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The Impact of Corporate Provision of Social Welfare on the Legitimacy of the state: Providing Anti-retroviral Drugs in South Africa

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M00328839

A thesis presented for the degree of Doctor of Philosophy in Business and Management at Middlesex University Business School

London

January 2015

Declaration of Originality

I hereby declare that this thesis and the work reported herein was composed by and originated entirely from me. Information derived from the published and unpublished work of others has been acknowledged in the text and references are given in the list of sources.

S.Stephens

London, 13th January 2015

Abstract

This thesis considers the effect of corporate provision of social welfare on the legitimacy of the state. This research consists of a literature review, quantitative and qualitative research.

The following research questions are addressed

1. What is the relationship between social welfare provision and the legitimacy of a) the state and b) the corporation?
2. What are the consequences when some of these social welfare responsibilities are assumed by corporations in terms of a) The legitimacy of the corporation and b) The legitimacy of the state – i.e. have corporations adopted some of the legitimacy of the state along with the functions of the state?

The questions were addressed with case study research conducted in South Africa, in to the provision of anti-retroviral drugs to HIV positive employees by their employers. This case study was chosen because South Africa, a newly democratic country was facing a significant challenge in HIV to which the state did not initially respond well. Many large companies, and the mining industry in particular, have been involved in providing treatment to employees, their families and to the wider community since the early stages of the crisis. Therefore the South African context offers a clear example of where corporations have assumed some of the social welfare responsibilities of the state.

The first research stage consisted of quantitative analysis of public and private investment in health, corporate social investment spending and attitudes to the government and to major corporations over a sixteen year period. The second research stage consisted of interviews and a focus group with people receiving anti-retroviral treatment from their employers, those involved in the provision of the treatment, representatives of the broader South African community and academic experts. The findings from both stages were considered together in order to gain an understanding of the relationship between the involvement of corporations in providing healthcare and attitudes to the legitimacy of the state.

These questions were addressed by appealing to the social contract, both as it is used in traditional political philosophy and how it has been applied more recently to business ethics. The research questions were based on an implicit assumption that there was a direct, and probably negative relationship between the corporate provision of social welfare and the legitimacy of the state because it was assumed that the state and the corporation would be

competing for legitimacy in a zero sum game. The findings of the research suggest a more complex relationship, where corporations are seen to fulfil some terms of the social contract on the behalf are the state. This means that rather than usurping the legitimacy of the state, corporations may actually be bolstering the legitimacy of the state. Therefore the risk initially identified, that the provision of ARVs by employers will de-legitimise the state, was not realised. The findings were much more positive, with significant implications. Specifically, if corporations have the power to lend legitimacy to states they may also have a responsibility to ensure that this power is used wisely, and further consideration is required of the conditions under which such legitimation is appropriate.

Key words: Business Ethics, Corporate Social Responsibility, Legitimacy, Social Contract, South Africa, Mining

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List of Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ANC	African National Congress
ARV	Anti-retro viral
ATCA	Alien Tort Claims Act
CMO	Chief Medical Officer
CSI	Corporate Social Investment
CSP	Corporate Social Performance
CSR	Corporate Social Responsibility
DOTS	Directly Observed Treatment Schedule
FDI	Foreign Direct Investment
GEAR	Growth, Employment and Redistribution
HIV	Human Immunodeficiency Virus
IGO	Intergovernmental Organisation
IPE	International Political Economy
ISCT	Integrative Social Contracts Theory
LDC	Less Developed Country
MNC	Multinational Company
NGO	Non-Governmental Organisation
RDP	Reconstruction and Development Programme
TAC	Treatment Action Campaign
UDHR	Universal Declaration of Human Rights
UN	United Nations
VWSA	Volkswagen South Africa
WVS	World Values Survey

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Introduction

The mining industry is of great importance to South Africa, not least because of the size of the sector and its significance to the country's economy. The structure of the industry, where many aspects of the industry are horizontally integrated within the mining houses, has meant not only that mining dominates the country's economy, but that only a few companies dominate the industry (Randall 2002, Hamann and Bezuidenhout 2007, and Fig 2007).

Due to the size and the nature of the mining industry mining communities are particularly vulnerable to the corporate presence, and the mining industry's involvement in the HIV epidemic is undeniable. The labour intensity of operations means that any illness which is affecting such a huge swathe of the working population will have some effect on the day-to-day running of business, and the historical reliance on migrant workers housed in single sex barracks implicates the industry in the geographic spread of the virus (Fig 2005).

It is therefore perhaps of no great surprise that the mining industry was the first to respond to the crisis. The industry's first official response was in 1986 when the Chamber of Mines announced that new employees were to be screened and dismissed if found HIV positive. When this move was challenged by the Unions the industry desisted, but there was a notable decline in the employment of miners from Malawi as it was believed that they were more likely to be HIV positive than other workers. (Dickinson 2004).

Subsequent responses from the mining industry marked a departure from the initial discriminatory policies and Anglo American was the first company to announce drug provision for all of its employees in the early 1990s (Dickinson, 2004, 2007). This thesis presents case study research into the impact of this provision on the legitimacy of the South African state.

This is an important topic because companies are increasingly involved in the provision of social goods, but the impact of this increased involvement is ambiguous. Arguably, it could be claimed that the increased involvement of private actors in social welfare will increase the power of corporations as they gain control of services such as healthcare, and that provision of healthcare by private actors will threaten the quality of such welfare as corporations seem likely to put profit ahead of social benefit. In some ways these new concerns are anticipated by International Political Economy (IPE) scholars such as Cox (1983), Strange (1995), Gill and

Law (1989) – among others - who argued that due to their accumulation of wealth, private actors were adopting a significant amount of the power traditionally associated with the state, with the suggestion that this shift in power may be a manifestation of a neo-colonialism which was a continuation of a policy of indirect political interference via companies such as the East India company in the nineteenth century (Strange 1998, Cain and Hopkins 2013). This discourse, which gained prominence in the 1990s, focussed on the interplay between the state and the corporation in terms of trade and finance. Perhaps because Corporate Social Responsibility (CSR) was still gaining prominence as a business practice at the time, or because of changes taking place in international market liberalisation (meaning that this is where academic interest was focussed), the role of the corporation as a social actor has never been seriously considered by traditional IPE scholars. Therefore while the IPE literature has addressed issues relating to the changing relationship between public and private actors it has not explored the relationship between corporate involvement in welfare provision and the state. This is a significant research gap which this thesis will, in part, address. Specifically, this research will consider the effect of corporate provision of social welfare on the legitimacy of the corporation and the relationship between the legitimacy of the corporation and that of the state.

However, a discourse which does consider the role of business as a provider of public goods has emerged in the field of Business Ethics and Corporate Social Responsibility. Within the Business discipline the discussion has focussed on the evolving role of the corporation rather than the declining role of the state. Academics such as Frynas (2005 and 2007), and with Blowfield (2005) are concerned with the social role of corporations. Others, such as Prietyo-Carron et al (2006), Scherer and Palazzo (2007, 2011), and Moon et al (2005) are concerned with the way in which the involvement of business in social welfare provision can be used to achieve political aims and there is some consideration of the way in which such activities may be used to gain a 'social license to operate'. When a 'social license' is granted, a community allows companies to operate; when the license is not granted, the resistance of the community may prevent a companies' operations in the vicinity, either through social opposition or by legal opposition (Gifford and Kestler 2008 and Wilburn 2011, Prno and Slocombe 2012, Morrison 2014). Therefore the importance of CSR as a social and political issue has been acknowledged and within the business discipline the current literature does address the legitimacy of businesses, as social actors. What has not been addressed however is the impact of this social role for business on the legitimacy of the state.

