, for the same reasons as detailed above.

triggered by relationships between constituents and their political representatives.

Second, because the relationship between constituents and representatives begins with the former allocating defined powers and privileges to the latter, the second version of the democratic framework establishes an expectation of responsiveness towards the constituents that allows for the exercise of those powers to be justified. Accountability practices are then intrinsically valuable, as they partly constitute the legitimation of political power to those subject to it. But in the NGO case, relationships often begin with organisations identifying their principles and mission statements and then engaging simultaneously in two tasks: attempting to gain powers from others on the basis of those principles, and attempting to demonstrate that those principles are indeed sufficiently responsive to the perspectives of the poor and marginalised.

More commonly, the first version of the democratic framework—that which bears similarities to the economic principal-agent model—is applied to NGOs. Here, NGOs ought to be accountable to the perspectives and viewpoints of their "constituents" so that their activity better represents and reflects those viewpoints. This is instrumentally valuable for serving some further, independently-specified, aim. This aim may be transparency and democracy in global civil society; making NGOs more internally democratic; or the improvement of an NGO's image as a credible global actor.[283] While the ends are democratic ideals instead of performance, it remains the case that NGO accountability only has instrumental value in virtue of its role in securing such ideals.

An immediate question for this approach is what criterion we ought to use to categorise NGOs as representatives and thus, as a member of the class of those

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[283] MacDonald (2008); Held & Koenig-Archibugi (2005); Brown (2010).

subject to democratic forms of accountability. Terry MacDonald (2008) has argued that NGOs are capable of exercising "public power,"[284] which she defines as "autonomy-constraining impact"[285]: the ability to affect others' autonomous capacity for choice.[286] In virtue of this power, she argues, NGOs ought to be democratically accountable. According to MacDonald, the purpose of accountability "is to give stakeholders some control over the activities of public political agents such as NGOs."[287]

While MacDonald is correct to highlight the moral relevance of NGOs' abilities to affect the abilities of others, her construal of this as a "public power" that subjects NGOs to the application of a democratic framework is not the only, nor feasibly the best, interpretation of these abilities.[288]

As many in the NGO literature have mentioned, representative forms of accountability, when enforced, seem capable of doing both too little and too much. They do too little by failing to provide the type of oversight that will solve the problem which motivates the value of accountability in the first place. Representation of the viewpoints of those affected by projects does not necessarily lead to improved service or advocacy.[289] Similarly, if this framework of accountability is applied to NGOs on the basis that they affect the autonomy of other agents, this seems to do too much, requiring NGOs to

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[284] MacDonald (2008, p. 13).
[285] Ibid.
[286] Ibid. (p. 23).
[287] Ibid. (p. 185).
[288] An initial concern is that MacDonald construes public power as having a specifically *negative* impact on the autonomy of others: "If we were to think that these impacts were positive for all affected individuals, then it could be argued that this NGO power would not qualify as public...[and]... may not require democratic legitimation" (p. 78). Her approach therefore bases NGO accountability on proof of wrongdoing or the possibility of wrongdoing. My approach here, in contrast, identifies reasons that an NGO ought to be accountable regardless of whether the consequences of its activities are positive or negative.
[289] Ebrahim (2007); Peruzotti (2006); Charnovitz (2006).

be accountable to the corporations and hostile governments whose illicit or unjust practices they are working against.[290]

Moreover, an NGO's ability to affect the abilities or interests of others can elicit moral obligations without appeal to a democratic framework. As MacDonald correctly points out, NGOs are able to affect the abilities and interests of others in a multitude of ways, through participation in formal consultations with international organisations of governance, international advocacy, and their ability to control large amounts of resources in conditions of scarcity.[291] Her connection between this ability and the application of democratic accountability to NGOs rests on a form of the "all-affected principle," which states, generally, that all those affected by a particular decision ought to have a say in how it is made.[292]

While the all-affected principle plays a prominent role in democratic theorising, it is not necessarily a *democratic* principle, as much as it is a principle of equal treatment.[293] The all-affected principle is important to accounts of democratic authorisation and legitimacy because it motivates the value of representation through an appeal to egalitarian concern: the interests of those affected by a decision are given equal treatment through a consultative process that ensures their viewpoints are represented in the decision. But it is possible to apply the all-affected principle more generally, without assigning a model of representative agency to the decision-maker. A decision-maker may have a moral reason to engage with those affected by their decision, not because his or her function is necessarily to *represent* those viewpoints, but because structuring their relationship in this way fulfils basic values of respect and equal concern. That is, affecting others' interests can

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[290] Jordan & Tuijl (2006, p. 20).
[291] MacDonald (2008, chp. 3).
[292] Näsström (2011, p. 117).
[293] Ibid. Goodin (2007, p. 50).

trigger an obligation to structure one's relationships to them in a manner that does not refer only to producing certain desired outcomes, such as representation or the curtailing of opportunism.

This final point means that we can reject the problematic democratic framework while still maintaining that NGOs, in affecting the abilities of others, trigger obligations of accountability. In the following section, I argue that we can maintain this through a framework and conception of accountability that better reflects the relevance of the all-affected principle for NGOs.

2.4.3 Accountability without sanctions

2.4.3.1 The multi-party social actor framework

If the principal-agent and democratic frameworks are inapplicable to NGOs, then we need a conception of accountability based on a more accurate description of NGO relationships. We need, in other words, a conception tied to the theoretical definition of NGO agency identified in the previous chapter, which characterised an NGO through its collaborative engagement with multiple other actors.

We can begin by selecting a more suitable descriptive framework for understanding an NGO's accountability relationships. L. David Brown's (2007, pp. 93-5) multi-party social action framework offers a viable alternative to applying an economic or political framework to NGOs. The multi-party social action framework uses as its starting point the perspective of an agent attempting to manage the negotiation of multiple, often ill-defined, relationships, which give rise to a diverse and sometimes conflicting set of

values.[294] Rather than understanding NGOs as an agent *for* others—e.g. shareholders or constituents—it instead frames NGO accountability through a starting point of NGOs interacting with others as agents in their own right, negotiating goals and values. The model of accountability that Brown characterises through the multi-party social action framework is what he calls mutual accountability: "accountability among autonomous actors that is grounded in shared values and visions and in relationships of mutual trust and influence."[295]

While Brown's multi-party social actor framework provides a more accurate description of the relationships for which NGOs have accountability obligations, his notion of mutual accountability relies too heavily on an NGO's shared values with other actors. This kind of accountability is relevant to an NGO's internal relationships, in which staff can be characterised as holding shared aims, or cases where an organisation works in collaboration with other NGOs on a campaign or self-regulatory initiative. In most of its external relationships, however, NGOs collaborate and engage with other actors on a variety of bases, with varying degrees of shared values and hostility. A multi-party social action framework can still provide the basis for a workable and intrinsically valuable conception of accountability, but only if it shifts the focus from relationships built on shared values to collaborations which NGOs secure by making claims as norm-enacting agents. In many cases, these collaborations allow NGOs to exercise an important ability: the ability to alter and affect the abilities of others. Examples of the exercise of this ability include: making claims or plans with others to affect the abilities of beneficiaries, impacting state abilities through competition or support, engaging in capacity-building with GROs, negatively impacting the abilities of

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[294] Brown (2007, p. 93).
[295] Ibid. (p. 95).

transnational corporations, IEIs or IGOs through campaigns, and affecting the abilities of other NGOs to act in a given context.

Within these interactions, an unequal balance of power is formed between the NGO and the agents whose abilities are affected by its actions. The conceptions of accountability we have considered thus far hold that, in order to rectify this inequality such that the NGO's actions are justified, some form of sanctioning power must be provided to all affected. However, as I will now argue, this egalitarian commitment can be better reflected in a conception of accountability that emphasises moral appraisal over sanctions.

2.4.3.2 *The attitudes of moral appraisal*

I suggest formulating this conception through a distinction made famous by P.F. Strawson that contrasts two ways of relating to those who affect us with their actions.[296] Strawson discusses cases where the actions of an agent are the same, but our feelings towards her are quite different, for example someone stepping on your hand intentionally, as opposed to accidentally while trying to provide you with assistance. While the physical pain may be identical, we have an added feeling of ill-will or resentment in the first case. Strawson's view is that such feelings are central to understanding what moral responsibility really is: a set of social practices.[297] Treating others as subject to our moral appraisal is captured by what Strawson calls our 'participant reactive attitudes' which we develop and express through our participation in relationships with others:

> We should think of the many different kinds of relationship which we can have with other people—as sharers of a common interest; as members of the same family; as colleagues; as friends; as lovers; as chance parties to an enormous range of transactions and encounters. Then we should think, in each of these connections in turn, and in others, of the kind of

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[296] Strawson (1962).
[297] Fischer (1999, p. 93).

> importance we attach to the attitudes and intentions towards us of those who stand in these relationships to us, and of the kinds of reactive attitudes and feelings to which we ourselves are prone. In general, we demand some degree of goodwill or regard on the part of those who stand in these relationships to us, though the forms we require it to take vary widely in different connections.[298]

But there are instances in which we excuse individuals from negative reactive attitudes. One such class of excuses occurs when an agent towards whom we would otherwise have participant reactive attitudes experiences circumstances that no longer allow us to draw a connection between the action and the agent's will or intention.[299] For example, if the person stepping on your hand was pushed, or was attempting to help you out of a burning building. We can still consider her a responsible agent, just not fully responsible for the action in this particular instance.

Another class of excuses is entirely different. Examples of these excuses are "He's a hopeless schizophrenic" or "He's only a child."[300] Towards such persons we do not experience reactive attitudes at all, nor do we view excusing their actions as a rare exception to otherwise engaging with them as fully responsible agents. Instead, persons for whom we make such excuses are objects of what Strawson calls "objective" attitudes:

> To adopt the objective attitude to another human being is to see him, perhaps, as an object of social policy; as a subject for what, in a wide range of sense, might be called treatment; as something certainly to be taken account, perhaps precautionary account, of; to be managed or handled or cured or trained; perhaps simply to be avoided.[301]

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[298] Strawson (1962, p. 3).
[299] These are vague and fuzzy notions that are simply here to serve as short-hand for whatever more fine-grained account of intentionality or capacity for agency one might prefer—one plausible such account is that the action in this case has been severed from the agent's "judgment-sensitive attitudes" (Scanlon 1998).
[300] Strawson (1962, p. 5).
[301] Ibid.

Objective attitudes are what we adopt towards those we consider to be incapable of being morally responsible. They are controlled and motivated via incentives and sanctions in order to obtain desired behaviour.

The kind of moral appraisal that constitutes reactive attitudes, on the other hand, is not primarily a sanction or incentive. Rather, appraisal of this sort speaks to the special force that moral reasons have for us, a force that has nothing to do with considerations of punishment or incentives. Scanlon, in articulating the difference between holding someone morally responsible in a way that makes them subject to appraisal, and holding them morally responsible in a more substantial way that makes them subject to a sanction, remarks with regards to the former, "...morality is not, fundamentally, a mechanism of control and protection but, rather, what I call a system of co-deliberation."[302]

This offers an approach to the interaction between the agent and its account holder that is more compatible with the notion of accountability as an obligation than an approach that is based on sanctions and fosters objective attitudes towards NGOs. Instead of understanding an NGO's accountability relationships to others in terms of behavioural control, punishment, and reward, we can view it as an obligation to recognise the ability for reactive attitudes in others, and to create the opportunity for those attitudes to be expressed and answered.

2.4.4 Accountability as moral appraisal

We can now fill in the remaining elements of a conception of accountability: in section 2.2, we identified accountability as a structured relationship, but did

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[302] Scanlon (1998, p. 268).

not discuss in detail the nature of that structure. In 2.3, we specified that accountability was an obligation the account giver has to create and recognise abilities in other agents to hold her to account, but did not identify the grounds for this obligation.

Relationships governed by reactive attitudes are structured by respect and equal concern. Expressions of reactive attitudes "seek reciprocal recognition of the (equal) dignity that they both claim (of the addresser) and presuppose (of the addressee)."[303] When an NGO fulfils its responsibility to recognise and support the ability of other agents to understand its reasoned account of its actions, to evaluate that account, and to respond to it, it succeeds in structuring its relationship to those agents in a way that balances the power asymmetry that exists when one agent affects the abilities of another. Accountability relationships are valuable insofar as they are constituted by a balancing of power between two agents via the sharing of reasons and the mutual recognition of authority.[304]

Section 2.3 argued that accountability can be understood as an obligation to create these relationships. One basis[305] for this obligation is the exercise of an NGO's agency which, as argued in Chapter 1, is dependent upon the collaboration with other parties that view the NGO as norm-enacting. NGOs have the ability to affect the abilities of other agents in significant ways, enhancing or inhibiting their capacities to satisfy their interests and make autonomous choices. Importantly, it is not a mere application of the all-affected principle that elicits an NGO's obligations of accountability to those parties. *How* they are able to affect others also serves as part of the grounds for

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[303] Darwall (2006, p. 84).

[304] The mutual recognition of authority as a constitutive part of accountability is borrowed from Darwall (2006). The idea here is that one must assume the authority of another in order to address them with reasons.

[305] I am not suggesting that my account here of the basis of an NGO's obligations of accountability is exhaustive. Rather, I am offering a sufficient basis which, I believe, is currently overlooked in the literature on NGO accountability.

this obligation. NGOs are only able to affect the abilities of others through collaboration—that is, through multi-party social actor relationships—with other agents such as donors, governments, other civil society organisations, a mobilised public, etc. In collaborating with an NGO, these other agents accept the NGO's portrayal of itself as a norm-enacting agent. This acceptance reasonably includes the assumption that the NGO, as a norm-enacting agent, is respectful and structures its relationships to others in a morally appropriate manner. Therefore, an NGO ought to fulfil its obligation to create relationships of accountability with those affected by its activities, since, in doing so, it justifies the reasonable assumptions that make the exercise of its own agency possible.

Moreover, by understanding accountability as the structuring of a relationship that provides the ability for moral appraisal, it is reasonable for NGOs to be expected to be accountable, even to those agents with whom they have a hostile or confrontational relationship. Many advocacy NGOs might object to this, as they feel they do not need to be accountable to the transnational corporations whose abilities to engage in certain trade or employment practices can be diminished or frustrated by their campaigning. If sanctions were a necessary component of accountability, this sentiment would be reasonable since an advocacy NGO's campaign could be significantly impaired if the target of the campaign had the ability to remove their funding or political privileges. But according to the moral appraisal approach to accountability, NGOs simply have a responsibility to account for why they have affected others' abilities in a given way and to offer those others the opportunity to engage with these reasons. The response from such stakeholders can take the form of an invited assessment, or an in-person deliberation about the veracity and justifiability of the NGO's account, rather than as a set of material losses or other types of sanction. NGOs have this obligation, in part, due to their reliance on coordinating the opinions and actions of others in restricting a transnational corporation's abilities, and the

reasonable assumption of those other parties that the NGO is an agent that conducts itself in a respectful manner.

On this understanding of accountability, based on the multi-party social actor framework, the motivation of the NGO is presumed to be a motivation to collaborate with and affect others, with an eye towards delivering on its mission. Accountability, then, consists partly in the moral appraisal of the NGO, an appraisal the NGO is responsible for acknowledging and responding to. The source of value in this framework is the process of justification to others, and the relationships to others that are partly constituted by there being this type of accountability. Accountability is, thus, not merely instrumental to, but constitutive of, these relationships through which an NGO's agency is exercised. On this conception of accountability as moral appraisal, accountability is valued for its own sake:

> ***Moral Appraisal Accountability:*** a structured relationship between two agents, in which the accountable, A, (i) fulfils an obligation **to ensure that H is in a position to morally appraise A's actions,** (ii) gives an account to H for a set of actions; (iii) recognises H's determination of whether H's standards have been met, and **(iv) provides a reason-based response to H's appraisal.**

To say A is accountable, then, is to say that A fulfils this obligation for at least one of its relationships (an organisation may be accountable with respect to one party but unaccountable with respect to another). To say that A is unaccountable is to say that A has a relationship for which this obligation is required, but not delivered on. USAID's failure to be accountable to the poor is an example. To say that A is not subject to accountability obligations is to say that A does not have any relationships for which this obligation is elicited.

2.5 'Moral-appraisal' versus 'Mission' accountability

The previous three sections have laid out an alternative to the view that NGOs should be motivated towards accountability only on the basis of its instrumental value. I will now discuss how my proposed alternative—accountability as moral appraisal—is distinctive from another similar conception, that of accountability to mission.

Given the aforementioned problems with using the principal-agent and the democratic frameworks as the basis for NGO accountability, other conceptions of accountability have been suggested that, like our conception, are tailored more specifically to the kind of agent NGOs are and the types of relationships they have. A paradigm example would be "mission accountability."[306] It is instructive to note the differences between mission accountability and the conception of moral appraisal accountability, and the advantages of the latter.

As discussants of NGO accountability have expressed their discontent with the current "regimes"[307] of accountability imposed on NGOs, they have also explored ways of understanding how accountability can be of importance to an NGO in virtue of its own interests, not the interests of its donors or public critics. A constellation of approaches clusters around the idea that the mission or values of an NGO determines the ends that accountability should serve. On this view, NGOs ought to be accountable to themselves and to others for how well their projects and activities serve the core values and aims of their organisational mission. This approach emphasizes the importance of adapting

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[306] Ebrahim & Weisband (2007); Jordan (2006). Mission accountability is really a cluster concept, overlapping with several other similar conceptions that have been developed and renamed by other authors. Examples of its different incarnations are: "accountability to values," Kilby (2006); "moral accountability," Kaldor (2003); "adaptive accountability," Ebrahim (2009); or "holistic accountability," O'Dwyer & Unerman (2008).

[307] Ebrahim (2009).

to changes in the social environment and the value of organisational learning. Such an approach relies just as much on recognising failures and their causes and improving on mistakes as it does on identifying success.[308]

While it shares some similarities in speaking specifically to the nature of NGO agency and emphasizing the importance of an NGO's mission and values, the mission accountability approach differs from moral appraisal accountability in two respects. First, most versions of this account appear to treat the mission as the given "bottom line," so to speak, accepting the missions of NGOs at face value. Viewing accountability as a process of moral appraisal, on the other hand, subjects the mission statement to scrutiny and requires organisations to give an account for its appropriateness.

This difference is not always recognised by those who define mission accountability. For example, in her version, Mary Kaldor includes a feature that seems close to moral appraisal:

> External or strategic accountability, sometimes called political responsibility (Jordan and Tuijl, 2000), is about accountability *towards the beneficiaries*, the people that the NGO is trying to help; it is about *the extent to which an NGO remains true to its stated mission or goal* [...].[309]

Similar to Kaldor's construal of mission accountability, moral appraisal accountability also directs the attention of an NGO towards the interests of its beneficiaries, its mission, and, most importantly, how the two are intertwined. But moral appraisal accountability also demands a critical reflection on the adequacy of the NGO's claims and how its projects and activities reflect the values embodied in such claims. Kaldor, on the other hand, treats the mission as an unquestioned standard of evaluation. This occurs in the above quotation, where she equates accountability to beneficiaries with accountability for how

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[308] Ebrahim (2009).
[309] Kaldor (2003, p. 6), italics added.

well an NGO has carried out, and been true to, its mission (see italics). The primacy Kaldor places on mission as a source of accountability is evident again when she writes: "Broadly speaking, moral accountability arises from the mission of the civil society actor. Who is responsible for ensuring that the activities are designed to fulfil the mission?"[310] The complementary questions posed by moral appraisal accountability would be: "Is the mission justified? How does it affect the abilities of others to act? Who is given the opportunity to offer moral appraisal of the appropriateness of the mission?"

A second difference is that accounts of mission accountability still lean towards an instrumental account of accountability's value, where it is presented as a strategic choice rather than an obligation:

> One could argue that NGOs should take up the issue of accountability because it is the right thing to do (Edwards, 2002). This argument is not relevant to all NGOs but any NGO that promotes democratic rights (transparency, participation and recourse for minority voices) *is going to be more credible* if it practices what it preaches. For NGOs that practice aggressive advocacy and are often accused of staking out the moral high ground, undertaking a serious accountability discussion within the organization...*can help to deflect public attacks on NGO credibility. Without it, an NGO is open to attack.*[311]

Again, mission accountability shares a commonality with the moral appraisal view: the claims that NGOs make are of fundamental importance for directing their accountability practices. But crucially, where the mission accountability view treats this as a way of managing an NGO's public face, and views accountability practices as pertaining only to NGOs working on democracy and transparency, the moral appraisal conception identifies any claims made by NGOs that enable it to affect the abilities of others to be the basis for their accountability responsibilities. The reason NGOs should take up

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[310] Ibid. (p. 20).
[311] Jordan (2007, p. 165).

accountability *is* because it is the right thing to do. It is the right thing to do, in part, because it delivers on what others must reasonably assume about an NGO when deciding to collaborate with them, collaborations without which an NGO's agency would be impotent. Moral appraisal accountability reaches deeper to tie accountability practices to the constitutive elements of an NGO's agency, and thus provides a stronger basis for its justification as an actor.

Conclusion

Accountability can serve numerous valued purposes. But its value is not limited to such purposes. Those in the NGO sector have (rightly) become disillusioned with calls for NGO accountability, because these calls often result in increased mechanisms of control and sanction over NGOs by those who already hold positions of power. The concern that organisations like GiveWell or New Philanthropy Capital show towards effectiveness fails to take into consideration what uniquely positions NGOs to do what they do, and how accountability is important in a manner that goes beyond performance improvement. Those in the NGO sector could also stand to recognise this importance, instead of abandoning the idea of accountability as anything other than something to be pursued strategically. Accountability is a concept we use to convey whether an agent or institution has fulfilled a particular set of responsibilities, not a term we simply use to describe a set of relationships, nor merely an instrument for achieving independently specified and valued ends. Moreover, it need not make NGOs significantly vulnerable to hostile others, such as corporations or corrupt states, as it does not require a sanctioning mechanism.

Recall Lisa Jordan's statement: "No one has really made a positive argument as to why NGOs should undertake a risky, expensive, difficult exercise to create meaningful and concrete accountability mechanisms." The reply to this is that the creation of such mechanisms is what is required for an NGO to fulfil its obligation to structure its relationships with the parties whose abilities it affects in a way that allows for those parties to engage in moral appraisal of the organisation. Why is this moral appraisal valuable? As Brown points out, conceptions of accountability can be regulative, focusing on constraining the agent's activities, or constitutive, "in a deeper sense in that they shape the experience of actors and the social systems in which they are embedded."[312] Moral appraisal accountability is a constitutive conception, shaping an NGO's relationships to others in a way that justifies an NGO's activities, both to those affected by their actions, and to those who agree to collaborate with an organisation in affecting the abilities of others.

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[312] Brown (2007, p. 107).

CHAPTER 3 INGOS AS INTERMEDIARY AGENTS

Introduction

As discussed in the previous chapter, one of the primary motivations for increasing NGO accountability is to improve performance and help donors identify those organisations to which they should contribute. One sub-type of NGO for which the issue of effectiveness is particularly important is the international humanitarian aid and development NGO, a class of organisation including CARE, Médecins Sans Frontières, and Oxfam.

The effectiveness of INGOs working in development and emergency relief (hereafter referred to collectively as INGOs) has gained significance, in part, due to the large philosophical scholarship that has emerged from the discussion of the moral implications of severe poverty.[313] Peter Singer, whose single story of a child in a pool sparked the contemporary discussion on duties of assistance, famously argued that this duty is strengthened by the sheer ease and certainty with which an average individual could save a human life through a donation to aid organisations. This claim placed the operations of INGOs at the centre of Singer's argument, as he presented Oxfam and similar

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[313] Indeed, two of the monitoring charities mentioned in chapter 2, Give Well and Giving What We Can, have ties to moral philosophers. Give Well is discussed in detail in Singer (2009, chps. 6 & 7) and Giving What We Can is based at Oxford University and lists Peter Singer, Thomas Pogge, and other philosophers as its members (http://www.givingwhatwecan.org/about-us/our-members.php).

organisations as a means through which individuals could fulfil their obligation to assist. Critics of Singer have objected that INGOs do not save lives as reliably and efficiently as his argument claims, thereby undermining the stringency of our obligation to assist—at least, by means of INGO donation.[314]

This prompts two important questions regarding INGO obligations with respect to resource allocation. The first regards the content of this obligation: what would it mean for an INGO to allocate its resources in an efficient manner? That is, what kind of decision-making procedure should an INGO adopt in order to allocate resources justifiably? The second question regards the grounds for this obligation: To what extent, and on what basis, might INGOs be morally obligated to allocate their resources in a particular manner? If individuals in affluent nations hold a stringent moral obligation to reduce the suffering of those oppressed by severe poverty, what implications might this duty have for the obligations of an INGO?

This chapter examines Thomas Pogge's answers to these questions and their import for the moral agency of INGOs. Pogge's arguments for assistance[315] have focused more on the reform of global institutions and policies, rather than on the provision of assistance by individuals. Still, Pogge has also discussed the role of INGOs in relation to individuals' obligations to the poor, conceiving of aid organisations as a mechanism through which citizens of

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[314] See, for example, Wenar (2011).

[315] This chapter's discussion of Pogge's view relies predominantly on the following key texts, which will hereafter be cited in their abbreviated form: (2008) *World Poverty and Human Rights*, 2nd edition, Cambridge: Polity Press [WPHR]; (2007a) "Moral Priorities for International Human Rights NGOs" in: Bell, D. and Coicaud, J-M (eds.), *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, Cambridge: Cambridge University Press, pp. 218-256 [MP]; (2005a) "Severe Poverty as a Violation of Negative Duties", *Ethics and International Affairs* 19 (1), pp. 55-83 [SPVND]. I use the abbreviations instead of normal citation in order to assist the reader in keeping track of whether a point appears in his article on INGOs or his broader work on global justice, since part of my argument maintains that Pogge's views in the two pieces are in tension with one another.

affluent states can off-set the harm of poverty, while also working to change the institutional system that causes it.

Pogge frames INGOs as primarily intermediary agents. Their role is understood as providing obligatory assistance on behalf of the global wealthy, who are unable to directly assist the poor on their own. In his contribution to a volume on the ethics of human rights and aid NGOs, Pogge develops the implications of grounding a moral principle for INGOs in the moral obligations of their donors in detail.[316] He argues that if affluent citizens have a stringent obligation to alleviate poverty because poverty constitutes a serious moral wrong, then it cannot be the case that INGOs have full discretion as to how they spend their limited resources.[317] INGOs act as intermediary agents for their donors and, therefore, must use certain moral criteria to guide their decision-making. Pogge's suggestion for a set of moral criteria is embodied in a single cost-effectiveness principle that directs INGOs to maximally reduce harm with respect to their limited pool of resources.

I argue here that this approach faces several problems. Trying to justify a prioritarian principle for NGOs through a deontic argument for an individual's obligation to aid, as Pogge does, is frustrated by the different ways in which consequentialism and deontological theories conceive of moral harm. This argument is presented in 3.3, after a discussion of Pogge's argument for the obligation to aid (3.1), and his prioritarian principle for INGOs (3.2). In 3.4, I argue that Pogge's broader strategy also fails since it rests on an inaccurate view of INGOs as intermediary agents. Intermediary agency is based on the principal-agent framework used to describe economic agents, which, as argued in 2.4.1, does not accurately describe the relationship between an INGO

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[316] MP.

[317] Others have adopted a similar perspective, on the basis that, if we reject the idea that aid is an act of mere charity, we are committed to rejecting the idea that NGOs can spend their resources in any way that they like, and this second commitment implies NGOs ought to be viewed as agents acting on behalf of their donors. Cf. Wenar (2006).

and its donors. INGOs do not merely accept donations, they solicit them. This solicitation often involves constructing moral arguments and articulating new social norms. INGOs that rely on this solicitation are obligated to conduct themselves according to principles and values that are consistent with one another. After exploring an alternative to Pogge's account suggested by Lisa Fuller, I argue that an INGO's management of its resources ought to be directed in part by consideration of maintaining consistency in the values to which it commits itself through its moral engagement with others.

3.1 Pogge on the obligation to aid

3.1.1 Poverty as a violation of the duty not to harm

Providing assistance to those in extreme need is classically understood as a less stringent requirement, on the basis that it is a "positive" as opposed to a "negative" duty. While there are a number of ways to define the categories of positive and negative obligation,[318] Pogge opts for the general nonconsequentialist distinction between harming and failing to aid.[319] He talks of negative duties as those requiring that one "ensure that others are not unduly harmed (or wronged) through one's own conduct"[320] and positive duties as those requiring one to "benefit persons or shield them from other

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[318] The broadest basis is via a distinction between action and omission. However, this distinction has been subject to powerful criticism. See: Rachels (1975; 1979); Shue (1996, in particular chps. 2 & 3).

[319] For a discussion of this general distinction, see Kamm (2007, chp. 1).

[320] WPHR, p. 136. An identical quote from 1st edition also quoted by Cruft (2005, p. 29).

harms."[321] On this account, positive and negative duties do not map neatly onto the categories of action and omission: one can both alleviate or cause harm through acting or refraining from action.[322] In order to maintain consistency with Pogge's arguments, for the remainder of this chapter we will rely on his harming/not aiding understanding of negative and positive duties, putting to one side the controversy over the merits of such a distinction.

One way of arguing for a more stringent obligation to assist that does not directly confront the positive/negative distinction is the utilitarian line of argument made famous by Peter Singer. As a utilitarian, Singer would reject a differentiation between positive and negative types of duty, yet he offers an argument that is consistent with reading the obligation to aid as a positive duty. Given the great increase in well-being that can be achieved at such a low personal sacrifice to affluent individuals, Singer reasons that our positive obligation to aid is considerably more stringent than we have traditionally thought.[323] The simplicity of Singer's argument has garnered it wide appeal, yet it remains vulnerable to a number of objections, including the above-cited concern regarding INGO effectiveness, as well as the rejection by some "moral minimalists"[324] of the existence of obligations that go beyond respecting people's negative civil or political rights.

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[321] Ibid.

[322] Pogge in fact uses this in his distinction between a 'duty' and an 'obligation', which is meant to explain why positive duties can require omissions and negative duties actions: obligations are requirements for specific actions, generated by duties, relevant for a person in a given situation. This means that a negative duty to not harm may require 'positive' obligations or actions, while a positive duty to alleviate harm may be the grounds for a 'negative' obligation, or, omission of action. In order to fulfil our negative duty to not harm, we may be required to run to stop the car we have left parked without the parking break on, which is now rolling down an inclined driveway towards a child. In order to fulfil our positive duty to aid others, we may have an obligation to omit from throwing away our clothes or unused canned goods, so that they may be donated instead. SPVND, p. 68.

[323] Singer (1972).

[324] Libertarianism is often cited as an example of this moral minimalist view (Tasioulas 2007, p. 96). Since there are many variations of libertarianism, I opt for using John Tasioulas' general term, "moral minimalism" to refer to the targets of Pogge's argumentative strategy: those who

Pogge's approach is well-known for its distinctive strategy of attempting to meet this moral minimalism on its own terms by casting the obligation to assist as arising out of the violation of a *negative* duty. In order to support this conclusion, Pogge advances an institutional account of duties based on a framework of moral cosmopolitanism.[325]

Moral cosmopolitanism[326] consists of three basic tenets: the ultimate units of moral concern are individuals (individualism), this status applies equally to each such individual (universality), and they are units of moral concern to everyone (generality).[327] It grounds principles and constraints of two types. The first type sits at the level of individual interactions and grounds principles of ethics. This 'interactional' form of cosmopolitanism "assigns direct responsibility for the fulfilment of human rights to other individual and collective agents."[328] The other type, 'institutional' cosmopolitanism, grounds principles of social justice, and assigns the responsibility for fulfilling human rights to institutions, with individuals having only an indirect responsibility for the outcomes of the institutional scheme in which they participate.[329]

On this institutional understanding of human rights, individuals have the responsibility to create and uphold institutions that secure the content of human rights for all its members. If we limit ourselves to meeting only negative rights, our responsibility as individuals is as follows: "One ought not to cooperate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled without making reasonable efforts to aid its

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reject either the existence of a positive obligation to assist, or reject that this obligation has any significant strength (SPVND, pp. 65-6).

[325] But his argument does not depend on moral cosmopolitanism being true: one can accept that we have negative institutional duties without accepting the tenets of moral cosmopolitanism (WPHR, p. 175-78).

[326] Contrasted to 'moral' there is also 'legal' cosmopolitanism, which meets the three tenets as a "political ideal" that expresses and protects the equal legal rights of all human beings (WPHR, p. 175).

[327] Ibid.

[328] WPHR, p. 176.

[329] Ibid.

victims and to promote institutional reform."[330] Because the responsibilities of individuals are indirect and require only the omission of harm, Pogge's approach is, in theory, less demanding than an interactional approach such as Singer's, which ascribes direct responsibility to individuals for alleviating world poverty.

However, Pogge's institutionalism also provides a way to strengthen the obligation to aid, while accepting—for the sake of argument—the moral minimalist view that the only duties we have are negative. By linking the responsibilities of individuals to the effects of far-reaching institutions, Pogge's account expands the range of what we are responsible for, specifically, what *harms* we are responsible for: "The institutional view thus broadens the circle of those who share responsibility for certain deprivations and abuses beyond what a simple libertarianism would justify, and it does so without having to affirm positive duties."[331] Even if an individual does not act directly to cause harm to another person, under the institutional view, he violates a negative duty through his cooperation within a broader system through which others are harmed.[332]

Pogge contends that citizens of Western or wealthy states (as well as the wealthy elite within poor states) persistently commit indirect violations of the negative duty to refrain from harm through their participation in a global institutional order that unnecessarily imposes radical inequalities and severe deprivations upon the poor. To reach this conclusion, Pogge claims, we do not need to take into account the past injustices of slavery, colonisation, or the assassinations carried out with the aid of Western intelligence agencies on democratically-elected leaders in developing countries throughout the 60s and

[330] Ibid.

[331] Pogge (2002, p. 172).

[332] A primary historical example of such a violation are the American tax-paying adults alive in the 1840s, who, despite not owning slaves themselves, violated their negative duties through their cooperation within an economy supported by slave labour.

70s, each of which was not only morally deplorable in its own right, but also conceivably had a causal impact on the functioning of developing societies today.[333] Nor must we show that those living in poverty across the world have currently and historically been denied rightful access to their portion of the planet's shared natural resources.[334]

While he thinks both arguments can be made,[335] Pogge focuses much of his attention on the claim he considers most convincing to those sceptical of an obligation to assist: the legal and economic systems in which we currently participate impose severe poverty on many others through rules that operate to the advantage of the most affluent. Because the poverty that these rules create constitutes a severe harm, our cooperation with them violates our negative duty to avoid cooperation with coercive institutional orders that impose serious harms on others.[336]

Two examples Pogge uses to illustrate the injustice of the current global order are internationally recognised resource privileges and borrowing privileges. These privileges refer to the practice of accepting any group or individual in control of the coercive apparatus of a given state (in most cases the military, or some sort of armed forces) as the legitimate head of that state, who can then sell the state's natural resources or take out loans in the name of that country.[337] Such practices serve the interests of transnational corporations, since they can negotiate favourable contracts for resource extraction. They also work to the advantage of citizens of wealthy states by maintaining low prices for basic resources. The harm caused to the poorer, resource-rich countries is more than merely material: such resource and borrowing

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[333] WPHR, pp. 209-10.
[334] WPHR, pp. 207-9.
[335] He presents them as two alternative grounds that support the identical conclusion, namely, that poverty is a violation of a negative duty. See above, ff. 333, 334.
[336] WPHR, pp. 205-7.
[337] WPHR, pp. 118-21.

privileges also incentivise instability in developing countries, as competing factions and would-be dictators are motivated to gain power in anticipation of the benefits that it will accrue to them.[338]

3.1.2 Intermediate duties and compensatory obligations

If we accept Pogge's empirical claim that global political and socio-economic institutions have caused great harm, the question remains as to how moral responsibility for this harm is attributed to individuals based on their participation in global institutions, and what is the nature of the obligation arising out of this participation.

3.1.2.1 Attributing moral responsibility for severe poverty

What is it about their connection to institutions that in turn are causally linked to severe poverty that makes individuals morally responsible for a human rights violation? Pogge's view identifies five jointly sufficient and individually necessary conditions[339] for determining whether an affluent person has violated a negative institutional duty to refrain from harming:

1. There exists an institutional order imposed on individuals that produces human rights deficits.
2. The individual has cooperated in imposing this institutional order and/or has benefited from this institutional order.
3. The global institutional order "*forseeably* gives rise to substantial human rights deficits."[340]
4. Such deficits "must be reasonably avoidable in the sense that an alternative design of the relevant institutional order would not produce

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[338] Ibid.
[339] SPVND, p. 60.
[340] Ibid.

  comparable human rights deficits, or other ills of comparable magnitude."[341]

5. "[T]he availability of such an alternative design must also be foreseeable."[342]

Under these conditions, an affluent person has what Pogge in some places calls a "remedial"[343] and in other places an "intermediate"[344] duty to off-set the harm caused.

3.1.2.2 *Intermediate duties*

Intermediate duties, Pogge says, are "moral reasons to prevent or to mitigate harm that one otherwise will have caused or participated in causing."[345] For example, while I am not typically required to sacrifice my hand to save your life, if I am the one who has placed you in this peril, this gives me an intermediate duty to sacrifice my hand to save you.[346]

The stringency of an intermediate duty is greater than that of a positive duty, less than that of a negative duty. Imagine, for example, that a drunk driver runs over two children, injuring them both severely. They will die unless he pays for their expensive operations, the cost of which is equal to the amount it would cost for him to save three other children who are at risk of dying through no actions of his own. Because he bears a special relationship to the suffering experienced by the first two children (in so far as he caused it), the driver has a reason to prioritise their well-being even if he can achieve greater overall gains in well-being by giving his money to others. However, if the children he has injured require organ donations, the driver is not permitted to

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[341] Ibid.
[342] Ibid.
[343] Ibid.
[344] MP, p. 251. I will be using "intermediate" duty for the rest of this chapter.
[345] MP, p. 251.
[346] Ibid. p. 250.

kidnap other children in order to steal their organs. His intermediate duty to the children he injured outweighs his positive duty to others he may be capable of assisting, but does not outweigh his negative duty to refrain from harming others.[347]

Citizens of Western states cannot easily extricate themselves from the institutions that impose severe poverty, and, even if they actively work towards reforming such institutions, this reform will predictably take many years before it is fully achieved. In light of this, Pogge has sought to protect his account of intermediate duty against the criticism that it is overly demanding and, thereby, unfeasible. He claims that affluent citizens' intermediate duties elicit for each an obligation to provide a feasibly prescribed amount of compensation to those they have harmed. If an individual compensates accordingly, her continued cooperation and benefiting with respect to harmful institutions is no longer wrong.[348] In order to round out his view on the obligation to assist, we now turn to variations on setting the level for this adequate compensation.

3.1.2.3 *Specifying obligations of compensation*

The idea that a person has an obligation to "compensate for their share of the collective harm,"[349] as Pogge puts it, can be construed in several ways.[350] At least three run throughout his writings:

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[347] Assuming that one accepts the existence of positive duties. But acceptance of positive duties is not required to accept the existence of an intermediate duty. Pogge merely uses this to illustrate the relative stringency of an intermediate duty.

[348] SPVND, pp. 60-1.

[349] Ibid. p. 80.

[350] Rates of compensation differ based on whether one benefits from the global order or merely cooperates with it. Those who benefit from the global order, Pogge says, are to compensate by paying back an amount equal to that by which they benefited. Here, we will focus on the obligation that arises from cooperation, since this obligation is one that every citizen of an affluent state arguably has, and tends to be the obligation to which Pogge gives greater attention (SPVND, pp. 69-74).

Proportional to Cause: You are obligated to compensate proportional to your causal contribution to the harm caused.

Proportional to Ability: You are obligated to compensate proportional to your comparative ability to eliminate the harm caused.

Proportional to Total Alleviation: You are obligated to compensate proportionally, based on the total amount required to eliminate the harm divided by the number of people obligated to provide compensation.

While he is, in principle, attracted to the Proportional to Cause construal, Pogge dismisses it as a workable basis for setting compensatory obligations, since it is empirically complex and, therefore, too difficult to work out with any precision.[351] While many others have endorsed something similar to a Proportional to Ability view on agents' obligations towards eliminating world poverty,[352] Pogge does not explicitly discuss or endorse this. Rather, it creeps into his discussion when he is considering Proportional to Cause. For example, after posing himself the rhetorical question, "How much is enough for a person to compensate?" Pogge writes:

> One can estimate that the typical affluent person, by the time of his or her death, bears responsibility for roughly one poverty-related death, for about 200 human life-years spent in severe poverty, and for about 20,000 hours of children suffering intense pain from hunger and diarrhoea. But this sort of rough calculation underestimates our responsibility. Most of us belong to some subset of the world's affluent that could single-handedly bring about the needed global institutional reforms.[353]

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[351] Ibid. pp. 79-81.
[352] That is to say, they argue for obligations to aid based on the capacities of certain agents to provide aid. (Wenar 2007); (Green 2005); (Kuper 2005); (Fuller 2005); (O'Neill 2001). This is the capacity-based approach to responsibility mentioned in the previous chapter (2.3.2). We take up the issue of agential capacity and its connection to responsibility in chapter 4.
[353] SPVND, pp. 79-80.

Here, Pogge remarks that setting compensation based on Proportion to Cause may not exhaust the extent of our responsibility to assist. If we have greater abilities or opportunities than others to bring about institutional reform or eliminate some of the institutional causes of poverty (that is, if we are part of the subset that, as a group, could single-handedly bring about reform), then we have an obligation to do more. Our obligation to compensate may be proportional in some respect to our comparative advantage in affecting the rules of global institutions.

While in many instances he indicates that we have reason to do more, Pogge tends not to emphasise Proportional to Cause and Proportional to Ability. While he does not indicate problems with either, as Pogge has stated numerous times, his argumentative strategy is shaped by his aim of providing the strongest, most broadly acceptable version of his argument.[354] This involves responding to the criticism that a stringent obligation to assist is too demanding of average moral agents, since working out our specific obligatory contributions is too difficult in light of the empirical complexity involved.[355]

Therefore, Pogge's official line on how to set the required level of compensation for each individual is the considerably less demanding (but still very far from the current practices of average moral agents) Proportional to Total Alleviation (PTA). On this approach, defended in detail by Liam Murphy (2000), an individual's required rate of compensation is whatever would be necessary to eliminate the overall harm if every culpable person contributed their share. Thus, if the eradication of world poverty required 1% of the collective income of citizens of wealthy states, then each citizen would be obliged to donate 1% of her annual income to poverty eradication.[356] Regardless of the merits or demerits of the demandingness objection and the

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[354] SPVND, p. 65.
[355] See for example: Satz (2005).
[356] WPHR, ff. 246.

endorsement of PTA as an approach to setting the rate of compensation, for the remainder of this chapter it will be assumed that citizens are obligated to compensate some set 'sum' to the alleviation of worldwide deprivation.

3.1.2.4 INGOs as an instrument for compensation

With some idea as to how to set the level of compensation, we can imagine a citizen of an affluent state who is now prepared to fulfil her intermediate duty to the global poor by providing her fair share of compensation. One of the ways in which she can do so is by donating to an international aid and relief organisation. In Pogge's view, this provides the basis for thinking about the ethical obligations of an INGO, specifically with respect to how they allocate their funds:

> Intermediate moral reasons may have much wider relevance ... An INGO is not merely an actor in its own right but is also an agent and trustee for its contributors, entrusted with fulfilling *their* moral responsibilities. As citizens of rich and powerful countries, we may well have been (and still be) participating in causing much of the harm that INGOs are working to reduce.[357]

By accepting donations, INGOs assume the role of an intermediary agent, dispensing aid and reducing suffering in a way that their donors are incapable of doing themselves. Since affluent citizens have an obligation to provide compensation to the poor, they should be keen to see the positive effects of their donation maximised. Therefore, Pogge contends, these donors need to be able to trust that an INGO will spend its limited resources in the best way possible, that is, in an efficient and well-informed manner guided by "carefully formulated moral priorities."[358] In order to do this, INGOs must have some idea of how to prioritise their projects. Pogge concludes that 1) a significant

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[357] MP, p. 252; italics are Pogge's.

[358] Ibid. p. 221. Notice that Pogge's recommendations focus not on accountability to donors, but rather, on how a donor's trust in an INGO can be justified. This calls into mind O'Neill's (2002) portrayal of trust as the counterpart to accountability mechanisms in the previous chapter.

moral requirement of INGOs is generated by their acceptance of donations from individuals who are morally obligated to provide compensation to the kind of people generally targeted by INGO projects (the severely poor), and 2) that this moral requirement directs INGOs to use a cost-effective harm reduction principle to allocate their resources.

3.2   The (ABCD*) Principle

3.2.1   The four moral commitments

In order to guide INGOs in their decision-making, Pogge offers the following principle:

> **(ABCD*):** Other things being equal, an INGO should govern its decision making about candidate projects by such rules and procedures as are expected to maximize its long-run cost-effectiveness, defined as the expected aggregate moral value of the projects it undertakes divided by the expected aggregate cost of these projects. Here aggregate moral value, or harm protection, is the sum of the moral values of the harm reductions (and increases) these projects bring about for the individual persons they affect.[359]

(ABCD*) is the product of four separate moral commitments, factoring in a concern for risk and uncertainty. These considerations flesh out Pogge's account of the "moral value" of a harm reduction: (A) it is morally more important to protect a person from greater serious harm than from lesser; (B) in trying to protect from harm, we should prioritize the worse-off; (C)

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[359] MP, p. 228.

aggregate harm protection is measured as a linear function of the number of persons protected; and (D) other things being equal, the choice-worthiness of a project is inversely proportional to its cost.[360] The consideration for risk and uncertainty (represented by the asterisk in (ABCD*)) means that the moral value of an INGO's decision can only be evaluated *ex ante*, that is, in terms of expected gains and losses.

With these in mind, Pogge's principle can be expressed as the requirement that an INGO prioritize its projects according to *cost-effectiveness*, defined as *expected moral value* divided by *expected cost*. *Expected moral value* is determined by how many people are protected, to what extent they are protected (i.e. how serious the harm is), and the level of harm they suffer relative to others.

There are four features of Pogge's principle that are helpful to note.

First, it is sufficientarian: the level of harm a person is considered to suffer is measured in relation to a minimal baseline set at the standard of living necessary for human beings to meet their "ordinary needs and requirements."[361] Second, it is prioritarian: a smaller reduction in harm may be morally more valuable than a larger reduction in harm, if it occurs for a person who is proportionately worse off than the person who would receive the larger reduction.

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[360] MP, pp. 222, 224, 227, 228. Cost-effectiveness here equates to maximizing the effect on overall weighted harm reduction because "...any INGO's resources are scarce relative to the morally important projects it might undertake. Any INGO should prefer to implement cheaper projects because it can then achieve more of what is morally important" (MP, p. 228). Here we are assuming that the INGO will spend 100% of its budget. Otherwise, prioritizing cost-effectiveness would lead to the counterintuitive conclusion that, in choosing between saving 2 lives for £1 or 3 lives for £3, one ought to spend only £1 on saving 2 lives instead of £3 on saving 3 lives, since that would be more cost-effective per person. The perspective Pogge adopts is that of an INGO with a fixed budget, faced with a total amount of suffering that is greater than what the INGO can afford to eliminate entirely. In such a situation, cost-effectiveness will lead to the maximal amount of harm being reduced.
[361] Ibid., p. 222.

Third, the principle is broadly consequentialist, as it guides INGOs by reference to the predicted outcomes (i.e. predicted harm reduction) of their projects.[362] This emphasis on outcome means that (ABCD*) will preclude a number of deontic considerations or principles that INGOs commonly use to guide and justify their decisions on resource allocation. I address one such consideration below. Another is considered in 3.4.

Finally, the less obvious characteristic of the (ABCD*) principle is its underspecification, which allows for some flexibility as to how an INGO uses it. The emphasis on harm reduction could provoke the reply that the diversity of INGOs and the projects they work on would be severely undercut if all were assessed according to (ABCD*). Pogge anticipates such a response by highlighting the underspecification of (ABCD*) and, in particular, propositions (A) and (B).[363] In following (A), an organisation must specify for itself the criteria for what constitutes harm and how a scale of harm (ranging from serious to none) is structured. Depending on how they do so, this will affect their calculation of the expected improvements of a given project.[364] Committing to the prioritarian proposition (B) still allows organisations discretion to determine how badly off someone is with respect to others and what factors about a person and her life (for example, how far back into one's life span one should look to calculate harm) should be taken into consideration when determining this. Finally, different weights can be

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[362] Pogge calls the principle "broadly consequentialist" because he takes it that prioritarianism, i.e. giving priority to the worst-off, can be cast as deontological. He cites in support of this Rawls' distinction between deontological and teleological theories, in which teleological theories define the right in terms of the good, and deontological do not (giving, instead, consideration to other factors such as how one fares relative to others) (MP, p 245, ff). The deontological aspect of Pogge's view that plays a larger role, and figures into the objection pressed in 3.3, is the notion of intermediate duties and the way they conceive of moral harm. Given that whether one considers prioritarianism to be sufficiently deontological or not has no bearing on this, I take Pogge's prioritarianism to be, for all intents and purposes, consequentialist.

[363] He also points to this in his reply to Carens' (2007) objection that (ABCD*) produces a "dreary monoculture" across all INGOs (Pogge 2007b, p. 274).

[364] MP, p. 222.

assigned to expected harm reduction and the position of the potential beneficiaries relative to others (in other words, weighting (A) against (B)).[365] In this way, two organisations with the same budget may be able to justify very different projects using (ABCD*), depending on how they operationalize harm and the importance of how possible beneficiaries fare relative to one another. While he notes different ways of approaching answers to these considerations, Pogge refrains from endorsing any one in particular.[366]

3.2.2 Distributive fairness

Despite this flexibility, Pogge discusses a number of ways in which the consequentialism of the (ABCD*) principle places constraints on INGO decision-making which, if adopted, would signal a significant and controversial departure in their practices. One example is the use of participatory methodologies to identify INGO priorities and carry out projects.[367] Another is the issue of whether INGOs ought to accept donations from morally questionable donors—this is discussed in 3.4. Here I will focus only on Pogge's comments on distributive fairness.

Pogge devotes considerable attention to what he cites as an expressed INGO concern for distributive fairness.[368] One variant of this commitment that he discusses in length is nation-based distributive fairness—that is, spreading resources somewhat equally across countries. An alternative to distributive

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[365] Ibid.
[366] Ibid. pp. 222-28.
[367] Ibid. pp. 248-9.
[368] What he refers to as "distributive fairness" means distributing fairly across certain defined categories, for example, distributing equally with respect to proportions according to gender, or nation, or religion, or ethnic group. Therefore, a better term for the view he is attacking might be "non-welfare-based distributive fairness," as Pogge's (ABCD*) principle also calls for distributive fairness, but defines fairness in terms of who is at greater harm and can be saved most cheaply. While this should be kept in mind, for ease I simply refer to the view Pogge is criticising in the same terms he uses, as "distributive fairness."

fairness is to focus INGO projects exclusively in nations where they would be most cost-effective, thereby saving more lives for the same amount of money. According to some calculations, this would mean that Ethiopia, India or Uganda should receive a larger chunk of aid, while countries like Venezuela or Nigeria should be avoided.[369] Given their professed interest in securing the content of basic human rights for all human beings, it would be uncomfortable for most INGOs to explicitly direct their projects towards a handful of cost-effective nations while completely ignoring others.[370] But is this discomfort justified? Is distributive fairness morally relevant?

Pogge thinks not, on the basis that nation-based distributive fairness is in contradiction with a commitment to universal individualism, the idea that, "in the moral assessment of conduct and social institutions, their impact on any person matters equally, irrespective of who this person is."[371] Barring a plausible account of the moral significance of national boundaries, which in Pogge's eyes is nonexistent, INGOs cannot offer justified reasons for distributing fairly across nations when more lives can be saved by focusing on only the most cost-effective regions.

Universal individualism, a principle appealing to INGOs in virtue of its affirmation of egalitarianism, can operate as a potent weapon against nation-based distributive fairness when paired with proposition (C) of the (ABCD*) principle. Accepting (C), which states that it is morally more important to save more people over fewer people, commits us to choosing to save 1,000 people

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[369] MP, pp. 229-31. Collier and Dollar restrict their study to 59 countries for which there was strong data on the distribution of income. Certain nations that are favoured targets of aid, such as Sudan, were not included (Collier & Dollar 2002, p. 1489).

[370] I say 'explicitly' because, as it turns out, there is empirical evidence that, despite their professed allegiance to nation-based distributive fairness, or to the commitment to working in hard-to-reach areas, many aid INGOs already concentrate their projects in less dangerous and more stable, pro-democratic, environments (Koch, et al., 2009). The point, however, is that this fact is considered to be a criticism or a problem for INGOs. If Pogge's moral argument against nation-based distributive fairness holds, then this would pose less of a credibility problem for INGOs.

[371] MP, p. 232.

over only saving 50 people. For, if we chose to save the 50, how could we explain to the 1,000 that one of the 50 was worth 20 of them? If this is the case, and we accept universal individualism, then, Pogge argues, it should not matter if the 1,000 we are saving are Ethiopians and the 50 are Chadians.[372] The reason why we should prefer to save 1000 Ethiopians over 50 Chadians at the same cost is because that is what it means to treat Ethiopians and Chadians as equal.

Pogge applies the same reasoning to show that any category which an INGO suggests as a basis for distributing fairly across different groups will not hold up to the demands of (C). Attempts to distribute fairly on the criterion of rural/urban communities, gender, religious denomination, etc. are unjustifiable if they lead to the overall saving of fewer lives. In each case, saving the life of someone because of their gender or where they live, when it would cost the same to save two lives of someone who does not meet that criterion, is to treat people unequally.

One might reply by asking why it is easier to save Ethiopians than Chadians, or urban slum dwellers over rural peasants, or members of a majority religious denomination over members of a minority religious denomination. In some of these cases, the factors that make it costlier to save certain people compared to others are also factors we consider to be morally more weighty. For instance, there is some evidence that poverty relief is more cost-efficient in countries whether there is better governmental infrastructure, some commitment to democracy, and low levels of civil unrest or violence.[373] This means we may be prioritising the wrong people—the Chadians are more difficult to help *because* they suffer from greater injustices at the hands of the global system and are therefore in greater need of our aid than the Ethiopians.

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[372] Ibid., pp. 232-3.
[373] Koch, et al. (2009).

Pogge's reply to this is that the (ABCD*) principle accommodates these concerns. If the Chadians suffer from worse governmental infrastructure, this may mean that they suffer a greater harm. And if they suffer a greater harm, then, according to (B), their interests should be given greater weight. The concern that INGOs have for distributing across different groups may be maintained if they can argue that certain groups, though costlier to help, also suffer a greater degree of harm.[374] But if this is the case, then they are still deciding in a way that is consistent with (ABCD*). Their decision to spend the money on those more costly to assist is no longer justified by distributive fairness, but by the principle of cost-effective maximal harm reduction. Distributive fairness on its own, Pogge contends, should play no role in an INGO's allocative considerations.[375]

3.3   INGOs and the supposed transfer of obligation

3.3.1   Intermediate duty as a grounds for the (ABCD*) principle

Pogge holds that INGOs ought to follow the (ABCD*) principle because they act in part as intermediary agents for their donors, who in turn hold strong intermediate duties to assist the global poor due to their cooperation in the institutions that impose such poverty. But it is not clear how the obligations of the donors, acquired through a rights violation, transfer to an INGO, a separate agent with its own pre-identified aims and values.

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[374] MP, p. 237. Lisa Fuller seems to have such a case in mind when she discusses how Pogge's principle is *too* flexible (Fuller 2006).
[375] MP, p. 237.

Suppose, for example, that the driver in Pogge's original case ran over the children while on holiday in a foreign country. Choosing not to bother with legal proceedings, the prosecutor simply has the driver deported. But the driver is aware of his intermediate duty to assist the children and wishes to fulfil it, so he contacts a charity in the foreign country that provides free medical aid to children and donates to them. Does the charity now have an obligation to assist specifically those two children hit by the drunk driver? It does not seem that it does, so long as the charity has not made any promise to the driver to target the aid to his victims. This organisation may in fact be up front about their policy of not coordinating aid from any particular donor to any particular child, for logistical reasons. Perhaps the driver donates to them anyway, in the hopes that it will somehow reach the children he has injured. Or perhaps the employees of the charity are personally moved by his guilty conscience and make an effort to deliver the aid to his victims. The point is, if they do so, the aid of the particular children is entirely optional and not morally required, provided they have not taken the driver's money on the *promise* of directing his aid to the children in question.

The relationship between donors and development and relief INGOs is similar. INGOs define themselves through aid-related aims and it is reasonable to expect them to work hard to succeed at those aims. But an INGO's effectiveness with respect to its self-set priorities is an entirely separate matter from the way in which Pogge motivates (ABCD*). INGOs may have good reasons to maximise harm reduction with their resources, but these reasons are not necessarily rooted in their acceptance of funds from donors who have causally contributed to this harm.

In contrast, Pogge believes that if it accepts money from a donor and its donor has a moral obligation, this is sufficient for the INGO to acquire an obligation with respect to how it spends its funds. The structure of his argument is as follows:

(1) A has an obligation to assist C.

(2) A cannot directly assist C herself.

(3) B is able to assist C.

(4) A gives money to B.

Therefore: B has an obligation to assist C with A's money.

As it stands, the conclusion does not follow from (1)-(4) alone. Pogge requires one or more additional premises to support his conclusion that an INGO (B) has an obligation to assist a specific other (C) with A's donated money. One way in which an INGO may acquire such an obligation is if this is a specific condition of the donation. So we might add the following to complete Pogge's argument:

(5) If A gives money to B on the condition that B assist C with A's money, and if B accepts A's money under that condition, then B has an obligation to assist C with A's money.

Premise (5) draws on the norms associated with promise-giving and certainly reflects a widespread standard within current donor-INGO relationships, where funding is sometimes predicated on the donor's request that money be spent on specific projects or regions. INGOs are expected to make good on these requests if they accept the funding, and it is precisely because of this expectation that some INGOs refuse to accept certain types of grants or funding from particular donors.[376]

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[376] INGO fundraising is highly publicised, and therefore the ethical implications of accepting certain donations is a recognised concern across the third sector. Most major INGOs have corporate donor policies which outline certain groups from which they will not accept money due to the potential for a conflict of interest. For example, see: http://www.doctorswithoutborders.org/donate/fundraiser/faq.cfm (MSF), or http://www.oxfamamerica.org/whatyoucando/donate/oxfam2019s-corporate-donation-policy (Oxfam).

But premise (5) does not complete Pogge's argument so much as it provides a competing alternative. Premise (5) bases B's obligation on the act of promise-making to A, making premise (1) to a certain degree irrelevant: it does not matter to B's obligation whether A has a pre-existing obligation to C or not. Pogge's argument, in contrast, relies largely on premises (1) and (4): B has an obligation to C because A has given B money, and because of the nature of the obligation A has toward C. His view is that an INGO is obligated to follow the (ABCD*) principle in virtue of its donors' intermediate duties to the poor, not in virtue of a promise or acceptance of conditional donations.

It seems that Pogge's view here is motivated by his particular conception of intermediary agency.[377] Under premise (5), an INGO becomes an intermediary agent for a donor with respect to C only when it makes certain promises about C to the donor. But Pogge's understanding of intermediary agency is not as limited: he appears to think that one acts as another agent's intermediary agent whenever one is engaging in an activity and accepts money from an agent who has an obligation with respect to that activity. More precisely, Pogge seems to think that intermediary agency entails premise (6):

> (6) If A has an agent-relative reason to give money to B, and A gives money to B, then B ought to spend A's money in such a way as to satisfy A's agent-relative reason for giving.

An intermediate duty elicits agent-relative reasons: an agent is required to assist specifically those harmed by her actions. Here, I understand agent-relative reasons to be reasons for acting that refer in some way to the agent for whom they are reasons. A doctor that does not want to participate in a risky operation may say this is because it is *she* who would be responsible for

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[377] Pogge does not fully explain his view of intermediary agency, so the following is inferred from his choice comments, such as the one quoted previously in this chapter (see ff. 357 , in 3.1.2.4).

anything that went wrong. Similarly, it matters to a donor that *her* donation has maximal effectiveness in reducing the harm suffered by those harmed by *her* cooperation in unjust global institutions. If we accept Pogge's claim in premise (6)—that an agent can transfer her agent-relative goal by paying an agent who in virtue of that payment becomes her intermediary—then we can construct the rest of his argument (beginning with premise (6)) as follows:

(7) Donors have agent-relative reasons to provide aid to the severely poor (because of their intermediate duty).

(8) INGOs provide aid to the severely poor.

Therefore [from (7) and (8)]:

(9) Donors have agent-relative reasons to give money to INGOs.

Therefore [from (6) and (9)]:

(10) If donors give money to an INGO, the INGO ought to spend their money in such a way as to satisfy their donors' agent-relative reasons for giving.

Premise (6) is implausible; at best, its justification awaits a more detailed account of intermediary agency and the transfer of moral obligation via such agency than what Pogge provides. However, for now I intend to grant Pogge the argument from (6) to (10). This means we will accept for the remainder of 3.3 his view that INGOs can become intermediary agents, and thus acquire obligations, simply by accepting money from a donor whose donation is motivated by a moral, agent-relative reason (but who does not make her donation conditional on the INGO acting in any particular way).

Even granting Pogge his account of intermediary agency, he still needs to show how accepting premise (10) leads to a justification of the (ABCD*) principle. For this, he must rely on the following premise:

(11) The (ABCD*) principle allows an INGO to satisfy its donors' agent-relative reasons for giving.

There are two ways in which this premise might be justified; I will now argue that neither is successful, and that, therefore, this premise is false. Even if we accept Pogge's claim that INGOs, as intermediary agents, ought to satisfy their donors' agent-relative reasons for giving, it does not follow that this commits INGOs to using the (ABCD*) principle.

3.3.2 Agent-relative reasons and the (ABCD*) principle

In order to justify the (ABCD*) principle, there must be some explanation as to how adopting a broadly consequentialist principle assists INGOs in better fulfilling the agent-relative goals of their donors. We will consider two options: 1) The (ABCD*) principle assists INGOs in maximising overall harm reduction relative to their projects; 2) The (ABCD*) principle assists INGOs in maximising harm reduction with respect to the harm caused by their donors.

3.3.2.1 *Maximise harm reduction relative to their projects?*

A citizen of an affluent nation must be confident that, when she provides the appropriate amount of compensation required of her, she is at the same time fulfilling her intermediate duty to the greatest extent possible.[378] This implies she ought to seek out the INGO she thinks will do the most with her limited donation. Imagine that this donor is presented with a chart depicting each INGO's causal contribution to overall harm reduction across the globe for a particular year. Let us say for the moment that it is unclear to which of these

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[378] The duty to off-set harm caused by an agent is not identical to the obligation to compensate: it is implied that compensation provides a way to fulfil the duty to off-set harm. An agent may fulfil her compensatory obligation, yet if the compensation is misspent, it will not succeed at off-setting the harm caused.

harms the donor has causally contributed the most, but that she is certain she causally contributed to at least some of the harm that was reduced in that year.

Figure 1. Individual INGO contribution to overall harm
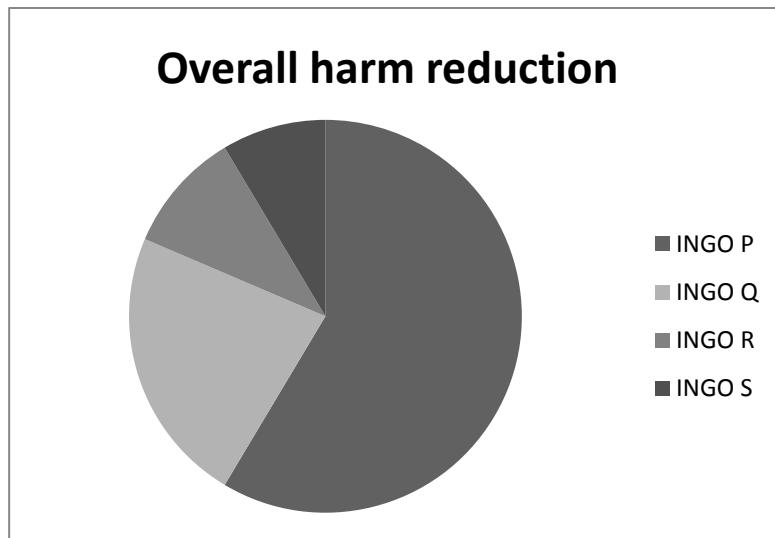
Perhaps the donor expects that the organisation that makes the greatest contribution to the overall reduction of harm will accomplish the most with her donation. Based on that assumption, and the chart, she would be swayed by her intermediate duty to put her donation towards INGO P, as it is comparatively more effective at harm reduction than any of the other INGOs. Her decision is not based on how well INGO P coordinates or organises with other INGOs to jointly reduce overall harm; it is based only on her obligation to reduce as much of the harm she has caused as possible, and on her determination that the organisational attributes that enable INGO P to outperform other INGOs at harm reduction will also maximise the probability of her donation's success if it goes to them. She concludes she ought to give to INGO P because of the specific contribution *their* activities make towards harm reduction.

This offers an initial option for justifying premise (11): The donor's agent-relative reason to assist is grounds for an INGO adopting the (ABCD*)

principle because the principle allows the latter to ensure that *their* organisation is the most efficient and effective in reducing poverty and that therefore the donor's compensation will be as uniquely harm reducing as possible. The (ABCD*) principle is therefore authoritative for an INGO insofar as it matters morally to the INGO that *its* activities are harm reducing, not merely that harm is reduced.[379]

But the contribution to overall harm reduction made by an INGO using the (ABCD*) principle is a poor indicator of which organisation will do the best job at fulfilling our imaginary donor's agent-relative obligation. Her donation to INGO R, for example, might in fact do more, as it could allow INGO R to scale-up their harm reduction activities significantly. The INGO that maximises its contribution to overall harm reduction is not necessarily the organisation that will maximise an individual donor's contribution to overall harm reduction.

Moreover, there are significant problems with INGOs adopting this approach to poverty alleviation. A form of agent-relative reasoning is already present in INGO evaluation, in the guise of impact measurement. The idea behind impact measurement is that long-term positive changes in the areas targeted by an INGO (e.g. well-being, rates of poverty-related death or illness) ought to be counterfactually dependent upon their projects. This counterfactual dependence is supposedly reached by 'measuring impact', i.e. comparing baseline measurements to data collected towards the end of a project.[380] While it is questionable that this kind of measurement produces sufficient evidence for the claim that the INGO was singularly efficacious, it reflects a long-held concern of INGOs to demonstrate that *their* organisation in particular is

[379] Under this justification, premise (6), which states the INGO must attempt to satisfy the donor's agent-relative reason for donating, indicates that if it matters to the donor that her donation is uniquely effective, then this must also matter to the INGO.
[380] Ebrahim & Rangan (2010).

making a positive causal difference. An INGO does not want to see merely that poverty was reduced, class attendance raised, or childhood deaths averted, but that these effects came about specifically due to *its* activities.[381]

Aside from other issues concerning the measurement of NGO effectiveness,[382] there is a further concern that the efforts of INGOs might be more effective if they did not focus so much on demonstrating singular causal efficacy. INGOs as a sector might be more successful if organisations were motivated by the pursuit of poverty reduction as a shared aim to be reached jointly, rather than by an attempt to identify what each is specifically responsible for accomplishing.[383] In other words, the suggestion is that INGOs ought to treat poverty reduction as an agent-neutral goal, one which could be universally adopted by any agent, and is satisfied when the appropriate outcome is secured, regardless of which agent secures it.[384]

In fact, it is Pogge himself who makes such a point, in the very same article on INGOs, in a section on fundraising. Pogge suggests that when INGOs are driven by an agent-relative concern to maximise the impact of their own organisations they compete with one another for fundraising.[385] This results in reduced overall effectiveness towards the goals shared by such organisations, as INGOs may pursue less effective projects that are more likely to garner greater funds, or may crowd each other out, leaving fewer INGOs overall to

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[381] Interview with INGO programme director, Mongolia, 8 June 2008.

[382] Despite the current dominance of impact measurement in development work, there remains a number of problems in defining impact in a way that is measurable and sufficiently rules out intervening variables to establish causal links between INGO activities and broader changes in the environments in which they work. See, for example: Riddell (2008); Ebrahim & Rangan (2010).

[383] See, for example, literature on the 'coordination dilemma' amongst humanitarian INGOs: Stephenson (2005); Rey (1999); Cooley & Ron, (2002).

[384] This implies that an organisation may be required to forgo taking money that would be more effective elsewhere, out of consideration for the shared goal of overall greater poverty reduction.

[385] MP, pp. 241-4.

work towards poverty relief.[386] In this way, Pogge observes, an agent-relative approach to the work of INGOs is collectively self-defeating: if each organisation acts to maximise its own individual impact, then each will be less successful than if they all pursued poverty relief as a collective goal. Therefore: "Because the agent-neutral goal is morally more plausible and because the agent-relative goal is directly collectively self-defeating, INGOs ought to be committed to the agent-neutral goal."[387]

An interesting question is why INGOs do not treat poverty reduction as more of an agent-neutral goal. Here Pogge's analysis gets the cart before the horse. INGOs compete, not because they are driven on their own to act on agent-relative reasons, but because agent-relative reasoning is currently encouraged by donors and donor agendas.[388] Many donors adopt precisely the attitude that Pogge's account of intermediate duties endorses: they want to see that *their* moral obligations are being fulfilled, that *their* money is having a concrete, definable impact, that *their* INGO has made 'a', or possibly 'the', difference.

It seems reasonable that if INGOs collaborated to achieve poverty reduction as a shared agent-neutral goal, their efforts might be more effective.[389] But the

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[386] Ibid. Pogge's speculation has some support in the empirical literature, e.g.: Stephenson (2005, pp. 337-8); Cooley & Ron (2002, pp. 6, 17).

[387] MP, p. 244.

[388] Part of the issue here may be that Pogge assumes, for the sake of argument, that INGOs have relatively strong control over how their priorities are set, and that they are relatively uninfluenced by the whims of donors. This is what allows him to discuss the moral priorities of INGOs as if they were the main decision-makers for how their donations are spent (MP, p. 220). The most common complaint of unethical behaviour amongst Mongolian NGO employees has to do with lack of collaboration on shared goals and misdeeds motivated by competitiveness for grants. In turn, this behaviour can be attributed to the policies of foreign donor agencies in Mongolia, who actively encouraged such competition based on the idea that they only wanted to fund the domestic NGOs that were effective, and competition was the best way to encourage effectiveness. (Feb-Sept 2008) Personal interviews with Mongolian NGO staff, World Bank Mongolia Operations Officer, Country Manager (see Appendix A).

[389] "...we suggest that the marketization of many IO and INGO activities—particularly the use of competitive tenders and renewable contracting—generates incentives that produce dysfunctional outcomes. This claim disputes the popular assumption that market-based

robustness of this prediction is not what is at issue. Pogge endorses agent-relative reasoning for donors, as they must seek to off-set the harm of poverty insofar as it is harm to which they contributed. Yet, he rightly rejects applying the same kind of agent-relative reasoning to INGOs' pursuit of harm reduction. When INGOs pursue their aims in an agent-relative manner, their efforts to alleviate poverty can produce sub-optimal results. Therefore, it cannot be the case that INGOs ought to adopt the (ABCD*) principle out of a concern for maximising their unique contribution to poverty alleviation. Moreover, an INGO's contribution to overall harm reduction is at best an imperfect indicator of whether it will make the greatest relative contribution with a donor's money. This approach to justifying premise (11) therefore fails, as it cannot provide an adequate explanation that moves us from the intermediate duties of donors to the prioritarian obligation of INGOs.

3.3.2.2 Maximise harm reduction relative to the harm caused by the donor?

A second and more obvious option for justifying premise (11) is suggested by Pogge's comment, quoted earlier in 3.1.2.4., that as intermediary agents INGOs are responsible for fulfilling specifically their donors' moral obligations, and that those obligations arise out of the donors' causal connection to those whom INGOs work to assist. This suggests that the decision faced by the donor as she acts on her agent-relative reason for aid is better captured by Figure 2 than Figure 1.

In Figure 2, she wants to pick the INGOs who are most accomplished at reducing Type 1 harms. Rather than pick the INGO that contributes most to overall harm reduction (INGO P), she must meet her intermediate duty by donating to those organisations that, at the margin, will most reduce suffering for the victims of the violation of *her* negative duty with her donation (INGO

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institutions in the transnational sector increase INGO efficiency and effectiveness" (Cooley & Ron 2002, p. 6).

S). An INGO's relationship to its donors therefore grounds its obligation to use the (ABCD*) principle if it allows them to maximally alleviate harm (as an agent-neutral goal), with respect to the subset of harms that were identifiably caused by their donors.

Figure 2. Harm reduced per INGO
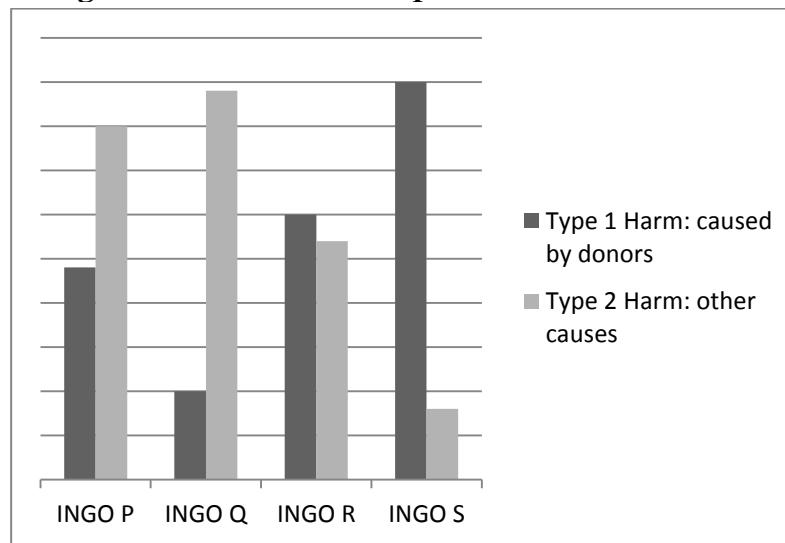
An initial worry here is that it is not clear how an INGO can determine whether the harm it is reducing was caused by its donors or whether it is due to some other factor—perhaps natural disaster. Directing INGOs to aid the worse off will not necessarily target those we (the donors) have most reason to help, if the worse off are suffering harm that we did not cause. Those who we harmed may still be better off than others. While there is a probable overlap between these two categories (the darker middle section in Figure 3), those to whom we have an intermediate duty do not necessarily match up one to one with those given priority within the (ABCD*) principle. INGOs therefore may not be able to tell if the harm they are off-setting constitutes a fulfilment of their obligations to their donors.

Figure 3.
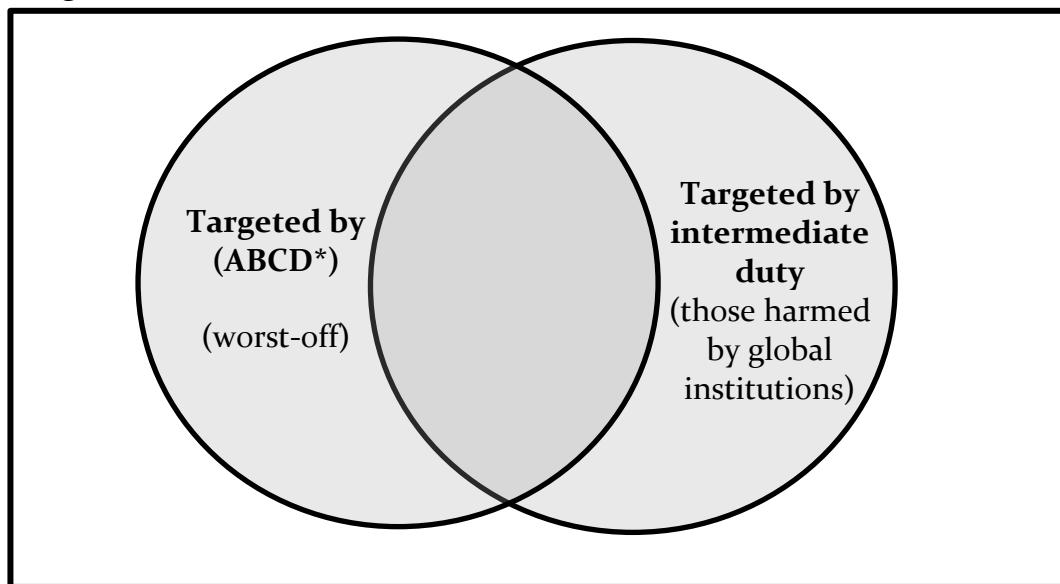
Pogge considers this problem, imagining the daunting questions that face the citizen of an affluent nation who wants to do the right thing—How much have I contributed to harming others? Which harms are harms caused by me and require compensating, and which were not? How much do I owe? He answers:

> Fortunately these unmanageable complexities can be largely avoided. The massive harm in today's highly interdependent world cannot be neatly sorted into harm that the government and citizens of some rich country are, and harm they are not, materially involved in causing ... Even when people are harmed by clear-cut natural disasters, such as an earthquake or a long-standing congenital defect, social factors are heavily involved in causing the resulting harms ... INGOs and their contributors therefore rarely face actual hard choices between morally less valuable harm reductions that we have intermediate moral reasons to achieve and morally more valuable harm reductions that we have only positive moral reason to achieve.[390]

[390] MP, pp. 253-4.

For Pogge, almost all harm related to global poverty falls under the category of harm caused by unjust global institutions, and, therefore, qualifies as harm that affluent individuals have intermediate moral duties to alleviate and offset. INGOs, then, are not required to ascertain which harms have causal links to their particular donors when they choose how to allocate their resources.

Even if we grant this simplification, there is a further problem in trying to use donors' intermediate duties to ground the (ABCD*) principle for INGOs: the (ABCD*) principle directs INGOs to avoid helping some of the most visibly and clearly identifiable victims of the unjust global order.

Recall that the (ABCD*) principle compels INGOs to pull out of countries in which it is costlier to operate due to civil war or extreme lack of infrastructure. Instead, Pogge says, they ought to focus their efforts on places where it is less costly to save a life, such as India. But why is it so costly to save a life in some countries? In some, such as Sudan, it is because those countries are rich in a type of resource, such as oil, which contributes to their instability. And why do resources contribute to destabilisation and, thus, increase the cost of saving a life in these countries? Because of one of the key features of injustice in our shared global institutional order: the recognition of resource privileges for any tyrant or rebel group that happens to control the coercive forces of a given state, as Pogge himself discusses several times in WPHR and elsewhere.

In 3.2.2 we considered an attempted objection to Pogge's argument against distributive fairness. This objection fell short because appeals to why some people are costlier to save could count as reasons to prioritise them if they also showed that such people suffered a worse harm. The scale would be tipped in their favour according to commitment (B). Therefore, Pogge replied, those appeals can be made consistent with the (ABCD*) principle.

The present objection, however, does not cast the instability of these less cost-effective countries as an added harm. Rather, it appeals to Pogge's own

arguments for how the global institutional order creates and sustains poverty. In WPHR, Pogge specifically cites several countries that have been affected by the policy of unjustified resource privileges, two of which are Nigeria and Venezuela.[391] In his article on INGOs he cites a study by economists Collier and Dollar which he suggests INGOs can use to identify countries with the highest and lowest rates of cost-effectiveness.[392] Yet, two countries ranked low in cost-effectiveness by this study, therefore qualifying as countries INGOs should avoid, are Nigeria and Venezuela.[393] This is a problem internal to Pogge's account that indicates the crucial premise (11) supporting the (ABCD*) principle cannot be justified. If we are going to accept a deontic argument that bases our obligation to aid in the specific, unjust, policies and practices of our institutions, then it is a contradiction to say that INGOs should use a principle that directs them to avoid aiding the places that are the most clearly identifiable victims of such practices.

In other words: even if the poor in Sudan are equally badly off or even somewhat better off compared to the poor in India, on Pogge's account, there should be an added reason to save the person in Sudan, because of the greater impact of the unjust institutional order, via resource privileges, when compared to the person in India. The moral wrongness of poverty rests not in the sheer deprivation experienced by the poor, but in the fact that this deprivation was imposed upon them by others through unjust institutions and practices. In places where the imposition of this deprivation is strongest, lives may be much costlier to save. Pogge's (ABCD*) principle can therefore direct INGOs away from the people who, by his own account, are most deserving of aid.

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[391] WPHR, pp. 119-20.
[392] Collier & Dollar (2002), discussed by Pogge in MP, pp. 230-3.
[393] Collier & Dollar (2002, Table 3).

3.3.3 Conflicting types of harm

Ultimately, the justification of the (ABCD*) principle for INGOs cannot be based on the intermediate duties of individuals because they operate on different understandings of harm. Pogge's work is characterised by what he calls an "ecumenical spirit" [394]: he seeks the strongest support for his conclusions by offering parallel and incompatible arguments that appeal to different starting points, often giving greatest attention to those starting points most hostile to an obligation to assist. Pogge notes that an implication of this ecumenical spirit is that some of his arguments for the obligations to aid are based on different notions of harm.[395] This does not pose a problem for him so long as each of his arguments for the obligation to aid remains self-contained and internally consistent.

Yet in his discussion of INGO obligations, Pogge attempts to base a principle of harm reduction on another argument that conceives of harm fundamentally differently. In order to convince those most hostile to the existence of a stringent duty to assist, Pogge must frame the harm of poverty as a deontic harm that arises out of the violation of a negative duty. Therefore, with respect to individual obligation-bearers, Pogge understands harm in deontic terms, as the violation of a duty: "On my view, you harm others insofar as you make an uncompensated contribution to imposing on them an institutional order that foreseeably produces avoidable human rights deficits."[396] It is this notion of harm that is meant to be the reason why INGOs should commit themselves to making tough decisions with the (ABCD*) principle. And yet, when defining harm for the application of the (ABCD*) principle, he describes it in terms of the human rights deficits (disutility) experienced by an individual: "In the present context, I propose to define harm as shortfalls persons suffer in their

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[394] SPVND, p. 65.

[395] (Pogge 2005b, p. 4).

[396] (SPVND, p. 61).

health, civic status (civil and political rights, respect within their community), or standard of living relative to the ordinary needs and requirements of human beings."[397] In virtue of this conflict between two different conceptions of harm, a prioritarian principle for INGOs cannot be justified by appeal to their donors' deontic obligations to the poor. Premise (11), on which Pogge's (ABCD*) principle rests, is therefore false.

However, we have not yet addressed the claim that INGOs acquire at least some sort of (non-promise-based) obligation by accepting money from morally obligated donors. In other words, the claim that INGOs are intermediary agents, reflected in premise (6), has yet to be contested. In the following section, 3.4, I now argue that, outside of any promises they make to a donor, INGOs are not intermediary agents at all.

3.4 Are NGOs intermediary agents?

In the previous section we saw that Pogge's attempt to justify—without assuming the role of promise-keeping—the (ABCD*) principle for an INGO through a donor's intermediate duty is unworkable. This also poses a general problem for viewing an INGO's obligations as based on a transfer of obligation from their donors, as it is not clear whether a stronger formulation of this transfer can be presented. In absence of an alternative to Pogge's argument, we can conclude that viewing INGO obligations as the result of a transfer from their donors' moral duties, absent of a promise, is unconvincing. A may have an obligation to assist C and, therefore, gives money to B because she is unable

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[397] (MP, p. 222).

to provide this assistance directly. However, unless this gift is conditioned on a promise made by B to specifically assist C, then B is under no obligation to assist C. If B uses A's money to assist D instead, this poses a problem for A, since her obligation has not been fulfilled, but it is not a problem for B. Put more concretely: if an INGO does not use its donors' money to assist those to whom those donors have intermediate obligations, then, in the absence of any promise to do so, this poses a moral problem only for the donors, not the INGO.

As mentioned, Pogge's argument is based in part on his view that INGOs are intermediary agents acting on behalf of their donors. In 3.4.1 I discuss why Pogge is motivated to think of INGOs in this way, and revisit some reasons as to why such a view is ill-suited for INGO agency. In 3.4.2 I discuss Lisa Fuller's objection to Pogge's construal of INGO agency, using Pogge's problem of the "discriminating contributor" as a focal point. I then develop an alternative solution, based on the multi-party social actor framework introduced in Chapter 2.