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We can therefore identify a gap in the current literature, both in the IPE discipline and in the field of business, where the legitimacy of corporations as social actors *in relation to the government* has yet to be examined. This gap will be addressed by the research presented in this thesis.

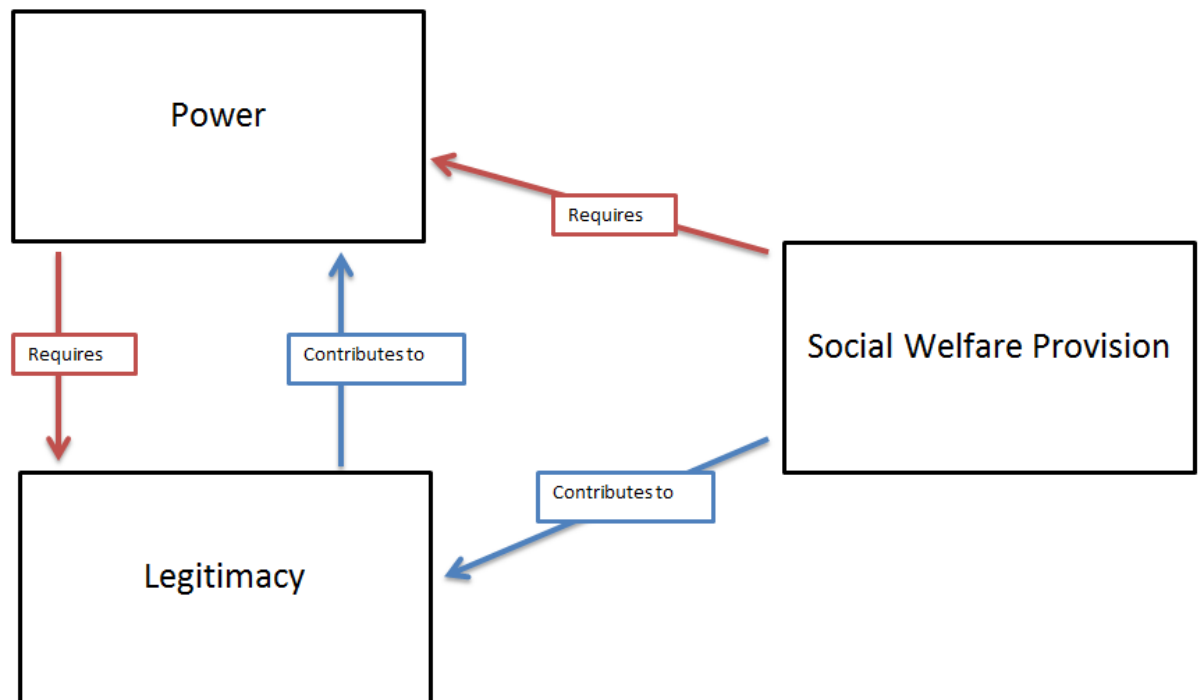


Figure.1.1 – The relationship between power, legitimacy and social welfare provision – for both business and the State – which will be investigated in this research.

Specifically, this research will consider the relationship between the provision of social welfare, power and legitimacy (shown in Figure 1.1). The concepts of ‘power’ and legitimacy’ will be considered in the literature review, and will be used to establish that legitimacy is both required by and a contributor to power. Subsequently, specific criteria for legitimation will be considered using a social contract framework. This thesis considers whether the provision of social welfare by corporations is both a manifestation of corporate power and a contributor to corporate legitimacy (which would in turn contribute to corporate power). If this relationship can be established it would suggest that this social welfare provision is both a manifestation of and a contributor to corporate power, and where social welfare is being provided by the corporation instead of by the state, the legitimacy being bestowed by the involvement of businesses in social issues is at the expense of the legitimacy of the state, as the state forgoes an opportunity to gain legitimacy.

The possibility of a relationship between social welfare, corporate power and legitimacy is an important issue to explore for a number of reasons; firstly, the transference of legitimacy to

private actors would potentially pose a significant challenge to a nascent democracy, highlighting inadequacies of an elected government and causing communities to question the value of the system. Therefore there is the risk that the provision of ARVs by employers will delegitimise the state, as it highlights the state's inadequacies and causes the usurpation of legitimacy which would be bestowed on the state were the state to be the primary provider of such healthcare. Secondly, it raises questions about the quality and reliability of the social welfare being provided by companies; if companies are primarily accountable to shareholders, their social welfare provisions to the communities in which they operate can only be relied on for as long as it is financially advantageous to operate there. The withdrawal of welfare provision could be devastating to these communities and it is therefore arguable that the focus of businesses, if they are to fulfil a role of social actor, should be on government capacity building, rather than direct provision of social goods – or perhaps even that there is no justification for companies being involved in anything other than their core business activities. On the other hand, if it can be established that corporations do have a responsibility to the communities affected by their operations, then traditional understandings of business will be challenged and there may need to be a reconceptualization of the relationship between businesses and communities and the limits of CSR.

This thesis will present a case study examining the provision of antiretroviral (ARV) treatment and HIV prevention programmes in South Africa by extraction companies, in order to establish the effect of providing life-saving medication by employers (as opposed to being provided by the state) on perceptions of government legitimacy in a context where democracy has yet to become an established tradition.

The case study of ARV provision in South Africa has been chosen due to the severity of HIV/AIDS as a social and economic challenge facing the country. The initial failure of the South African government to effectively respond to the HIV/AIDS epidemic was met with an ad hoc response by businesses (Dickinson 2004, Bezuidenhout et al 2007). This transference of responsibility raises serious questions regarding the role of the state and the impact when that role is distorted. Specifically, the assumption of a role of social welfare provider by some businesses may threaten to undermine the legitimacy of the state as the government fails to fulfil its role of social welfare provider in the face of the epidemic. The provision of social welfare by employers differs from general private healthcare (e.g. through individually purchased private health insurance) because in the instances being investigated here, the healthcare is being provided by the employers at no cost of to the recipient. Further, as is

discussed in Chapter Six, the employers being researched here provide ARVs to employees when they are on strike, to their families, and in some instances to the wider community. Therefore the provision of healthcare in these instances is not a simple market exchange, but an assumption of responsibility by employers resulting in the kind of universal (albeit within a discrete group) healthcare provision one might associate with the state. Further, as argued Youde (2001), Barnett and Whiteside (2002) and Mattes and Manning (2004), democracy in South Africa is particularly vulnerable to crises due to the country's relatively recent transition to a democratic political system. Therefore the risk of legitimacy transfer may also be particularly high. If it can be shown that the transference of the role 'social welfare provider' entails a transference of legitimacy, a significant challenge to the legitimacy of the state will be uncovered. This would raise further questions regarding the ethics of business as a social actor and the relationship between the state and private actors.

Two initial research questions have been identified.

- 1) What is the relationship between social welfare provision and the legitimacy of a) the state and b) the corporation?
- 2) What are the consequences when some of these social welfare responsibilities are assumed by corporations for a) the legitimacy of corporations as social actors and b) the legitimacy of the state – i.e. have corporations adopted some of the legitimacy of the state along with the functions of the state?

This thesis is comprised of a literature review, a discussion of methodology, an analysis section and a conclusion. The literature review will identify the research gap and inform the theoretical framework. Specifically, it will discuss the concept of legitimacy and its relationship to power; the social contract and its application to business ethics and current research regarding CSR, development and politics, with a particular focus on the South African context.