3.4.1   Pogge on intermediary agency

The temptation to understand the moral agency of INGOs as a form of intermediary agency, in which their obligations are parasitic on those of their donors, is motivated by the idea that the only available alternative is to view INGOs as free agents acting without any obligations at all. In defending the (ABCD*) principle, Pogge explains that he thinks INGOs must be obligated in *some* way, since it is unjustifiable for their employees to simply say: " 'this is *our* INGO, and we are morally free to raise money for any cause we like and spend it as we deem fit.' "[398] He takes issue with this anything-goes attitude

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[398] Pogge (2007b, p. 278).

because it complements the traditional view of poverty alleviation as a supererogatory 'good deed' that is considered an act of charity rather than one of obligation. If we are going to reject the notion that our contributions to reducing severe poverty are a matter of optional charity rather than moral requirement, then we must expect INGO staff to undergo a similar paradigm shift, viewing their project design and resource allocation as constrained by stringent moral considerations rather than determined by their organisation's self-set priorities:

> My willingness to criticize where others do not may be related to my seeing INGOs not primarily as venues for 'helping,' but as instruments for undoing a fraction of the vast harms the affluent countries are inflicting on the poor and marginalized in the so-called developing world.[399]

For Pogge, treating INGOs as intermediary agents is an implication of taking seriously our obligations of assistance to the poor.

In light of the arguments against the principal-agent framework presented in Chapter 2, Pogge's treatment of INGOs as intermediary agents acting on behalf of their principals, the donors, presents too narrow a perspective on their agency. As argued in 2.4.2, the principal-agent framework is limited in its focus and produces inaccurate depictions of an NGO's relationships to its donor. As a type of NGO, an INGO is not necessarily a "venue"[400] or "instrument"[401] which individual moral agents use to pursue their charitable or obligatory goals. This characterisation portrays INGOs as proxies that simply adopt the moral ends of other agents. Rather, INGOs' involvement in individual agents' understandings of their moral obligations and how they might fulfil them is considerably more active than what the framework of intermediary agency offers. These organisations do not merely adopt the ends,

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[399] Ibid. (p. 277).
[400] Ibid.
[401] Ibid.

and thus obligations, of their donors: they are actively involved in shaping the ways in which donors identify appropriate ends and understand their moral obligations.

Considering these other ways in which INGOs interact with donors means that, in rejecting the idea that INGOs are agents of their donors, we need not accept the position that they have no obligations whatsoever with respect to how they design projects and allocate funds. As I will now illustrate, Pogge's (ABCD*) principle is not the only alternative to an 'anything-goes' attitude.

3.4.2 Integrity and the "discriminating contributor" problem

Lisa Fuller's reply to Pogge's work on INGOs similarly argues that his view rests on a fundamental misunderstanding of an INGO's unique agency.[402] As mentioned, the (ABCD*) principle dissuades INGOs from engaging in certain practices, such as distributive fairness or participatory planning, if these detract from the goal of maximising harm reduction. Pogge also suggests at one point that INGOs ought to be open to accepting limited donations from racist donors (e.g. white donors who specify their funding be directed only to other whites), if doing so will result in saving more lives.[403] This is not a far-fetched hypothetical: many INGOs as well as domestic NGOs face dilemmas over whether to accept funding from a donor who holds views that are publically controversial, raise questions of conflict of interest for the NGO, or are in direct contradiction to some of the organisation's stated values or aims.[404] In such cases, Pogge argues, it is wrong for organisations to allow

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[402] Primarily Fuller (2006), but see also Fuller (2005).
[403] MP, pp. 245-7.
[404] Two recent examples of this include Save the Children, which came under fire for dropping its support for a soda tax in the U.K. after accepting a substantial donation from the Coca-Cola Foundation, and the controversy, discussed below, over the British Legion receiving support of various forms from members of the British Nationalist Party: Neuman, W. (2010 Dec 14). Save

queasiness over a potential donor's motivations or beliefs to outweigh the value of the good that can be achieved with their donation.

Applying Bernard Williams' concept of integrity, Fuller reads these non-consequentialist commitments to participatory methods, respect for past relationships, and racial equality as part of an arc of projects and beliefs that constitute an INGO's integrity:

> An INGO, if it were to allow itself to contradict its own principles ... would cease to be the sort of moral agent that is appropriately designated to handle this type of work, since by its actions it has become alienated from its central purpose of working for the just treatment of all human beings.[405]

Fuller claims that in treating INGOs as instruments for providing assistance to the severely deprived, Pogge dismisses the commitments that allow them to perform this role successfully. It is precisely its non-consequentialist principles, such as the refusal to collaborate with agents of discrimination and oppression, which enable an INGO to improve the well-being of the disadvantaged and protect human rights.

This sketch faces an initial problem as an alternative to Pogge's insofar as it is question-begging against his claims about INGO priorities. Someone like Pogge believes that the just treatment of human beings is precisely what is captured by a principle like (ABCD*) because it leads to a maximal, priority-weighted reduction in severe deprivation. If INGOs define themselves as moral agents in terms of a concern for justice and the remediation of human rights deficits, then they have more reason to constrain themselves by such a principle. Failure to do so amounts to prizing a fidelity to principle over substantial improvements in people's life chances, a choice that Pogge finds

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the Children Breaks With Soda Tax Effort. *The New York Times online*; Furlong, R. (2009 Sept 11). British Legion Accepts BNP Gift. *BBC News online*.
[405] Fuller (2006, p. 20).

unjustifiable: "...I do not know how one can answer the question how many extra deaths this 'standing up for principle' can justify. What is the correct exchange rate between racism spurned and additional lives saved?"[406] While an INGO may find it anathema to collaborate with unsavoury characters, given the grim calculus of international aid, they may not be able to afford an across-the-board rejection of such collaborations. In so doing, far from being alienated, Pogge might say, INGOs are brought closer to their central purpose of serving humankind through a principle like (ABCD*).

There are two ways to develop Fuller's idea in reply to this objection. The first would highlight the similarity between hers and Pogge's views, by contending that when INGOs remain principled, this better satisfies the (ABCD*) principle in the long-term. According to such a reply, Pogge underestimates the importance of an INGO's core commitments to non-discrimination and participatory processes as a necessary condition for the success of any aid project. An INGO's principles make it ideally situated to deliver aid, not because of the principles themselves, but because the content of these principles is responsive to the perspective and interests of the poor and marginalised, and this responsiveness, in turn, is the necessary ingredient for a successful aid project. Indeed, Pogge himself seems open to such a view. Given that "judgments about the long-term impact of alternative projects [are] highly speculative", there is a large "range of diverse projects that can reasonably be judged consistent with (ABCD*)."[407]

This, however, masks what I take to be the real alternative Fuller is offering to Pogge's understanding of INGO moral agency.[408] Her point is that INGOs are

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[406] MP, p. 245.
[407] Pogge (2007b, p. 274).
[408] Fuller's (2005, p. 294) broader view conceives of INGOs as political, not economic, agents. For example, elsewhere she writes: "I reject the idea that the international aid community is a bunch of private organizations from which it is inappropriate to expect the type of

ideal candidates for poverty reduction because of their commitment to specifically non-consequentialist principles. The challenge posed by the case of the "discriminating contributor" is whether the good that can be done with the contribution outweighs the INGO's deontic concern for equal respect and non-discrimination. How might we motivate the importance of such concerns for the agency of an INGO?

In the previous chapter, we discussed how the multi-party social actor framework provides a more accurate basis for understanding how NGOs rely on collaborations with other actors in order to exercise their agency. An NGO's accountability obligations, I argued, are triggered in part by its reliance on these collaborations to alter the abilities of other actors. Another manner in which NGOs can interact with others in a way that triggers obligations is by shaping their moral values and evaluative judgments.

Contemporary examples of NGOs' abilities to change values and form a new moral consensus include the NGO-led boycotts against Nike and De Beers, and the International Campaign to Ban Landmines (ICBL). For the campaigns against Nike and De Beers to be successful, NGOs not only had to raise consumers' awareness of the conditions of child workers in Nike plants overseas or the conflict-sustaining origins of De Beers' products. They also had to convincingly argue that the practice of child labour was harmful and wrong, or that a purchase of jewellery made with De Beers' 'blood diamonds' constituted financial support for mass violence and rape. ICBL also stands out for achieving a significant change in global legal norms through the ratification of the International Treaty on Landmines in 1997. This was the

accountability and legitimacy characteristic of political institutions. They are already an established part of the international political scene…"

outcome of significant campaigning by ICBL, which included both the provision of facts, and the use of persuasive moral argument.[409]

In order for these campaigns to be successful, the other actors mobilised by the INGOs must assume that these organisations act in a manner consistent with the principles and values that they advocate. This is because their engagement with the INGO is motivated and shaped by their commitment to certain moral principles espoused by the organisation, and the INGO's presentation of itself as an organisation that enacts such norms or principles. If an INGO acts in a manner that is inconsistent with these principles, this would lead others to question its ability to perform adequately as an arbiter with respect to these values. More importantly, the parties upon whom the INGO depends in order to act could come to question the INGO's own commitment to their defining principles, and thereby question the value of their collaboration with the INGO.[410] If Team Sweat, an INGO that advocates for improvements in Nike's supply chain, argues that it is wrong to buy products made through exploitative working conditions, then their own activities and collaborations must maintain consistency with their account of what constitutes exploitation and why it is wrong. If they were, for instance, to collaborate with competitors of Nike who themselves also engage in exploitative practices, they would be wronging their supporters by violating the very norms upon which this support is conditioned.[411]

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[409] See ICBL's "Arguments for a Ban":
http://www.icbl.org/index.php/Problem/Landmines/Arguments-for-a-Ban
[410] Brewer (2003) makes a similar point regarding the nature of associative obligation. See the following chapter, section 4.1.3.
[411] Unlike Fuller's account of integrity, requiring consistency across the values on which an NGO's collaborative activity is based does not necessarily cast those values as deontic constraints on the maximisation of harm reduction. That is, an NGO's values may be compatible with a consequentialist concern for maximising harm reduction. In a study of the decision-making strategies of humanitarian INGOs, Lisbeth Heyse (2006, p. 53) identifies a "consequential" strategy that is characterised by "prospective reasoning" and "maximizing behaviour." Médecins Sans Frontières (MSF) is a paradigmatic example of an organisation utilising the consequential strategy. They have maintained consistency with this strategy even

3.4.3 Revisiting the problem of discriminating contributors

NGOs that place this kind of moral engagement at the centre of their work have a stronger reason to say no to an offer from a discriminating contributor. To focus our attention, let us consider an actual example of this problem: the donation made to the British Legion by a member of the British National Party, a party with a 'whites-only' membership clause that declares a commitment to "the continued creation, fostering, maintenance and existence of an indigenous British race."[412]. This example also helps to demonstrate how the shaping of moral norms and the challenge of donors with morally questionable beliefs applies generally to all NGOs, not only INGOs working in aid and development.

In 2009, a member of the BNP held a fundraising event, after which she split the proceeds evenly between donations to the BNP and the British Legion. The British Legion's acceptance of the donation was highlighted in the media and criticised by many, including those working for similar veterans' charities. The head of a veterans' association in Scotland, for example, voiced his objection as follows: "Look at the armed forces and you have multi-ethnicity. What would you do with BNP money - not spend it on soldiers of Afro-Caribbean descent? It's a complete nonsense. We're very saddened they (other charities) feel they have to take this money, and they obviously have to clear their own consciences."[413]

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when it creates controversy for them within the aid industry, issuing public statements when they believe that further donations to a given humanitarian crisis will not be cost-effective (Rieff 2004).

[412] Furlong (2009 Sept 11) "British Legion Accepts BNP Gift." *BBC News online*.

[413] Ibid.

But other veterans' charities were more sympathetic, citing a severe lack of resources as a larger problem for them than the political or moral views of their potential donors:

> The case illustrates a dilemma faced by other service charities approached by the BNP. Tommy Moffat runs FEBA, a charity which is negotiating £50,000 a year from the BNP to keep open its veterans' drop-in centre in Hamilton, Lanarkshire. 'We're at the bottom of the darkest pit, where we could close the doors within the next two to three weeks, and it would be a tragedy for our ex-service personnel. We're desperate,' he says.[414]

If we take NGOs to be intermediary agents, then a veterans' charity may be inclined to accept a donation from the BNP if it is significant enough to considerably raise the well-being of its beneficiaries. However, doing so can undermine the very basis on which such charities rely to exercise their agency. Insofar as a veterans' association's activities involve moral claims and altering people's views of their moral obligations to former soldiers, they ought to avoid inconsistency with those activities by rejecting collaborations with actors that undermine or contradict their moral activism. If we maintain that an NGO's agency is constituted by the collaborative activities in which it engages, then failure to maintain consistency results in a fracturing of their agency,. Given that the British Legion appeals actively to a sense of national unity to encourage donations, and campaigns on the slogan "Standing shoulder to shoulder with all who serve,"[415] the decision to accept funding from the BNP violated the very basis on which they enlisted collaborations with others. Therefore, they ought not to have accepted it.[416]

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[414] Ibid.
[415] www.britishlegion.org.uk
[416] FEBA, the charity mentioned in the above article that accepted a considerable donation from the BNP, provides a helpful example of what can result when the inconsistency of an NGO's collaborative activities lead to a fracturing of its agency. While it declared itself to be a charity providing much-needed services to Scottish servicemen and women, FEBA accepted a significant amount of funding from the BNP over a 4 year period and engaged in other fundraising activities that were deemed high-risk and more befitting of a private company

3.4.4 Concluding remarks on intermediary agency

Pogge could contend that my account of NGO agency and the importance of maintaining consistency across its norms and activities does not offer an adequate alternative to the notion that INGOs are free agents with free reign over their resources. That is, the contention is that my discussion has not presented a comparable alternative to the (ABCD*) resource allocation principle.

The moral importance of a principle of resource allocation for an INGO is that it brings considerations of effectiveness into the planning process. The INGO that takes resource allocation seriously aims for the best possible achievement with its limited funds. While Pogge's (ABCD*) principle takes account of risk and uncertainty, it does not capture the types of planning and reasoning that an NGO must engage in throughout the lifetime of a project in order to manage new complexities that threaten to disrupt well-made plans or turn efficient projects into money pits. As indicated by the literature on NGO performance, a set of standards regarding the causal claims an NGO must rely on to ensure effectiveness is equally important to efficiency as a principle that provides general weights for organisations to use in determining cost-effectiveness.[417]

I turn in the following chapter to a consideration of what these standards might look like, and how an NGO's ability to meet these standards can qualify it as an agent of justice. While this chapter has sought to demonstrate that NGOs should not be understood primarily as intermediary agents acting on

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than a charity. As a result of these activities, FEBA went into arrears and was stripped of its charity status in 2010 (Wiggins (2010 Oct 18) "FEBA struck off Scottish register"). FEBA acted to undermine the other relationships on which its agency as an NGO depended, thereby dissolving it entirely.

[417] Ebrahim & Rangan (2010).

behalf of their donors, the following chapter 4 discusses a methodology that an NGO as an agent in its own right can be required to use in its attempts to accomplish positive material change, including the alleviation of serious harm.

Conclusion

The proposal under consideration in this chapter was Pogge's derivation of moral principles for INGOs based on the obligations of their donors. This failed for two reasons. First, Pogge employs a deontic argument for the obligation to aid that does not fit comfortably with his consequentialist principle for guiding the dispersal of aid. Deontic arguments carry the baggage of agent-relative reasons, which can be counterproductive for overall poverty reduction.

Deontic arguments also conceive of moral harm in terms of a violation of a duty, thereby harbouring a concern for coherence between the justification of an obligation and the way in which it is carried out. Consequentialist principles treat harm in terms of the content of a human rights deficit, not how it occurred, and therefore, do not look at the agents behind the harm. They identify material harm and guide us toward maximally reducing it. In conditions of scarcity, this requires us to assist those who are least costly to save. When we turn our attention to the task of reducing poverty, these two notions of harm come into conflict with one another. Those who are less costly to save may not be identical to those whose suffering is more directly the result of a negative human rights violation.

A further criticism dealt with the pervasive idea that INGOs are to be understood normatively as intermediary agents for obligated individuals. Any account of INGO principles that rests on such a notion of their agency—whether deontic or consequentialist—will fail. Conceiving of NGOs in general as intermediary agents fundamentally misinterprets what NGOs are and the nature of their relationships to others. The mere act of donation is not sufficient for an organisation to assume the obligations of its donor.

Instead, using the theoretical characterisation of an NGO as an agent that relies on its collaborations with others for its agency, and consideration of the NGO activity of moral claim-making, I argued that we ought to approach problems such as the "discriminating contributor" through an analysis of the collaborative activities of a particular NGO. If accepting a donation from such a contributor is inconsistent with the values invoked in the other collaborative activities the NGO relies on for its agency, then accepting such a donation produces a fractured organisational personality. Either the NGO must refuse the donation, or give up its activity of moral claim making.

While maintaining consistency with its values is an important obligation, it does not directly address the issue of effectiveness. This issue is now taken up in the following chapter, where I consider the comparative capacities for justice between NGOs and the state, and argue that the requirement of effectiveness ought to be framed in terms of the efforts an organisation makes at articulating and verifying a theory of the causal pathways for positive change.

CHAPTER 4   THE CAPACITIES OF VOLUNTARY ASSOCIATIONS FOR JUSTICE

Introduction

The previous chapter addressed one role INGOs might play in connection to the demands of global justice: as dispensers of economic assistance to the global poor.   But NGOs, those operating internationally as well as domestically, also engage in protecting and fulfilling human rights, improving labour and wage practices, promoting gender equality, facilitating processes of criminal justice in post-conflict settings, and advocating for just tax reform.[418] For such NGOs and many of those who interact with them, these activities illustrate the way in which NGOs work to realise the ideals and principles of socio-economic and civil justice.

And yet, within contemporary political philosophy, NGOs are rarely considered to be subjects of justice, due to their classification as "private associations."[419] Following Rawls, many hold that justice is primarily understood as applying to "the basic structure of society"[420]: "a society's main political, social, and economic institutions."[421] The task of a theory of justice is to work out the principles which structure and regulate these institutions, as they provide the background conditions against which private transactions

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[418] Albrow & Seckinelgin (eds.) (2011).
[419] Rawls (1971, p. 7).
[420] Ibid. (p. 3).
[421] Rawls (1993, p. 223).

can take place fairly and freely. What defines the basic structure of a society, and which institutions qualify as part of the basic structure, has been a significant topic of debate in the literature. On one interpretation, the basic structure is characterised by its coercive power, "which determines in a relatively fixed and general way what people may and must do."[422] On another interpretation, institutions qualify as part of the basic structure in virtue of their far-reaching impact, that is, their "profound and pervasive influence on the persons who live under its institutions."[423]

Voluntary organisations such as NGOs can be excluded as subjects of justice on both of these interpretations of the basic structure. If we take the basic structure to be defined by coercive power, then NGOs, as voluntary associations, fail to coerce and thus, fail to qualify as subjects of justice. On the "pervasive impact"[424] interpretation, voluntary associations such as NGOs can be cast as unable to influence people's life chances in a manner as deep and substantive as state institutions.

Each of these views, I believe, rests on an implicit assumption about the nature of voluntary association. The first assumes that voluntary associations, in virtue of their voluntariness, do not trigger any further demand, or any significant demand, for justification to their members.[425] Therefore, they lie outside the scope of justice[426] because they cannot trigger obligations of

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[422] G.A. Cohen (1997, p. 19). Cohen's article initiated debate over the meaning and relevance of the basic structure with his objection that Rawls' account of the basic structure is ambiguous and fails to distinguish state institutions as the proper subjects of justice on nonarbitrary grounds. Other key contributions to this debate include Murphy (1998); Estlund (1998); Pogge (2000); James (2005b). For work on the importance of coercion to Rawls' restriction of justice to state institutions, see Blake (2002); James (2005a; 2005b); Nagel (2005); Sangiovanni (2007); Abizadeh (2007).

[423] Rawls (1999, p. 55).

[424] Abizadeh (2007, p. 341).

[425] Blake (2002); Nagel (2005).

[426] To clarify, here I am speaking of "scope" in the sense of the scope of duties or obligations of justice. In the sense that I am not using, voluntary organisations are within the scope of justice, insofar as they operate within a closed state system and therefore act against a background system that meets principles of justice.

distributive justice. The second view is based on the ill-defined concept of agential capacity. Voluntary organisations such as NGOs cannot be agents of justice, it is argued, because they lack the requisite capacities to meet principles of justice,[427] including the capacity to deeply impact people's lives. This chapter aims to undermine both of these reasons for excluding NGOs from the responsibilities of justice.

In 4.1, I discuss Thomas Nagel's (2005) "involvement of the will" thesis as an example of an argument for the view that the grounds of justice rest in the nonvoluntary engagement of individuals' wills. I present both Andrea Sangiovanni's (2007) version of this argument, which rests on a weaker claim, as well as Nagel's own, more restrictive view. The weaker and more palatable presentation of voluntarism by Sangiovanni illustrates—as Sangiovanni himself notes—that an appeal to the absence of exit costs cannot be the basis for Nagel's claim that voluntary relations trigger no additional need for justification since it admits to a difference in degree, not in kind, of association. I then provide a positive argument against Nagel, arguing that when we engage in voluntary relations, we make claims about our intentions and values that can make us liable to obligations and expectations of justification from others. Finally, I argue that Nagel's attempt to ground justice in legitimate state authority is better read as a claim about the necessary means for achieving justice. Nagel confuses the claim that the state provides the necessary means for practically achieving justice, with the claim that the state serves as the grounds for justice.

In section 4.2, I turn to Saladin Meckled-Garcia's (2008) argument for statism, which has the potential to fix the problems in Nagel's position. Meckled-Garcia's explanation of the role of agency and agential capacity in fixing the domain of a moral principle gives us a way to connect means to grounds: the

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[427] Meckled-Garcia (2008).

grounds of justice are the existence of agents of justice, who are, in turn, identified by their capacities, or means, for realising justice. After explaining Meckled-Garcia's argument, I argue that his account is unclear on the definition of agential capacity, and I offer two possible understandings of this concept: capacity as a causal power and capacity as a moral power.

In 4.3, I compare state institutions and NGOs with respect to their causal powers for justice and argue that these powers vary based on institutional context, not institutional type. Therefore, justice cannot be restricted to the state on the basis of considering causal powers alone. I conclude by considering the moral powers required by an agent of justice. States possess a moral power distinct from the powers of NGOs. Yet this, I argue, does not separate them in kind, but by degree, as the moral power of an NGO is just as important, if not necessary, for the realisation of justice in actual societies.

4.1 Nagel on sovereignty and justice

4.1.1 Nagel's 'involvement of the will' thesis

In "The Problem of Global Justice" (2005), Nagel opens his discussion by distinguishing two different conceptions of justice.[428] On the *cosmopolitan* conception, "the demands of justice derive from an equal concern or a duty of

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[428] Sangiovanni (2007, pp. 5-8) points out that Nagel's distinction combines two separate distinctions regarding the scope and grounds of justice. In Sangiovanni's terms, Nagel's cosmopolitan conception is *nonrelational* and *globalist*, and his political conception is *relational* and *internationalist*. The third possible position revealed through the disentanglement of these two distinctions is the relational globalist position, which would hold that principles of justice apply globally in virtue of the existence of a global basic structure.

fairness that we owe in principle to all our fellow human beings, and the institutions to which standards of justice can be applied are instruments for the fulfilment of that duty."[429] The cosmopolitan conception of justice casts real-world institutions as contingencies that we can, and should, manipulate so as to better realise the universal moral value of equal concern. Insofar as the current state system has yielded a serious departure from this value, it constitutes an obstacle to justice and ought to be significantly revised or dismantled. In contrast, the *political* conception, attributed to Rawls, holds that principles of justice are grounded, not in a notion of universal moral concern, but in social institutions that create the need for such principles "by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity, an institutional relation which must then be evaluated by the special standards of fairness and equality that fill out the content of justice."[430] Consideration of what justice demands begins with an account of the moral significance of the relations amongst members of a shared institutional system.

Nagel is interested in developing an argument for the political conception, which requires him to explain both the special relation that prevails amongst co-citizens, and the moral significance of such a relation. In particular, this relation must be morally significant in a manner that justifies its status as the *exclusive* grounds for demands of justice, thereby explaining why obligations of justice do not extend beyond the boundaries of a state to the rest of humanity. For Nagel, not only is this relation the exclusive grounds for justice, it is the exclusive grounds for *any* moral requirements above and beyond "basic humanitarian duties": obligations of assistance to those in life-threatening need, and a respect for basic universal human rights such as the

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[429] Nagel (2005, p.119).
[430] Ibid. (p. 120).

rights against violence or enslavement.[431] Nagel is therefore a "dualist" [432] with respect to moral principles: he holds that there are two distinct moral spheres governed by separate moral requirements.[433] Dualism can be contrasted with "pluralism," the position that there are multiple moral spheres each with their own set of regulative principles, as well as "monism," the view that the same moral principle or set of principles applies across a universal domain. Monism is more common amongst cosmopolitans, who hold that the same principles of equal concern apply globally, or utilitarians, for whom the principle of utility applies to the regulation of institutions as well as interpersonal conduct. Nagel's dualism places even greater weight on the importance of assigning the limits of justice, as relations that fall outside this limit are regulated only by the most basic moral requirements.

Nagel thinks that an account of the moral significance of relations between co-citizens is available if we clarify Rawls' idea of morally arbitrary inequalities as the trigger for the demands of justice. Rawls' development and defence of his principles of justice are guided by the conviction that a just society is that which seeks to eliminate or reduce as much as possible the inequalities in life prospects caused by morally arbitrary factors such as a person's race, gender, or natural talents. According to Nagel, this idea is not, as read by some cosmopolitan critics, grounded in a universal dictum against inequalities

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[431] Ibid. (pp. 125-6). Later, Nagel describes this minimum level of moral regard as follows: "This minimal humanitarian morality governs our relation to all other persons. It does not require us to make their ends our own, but it does require us to pursue our ends within boundaries that leave them free to pursue theirs, and to relieve them from extreme threats and obstacles to such freedom if we can do so without serious sacrifice of our own ends" (p. 131).

[432] The distinction was first introduced by Liam Murphy (1998, p. 254) as a contrast only between monism and dualism. While the distinction is widely accepted, in most cases "pluralism" takes the place of dualism, as the real disagreement is between those who think only one principle regulates all forms of interaction and those who think different principles apply to different forms or domains of interaction. See the authors cited above in ff. 422 for a list of those who discuss the monism/pluralism issue.

[433] Despite the prevalence of pluralist over dualist views, Cohen & Sabel (2006) point out that Nagel's view is specifically dualist, as it posits only two possible moral spheres.

caused by morally arbitrary features, but is instead motivated by the claim that such inequalities gain a special moral significance when they arise within particular societal structures: "What is objectionable is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates such arbitrary inequalities."[434] The existence of coercively imposed legal and political institutions is, Nagel contends, what gives normative force to an account of socio-economic justice. Neither the generation of arbitrary inequalities alone, nor the pervasive impact of these inequalities on the life prospects of an individual, are sufficient to operate as the basis for demands of egalitarian justice. If they were, then cosmopolitans could easily point to membership in a particular state as a characteristic that is as equally morally arbitrary as race or gender and conclude that, since this membership has a pervasive impact on our life prospects, the scope of principles of justice cannot be restricted to the internal relations of individual states.

Nagel thinks this cosmopolitan extension of the grounds of justice is unavailable since inequalities call for special justification only when they arise through coercively imposed institutions. This is because shared coercive institutions engage with their members' wills in a particular, morally relevant way. Nagel describes this special "involvement of the will"[435] as follows:

> Without being given a choice, we are assigned a role in the collective life of a particular society. The society makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence; and it holds us responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and disadvantages are created and distributed. Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why

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[434] Nagel (2005, p. 128).
[435] Ibid.

we should accept them. This request for justification has moral weight even if we have in practice no choice but to live under the existing regime. The reason is that its requirements claim our active cooperation, and this cannot be legitimately done without justification—otherwise it is pure coercion.[436]

According to Nagel, the state exerts a monopoly of force that binds each citizen equally and, thus, is exercised equally in each citizen's name, in a way similar to Rousseau's notion of the general will.[437] In order for this exercise of power to be justifiable to all subjected to it, the laws through which this power is exercised must provide equal consideration to all citizens. This means that egalitarian principles of justice are grounded in the idea that equal consideration to all affected by a collectively-imposed coercive power is a necessary condition for the justification of that power. It is necessary because, in order for the system of law to rule in the name of each and every citizen, it must be justifiable to all, and this justifiability consists in it satisfying the condition of equal consideration. If a system of law allows for inequalities on the basis of arbitrary considerations, Nagel says, then, we as citizens under that law may request a justification, since these inequalities are being permitted in our name. Voluntary enterprises, such as universities or tennis clubs (or, as Nagel argues, institutions of global governance[438]), do not involve the will of their members in the same way, and therefore, do not trigger the same demands for justification. Justice is therefore not owed to participants within these types of relations. This is Nagel's *involvement of the will* thesis: demands of justice operate as a special kind of moral justification that applies only to relations which coercively place requirements on the wills of their participants.

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[436] Ibid. (p. 129).

[437] Ibid. (p. 128).

[438] Nagel's view (2005, p. 128; pp. 129-34) is that institutions of global governance are morally analogous to universities or tennis clubs insofar as they are entered into voluntarily by their members and obligations are exhausted by the terms of membership (members being states in the case of IGOs). See also the careful analysis of Nagel's view by Cohen and Sabel (2006, pp. 157-8).

Despite his emphasis on the necessity of "the required active engagement of the will" of citizens for the application of justice, Nagel's argument is ambiguous about what this engagement consists in, and what about it bears the moral significance that makes this engagement alone the exclusive grounds for principles of justice. If egalitarian principles are only triggered as a solution to a particular type of normative problem, then Nagel's account must explain how this normative problem is unique to those living collectively under shared coercive institutions. We will now consider two possibilities. One possibility is that the wills of citizens are engaged nonvoluntarily because of their inability to exit the state, rendering Nagel's view as the claim that justice applies only to nonvoluntary enterprises, defined in terms of their exit costs. Nagel's argument has faced convincing criticism when his argument is read in this manner, but none of these critics question the basic claim regarding the benign moral status of voluntary relations. I argue that this assumption is also unjustified, and that, moreover, Nagel's argument reflects a confusion between the *grounds* of justice and the *means* for achieving justice.

4.1.2 No exit

Nagel's comments follow Rawls' distinction between the basic structure of a society and the various voluntary associations within it, suggesting that his "involvement of the will" thesis is based on the notion that state institutions are morally special insofar as they constitute "a structure we enter only by birth and leave only by death."[439] Andrea Sangiovanni (2007) claims that this offers the most plausible reading of Nagel's argument, since a straight-forward understanding of the thesis—that citizens are involved as co-authors of a shared system of law—does not sufficiently distinguish state institutions from

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[439] Rawls (1993, p. xliii).

voluntary associations such as tennis clubs.[440] Members of clubs are just as much the "authors" of their clubs' by-laws and decisions as co-citizens are the authors of their state laws. This indicates, Sangiovanni says, that authorship as a mode of engaging with a citizen's will cannot be sufficient alone.[441] Therefore, he suggests interpreting Nagel's argument as a statist approach to global justice that appeals to the high exit costs associated with state membership. On this interpretation, the special normative problem that gives rise to egalitarian demands is the special need to justify nonvoluntary arrangements to their participants:

> 1) Principles of justice are special moral requirements that apply only to relations that require moral justification above and beyond an appeal to basic humanitarian morality.[442]

> 2) Only nonvoluntary relations require moral justification above and beyond an appeal to basic humanitarian morality.[443]

> 3) The relation between a state and its citizens is nonvoluntary, while relations that constitute nonstate enterprises are voluntary.[444]

> C: Therefore, only the relations between states and their citizens are those to which principles of justice can apply.

This construal of the argument makes Nagel vulnerable to many counter-examples that undermine premise (3). Despite Nagel's attempt to highlight particular features of global political and economic institutions that supposedly disqualify them as justice-relevant coercive bodies,[445] critics have argued convincingly that the WTO, World Bank, U.N. and other similar

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[440] (pp. 16-7).

[441] Ibid. (p. 17).

[442] Nagel (2005, pp 142-3). Cohen and Sabel (2006, p. 155) refer to this as Nagel's "Strong Statism": "For him, the state is the unique normative trigger: unique in establishing the conditions not only for egalitarianism, but also for the validity of any norms of justice more demanding than humanitarianism."

[443] Ibid.

[444] Sangiovanni (2007, p. 17).

[445] For example, that the parties bound by such institutions are representative of states, not individuals, or that, implausibly, the WTO and IMF are voluntary, since governments have a real choice regarding their participation: Nagel (2005, pp. 136-40).

institutions engage authoritatively and nonvoluntarily with individuals in a way indistinguishable from Nagel's account of state-citizen relations.[446] If the moral significance of the involvement of the will is, in fact, based on this involvement being nonvoluntary, then Nagel's argument fails based on premise (3) alone.

Rather than pursue an already successful line of criticism, I will instead add a further reason to reject Nagel's view. Even if Nagel were to succeed in showing that states are uniquely nonvoluntary institutions, this version of his argument still fails due to the voluntarist premise (2). While Nagel states something close to (2) in his argument,[447] he does not discuss in detail how voluntary and nonvoluntary schemes impinge on the autonomy of their participants in distinct and morally significant ways. To support premise (2), Nagel must explain in virtue of what consideration nonvoluntary relations are morally problematic in a way that voluntary arrangements are not. Sangiovanni attempts the following explanation on Nagel's behalf:

> Say that you feel disadvantaged by a set of norms and regulations set by a voluntary association, and you demand a justification. Because you have an eligible option to leave the association, we say that the standards for justifying the rules need not be as stringent as a nonvoluntary association. When you have viable options that are not excessively burdensome, 'love it or leave it' is a reasonable reply. If a nonvoluntary organization imposes a disadvantage on you, things look very different. Because you have no viable alternative to compliance, the disadvantage must receive a special and more stringent justification, precisely given your lack of alternatives.[448]

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[446] Cohen & Sabel (2006); Julius (2006); Sangiovanni (2007).

[447] E.g.: "What is the characteristic in virtue of which they [non-coercive participation in institutional structures] create obligations of justice and presumptions in favor of equal consideration for all those individuals? If the default really is a basic humanitarianism, permitting voluntary interaction for the pursuit of common interests, then something more is needed to move us up toward the higher standard of equal consideration. It will not emerge merely from cooperation and the conventions that make cooperation possible" (p. 142). See also Cohen & Sabel (2006, pp. 161-4).

[448] Sangiovanni (2007, pp. 17-8).

This defence expresses a popular understanding of the different moral standings of voluntary and nonvoluntary relations, one which treats the moral acceptability of an association as a function of its exit costs.

An initial objection to this outlook is that it underestimates the depth of value that individuals can accord to their voluntary associations, such that an appeal to excessively burdensome options ultimately undermines the distinction it is employed to support.[449] The disadvantages imposed through a nonvoluntary organisation supposedly carry special moral weight because of the lack of viable, nonburdensome alternatives. Yet, while one may have viable options with respect to a voluntary organisation, the nature of the burden of withdrawing from such organisations is significantly underestimated by the voluntarist position. For example, Sangiovanni frequently uses a tennis club as an example of a voluntary association that does not impose on its members' wills in the same way as a nonvoluntary state. But imagine a tennis club that functions as the primary social hub for a given town. Membership in the club provides key social capital: friendships, networking opportunities, social standing, etc. If such a club were to adopt a new policy charging a higher rate for those of a particular religious orientation, or for those with lower incomes, it is not merely callous, but straight-forwardly false to say that such a practice is not as morally problematic as it could be, in virtue of the fact that membership is voluntary.[450]

The burdens of leaving a voluntary association that are evident when that association is valued instrumentally for some other good—e.g. the tennis club valued not only for tennis but also for the opportunities to network—are

[449] As Sangiovanni himself would agree, as he believes "the 'voluntarist' turn in the global justice debates is a dead end" (p. 19). However, Sangiovanni still defends a statist position, and does not articulate, as I do here, Nagel's implicit claim that voluntary relations are morally unproblematic.

[450] In fact, this is often the case put forward by businesswomen who opt out of joining their male colleagues at sporting events or "gentlemen's" clubs, which are voluntary activities, and yet in doing so lose out on key opportunities to network and gain promotion.

increased when membership has an intrinsic value. 'Love it or leave it' is not a genuine option for committed Catholics who hold deep reservations over the Church's stance on gays or women. Nor is it an adequate response to members of an environmental cooperative who discover their fellow cooperative members have been buying factory farmed eggs, or to members of a human rights NGO who disagree strongly with the organisation's decision not to act on a particular rights violation. In such cases, the presence of viable options for exit is, to a large degree, immaterial to the reason why an individual may seek a justification for decisions or practices she objects to within a voluntary association. In fact, these circumstances raise the question as to how to determine the set of options a person has with respect to her membership within a given association. While the Catholic has other options for religious practice and the NGO members have options with respect to NGOs they can support or human rights campaigns they can participate in, both might reasonably claim that the *intrinsic* value of being a Catholic, with its concomitant rituals, or of being a member of a particular NGO with which they have a shared history or identity, is unrivalled.

This objection may only serve to broaden the category of what we would consider "nonvoluntary" relations, if we tie that category to the presence or absence of excessively burdensome options. Or, more likely, it indicates an approach that admits of degrees when it comes to the stringency of moral requirements, based on a scale of varying degrees of nonvoluntariness. As indicated in the quote above ("the standards for justifying the rules need not be *as stringent* as a nonvoluntary association"), Sangiovanni would agree; he views a scale of varying stringency as a natural conclusion of any approach that identifies exit costs as the trigger for further moral requirements. At most, he says, the voluntary/nonvoluntary distinction yields a pluralist account of moral requirements organised along a spectrum in which "...the more

significant the costs of exit, the more stringent the justice norms which should apply."[451]

But Sangiovanni's weaker claim here, which admits of degrees, would not satisfy Nagel, who believes that either we have obligations of justice, or we must meet only a minimum humanitarian morality. Indeed, Nagel considers the possibility of a "'continuous' sliding scale of requirements of justice" that depends not on exit costs, but "on a scale of degrees of collective engagement."[452] He rejects this, however, on the basis that a continuous account of requirements of justice is in want of a plausible moral basis.[453] So Sangiovanni's appeal to exit costs cannot be the correct understanding of the involvement of the will thesis; something more than the lack of viable options must characterise the moral significance of the nonvoluntary involvement of the will in order to support Nagel's dualist, not pluralist, premise (2).

I turn now instead to what I argue is Nagel's actual understanding of the moral significance of the nonvoluntary relations between the state and its citizens. While Sangiovanni's explanation demonstrates that an appeal to exit costs is too weak to support his dualist premise (2), it does not offer a positive argument against Nagel that gives an account of how voluntary relations can trigger special demands for justification.[454] Nor does it address what I will argue is the basic confusion regarding the relationship between state institutions and justice at the heart of Nagel's argument.

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[451] Sangiovanni (2007, pp. 18-9).
[452] Nagel (2005, p 142).
[453] Ibid. (pp. 142-3); Cohen & Sabel (2006, pp. 161-4).
[454] Sangiovanni (2007, pp. 10-19).

4.1.3 Confusing Legitimacy with Justice

Sangiovanni discards Nagel's notion of authorship as the explanation for how states engage specially with the wills of their citizens because he does not think it sufficiently sets states apart from voluntary associations, whose members also serve as authors of their by-laws and decisions. As we saw above, Sangiovanni's own explanation, based on the lack of viable options available to subjects of nonvoluntary relations, also fails to yield a firm distinction in kind between states and non-states.

The accurate reading of Nagel's argument, I believe, involves both considerations. Nagel clearly rejects the idea that it is the nonvoluntary nature of our membership in a state that alone grounds principles of justice, since it is this idea that cosmopolitans use to draw an analogy between state membership and other nonvoluntary aspects of our lives, such as race or gender. Distributive justice is contingent on nonvoluntary association with others, Nagel says, but what matters for *grounding* demands of justice is not the lack of options that characterises such associations, but *what* we are being nonvoluntarily engaged in.

For Nagel, what we are nonvoluntarily engaged in as citizens is respect for, and obedience to, state authority and its laws. Authorship, then, *is* relevant to the distinction between state and non-state associations, as the authorship exercised by citizens arises through the acceptance of obligations created for them by state authority; in other words, the authorship that grounds demands of justice is a product of legitimate rule:

> Justice, on the political conception, requires a collectively imposed social framework, enacted in the name of all those governed by it, and aspiring to command their acceptance of its authority even when they disagree with the substance of its decisions. Justice applies, in other words, only to a form of organization that claims political legitimacy and the right to impose decisions by force, and not to a voluntary association or

contract among independent parties concerned to advance their common interests.[455]

Nagel, like Rawls, adopts a Kantian approach to political legitimacy, which "offer[s] a justification of the state's right legitimately to use force under certain circumstances, and then offer[s] a justification of the state's general powers to change its subjects' normative situation that makes essential reference to this prior right."[456] Legitimacy pertains to the justification of state coercion, which, if successfully achieved, establishes the state's authority, or, 'right to rule.' Importantly, Nagel conceives of the state's right to rule as a claim-right, implying that legitimate authority entails a corresponding *pro tanto* obligation held by individuals under that authority.[457] It is this entailed obligation that seems to form the basis for Nagel's views on the grounds of justice.

The reason coercive institutions require a special moral justification is not merely because their membership is nonvoluntary, and nonvoluntary arrangements impose significant exit costs. They require a special moral justification because, in order to justifiably exercise coercion, the state must act legitimately, and if it does so, then its subjects are enjoined to "obey" and "actively cooperate" with them. To borrow Joseph Raz's (1986) oft-repeated phrasing, the state's legitimate political authority alters the normative situation of its subjects,[458] and this is what Nagel is referencing when he speaks of the special engagement of the will that serves as the trigger for obligations of justice.

For Nagel, since we can never actually consent to our membership in a particular state, the idea is to show that such institutions *could* be justified to

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[455] Nagel (2005, p. 140).
[456] Perry (2007, p. 1, ff). See Nagel (1991, chp. 4) and Simmons (1999) discussion of Nagel's views on legitimacy.
[457] Nagel (1991, p. 35).
[458] Raz (1986, pp. 23-5). See also Applbaum (2010).

reasonable individuals.[459] In order to meet such a standard of hypothetical justification, at minimum state institutions must be based on an equal consideration to the interests of those obligated by them. Egalitarian justice, then, provides the necessary justification that allows us to truly see ourselves as shared authors of state authority instead of as its captives.

Nagel thinks that equal consideration as a form of justification demarcates the state as the sole grounds for justice because this justification is sought only on the basis that members of a political society cannot consent to their membership. For members of voluntary relations, consent is already present. Therefore, Nagel might reason, *contra* the state, that there is no need for any further justification of voluntary relations, since our consent removes the need for such justification. The only relations that require further justification, and thus trigger moral requirements beyond basic humanitarianism (i.e. justice), are those which are nonvoluntary, namely, the relations shared by co-citizens. If it is true that consent removes the need for special justification such as equal consideration in the context of voluntary associations, then this may explain why Nagel thinks that legitimate authority, which is necessitated only by non-consensual membership, provides exclusive grounds for the demands of justice.

On Nagel's view, the acquisition of a special obligation via voluntary association operates in the same way as a promise: I consent to meeting you at 4:00 on Tuesday, and thereby obligate myself to do so. The reason we do not need an account of obligation or moral requirement for voluntary associations is that any obligations that apply to them are exhausted by the terms that establish the association. By consenting to joining a tennis club, or to becoming your friend, or to paying membership dues to Amnesty International, I promise to conduct myself according to the terms of those

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[459] Nagel (1991, p. 33); Simmons (1999, pp. 756-62).

associations, whatever they may be. I am obligated to conduct myself in that fashion insofar as I have given my word to do so and ought to keep it.[460] But I do not have any further obligations above and beyond this: as Nagel says, further moral requirements (e.g. requirements of justice) cannot "emerge merely from cooperation and the conventions that make cooperation possible."[461] The norms and obligations regulating cooperative associations are "exhausted by the terms of their agreement... [and are] ...not independently norm-generating."[462]

But members of a shared voluntary association *can* demand further justification from one another, and can acquire obligations to one another, in a way that goes beyond the terms of their voluntary interactions. Nagel's picture of associational obligations misrepresents the value that people accord to voluntary associations and therefore ignores how this value can generate obligations in a manner that does not appeal to promise-making. Voluntary associations are constituted by coordinated activities organised around a collectively shared goal, ideal, or belief. These activities are possible only if members of the association feel justified in forming certain expectations about the actions and beliefs of one another. One way to justify your expectation that Ann will perform a certain action is if she makes a promise to do so. But another way to justify your expectation is if Ann merely states her intention to perform a certain action. In the context of your coordinated interaction, Ann's statement of intention operates as an obligation-triggering commitment, because Ann is aware that you are engaged in a joint activity with her and that you will form expectations regarding her behaviour based on her stated intentions. Talbot Brewer has argued that in such associative contexts, the

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[460] Brewer (2003).
[461] Nagel (2005, p. 143).
[462] Cohen & Sabel (2006, p. 158) describing Nagel's view.

expression of intention—an "internalist"[463] commitment—grounds an obligation—"externalist"[464] commitment—in two ways:

> The first sense is that when we act on them [intentions/internalist commitments], we make possible a kind of cooperative activity or relationship that would otherwise be impossible, and in a healthy association these cooperative activities or relationships are valuable to others. The second sense is that if we occasionally stray from the shared principles, ideals or values that structure some association, this strains the trust on which associations depend by giving associates a reason to doubt each others' sincerity or moral seriousness. Our deviations tinker with the life stories of our associates, casting doubt on whether our shared activities really do answer, and have answered, to the description under which our associates find them worthwhile.[465]

A number of our most important associations—friendship, religious affiliation, marriage—do not generate their obligations via the terms of a contract, as the object of a promise, but as an expression of shared intention or a commitment to core values and ideals which others rely upon as part of the fabric of their life plans. While some voluntary associations may not generate expectations, or demands, of egalitarian justice, others might, depending on the principles and values around which they are defined. Labour unions, pro-poor cooperatives, and fair trade associations committed to an ethos of egalitarianism are each examples of voluntary associations that can trigger demands for internal distributive justice as necessary for answering to the description under which their members find them worthwhile. Fair trade associations that use a 100 : 1 as their executive to farmer pay ratio or a pro-poor cooperative that does not distribute its earnings in a manner justifiable to all who contributed to creating them are associations that have violated the obligations they generated when they identified themselves by values of

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[463] Brewer (2003, p. 562).
[464] Ibid.
[465] Ibid. (p. 574). Interestingly, Brewer thinks that the obligations generated via political association are also better understood in terms of expressed commitment to shared ideals.

equality, economic empowerment, and social justice. As discussed in the previous chapter (3.4), NGOs elicit collaborations that compel them to be consistent with the values they espouse, as these values are what make those collaborations worthwhile for the other parties involved. Thus, voluntary associations can generate new obligations if those obligations are necessary for delivering on the commitments that make their activities possible in the first instance.

In sum, Nagel's main argument for restricting the domain of justice to state institutions fails in two main respects. First, the exit costs reading of his argument undermines his conclusion, since the exit costs for withdrawing from institutions of global governance are comparable to those associated with state citizenship. In contrast to the dualist position Nagel attempts to defend, this exit costs reading supports the view that there is a plurality of moral requirements we acquire through our membership in different institutions and organisations. Second, Nagel's attempt to link justice exclusively to legitimate institutions rests, in part, on the claim that voluntary associations can generate no additional obligations beyond those elicited by the promises members make to one another, and this claim, I argued, is false.

There is, however, a third possible reading of Nagel's argument that, while still problematic, suggests a strategy through which his conclusion can be justified. Nagel is seeking the grounds for demands of justice, yet at certain points he seems to confuse this task with the identification of the means necessary for practically achieving or implementing justice. Rather than argue that coercive, obligation-imposing institutions are the normative grounds for justice, Nagel might claim that such institutions are necessary for justice, in the sense that only they meet certain operational, logistical, or justificatory requirements for the fulfilment of principles of justice. He hints at this idea earlier in his article:

> "What creates the link between justice and sovereignty is something common to a wide range of conceptions of justice: they all depend on

the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force."[466]

While Nagel moves on to argue that the state's monopoly of force is the unique grounds for justice, this comment here suggests a different, more indirect relationship: practically speaking, justice requires the large-scale coordination of many people, and this kind of coordination can be achieved only through the exercise of a monopoly of force. The state may indeed be the grounds for relations of justice if it can be shown that it constitutes or monopolises the necessary and sufficient means for realising justice. The connection between states and justice, on this reading, is indirect, running through an account of what is necessary for achieving justice and what abilities the state uniquely possesses with respect to that task.

In order for this strategy to work, however, Nagel would need an account of how the means for satisfying a moral requirement can be used to settle the scope of that requirement, as well as an argument supporting the claim that only the state provides the necessary means for justice. I turn now to such an account offered by Saladin Meckled-Garcia.

4.2 Agent-capacities

If justice is to be restricted to the state, statists such as Nagel require an account of what is unique about the state that would justify this restriction. Several formulations of Nagel's "involvement of the will" thesis failed to provide this justification. In this section and the next, we consider a new

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[466] Nagel (2005, p. 115).

strategy, in which justice is state-based in light of the claim that only state institutions possess the requisite abilities to deliver on the demands of justice.

4.2.1 Introducing agential capacity

Several recent discussions of Rawlsian statism[467] have drawn attention to the way in which it is supported by considerations embedded within the method of moral constructivism itself.[468] Saladin Meckled-Garcia's (2008) particular contribution to this strategy stands out for targeting the notions closest to the heart of the constructivist method: agency and agential capacity.

Agency plays a central role in constructivist accounts of moral reasoning. Constructivist methodology is occupied with explaining how moral principles can be arrived at through an argument (the 'constructive procedure') that is grounded in a consideration of a type of interaction or practical standpoint. One of its main motivating ideas is that the function of moral reasoning is to guide action, which it can perform only if it is appropriately sensitive to the standpoint of a moral decision-maker, i.e. a moral agent. Therefore it is a necessary condition for a moral principle that it identify *for whom* it is a directive.[469] Directives that merely specify a desirable end or state of affairs

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[467] Rawlsian statism refers generally to those who support Rawls' theory of international justice outlined in (1999) *A Law of Peoples*. This theory is characterized by taking nation-states (or, "peoples" as Rawls prefers) as the basic units in considerations of international justice, and by holding that domestic governments are largely responsible for their own socio-economic development. While there are international principles of humanitarian assistance to help other societies when they fall below a minimum subsistence level, the difference principle, Rawls' key principle of distributive justice, only applies domestically.

[468] See, for example: Meckled-Garcia (2008); James (2005); Sangiovanni (2007; 2008). Insofar as cosmopolitans admit no difference in method between theories of domestic versus global justice, if this line of argument is successful, it could have serious implications for the viability of cosmopolitan theories of justice. If it can be shown that the constructivist method cannot support principles of justice of an international scope, this would supposedly place an added burden on cosmopolitans to outline an alternative method for identifying and defending principles of justice.

[469] Meckled-Garcia (2008, p. 246).

without identifying an agent responsible for realizing that goal fail to operate as actual moral principles on the constructivist view.

In connection to this, constructivists also hold the view that "the correct regulative principle for a thing depends on the nature of that thing,"[470] implying that different moral spheres (e.g. agents, practices, interactional problems, institutions) can require different moral principles. For example, the development of principles that identify parental obligations begins with a consideration of the goods and the range of actions available within a parent-child relationship. The international responsibilities of states, in contrast, are constructed with an eye to the goods and activities that constitute international relations. Constructivists, in other words, are pluralists with respect to moral requirement.

Meckled-Garcia refers to this feature of constructivism as "domain-restriction,"[471] and explains how it makes an analysis of agency integral to the construction of a moral principle:

> The fundamental idea behind differentiating spheres and agents is that moral principles express specific values discoverable in different domains of human relationship. They do so by defining the morally appropriate behaviour of an agent in a domain. [...] What gives focus to these considerations of value expressed by a principle for the distribution of benefits and burdens, is precisely the powers an agent has to effect such a distribution. These we can call an agent's 'moral powers'. They combine a consideration of what an agent should be expected to do and what they are capable of doing in respect of such a distribution. This supports the differentiating approach because, plausibly, different agents have different moral powers, and are consequently bound by different primary principles.[472]

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[470] Rawls (1971, p. 25).
[471] Meckled-Garcia (2008, p. 246).
[472] Ibid. (p. 250).

I will refrain here from a more detailed discussion of the method of moral constructivism, as the aim is to focus on the work being done by the notion of agential capacity. While he uses the phrase "moral power" in the above excerpt, Meckled-Garcia later replaces this, or uses it interchangeably with, the term "capacity."[473] According to Meckled-Garcia's extrapolation of constructivism, a moral principle regulates a domain of activity by embodying the value(s) appropriate to that activity. These values are determined by two considerations: 1) a consideration of the kind of benefits and burdens being distributed by the activity, 2) the capacities of the agents involved to effect a certain distribution. Because they hold that the function of a moral principle is to guide activity, constructivists are committed to the "ought implies can principle": an agent cannot be held morally responsible for an action which she cannot reasonably perform.[474] The "crucial"[475] role of agency, then, is to guarantee that a constructed principle will not violate the ought implies can principle, by bringing considerations of what an agent can do into the process of working out a principle's content and scope.

The use of agency to settle questions of domain restriction provides a way to solve the challenge unanswered by Nagel's argument: how to link the means for justice to the grounds of justice. Agent-capacities are the morally relevant aspect of agency needed to identify the appropriate agents for a particular principle. If we identify the capacities required of an agent to fulfil the duties issued by a principle of justice, then we can use that account to assess whether a particular institution or individual should be held responsible for meeting those duties as an agent of justice. The grounds of justice are established through a consideration of which agents have the means, or capacities, to deliver it. Meckled-Garcia's particular diagnosis is identical to Nagel's: only

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[473] While he attributes the term to Rawls, Meckled-Garcia's definition of a moral power differs significantly (2008, p. 249, ff). Cf. Rawls (1993, pp. 18-9; 104).
[474] See, for example: O'Neill (1996, chps. 1-3).
[475] Meckled-Garcia (2008, p. 251).

authoritative state institutions operating domestically have the necessary and sufficient capacities to effect the relevant distribution of benefits and burdens governed by a principle of justice. Therefore, principles of justice are bounded doubly by state borders and by the outer limits of state legal and political institutions. The relations of compatriots are the only grounds for justice. I turn now to a brief discussion of Meckled-Garcia's argument, through which we can develop a better idea of the notion of agential capacity.

4.2.2 Assessing the capacity for justice: Meckled-Garcia's statism

4.2.2.1 The overall argument

Meckled-Garcia defines the moral powers of an agent of justice as the ability to continuously effect an appropriate distribution of benefits and burdens for all members of a cooperative system.[476] The essential challenge to maintaining such a distribution over time is the accumulation of private choices and interactions that impact individuals' life prospects, creating unjustifiable inequalities. In order to avoid these inequalities and "secure justice for those citizens"[477], an agent of justice must be capable of making continual adjustments to the overall distribution.

According to Meckled-Garcia, individuals and private organisations, such as schools or universities, lack this ability in the domain of domestic justice, and international and state institutions lack this ability in the domain of global justice. He concludes that the only agents that possess the requisite moral powers for distributive justice are state institutions operating with respect to domestic distributions. This means that the relevant agents necessary for fulfilling principles of global justice cannot be identified, since no agents

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[476] Ibid. (p. 253).
[477] Ibid.

possessing the necessary moral powers for global justice exist. Cosmopolitan principles of justice fail to identify a relevant agent and are to be rejected on the grounds that they are "incomplete."[478]

Meckled-Garcia supports these conclusions by arguing that non-state actors (IGOs as well as NGOs) fail to qualify as agents of justice for three reasons: 1) they do not have the knowledge necessary for preserving a pattern of distribution over time, 2) they do not have the capacity to control the actions of others in affecting the distribution, and 3) it would be unreasonable to expect these actors to acquire the abilities identified in (1) and (2).

4.2.2.2 The domestic domain: states as solitary agents of justice

In the domestic case, individuals and private organisations cannot predict the long-term consequences of their contributions towards decreasing inequality, nor can they calculate the total effect on burdens and benefits that their isolated action may have.[479] Here, Meckled-Garcia is repeating a familiar point of Rawls': individuals and private organisations only have epistemic access to "local circumstances."[480] Therefore, they are not in a position to determine the justness or fairness of their decisions and agreements. As Rawls argues, "It is obviously not sensible to impose on parents (as heads of families) the duty to adjust their own bequests to what they estimate the effects of the totality of actual bequests will be on the next generation, much less beyond."[481] Only a position from which the entire distribution and its long-term effects can be assessed, a position available to parties setting the background rules and conditions against which individuals interact, can meet the epistemic requirements for accomplishing a just distribution.

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[478] Meckled-Garcia (2008, p. 267).
[479] Ibid. (p. 256).
[480] Rawls (1993, pp. 266-7).
[481] Ibid. (p. 268).

The challenges that individuals and private organisations face in exercising the abilities described in (1) are magnified by their lack of capacity with respect to (2). A major contribution to the epistemic deficit faced by non-state agents is their inability to control what others within the system are doing to affect the distribution. Ann cannot predict the long-term justice-relevant consequences of her donation to a disadvantaged group because she cannot control the actions of those within that group. Its members may use the donation to economically dominate others by, for example, converting the long-term consequences of her donation from a contribution to justice into a contribution to injustice.[482]

While he does not discuss NGOs specifically, the challenges Meckled-Garcia highlights for individuals and private organisations attempting to meet the demands of justice echo familiar problems associated with the practices of humanitarian and human rights NGOs. Projects intended to improve the circumstances of a disadvantaged population can end up worsening those circumstances by funnelling money to corrupt regimes or supplying food and other aid to violent militias.[483] Even in cases where corruption and violent conflict are not an issue, many human rights NGOs have struggled with the experience of promoting the rights of a minority group only to find that another rights deficit (e.g. the rights of women) within that group either remains unchanged or is exacerbated.[484] In line with Meckled-Garcia's analysis, these problems are often attributed to the limited information NGOs possess regarding the long-term implications of their projects and their inability to control the actions of those around them, including those targeted by their aid.

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[482] Meckled-Garcia (2008, p. 256).
[483] Uvin (1998); Anderson (1999); Riddell (2007, p. 172); T. MacDonald (2008, chp. 3).
[484] Gledhill (2009); Cleaver (2009).

Meckled-Garcia's third reason for excluding individuals and private organisations as agents of justice does not extend so easily to NGOs. He argues that it would be unreasonable to expect individuals to develop the capacities necessary for maintaining just distributive patterns over time because continually adjusting for changes in distributions would divert their attention away from their other responsibilities as family members, employees, or citizens. Similarly, requiring universities or museums to act as agents of justice would direct them away from their primary functions as educational and cultural institutions.

This concern does not seem to hold in the same manner for NGOs, as many of these organisations define themselves around a contribution to the aims of social justice. It seems more reasonable, therefore, to expect NGOs to develop the necessary epistemic and regulatory capacities to acquire the responsibility for securing justice. Yet, the kind of justice at issue here—distributive justice—is broader and more wide-scale than the social justice goals pursued by many NGOs. Moreover, the duties Meckled-Garcia has in mind are perfect duties: duties which constrain an agent to acting in specific ways and fulfilling specific tasks. If we were to expect NGOs to conform to these duties the result would be to require NGOs to allocate resources in a particular manner, regardless of the other commitments by which they define themselves.[485] The concomitant obligations of justice would likely prevent NGOs from pursuing other, non-distribution-related social justice goals considered to be as fundamental to their identity as good curation is to the identity of a museum.

Individuals and private organisations have the ability to significantly influence overall distributions through an accumulation of private transactions and activities. But Meckled-Garcia, following Rawls, argues that this "horizontal

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[485] In other words, the results would be similar to those discussed in the previous chapter with respect to Pogge's (ABCD*) principle. I discuss how NGOs can have obligations with respect to resource allocation that are more sensitive to their commitments in 4.3.

impact"[486] is distinct from the ability to continually adjust over time for the distributive disruptions resulting from that impact.[487] This latter task, of correcting for unintended inequalities, is constituted in the setting of "background conditions"[488] for free and fair transactions, and reaches beyond the capacities of individuals and private organisations insofar as it requires the ability to alter the social rules bearing on individuals' life prospects and on the fairness of their private agreements.[489] In order to set background conditions, an agent of justice must be able to, among other things, establish rules for property ownership and control access to education and health services. Meckled-Garcia contends that an agent can perform these tasks only if it meets *"the authority condition"*: possession of the capacity to allocate rights and duties to individuals within a cooperative system.[490] Only authoritative state institutions, with the concomitant public system of law, can meet the authority condition and thereby fulfil the duties described by a principle of justice.[491] This is because, as Rawls states, "there are no feasible and practicable rules that it is sensible to impose on individuals that can prevent the erosion of background justice...the rules governing agreements and individual transactions cannot be too complex, or require too much information to be correctly applied..."[492] They are therefore the only relevant agents of justice identifiable in the domestic domain.

4.2.2.3 *The global domain: the absence of agents of justice*

While state institutions meet the authority condition domestically, Meckled-Garcia argues that neither they nor any other institutional agent does so with respect to international distributions. In the international sphere, there is a

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[486] Meckled-Garcia (2008, p.257).
[487] Ibid. (p.253).
[488] Ibid. (p.257).
[489] Rawls (1993, pp. 266-8).
[490] Meckled-Garcia (2008, p.257).
[491] Ibid. (pp. 256-7).
[492] Rawls (1993, p. 267).

plethora of actors that operate in ways that have far-reaching and serious effects on individuals' life prospects. These include not only states themselves, but major intergovernmental institutions such as the United Nations and World Trade Organization, as well as transnational corporations and INGOs. As with individuals in the domestic sphere, Meckled-Garcia concedes that these actors are capable of deep horizontal impact through their isolated activities and policies. However, none of these actors has the ability to allocate rights and duties internationally; even states only satisfy the authority condition with respect to their own people and cannot assign rights and duties to those outside their borders. For this reason, Meckled-Garcia argues, there is no comparable "basic structure," or set of agents possessing the capacity for justice at the international level.[493]

A cosmopolitan might reply to this by insisting that principles of justice may operate internationally in lieu of a centralised authority if we hold states responsible for their fulfilment. On this suggestion, the horizontal impact of state agreements and practices can be evaluated according to how closely it approximates a just distribution, and states can be held responsible either for their own negative horizontal impact, or for doing their fair share to correct the overall accumulation of distributional unfairness over time.[494]

But Meckled-Garcia rejects this reply, for the same reasons that he finds it unreasonable to treat individuals and private organisations as agents of justice in the domestic case. States lack the knowledge necessary for achieving a just global distribution (reason (1)) insofar as they are unable to predict the long-term consequences of their economic policies on the life prospects of others. Encouraging a particular import from a developing country or adopting a tax on currency trades could, in the long-run, have a disastrous economic effect

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[493] Meckled-Garcia (2008, pp. 261-3).
[494] Ibid. (p.263).

that would ultimately lead to a less fair distribution.[495] These epistemic problems are fuelled by the fundamental lack of control that states have with respect to the complex social, political and economic factors that converge to affect a given population's life prospects (reason (2)). Ultimately, regulations are the best that states can do to control the consequences of the international market, and these are not sufficient for maintaining a just distribution over time.[496] In order to correct for the accumulated effects of private transactions, states must have the authority to control "prices, exchange rates (the strength of each currency), capital flows and investment, which sectors of the economy get developed, speed of development, property ownership regimes, and employment patterns."[497] Given that they lack this authority outside their borders, states do not have the necessary capacities to be held responsible for securing global distributive justice. Meckled-Garcia concludes that since neither of the options necessary for completing cosmopolitan principles of justice is workable— neither non-state international actors that satisfy the authority condition, nor states that satisfy the authority condition globally— these principles fail to offer a robust alternative to statism.

4.2.3 An alternative perspective on capacity: O'Neill and agents of justice

Meckled-Garcia's comparative analysis of agent-capacities yields a firm distinction between states and non-states as two distinct types of agency with

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[495] Ibid. (p. 266).

[496] One might say that, while states cannot maintain a *perfectly* just distribution via international regulation, they could at least make the global distribution of basic goods *less* unjust. As a reflection of how he views capacities for justice in terms of kind rather than degree, Meckled-Garcia does not fully engage this possibility. After raising the possible cosmopolitan reply that states could work to make the horizontal impact of their actions more just, he only re-states his assertion that, in this context, states still cannot assign rights or duties and would, therefore, have to rely on identifying and following better sets of rules and regulations, a task that he thinks is unlikely to produce reliably just distributions (pp. 263-7).

[497] Meckled-Garcia 2008, p.265.

distinct sets of responsibilities. Yet, as I will argue, he offers no explanation for why agential capacity—what an agent can do and can be expected to do— issues distinctions in *kind* instead of *degree*. In 4.2.4 I will show how current understandings of agential capacity conflate two distinct types of powers, or, more concretely, make two distinct types of claim about an agent. In order to illustrate how this problem is endemic to the concept of agential capacity, we will examine Onora O'Neill's more pluralist assessment of the agency required for justice. Comparing O'Neill's view to Meckled-Garcia's illustrates the ambiguity of agent capacity, as each reach divergent conclusions regarding the suitability of NGOs as agents of justice despite appealing to the same constructivist notion of agential capacity.

Like Meckled-Garcia, O'Neill (2001; 2005) has criticised cosmopolitan theories of justice as being incomplete, on the grounds that they do not yield specific obligations or identify specific duty-bearers. She also urges an attendance to obligation and obligation-bearing agents as the "active aspects of justice,"[498] claiming that an adequate moral principle must at the very least take into account the distinctive capacities and vulnerabilities an agent possesses with respect to justice. Principles that fail to do so, O'Neill says, "will be no more than gesture."[499]

Yet, in contrast to Meckled-Garcia, O'Neill thinks that an agent-centred, obligation-focused approach to justice will point away from statism and toward a more pluralist account of the agents responsible for justice. She draws on Amartya Sen's notion of capability to provide a means for identifying these agents and their obligations:

> From the point of view of achieving justice—however we conceptualise it—agents and agencies must dispose not only of capacities which they could deploy if circumstances were

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[498] O'Neill 2001, p.185.
[499] Ibid. (p. 189).

> favourable, but of capabilities, that is to say, of *specific, effectively resourced capacities which they can deploy in actual circumstances*. Capabilities are to capacities or abilities as effective demand is to demand: it is the specific capabilities of agents and agencies in specific situations, rather than their abstract capacities or their aggregate power, that are relevant to determining which obligations of justice they can hold and discharge – and which they will be unable to discharge.[500]

O'Neill's assessment emphasises the distinction between the potentiality of an agent and that agent's option set for concrete action. Where constructivists such as Meckled-Garcia think moral reasoning needs to be realistic about agents' capacities to effect a given distribution, O'Neill pushes even further, demanding a sensitivity to the practical conditions in which agents act and seeking "a *seriously realistic starting point for normative reasoning*."[501] It is not enough that an agent have the capacity to meet the demands of justice, for the same reason that having the capacity to learn French will not get me very far on the streets of Paris if I have not actually studied the language. Capacities describe the abstract abilities of an agent—the realm of possible activities or skills available to us—whereas capabilities describe what a given agent can actually do in a given situation.[502] In the absence of favourable conditions or real opportunities, one's capacities can "lie barren,"[503] with the agent unable (i.e. lacking the capability) to engage in a given activity. Someone may have the capacity to work as an agricultural labourer, O'Neill says, but lack the capability to do so if the "social and economic structure"[504] in which she lives

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[500] Ibid.

[501] Ibid. emphasis is O'Neill's.

[502] Sen (1999). The distinction to which O'Neill refers may be closer to Sen's distinction between a "capability" and a "functioning," rather than between a "capacity" and a "capability." I use the second pair of terms, because this has been the terminology primarily adopted by the literature on institutional and organisational abilities with respect to bearing obligations of justice. See: Green (2005); Kuper (2005). As discussed in chapter 1, Seckinelgin (2006, p. 720), uses similar terminology in discussing what NGOs are able to do as actors: "The analysis of NGO capabilities needs to be located within social processes implicit in multiple institutionalised settings that differently frame NGO identity and agency."

[503] O'Neill (2001, p. 189).

[504] Ibid.

does not support or provide this opportunity. Similarly, an institution may have the abstract capacity to direct the distribution of a large amount of goods, yet lack the capability to do so in hostile environments that prevent that agent from using that capacity effectively. Capabilities make moral requirements practicable for real agents, operating as the mechanism through which the values specified within a moral requirement can be realised in the world.

While her emphasis on capabilities over general capacities lends her account a greater sensitivity to context, O'Neill's application of this concept in identifying agents of justice and their obligations bears a key similarity to Meckled-Garcia's. O'Neill distinguishes between "primary" and "secondary" agents of justice, defining the former as those that have the capacity to assign roles and capacities to other agents, to coerce, and to coordinate amongst agencies.[505] In theory, an individual may have this capacity (for example, the chief within a tribal system of law), yet in our world, states operate as the most viable candidates for primary agency.[506]

However, O'Neill argues that non-state actors, such as INGOs and TNCs, may play a key role as secondary agents of justice, and that, depending on the political context in which they act, this role can increase greatly in importance.[507] This is where the distinction between capacity and capability becomes particularly salient for assigning obligations of justice in O'Neill's view. In good circumstances, secondary agents of justice are obliged to follow the requirements and rules issued by primary agents who, presumably, define their required contributions to justice. But there are also contexts in which states fail to serve as strong primary agents of justice, namely those involving *rogue* states that actively pursue injustice or *dependent* states that lack the

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[505] O'Neill (2001, p. 181).
[506] Ibid. (pp. 181-2).
[507] Ibid. (p. 190).

resources or ability to function properly as a state. In such cases, the typical capacity of the state is not effectively translated into the capabilities needed to uphold principles of justice:

> When states fail as agents of justice, the problem is not, therefore, simply a general lack of power. It is rather a lack of a specific range of capabilities that are needed for the delivery of justice – and specifically for the coordination, let alone enforcement, of action and obligations by other agents and agencies.[508]

In these cases, secondary agents may contribute to justice by supporting and assisting state institutions to become better primary agents, by either lobbying them or helping them to develop the necessary capabilities. INGOs are clear candidates for operating as secondary agents of justice because, O'Neill says, their *raison d´être* is to alter the operations of state institutions to support a more just society.

O'Neill's view is mixed on the possibility of INGOs, or any typically-secondary agents of justice, acting as primary agents. Secondary agents may take on significantly greater responsibilities for justice within weak or failed states, but they lack the capacity to coerce or assign duties that O'Neill considers to be fundamental to primary agency. Instead, INGOs can engage in other important justice-related activities, such as advocacy or funding good governance reforms. The capabilities of any particular INGO will be determined largely by the specific political context in which they operate; in weaker states, an INGO's contributions to justice will carry much greater significance than in strong, stable states. Ultimately, however, O'Neill seems to conceive of the principal aim of secondary agents as providing support to the improved long-term functioning of state institutions. While they can be

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[508] Ibid.

vital in assisting or reforming failed states, INGOs "cannot themselves become primary agents of justice."[509]

And yet, despite her claim that INGOs cannot operate as primary agents of justice, even in cases of failed states, her concluding comments suggest that in those cases the distinction between primary and secondary agency may be a moot point:

> In the end, it seems to me, any firm distinction between primary and secondary agents has a place only where there are powerful and relatively just states ... once we look at the realities of life where states are weak, any simple division between primary and secondary agents of justice blurs. Justice has to be built by a diversity of agents and agencies that possess and lack varying ranges of capabilities, and that can contribute to justice—or to injustice—in more diverse ways than is generally acknowledged...[510]

Several authors sympathetic to cosmopolitanism have developed O'Neill's idea into a capacity- or capability-based approach to assigning responsibilities for global justice.[511] For the sake of clarity, I will primarily use the term "capacity" in reference to these views—indicating where necessary O'Neill's more specific notion of capability—until the end of this chapter where the value of distinguishing between capacity and capability is made clearer.

Cosmopolitanism is sometimes targeted by an over-demandingness objection on the basis that it demands states of affairs that require large collective action to achieve, without offering a clear, nonarbitrary way of assigning feasible obligations to individuals that, if successfully fulfilled, will reliably lead to the achievement of global justice.[512] If ought implies can, this objection goes, then

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[509] Ibid. (pp. 191-2).
[510] Ibid. (p. 194).
[511] See, for example: Wenar (2007); Green (2005); Pogge (2005b); Fuller (2005).
[512] Miller (2005); Satz (2005).

cosmopolitan duties fail to meet this important condition for moral requirements.

Agent capacities provide cosmopolitans with the reply that 'can implies ought': NGOs, corporations, the global wealthy, and international institutions can be expected to bear greater responsibilities for justice, based on their comparatively greater capacities for promoting equality, alleviating poverty, and making the necessary reforms to address the root causes of global injustice.[513]

Regardless of the merits of such a strategy, at the very least this line of argument only places greater weight on the notion of agential capacity as a determinant of moral obligation. Given that so much in the global justice debate hinges on how capacities are ascribed, it is worth considering what exactly an assessment of an agent's capacities consists in.

4.2.4 Capacities as causal or moral powers

In order to perform their function of identifying the relevant principle for a particular agent (or the appropriate agent for a given principle), agential capacities need to be linked to particular responsibilities. With respect to justice, for Meckled-Garcia this link is the authority condition, the ability to assign rights and duties. He argues that only the state possesses duties of justice and only with respect to domestic distributions because these are the only contexts in which the authority condition is satisfied.

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[513] Admittedly, this is a pragmatic solution. Authors recognise the problem of moving from an 'is' to an 'ought,' but instead base their argument on arriving at a practical approach to meeting the demands of justice (Green 2005).

Now, it cannot be the case that the capacity that identifies agents of justice is, by definition, the authority condition. If this were Meckled-Garcia's argument, then it simply begs the question against those who think non-state actors can be agents of justice as well. Meckled-Garcia defines an agent of justice as an agent that can assign rights and duties, yet this is precisely what is at issue: must an actor be able to assign rights and duties in order to be responsible for socio-economic justice? O'Neill's definition of a primary agent of justice as that which can coerce and assign roles to others faces a similar problem. As argued above *contra* Nagel, justice is not analytically equivalent to political authority or legitimacy: it must be *argued* that either of the latter two is a necessary condition for the former, not stipulated in a definition. In order to defend his claim that non-state actors cannot be responsible for justice, Meckled-Garcia must show that the capacities required for effecting socio-economic justice either necessarily include, or depend upon, the prerogative to assign rights and duties.

First, however, we need a more specific understanding of what it means to have a capacity for justice. Initially, we may think of a capacity for justice in the same way that we think of an individual agent's capacity for reflective awareness, or capacity for reason. In this case, to say an agent has a capacity for Φ is to say that the agent is able to engage in Φ-ing. But if we consider Meckled-Garcia's phrasing, that a capacity for justice is the ability to effect a just distribution,[514] then an individual agent's capacity for reflective awareness seems disanalogous to an agent's capacity for socio-economic justice in a crucial way: the former denotes an ability to engage in a process or activity, whereas the latter is concerned with an ability to produce certain outcomes or ends. An agent exercises her capacity for reflective awareness by simply engaging in reflection; this need not lead to certain outcomes in order for the capacity to be attributed to her. A capacity for justice, described by Meckled-

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[514] Meckled-Garcia (2008, p. 267).

Garcia, is different insofar as it is defined in relation to principles of justice that specify required states of affairs. This capacity can be specified in terms of processes—for example, processes that assign powers or duties to other agents or accumulate the necessary information for maintaining a distributive pattern—but these processes are relevant only insofar as they reliably produce the outcomes required by a principle of justice. A capacity to effect a just distribution, thus, implies a causal connection between what an agent is able to do, and the event or outcome to which the capacity refers. We can define this conception of capacity as follows:

Capacity as a causal power: An agent has a causal power for Φ if the agent has the ability to perform an action that operates as a cause for Φ.

Causal power for justice: The ability to perform the actions that operate as causes for the states of affairs required by a principle of justice.

The understanding of what it is to operate as a 'cause' is left intentionally broad and vague in this definition. Different theories of causation will produce different conditions for describing an agential action as causal. But the task of assigning agent capacity is such that we do not need to settle on any one theory.[515]

A focus on an agent's actual causal powers in the world is what O'Neill's realistic notion of capabilities is intended to deliver. Causal powers are contingent on institutional and social context, and, as I will argue in 4.3, differentiate actors in terms of degree, not kind.

What can we make then, of the claim that a system of authoritative law, through which rights and duties are assigned and enforced, is causally

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[515] Following Cartwright (2007), we can adopt a pragmatic pluralism with respect to accounts of causation, selecting conditions for the establishment of causal claims on the basis of how we wish to use such claims.

necessary for effecting a just distribution? I believe the correct answer is that this is not a claim about causal power at all, but is instead a normative claim about the way in which an actor must be able to affect the normative situation of others in order to operate as an agent of justice. Indeed, Meckled-Garcia explains that what he means by capacity is an agent's "moral powers," a term Rawls used to characterise his liberal conception of a citizen. But Rawls does not provide a clear definition of a moral power, and Meckled-Garcia offers little explanation as to how he has adapted Rawls' idea for application to institutions and collective agents.[516] As a result, Meckled-Garcia conflates two distinct types of claims one can make about such agents. To see this, consider the key part of the passage quoted above in 4.2.1, in which Meckled-Garcia introduces the importance of an agent's capacity:

> What gives focus to these considerations of value expressed by a principle for the distribution of benefits and burdens, is precisely the powers an agent has to effect such a distribution. These we can call an agent's 'moral powers'. They combine a consideration of what an agent should be expected to do and what they are capable of doing in respect of such a distribution.[517]

One way of reading this is as a causal claim about an agent with respect to a distribution. Meckled-Garcia's main arguments against non-state and global justice facilitate this reading because of his insistence that the authority condition is necessary for reliably securing a just distribution over time.

But instead Meckled-Garcia may intend to say the following: States possess a *moral* power, which in turn, is necessary for possessing the *causal* power that when acted upon is necessary and sufficient for achieving a just distribution. Let us define a moral power, and a moral power for justice, broadly as follows:

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[516] See ff. 473.
[517] See ff. 472.

Capacity as a moral power: An ability an agent has that allows it to affect the normative situation or status of others.

Moral power for justice: The ability to affect the normative situation of others in a manner that allows for the distribution of goods and opportunities required by principles of justice.

The definition of capacity as a moral power is based on Joseph Raz's (1986) account of political authority. Despite its connection to state agency, I will argue below that capacity as a moral power can have broader application, as there are different ways in which agents can affect the normative situation of others.[518] As Raz discusses, capacities as moral powers are distinct from the mere ability to affect another person. In order to get you to trim your tree branches that hang over his yard, your neighbour has the ability to affect your interests by burning his trash near your shared fence. You may indeed decide to trim them in response to his threat. However, you have no *obligation* to do so: your neighbour is unable to assign to you a duty to trim your tree branches.[519] He has not altered your normative situation. Moral powers, distinct from causal powers, refer to the ability to alter a person's normative status, and one significant example of this power is the assignment of rights and duties.

Assessing whether a collective or institutional agent qualifies as an agent of justice in terms of its moral powers hinges on an account of how institutions of justice must be able to affect the normative status of individuals. One of the ways in which institutions can do this is through the justified assignment of rights and duties, a power widely viewed as being exclusive to state institutions. This means that what we took to be the most plausible version of

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[518] Applbaum (2010) discusses such possibilities in his discussion of the moral powers (legitimate authority) of the state.

[519] Raz (1986, pp. 24-5).

Nagel's argument—that only legitimate political authorities are the grounds of justice since only they can provide the means for justice—can be justified if Meckled-Garcia's argument is successful. This argument is:

1) Only agents that can justifiably (have the moral standing to) assign rights and duties can assign rights and duties.

2) Only agents who can assign rights and duties can causally effect a just distribution.

3) Only agents who can causally effect a just distribution are agents of justice.

4) Only state institutions operating domestically can justifiably (have the moral standing to) assign rights and duties.

C: Only state institutions are agents of justice.

The following section deals primarily with assessing premise (2): there, I examine the causal powers NGOs possess for justice and argue that Meckled-Garcia's claim about the comparative causal powers of states and NGOs is unsupportable. I then consider the comparative moral powers of states and NGOs. While the ways in which state institutions and NGOs can affect the normative situation of others is distinct, I argue that both qualify as moral powers for justice. The role of the state is to provide a system of rights and obligations through which the demands of justice can be negotiated and met. NGOs play a significant role both in shaping how these demands are understood and actualised in real, concrete situations, and in accumulating and using material resources for positive change, which can include the realisation of justice, particularly (but not only) when state institutions are weak.

4.3   Capacity as a causal power

4.3.1   Causal capacities for justice

Causal capacities for justice involve causal claims at two levels. First, the attribution of a causal capacity is itself a causal claim about an agent with respect to a particular event or outcome. Causal capacities for justice require us to assess the effectiveness of policies and projects. Here we are interested in establishing unique contributions: had there been no intervention, would the outcome be better, the same, or worse with respect to the desired goal? Counterfactuals are, therefore, the kind of causal claim we have in mind when attributing the capacity for justice to an agent.[520]

With respect to comparing the causal capacities for justice held by states and NGOs, we are interested in examining whether a collective agent is able to act so as to effect a specified distributive goal. Typically, these actions take the form of social and economic interventions designed to shape "the positions of relative advantage and disadvantage in individual life expectations"[521] within a given population. These interventions will typically be causally efficacious only if an agent is able to collect and organise relevant evidence, make predictions on the effects of different projects or policies, and implement chosen projects and policies successfully. Causal claims, therefore, enter in at a second level in attributing causal capacities for justice: in order to bring about a just distribution, an agent of justice must be able to successfully formulate its own causal claims and predictions with respect to the different interventions it can take. With these considerations in mind, we can assess an agent's causal capacity for justice by examining its ability to: 1) collect or gain access to the

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[520] Cartwright (2009, p. 37) makes this claim as well.
[521] Meckled-Garcia (2008, p. 260).

relevant and necessary information, 2) use that information to construct useful, predictive claims regarding different interventions, and 3) successfully implement the intervention designated as most likely to bring about the desired outcome.

4.3.2 Collecting and using evidence

How do NGOs measure up to state institutions with respect to collecting useful information that can make their operations more causally effective? I address this question by first discussing the different paths by which NGOs and governments have come to place greater emphasis on the use of evidence and data collection, and some challenges faced by each. I then outline an alternative approach to the use of evidence for policy and project design and provide some reasons as to why NGOs might have an advantage over state institutions in implementing this approach.

4.3.2.1 NGOs: Logical frameworks and their associated problems

Effectiveness and its measurement have become significant issues for those working in and around the non-profit sector. As recently as 15 years ago, it was rare for an NGO to undertake rigorous internal evaluations of its projects; today it is commonplace for even mid-size NGOs to dedicate a team to monitoring and evaluation (these employees are often referred to as M&E personnel).[522] This pressure on NGOs to verify the effects of their activities was originally born out of the push for greater NGO accountability that began in the early 1990s.[523] As discussed in Chapter 2, the demonstration of effectiveness continues to be linked closely to theories of NGO accountability,

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[522] Riddell (2007); Ebrahim & Rangan (2010).
[523] Ebrahim & Rangan 2010

whether it is rooted in the principal-agent framework, or conceived of as an integral part of an organisation's accountability to its own mission.

With respect to what exactly constitutes effectiveness, "impact" has become the holy grail of NGO performance evaluation. The definition of the term comes out of a widespread approach to NGO project planning known as "logic chains" or logical framework analysis (LFA), originally developed by USAID in the 1960s.[524] The purpose of a logical framework is to provide a systematic plan for a given project that identifies both the goals the project aims to achieve and the assumptions and organisational activities necessary to realise those goals. Under LFA, an organisation's effects on its surrounding environment fall into one of three categories. "Outputs" are the immediate results of a project: for example, an output of a skills training project for indigent single mothers might be the acquisition of new job-related skills by project participants. Under the right conditions, these outputs can causally contribute to medium- and long-term effects. These are the second category of effects, referred to as "outcomes." An outcome of the skills training project, for example, may be the participants being hired for a job, or an increase in their income.

Demonstrated outcomes are considered more valuable than outputs, but outcomes are still isolated effects that may not reflect how the overall well-being of a participant has changed due to the project. Therefore, donors and NGOs alike have become increasingly concerned with the achievement and proof of the third type of effect, "impact": a sustained, long-term, positive social change caused directly by an NGO's work. An NGO (or its donor) does not want to see its trainees simply increase their income—they want that increase to result in raising that individual out of poverty entirely, or empowering the participant to have more control over aspects of her life that are fundamentally important to her. Outputs and outcomes are ends-in-

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[524] Dale (2003, p. 57).

themselves, but more importantly they are also means to the achievement of the kind of social impact identified by an NGO's core aims and mission statement. For this reason, demonstrating impact is now "the new mantra" in the assessment of third sector organisations.[525]

The main feature of LFA is the construction of a 'logic chain' connecting organisational activities (inputs) to a chain composed of the above three types of effects: outputs, outcomes (sometimes referred to as 'purpose'), and impact (sometimes referred to as 'goal'). Assumptions for each move along the logic chain are identified, indicating what external factors must be in place in order for activities to successfully effect outputs, for outputs to translate into outcomes, etc.