Quantitative and qualitative research methodologies have been used, and the research consists of two stages. The first stage will consist of quantitative data analysis, using the World Values Survey to measure state legitimacy, World Bank data on government and non-government spending on health and levels of Corporate Social Investment (CSI) in South Africa provided by Trialogue, a South African CSI consultancy. The second stage will consist of interviews and a focus group with members of a community in South Africa who have experience of ARV provision via CSR. The discussion will focus on attitudes to the state and attitudes to corporations regarding the provision of treatment, and an exploration of how

receiving treatment from an employer might affect attitudes to the state. The final chapter is the conclusion where the findings from both research stages will be considered and the implications of these findings will be considered.

This thesis has a number of research implications for both academia and business.

As will be demonstrated in the Literature Review below, this thesis addresses a significant literature gap which lies between IPE, International Law and Business. The wide academic scope of this research has allowed the researcher to identify the existing knowledge across these fields, and use this knowledge to inform new empirical research which will make a contribution to each field. This research lends much needed empirical insight to the field of IPE, specifically to the suggestion that increased corporate power has a relationship to the power and legitimacy of the state (Strange 1995, 1996; Cox 1983, 1995; Gill and Law 1989). It continues the discussion in International Law regarding the changing legal role of MNCs, and extend this discussion by considering not only the relationship between the power of the state and that of MNCs, but also the relationship between the legitimacy of state and that of MNCs. As argued, this is particularly significant given the 'soft' nature of international law, which means that the state lacks any actual legal recourse. Finally, this research will contribute to the CSR discourse in the business discipline where there is an ongoing discussion regarding the changing role of businesses in relation to the state, and a consideration of what this means for the functions of business, but no consideration of the impact of these changes on the legitimacy of business in relation to that of the state, as is offered in this work.

There are also implications of this research for business, as a greater understanding of the relationship between business, society and the state will help business practitioners to act in a way which maximises their social aims. If it is established that businesses are in fact delegitimising the governments of the states in which they operate, it would be appropriate for businesses and for governments to take steps to prevent this. These steps might take the form of preventing social welfare provision by corporations, or at the very least imposing mandatory or voluntary restrictions on the kind of programs businesses are allowed to become involved in; for example, businesses might be limited to capacity building programs, to ensure that the legitimacy is 'captured' by the state. This may mean that businesses lose their incentive to provide social welfare support, as they will not be gaining legitimacy from them (although it might also be the case that the material benefits of a healthy workforce, for example, are incentive enough to invest in healthcare, even if it is via the state). Alternatively,

it might be concluded that where a business is more able to provide healthcare than the state, it is appropriate for the business to do so, and appropriate that the business gain the legitimacy from doing so. Therefore it may be argued that employers do usurp legitimacy from the state when they provide healthcare to their employees, but that they are entitled to do so.

If however the findings suggest that there is not a direct negative relationship between the provision of ARVs by employers to their employees and the legitimacy of the state, and that indeed there is a positive relationship between the provision of ARVs by employers and the legitimacy of the state, then there are also significant implications for businesses. Specifically, the power to add legitimacy to states entails a responsibility to ensure that legitimacy is bestowed in this way only to those states which are worthy. Therefore further research would be required in order to establish what criteria of legitimacy states must meet to warrant the involvement of corporations in the provision of social welfare.

1. Literature Review Introduction

The research presented in this thesis is intended to address a cross-disciplinary research gap, and therefore a review of the literature has been undertaken in order to establish the parameters of the gap and demonstrate the way in which this research will offer a substantial contribution.

This research is concerned with the concepts of 'power' and legitimacy', and the value of the research relies on a sound understanding of what these terms mean and how they can be applied. Therefore this literature review begins with a discussion of how these terms have been understood in the past and in the present. In order to establish a way in which the concept of 'legitimacy' can be operationalized, the Social Contract mechanism shall be considered; both the way in which it is used in traditional political philosophy (Hobbes 2001, Rousseau 2001, Locke 2001) and the more recent application of the concept to business ethics (Donaldson and Dunfee 1995, 1997). In applying the same mechanism to identify the legitimacy of the state and that of business we shall establish that a meaningful comparison between the legitimacy of these two institutions is possible, and this comparison will allow us to consider ways in which the legitimacy of one may affect the legitimacy of the other.

The second chapter of the literature review will consider some applications of these concepts for business in order to present the current discourses regarding the nature of legitimising social responsibilities which may be being assumed by businesses and the way in which these responsibilities are related to the power of the corporation. Firstly we present the discussion of the human rights responsibilities of business under international law, highlighting that there is insufficient consideration of the impact of increased social responsibilities for business on the legitimacy of the state in the current literature. We then narrow the focus to business involvement in social welfare provision and a discussion of CSR, focussing specifically on the role that this kind of business activity may play in the context of a developing country. While there is an active and on-going discussion in this area we shall demonstrate that there has not been sufficient consideration of the implications when businesses act as an agent of development on the legitimacy of the state. Finally, we shall present discussions regarding the role of business as providers of social welfare in the South African context in order to review the current literature relating specifically to our case study. Again, while there is valuable material in this on-going discourse, there is no consideration of the implication of businesses involvement in providing anti-retroviral drugs to employees and beyond in South Africa on the legitimacy of State, despite the pertinence of this issue in the post-apartheid South African

context.

The literature review will meet two aims; the first is to clearly identify the literature gap that this research will address. The second is to inform the methodological decisions taken for this research. It shall do this by establishing the utility of the Social Contract as a mechanism for establishing legitimising criteria for the power of both the state and of the corporation. The social contract is considered in order to establish what (if any) terms may constitute an implicit agreement between businesses and the societies in which they operate, where businesses gain legitimacy in exchange for fulfilling certain functions, in the same way political philosophers such as Hobbes, Locke and Rousseau have asserted that states are legitimised. Specifically, the research presented here will establish possible ways in which the involvement of businesses in social welfare may be legitimising the power of the corporation (i.e. through social welfare provision in the context of changing state power), and the focus on the South African context will establish the value of the specific case study chosen for the primary research. Therefore the literature review will make a direct contribution to the methodology as well as establishing the importance of this research.

2. Key Concepts and Their Application

A fundamental challenge for this research is identifying and defining the key concepts of power and legitimacy in a way that is both accurate and useful. Further, we are considering the relationship between the legitimacy of the corporation and of the state. In order to do this we must also understand the nature of the power of these institutions, as it is power which demands legitimacy. To allow for such a comparison of these institutions, it must be established that there is a conception of both power and legitimacy which can be applied meaningfully to corporations and to the state. Therefore this literature review begins with a review of both traditional and contemporary conceptions of power and of legitimacy, and identifies that a broader conception of power as offered by Nye (1990, 2004) and by neo-Gramscians (Cox 1983, Gilpin 1987, and Gill and Law 1989) one which can be applied to both the state and the corporation. Further, the social contract as it is applied by traditional political philosophers (Hobbes 2001, Rousseau 2001, Locke 2001) to the state and to business (Donaldson and Dunfee 1995, 1997) is presented as a valid way of understanding and comparing the requirements of a legitimate state and a legitimate corporation. Social Contract Theory will therefore be used to justify the choice of antiretroviral drug provision as a case study, as the preservation and protection of life emerges as a fundamental requirement for legitimacy according to the social contract mechanism.

2.1 Power and Legitimation for the State and the Corporation

The research presented in this thesis is concerned with the nature of power and its legitimation in the context of the relationship between the state and business. Therefore we must first consider the relevant literature which offers an account of the way in which the power of the state may be comparable with that of the corporation. Further, the process of legitimising this power must be considered, because if it is established that the legitimation process for both corporate and state power is comparable, then there may be a risk of legitimacy transfer. The literature reviewed below demonstrates that this is indeed the case. Specifically, the application of the Social Contract to both the state and to business suggests the possibility that where corporations assume some of the social roles of the state, they do so at the expense of the legitimacy of the state. This has clear implications for this thesis as it considers the impact of social welfare provision by corporate actors on the legitimacy of the state in a developing country.

Questions regarding the legitimacy of the corporation and that of the state are only important in so far as they relate to power, because in the absence of power there is no need for

legitimacy. These questions regarding legitimacy are particularly important where the power of the corporation is great, growing, or changing. As shall be discussed below these issues are being addressed by academics in both the field of politics (Strange 1995 and 1996, Cox 1983 and 1995, Gill and David Law 1989) and that of business (Scherer and Palazzo 2007 and 2011, Matten et al 2003, Moon et al 2005). This research will attempt to bridge the gap between arguments regarding the relationship between wealth and power advanced by the political scholars and the research conducted in the business field regarding the legitimising effect of corporate involvement in social welfare on corporate power. However, before the specifics of these concerns are addressed, we must first consider the way in which the concept of 'power' is understood in this context.

A central concern of this thesis is the power relationship between the state and the corporation; specifically, we are concerned with the way in which social welfare provision acts to legitimise the power of corporations, and with the relationship between the legitimacy of corporations and the legitimacy of the power of the state. Therefore in order to understand this relationship, the concept of 'power' must also be understood. As described by Beetham, power is the ability of an agent to achieve its purposes (Beetham 1991). This is a broad definition, and there are a number of arguments regarding the different kinds of power being exercised by different agents. Referring specifically to the power of states Nye (2004) outlines three different ways that an agent can achieve its aims; 'coercion (sticks), payment (carrots) and attraction (soft power)', and argues that states should embrace the possibilities of soft power rather than pursuing the policies traditionally associated with power by force. Strange (2002) similarly recognises the changing nature of state power, but argues that the role of the corporation must be considered when understanding power of this nature, as the shift away from power by force has meant a shift towards the power of wealth, which is inextricably linked with the role of businesses as wealth creators. This shift entails a new conception of power, which can be applied to both businesses and the state. The concept of hegemonic power as introduced by Gramsci (2005) and developed for international political economy by neo-Gramscians such as Robert Cox (and later others including Gilpin 1987 and Gill and Law 1989) and that offered by Joseph Nye (1990, 2004) constitute such a conception. These accounts of power allow us to see the commonalities between the power of the state and that of the corporation and therefore facilitate a meaningful comparison, which will enable us to conduct research in to the possibility of a transfer of power and legitimacy between the two institutions.

The Gramscian concept of hegemony is a way of accounting for what Gramsci observed as the dual nature of power, comprising of coercion and consent. 'Hegemony' was a way of describing the dynamics involved in the securing of consent, covering the political and ideological leadership adopted in order to ensure that consent was obtained (Simon, 1991). Gramsci was writing about domestic politics, specifically about Italian domestic politics, but his ideas about the dual nature of power were adopted and developed by international relations scholars in the 1980s and 1990s. Robert Cox (1983) described what an international hegemony would look like:

'Hegemony at the international level is ... not merely an order among state. It is an order within a world economy with a dominant mode of production which penetrates into all countries and links into other subordinate modes of production. It is also a complex of international social relationships which connect the social classes of the different countries. World hegemony is describable as a social structure, an economic structure, and a political structure; and it cannot be simply one of these things but must be all three.' (p.171-2)

Thus it is clear that a hegemonic power is a different kind of power to that associated with domination by force; it would be manifest in economics, politics and culture, and international institutions would be used to shape ideology. According to this understanding of power, consideration of the actions state would not, in itself, be sufficient to understand the crucial sources of power affecting the lives of individuals; rather we must also consider other actors, particularly economic actors, such as corporations, in order to gain a useful understanding of how the world works. For Cox international hegemony would still operate on a state-based structure; ideology-shaping international institutions would be initiated by the hegemonic state, and while the social classes of different countries would be connected, it would still be states, rather than a class, that would be the hegemonic power.

Other neo-Gramscian's developed this idea further, and while they broadly agreed on the nature of hegemonic power as described by Cox, (i.e. that it would be exerted through modes of production, economics and ideology), they did not agree that it could only be understood as state-centric. Robinson (2005) argued that Gramsci never intended for the concept of hegemony to be state-centric, but that it has become so via interpretation. He instead suggests that the correct unit for the analysis of hegemonic power is class-based, but on an international scale. Cutler (2006) agreed that hegemony could be understood as operating internationally and beyond the state, but that it could be best observed in the implementation

of international law, and in particular soft (non-binding) law, which operated in order to assimilate the opposition to the hegemonic powers (the dominant international class) in a process described by Gramsci as *transformismo*. The various developments in neo-Gramscian IPE shall be discussed in more detail below, but the crucial point here is that hegemonic power need not be understood as something that only states can exert. By introducing a notion of power that does not rely on resources (such as an army) that only a state can feasibly command, it becomes possible to see that power can be exercised by non-state actors; the form that this power takes may be more complex than that traditionally ascribed to states, but it is power nonetheless. This therefore allows for a meaningful comparison between the power of the state and that of corporate actors.

Although politically poles apart (Nye's neo-liberalism contrasts sharply with Cox's Leninist-Gramscianism) Joseph Nye was also concerned with questions of power and hegemony, although he used the term 'hegemony' in the traditional sense of one country dominating another. In 'Bound to Lead - The Changing Nature of American Power' (1990) and later work, Nye argued that America's dominance prevailed, but that the nature of power in international relations had changed. Notably, Nye identified what he described as 'soft power'. Defined as 'the ability to shape the preferences of others' (Nye 2004, p.5) soft power, he argued, was becoming a characteristic of international relations, in a world where 'power is becoming less fungible, less coercive and less tangible' (1990, p.188). This new kind of power manifested in politics and economics, but also in culture and ideology. To wield soft power is to *appeal* to others;

'Soft power is not merely the same as influence. After all, influence can also rest on the hard power of threats or payments. And soft power is more than just persuasion or the ability to move people by argument, though that is an important part of it. It is also the ability to attract, and attraction often leads to acquiescence.' (Nye, 2004, p.6)

Nye argues that in order for America to maintain its power post-Cold War, or for any state to gain power, it would have to adjust its approach to dominance; power would no longer be characterised by simply having the largest supply of resources, but would instead be characterised by an ability to shape the interests of other international actors. Traditional concerns for physical security were being supplemented with a further concern for economic security in both domestic and international politics, with the consequence that for a state to be successful it must have economic as well as political influence.