While the concern for measuring impact has intensified NGOs' efforts at collecting and using evidence to plan and assess their projects, the logical framework approach has faced a number of criticisms. Des Gasper (2000) identifies three main problems, named after what he sees as being the form that logical frameworks can take in practice: "logic-less frames," "lack-frames," and "lock-frames."[526]

NGOs often use logical frameworks at the request of their donors, leading to a perfunctory application of the framework after the project has already been designed. Such use produces a *logic-less* frame that fails to actually guide project implementation, or draws questionable connections between inputs and outcomes.[527] Logical frameworks are also *lack-frames* in the sense that they provide little room for capturing the important complexities of the environments in which NGO projects are implemented. The downside to simplicity is that "[n]ot everything important can be captured in a one- to

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[525] Ebrahim & Rangan (2010, p. 2).
[526] Gasper (2000, p. 21).
[527] Ibid.

three-page, four- or five-level diagram."[528] Finally, a logical framework is typically left unrevised once the project has begun, becoming a *lock-frame*. The rigidity of such frameworks leads them to lose relevance and usefulness in the face of changing conditions that affect the assumptions of the project.[529]

Similar frustrations with LFA were expressed by NGO staff in Mongolia. Staff at Mongolian NGOs cited the different approaches to LFA as an example of the onerous requirements placed upon them by foreign donors that sapped time and resources. Amongst INGOs, LFA procedures led to internal tensions. One INGO, which was attempting to use a community-based approach to identifying projects, required local officers to submit project proposals to the national office, which in turn required approval from monitoring and evaluation staff at the organisation's international headquarters. The head of the monitoring and evaluation unit at the Mongolia office described LFA as being in direct tension with their organisation's attempt to be community-based. Project proposals from local officers were often rejected for failing to appropriately translate their project into an LFA format, for example, by confusing outcomes with outputs. While acknowledging the objectivity that LFA supposedly brought to the planning and monitoring process, the M&E staffer found it difficult and "disempowering" to instruct local staff on how to convey their project ideas through a set logical framework:

> I can see a lot of benefits in it, that it's very logical. But—I know that basically development—we kind of try to have a universal framework for how we do projects and programs. And how we identify needs in the community and how we move those needs into a program or a project design. But I can also see that it doesn't—there's got to be a better way. Because it's a very analytical process. And it's a very Western education way of thinking about things that doesn't necessarily translate easily into a different culture or a different context. It's difficult to teach, and

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[528] Ibid.
[529] Gasper (2000, p. 22).

even coming from a Western education system sometimes it's difficult to understand.[530]

Peter Smith argues that this attempt to apply a universal framework betrays a "naïve realism" implicit in LFA, in which the facts of the situation and the meaning of goals are assumed to be "clear to all reasonable people."[531] As a result, within the guidelines specified by LFA, "no effort is made to explore radically alternative views of the categories used or of the causal links between them."[532] This indicates that LFA can direct NGO staff away from identifying potentially important sources of evidence for the planning and assessment of their projects.

4.3.2.2 The state: evidence-based policy and its challenges

State agencies have had only a short chronological advantage over domestic and international NGOs with respect to focusing policy development around the collection and use of rigorous evidence. "Evidence-based policy," which places a heavy emphasis on the use of randomised control trials (RCTs), has become a dominant approach to social policy across Western countries, in particular the U.K., Australia, and the United States.[533] However, it only entered the mainstream of policy-making in the mid-1990s and did not achieve its current prominence until 2000.[534]

The move towards evidence-based policy is motivated by the idea that effective policy is built on considerations of "what works," and that rigorous research can provide evidence useful for determining what works.[535] Evidence-based policy thus reflects the above analysis of what constitutes a causal

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[530] Interview with INGO staff, 8 August 2008.
[531] Smith (2000, p. 440).
[532] Ibid.
[533] Black (2001); Cartwright (2009).
[534] For example, the What Works Clearing House, a database for research relevant to education policy, was established only in 2002 by the U.S. Department of Education.: http://ies.ed.gov/ncee/wwc/aboutus/ .
[535] Cartwright (2008).

capacity for justice: in order to be causally efficacious, policy-making inistitutions must have the capacity to formulate useful causal claims by appropriately collecting and using evidence.

Since the increase in using evidence for policy, a number of challenges for integrating rigorous research into the processes of policy making have been highlighted. In the area of health, the underdetermination of certain causal claims has meant that research can be drawn on equally by policy-makers advocating for and against particular health policies.[536] Policy-makers may look at the wealth of data and see what they wish to see, rather than use evidence to guide policy prescriptions. In the area of social work, the prioritisation of RCTs as a form of evidence has made that evidence difficult to use in identifying specific best practices.[537] Meta-studies conducted on the effectiveness of evidence-based policy itself on improved policy pertaining to social services have been inconclusive.[538]

More generally, policy-makers tend to rely heavily on reviews of multiple studies around a particular topic. The accuracy and usefulness of these reviews is questionable, however, as "[m]ost systematic reviews also tend to be one-off exercises, conducted only as funding, interest, or time permits. Rarely are they updated to take into account new studies that are relevant to the review, a challenge that is more significant given the cumulative growth of evaluation reports..."[539] Overall, while state institutions have improved in terms of their collection of evidence, current practices indicate that there are significant challenges in successfully integrating evidence collection with the processes of policy-making.

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[536] Black (2001).
[537] Mullen, et al. (2005, p. 75).
[538] Ibid. (p. 78).
[539] Petrosino, et al. (2002, p. 23).

4.3.2.3   INUS conditions and Theory of Change

Recently, Nancy Cartwright (2008; 2009) has attempted to provide an essential tool to practitioners of evidence-based policy by articulating a theory of use for evidence. In presenting her theory, Cartwright has argued that information is useful for policy-makers insofar as it allows them to model the complex causal mechanisms relevant to the success of a given policy, and that, therefore, a theory of what counts as evidence must adopt the perspective of evidence *users*, not the producers.[540] In order to get at these complex causal mechanisms, Cartwright proposes that policy-makers identify the INUS conditions—"*I*nsufficient but *N*on-redundant parts of *U*nnecessary but Sufficient conditions"[541]—for a policy outcome and seek to understand the ways in which these conditions interact and impinge on one another to bring about policy goals.

The job skills training project mentioned above in the discussion of logical frameworks is an example of an INUS condition for the desired outcome of bringing the target population out of poverty. It is insufficient, since in order to be efficacious, it relies on the presence of other conditions, for example, effort from the participants to learn and utilise their training, the availability of jobs on the market for the participants to get hired, and an adequate wage rate. However, when it occurs in conjunction with these other conditions, the project operates as a non-redundant, or necessary, part of an overall sufficient cause. This overall cause, created by the conjunction of each of these parts, is sufficient to bring the target population out of poverty, but is also unnecessary, since the participants could rise out of poverty in other ways. Hence, it is an INUS condition.

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[540] Cartwright & Stegenga (2008).

[541] Cartwright borrows the notion of an INUS condition from J.L. Mackie's (1974) definition of a cause.

Cartwright suggests that the search for INUS conditions directs the user of evidence to answering the important "how" question: how does a given policy or intervention operate on its environment. In other words, what is the "causal pathway"[542] that the policy takes to produce particular outcomes?

4.3.2.4 Comparing NGOs to states on evidence collection and use

If we define high-quality collection and use of relevant information in terms of the modelling of causal pathways, then NGOs have a comparative advantage over states for two reasons: 1) the use of such models has a longer history in NGO activities than it does in governmental operations, 2) the construction of accurate causal pathways relies more on context-specific or local information than it does on cross-contextual studies or broader-level statistics and NGOs are more adept at the former, states better suited for the latter.

The notion of a causal pathway has already been popularised in NGO monitoring and evaluation via the recent rise in "theory of change" methodology.[543] Theories of change are similar to logical frameworks insofar as they direct project planning through the identification of a long-term goal and a reasoning process, through which NGO staff identify the causal chains necessary to achieve that goal. What differs, however, is that theory of change methods focus on pushing NGO staff to understand how they are changing the environment in which they act, and what factors contribute to or detract from this process. It directs them to identify the theory implicit in any social project that explains "how and why the program will work."[544] Grounding project planning in the construction of a theory not only adds value for the particular organisation using it, it also "facilitates aggregation of evaluation results into a broader base of theoretical and program knowledge"[545] and has greater

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542 Cartwright & Stegenga (2008, p. 35).
543 Ebrahim & Rangan (2010, p. 22).
544 Weiss (1995, p. 68).
545 Ibid. (p. 69).

potential to influence policy and popular opinion by addressing "the theoretical assumptions embedded in programs."[546]   Theories of change thus attempt to avoid the central criticism faced by LFA, namely, that it rests on "assumptions of relatively well-understood and controllable change, engineered via a `project' within or largely controlled by a single organization."[547]

There is unfortunately little evidence as to whether either the NGO or state sectors utilise theory of change methodology to a greater extent. Yet there is reason to think that NGOs hold an operational advantage over states for using these methods, since they do not face the same kind of bureaucratic or political constraints.[548] NGOs are generally more flexible than governmental authorities and more open to experimentation and adaptation.[549] They can make decisions regarding changes to a project more quickly, indicating that they are better placed to revise their theories of change and shift project elements accordingly.

The abilities of NGOs to accumulate evidence and contribute to the formulation of cogent causal pathways have been recognised by policy makers themselves, who have, in turn, created greater opportunities for NGOs to consult on and influence policy design. NGOs' specialised aptitude for gathering rigorous evidence is of particular importance when they view a given policy as liable to cause harm instead of benefit. For example, in 1995 the World Bank agreed, at the behest of NGOs, to investigate the long-term impact of the controversial Structural Adjustment Programmes implemented by itself and the IMF in developing countries during the 1980s. Known as the Structural Adjustment Participatory Review Initiative (SAPRI), this assessment

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[546] Weiss 1995, p. 69.
[547] Gasper (2000, p. 21).
[548] Nelson (2007, p. 12).
[549] Lewis & Wallace (2000, p. xi).

process created a large role for civil society actors, most notably NGOs, who drew on their grassroots connections to gather data on the actual effects of SAPs on poverty and corruption.[550] In some cases, SAPRIs led to a broader increase in NGO participation in formulating policy strategies, "breaking the monopoly of the government in development policy making."[551] Similarly, NGOs' expertise and creation of a valued set of data has granted them a larger role in policy change and development at the WTO and other branches of the World Bank.[552]

Another area in which NGOs have exerted a significant influence due to their research and data collection is that of international environmental policy. Because of the size of the data pool on changes and threats to ecosystems world-wide, IGOs rely on non-state actors such as NGOs for the collection, dissemination and analysis of relevant information.[553] For example, the Global Environment Outlook, a project of the UNEP, and the UN Millennium Ecosystem Assessment obtain data from a wide-ranging "network"[554] of groups, each of which is responsible for gathering data on a particular region. NGOs play a significant role in these collaborations: "Global system assessment is integrated with local environmental reporting. NGOs and other non-state actors such as academic and research institutions are the main contributors, providing reports and data analysis."[555] Regional branches of large INGOs such as the World Wildlife Fund or Nature Conservancy can also

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[550] Bhattacharya and Titumir (2001).

[551] Opoku-Mensah (2009, p. 255). But this observation comes with a caveat: the influence of NGOs in developing countries, such as Ghana, is heavily mitigated by trends and interests in the broader aid system. However, this point is a side issue to our comparison here, as governments of developing countries are similarly encumbered by the same aid system. See discussion below.

[552] Pollard & Court (2007, pp. 139-141).

[553] Gemmill & Bamidele-Izu (2002).

[554] Ibid. (p. 11).

[555] Ibid.

operate as primary sources for data on habitat destruction and decline or growth in species population.[556]

In sum, while neither has a decisive advantage, there are reasons to believe that NGOs are at least as capable with respect to the collection and use of evidence for meaningful project planning as state institutions. Depending on the topic and context, NGOs have been adjudged as adequate providers of pertinent policy-relevant data. While it may be the case that state institutions still dominate policy environments, there is no indication that NGOs are incapable of constructing policy-relevant causal predictions on par with those reached by government policy-makers.

4.3.3 Successful implementation

Collecting and using relevant information is only of value for an agent of justice insofar as it supports the successful achievement of a just distribution. Meckled-Garcia claims that states possess the capacity to set the fair background conditions necessary to support a just distribution domestically, but that they lack this capacity internationally because:

> "the long-term effects of actions...are beyond prediction. This is because their consequences will depend on the accumulated decisions of market agents. Encouraging a particular import, for example prawns, from a developing economy may, indeed, increase that economy's growth in the short term, but it may also lead to a long-term loss of diversity in that economy as more resources are given over to prawn production, resulting in vulnerability should consumption trends change..."[557]

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[556] The Nature Conservancy in particular emphasises its scientific credentials as a leading source of information on conservation, and employs hundreds of scientists to conduct original research: http://www.nature.org/ourscience/index.htm

[557] Meckled-Garcia (2008, p. 264).

I quote Meckled-Garcia at length here because the prawn example indicates the degree of control he thinks an agent must have over the effects of its actions in order to qualify as an agent of justice, namely, control over "the overall outcomes of their agency."

But this will not do as a boundary marker for (causal) capacity, as states do not necessarily possess significantly more control over the domestic outcomes of their agency than they do internationally. One could point, for example, to the decision by the Bush administration to encourage home ownership amongst minorities by relaxing lending regulations, which some claim contributed to a housing bubble that consequently resulted in a large-scale financial crisis.[558] In other areas of domestic policy, there is on-going uncertainty as to what kind of unemployment benefits scheme most effectively balances the need to provide assistance with the desire to incentivise individuals to continue to seek employment.[559] There is similarly little consensus as to the underlying cause of increased income disparities or how they can best be reduced.[560] The pursuit of evidence-based policy in the United States and Europe has revealed the challenges faced by local and national state agencies in predicting the overall consequences of their policies. For example, studies have identified welfare-work schemes that had no effect on long-term employability for participants, or expensive policies that reduced classroom size, only to result in an influx of poorer-quality teachers that drove down test scores.[561]

In contrast, there are well-known cases of non-state actors exerting at least as much control over the overall outcomes of their agency as state institutions. For example, in Bangladesh, BRAC (formerly the Bangladesh Rural Advancement Committee) operates as one of the largest NGOs in the world,

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[558] Becker, et al. (2008).
[559] Carling, et al. (1996).
[560] Coburn (2000).
[561] Cartwright (2009).

providing comprehensive social services to over 10,000 villages in Bangladesh, including education, micro-credit, health care, and legal services. In 2002 it initiated a project in Afghanistan, becoming the first NGO from a developing nation to conduct development work in another country. Now BRAC reaches over 110 million people throughout Asia and Africa, and operates in its country of origin as a "parastate", arguably exercising a greater impact on Bangladeshis' life prospects than the Bangladeshi government.[562]

The influence of NGOs on medicine markets in developing countries provides another important example of non-state actors successfully providing a crucial service typically allocated to the state in contexts where the state cannot provide it on its own. In India and Sub-Saharan Africa, NGOs fund and provide key health services, including essential medicines.[563] Mackintosh, et al. (2010) have described how this activity not only increases access to such medicines, but also has an indirect effect on the quality and price of such medicines by creating competition with other health providers in the market. Many NGOs also take on the role of regulator by conducting sample tests of medicines to ensure product safety. These tests are then used by others in the market to identify reliable suppliers. Thus, NGOs provide a form of informal regulation, or, "the shaping of market behaviour by 'regulatory webs' of actors and discourse,"[564] and can be as effective in providing access to essential medicines to the worst-off and influencing the behaviour of individual market actors as the formal regulatory powers of the state.[565]

These anecdotes indicate that Meckled-Garcia's argument rests on presenting only one side of the story regarding state and non-state performance; the overall picture points to the conclusion that the capacity for effecting a just

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[562] Ebrahim & Rangan (2010, p. 20).
[563] Terry MacDonald (2010, pp. 76-7) discusses Kenya and Mozambique as two examples where NGOs are responsible for a particularly high percentage of health care services.
[564] Mackintosh, et al. (2010, p. 3).
[565] Ibid.

distribution will, like any causal power, vary across types of actors in different social and institutional contexts. Meckled-Garcia mistakes a difference in degree (of causal control) for a difference in kind, over-emphasizing the causal powers of state institutions in the domestic domain and under-emphasizing their powers internationally, as well as the causal powers of non-state actors in both domains. In contrast to what Meckled-Garcia claims, the achievements of the American Farmland Trust (domestic NGO) in the United States may be the same achievements of Mercy Corps (INGO) in Mongolia, or the UNDP (IGO) in Kenya, or the Department of Agriculture (state) in Chile.

4.3.4   Re-assessing the authority condition

4.3.4.1   The authority condition as a causal power

Meckled-Garcia might reply that the authority condition provides the basis for establishing a difference in kind between the causal powers of state agencies and those of NGOs. After discussing the various ways in which state institutions are incapable of controlling for outcomes internationally, he considers the following problem:

> "Have I shown too much here? For if it is beyond states to counteract economic effects relevant to a just distribution in the global sphere, it should be just as difficult for them to do so in the domestic case. Yet in the domestic case states have direct redistributive control on an ongoing basis through the distribution of rights and duties, whilst at the global level their only way of affecting distribution is through economic regulation on a coordinated basis."

Meckled-Garcia thinks that the ability to assign rights and duties is the determining factor in the state's causal power to manage background conditions and rules so as to best approximate a just distribution. Internationally, state institutions are able only to issue regulations, the effects

of which may be counteracted or manipulated by the interventions of others whom they cannot control. Domestically, the state's regulatory authority is buttressed by the additional ability to assign duties and articulate and fulfil rights, giving them sufficient causal capacity to support a just distribution. He could therefore claim that we have not adequately engaged with his premise:

> (2) Only agents who can assign rights and duties can causally effect a just distribution.

There are two problems with this reply. The first is that answering this question requires operationalizing what it means for a state agency to "distribute rights and duties" in order to assess the causal effects of such an ability. It is unclear how this can be done in a way that would distinguish this ability from the regulatory activities that Meckled-Garcia deems insufficient for controlling a distribution.

For example, the state may enshrine a right to education for all school-age children. What does this actually mean? Perhaps the state assigns duties to individuals: some options here might be a teacher's duty to provide adequate teaching in a non-discriminatory manner, a parent's duty to enrol their child in school, or citizens' duties to provide funding for a public school system through taxation. But these duties are still vague and do not indicate a causal relationship between the authority condition and the achievement of a fair distribution of goods and opportunities. In order for the assignment of duties to be causally efficacious, they must be specified for the particular context in which the state acts—that is, state policy-makers would need to outline what specific actions or met goals would constitute a fulfilment of these duties. For example, specifying the duty to provide adequate teaching would involve setting standards for teachers both in terms of their training and their in-class performance. Taking this example alone, the state already has a variety of options from which it must select: should it make an education degree a requirement for new teachers, or specifically require that new teachers

graduate with something other than a qualification in education? Will random video monitoring of classrooms improve teaching performance? Should teachers be assessed based on standardized testing scores, in-classroom observations, qualitative assessments of student progress, or some combination of the three?

Answers to these questions are all relevant, and some of them are necessary, for translating a state's ability to enshrine rights and duties into a causal capacity for effecting a just distribution. And the answers to these questions depend on how state institutions collect and use evidence regarding the causal mechanisms relevant to the effectiveness of different interventions. Rights and duties are abstract concepts that can only acquire effective causal powers if they are operationalized into concrete actions, services and opportunities. This has two implications: 1) the meaningful assignment of a duty requires the state to become involved in the same predictive policy guesswork that they engage in for regulatory purposes, 2) even once duties are assigned and operationalised, there are other factors that may impinge on whether or not a right is fulfilled domestically. It is not clear that state institutions have a good handle on what those factors are. This undermines Meckled-Garcia's use of the authority condition as a boundary marker between states and non-states in terms of their causal powers for justice, since the selection and implementation of these concrete interventions requires the same kind of regulations and policy-making that Meckled-Garcia argues is too unreliable for effecting justice domestically by NGOs and internationally by any agent.

But there is a deeper reason why premise (2) is unsuccessful. In actual rights practice, NGOs play a significant role in the way in which people understand their rights and the degree to which governments actually fulfil rights and pursue socio-economic justice.

For example, in a number of countries, domestic NGOs have played a critical part in the formulation and protection of immigrants' rights. In the

establishment of South Korea's Employment Permit System, "local pro-immigrant NGOs played a more crucial role in the promotion of migrants' rights than the state or international human rights norms."[566] In other countries, NGOs "...have contested and expanded the local government's definition of who is a legitimate community member worthy of local citizenship...In addition, NGOs often monitor compliance with laws and regulations that apply to foreign workers (especially in the workplace), helping to ensure that they are properly implemented."[567]

NGOs have also contributed to the enforcement of socio-economic rights by pursuing rights-based approaches to development. Rather than competing with or replacing the state, NGOs using the Human Rights Based Approach to Planning/Development (HRBAP/HRBAD) have emphasised the duties of the state and the empowering potential of civic participation as essential to the successful achievement of development goals. In some cases, organisations work against a noncompliant government, but in other cases state failure may be due to a lack of resources or, in many cases, a lack of sufficient local knowledge and connection to the realities of the poorest and most disadvantaged within their society. In all three contexts, NGOs provide the essential ligature between citizens whose needs are unmet and the government agencies responsible for meeting them. For example, in Brazil, where the right to food is enshrined in its constitution, domestic NGOs forced policy changes in the government by demonstrating how the latter had failed to provide adequate means for nutrition for all children under the age of five.[568] In Uganda and Rwanda, international and local NGOs have successfully demanded greater accountability from public officials, leading to a downturn in corruption.[569] Grassroots organisations successfully changed property law

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[566] Kim (2011, p. 1).
[567] Tsuda (2006, p. 25).
[568] Hickey & Mitlin, (eds.) (2009).
[569] Ibid.

and land re-distribution policies in order to protect the rights of marginalised ethnic minorities in Nicaragua.[570] These examples and others indicate that, while states may have the unique prerogative to assign and recognise rights and duties through a body of law, the connection between this ability and the actual realisation of a principle of justice can run directly through the operations and advocacy work of NGOs.

It is not my claim here that NGOs are better at bringing about just states of affairs or affecting the background rules that create the necessary space for fair private exchanges. In order to undermine Meckled-Garcia's argument, I need only show that any differences that may exist do not establish that only states possess the right causal powers. Interestingly, the empirical evidence on the comparative performance of states and NGOs has often been cast as a criticism of NGOs, because it refutes the popular claim of the late 1980s and 1990s that NGOs were inherently better at delivering services and development aid than states.[571] This view, however, was as mistaken as Meckled-Garcia's, and for the same reason: empirical evidence indicates that there are no essential distinguishing features of states or NGOs that makes either inherently better suited to achieve or provide the social goods constitutive of a full and well-functioning human life.

4.3.4.2 The authority condition as a moral power

Recall our formulation of Meckled-Garcia's argument:

1) Only agents that can justifiably (have the moral standing to) assign rights and duties can assign rights and duties.
2) Only agents who can assign rights and duties can causally effect a just distribution.

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[570] Ibid.; Gready & Ensor (2005).
[571] Edwards & Hulme (1995a); Lewis (2001; 2005).

3) Only agents who can causally effect a just distribution are agents of justice.

4) Only state institutions operating domestically can justifiably (have the moral standing to) assign rights and duties.

C: Only state institutions are agents of justice.

I have argued that premise (2) is false. However, while meeting the authority condition may not ground a set of unique causal powers for the state relevant to justice, it does identify a *moral* power possessed exclusively by the state that is important for delivering on distributive justice.

The ability to coerce and assign rights and duties is a moral power for justice insofar as participants within a distributive scheme require some assurance that their transactions are taking place against a background of fair and free conditions. At minimum, an agent aiming to manage a just distribution must be able to demonstrate to members of the distribution that it is so. A centralised authority that can alter the normative situation of participants by assigning duties and rights, and can be appealed to in cases of suspected injustice, meets that criterion. Agents that can significantly alter distributions, but lack this authority, cannot.

However, while the state's moral power is necessary, in many cases it is not sufficient for the realisation of justice. While the demands of justice and human rights can be universal, the mechanisms, practices, and rules necessary to meet them in particular social contexts will vary widely. NGOs exercise a moral power of their own, influencing the normative situation of others by articulating how duty-bearers are failing to fulfil their obligations, highlighting socio-economic inequalities, and identifying specific policies needed to meet people's rights. While they cannot affect the normative situation of others by assigning obligations and rights directly, NGOs can influence how obligations and rights are understood and practiced, thereby affecting how individuals

materially experience these moral requirements. Put differently, NGOs are able to assign or increase moral liability to an agent for failing to fulfil its duties.[572]

This helps make sense of O'Neill's mixed verdict on the contributions INGOs can make towards justice. NGOs and states possess the same causal capacity: the ability to accumulate and alter material resources for the purposes of positive social change. But their specific, effectively resourced abilities to exercise that capacity, in other words their *capabilities*, varies based on the institutional environment in which they operate.

If we look at O'Neill's and Meckeld-Garcia's discussion through the lens of moral, instead of causal, capacities, then it may be true that NGOs are never able to act as primary agents of justice, because they lack the moral power to assign rights and duties. However, as indicated by empirical studies on the roles NGOs play with respect to human rights, these organisations possess a moral power to shape what it means to have a duty or right in a given social setting, and to provide essential assistance to state institutions as the latter seeks to fulfil its function. In contexts where states are dysfunctional or non-existent, both this moral power and an NGO's causal capabilities to direct material resources acquire comparative significance.[573]

Finally, it bears mentioning how an NGO's general causal capacity to accumulate and utilise material resources for the purposes of positive social change connects to the questions concerning NGO effectiveness raised in the previous and current chapters. As discussed above in 3.3, the important question for achieving effective social change, whether it is through state

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[572] Interestingly, Applbaum (2010) argues that the state's power to make its citizens liable, not its power to assign duties, is the best way of understanding political authority. Applbaum does not discuss the moral powers of non-state actors.

[573] The moral power that NGOs can exercise in contexts of injustice to connect victims of rights violations to duty-bearers is discussed in the following chapter.

policy or NGO projects, is not "what works?" but "*how* does it work?" Tools such as the (ABCD*) principle and logical framework analysis direct NGO staff to consider the comparative costs and benefits of different probabilistic outcomes. They do not seek to understand the factors that might explain *why* particular projects are more or less likely to be successful, or more or less costly. The (ABCD*) principle and LFA focus on the measurable results of causal pathways rather than on understanding how these pathways operate, thereby ignoring how they might shift in the middle of a project. This means they are unable to guide NGOs through the complex, dynamic situations that are most threatening to effective performance.

Therefore, NGOs can better pursue effective performance through the use of a theory of change methodology, in which an organisation not only articulates the causal pathways of its projects, but also explains and justifies those projects through a broader theory of social change. In so doing, NGOs demonstrate that their utilisation of material resources conforms to an awareness of the conditions that will maximise the potential of those resources to accomplish positive change. This demonstration can be demanded of them as an obligation triggered by their stated intentions of achieving a more just world for others.

Conclusion

In this chapter, I have attempted to make the following three points: 1) That voluntary associations can trigger obligations on the basis of the expectations that are generated by certain types of statement, which in turn are necessary for the existence of the association; 2) That Nagel's argument for legitimate

political authority as the exclusive grounds for justice is inconclusive; 3) That there are two ways of understanding agential capacity: on the causal conception, states and NGOs cannot be distinguished based on organisational type alone and instead exercise different capabilities depending on the resources and conditions available to them; on the moral conception, these two do exhibit different types of power, but an NGO's moral power with respect to distributive justice can still be significantly strong.

As discussed in the introduction, NGOs are often overlooked as agents of justice, as they are not considered to be part of "the basic structure" of society. In general, two strategies have been pursued against this view.

One strategy, opted for by Cohen (1997), is to deny that there is any division of labour with respect to moral principles, and hold that same set of moral requirements apply to social institutions and private individuals alike. On this monist view, NGOs would have the same obligations of justice as state institutions, not because they qualify as part of the basic structure, but because these obligations apply equally to all moral agents.

A second strategy begins by accepting pluralism, and also accepting the Rawlsian basis for distinguishing the basic structure, either by appeal to its coercive, nonvoluntary structure, or by appeal to its wide ranging impact on people's lives. The next step in this strategy is to show how NGOs are agents of justice, since they are sufficiently coercive or impactful as to qualify as part of the basic structure.[574]

In this chapter, I have pursued a different strategy, by examining the underlying assumption that there are fundamental moral differences between 1) nonvoluntary versus voluntary forms of association, and 2) between the capacities of state institutions and NGOs. This view accepts pluralism with

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[574] Cf. Rubenstein (2009); James (2005b).

respect to moral requirements, but denies that coercion or wide impact ought to be the sole grounds for obligations of justice. NGOs play an important role, characterised by both causal and moral powers, in achieving justice in specific, actual social settings. This role is distinct from, but equally important as, the role of the state.

While they may be unable to act as centralised authorities for a given distribution, NGOs do possess the capacity to accumulate and harness material resources toward the purpose of effecting positive change, including the accomplishment of fairer and more just socio-economic conditions. In societies with stable state institutions, this capability can be vital for justice by identifying gaps in services or negotiating for contested rights; in failed states these powers turn NGOs into the closest approximations of a primary agent of justice to which people can appeal.

Chapter 5 Broadening The Claimability of Rights

Introduction

In the previous chapter, we defined two conceptions of agential capacity: capacity as a causal power, and capacity as a moral power. I argued that on this understanding, Meckled-Garcia's argument that only states possess the powers to operate as agents of justice cannot be defended. The causal powers of state and non-state actors with respect to effecting a just distribution across a given population depends more on their capabilities within a given institutional context than on any essential features of state or non-state agency.

Capacity as a moral power was defined as the ability to affect the normative situation of others. Based on this definition, I described briefly how NGOs can affect the normative situation of others by shaping how duties and rights are understood and fulfilled in particular social settings.

This chapter provides a second example of how NGOs can make rights more practicable by eliminating or weakening the mitigating factors often cited by those who believe these citizens do not owe significant obligations of compensation or assistance to the global poor. NGOs, I will argue, are able to convey information that broadens citizens' awareness of the effects of the large, complex institutions in which they are implicated. They also function to

identify solutions and opportunities for achieving a more just global order. In order to motivate the importance of these abilities, I consider the role that causal and epistemic criteria can play in establishing the existence of a moral requirement.

To provide focus to the discussion, I use Onora O'Neill's critique of universal welfare rights as a paradigmatic example of a view that uses causal and epistemic criteria to argue that obligations of assistance are less stringent than obligations to refrain from direct harm. O'Neill's conclusion is a result of her broader critique of rights-based approaches to moral requirement. She takes issue with welfare rights in particular, contending that such rights are not claimable without institutions that recognise them. The positive nature of a welfare right, she claims, makes it fundamentally unclear *which* duty-bearers are morally responsible for providing *which* specific recipients with access to basic goods and services. She concludes that universal welfare rights do not exist because they cannot be claimed by specific individuals against specific others without institutions.

After discussing O'Neill's argument in section 1, I examine Elizabeth Ashford's objection to O'Neill in section 2. Ashford raises the challenge of matching duty-bearers to rights-holders in cases involving complex causal chains with large groups of people. In such cases, where the moral responsibility for a rights violation is shared by many, Ashford argues that victims cannot make the claims against specified others that O'Neill says are necessary for the establishment of a universal right. Ashford's cases pose a dilemma for O'Neill: either she can accept that they qualify as rights violations, in which case her basis for distinguishing between liberty and welfare rights disappears, or she can claim, implausibly, that such cases do not qualify as human rights violations, despite the foreseeable and avoidable cause of serious injury to others.

Ashford successfully shows that complex causal chains defeat O'Neill's claim that one can identify the violators of a liberty rights violation but not the violators of a welfare rights violation. However, as I argue at the end of 5.2, Ashford's cases are not strong enough to fully defeat O'Neill's argument, since O'Neill provides multiple characterisations of her claimability condition. O'Neill discusses claimability in terms of both an antecedent and a *post hoc* perspective; Ashford's cases address only the latter. I therefore present modified versions of Ashford's cases in 5.3 which, I argue, defeat the antecedent version of O'Neill's claimability condition.

Finally, in 5.4, I connect this discussion to the agency and obligations of NGOs by highlighting how these organisations can assist in conveying information to duty-bearers in contexts of complex causal chains. Using the abolitionist movement as an example, I argue that contemporary NGOs ought to similarly use an honest and accurate transfer of information to instigate wider support for institutional reform.

5.1   Claiming welfare rights: Against whom? For what?

5.1.1   O'Neill on welfare rights

In a deontic system, rights and duties can operate as different perspectives on the same moral requirement. With respect to the act, "setting another's house on fire," from the duty-bearer's perspective there is an obligation to refrain, and from the rights-holder's perspective there is a justified claim against having one's house set alight. The appeal of a deontic system is that it structures relationships and sets clear expectations for moral agents through

the classification of actions as required, forbidden, or permissible.[575] If A is required to perform an act with respect to B, then B is entitled to expect that act; if A is permitted to perform an act, then B is not entitled to demand the omission of that act, etc. O'Neill, like other moral constructivists,[576] contends that this deontic structure plays an important role in establishing the existence of a right, since one cannot have an entitlement without there being a corresponding requirement on others to honour that entitlement. In order for B's claim against having her house set on fire to have any normative authority, there must be some specifiable agent(s) who has or have an obligation to refrain from setting her house on fire. This is because a moral requirement can only operate as a requirement if it demands certain actions of specified agents. If no such agent or action can be identified, then B's 'right' is not so much a claim as it is a mere wish, or aspiration. This is O'Neill's "claimability" condition, a necessary condition for the existence of a right, which can be broadly defined as follows:

Claimability condition: A right to Φ exists only if the rights-bearer can claim a specific action or inaction (the content of a right to Φ) against a specific, identifiable agent.[577]

A so-called "right" that fails to meet this condition is "radically incomplete,"[578] as it identifies a normative requirement without specifying how that requirement can be fulfilled or which agent(s) is or are responsible for its fulfilment. O'Neill treats the claimability condition as fundamental to deontic reasoning, using it to reveal what she sees as two asymmetries in a deontic system of moral requirement: one between rights and duties and another between welfare rights (rights to basic goods and services necessary for

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[575] O'Neill (1996, p. 127).
[576] Cf. Meckled-Garcia (2008, p. 259).
[577] O'Neill (1996, pp. 129-36; 2005); Tasioulas (2007, p. 80).
[578] O'Neill (1996, p. 134).

sustaining human life) and liberty rights (rights against bodily harm or interference with political participation or free speech).[579]

Rights and duties are asymmetrical with respect to their co-dependence. Because a claim has no normative force without a claimant, a right cannot exist without there being an agent who has an obligation to fulfil it. Duties, however, do not depend upon rights for their existence, as A may have a normative requirement to Φ even if no one has a *claim* on A to Φ. This asymmetry supports the familiar Kantian distinction between perfect duties, which are stringent and have corresponding rights, and imperfect duties, which operate as less stringent requirements that are not claimable by others.[580] In addition, O'Neill distinguishes between duties and rights that are "universal," that is, identifiable outside of an institutional system, and those that are "special," arising only in the context of certain relationships or institutions.[581] Duties can, therefore, take on four distinct structures: perfect and special, perfect and universal, imperfect and special, and imperfect and universal.[582]

Using this taxonomy, O'Neill argues that there is a fundamental asymmetry between the structure of a welfare right and a liberty right at the pre-institutional, or universal, level. Her argument is based on two claims: 1) the primary duty corresponding to a liberty right is negative and the primary duty corresponding to a welfare right is positive; 2) because of (1), welfare rights fail to meet the claimability condition outside of an institutional system.

With respect to a liberty right, O'Neill claims, we can identify clear answers to the questions, 'What is the content of the duty corresponding to this right?',

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[579] Ibid., (p. 130 ff.) O'Neill (2005, pp. 427-8) notes that the label of "welfare rights" is a misnomer, as the "salient feature of these rights is not that they contribute to the welfare of the recipient (although they are likely to do so), but that they are rights to goods or services."
[580] O'Neill (2000, p. 107); O'Neill (1996, pp. 146-53).
[581] O'Neill (1996, p. 129).
[582] Ibid., (p. 152).

and 'Who holds these corresponding duties?' The primary obligation corresponding to a liberty right is the negative obligation to refrain from harm or interference, which gives specific guidance to duty bearers by identifying actions they are prohibited from engaging in. Such is the ease of a negative duty: the agent may fulfil her obligation by doing anything she wishes, so long as she refrains from engaging in the action prohibited by the duty. Because an individual's right to bodily security and free expression are only met if all others fulfil this corresponding obligation, this allows us to identify all others as the relevant duty-bearers. O'Neill often highlights the important implications this has for identifying rights violations. In the case of a liberty rights violation, "whether or not specific institutions have been established, there are determinate others to whom the violation might be imputed."[583] While in practice there may be challenges to identifying those who are the cause of a given harm, in principle we know the specific relation which constitutes the violation of a liberty right (A causes harm to B) that would allow us to match perpetrators to victims. Thus, the duties corresponding to liberty rights are perfect, universal duties: they are duties to which others have a claim, and which each individual holds with respect to all others, independent of any institutional system.

The situation is quite different with respect to welfare rights, O'Neill claims, because positive obligations to provide goods and services do not specify what constitutes adequate assistance, nor can they be obligations an individual holds towards all others. Duties of assistance place demands on an agent's time and resources and, since these are finite, it is not feasible to require an obligation bearer to provide assistance to all relevant rights-holders.[584] Furthermore, the bearer of a welfare right does not require that all others act in order for her claim to be met. She only requires certain others to act.

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[583] Ibid., (p. 132).
[584] O'Neill (1989, p. 230); Ashford (2006, p. 222).

Herein lies the central problem for O'Neill: it is unclear, in principle, how these specific others may be identified and linked to each individual rights holder. Thus, in order for a welfare right to be claimable, institutions must allocate obligations to specific duty-bearers and identify the content of these obligations. Without these linkages between rights-holders and duty-bearers, it is impossible to identify those responsible when welfare rights go unmet: "…when supposed universal rights to goods, services or welfare are not met, and no institutions for distributing or allocating special obligations have (yet) been established, there is systematic unclarity about whether one can speak of violators and not just contingent uncertainty about who they might be."[585] Without the presence of institutions, it is impossible to identify who has violated an agent's welfare right, because it is not clear, in abstract, who was obligated to assist *her* specifically in the first place.

One might point out that the full protection of a liberty right also requires an allocation of positive obligations by institutions, such as a police force or legal system of penalties for those who violate the liberty rights of others. Similarly, it is not clear that welfare rights correspond strictly to positive obligations, as an agent may also have the obligation to refrain from interfering with an individual's attempts to secure basic goods for her survival.

Indeed, O'Neill recognizes that liberty and welfare rights both require a mixture of positive and negative obligations in order to be fulfilled in societies larger than a few dozen people. But, she says, enforceability is not the same as claimability.[586] Although liberty rights may depend upon institutions to allocate and specify relevant "second-order"[587] obligations for their practical achievement, it is still possible, in principle, to identify the corresponding

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[585] O'Neill (1996, p. 132).
[586] Ibid., (p. 131).
[587] O'Neill (2005, p. 428).

"first-order"[588] negative obligation and responsible agent(s). Yet, welfare rights do not identify first-order obligations or obligation bearers at the abstract level; they depend upon institutions not only for their enforcement, but for their very existence. Without such institutions, welfare "rights" are not really rights at all.

For these reasons, O'Neill concludes that welfare rights are special, not universal. This means that, while duties of assistance can still be perfect, they achieve this stringency only within the context of an institutional system. The institution's recognition is the basis for the normative authority of a duty of assistance. Outside of this recognition, the duty is merely imperfect, an obligation that an agent can choose to fulfil in a variety of different ways.[589] This is disappointing for rights advocates who maintain that socio-economic rights share the same universal moral standing as civil and political rights. But in reply, O'Neill urges that taking obligations seriously is essential in order to take rights seriously, as obligations are the essential ingredient for a right's normative force.[590] On her view, we are not justified in speaking of such rights as if they exist outside of institutional recognition. To do so is to engage in "bitter mockery to the poor,"[591] offering aspirational rhetoric without paying heed to the obligations needed for rights to operate as real normative requirements.[592]

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[588] Ibid.
[589] O'Neill (1996, pp. 139, 147-8).
[590] O'Neill (2005, p. 430; 1996, pp. 141-6).
[591] O'Neill (2000, p. 105).
[592] O'Neill (2005, p. 430).

5.1.2   The multiple meanings of claimability

In sum, O'Neill argues that welfare rights are not universal because:

1) In order to be universal, a right must be claimable by all, against all, outside/prior to the existence of institutions.

2) The primary obligation corresponding to a welfare right is the positive duty to provide assistance.

3) Positive duties (in particular, the duty to provide assistance) are not universally claimable.

Though I believe premise (2) is not well supported, we can grant O'Neill this claim and assume that the primary obligation corresponding to a welfare right is the positive obligation to provide assistance.[593] There remains the following problem: O'Neill is not clear on what precisely she thinks claimability consists in, or why it is important enough to draw a distinction between perfect and imperfect types of obligation.[594] In general terms, this condition refers to the ability of the rights-bearer to make a claim against others, as stated above:

Claimability^{Identifiable Duty & Duty-bearer (ID)} **condition:** A right to Φ exists only if the rights-bearer can claim a specific action or inaction (the content of a right to Φ) against a specific, identifiable agent.[595]

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[593] Many would contend that welfare rights correspond as well to a negative duty to not interfere with others' attempts to meet their basic needs, e.g. Ashford (2007, p. 190); Tasioulas (2007, p. 90).

[594] Part of the difficulty is down to the fact that O'Neill has presented her critique of welfare rights in several books and articles over the span of two decades, in each case slightly modifying her explanation of the asymmetry between welfare and liberty rights. This chapter draws on her presentation of the critique in the following four sources: *Constructions of Reason* (1989), *Towards Justice and Virtue* (1996), *Bounds of Justice* (2000), and "The Dark Side of Human Rights" (2005).