Nye's discussion of soft power has focussed on America and American power, and the most obvious example of US soft power is that exerted by the media and the propagation of American values via films, music and popular culture. However, Nye also argues that multinational corporations (MNCs) have a part to play - arguing that to some extent where MNCs originate in the U.S. the power that the companies exert in the host countries is a form of soft-power exerted by America. He recognises however that this is limited by the 'multinational' aspect of MNCs, as the interests of the MNCs are 'often distinct from those of both the home and host countries in which they operate' (Nye, 1990, p.193). He later developed this idea, briefly suggesting that in fact MNCs might be exerting *their own* soft power. Nye gives the example of the way in which drug companies responded to NGO pressure and gave up lawsuits in South Africa over infringements of patenting rights for HIV drugs, with the suggestion that such a response might be a way of companies protecting their soft power, which lies primarily in their brand. (Nye, 2004, p.93)

This notion of soft power certainly seems more applicable to the kind of power being exerted by corporations than the traditional understanding of power involving force and other forms of direct coercion. Indeed, as shall be discussed below, and as was recognised by Nye, this is the kind of power that IPE scholars argue is increasing. By Nye's account hard and soft power are two sides of the same coin, they are both ways of 'achiev(ing) one's purpose by affecting the behaviour of others' (2004, p.7). It seems that MNCs are more likely to employ soft power, as they do not have the 'hard power' resources of states, but nonetheless the power they exert *is* comparable to the power being exerted by states - either because the states are doing as Nye recommends and recognising the value of their soft power, or simply because hard or soft, power is power.

Therefore, these accounts of power show that there is at least a starting point for comparison between the role of the corporation and the role of the state. By understanding that power comes in many forms we are able to consider the extent to which the power of the corporation is coming to rival that of that of the state, an issue which is a primary concern for the IPE scholars who will be discussed below. This is a crucial consideration for this thesis as any questions regarding legitimacy will inevitably be questions regarding the legitimisation of power. Therefore, in order to address the issue of legitimacy transference between state and corporation, we must first consider the power relationship of the two, which has been the focus of International Political Economy.

2.2 Business and the State in International Political Economy

Concerns about changes taking place in the relationship between states and corporations are not new. During the latter part of the twentieth century international relations theorists turned their attention to what some perceived as a risk being posed to the power and autonomy of the state by the growing influence of major corporate actors. International Political Economy (IPE) emerged as a new discipline, spearheaded by, among others, Susan Strange (1995, 1996), Robert Cox (1983, 1995), Stephen Gill and David Law (1989).

Despite an occasional divergence of theoretical perspectives, their work shared the focus of the changing power dynamic in the relationship between business and the state and the impact that this would have on the value of the democratic process. Emerging from International Relations, the IPE discipline focussed almost exclusively on power and authority, and the implications of accumulated wealth by private corporate actors for the distribution of power. This focus, while beneficial to the aims of the discipline, has meant that IPE has failed to comment on some of the broader impacts of business. While consistently recognising the importance of soft power in the context of policy formation and regulation, IPE has not considered the impact of non-core business activities such as CSR on public understanding of the role of business and that of the state. The role of business is more complex than is suggested in IPE; while it may be true that the primary function of a corporation is to accumulate wealth (Cox 1983, Gill and Law 1989, Strange 1995, 1996, 2002,), corporations are also inevitably members of the communities in which they operate (Matten et al 2003, Moon et al 2005, Scherer and Palazzo 2007, 2011). They are employers, producers, health care providers, school builders and infrastructure developers. They perform a multitude of functions (Blowfield 2005, Frynas 2005, Frynas and Newell 2007, Barkemeyer 2009, Sagebien and Whellams 2011), which must be considered when attempting to evaluate the effect of their presence in a community or country. Therefore, while this thesis is intended to continue and compliment the work of IPE scholars, it will also address a significant omission in academic understandings of the relationship between business, the state and society.

As discussed above the Gramscian notion of hegemonic power has had significant influence within IPE, initiated by Robert Cox and his neo-Gramscian approach to International Relations. Because of the Gramscian emphasis on structure, Cox offers a broad understanding of the state, which includes 'the underpinnings of the political structure in civil society' (Cox, 1983). This understanding of power as structural as well as overt is

common throughout IPE, and the Gramscian hegemonic theory is implemented by a number of IPE scholars such as Cox (1983), Gilpin (1987) and Gill and Law (1989).

Applying the Gramscian concept of the 'historic bloc' Cox describes his understanding of the 'hegemony of capital' as 'an order within (the) world economy with a dominant mode of production which penetrates into all countries and links into other subordinate modes of production' (Cox, 1983). Referring back to the discussion in the previous section, we can see that the form of power Cox is attributing to capital is distinct from the kind of power traditionally associated with the state. However, Cox is arguing that due to the increasing interconnectedness of the political and economic spheres the 'hegemony of capital' actually acts as a great leveller for the state and the corporation, as both pursue this excludable resource as means to power. Of particular relevance to this thesis is the impact that this may have on the importance placed on the provision of social welfare for both state and corporation. If it is the case, as Cox is arguing, that states are prioritising the pursuit of wealth over other responsibilities, then the state may forgo spending on some of its more costly and demanding programmes which are associated with social welfare. Thus an opportunity is created for corporations to further usurp the state as they assume the role of welfare provider – a role which is traditionally associated with the state. Despite this risk, Cox and the IPE field more generally, does not consider any transfer of the *social* role of state to corporation. By focussing on the pursuit of wealth Cox and others ignore the social aspect of soft and hegemonic power. The role of the state as social welfare provider undoubtedly places it in a position of moral leadership, and it is therefore important to consider - as this thesis will - the effect of any transference of this role to corporations.

It is worth noting that in his early work Cox was identifiable as realist, in that he maintained that the structures of the historic bloc still primarily consisted of state actors. In later work Cox discussed a 'post-Westphalian' system, which suggests that his views regarding the significance of the state as a unitary actor had somewhat changed. Cox (1995) amends the realist position by arguing that 'the entity we call "the state" is a complex of governmental functions and societal practices', indicating that the traditional realist assumption that the state should be understood as a dominant and unitary actor should be modified to reflect the complex interaction of various other actors and structures that operate both within and between states. This shift from a realist perspective to one which asserts the importance of other structures, while maintaining the enduring reality of the state is termed 'structural realism' and is typical in the development of IPE. The shift indicates a growing concern that

the state is becoming less relevant (although by no means irrelevant) in international relations. This concern is central to this thesis as the role of the state is being considered in comparison with that of private corporations. As the state is being considered as a primary actor this research lends itself to a realist analysis, although the emphasis being placed on other sources of power suggests that the traditional realist perspective is not appropriate. Therefore the structural-realist and neo-realist position, discussed below, will also be considered.

Gilpin, another international relations-turned-IPE scholar, also adopted a neo-Gramscian approach. Gilpin (1987) considers Political Economy in the contemporary context, identifying the change in meaning from when it was used by Adam Smith to mean 'the science of economics' to the way in which Gilpin himself is using it to refer to a set of questions which 'ask how the state and its associated political processes affect the production of wealth, and in particular, how political decisions and interests influence the location of economic activities and the distribution of the costs and benefits of those activities.' (p.9)

Echoing Cox' assertion that the accumulation of capital was becoming a dominant feature of the world system, (or historic bloc), Gilpin argued that it was economic dependence which, above all else, established the power relationship which defined the contemporary world economy. Gilpin describes a situation of economic interdependence that leads to a power relationship characterised by a 'mutual albeit not equal dependence' (Gilpin, 1987). The market, according to Gilpin, is able to shape the modern world in part because it 'forces a reorganisation of society in order to make the markets work properly' (p.19), and it can have this effect internationally because it 'expands(s) geographically...to incorporate every aspect of society into the nexus of market relations'. (p.20)

Emphasising the inseparability of wealth from politics Gilpin explains that the market is not politically neutral; rather it creates power through wealth which can then be transferred to a political context. The potential effect of the market is therefore structural change at almost every level. Again, it is important to emphasise here the *kind* of power that Gilpin is referring to. Gilpin is arguing that the effects of this structural change are a kind of power exertion. This is a form of hegemonic power, akin to Nye's concept of soft power, where the structures dictated by the market influence what is believed to be possible, and even desirable. According to this argument the State is left with a reactionary role, responding the threat of an unfettered market in order to 'advance the effects of the markets beneficial to

themselves and to counter those that are detrimental' (p.21). This has clear implications for the way in which the power relation between the state and the market, and the corporations and individuals which comprise the market, is understood. Arguments of this form are not intended to suggest that MNCs are challenging state power on every level. Rather, the argument is that as the political and the economic spheres become increasingly interrelated, the political influence of economic actors is correspondingly increasing. The concern therefore is that economic actors such as large multinational corporations are gaining influence over the state in some respects. Returning to the research questions of this thesis, the issue of whether the state maintains power and authority must be considered in order to establish exactly what the state's claim to legitimacy is.

Gilpin like Cox focusses exclusively on the interaction between the political and the economic, and does not consider the social function of either the state or the corporation. If it is the case that the market is not politically neutral and if functions such as providing health care are neglected by the state and adopted by the market, then it is important to consider the impact of these new structures on the allocation of social welfare goods. The research presented in this thesis will address these concerns, addressing one particular aspect of these changes in political economy. As with Cox, Gilpin adopts many aspects of the realist perspective, maintaining that while capitalism has had a profound impact on social relations and political systems; it has not changed the fundamental state-based international order. However, the argument that wealth is pursued as a means to power, as opposed to overt power being sought as an end in itself, is another departure from the traditional realist position. This position is often termed 'neo-realism', and although there are distinctions between the two, the terms 'neo-realism' and 'structural-realism' are often used interchangeably. Given the focus of this thesis, i.e. the distribution of legitimacy through the provision of social welfare by MNCs and the relationship between social welfare provision and power, it seems most appropriate to deem the approach taken 'neo-realist'.

Gill and Law (1989) continue the neo-Gramscian approach to international relations, arguing that it should help shape the future research agenda. The argument is twofold – the primary argument is that the structural power relationship between the states and markets is shifting; the secondary argument is that the state has the structural power to limit the power of the market. Like Gilpin, Gill and Law describe the relationship between states and markets as being mutually, but not necessarily equally, dependent. As realists they maintain that capital 'still depends on the power of the state to define, shape, and participate in a regime

of accumulation' (Gill and Law, 1989, p.479). The societal structure described by Gill and Law is both material and normative, the normative aspect being demonstrated by the higher priority given to economic growth than that given to other goals. The precedence of economic concerns means that 'capital, and particularly the financial fractions of capital, may have the power to indirectly discipline the state' (p.481). Although this is not explicitly addressed by Gill and Law, the precedence given to economic growth is likely to be at the expense of other costly state functions such as social welfare provision. This therefore creates a need and an opportunity for corporations to step-in, offering social welfare where it is socially or economically beneficial to do so, (depending on the motivations of the company). The focus of this research is therefore an example of the structural changes discussed in IPE, as well as an example of an important social phenomenon which demands consideration.

The growth of Transnational Corporations (TNCs), a prevailing theme in IPE, is discussed by Gill and Law (1989) as a particular aspect of the structural power of capital. The transference of capital within firms (rather than within or between states) means that, as argued by Gilpin, capital is being allocated 'consciously and politically' (p.485). This is offered as an example of the increased interrelation of economic and political spheres, and of the influence that economic actors, i.e. the firms, are able to exert over political actors, namely the state. Again supporting Gilpin's position, Gill and Law argue that the policies of 'sound finance' spread from one country to another as states are locked in competition with each other to attract investment. They argue that in this situation the structural power of capital is evident because these policies are adopted with a sense that there is no credible alternative, and thus 'the power of capital attains a hegemonic status' (p.486).

Fieldhouse (1995) took up the theme of transnational or multinational corporations, focussing attention on the impact of these corporate actors on the sovereignty of states in less developed countries (LDCs). Fieldhouse argues that the role of MNCs in LDCs differs from their role in developed countries as the former are not in a position to balance the financial benefits of foreign direct investment (FDI) against the welfare risks posed by the presence of an MNC, such as greater inequality and a siphoning of state power. It is argued that any state faced with the potential for FDI must make a normative decision about what constitutes 'growth'. Although Fieldhouse does not mention structural power or hegemony, it seems that the concern regarding normative questions on the decision to pursue FDI are similar to those expressed by Gill and Law; i.e. is economic growth to be given a normative

primacy over other potential development indicators. If economic growth *is* to be given primacy over other possible indicators there is then, as previously discussed, the risk that social welfare goals will be neglected by the state, leaving them to be adopted instead by private actors such as MNCs.

Fieldhouse recognises the great complexity of foreign investment issues, identifying fundamental differences in the role of MNCs engaged in the 'old' industries of utilities, oil, mineral and agricultural corporations, and those engaged in the modern manufacturing industry. According to Fieldhouse the former exist to distort the market, seeking a monopoly that is a new form of mercantilist imperialism. The latter however benefit from a genuinely open and free market as they are positioned to greatly benefit from new markets and labour sources. The geographic expansion of MNCs' operations can therefore be attributed to market imperfections which are, it is argued, created by protectionist state policies. Fieldhouse therefore identifies the state as being ultimately responsible for the presence of MNCs in the host country and concludes that 'in so far as there is a latent tension between the power of the MNC and that of the sovereign host state, it is the state that now holds most of the cards' (p.177). However, this argument is persuasive only in the context of the newer manufacturing industries, and arguably underestimates the continued heft of the 'old industries' within certain national contexts. In order to make this account more broadly applicable further consideration needs to be given to the on-going effect of the enduring 'old industries' in LDCs on the role of the state, consideration which will be offered in this thesis, as it focusses on the mining industry in South Africa.

In considering the role of MNCs in international relations Susan Strange comes to a different conclusion. Strange adopts a structural realist position, maintaining that seemingly unrelated changes in world politics and business have common roots in the structural changes in the world economy and society. Strange argues that as a result of these structural changes corporations have assumed a diplomatic role with significant influence on international relations (Strange, 1995). It is argued that technological developments have been at the root of this structural change, and the subsequent internationalisation of production has changed the balance between 'companies working only for a local or domestic market, and those working for a global market'. (p.62) Like Gill, Law and Gilpin, Strange maintains that these changes have altered the policy makers' perceptions in LDCs, causing them to prioritise export oriented policies, liberalisation and privatisation as they seek the value that international investment can add to labour, materials and knowledge within the LDC. This

would be an example of the soft power described by Nye, although not necessarily of the soft power of states as it is clear that other (specifically corporate) actors are involved.

As with other neo-realists Strange asserts that states are now competing for wealth as a means for power rather than competing directly for power itself. Distancing IPE even further from the traditional realist perspective Strange emphasises the role of corporations in international diplomacy, arguing that corporations now play a significant role in the development of states' policies as states design policies to attract foreign firms and retain domestic firms (Strange, 1995). This is of course a significant divergence from Nye, who maintains that it is states which are best placed to take advantage of the structural changes of international interdependence.