[595] "Any right must be matched by some corresponding obligation, which is so assigned to others that right-holders can, in principle, claim or waive the right. Unless obligation-bearers are identifiable by right-holders, claims to have rights amount only to rhetoric: nothing can be claimed, waived or enforced if it is indeterminate where the claim should be lodged, for whom it may be waived or on whom it could be enforced" (1996, p. 129).

This characterisation of claimability takes the perspective of the recipient, or rights-holder, an approach that O'Neill contends is too limited for identifying ethical requirements.[596] An emphasis on recipience ignores an entire class of obligations that are not claimable by anyone (due to the asymmetry between rights and duties), such as the obligation to cultivate virtues like courage or fairness.[597] Treating rights as fundamental also does not take seriously the activities and institutions necessary for fulfilling the claims of rights-holders.[598] Therefore, O'Neill moves from the perspective of the rights-holder to the perspective of the duty-bearer in order to develop further her claim that there is a fundamental asymmetry between liberty and welfare rights.[599]

Adopting an obligation-based perspective, O'Neill thinks that in order to operate as a moral requirement, a directive must meet certain conditions that are conducive to real agents in the world acting on, and being guided by, such requirements.[600] One of these is a *physical* or *material* condition, which O'Neill draws on in her discussion of liberty and welfare rights.[601] Our moral requirements, O'Neill thinks, must take into account our nature as embodied agents with physical limitations[602]:

Physical condition: An agent has a universal obligation only if she is physically capable of fulfilling this obligation with respect to all other individuals.

As mentioned above, O'Neill thinks this poses a problem for the claimability of a welfare right. As potential duty-bearers, we are embodied agents, "hence

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[596] See, especially, O'Neill (1996, pp. 135-41).
[597] Ibid. (pp. 136-7, 148-51).
[598] O'Neill (2000, pp. 198-200).
[599] O'Neill (2005, pp. 429-31; 1989, pp. 230-1).
[600] This stems from her conception of ethical reasoning as a fundamentally practical activity, a main theme of her writings. See in particular: O'Neill (1996, chps. 1 & 2).
[601] O'Neill (1989, p. 230).
[602] Ibid.; O'Neill (1996, pp. 129-31).

spatially and temporally dispersed,"[603] with limited resources. While we are physically capable of refraining from harming all others, or from interfering with the free speech of all others, we are unable to provide adequate access to basic goods and services for all potential rights bearers. If O'Neill is correct, and it is the case that no individual duty bearer can hold the corresponding obligation to assist with respect to all other individuals, this means that I, as a potential rights bearer, cannot make my claim against everyone in the same way that I can with my liberty rights. I cannot claim access to goods and services from all, because no one has an obligation to assist all others, and it is unclear to me which potential duty bearer would be tasked with the obligation to assist me specifically.

The welfare rights advocate, O'Neill says, will probably respond with the following: the Physical condition does not matter because duty-bearers may still fulfil their obligation by providing assistance to a subset of rights-holders. This means that as a rights-holder, while I cannot lodge a claim to basic goods and services against all, I can lodge it against *some*, which is sufficient to claim my right.[604]

O'Neill replies that this will not be sufficient for grounding a *universal* right to welfare because of a new epistemic problem that arises when a moral requirement fails to meet the physical condition. From the right-holder's perspective, the epistemic problem is that I do not know against whom, specifically, I can make my claim; from the duty-bearer's perspective, I do not know which subset of individuals to assist, or the extent of my required assistance (the content of my duty).[605]

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[603] O'Neill (1996, p. 130).
[604] Ibid. (p. 131).
[605] Ibid. (pp. 130-2).

O'Neill refers to this generally under the heading of whether or not a right is "claimable and waivable."[606] So we get two further specifications of the claimability condition from the perspective of the duty bearer:

Claimability$^{\text{Identifiable Recipient (IR)}}$ **condition:** A right to Φ exists only if the prospective duty-bearer can identify the specific persons towards whom she has the corresponding duty.[607]

Claimability$^{\text{Identifiable Content (IC)}}$ **condition:** A right to Φ exists only if the prospective duty-bearer knows the content of her duty corresponding to the right.[608]

Finally, O'Neill also explains the asymmetry between welfare and liberty rights through what she sees as a consequence of Claimability$^{\text{ID, IR, and IC}}$ not being met: the inability, in the absence of clear relationships between identifiable recipients and duty bearers, to identify who is at fault when a right is not fulfilled. O'Neill thinks that the inability to identify the perpetrator of a supposed violation of a welfare right is a direct consequence, or implication, of a welfare right's inability to satisfy Claimability$^{\text{ID, IR, and IC}}$:

> Suppose we think that there are both rights not to be tortured and rights to food. If, in the absence of enforcement, A tortures B, we are quite clear who has violated B's right; but if A does not provide B with food, not even with a morsel of food, we cannot tell whether A has

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[606] Ibid. (p. 131); O'Neill (2000, p. 126; 2005, p. 431).

[607] "[Before a distributive scheme is fixed n]obody would know what their obligations were; or for whom they ought to provide what or when they should act, or at how much cost to themselves" (1996 p. 134).

[608] "Universal rights to goods and services and the corresponding obligations to provide them cannot be antecedently identifiable in the same way that liberty rights and their corresponding obligations are antecedently identifiable ... An account of the content as well as the allocation of obligations to provide those goods and services will take on a definite shape only as the structure of a specific scheme is fixed" (1996, pp. 133-4).

> violated B's rights. *For nothing shows that it is against A that B's claim to food holds and should be enforced.*[609]

In cases where A's action or inaction is a contributing cause of B suffering harm or not having access to any food, we cannot know if this causal relation is sufficient for attributing moral responsibility without a prior assignment of obligations. Negative obligations to refrain from harm can be assigned, or identified, without the existence of institutions, indicating for O'Neill that perpetrators of violations can also be identified without such institutions. But if positive obligations to assist depend upon institutions for their allocation, then B's lack of access to food cannot be pinned to a particular perpetrator without the existence of an institution. O'Neill therefore characterises the asymmetry of the claimability of liberty and welfare rights in terms of whether perpetrators can be identified:

Claimability$^{\text{Identifiable Perpetrator (IP)}}$ **condition:** A right to Φ exists only if it is possible to identify a responsible perpetrator when a rights claim goes unmet (a right is violated).

The problem with O'Neill's reliance on these four characterisations of claimability is that Claimability$^{\text{IP}}$ asserts something quite distinct from the stipulations of Claimability.$^{\text{ID, IR, and IC}}$ Claimability$^{\text{IP}}$ refers to our ability to attribute moral responsibility for a past action or inaction. It is backward-looking, stating that an agent only has a right to Φ if denial of her enjoyment of Φ can, in principle, be causally attributed to an identifiable perpetrator. The other three types of claimability offer an epistemic, not causal, condition: an agent only has a right to Φ if it is possible, in principle, to *antecedently* link her to specific obligation-bearers and to identify the content of the obligations required to fulfil her right.

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[609] O'Neill (2000, p. 136), italics added for emphasis. See also O'Neill (1996, p. 132). In these cases, there is an assumption that there are many others like B whom A could help instead, and many others who could help B to get food, hence the indeterminacy.

O'Neill seems to move from Claimability$^{ID, \, IR, \, and \, IC}$ to Claimability^{IP} through the following assumption: If we can antecedently identify who has an obligation to whom and for what, then, when the recipient is denied that to which she is entitled, we will know who is causally, and thus morally, responsible. Conversely, in the case where Claimability$^{ID, \, IR, \, or \, IC}$ are not met, then perpetrators will not be identifiable, since there was no clear allocation of obligations—or substantive moral responsibility—to begin with.

With these different characterisations of claimability identified, we can now turn to Elizabeth Ashford's examples of complex causal chains between duty-bearers and right-holders. I will argue that Ashford's cases successfully undermine the assumption O'Neill uses to move from Claimability$^{ID, \, IR, \, and \, IC}$ to Claimability^{IP}, and thus, show that Claimability^{IP} is too narrow to operate as a necessary condition for the existence of a right. However, O'Neill can still maintain the necessity of Claimability$^{ID, \, IR, \, and \, IC}$ for establishing a right. Therefore, I modify Ashford's cases in section 3 to argue that Claimability$^{ID, \, IR, \, and \, IC}$ are, like Claimability^{IP}, too restrictive as a necessary condition for a right since they cannot account for cases in which duty-bearers may knowingly commit rights violations, despite lacking antecedent knowledge of the specific content of their duties and to whom those duties are owed.

5.2 Ashford's complex causal chains

O'Neill's critique of welfare rights reflects the implications of accepting what Elizabeth Ashford calls our "traditional conception of the duties imposed by human rights."[610] Ashford contends that this traditional conception rests on an unduly restrictive understanding of claimability. Revising our understanding

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[610] Ashford (2006, p. 217).

of claimability, as Ashford contends we ought to do, will eliminate the basis on which global poverty is currently denied to be a prime and urgent example of a violation of human rights. This denial of poverty as a violation of a human right by our traditional conception of rights occurs at two levels. First, a *positive* duty to provide others with a minimally decent standard of living is rejected because, as discussed in the previous section, its content and assignment rely on institutions for its specification. Second, the claim that severe poverty is a violation of a *negative* right is rejected because the causal links between the actions of citizens of affluent nations and the active deprivation of the poor are so complex that it is unclear whether this relationship is sufficient for attributing moral responsibility.[611]

Ashford offers a strategy against both points by showing how the O'Neill/traditional view would force us to reject obvious liberty rights violations that arise through interactions involving large numbers of individuals. In these interactions, comprised of complex causal chains, "few or none of the agents who contribute to the causal chain can be singled out as responsible for the harm suffered by any particular victim and so be identified as the perpetrator of any particular human right violation."[612] Ashford then poses a dilemma for the O'Neill/traditional view. If O'Neill wants to include such cases as violations of rights, then the claimability-based distinction between welfare and liberty rights collapses. If, by contrast, she rejects such cases as violations of rights, then her view offers an implausible assessment of what does and does not constitute a liberty rights violation.

Ashford contends that the narrow interpretation of claimability on which the distinction between welfare and liberty rights rests ought to be discarded for a broader conception that is better suited for identifying rights violations caused by a multitude of agents. She develops her argument through consideration of

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[611] See, for example, Satz (2005).
[612] Ibid. (p. 218).

two types of complex causal chains: those that produce what she calls "additive" harms and those that produce what she refers to as "multiplicative" harms.[613]

5.2.1 Direct harm: additive and multiplicative harms

5.2.1.1 Additive harm

Additive harms are created through a causal chain in which each individual makes a small causal contribution to a harm that is spread over a large number of victims. In such a chain, each contributing agent produces an effect which "is very thinly spread over millions of victims and therefore does not in itself cause a serious harm to any particular victim, even when the cumulative effect of the behaviour of all these agents is an extremely serious harm to a huge number of victims."[614] Ashford modifies Derek Parfit's 'Harmless Torturers' scenario[615] as an example, calling it the *Torturers' Union* case[616]: Imagine that a large number of agents are employed by a company that manufactures equipment used by robots to torture victims whom these workers never see. The workers are spread across a number of factories, each of which is responsible for an individual component of the torture equipment. While they are uninformed as to the exact nature and use of the equipment, the workers "have strong reason to suspect"[617] that this equipment is used to cause serious harm, yet they choose to remain wilfully ignorant because the factory jobs offer good pay.

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[613] Ibid., (p. 224).
[614] Ashford (2007, p. 195).
[615] Parfit (1984, pp. 80-1), as cited by Ashford (2006, p. 224).
[616] Ashford (2006, pp. 225-6); these are also described in Ashford (2007, pp. 195-7).
[617] Ashford (2006, p. 225).

Ashford argues that we can plausibly consider the torture in this case to be a violation of the victims' liberty rights, given that the harm is serious, foreseeable and could be avoided. And yet, she claims, contrary to O'Neill's account of a liberty rights violation, it is not possible to link the harm suffered by any individual victim to the action of any individual agent working in the factories.

Ashford stresses that this is not merely an epistemic problem, wherein each factory worker is singularly causally responsible for the torture of a single victim, yet does not know in what way or which victim.[618] The causal chains that produce additive harms are not simply opaque networks of causal relationships linking perpetrators to victims. "Rather, none of the agents is responsible for a serious harm to any one of the victims. Moreover, if any one agent withdrew from participating in the causal chain, none of the victims would suffer significantly less."[619] Because each worker contributes only a small portion to the overall cause of the victims' torture, no individual factory worker is directly causally responsible for the torture of any single victim. Insofar as the causal contribution is dispersed across the factory workers, so too is the actual attributive moral responsibility for the rights violation truly dispersed. No victim can make a claim against any individual worker, Ashfords says, as the victim's claim is against the entire group of workers. And yet, given that the caused harm is serious, foreseeable, and avoidable, it seems reasonable that each victim has a claim against the group of factory workers as a whole.

5.2.1.2 Multiplicative harms

Complex causal chains can also create multiplicative harms, which Ashford defines as cases in which "the main effect of a contributing causal factor is to

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[618] Ibid., (p. 224); Ashford (2007, p. 195).
[619] Ashford (2006, p. 225).

magnify the harm caused by another agent or agents."[620] Taken in isolation, the individual's contribution would not be enough to cause harm (it may even be beneficial), but, in conjunction with the contributions of others, it creates a harm that is significant. Given that the effect of each contributor does not necessarily "multiply" (in the case where the pollution would be positive in isolation, the effect in fact changes entirely from a benefit to a harm), a more accurate term for this kind of harm might be "conjunctive": each isolated cause conjoins with one another to create a new cause. In reference to our earlier discussion in 4.3, each agent's contribution in this case is an INUS condition-type cause for harm: a necessary part of a sufficient, but unnecessary cause of harm.

Ashford uses an example from Thomas Pogge (2005)[621] to illustrate this point. Suppose that there are several factories discharging into a river. On its own, each factory's waste has no significant environmental impact, yet when the group of pollutants mix, they create a toxic chemical that destroys the local ecosystem and causes serious bodily harm to the people who use the river as drinking water. We can call this the *Polluting Factories* case. If there were only one factory polluting and causing this destruction, then it would be a clear case of a human rights violation, as there is a direct causation of foreseeable and avoidable harm. It would be absurd, Ashford says, to hold that adding a second, third, fourth, or n^{th} factory to the causal chain makes the rights violation disappear.[622]

Ashford argues that multiplicative, or conjunctive, harms such as these require institutions for their rectification, as "it is indeterminate against which particular agent or agents a particular victim has a claim. All we can say is that this victim, along with all the other victims, has a claim against the whole

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[620] Ashford (2007, p. 197).
[621] Pogge (2005, p. 48), as cited by Ashford (2006, p. 226).
[622] Ashford (2007, p. 198).

group of factory owners."[623] But this is problematic for the O'Neill/traditional view, since violations of liberty rights should not, in principle, require institutions for the identification of morally responsible perpetrators. Yet again, O'Neill must choose between abandoning her claimability condition as a necessary condition for a right, or implausibly claim that the mere presence of additional factories disqualifies *Polluting Factories* as an example of a human rights violation.

5.2.2 A broader account of claimability

Because they are collectively exercised, O'Neill cannot account for rights violations caused by additive or multiplicative/conjunctive causal chains. A condition that demands a one-to-one matching of rights violation victims to perpetrators appears to be too narrow to account for cases of highly plausible, yet group-based, rights violations. As Ashford points out, the O'Neill/traditional view may apply well to interactions within close-knit groups, but "it is inappropriate to the much more complex relations between agents and victims that now form the backdrop of much of our behaviour, where the interaction of the behaviour of a huge number of agents ultimately causes severe harms to a huge number of victims round the world."[624]

Therefore, Ashford suggests a broader claimability condition according to which individuals may hold rights against institutions and groups, and can place claims on the individuals who support and participate in these exercises of collective agency:

> This is genuine claimability, because it articulates a demand each victim can make against all those who fail to take enough action

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[623] Ibid.
[624] Ashford (2006, p. 219).

towards reforming the social institutions of which they are members. Where agents are directly responsible for their contribution to complex causal chains that lead to serious harms, victims of the harms have a claim against them that they take personal responsibility for this contribution and either withdraw from the chains or seek to coordinate with others to stop them.[625]

Under this revised notion of claimability, those who suffer harm from the operation of unjust institutions have a legitimate claim on their participants to seek institutional reform and to provide compensation.

5.2.3   An escape route for O'Neill?

Recall that the traditional conception of human rights rejects poverty as a violation of a right at two levels: as a positive right and as a negative right. Ashford's cases successfully undermine this rejection at the level of a negative right. The traditional claim is that poverty is not a violation of a negative human right, on the basis that the causal relations between citizens of affluent nations and the global poor are too complex to establish moral responsibility. But this cannot be correct, as it would also rule out *Torturers' Union* and *Polluting Factories* as examples of a violation of a human right against serious harm. Ashford concludes:

> This indicates the status of torture as a human right violation does not depend upon our being able to identify the perpetrators. It follows that deprivations of secure access to basic necessities may constitute human rights violations even where we cannot identify the agent(s) specifically responsible for a particular victim's coming to be deprived of a subsistence income.[626]

It follows from Ashford's cases that a collectively caused deprivation of secure access to basic goods and services can constitute a negative human rights

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[625] Ibid., (pp. 233-4).
[626] Ibid., (p. 226).

violation, akin to the violations that occur in the *Torturers' Union* and *Polluting Factories* cases. It remains to be seen, however, whether these cases pose a problem for O'Neill's claimability condition and the distinction between a positive right to welfare and a negative right to liberty that this condition supports.

As we saw in 5.1.2, O'Neill conceives of claimability in a variety of ways. Only one these versions, Claimability,^{IP} refers to the possibility of identifying the perpetrator of a rights violation through a causal link between individual action and harm. As mentioned, O'Neill often introduces Claimability^{IP} as an example or illustration of her main explication of claimability, which draws more heavily on Claimability.$^{ID, \ IR, \ and \ IC}$ This may provide O'Neill with an escape route from the dilemma posed by Ashford, if it turns out that Claimability$^{ID, \ IR, \ or \ IC}$ is indeed satisfied in both cases.

5.2.3.1 The Torturers' Union revisited

As Ashford describes this scenario, the factory workers have good reason to suspect that what they are doing causally contributes to torture, and they can avoid this by quitting their jobs. On this basis, Claimability^{IR} and Claimability^{IC} have been satisfied: antecedent to their actions, the duty-bearers know the content of their duty (do not harm) and the recipients (everyone). They also know that they can fulfil this duty by not working in the factory. Thus, O'Neill can say that her claimability condition fully accounts for the rights violation constituted by the factory workers' activity. The workers violate their victims' rights by engaging in activities they specifically know will causally contribute to the torture of others.

It is a further question as to whether Claimability^{ID} has been met, that is, whether the victims of the robotic torture scheme can identify those who bear duties towards them and the content of those duties. Ashford writes that the rights-holders cannot identify specifiable others against whom they have a

claim, since the cause of their torture was collectively created, and therefore, their suffering is not linked to any single factory worker.[627] But this is claimability for a rights *violation,* which refers to a causal attribution of each victim's suffering to the past actions of individual workers. Thus, this consideration applies strictly to Claimability^{IP}. Antecedently, the rights-holders knew they had a universal claim against all others not to be tortured.

One might ask why Claimability^{IP} is not satisfied in *Torturers' Union*: why can we not say that each victim has a claim against each factory worker? If they were able to identify their obligations before the fact, then we could attribute moral responsibility to each as perpetrators of human rights violations once they choose to work in the factory. In this case, O'Neill would avoid Ashford's dilemma altogether, as she could argue that the rights violation meets the condition of Claimability.^{IP}

But what Ashford's case shows is that O'Neill's move from the epistemic conditions of Claimability$^{ID, IR, and IC}$ to the causal condition of Claimability^{IP} is unsupported. O'Neill thinks that if we can identify duty-bearers, duties and rights-holders prior to action taking place, then we can identify rights violations through one-to-one causal connections between victims and individual duty-bearers who fail to perform the required action. The ability to make clear causal connections for wrongdoing is entailed within the ability to antecedently identify who owes what to whom; if Claimability$^{ID, IR, and IC}$ is satisfied, then Claimability^{IP} will follow.

Ashford's cases show that these two aspects of claimability pull apart, as the one-to-one causal condition expressed in Claimability^{IP} does not hold in *Torturers Union*. No individual victim of torture can be paired with the action of a single worker as the cause of their suffering. Thus, we cannot always link victims of human rights violations to individuals who act as their singular

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[627] Ashford (2007, pp. 195, 198).

cause, even in cases where we can identify antecedently who owes what to whom. As Ashford's case demonstrates, this is true even for negative rights against harm.

Yet, because Claimability$^{\text{ID, IR, and IC}}$ are arguably still satisfied in this case, O'Neill could abandon the idea that Claimability$^{\text{IP}}$ is entailed by antecedent knowledge of one's duties and corresponding rights-holders, and also abandon her contention that Claimability$^{\text{IP}}$ is a necessary condition for the existence of a right. Instead, she may insist, it is the possibility of the antecedent identification of duty-bearers, duties, and recipients that truly matters in the distinction between welfare and liberty rights. And this identification is still possible in *Torturers' Union*.

5.2.3.2   The Polluting Factories revisited

In the case of the Polluting Factories, while "it is entirely predictable" to the factory owners that if they all pollute the river, "the overall result will be devastating,"[628] Ashford does not indicate with what degree of certainty each factory owner believes that the others will also pollute.

Let us say that it is either the case that (1) the factory owners knew enough to foresee with relative certainty that all of them will pollute into the river and could thereby predict that their actions would cause serious harm, or (2) they did not foresee the joint action, with each instead acting with the belief that the others will not discharge, and that his own individual discharge will be harmless or even, perhaps, beneficial.

If (1) is the case, then O'Neill could agree that this is a human rights violation, since each factory owner has an obligation not to discharge in circumstances when he believes others will pollute as well. In this case, each was aware that

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[628] Ibid. (p. 197).

they had an obligation to refrain from harming all those using the river as a water source, and yet chose to causally contribute to serious harm in view of this awareness. As with *Torturers' Union*, this poses no problem for her claimability condition since Claimability$^{ID, IR, and IC}$ have been satisfied. Each of the individuals affected by the pollution knows, prior to the joint pollution, that he or she has a claim against each factory owner to not discharge if it is the case that the others have discharged.

If (2) is the case, O'Neill might say this is not a rights violation, but that this answer is more in line with our intuitions about plausible rights violations. If the owners acted under non-culpable ignorance, with justifiable belief that their pollution would either do no harm, or produce a benefit, then this weakens the conviction that the factory owners violated the rights of their victims.

However, in *Polluting Factories*, Claimability^{IP} is not satisfied, since the individual harms suffered cannot be matched one-to-one with the discharging action of each factory owner. Once again, the ability to causally attribute a rights violation does not follow directly from the ability to identify the content of one's duties and to whom they are owed prior to acting. The complex chains in which our actions become entwined disperse the causal links between individual actions and their collective effects. Yet we still think there is moral culpability for violations in these cases. O'Neill would add that the reason why we think this is because the antecedent conditions Claimability$^{ID, IR, and IC}$ are still satisfied. I will now argue in 5.3 that this is wrong: rights violations can be avoidable and foreseeable without Claimability$^{ID, IR, and IC}$ being met.

5.2.3.3 Rights and necessary conditions

In sum, O'Neill's claimability condition in fact offers two necessary conditions for the existence of a right: 1) an epistemic condition regarding what duties and relationships can be identified antecedently to establish substantive moral

responsibility, and 2) a causal condition regarding whether attributive moral responsibility can be assigned in such a way as to match individual perpetrators to individual rights violations. Ashford's cases show that (2) is not a necessary condition for a right, as causal responsibility for a serious, foreseeable and avoidable harm can be spread across groups of agents.

However, as I argued, the epistemic condition is satisfied by both cases, indicating that at most, Ashford's complex causal chains undermine (2) and O'Neill's assumption that (2) is a direct implication of (1). When faced with Ashford's objection, O'Neill could therefore drop this assumption as well as Claimability.[IP] She could then maintain that the asymmetry between positive and negative rights consists primarily in Claimability.[I.D, IR, IC] The conditions of Claimability[ID, IR, IC] are for the most part satisfied in the above cases and, where they are not, there is plausibly no rights violation.

5.3   Human rights in contexts of uncertainty

5.3.1 Revising Ashford's cases

Here I aim to strengthen Ashford's objection to O'Neill by arguing that, with slight modification, the complex causal chains she identifies can undermine our epistemic abilities to *antecedently* identify the content and recipients of

our negative obligations against harm. Doing so will rebut O'Neill's claim that only liberty rights satisfy Claimability$^{ID, IR, and IC}$ pre-institutionally.[629]

5.3.1.1 The Human-Powered Torture Machine

Imagine that the masterminds in the *Torturers' Union* case could not find any workers to employ, so they have instead completely mechanised the construction of the equipment. However, they still need to power the machinery and the robots that use the equipment to torture, so they have rigged both systems to myriad devices that individuals use on a daily basis. Turning on a light switch, for example, may help move the conveyor belt. Running on a treadmill or using a stationary bicycle in a gym is enough to put in several screws. Fruit picking machinery may contribute to flipping the switch to turn on the torture equipment once it has been completed. Importantly, however, not all types of device are linked to human-powered machinery, nor are all token instances of any device: all coffee pots and some light switches and treadmills are not connected to the system.

In this case, individuals contribute causally to the torture of others through typically innocuous activities such as exercise or the purchase of fruit. As in Ashford's original case, the harm they cause is additive: the effect of each individual's action is spread out over many victims, each of whom suffers a significant degree of harm.

What is different in this case is the separation between the duty-bearers' knowledge of the *general effects* of their activities and their knowledge of *which activities in particular* contribute to this effect. Such a separation must

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[629] It is important to remind ourselves at this juncture what kind of institution O'Neill has in mind with respect to the 'pre-institutional' standpoint used to assess whether a right meets the claimability condition universally. Although complex causal chains often occur through institutions, and are thus not wholly 'pre-institutional', what O'Neill is referring to is the absence of institutions that function specifically to recognize and assign rights and duties. Insofar as the factories in Ashford's two cases operate in a context in which rights and duties are not assigned by any institution, they constitute a pre-institutional standpoint.

occur in order to produce a successful counter-example to O'Neill's claimability condition. This is because knowledge of the general effects is necessary for attributing moral responsibility to a duty-bearer, but knowledge of which specific activities the agent must refrain from cannot be present, as it would allow O'Neill to contend that, at the very least, Claimability^{IC} has been met. She would then be able to explain why such a case qualifies as a human rights violation. To undermine Claimability,^{IC} we need a case in which an agent can foresee the harm caused by her action (so as to establish moral responsibility), but has an epistemic deficiency with respect to identifying the content of her duty, that is, what exactly she must refrain from doing in order to refrain from harming others.

In *Torturers' Union,* the workers can identify the content of their obligations towards others: they ought not to work for the factory. But in the Human-Powered Torture case, individuals do not know which of the otherwise innocuous activities they engage in will contribute to the making and powering of the torture equipment. They know of the effects of their day to day activities, and that they have, in general terms, a duty to refrain from harming others. Presuming that it is too burdensome to expect individuals to stop all such activities[630], this leaves individuals unable to antecedently identify the practical content of their obligation to refrain from harm. They are unsure (and have no means of discovering) of how their use of various devices or their activities with others contributes causally to the serious harm and deprivation of the victims. Claimability^{IC} has not been met, and yet, as Ashford argues, it would be implausible to deny that this counts as a rights violation, given the general foreseeability and avoidability of the harm. It seems then

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[630] Aside from the burden of withdrawing from one's day to day activities, it is also quite a blunt solution to the problem. The individuals in this case need only to avoid using the particular devices that are connected to the machinery. The problem is that they do not know which devices are in that subset.

that Claimability^{IC} places too significant an epistemic burden on potential duty-bearers to establish a human right.

5.3.1.2 The Polluted Tributaries

Whereas the previous modification argued that the content of our negative duties is unspecified (Claimability^{IC}), modifying the Polluting Factories case can illustrate how the *recipients* of our negative duties are pre-institutionally unspecified (Claimability^{IR}). Suppose that each of the many factories in this case sits on the shore of an individual tributary, all of which converge into the same river several miles south, before branching out again into new tributaries and creeks that provide water to 100 different towns scattered across the region. Because the factories are not on the same shoreline, they cannot see whether or not one of the other factories is polluting as well. Let us also imagine there is no way for them to communicate with one another.

The owner of Factory A knows that if his factory's discharge, let's say Discharge-A, goes into the water on its own, for 75% of the population not only will it do no harm, it will actually be beneficial for the health of the people who drink it, like a vitamin supplement. For the other 25%, however, it will cause serious, potentially debilitating, health problems. If Factory B happens to be polluting at the same time, and Discharge-A mixes with Discharge-B at the point where their tributaries connect, then it becomes toxic to anyone who swims in the river that day, but will have no effect if it is processed as drinking water. Finally, if the A-B mixture mixes with Discharge C, then only people with a certain genetic condition, the prevalence of which in the population is unknown, will be seriously sickened and everyone else will be unaffected.

In this case, the owner of Factory A knows that, whatever else happens, if he discharges into the river some subset of the population living along the tributaries will suffer serious harm. But the variability of possible outcomes

means that he cannot antecedently identify those individuals who have a claim against him polluting into his tributary. It is not the case that everyone has a claim against the owner of Factory A: if no other factory emits discharge, then 75% of the population will in fact be benefitted from the owner's pollution. In the second scenario, only those unfortunate enough to swim in the river will have a claim against the owners of factories A and B.

Polluted Tributaries meets the following necessary conditions for a human rights violation: the harm is foreseeable, as the owner knows his discharge will cause harm, it is avoidable, and it causes (conjunctively, or multiplicatively) serious harm to others. However, the owner is unaware of the circumstances in which his discharge will occur: he does not know if his discharge will harm 25% of the population on its own, harm swimmers by mixing with Discharge-B, or harm those with the genetic condition by mixing with both B and Discharge-C.

Unlike *Polluting Factories*, in which the entire population of those who use the river will be harmed by the pollution, in this case the relevant rights-holders are not fixed and identifiable. Rather, those who will be harmed constitute a subset of the total population, and the content of this subset (which particular individuals are members of it) varies based on the actions of the other factory owners. Because he is unaware of which scenario will unfold, the owner of Factory A does not know, prior to his action, the specific rights-holders who have a claim against his discharging into the river. The people who will be better off with the pollutant in the water if it is discharged on its own, or the people who do not have the genetic condition in the case where A is mixed with Discharges B and C, do not have a claim against the owner of Factory A. Only those who would be harmed have a claim. But it is unclear to the owner who, specifically, those rights-holders might be.

Claimability^{IR} is not satisfied in this case, yet, again, it would be implausible to deny that the owner of Factory A violates an existing right when he decides to

discharge into the river. He commits this violation despite the impossibility of identifying, antecedently, which individuals have a claim against his action. The owner knows he will harm *someone* by discharging into the river, but has no way of specifically identifying his victims. O'Neill insists that universal human rights are only those for which we are able to identify specific rights-holders prior to the establishment of institutions. But this cannot be the case, as we can be aware that there is a claim against us to perform or refrain from an action, while being unable to identify specifically who is the holder of this claim.

5.3.2 The supposed relevance of antecedent claimability

In response to these modifications, O'Neill might *still* insist that there is some sense in which we "know" we have an obligation to all others in abstract to do no harm to them, and all others "know" they have a claim against all to refrain from harm, whereas we do not "know" to whom, in abstract, we have an obligation to provide goods and services. That is, the owner of Factory A still knows, in a vague sense, that he has an obligation to do no harm to all others, but does not know for which individuals this obligation will be violated by his action. Similarly, an individual in *Human-Powered Torture Machine* knows very generally she should not harm anyone, but simply has no idea how to actually go about refraining from harm or minimising her contribution to harm.

But at this point the onus is on O'Neill to explain what this epistemic requirement really amounts to and why it is important. Because it seems perfectly reasonable that I know "in abstract" that I have a general obligation to do my part to provide goods and services to all others. Working out the details of this obligation requires coordination, or even institutions. But this is no different from the details I need to engage with to know what my

obligation to do no harm to others consists in, particularly in a world of complex causal chains such as ours. My ability to antecedently identify a universal obligation to refrain from harming all others means as much (or as little) for my decisions about what to do and with respect to whom as the identification of a universal obligation to provide assistance. To take both obligations seriously, we must take seriously the role of relevant institutions and social actors that can help us to instantiate our obligations in specific contexts and decisions.

5.4 NGOs and claimability: rectifying epistemic deficiencies

5.4.1 Indirect harms and social institutions

As argued above, O'Neill and the traditional view of human rights rely on an understanding of claimability that is too narrow, both antecedently and post hoc, to account for cases of direct human rights violations when those violations come about through a collective cause. This understanding of claimability is also too restrictive, Ashford argues, to account for cases of indirect harm, in which the duty-bearer's contribution to harm is mediated through a social institution, and is, therefore, neither foreseeable nor avoidable.

Why should a conception of claimability be able to fit such cases, thereby qualifying indirectly caused harms as rights violations? Precisely because many of the most egregious rights violations in human history have been perpetrated by social institutions, for example the institution of slavery or the denial of women's rights to vote and own property in most 19th century legal systems. In cases such as these, the violation of the victims' rights does not

consist solely in token acts of slave ownership or the refusal to provide a woman with a ballot. Rather, because token acts of harm and oppression are made possible by their systematic legitimation, responsibility for such harm and oppression falls upon all participants within the social and legal system that supports it.

Ashford reasons that, if individuals bear a negative duty to refrain from harm, then they also bear a negative duty to refrain from participating in social institutions that foreseeably and avoidably lead to the serious harm of others. If the social institution is so pervasive that agents are unable to withdraw their participation, or it is unreasonable to demand that they do so, then they have a duty to seek to reform the institution (or create the necessary new institutions) along with a duty to attempt to rectify the harms suffered by others.[631]

The consideration of indirect harms illustrates, yet again, a problem with Claimability.[IC] Agents involved in a rights-violating social institution from which they cannot easily extract themselves do not have a clear idea of the content of their negative duty in such cases.[632] Consider, for example, a non-slave owning person living in the United States in the 1840s. What might this individual do to fulfil his negative duty to refrain from supporting social institutions that cause serious harm to others? Agents support and sustain social institutions by way of a variety of means. Therefore, if total withdrawal is not feasible, then it is down to the agent to determine which activities he can refrain from and which he cannot. A non-slave owning person may attempt to boycott certain products that are particularly dependent upon slave labour, participate in political demonstrations and processes to voice his ideological opposition to slavery, or assist in illegal activities such as the Underground Railroad.

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[631] Ashford (2006, p. 229-31).
[632] Ibid. (p. 232).

Insofar as the content of a negative duty in cases of indirect harm is undetermined and multiply satisfiable, it is no more specified, and thus, no more claimable, than a positive duty to provide aid. Moreover, because participants can exercise discretion in how they fulfil their obligation to refrain from supporting harmful institutions, and because they do not owe this obligation to any particular claimant, this negative duty is imperfect. Given that the duty to refrain from harm is a paradigm example of a duty of justice, Ashford concludes that duties of justice can be imperfect.[633]

If the perfect/imperfect distinction does not map precisely onto the distinction between negative and positive duties, as O'Neill claims it does, then there is no basis for her denial that duties to provide assistance are also duties of justice. Moreover, a duty of justice may consist in an imperfect duty to create the means necessary for transforming it into a perfect duty, i.e. to establish and support the necessary institutions.[634] Regardless of whether one views our imperfect duty to the poor as a negative duty to off-set the harm caused by our socio-economic institutions, or as a positive duty to provide life-saving material assistance, an essential part of that obligation is to work towards the establishment of institutions and laws that better meet individuals' liberty and welfare rights by allocating responsibility for their fulfilment.

5.4.2 Moral capital and NGOs

Those who believe we have a stringent obligation to provide compensation or assistance to the poor frequently compare our contemporary global economic system to past institutions of slavery, on the basis that the relationship of

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[633] Ibid. (p. 234).
[634] Ibid.

many citizens of affluent nations to the former is structurally and morally similar to the relationship of non-slave owning citizens to the latter.[635] I believe this analogy is appropriate for an additional reason: just as their predecessors played a primary role in successfully demolishing institutions of slavery, contemporary non-governmental organisations have the ability to help bring about, through various means, the institutional and interactional changes necessary for correcting global economic and political injustices.

One of the ways in which NGOs can do this is by eliminating the frequently cited barriers to holding such citizens morally responsible for global injustice, and by increasing citizens' abilities to fulfil the imperfect duties of justice outlined by Ashford above.

Here, the comparison to the anti-slavery movement is particularly instructive. Recent scholarship on the abolition of slavery has argued that historians have explained the event of the abolition of slavery in large part through a change in the moral sentiments and beliefs of English and American citizens, yet have not explained how this change occurred or how it led people to take action against slavery.[636]

Christopher Brown (2008) offers such an explanation by detailing the development and activities of several key anti-slavery organisations. Because they had built a reputation for themselves through other popular works of charity, Brown argues, these groups had accrued "moral capital": a form of prestige that could be "mobilized 'for the sake of tangible, exterior returns.'"[637] They then "spent" this capital on mobilizing the English and (at least part of) the American public against the evil of slavery. I quote the beginning of Brown's account of this transformation here, as it illustrates the similarities

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[635] Pogge (2005); Ashford (2006).
[636] Brown (2008); Hochschild 2005).
[637] Brown (2008, p. 457). Brown borrows the concept of 'moral capital' from Kane (2001, p. 7).

between the role of these charitable organisations and the one that NGOs can fill today:

> It is one thing to notice an injustice and something else to act. For too long, the antislavery movement in Britain has been described as the consequence of shifts in moral perception, as if the mere recognition of a moral duty must have led men and women to act. It can be easy to forget what most of us know from our own lives: that professed values do not always determine the choices we make, that sometimes we decide against what we believe to be right, that we often accept questionable practices because they seem necessary to the world we know or because they enjoy the sanction of age, however troubling they may seem on careful reflection. Antislavery values were not enough in the eighteenth century, or after...Somehow this particular moral wrong had to become important and urgent enough to drive individuals and groups to confront entrenched institutions.[638]

NGOs can engage others to confront entrenched institutions through the capacity discussed in Chapter 3, the ability to articulate norms and shape public opinion on moral issues. However, an equally important capacity used by NGOs to alter and undermine unjust institutions is the ability to convey information across epistemic boundaries, that is, to inform an audience on matters that can significantly affect the way they see their world.

The conviction that contributing directly and indirectly to the serious harm of others is wrong is arguably shared by many. However, due to the epistemic uncertainties elicited by complex causal chains, the degree to which our currently accepted practices and institutions constitute such a wrong remains largely unrecognised. As argued above, rights-holders do not need to be epistemically or causally matched one-to-one with duty-bearers in order to establish the existence of a right. But the lack of a specific assignment of duty poses a practical challenge for the enforceability and fulfilment of rights. NGOs can help overcome these practical difficulties by gathering and conveying information on the collective harms caused by the institutions with

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[638] Brown (2008, pp. 2-3).

which individuals cooperate, and on the ways in which they can currently act to fulfil obligations of assistance and compensation for specific others.

In the 18th and 19th centuries, recognition of the values of freedom and equality was not enough for individuals to reject outright the institutions that flagrantly violated these values (this juxtaposition is perhaps no better demonstrated than in the Constitution of the United States of America, which begins with a universal declaration of freedom yet affirms the practice of owning human beings as property). The similar acceptance of a universal negative right against harm today has not yet led to a widespread call for the reform of the institutions and collective practices that violate this right. In order for this to occur, these institutions and practices must be identified as token instances of the violation of a human right; their moral standing and acceptability must be re-cast through an increased awareness of the facts regarding their repercussions.

The anti-slavery movement exercised the ability to convey information across epistemic boundaries to great effect. In the middle of its campaign, the London antislavery committee reproduced a diagram of the Brookes slave ship for publication in newspapers, magazines, and as posters (see figure 4). The abolitionists took care to ensure that the diagram was free of any embellishment—in fact, the number of slaves depicted on the diagram was considerably less than the estimated maximum capacity used by some ship captains at the time.[639] The Brookes diagram ended up being one of the primary tools of the abolitionist movement. In his memoirs, Thomas Clarkson, a leading abolitionist, wrote of the diagram: "the print seemed to make an instantaneous impression of horror upon all who saw it, and was therefore

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[639] Hochschild (2005, p. 155).

instrumental, in consequence of the wide circulation given it, in serving the cause of the injured Africans."[640]

Figure 4. Diagram of the Brookes Slave Ship[641]
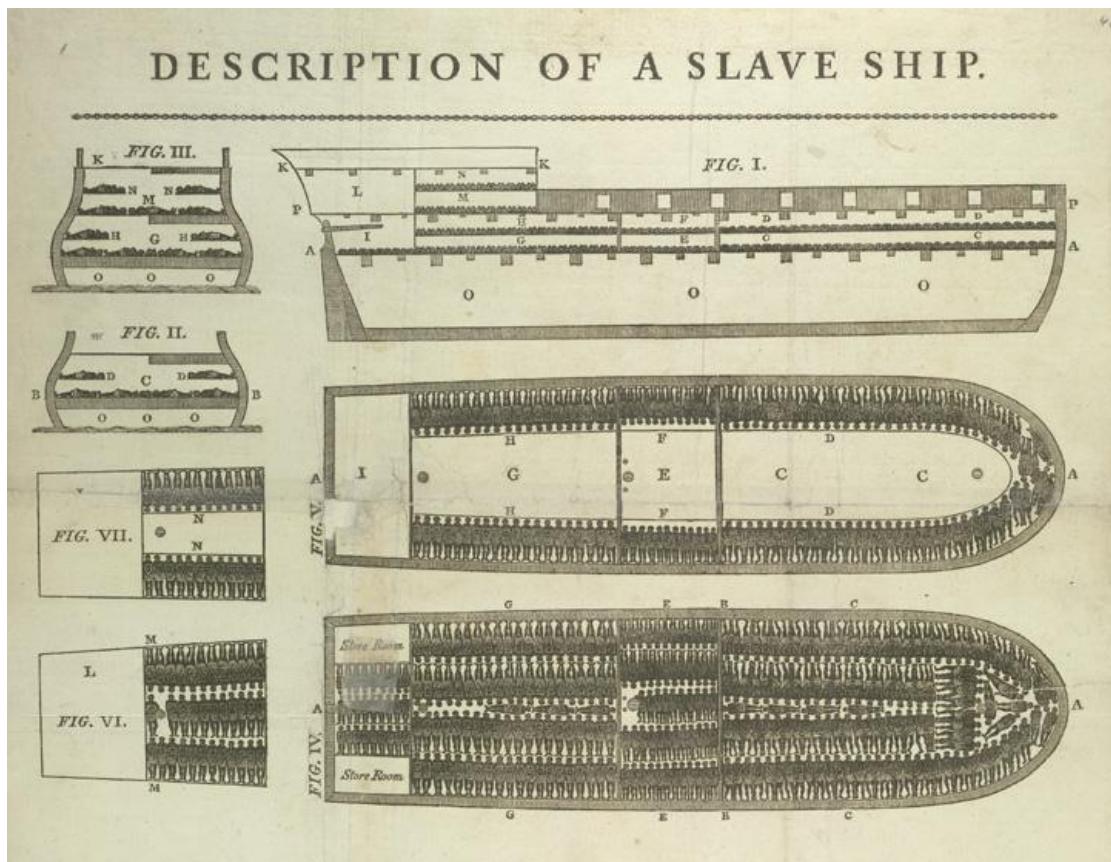
Contemporary NGOs also possess the ability to orchestrate institutional change by simply conveying the facts of injustice. Some have successfully exercised this ability, for example, in changing supply chain practices by

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[640] "Diagram of the Brookes Slave Ship." British Library online: http://www.bl.uk/learning/citizenship/campaign/myh/photographs/gallery2/image2/brookes ship.html

[641] Ibid.

raising awareness of poor labour conditions.[642] Like their predecessors, these organisations also have an obligation to convey this information accurately. Just as the "moral capital" of the abolitionists gave credence to their campaign, collaborations with contemporary NGOs based on their identity as norm-enacting agents entail the expectation that they will convey information honestly and accurately. NGOs working on issues of poverty and justice today can thus follow in the footsteps of the abolitionist movement in two ways: 1) by conveying information honestly and accurately, and 2) by doing considerably more to highlight the causal links between practices that structure the daily lives of those in affluent nations and the deprivation that dominates the daily lives of the global poor.