In order to justify the assertion that the position of the state is shifting Strange outlines the traditionally-assumed responsibilities of the state. Many are to do with economic responsibilities such as building economic infrastructure, maintaining competitiveness internationally and correcting the boom and slump cyclical tendencies of the market. As the welfare responsibilities of the state are a central theme of this thesis, it is of particular importance that one of the state's responsibilities discussed is the responsibility to provide 'a safety-net for those least able to survive in a market economy' (Strange, 1995, p. 76). This point is not expanded on by Strange, although it touches on the issues discussed later in this chapter regarding the terms of the social contract between state and citizens. However, as will be discussed further in chapter three, the role of business, particularly that of MNCs, may be more complex than is recognised by IPE. While the goal of corporations may be the accumulation of wealth, they also inevitably function within a community and are therefore also social actors. While businesses are fulfilling a variety of social functions via for example their CSR programmes (see Matten et al 2003, Blowfield and Frynas 2005, Moon et al 2005, Scherer and Palazzo 2007 and 2011), IPE is only able to consider the interaction between states and corporations on the economic and political level and fails to address their interaction on a social level. As IPE suggests, a change in the role of business is likely to relate to correspond with a change in the role of the state (although the causal direction of this relationship is not established) and this thesis will build on the premises of IPE, but will also explore issues relating to the social function of corporations as yet unconsidered in this discipline.

More recent discussions in IPE have arguably responded to the changing nature of the state's

role by increasingly considering the state as one of a nexus of other significant actors. In particular, there has been a vibrant discussion focussing on non-state (or extra-state) governance. The role of private regulation has received attention ((Büthe 2010), the role of non-binding global governance (for example the U.N. Global (Cutler 2010, Hofferberth 2011, Berliner and Prakash 2012).

Within this discussion the concerns about the legitimacy of the state have also been expressed. Berliner and Prakash (2010) examine the conditions for a legitimate global governance programs and argue that inter-governmental institutions such as the U.N. have a legitimizing effect on private governance initiatives. However, there is a strong voice within this discourse arguing that while extra, intra and inter-state governing bodies may have a significant role to play in global governance; the role of the state should not be dismissed or overlooked. Brassett and Tsingou (2011) and Cerutti (2011) argue that any claimant to legitimate global governance faces challenges which the state has, in the past, avoided. Cerutti goes on to argue that these challenges must nonetheless be met as they are global challenges, requiring action by global actors, but nonetheless the status quo is, according to this argument, one where the states hold a legitimacy lacked by all other actors. This echoes the assertion made by Whytock (2010) that the state enduring holds certain abilities, which are lacked by other actors, and Whytock presents evidence that the state plays a crucial role in the arbitration of transnational law; a role which cannot be superseded or usurped by global governance actors.

These are certainly pertinent issues, and relate closely to the International Law literature presented in Chapter Three. As discussed in subsequent chapters the role of non-binding global regulation is of interest perhaps it is perhaps indicative of the changing role of the state, where non-state actors are assuming a regulatory role which would previously be assumed to belong to the state.

It should be noted however that while the focus may have shifted to global regulation there are continuing concerns with legitimacy, and this shift therefore does not represent a resolution of the issues presented by the early IPE scholars discussed above, but a deepening understanding of the range of their implications, and an enduring concern with the implications of global institutional dynamics on the legitimacy of the state and other actors. The concept of legitimacy is therefore addressed in the following section.

2.3 Legitimacy

The discussions in IPE revolve around a crucial consideration of this research – namely the impact of corporations on the state. As argued by Cox (1983), Gilpin (1987), Strange (1995) and others, the blurring of boundaries between the political and economic spheres is causing a shift in the relationship between public and private actors and between states and corporations. One significant dimension of this relationship is to do with power and, as explained by Weber (1968), wherever there is power there is the demand for legitimacy. The previous section established that the nature of the power being exerted by the corporation may be comparable to that associated with modern states. Therefore it is possible that the legitimation process for this power may also be comparable with that of states and, as discussed above, this may have implications for the way in which we understand the motives and consequences of corporate involvement in social welfare. In order to understand these consequences we must consider the way in which the concept of ‘legitimacy’ can be applied in this context, which will also have implications for our methodology as it will allow an insight in to how best to operationalise the concept of legitimacy.

In *Economy and Society* (1968) Weber identifies three kinds of authority, or legitimate domination (for him the terms are interchangeable), they are:

- 1) Rational grounds - domination is legitimate if there is belief in the legality of the process that bestowed the authority
- 2) Traditional grounds - domination is legitimate if there is a belief in the sanctity of the traditions and the legitimacy of those operating within them, to bestow authority
- 3) Charismatic grounds - domination may be legitimated by a devotion inspired by the personal qualities of the person in authority.

From this brief overview it is clear that for Weber legitimacy was in the eye of the beholder. All three of his justificatory grounds rest entirely on perceptual beliefs about the process through which power has been assumed. A consequence of this is that there need not be any qualitative difference between two authorities for one's domination to be legitimate and the other's domination not to be, as it is *belief* in their legitimacy that legitimises. This is clearly problematic as it makes a strong case for why perception of legitimacy is criteria for legitimacy, but does not offer any useful account as to what would cause a power to be perceived to be legitimate.

Beetham (1991) supports the Weberian assertion that power demands legitimation, but rejects Weber's claim that legitimacy relies on belief in legitimacy, and instead offers a tripartite account of legitimacy of his own. According to Beetham, there are three sources of legitimacy which correspond with three manifestations of power. However, Beetham's account differs from Weber's in that all three the manifestations of power, and their corresponding justification, are likely to occur simultaneously. As shall be discussed, this theory offers an account of legitimacy that is more useful for our purposes.

Here is Beetham's account of power and legitimacy:

- 1) The inequality of circumstance between dominant and subordinate is justified because of a normative distinction of superiority or inferiority; this can be seen in the historical justification of an aristocracy and class divisions and as such is closely related to Weber's account of traditional authority. Beetham's version differs however in that the argument from normative distinction can also take a meritocratic form and therefore distance itself from the legitimising myths identified by Weber as characteristic of traditional authority.
- 2) A transfer of power from subordinate to dominant can be justified where it can be shown that this transfer is to the advantage of all involved. Therefore for this to obtain two conditions must be met. Firstly, it must be acknowledged that the subordinate group do have interests of their own (thus excluding any form of slavery). Secondly, at least some of these interests must be shared by the dominant, and demonstrably so.
- 3) Limiting freedom by demanding subservience to the purposes of the dominant may be made morally acceptable by evidence of consent, which undermines the negative connotations of subservience.

The second and third points are of particular relevance to this thesis as they clearly relate to the kind of power being exerted by the state. Beetham's second definition of legitimacy (where a transfer of power is legitimate if it can be shown to be beneficial to all involved) is applicable to state power, and can be seen for example where citizens relinquish their power to the state in exchange for protection; an arrangement which, in the best circumstances, suits everyone. The third definition of legitimacy, where consent renders domination legitimate, is coherent with the belief that a state's power is legitimate when its citizens consent to its presence and power. These aspects of Beetham's account may therefore be considered as

indicators for state legitimacy and may also be used to understand if a corporation's power is being legitimised in a similar way to that of the state; i.e. if these criteria are met when considering the power of a corporation, the corporation may be assuming some state-like legitimacy.

The legitimisation processes described in points 2 and 3 by Beetham can perhaps best be understood in tandem, for both the corporation and the state, as in order for the consent required by argument 3) to have weight, those granting consent must have recognised interests, as suggested in argument 2); the consent is unlikely to be obtained unless these interests are demonstrably being represented by the authority, as also required by argument 2). In this way Beetham is able to offer an account of legitimacy which appeals to consent, but is also able to explain what would 'cause' the consent.