Conclusion

This chapter has argued against two main tenets of the traditional view of human rights, as espoused by Onora O'Neill: 1) rights against interference are more stringent than rights to access to basic goods and services; 2) poverty is not a violation of a human right. The previous three chapters each identified a causal capacity of NGOs: the ability to affect the abilities of others, the ability to shape and alter moral perspectives and social values, and the ability to collect and use material resources for effecting positive change. This chapter identified a fourth and final[643] causal power of NGOs: the ability to convey information across epistemic boundaries. In exercising this capacity, NGOs can assist in overcoming the epistemic uncertainties and causal complexities that prevent individuals from recognising and fulfilling their obligations

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[642] K. MacDonald (2007).

[643] Here I mean final with respect to the number of causal capacities discussed in this thesis. This set of four provides a minimal account of NGO agential capacity; I do not rule out the possibility of identifying others.

toward distant others. Contemporary aid NGOs could utilise this ability better, I suggested, to achieve institutional reform on par with the abolitionist achievements of the 18th and 19th centuries.

INTERLUDE

FOUR NGO CAUSAL CAPABILITIES AND THEIR CORRESPONDING OBLIGATIONS

As defined in Chapter 1, NGOs are agents that are characterised by their reliance on collaborative activities with others. The extent to which an NGO can exercise a capability—a "specific, effectively resourced"[644] causal ability— in a given environment depends largely on the cooperative relationships it can forge with the other relevant actors within that environment. An NGO elicits this cooperation by presenting itself to others through a set of norms that structure its organisational identity. Other parties are then motivated to interact with the NGO insofar as they recognise it as a norm-enacting agent. They draw on this recognition in identifying reasons for their collaboration with the NGO.

The quantity and depth of these beliefs can vary widely: a donor or government official can have a complex account of what a particular NGO does and the value of its work, or they can think very little about the organisation. What matters is that they must think of it as norm-enacting in *some* degree. If an NGO's collaborators did not recognise the organisation as norm-enacting, this would amount to a decision to collaborate with an agent that identifies itself by norms but does not, in fact, act in accordance with—or in pursuit of—realising those norms. Given the time, resources and other

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[644] O'Neill (2001, p. 189).

forms of commitment demanded of an NGO's collaborators, it is implausible that they would engage in this collaboration if they knew the NGO did not conduct itself in a manner befitting of a norm-enacting agent. If an NGO does not take its self-identified norms seriously, this undermines the reasons others have to take it seriously as a social actor.

In short, an NGO presents itself as a norm-enacting agent, convinces others to collaborate with it on the basis of this self-identification, and relies on these collaborations for the exercise of its own agency. This process forms the basis for identifying a set of NGO obligations. The argument can be presented as follows:

1) An NGO can exercise its agency (its causal capabilities) only if others collaborate with it.

2) Others collaborate with an NGO on the basis that NGOs identify themselves as agents defined by norm-enacting activity.

Therefore: 3) An NGO can exercise its agency only if others recognise an NGO as a norm-enacting agent.

4) If the recognition of an NGO as a norm-enacting agent is unmerited, then its exercise of agency rests on false pretences.

5) One ought not to exercise one's agency on false pretences.

6) Necessary characteristics of a norm-enacting agent include:
   a. respectfulness toward others,
   b. consistency in its actions and values,
   c. accomplished norm-enactment,
   d. honesty and use of accurate information.

7) If an NGO fails to fulfil the necessary characteristics of a norm-enacting agent (a. through d.) others' recognition of it as a norm-enacting agent is unmerited.

Therefore, from (3)-(7):

C: If an NGO fails to embody the necessary characteristics of a norm-enacting agent, it does that which it ought not to do: exercise its agency on false pretences.

To say that an agent exercises its agency on false pretence means that the reasons supporting its activities and capability to act are falsified by the agent's own attitudes or conduct. This is the kind of wrongdoing that occurs when an individual or institution, tasked with a set of powers and privileges, engages in activity that violates the reasons justifying their exercise of that set of powers and privileges. Its wrongness rests on it being a subset of the broader category of deceitful action. This argument, therefore, assumes the existence of a general obligation to refrain from intentionally deceiving others.[645] My contention is that NGOs that do not embody the characteristics of a norm-enacting agent violate this obligation and, therefore, commit wrongdoing. Their failure to embody these characteristics constitutes deceit insofar as their collaborations with others are based on their self-identification as norm-enacting agents, and on others' acceptance and recognition of that identification as a condition for their collaboration with the NGO.

In the literature on NGOs, the perceptions and assumed expectations of other parties are sometimes discussed as important for an NGO's "legitimacy" or its

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[645] For Kantian arguments as to why deception is wrong, see O'Neill (1989); Korsgaard (1996, chp. 12); Scanlon (1998, pp. 317-22). Rule-consequentialists also support a general prohibition against lying, though they believe that in certain cases this prohibition can be outweighed by other considerations (Hooker 2000, chp. 6; 2005). My account here does not deny that the obligation to refrain from deceit can be outweighed in certain cases. However, whether this pertains to NGOs in some circumstances, and thereby overrides the obligations I identify here, must be supported by further argument.

"credibility" as an actor.[646] Often, this discussion expresses the view that NGOs ought to be concerned about others' perceptions of their authenticity as actors because failure to do so may have an adverse effect on their operations. By failing to support their moral claims, some authors argue, NGOs are at risk of losing future support or funding.[647]

The difference between this approach and the argument I offer here is that, according to the latter, NGOs ought to meet the characteristics of a norm-enacting agent because in doing so their agency is not exercised through indirect falsehoods: others' recognition of them, which grounds their collaborations and gives strength to their capabilities, is not ill-founded. Insofar as an organisation fails to fulfil the characteristics of a norm-enacting agent, it exercises an agency based on "sham" collaborations, in which it acts in a manner that subverts the very reasons and justifications that support its ability to act. In short, an NGO that undermines the exercise of its own agency in this way fails to take itself seriously. Organisations that, in contrast, take themselves seriously as unique social agents, are obligated to "get it right" by directing themselves in thoughtful conformity to the basic characteristics of a norm-enacting agent.

Each obligation identified in this thesis corresponds to one of the four causal capacities discussed in chapters 2-4 (see Table 1). These capacities each illustrate one aspect of an NGO's agency, by providing an example of what an NGO utilises its collaborations with others to do. I now briefly summarise the capacities and their corresponding obligations, as they were introduced in the previous chapters.

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[646] Hudson (2001); Brown (2008); Lister (2003); Edwards & Hulme (1996); Edwards (1999); Vedder, et al. (2007).
[647] Brown (2008); Lehr-Lendhardt (2005).

Table 1.

	Causal capacity	Necessary characteristic of a norm-enacting agent	Obligation
Chapter 2	Altering the abilities of others	Respectful, responsible engagement with others	Accountability
Chapter 3	Altering values, social norms, and evaluative judgments	Values and actions are consistent	Fidelity to mission
Chapter 4	Use of material resources for positive social change	Accomplished norm-enactment	Construction of a theory of change that is sensitive to variables that can affect the success of the activity
Chapter 5	Epistemic connectedness	Honesty and use of accurate information	Use of appropriate internal procedures for learning and evidence collection

In Chapter 2's discussion of accountability, I argued that NGOs have the ability to alter the abilities of other agents, and that this triggers a responsibility to create the opportunity for those agents to engage in moral appraisal of the NGO. However, I argued that a democratic version of the all-affected principle was not the reason that affecting others' abilities triggers an NGO's obligation of accountability. Rather, the basis for the obligation of accountability, I argued, was that an NGO relies on other agents to collaborate with it in order to successfully enhance or diminish the abilities of a given actor. The basis for this collaboration is the recognition of an NGO as a norm-enacting agent, a characterisation that entails the expectation that the agent conduct itself in a respectful and responsible manner toward others. After arguing for a conception of accountability as respectful moral appraisal, I concluded by highlighting how accountability is an obligation an NGO has to structure its relationships in a manner that allows for moral appraisal. Fulfilling this obligation is intrinsically valuable for an NGO, as it is constitutive of the relationships through which its agency is exercised.

Chapter 3 engaged with Thomas Pogge's argument that the moral priorities of INGOs should be considered from the viewpoint of an economic framework of agency that casts NGOs as intermediary agents for their donors. At the end of this chapter, I argued that one of the ways in which NGOs of all types engage more actively with potential and actual donors, as well as other parties, is through the shaping of social norms and moral perspectives. Again, an NGO's ability to alter the way we view our moral landscape rests on our collaboration with it that recognises and affirms it as a norm-enacting agent. In this recognition, other parties attribute to the NGO, or assume that it will maintain, a level of consistency with respect to its values and other collaborations and activities. On this basis, NGOs have good reason to refuse collaborations with donors holding questionable moral viewpoints, as this undermines the basis for their collaborations with others.

This does not mean, however, that NGOs have no obligations with respect to their effectiveness at poverty relief (or other projects). In Chapter 4, I compared the respective causal and moral powers of NGOs and state institutions with respect to distributive justice. I distinguished between causal and moral agential capacities, as well as between these and the notion of a capability, that is, what an agent is actually able to do in a given institutional context. These distinctions allowed us to get a better handle on chapter 1's definition of NGO agency; I argued that an NGO's agency consists in its capabilities, which in turn are shaped through its particular collaborations. It is in this sense that an NGO's agency depends upon its cooperative engagements with others: without them, an NGO has general capacities, or potential, to act in a given way, but is unable to actually realise that potential.

The third capacity, identified in Chapter 4, was an NGO's ability to harness material resources for positive change, where that change can be social, ecological, political, etc. Those who collaborate with a norm-enacting agent must assume that it can meaningfully enact its norms through concrete accomplishments and be able to explain those accomplishments. Importantly, this approach to NGO performance emphasises the use of a theory of change and an attention to the causal stories underpinning an NGO's activity, rather than the linear logic and rote production of quantifiable results that dominate NGO evaluation today. The activation of this capacity into a specific capability for utilising material resources to achieve social change requires a fuller understanding of the causal pathways that contribute to this change in a given context. As a result, fulfilling this obligation will require NGOs to engage more in narratives, causal analysis, and a reflection on process.

Finally, in Chapter 5, I identified the causal capacity of an NGO to transfer information across epistemic boundaries. This capacity is significant for the fulfilment of universal human rights, as it allows individuals to better identify the complex causal chains through which they impact one another's well-

being. It can also provide such individuals with the necessary information to compensate or assist those harmed indirectly by their support of unjust institutions. A particular NGO's capability to successfully convey information rests, in part, on the willingness of their audience to listen and to view this information as coming from a credible source. The perception of NGOs as norm-enacting significantly increases this willingness, since a basic characteristic of a norm-enacting agent is honesty and truthfulness. NGOs therefore have an obligation to ensure that the information they use is accurate by implementing the appropriate internal procedures that can increase organisational learning and can verify the facts it uses for campaigning and fundraising.

Thus, in sum, NGO agency is characterised by four general capacities. These capacities tell us what NGOs have the potential to do, but NGOs require specific collaborations with other actors to actualise that potential. Institutional settings are particularly important if NGOs are to become effectively resourced. To support this process of transforming capacities into actual capabilities, NGOs present themselves to others as norm-enacting agents. The actual exercise of their agency, i.e. their capabilities, thus depends upon other agents recognising them as norm-enacting. If an NGO takes its agency seriously, it will seek to get things right by fulfilling the characteristics of a norm-enacting agent, so that its collaborations with others are authentic, not deceptive.

CHAPTER 6 A GROUNDED THEORY OF THE ETHICAL STANDPOINT OF NGOS

Introduction

Any project in applied ethics faces the challenge of engaging in moral theorising in a way that is rigorous and at the same time directly relevant to a real moral problem. The previous four chapters have explored normative questions regarding the moral status of NGOs: their accountability, whether or not they are intermediary agents, and their general causal and moral capacities. This chapter discusses the findings of a 10-month qualitative research project on the key ethical obligations and challenges faced by NGOs, as seen through the eyes of NGO staff in Mongolia.

The aim of understanding key ethical issues from the perspective of those working in such organisations was to identify the key problems characterising the standpoint of an NGO as a moral agent. The obligations identified in this thesis could then be assessed by the extent to which they provided guidance on these problems. All too often, proposals offered within applied ethics abstract from real world constraints and provide directives that will only guide action if certain conditions are met.[648] This approach is particularly tempting when the aim is to provide guidelines for reforming or improving NGO

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[648] A number of philosophers have commented on the challenges specific to methods in applied ethics. Onora O'Neill (2009, p. 229) in particular has drawn attention to the importance of considering the actual decision-making processes that actual individuals must engage in when faced with applied problems: "If we think of applied ethics merely as discussing principles and the types of situations in which they might be applied, we say too little about the practical task of working out how principles are to be enacted in those situations, and how conflicts and potential conflicts between them are best handled or averted."

activity, since in many cases the only roadblock to an otherwise workable solution is the presence of some regrettable or non-ideal circumstance that is subject to change. If only donors would support it, one might say, then an international association of evaluators and funders could be established to make NGO funding and monitoring more stable and coherent.[649] If only NGOs had more time or resources, they could utilise practices that would make them more accountable to their beneficiaries.[650] This thesis has aimed to avoid these problems by situating an NGO's obligations in the conditions upon which it relies for its very activity.

The first goal of this chapter is to illustrate the significant role that an NGO's relationships play in shaping how its staff views, and struggles with, their organisation's obligations. The second goal is to connect the findings of this study to the rest of the thesis by discussing how greater attention to the four obligations and account of moral agency defended previously can assist NGO staff in managing these relationships.

This chapter is organised as follows. 6.1 describes the grounded theory methodology employed in the study and explains why this approach is particularly useful for the integration of descriptive theory with philosophical analysis. 6.2 describes an initial problem that hampered the generation of a theory from the data, before explaining the core categories of validation and relationship frames. Finally, 6.3 outlines two frameworks based on the obligations identified in the previous four chapters and discusses briefly the relevance of these frameworks for the NGO staff that participated in this study.

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[649] Wenar (2006); Fuller (2005).
[650] Atack (1999).

6.1 Methodology and research design

6.1.1 Introducing grounded theory

The overarching purpose of this study was to understand the ethical nature of NGO work from the perspectives of those engaged in it. Grounded theory methodology was selected in view of its goal of "discovering"[651] an explanatory or predictive theory through deep, systematic analysis of qualitative data. Strauss and Corbin[652] summarise the methodology as follows: "Theory building is a process of going from raw data, thinking about that raw data, delineating concepts to stand for raw data, then making statements of relationship about those concepts linking them all together into a theoretical whole, and at every step along the way recording that analysis in memos."[653] A grounded theory approach pushes the researcher to go beyond mere description and arrive at a more abstract understanding of key concepts and meanings that are conducive to generalisation. Therefore, using this approach maximises the informative potential of qualitative research for a philosophical account of NGO moral agency.

While it is not a feature of every study, grounded theory methodology supports the possibility of identifying deeper processes and meanings that find expression in, but are not wholly defined by, the particular context of study.[654]

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[651] Glaser & Strauss (1967, p. 1).
[652] The method of grounded theory was originally developed by Barney Glaser and Anselm Strauss (1967). Later, each developed his own approach (Strauss did so in collaboration with Juliet Corbin), thus there is "Glaserian" grounded theory and "Corbin & Strauss'" grounded theory. This study draws on elements of both approaches, as they are outlined by Charmaz (2006).
[653] Corbin & Strauss (2008, p. 106).
[654] Ibid. (pp. 101-3).

Generalizability can be reached in two ways. The "constructivist" approach to grounded theory embraces the methodology's processes of inductive reasoning, and suggests situating a theory firmly within its cultural and social context so as to provide a better basis for comparison. This comparison between specific contexts allows the researcher to test the categories of her theory against new variations, allowing her to gradually build up its generality. A second way of achieving generalizability is suggested by Corbin and Strauss, who argue that grounded theory also makes use of deductive reasoning, as the researcher draws on previous theoretical categories and theories to derive conclusions that pertain to the context under study.[655]   If successful, the resultant theory may be sufficiently general to extend to other situations.

Reaching a generalizable theory was a primary goal of this study.[656] The research design reflected this goal in the selection of participants, design of interview protocol, and coding processes. While the NGOs interviewed all operated in a single country, Mongolia, data coding was sensitive to the aims of distinguishing between issues specific to the Mongolian context and those that were reflective of a general NGO outlook and experience. This perspective was aided by asking INGO staff to reflect on their previous NGO work experience in other countries and to contrast this with their experience in Mongolia.

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[655] Corbin & Strauss 2008 (pp. 210, 294-5).
[656] The problem faced by the study as a result of making generality a goal rather than something that emerged naturally from the analytic process is discussed below in 6.3.2.

6.1.2 Research questions and data sources

Within the overall aim of the study, four specific research questions were identified:

(1) What does it mean for an NGO to be accountable, and how important is accountability to NGO staff?

(2) What norms does an NGO organize itself around, i.e. what moral concepts does it refer to in its self-definition?

(3) What ethical decisions does an NGO employee consider difficult to make and how do they make them?

(4) What do NGO staff see as their own obligations and rights as an organisation, and what do they identify as the obligations and rights of their stakeholders?

Raw data was comprised of interview transcripts, observations recorded in field notes, and organisational documents, such as monitoring and evaluation guidelines or fundraising brochures. This data was collected over a 10-month period from December 2007 to September 2008. In order to arrive at a theory that was both rich and generalizable, the study was designed to involve two different types of participation. Under the first type, a breadth of NGO types was represented in the data through one-time interviews with staff from 4 international and 9 domestic (Mongolian) NGOs.

In addition, several organisations were solicited for more in-depth participation as case studies. These case studies involved a series of repeated interviews with multiple members of staff and observations of their project implementation and monitoring activities. For this component of the project, I sought an even distribution of domestic and international NGOs. Agreement from three domestic and three foreign/international organisations was initially secured for repeated interviews and site visits, however two of the Mongolian NGOs could not make staff available for interview after the initial round of

interviews, and repeated attempts to coordinate a site visit were unsuccessful. They were therefore dropped as case studies, leaving one Mongolian NGO, two large international development NGOs, and a fourth organisation founded and staffed primarily by foreigners that was heavily volunteer-based, structured similarly to a grassroots organisation, and concentrated on servicing a particular ethnic minority in Mongolia. Each of the case study participants is profiled below in Boxes 2-5. Names of the organisations and certain operational details have been altered for the purposes of protecting confidentiality.

Box 1. List of Mongolian terms

aimag   province

soum   second-level administrative unit

bagh   administrative unit within a soum

khurul   legislature

Box 2: Association for the Advancement of Rural Women (AARW)

Mongolian NGO

Formed in the mid 1990s, AARW engages in a mixture of development and advocacy activities aimed at improving the lives of impoverished women living in rural areas. Because much of Mongolia fits the description of a 'rural area', AARW maintains 26 *soum*-level branches across 8 *aimags,* as well as informal ties to micro-credit and business initiatives in other *soums*. Its main headquarters are located in Ulaanbaatar. AARW is entirely dependent upon funding from international donor organisations and INGOs. Its programme areas include: issuing micro-credit loans, providing training and support to women in business entrepreneurship and political activism, and HIV/AIDS prevention.

Box 3: Collective Compassion (CC)

INGO

CC is an international development and relief NGO that began operating in Mongolia in the late 1990s and now has regional offices in 13 *aimags* as well as a main office in Ulaanbaatar. Its main programmes focus on capacity building in Mongolian civil society and the business sector, and improving natural resource management and entrepreneurship amongst herders. Project goals include: 1) increased local availability of commercial services and increased economic production, 2) maximum "institutionalization" of program concepts and services within the local economy, 3) an enhanced ability of rural communities to make informed economic and social decisions 4) an enhanced ability of rural communities to participate in public sector decision-making. CC receives most of its funding from a single government donor agency and in 2007 was facing the end of a 10-year funding cycle. Staff were therefore in the process of concluding two large, long-term civil society capacity building and rural economic development projects and were holding strategic meetings to plan future programmes and identify new sources of funding.

Box 4: Local Horizons (LH)

Foreign, single-issue NGO

LH focuses on development projects geared primarily towards an ethnic minority group in the Bayan-Olgii *aimag* of Mongolia. It was founded by a group of Americans in the early 2000s, one of whom continues to act as its Executive Director. The organisation is small, relying heavily on volunteer staff, with two or three Mongolians employed as logistics coordinators and translators. Its original focus was on improving human health and strengthening herd population levels. In 2005, it worked with herders to establish a tourist business, run and managed by the herders, in order to take advantage of the tourist interest in the ethnic minority and its unique cultural practices.

Box 5: United For Children (UFC)

INGO

UFC is a faith-based international development and relief organisation that focuses on child well-being and protection. Its Mongolia office has one of the largest operating budgets of any organisation in Mongolia, including the United Nations. It operates over 30 regional offices, not including its main office in Ulaanbaatar, and it is estimated that 50% of the Mongolian population is reached through UFC's projects. From mid-2007 to the summer of 2008 two significant events occurred at UFC that triggered broad changes at the organisation.

The first was UFC Mongolia's decision to abandon the "grassroots" model of beneficiary engagement used by UFC International, as senior staff found that it was not truly meeting the definition of grassroots development and had failed in their eyes to engage adequately with rural Mongolians. Senior staff then had to devise a new plan for re-structuring the regional offices, which began with five pilots in late 2007. This re-structuring required, among other changes, that Mongolian staff in the regional offices move closer to the target areas of their projects (because of the large size of Mongolia, some regional offices were as far away as 200km from the target area of their project, even though they were within the same *aimag*), a change that was met with significant resistance by the regional staff.

The second event was a significant internal conflict at the Ulaanbaatar office. Several Mongolian staff holding senior positions (Programme Directors, 4th down from President) wrote a letter of complaint about the President and Vice President of UFC Mongolia to UFC International headquarters. An investigation was launched and resulted in the firing of the Mongolian staff who had signed the letter. A new HR policy was created stating that senior staff positions could no longer be filled by Mongolians. The other Mongolian Programme Directors who had not been involved in the complaint were moved out of their Programme Director positions and into different roles at the organisation with fewer oversight responsibilities.

In total, 36 open-ended interviews, averaging 1 hour in length each, were conducted across 16 NGOs and 4 IGOs/donor organisations (See Appendix A). 11 memos were also written on informal conversations or untaped interviews with NGO and IGO staff. A further 5 memos were written based on observation of five NGO-IGO meetings and workshops attended in Ulaanbaatar. Amongst the four case study organisations, memos were written for each of the five site visits. These visits were conducted to observe the NGOs' activities and interview local and regional staff where applicable.

6.2.3 Coding

The coding software nVivo7 was used to conduct open coding on the first four transcripts half-way through the field work, in May 2008. Emphasis was placed on using "in vivo"[657] codes: codes that draw directly on the language used by study participants. For example, one of the codes for the line of transcript "Mongolia is a culture of closedness—but democracy is a culture of openness, so they have to adjust." was "closedness *contra* openness." In vivo terms are useful in so far as they assist the researcher in retaining "participants' meanings of their views and actions in the coding itself."[658] However, since the ultimate aim is the development of a theory that can explain and predict rather than merely describe, in vivo codes must be problematized and abstracted from to identify broader explanatory categories.[659]

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[657] Glaser (1978), also discussed in Charmaz (2006).
[658] Charmaz (2006, p. 55).
[659] Ibid. (pp. 55-7).

Initial coding yielded a long list of codes—over 100—which were then grouped based on the broader analytic categories suggested by participants' usage of these terms. From these codes, as well as a handful of theoretical memos, three main categories emerged which were worked into the set of questions used for later interviews: NGOs' relationships to others, the process of justification, and the meaning and use of thick concepts[660] such as "empowerment" or "community." After field work was completed, focused coding was used on a selection of later interviews and memos. Whereas open coding involves line-by-line coding of a transcript in order to ensure that the initial concepts generated accurately reflect the data, focused coding is more selective, and guided by the emerging trends and categories identified by grouping the initial list of codes.

During this time I also attempted a combination of what Strauss and Corbin call "axial coding"[661] and what Glaser calls "theoretical coding."[662] Both forms of coding aim at enriching the core concepts by formulating hierarchical and lateral relationships between codes. Axial coding "increases the density of relationships around the 'axis' of a concept"[663] by identifying properties, or key attributes, that allow the researcher to categorise events or empirical phenomena under that concept. These properties are further developed by identifying their dimensions, that is, ranges along which properties can vary. An example of this might be: the concept, "academic career" has the property of "contributing to research," one dimension of which is "publications in peer-reviewed journals" that has a range from "high" to "low."

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[660] Williams (1985, pp. 140-1). Thick concepts are those which both describe and express an evaluative judgment. These are discussed in greater detail below in 6.4.
[661] Strauss & Corbin (1998, p. 125).
[662] Glaser (1978, p. 74; 1998).
[663] Strauss (1987, p. 64).

In contrast, theoretical coding aims at integrating the emerging concepts to tell "an analytic story that has coherence."[664] This type of coding was helpful for concepts that were not conducive to the property-dimension structure, as it provided a number of category "families"[665] which were used to test out different possible relationships between the emerging substantive codes.[666]

The initial attempt at building a theory through this higher-level coding was impeded by what appeared to be either a contradiction in the coding scheme or the absence of a core category that fit all the data while remaining theoretically interesting. Upon reflection, it seems this hurdle was caused by implicit assumptions in the research questions that were not fully recognised during the study. These are discussed below in 6.3.2. After setting the data aside for a period of reflection, axial and theoretical coding were resumed, at which point the preconceptions became clearer and an emergent theory was identified.

6.2   Validity and the importance of relationship frames

6.2.1   Overview of findings

Following the format of other grounded theory studies,[667] I now present the theory of NGO ethical perspective that emerged from the data, addressing broader theoretical connections as they arise in relation to the empirical

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[664] Charmaz (2006, p. 61).
[665] Glaser (1978, p. 74).
[666] Ibid.; Charmaz (2006, p. 63).
[667] Cf. Goddard & Assad (2006).

findings, rather than prior to discussion of the core emergent categories. However, in order to provide a useful guide to the reader, I will first give a brief overview of the core categories that form the basis for the theory.

Those who follow Strauss and Corbin's approach to grounded theory methodology often draw on their "paradigm model"[668] for theory construction. The paradigm model directs the researcher to answer a fixed set of questions in order to identify concepts and build a theory. The constituents of the theory are a core phenomenon, a set of action/interaction strategies employed by actors with respect to the core phenomenon, the consequences of these strategies, and the conditions or circumstances in which these strategies take place. Researchers are guided to build their theory by identifying the specific concepts that fill out each of these categories.

While useful for other contexts, for this study, the paradigm model was found to be too rigid and restrictive for explaining how the core emergent categories related to one another. In particular, the paradigm model does not capture how the core phenomenon can itself be altered through actors' response strategies, how consequences can loop back to affect strategy, or how conditions or circumstances are affected by interactions between actors. This made such a model insufficient for explaining the myriad and complex relationships and processes cited by NGO staff in their discussions of accountability, ethical obligation and decision-making.

Instead, two core phenomena were identified as constituting the ways in which NGO staff experienced the issues of ethical obligation, accountability, and organisational value: the process of validation, and the framing of relationships with others. These, and the main categories connecting them to one another, are depicted below in figure 5.

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[668] Corbin & Strauss (2008, pp. 89-95). For examples of published grounded theory research that draws on this paradigm model, see: Goddard & Assad (2006), Hildenbrand (2007).

Figure 5: The sources of validity
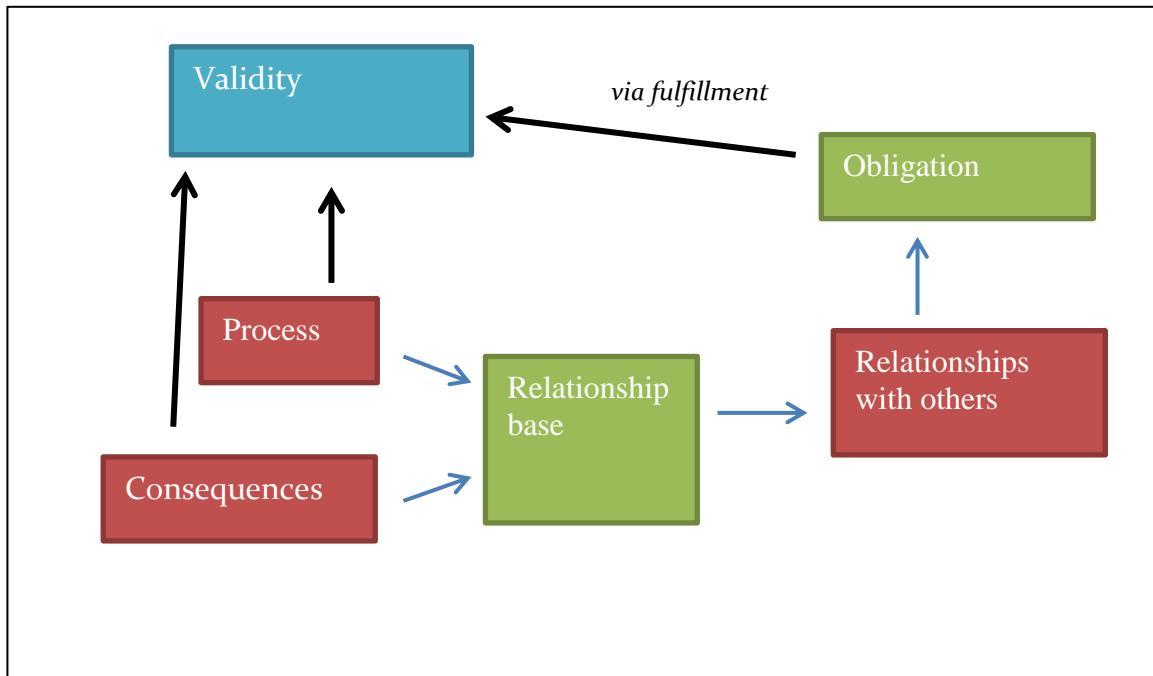
Throughout conversations on what they considered to constitute right action, NGO staff characterised the moral justification of their activities by reference to an objective notion of *validation*. Ethical problems were constituted by scenarios or conflicts that threatened organisational validity. The three main sources of validity are identified above by the boxes in red: process (method, or, "how" the NGO worked), consequences (the effects or outcomes of the NGO's activities), and, most importantly, their relationships with other actors, which impacted validity through the concept of obligation.

NGO staff considered their organisation validated if they 1) achieved the "right" process, 2) achieved the "right" consequences, and/or 3) fulfilled their obligations to others. These obligations in turn were defined in terms of how the NGO staff viewed their organisation's relationships with other actors. NGO staff identified these obligations to others by characterising, or framing, their relationships based on two factors: the *focus* of the relationship (process

or consequences), and the *relationship base*, namely, whether the relationship was personal or professional.

6.2.2 Validation as a core phenomenon in NGO self-perception

A concept that emerged early on was the process of "justifying," and its impact on how NGO staff understood their relationships with others and the value of their work. This process came up differently for the four case study organisations. For the foreign single-issue organisation, Local Horizons (LH), one of their most significant ongoing challenges was justifying their operations to competing NGOs as well as local government officials, who they perceived as threatening to the success of their projects. Staff of the two international NGOs discussed struggling with the internal process of having to "explain ourselves" to monitoring and evaluation (M&E) teams at their international headquarters, who were described as operating like "a double donor, a double wall" they had to go through in order to receive funding. Staff from the Mongolian NGO, the Association for the Advancement of Rural Women (AARW), explained that justifying their activities and motivations to the husbands of the rural women they were trying to serve had become a significant operational challenge:

> Respondent: In one example, there was a training and there was one woman who was very active and really wanted to learn and increase her education levels. But the second week she didn't come, and so we went to the home and her husband had beat her up, so he didn't let her go to the meeting and workshop. And we had to talk to the husband and said, 'Why are you doing this, because if your wife knows everything—or not everything, but increases her information it would be good for you and maybe your life would be better.' But he said, 'No, she doesn't need to learn any of these things, she just needs to stay home and take care of the family.'... Now this is one of the challenges. Some of the husbands don't like it, they don't like the training programs,

> so now we are trying the family together—having workshops for families. We are thinking about that.

While the audiences they had to prioritise were different, the four case study NGOs, as well as many Mongolian NGOs, repeatedly described experiencing the need to justify and explain themselves, or in some cases being compelled by others to do so.

This seemed initially to support the idea, found both in the literature and also in previous grounded theory studies of NGO accountability, that NGO legitimacy, or the managing of legitimacy, is a core feature of the NGO ethical experience.[669] NGO legitimacy is often understood as a descriptive concept: as the actual perception or belief that an NGO is "appropriate"[670] or "justified"[671] in doing what it does. According to this conception of legitimacy, insofar as other actors do not perceive the NGO to be justified, it lacks legitimacy. This supposedly leads to conflicts for NGOs as they attempt to satisfy the varying and conflicting legitimacy demands of multiple stakeholders.[672]

In contrast to this, it became clear through multiple interviews that participants thought of justification as part of, or one of multiple paths to, a broader process of achieving a more objective standard of self-assessment, that is, validity, or validation. The Executive Director of NH makes the distinction when talking about his organisation's approach to budgeting and resource allocation:

> I also knew that the more we address in terms of project activities the longer there would be a need for our organization, the longer we could—I mean that justifies, justifies sounds like you need to excuse yourself but, you know, uh, validate our presence, and, I knew that to pursue those additional initiatives we'd need to invest resources in it.

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[669] Vedder, et al. (2007), Goddard & Assad (2006).
[670] Edwards (1999, p. 258).
[671] Ibid.
[672] Logister (2007); Ossevaalde, et al. (2006).

Legitimacy was often referred to as a process of justifying one's organisation with respect to a particular audience: what justifies the NGO to its donors, what legitimates an organisation in a broader community of NGOs and other institutional actors, etc. Similarly, the Executive Director of NH associated justification with having to defend oneself to a critical audience. What made this audience "critical" was their questioning of the authority by which NH was acting.

This perspective was shared by the INGO staff interviewed toward the end of the study. One of the INGOs, United For Children (UFC), had experienced a tumultuous year, with a complete re-organisation of its structure and a serious staff conflict that resulted in a number of firings and a revised HR policy. The Head of Monitoring and Evaluation for the Mongolia national office discussed the way in which she was having to communicate these changes to UFC International Headquarters.

> Interviewer: How much is justification a process that's involved in that? The process of justifying...to yourselves, to your donors or beneficiaries? Is that something that resonates with you?
>
> Respondent: Yeah, I think so, because myself I've had to have a lot of conversations with our funding officers, not necessarily by design, but by default. Talking to them about M&E and having a discussion around all the changes that have happened. It's kind of hard to say—you know, having to justify it and explain it and explain what happened, and explain that we're moving and we're trying to do our best. You know at the end of the day, I really think we're trying to do our best, you know, (laughs) that's kind of what it's come down to is, is, all these things have happened but come on guys, we're trying to do our best.

This example complements the NH director's comparison of justification to excuse-making. Justification was a process directed at winning approval or, in this case, a reprieve from critical scrutiny, by providing a rationalisation for what had happened to a particular audience and defending one's motivations or level of effort. Like an excuse, justification was largely spoken of as a

process triggered by a negative occurrence or event—a 'mistake.' Processes of justification were primarily responses to challenges by other actors.

This raises the question: Challenges to what? What was it that NGO staff were defending or justifying in these situations? An initial answer is legitimacy: NGOs were faced with challenges to their perceived appropriateness, which they then attempted to manage or rectify via justification and other strategies.

However, participants in this study drew a firm distinction between their standing in the eyes of others and their overall "ultimate" or "real" value or standing as an organisation. Winning over certain stakeholders was instrumentally important for the success of an NGO's activities. But beyond and alongside legitimacy, NGO staff appealed to a deeper evaluative standard: validity. While justification to others was one means of increasing validity, NGO staff appealed to other sources as well, such as effectiveness, or by appeal to aspects of the way in which they worked (their method, or process).

Validity and validation are appropriate concepts for describing this form of self-evaluation because they connote a more objective evaluative standpoint. Sources of validity were referenced as intersubjective or objective standards according to which the organisation or its activities was deemed right or wrong, valid or invalid. Validity also fits well with the implied meaning of the "logical framework," a moniker that indicates 'good' projects are those that can be structured as tightly as a logical argument. In logic, validity indicates a successful deductive argument in which it is impossible for the conclusion to be false if the premises are true. If the inputs are correct, then the predicted outcome, or impact, will follow. Similarly, making this distinction between the perceptions of others and their overall validity allowed NGO staff to appeal to factors other than the particular perceptions of a single stakeholder to make their self-evaluation incontrovertible. It also allowed them to dismiss demands for justification they felt were groundless, on the basis that such demands were objectively wrong or would move them further from "real" achievements:

> I'm a major believer in the public sector but they're just so problematic and irresponsible and still unaware of this community, and if we were accountable to them then it would be pathetic. If we listened to what the government says, we would have done some of the dumbest things possible for this community and we would have overlooked some of the most obvious things that this community wants and needs. (NH)

> Everyone acknowledges the importance of having a monitoring system, but what's really important as well is, you know... when is it really real, solid work? (Collective Compassion (CC))

The perceptions of the government and of donors (via the monitoring system) operated as initial evidence of an NGO's validity that could be offset, or contextualised, by an objective assessment of how well the government understood the actual needs of the target community or an objective assessment based on a notion of "really real, solid work."

The organisations involved in the study appealed to three main sources of validation. These sources are: their *relationships* with others, *consequences* of their activities (often referred to as impact/outcomes/results), and features of the *processes* in which they engaged. Understanding of these three sources of validation and how NGO staff employed them in practice was only arrived at after a significant interpretive problem in the research design was identified. I now discuss this problem and how its resolution led to a deeper consideration of how NGO staff's perceptions of their organisations' relationships impacted how they viewed their obligations and primary ethical challenges.

6.2.3 Looking for the 'ethical' in NGO practice

One of the defining features of grounded theory methodology is its directive that literature relevant to the topic of study only be consulted after the initial

stages of coding are completed and the researcher has begun to identify basic categories.[673] This is because a familiarity with the literature at the outset can colour the researcher's perspective, making it difficult to see the topic through the eyes of study participants and remain open to a theory that is actually supported by the data.[674] As Glaser and Strauss originally described this problem, predilection for a given theory at the outset of the research threatens the researcher's theoretical sensitivity to the data at hand, to the point where he "can no longer 'see around' either his pet theory or any other."[675]

While at the outset of this study I was less familiar with the empirical literature on NGOs and the actual processes and procedures that constituted the "daily life" of an NGO,[676] to fulfil a requirement for my PhD I had conducted an extensive literature review on theories of NGO accountability. This, combined with a general outlook informed by a background in moral theory, led to an interpretive problem that was not clearly identified and addressed until after the primary field work was completed.

The study was initiated with a preconceived idea of the role that moral values and principles play in defining and guiding NGOs, and of the kinds of situations and relationships that would be labelled as ethically controversial or important. Specifically, my approach to answering the four main questions of the study, reflected in the interview protocols and the spontaneous follow-up questions pursued in interviews, rested on the following implicit assumptions:

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[673] Glaser & Strauss (1967); Charmaz (2006, p. 6).
[674] Glaser & Strauss (1967), Charmaz (2006, p. 165).
[675] Glaser & Strauss (1967, p. 46).
[676] In this study, both the benefits and drawbacks of the prohibition on pre-study literature review were experienced. I found that entering the study without a solid background in the typical organizational structures of NGOs or actual accounting and planning processes was beneficial in so far as I had to rely entirely on the participants to explain these processes to me, meaning that my understanding of logical frameworks, for example, was initially formed entirely through their perspectives. This lack of information also had a significant drawback, in that much time during the interviews was taken up by basic explanations of processes, and also in some cases seemed to cast me as more of an 'outsider' to NGO staff.

1) While individuals might use different criteria to identify an issue or problem as "ethical," their use of the term as a label would be the same, in the sense that there may be differences in *conceptions* of ethical principles or problems but agreement on the basic *concept* of an ethical principle or problem as that which is based solely on a sound moral argument.

2) From the viewpoint of NGO staff, there is something inherently ethical about NGOs and what they do, given the kind of work in which they are involved and the concepts and values by which they identify themselves.

Both assumptions posed problems for adopting the perspective of study participants when they said they could not think of any ethical problem they had faced, or identified ethical problems that were specific to certain professional relationships. Commonly cited ethical problems were: a staff member having a minor conflict of interest with respect to a given project, intra-staff relationships, and a perceived lack of programme effectiveness. When participants were asked to elaborate on what made ineffectiveness an ethical problem, they did not refer to the ethical value of the desired outcome, as expected. Instead, they spoke of it in terms of a broken promise: it was morally problematic only insofar as they said they were going to do something and did not do it. In asking NGO staff about their programme objectives or obligations towards others, the expectation was that they would at some point reveal an affinity for a particular ethical principle, justifying these objectives or obligations based on their own account of the "right thing to do." But instead, in most cases these objectives and obligations were explained instead by reference to organisational policy, pragmatism, or personal relationships.

What made these responses particularly difficult to process was the continued use of concepts which I was coding as ethical or moral, such as "empowerment," "sustainability," "justice," and "accountability." For instance,

INGO staff would use the term empowerment frequently to describe the way in which they wanted to structure their interactions with beneficiaries, yet when asked directly, said they did not think that poverty alleviation or development aid was something beneficiaries were owed, as a matter of ethical obligation. While development was important, the INGO was there by choice, not by obligation. Their works were "charitable," and, insofar as they did not coerce beneficiaries, the latter always had an exit option:

> The thing to remember, particularly with the participants, is that all of these projects are voluntary. No one is being gang-pressed into this... (INGO)

> And I'm certainly not saying, not diminishing the importance of accountability of NGOs, but the fact is, the work of NGOs in a lot of circumstances, especially with this community is almost a gift, literally and metaphorically: it's backed by gifts from individual donors and it's done with voluntary efforts. There's never a guarantee. (LH)

It was difficult to process this kind of answer, given the assumption that NGOs justified their projects directly through an appeal to moral principles and obligations. This led to the expectation that the values an NGO cites in its project implementation would connect to the motivations behind their work. It therefore seemed discordant when a participant stated that empowering individuals to be active, capable agents was an important value for the organisation but that the delivery of an empowering development project to those individuals was a matter of "gift-giving" and choice, not obligation.

It was only after stepping away from the data and returning to it that it became evident that most NGO staff did not see their ethical obligations or challenges as resting on abstract moral arguments or concepts. Despite engaging in processes of validation that implied an overall objective evaluative standpoint, the thinking that identified their ethical obligations was filtered

through particular types of relationship (See figure 5).[677] Interestingly, these similarities did not fall into categories based on type of stakeholder: there was no unified "beneficiary" or "donor" type of relationship. Instead, relationships were framed according to an implied *base* for the interaction (relationship base), and the *source of validation* around which the interaction was oriented (process or consequences). The combination of these two factors elicited four basic categories, within each of which there were two variations based on whether the relationship was positive or negative. This yielded in total eight *relationship frames*: frames that NGO staff applied to their interactions with others that shaped the way they viewed their obligations, and which placed a certain value on that interaction with respect to its role within the participant's assessment of his or her organisation's validity.

6.2.4 Relationship frames

As individual agents, we can bear a variety of obligations in virtue of our special relationships with others. Our obligations to our friends are different from our obligations to our students, which in turn are distinct from our obligations to fellow church-goers. Basic features of the different roles we assume serve as the grounds for the obligations we acquire through those roles.

A view that is common to both moral philosophy and everyday moral practice holds that there is another, more stringent class of obligations that we bear in virtue of a broader condition or standing: our humanity, our capacity to reason, or our capacity to feel pain. These obligations place demands on us as

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[677] Cf. de Graff (1987).

agents regardless of any particular relationship or institution we may belong to; they are universal ethical obligations.[678]

Most NGO staff placed their ethical obligations in the former category. Their obligations arose within the context of a type of interaction and were shaped by two factors: the base of the relationship and the source of validation towards which that relationship was oriented.

6.2.4.1. The relationship base: personal or professional

In participants' descriptions of obligation and ethical conflict, a contrast emerged between relationships in which there was a deeply felt commitment or long-term personal connection, and those which were discussed in terms of contractual obligation and what it was like to "work" in development or act as an employee of an NGO. The category of *relationship base* emerged from this contrast between personal and professional bases for understanding relationships.

This contrast between personal and professional emerged more explicitly in an interview with a staff member of CC. This person was describing previous work she had done in Nicaragua with what she described as a "volunteer" organisation, work that she felt was considerably different from the work she was doing for CC in Mongolia. Describing the difference, she said:

> You know, since working on development projects, I think that the motivations for doing it [volunteer work]—people have other jobs and they're doing the volunteer stuff because they feel very—for a variety of reasons. Some people felt very connected to Nicaragua, some people felt very connected to, um, to the project itself, or really wanting to give back, the level of motivation versus this kind of development, at this level, I don't know what you'd even call it. You kind of get into more like—at times I've even wondered, here, people treat it like a business,

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[678] See the discussion of monism and pluralism in Chapter 4.

> kind of, in some ways. So it's a different type—it's your job, it's a job, and that just changes the way you feel about it. And also I think the dynamics become very different within the organisation...

Notions of "business" or "job" in relation to how staff approached their work were contrasted with those of "connection" and a deeper level of motivation. Through this discussion and the descriptions participants used to explain their relationships to others, the concept of "relationship base," which ranged from personal to professional, was filled out through axial coding in three main properties (see Figure 6).

The first property is the *origin* of the relationship, which was understood through the dimension of sharedness of goals and values. High sharedness of goals and values was found in relationships that were described as originating in personal relationships or shared experiences and beliefs. Relationships on the low end of range originated out of the recognition of mutual self-interest with another actor, or as a means for furthering the organisation's ends. These were relationships in which an individual was likely to identify her experiences as her "job," as opposed to her "personal connection" to a given issue or group.

Figure 6. Properties and dimensions of the category: *Relationship Base*

Property	Dimension and dimensional range

Personal | Professional

⬅- - - - - ⁻ - - ➡

Relationship origin — high ————————————— low
Sharedness of goals and values

Proximity — deep ————————————— instrumental
Commitment

local ————————————— distant
Geography

shared ————————————— not shared
Culture

Self-image — relational ————————————— skill
Basis of expertise
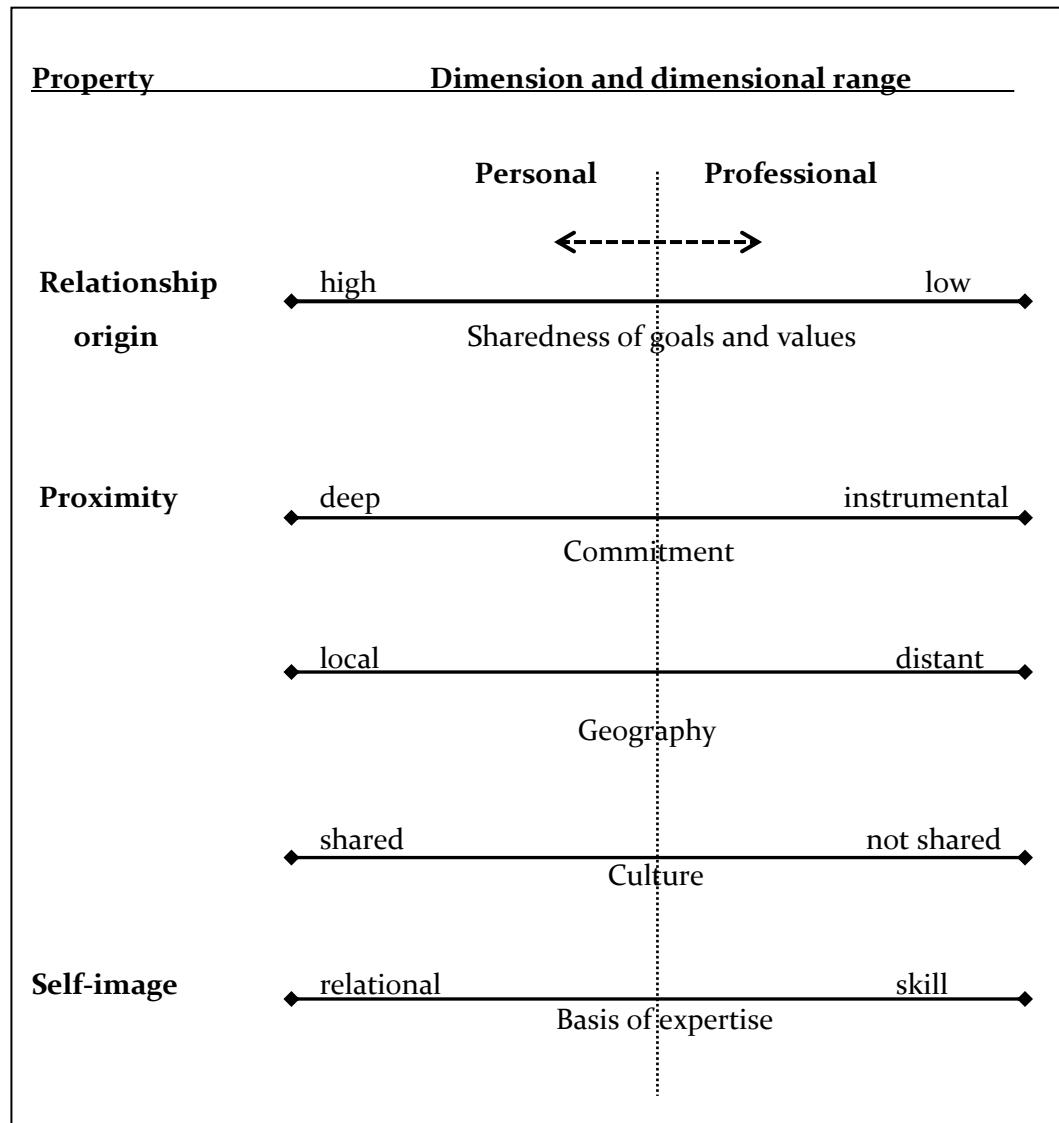
Proximity has three dimensions: commitment, geography, and culture. This means that NGO staff could feel close, or have high proximity, to another actor with respect to their commitment to one another, geographical location, and cultural membership. Closeness in terms of culture and geography were straight-forward dimensions through which participants explained their proximity to another actor. Individuals were from "UB (Ulaanbaatar, the capital)" versus "the countryside," or "Mongolian" versus "foreigner/ex-pat." Depth of commitment was another way in which participants conveyed their closeness to others. The difference between this dimension and the dimension of sharedness of goals and values is that the latter applies specifically to how the relationship *originated*, whereas proximity in terms of commitment was used to describe the current state of the relationship. NGOs could thus express disappointment in the trajectory of a given relationship that originated in a high degree of sharedness of goals and values but at present had devolved into a more distant relationship, with members viewing their commitments as supported only by instrumental reasoning.

Finally, NGO staff understood these relationships through the construction of an image of themselves in the relationship. This *self-image* varied along the dimension of expertise, which ranged from relational (expertise dependent upon their relations with the other party) to skill (expertise dependent on the actor's isolated abilities and background).

Through these dimensions, we can identify two main types of relationship base: personal and professional. When an NGO casts its relationship with another agent as having a personal base, it views the relationship as originating in shared commitments or personal experiences and sustained through some form of proximity. Its self-image, as an expert, is centred on the degree of intimacy that the organisation enjoys with the other actor. Obligations grounded in personal relationship bases arise out of

considerations of loyalty, communitarian solidarity, and personal responsibility.

An NGO views its relationship base with an agent as professional when it treats that relationship as a means to an end originating in mutual self interest or imposition from the other agent (such as a hostile government). Agreement on substantive values and ends is not assumed, and instead the relationship is one in which the NGO feels greater loyalty to the task at hand than to the other agents involved in its execution. Expertise in these relationships is conceived of as individually formed: the particular strengths and contributions of the organisation are defined in terms of its skill set or background, factors that are independent of its relationship with the other actor. When an NGO staffer considers her organisation's relationship base to be professional, her organisational obligations to the other agent are grounded on a notion of contractual obligation or basic professional etiquette.

As represented in Figure 6, the personal and professional types sit on opposite ends of a single scale. Actual relationship bases can therefore be personal or professional in matters of degree: the relationship frame is an ideal type, which NGO staff apply in varying extents to their interactions. Relationships are also malleable: events impacting a relationship can push it more towards the professional or personal end of the spectrum, as discussed below.

6.2.4.2   *The source of validation: consequences or process*

Consequences and process play a complex role in NGO staff's perspectives on their own organisations. Participants identified the demonstration of "results" or "impact" and using "locally-driven," "community-based" or "transparent" processes as sources of overall validation that were independent of the obligations they had towards others. At the same time, a focus on consequences or process also informed how NGO staff conceived of their obligations to other actors (see Figure 5).

If an NGO focuses on process in its relationship with an agent, this means that how the relationship develops or proceeds is the primary locus of value around which the relationship is oriented. In its relationship with the other actor, the NGO values the processes that allow the relationship to meet certain conditions deemed desirable by the NGO. Examples of sources of validation in process-focused relationships are: openness, power-sharing, and non-interference.

Consequence-focused relationships are those in which the NGO values the outcomes produced by a relationship with the other agent. In consequence-focused relationships, the NGO aims to produce certain outcomes *through* the relationship, not achieve certain features or conditions *within* it. Examples of consequences are: project ownership by beneficiaries and the outputs and outcomes specified by a given project plan.

6.2.4.3 Eight relationship frames

Moving from these abstract distinctions, I now discuss the eight relationship frames that NGOs used to assess their validity and contextualise their obligations towards others. There are eight, rather than four, relationship frames because a different frame was applied based on whether the relationship was perceived to be positive or negative (see Figure 7).

Figure 7. Relationship frames

Process

Personal ← → **Professional**

Consequences

Engager / Rival

Relationships with other agents that reflect proximity, shared values, representativeness

Supporter / Imposer

Relationships with other agents that reflect efficiency, results, sustainability

Parental: nurturing/ frustrated

Promisor / Opportunist
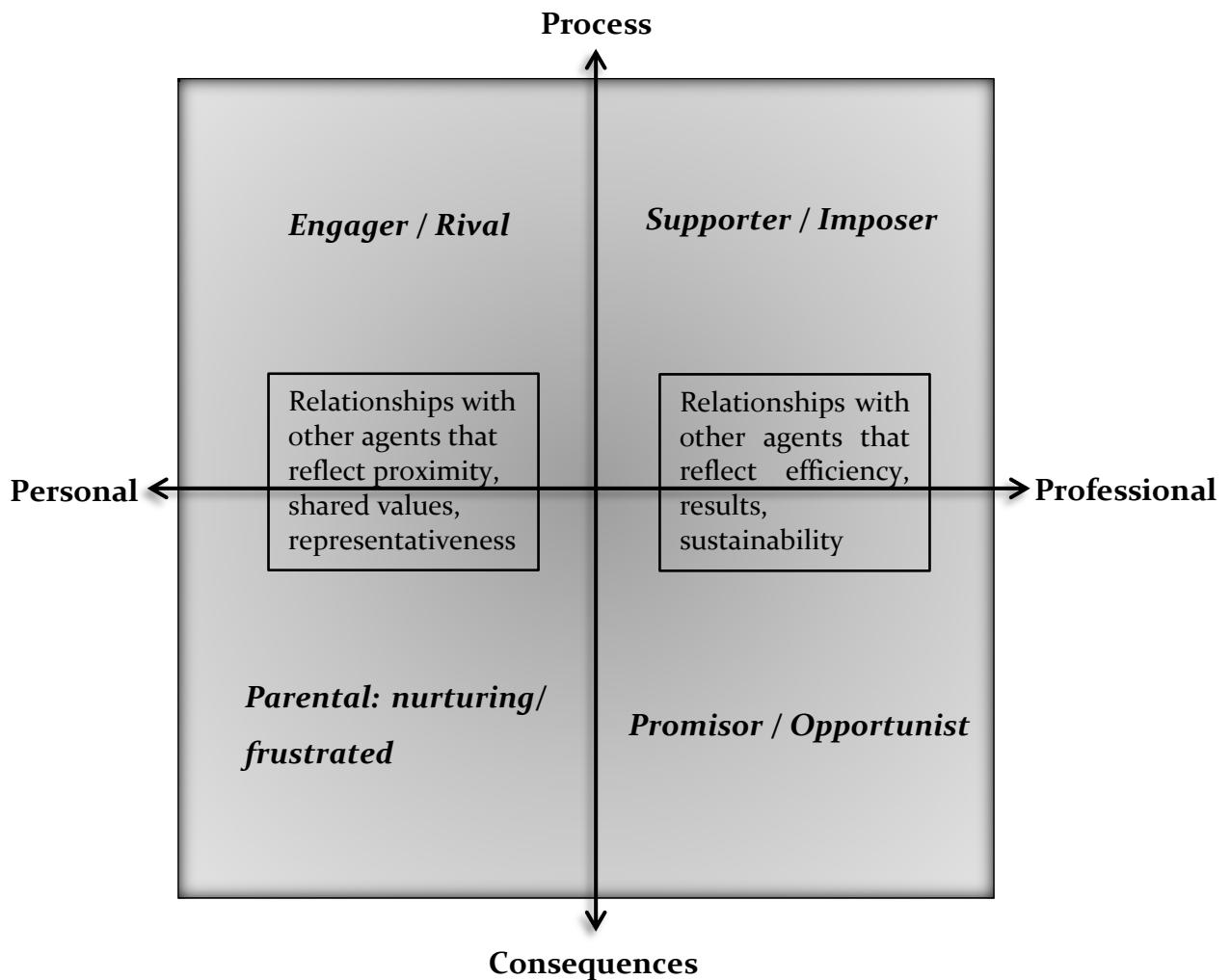
Personal base, process-focused

Engager:

In an *engager* relationship frame, the NGO has a positive relationship with another actor that is oriented around a method or way of working and is structured through shared commitment and close proximity. This frame is called "engager" because relationships that were personal and process-focused were described as relationships in which the NGO was "engaged" with a particular actor. Management staff of the faith-based INGO, UFC, used this language to specifically distinguish their approach to beneficiaries from a top-down approach focused only on ends:

> The emphasis is on building relationships with the community and assessing what are some of the needs, the issues, the problems within the community. So you're using the relationships to make the assessment. So it is not a baseline measurement, or assessment—it is an assessment that comes out of my discussions with people in the community, or in the government, or informal leaders, such as a teacher, or leader of a church, or a temple. So, the whole emphasis is on building relationships and using relationships to understand what's happening inside the community. Based on that we then create a design, a design for engagement.

In these relationships of engagement, UFC staff aimed at creating "processes of transformation" that would "empower" both local staff and intended beneficiaries.

Although engagement was highly valued by NGO staff, it did not always indicate a relationship that produced positive day-to-day experiences. Close proximity, a feature of an engager relationship (because it is on the personal end of the relationship base scale), indicated intimacy, which for some non-Mongolian NGO staff was measured in terms of a beneficiary's willingness to criticise them. For example, the Executive Director of LH identified the lack of

pleasantries between himself and herders as an indication that the relationship had been strengthened:

> And they've gotten, in a lot of ways—it's, it's funny, in some ways they've gotten harder with me and in some ways they've gotten easier. Harder—and I've even brought this topic up with lots of them. I said, 'Why do you guys give me so much shit?' And they go, 'Because we know you're going to come back. We're beyond, like, formalities, and, you know, we're beyond our best behaviour and pleasantries with you. You should take it as a compliment.' And I'm like, 'Well it sucks. [laughs] Can you stop?' And, and people—outsiders have definitely noticed that too. They're real with me. If they don't' like something they tell me. And the day they started telling me the things they didn't like or ideas that I had they thought were dumb, was like, we had made a break-through, it was awesome.

The break-down of civility in this relationship indicated to LH staff that there was increased honesty, and thus strengthened communication, through which they could gain a clearer understanding of the areas of agreement between themselves and the herders. In other words, there was engagement instead of formality or polite deference. This also increased their sense of relational expertise, as their relations with the herders became more "real" and thus authenticating.

Rival:

If the relationship turns negative, NGO staff may still read the relationship as a personal one, defined by certain shared commitments, thereby treating the other actor as more of a common rival than a partner. In the case of LH, this was the relationship frame that existed between different NGOs working with the same beneficiary group. A staff member of LH described this as similar to a dysfunctional family:

> And when we all sit around tables together, we're all nice to each other. It's really strange, it's like a dysfunctional family. You know, when you're with your family—you have a certain connection with your family that you don't with anyone else,

and even if you hate them and you can't get along with them, they're your family. And there's something that unifies everyone, a common experience, so when you're with these people, it's like, 'oh man, he's a pain in the butt', but if there's anyone else in the world that gets this, and can share sustained frustrations, it's these people, and I feel sort of connected to them, and they're involved, and they know the people I know, and, you know...when I tell my friends and family in the U.K. about it, they can't put visualisations to the stories and can't really make sense of things. And these people can, better than certainly a total outsider.

Despite the competitive dynamic that prevailed over their interactions, the NGOs working in this region of Mongolia engaged with one another on a personal basis, due to the shared experiences that increased their proximity and united them as "insiders", not "outsiders." This rivalry was process-focused insofar as the organisations valued their position within comparative processes of validation and were engaged in an ongoing competition with respect to that validity. While the organisations could agree on a number of things regarding their aims for the beneficiary group they were working with, they competed for their comparative role in how these aims were achieved.

Personal base, consequences-focused

Nurturing parent:

In some cases, attention within a personal base relationship shifted to consequences or outcomes over process: while there remained a high level of perceived proximity, the emphasis of the relationship was oriented around achieving certain results. Attention to consequences over process correlated with an increase in the disparity of power between the NGO and the other actor. Since actors were focused on just "getting it done" or getting "results," it was common for one actor to assume a more powerful role. Thus, while the same level of intimacy and closeness was present, one actor in the relationship

took on more of a patronising role, relating personally to the other agent but attempting to coax or lead them to a particular end result.

This relationship frame was evocative of a *nurturing parent*, who relates personally and intimately to his child while attempting to instruct it so as to accomplish certain outcomes. The self-image of a nurturing parent was evident in a number of examples where INGO staff spoke of Mongolian counterparts or beneficiaries as being like "children" that they had to "parent" in order to reach a desired project goal. This was oftentimes raised in conjunction to the INGO staff's discussion of the challenges they faced in making their development projects truly community-based and empowering.

UFC, for example, underwent a major re-structuring of its programming in 2007 as a response to their conclusion that their current approach to community-based development was not creating the kind of relationships that they had hoped for. UFC had attempted to initiate grassroots organisations in different *aimags* across Mongolia as a way of creating bottom-up channels for project initiation and implementation. But the relationships had been consequence-focused, centred around getting the UFC-created GROs to initiate a target number of activities. Because the relationship had not been process-focused, that is, because it did not attend enough to aspects of how the GROs were operating and interacting with UFC, this led to the perception that, while the GROs achieved outcomes, they were remaining dependent upon UFC: the GROs were therefore likened to children.

> So for us we basically created these GROs because it was what we were supposed to do. But they ended up being, I don't know what's the analogy...(laughs)..they're like a baby, and UFC is the mother, and they're dependent upon UFC. So we've just done an assessment—we have 14 currently—that was done by an external agency, using an appreciative inquiry approach: how do we get them from being a baby to not being dependent upon us. So, how do we support them to get them being grown up—how do we grow them up, so they can be completely independent, so

they're not dependent on us, so they have the skills to get other
funding to be, to be independent...

Interestingly, UFC national staff reacted to resolve this problem by shifting to a focus on process, but did so via consultation with an external agency, rather than engaging more directly with members of the GROs.

Frustrated parent:

Within negative, personal base, consequence-focused relationship frames, one actor takes the form of a frustrated parental figure when it is perceived that desired outcomes are not materialising. Out of all the NGOs studied, the organisation that used professional base relationship frames most frequently was the INGO CC. The main exception to this amongst CC staff occurred in CC's Civil Society Capacity Building (CSCB) programme. The Head of the CSCB programme at one point had to engage with Mongolian NGOs participating in the programme at a more personal level in order to mediate a conflict. Describing the experience, the Director said:

> The biggest headache right now is probably involving one of our
> networks in which there's two factions in the network that don't
> get along with each other, so we have to do a lot of babysitting
> and trying with great difficulty to explain that a network is not
> an organisation, these are not your co-workers, you don't have
> to like each other.

In this example, two different relationship frames push against one another. The Mongolian NGOs participating in the civil society network established by CC approached the network through an *engager* frame, which, upon the instigation of interpersonal conflicts, grew into a *rival* frame. The CC Director responsible for the project, who, as discussed below, otherwise operated with a Professional-base set of relationship frames, expressed frustration with the personalisation of the network's operations and the more personal role of *frustrated parent* ("babysitter") into which she was placed. She therefore sought to achieve certain consequences in her relationship with the

Mongolian NGOs: move them to a more professional relationship frame in order to alleviate the conflict. Mongolian NGOs were told they did not "have to like each other", and were encouraged to view the network as a system created through mutual self-interest of Mongolian civil society actors rather than as an engagement based on shared values.

<u>Professional base, process-focused</u>

Supporter:

Professional base, process-focused relationships that were positive operated as an interaction in which either the NGO or the other actor supported the other in order to improve a given process. NGOs using this *supporter* frame cast themselves more in terms of businesses hired by their donors to offer their expertise and counsel to the government and individual entrepreneurs of a developing country. For example, the Head of CC's Mongolia office described their approach to programme design as one of selective engagement that attempted to support market-based growth without interfering with market forces in a way that would impede sustainability:

> I think that, ah, we our primary business is to sustain development. And we try the best we can to help people move along the path towards ah, being able to mobilize resources to meet their socio-economic needs and so forth through what we see as an approach that doesn't interfere too much, if you like. The support is there if it needs support but it doesn't disrupt the general flow of things. We don't undercut the market by handing out shovels. If people want shovels, they can buy shovels, or we can help you find shovels or we can advise them on what kind of shovels they need to get, or how many shovels they should buy. But we won't go buy them and hand them out.

The obligation associated with this supporter relationship frame was one of non-interference. This is because the NGO's view was that individuals were generally able to "meet their socio-economic needs," and thus only required minimal interventions in order to do so. They therefore interpreted support as

providing only what was minimally necessary, without getting in the way of individuals' attempts to meet their own needs.

Imposer:

Negative versions of this kind of relationship constituted an *imposer* frame, in which one agent's procedures or consequence-related aims were pressed upon another, making the process an imposing one. This relationship was invoked when Mongolian NGO staff described the cumbersome and time-consuming donor-required reporting procedures that took up as much as 50% of their time and a significant portion of their resources. INGO staff also described the rising dominance of monitoring and evaluation practices within their organisation as "imposing" and top-down. Monitoring and evaluation tools such as the logical framework were perceived as professionalising project implementation in a way that stifled more personal relationship frames. This emerged, for example, when the Head of M&E at UFC described her attempts at trying to mitigate the *imposer* relationship between UFC International and local *aimag*-based staff:

> So, for me, ensuring that the daily processes are…that it's something that is done in they come in an empowering way. Because a lot of it, because it comes from UFC International, we have all these standards and frameworks we have to apply, so it can be a very imposing format. You have to use this format. You have to use these methods. You have to do this, this, this, and this, and produce this report in a certain way. So it can be very imposing. So I think we have an ethical responsibility as our department, as, you know, management, from the national office, to make that process as empowering as it can be for the staff.

Acting as an intermediary between UFC International and regional staff, the Head of M&E attempted to translate her professional base, process-focused relationship with UFC International into a personal base, process-focused relationship for her subordinates; she referred to this as her attempt to "make that process as empowering as it can be." During a site visit to a regional office

that was observed for this study, she asked staff to first explain their draft logframes to her and directed discussions about indicators by asking how the staff wanted to monitor and evaluate the progress of their projects. While at times she took on a professional role, throughout the 2 day visit she continually engaged on a personal level with the regional staff, asking about their families and how the new logframes made them feel, commiserating with them on the artificiality of the logframe format, making jokes, etc. All of these strategies seemed aimed at converting the process she experienced through an *imposer* relationship frame with her superiors into one that was more personal and positive.

Professional base, consequence-focused

Promisor:

Within professional base, consequence-focused relationship frames, obligations were perceived as based on a contract, or promise. NGO staff viewed their obligation with respect to the relationship upon which it was based to be fully satisfied so long as they had honoured the terms of the agreement. This is the primary relationship frame senior staff at CC used in describing their accountability obligations to donors and beneficiaries:

> So if we say we'll give them a training workshop and a business, we'll give them a training workshop and a business. We're accountable in that sense. When we make promises, we come through on it.

Because the relationship was professional, proximity in terms of culture, geography and shared commitment were low. Instead, NGO staff were connected to the project via the promise to produce certain outcomes.

Opportunist:

Professional, consequence-focused relationships were construed as negative if one of the actors in the relationship became opportunistic, seeking to draw as many concessions or promises from the other as possible.

A primary example of the opportunist relationship frame was found in the way NGO staff spoke of the accountability mechanisms in place between themselves and their donors. They saw their accountability to their donors as rooted in donors' perceptions or mistrust of the NGO as opportunistic: the NGO would misdirect their funds unless the donor imposed tight oversight and controls over how these funds were used.

A less expected relationship to which this frame was applied was between Mongolian NGOs and two other types of stakeholder: the Mongolian government, and their targeted beneficiaries. It would be reasonable to expect that the relationship between Mongolian NGOs and Mongolian beneficiaries to be closer, and thus more personal, than the relationships that INGOs had with their beneficiaries. However, as mentioned in Section 2, Mongolia's large land mass and nomadic history contribute to perceived divisions between those who live in Ulaanbaatar and those who live in the countryside, as well as divisions based on *aimag*. The Ulaanbaatar staff of AARW recognised this as a challenge, responded by engaging with local government officials—*bagh-soum* governors and *Khururl* officers—and attempting to form cooperative relationships. However, they found this to be relatively unsuccessful, as local government officials would engage with them only when they could receive direct benefits for themselves:

> R: If we go to the bagh-soums, we come from UB [Ulaanbaatar], so even though we make an effort and say to them 'we know it's a hard life for you' the bagh-soum governors are people who live there, and they know their lives better and know better than us how to lift their lives. So we try to cooperate with the bagh-soum governors all the time, and they say they will cooperate but for

> some reason, I don't know why, but they do not cooperate; there is not enough cooperation happening.
>
> For example, take Bagan-Nuur. We started a project, and had a request from the local people to do some trainings, they heard about the business trainings and said, 'we want to do some of these kinds of trainings.' So we did some research and we went to Bagan-Nuur, but the Bagan-Nuur Khurul officers didn't want to include the poor people in the training. They wanted to include only their families, so there's a moral conflict there. In order to improve my job I'm interested in the research of my work. We need to learn how to cooperate, how to cooperate with local government.

AARW attributed this consequence-focused attitude by government and rural Mongolians as a product of INGO activity that had conditioned people to think of their relationships to NGOs in terms of getting things for free:

> R: We are implementing projects where only the poorest women come. We can't reach all the women in the soum, so we invited the poorest women, but it was ineffective, they didn't come. The reason is that the women are not that interested in social life. They are not empowered. So if we can, we give them more information—too many NGOs are working for women, for children, for families, so maybe they just take the papers but don't read them, maybe they can't read. In some of the rural areas, too many NGOs have implemented too many projects, and the rural people mostly just want to take the things, free of charge, and not for anything, to increase their knowledge, or anything.
>
> I: How do you try to overcome that challenge?
>
> R: When we come to the site, all the people ask me, 'what will you give us?' So I answer, 'I will give you ideas. I will give you information, and I will be training you, or your wife.'

While at times the Executive Director of AARW discussed these relationship problems in a more personal manner, reflecting more of a *frustrated parent* frame, overall these relationships fell under an *opportunist* relationship frame because of the more equitable power dynamic and because of the professional manner in which beneficiaries and government officials related to AARW.

Despite AARW's attempt to relate more personally and to focus their relationships on processes instead of consequences, rural Mongolians and local government officials consistently responded with a professional-base, consequences-focused frame. When AARW did not deliver the desired goods, these stakeholders opportunistically refused AARW's services.

6.3   Two frameworks for the guidance of NGO obligation

In the Interlude, four main obligations were identified in connection to the four causal capacities of NGOs. Given the fluid and varied nature of the contexts in which NGOs operate, an account of NGO obligation that attempts to articulate a single principle or formula for action will likely be too rigid and therefore unable to guide actual organisations. As a preliminary guide to the practical judgment of an NGO as a moral agent, I offer instead two frameworks: a power framework, to guide organisations in identifying which causal powers they exercise in their relationships with different parties, and a justificatory framework, which lists questions that an NGO can use to assess the degree to which it has justified its exercise of its moral powers. These are presented below in Tables 2 and 3.

While there are significant problems with the logical framework approach to project planning and monitoring, I chose this as a model to build my power framework, so as to present it in a format familiar to most NGO practitioners. It does not, however, employ the problematic linear logic of traditional LFA discussed in Chapter 4.

The power framework provides a set of questions for NGOs to apply with respect to each of their relationships or interactions with others, in order to identify the moral powers and thus obligations relevant to that relationship. Once these are identified, guiding questions for each can be used to assist the NGO in its self-assessment.

Table 2: Power Assessment Framework

Power assessment	Donor	Beneficiary group 1	Beneficiary group 2	Local gov. officials	Other NGO 1 Etc.... -->
How do we interact with this actor?					
Aims of interaction:					
How do we affect the abilities of this actor?					
What norms or values underlie our interaction?					
What is this actor's relationship to our use of material resources?					
What information do we convey to or about this actor?					

Table 3: Self-assessment Framework

Obligation	Guiding Questions/Indicators
Accountability	- Are there opportunities for parties to offer their appraisal of the organisation's activities to project and executive staff? - Does the organisation provide justifications or responses to these appraisals? - Are there opportunities for the organisation to explain why it might view certain appraisals to be unmerited, and why (i.e. provide justification for why it might disregard certain appraisals)? - Does the organisation engage in its own regular assessments of how its activities affect the abilities of other parties to act and pursue their interests? - Are these assessments made publicly available, and if not, is there good reason to support why this is not the case? - Does the organisation have internal procedures of accountability that it makes public (e.g. Action Aid's ALPS framework)? - Are there mechanisms for processing and responding to complaints, both internally and externally?

Obligation	Guiding Questions/Indicators
Demonstrating Positive Change	➢ Has a causal model been identified during the initial stage of project planning? ➢ Have the causal powers of the organisation's activities been identified? That is, has the following question been answered: 'What will we do that will produce effect E?' ➢ Have indicators been identified for determining if/when the underlying assumptions of the causal model are no longer being met in the surrounding environment? ➢ Have thick concepts been clearly defined, i.e. both in terms of what they describe (have they been operationalized) and their evaluative function (are they clearly linked to organisation's justification of project) ➢ Are there rules or procedures that tie resource allocation to the comparative strength of theories of change for different potential projects? ➢ Are project/programme frameworks and their underlying causal models publicly available? ➢ If they are not publicly available, are they at least available to all those who donate time or money to the organisation?

Obligation	Guiding Questions/Indicators
Demonstrating Positive Change (ctd.)	➢ Are there procedures in place for adjusting project frameworks in response to changes or new challenges? ➢ Is the positive change aimed for coherent with norms shareable by those affected by the change?
Maintaining normative consistency	➢ Are organisational norms clearly defined and connected through an explanation, framework, theory or argument? ➢ Is the normative function of each concept and principle clearly identified and translatable to different interactional contexts? ➢ Have certain values or principles been identified as 'non-negotiable' or deontic, i.e. the organisation is unwilling to compromise on these or include them in trade-offs with other ends? If so, have justifications for this position been tied to the basis for the organisation's existence or agency? ➢ Does the organisation provide public information regarding the different actors with whom it interacts on an annual basis? ➢ Is there a clear, public policy regarding what stakeholders the organisation will or will not collaborate with, and why?

Obligation	Guiding Questions/Indicators
Epistemic virtue	➤ Does the organisation have clear standards of credibility that it can use to assess its claims? ➤ Is information articulated clearly to others? ➤ Is there evidence that can be presented to support each claim? ➤ Is that evidence publicly available or, if not, is there an explanation for why it is not? ➤ Is there a 'devil's advocate': a person whose role is to challenge and test organisational knowledge and factual claims? ➤ Are there organisational learning procedures that facilitate 'double loop' learning? ➤ Are there clear means by which outside parties can introduce new information or evidence for consideration by the organisation? ➤ Does the organisation have a clear procedure for verifying information it conveys about another actor to different audiences?

Concluding Remarks:

Framing relationships for validity and NGOs as norm-enacting agents

Relationship frames emerged as a core category in this study because an NGO's relationships—and the obligations that they grounded within them—were a primary source of both validation and conflict. This observation contributed largely to the view offered in this thesis, beginning in Chapter 1, that NGO moral agency is characterised primarily by such organisations' reliance on multiple types of collaborative activities with others.

With this in mind, the above frameworks attempt to provide an initial guide to organisations for navigating these relationships in a way that helps to clarify which demands ought to function as sources of obligation and which can be dismissed as unreasonable requests by other parties. In what remains, I shall conclude with some comments on the connection between validation, relationship frames, and the account of NGO moral agency argued for in this thesis.

NGO staff in this study understood their obligations as based on the kind of relationship they had with others. However, they also sought to meet a more objective standard of validation. In this way, NGO staff in Mongolia sought to get things right: that is, they engaged in a holistic self-assessment that took stock of the variety of relationships in which they were involved, the quality of the demands and expectations that others placed on them in those relationships, and the degree to which they were able to meet their responsibilities overall as an organisational agent.

As mentioned above, NGO staff used a number of "thick concepts"—concepts that were both descriptive and evaluative—in describing their work and their relationships. In cases where relationships turned negative, this could be

partly explained by the fact that the norms the NGO was enacting—as indicated by the evaluative concepts it employed—were in tension with the orientation of the relationship. For instance, in the scenario described under the *imposer* relationship frame, the top-down planning and monitoring relationship between herself and her superiors was framed negatively by the UFC M&E staffer, as she experienced tension between this approach to planning and monitoring and the grassroots-prioritising norm that UFC was attempting to enact. In other circumstances, NGO staff discussed difficulties with defining key normative concepts such as sustainability, community-based, and empowerment in a way that was conducive to guiding their relationships and activities.

This study's identification of relationship frames as a way of achieving organisational validity complements two main themes within qualitative research on NGOs working in developing countries. The first is that NGO activity is frequently dominated by a particular discourse, or "NGO-speak"[679]: INGOs utilise certain vocabularies to entice funding from donors, in turn pressuring local NGOs to use the same terms and concepts to frame their own work. This was evident amongst Mongolian NGOs that had participated in "civil society capacity building" projects operated by INGOs. When discussing how they thought of the function of an NGO in Mongolian society, Mongolian NGO staff referred to the concepts and ideas of INGOs as though they were official policies or hard facts.

A second theme, reiterated throughout this thesis and in this study, was the impact of the broader system of actors on what an NGO is able to be and to do. NGO activity within Mongolia was shaped by constructions of NGO agency created by international donors and Mongolians, as well as by many NGOs of one another. NGOs were affected by the definitions and roles placed

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[679] See ff. 17.

upon them by others, and sought to affect the abilities of other actors by the same means, using thick concepts to express and justify these roles.

Insofar as an NGO's relationships with others were impacted by evaluative concepts, directing greater attention to the nature of their organisation's work as a norm-enacting agent could assist NGO staff in clarifying what they are doing, on what basis it is justified, and in what way this activity obligates them to act towards others. The four obligations identified in this thesis can thus be read as an initial step in this direction. Engaging in moral appraisal accountability allows NGO staff to discuss with other actors the justifiability of their activities, and identify possible disagreements or disparities regarding the way in which key evaluative concepts are defined by different actors. Assessing activities and relationships with an eye to maintaining consistency with organisational norms can help identify the source of tension in negative relationship frames. This tension can then possibly be resolved by reference to a rigorous and detailed theory of change that connects the NGO's norms to a set of empirical goals, and explains the causal pathways needed to meet those goals. For example, in the *imposer* frame experienced by the UFC staffer, the top-down approach to planning and monitoring could be assessed with respect to whether it causally contributes to UFC's broader goals of community-based, child-focused positive change. Finally, attention to honesty and accuracy of information requires NGO staff to reflect on the veracity of the claims they make, including those they make to donors and local associations about the cultural and institutional context in which they operate.

Regardless of how they framed their relationships or assessed their own validity, NGO staff in Mongolia took their work seriously and wanted to get things right. The obligations outlined here bring these two concerns together: by identifying what obligations are entailed by an NGO taking itself seriously as a moral agent, the above frameworks aim to provide some initial guidance for getting things right.

APPENDIX A: LIST OF INTERVIEWS

Case studies

Mongolian NGO: Association for the Advancement of Rural Women

Interviews	Dates
Executive Director	26 Feb, 3 March, 22 Aug
Regional Project Leader	3 March

Site visits	Dates
Accompanied Executive Director on visit to observe projects at a regional office.	22-27 March

INGO 1: Collective Compassion

Interviews	Dates
Executive Director	27 March, 4 April, 26 Aug
Head of Nomadic Livelihood Improvement Program	18 March
Head of Civil Society Capacity Building (CSCB) Project	14 April
Project Leader, Nomadic Livelihood Improvement Program	18 March

Site visits	Dates
Accompanied Head of CSCB on visit to regional office in Dundgobi province	22-25 May

INGO 2: United for Children

Interviews	Dates
Vice Director (position 2 in organisation)	3 April
Head of Child Sponsorship	3 April
Head of M&E	31 July
Head of one of 32 regional offices	22 July

Site visits	Dates
Accompanied Head of M&E to	15-16 July

regional office visit, Hovd province	

Foreign NGO: Local Horizons

Interviews	*Dates*
Executive Director	8 Feb, 27 Feb, 8 March, 10 June, 16 Aug
Site visits	*Dates*
Accompanied Head of CSCB on visit to regional office	7-15 March

Other Interviews

NGOs: *Type//main area of work*	*Position of person(s) interviewed*	*Date(s)*
Mongolian//democracy-promoting, civil liberties	President	1 Feb; 11 Aug
Mongolian//freedom of the press, civil liberties (GI)	Executive Director	7 Feb
Mongolian//gender equality, human trafficking prevention	Executive Director	15 Aug
Mongolian// legal aid	President	9 March
Mongolian// youth organisation	Coordinator	9 March
Mongolian// environmental	PRA leader	2 July
Mongolian// anti-mining, environmental	President	10 July
Mongolian//rural women's aid association	Secretary	9 March
International, faith-based// development and relief	Country Director; Project Manager for Cooperative	14 Jan; 21 Feb

	Development Project	
Donor organisations/IGOs	*Position of person(s) interviewed*	*Date(s)*
The Asia Foundation	Executive Director	29 Feb; 27 March
Asian Development Bank	Procurement Officer	20 June
USAID/MCC	Director of Civil Society Relations	5 September
World Bank	Country Head; Head of Civil Society Relations	26 June; 26 June

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