While there are some similarities, it is important to highlight the divergence of Beetham's argument from Weber's; namely that for Beetham legitimacy is *not* in the eye of the beholder. Rather, legitimacy exists objectively, either due to a disparity in skill or deserving (here the distinction with Weber is less clear, as this must also be accompanied by a *belief* in the superior skill or 'rightfulness' of the dominant), or a correspondence between the interests of the dominant and the dominated, or through the consent of the dominated. Further to this last point, Beetham clarified that 'consent' should not be confused with a belief in the dominant's legitimacy, as consent has to be demonstrated:

'it is specific actions that publicly express (consent); and ... these are important because they confer legitimacy on the powerful, not because they provide evidence about people's beliefs.'
(p.91)

Beetham is therefore suggesting that there is such a thing as legitimating acts, which, as he explains, demonstrate but do not themselves constitute, consent. It is therefore *consent*, not belief, which legitimates power. However, as recognised by Beetham, the relationship between dominant and subordinate necessarily makes legitimisation through consent problematic. Where such a power relationship is pre-existing, as is likely to be the case in the power relationship between the state and the citizen, any single act of consent is likely to be done with the sense that one is adding legitimacy to the system which required it in the first place, and the existing rules of power are thus confirmed. Within such a system the structures of power can only ever be reproduced and so the system is weighted against change. This seems to undermine a prime requirement for consent to be valid, namely a plausible

alternative. Thus the legitimating of power through consent is problematic for political power.

Beetham's account fails to fully address the problems' associated with the potential that power has to manipulate the interests of the subordinate so that they will inevitably correspond with those of the dominant. Beetham provides the example of feudalism, describing how the domination of the aristocracy over the peasants was de-legitimised not because of the demands of the land owners, but because they did not demonstrably share (in fact they demonstrably did *not* share) the primary interest of the peasants, which was subsistence. This certainly supports the point Beetham is making, but it also suggests a further problem with power.

To take a slight variation on this example, suppose that the primary interest of the peasants *was* met, but just barely, so that hunger was common but starvation was not. And suppose that this was the case because the subsistence of the peasants was an essential requirement of the land-owners' primary interest in this relationship, i.e. the perpetuation of the system that kept the aristocracy dominant and the peasants subservient. In this variation the requirements of legitimacy are met, because the interests of the dominant and subordinate corresponded and were championed (i.e. to keep the peasants alive). However there is something deeply problematic here, as the *primary* interests of the two parties do not correspond at all – in fact it seems plausible that the peasants would not share the aristocrats' interest in perpetuating the system and would seek something quite different. However, the power that the aristocrats have is sufficient to ensure that at least some of the interests of the peasants align with interests vital to the aristocracy – by keeping the peasants near-starving the dominant group have ensured that the interests of the subordinate correspond with theirs, thus meeting Beetham's requirement of legitimacy.

This example highlights the problem of dependency when it comes to legitimating power. Beetham briefly discusses relationships of dependency, describing how the law of anticipated reactions can be more readily imposed in these situations, where the *threat* of sanctions is sufficient to modify behaviour, creating a situation where power is unenforced but not un-imposed. However, Beetham does not discuss the impact that dependency has on the ability of desperate people to genuinely consent to power. This thesis shall consider the effects of the provision of anti-retroviral drugs to HIV positive employees; arguably there is no clearer example of a relationship of dependency than that between someone with a life-threatening virus and the person able to provide life-saving drugs. While Beetham is able to explain the

effect of this kind of relationship on the acquiescence of the dependent individual, he does not consider the impact that this relationship will have on the legitimacy of the power being exercised.

Beetham is able to overcome one of the main problems associated with Weber's account; that is, he is able to offer objective and observable reasons why some exertions of power are legitimate and some are not. The description of legitimacy presented by Beetham is also more useful for this thesis because it has offered some potential indicators of legitimacy which may be employable in this research; i.e. demonstrations of consent. As discussed above, and as shall be a recurring theme in this research, there are significant problems with establishing precisely what counts as valid act of consent. Further, Beetham's account does not offer any clear criteria for what a legitimate state *must do*, beyond the assertion that it must firstly recognise the interests of the citizens and secondly defend these interests. Questions therefore remain regarding exactly what these interests are. This is an issue of great importance to this thesis as we seek to establish what the responsibilities of the state are and whether they are being transferred to private actors.

While Weber and Beetham have offered us an insight into the nature of legitimacy, their accounts are not specifically state related, and therefore fail to offer any useful empirical indicators of political legitimacy. The social contract is able to address some of these concerns, offering as it does a method for establishing minimum criteria for a legitimate government or state.

The Social Contract Account of Legitimacy

We have seen in section above that while there is contention in the understanding of power and legitimacy, there are also notable commonalities in the application of these concepts to the state and to the corporation, which will help facilitate the comparison of the power and the legitimacy of these two institutions. However, to operationalise these concepts in order to make such a comparison possible, a more tangible account of the legitimation of power is required. The Social Contract approach has been used by political philosophers and business ethicists to offer an account of the moral legitimacy of both the state and the corporation (Donaldson and Dunfee 1995). The applicability of this one approach to both institutions is further evidence that the nature of their power is comparable, but more importantly offers an insight in to how to conduct such comparison. By allowing us to establish criteria for the legitimation of power – both state and corporate – the social contract is a useful tool in

operationalising the concept of legitimacy.

In this section, and throughout this thesis, 'the state' will refer to the political institution responsible for running a country. The term 'the government' will be used to refer to specific individuals or collections of individuals (e.g. those belonging to a political party) who are in power due to the political institution at a given time. Therefore, when discussing how the social contract justifies the legitimacy of the state we are referring to the over-arching political institution which has power over a citizenry. As will become clear, the social contract can legitimise the state, but individuals, and 'the government' operating within the state may be able to delegitimise the state by failing to fulfil the terms of the social contract on the behalf of the state.

2.4 The Social Contract and the State

The Social Contract is a useful mechanism for addressing some of the problems identified above are associated with defining 'legitimacy'. Namely, by applying this mechanism we can identify some concrete criteria for a legitimate government, without getting lost in conceptual discussions about consent. Crucially, the social contract approach does not rely on a shared understanding of what constitutes consenting acts, but can rather appeals to what one would require in exchange for a relinquishing of personal power and therefore can offer us some understanding of what are causes of legitimacy; i.e. whatever would be consented to under the social contract is legitimate. The social contract is also a superior tool for examining the power relationship between citizens and states or other institutional actors, because as explained by Knowles (2010) the social contract can account for dual-level agreement, (those between citizens themselves and between citizens and the government), while the concept of consent, when considered without this framework, can only account for an agreement between two one party with another, on their own behalf.

On its most basic level, the social contract is an account of what citizens expect in exchange for their surrendering of power to the state. The legitimacy of the state can therefore be understood as something that obtains when the conditions of the social contract are met. There have been a number of accounts of the social contract and its relationship with legitimacy throughout history; Plato's Glaucon offers an unfavourable version of a social contract where men make a 'compact' with each other through which they sacrifice the 'good' feeling resulting from harming another in order to avoid the 'bad' feelings of suffering harm from another. (The Republic, Book II line 359). This is not an account of society that is

endorsed by the character of Socrates, but it does contain a kernel which is common to all social contract theories – namely that for a social contract to be legitimate, concessions will be made on both sides, with the implication that where there is failure to make the necessary concessions, the contract will be rendered void and the power illegitimate. By considering the classic accounts of the social contract, we are able to identify prevalent understandings of exactly what a state must do in order to achieve legitimacy.

For Hobbes the Social Contract was something entered in to out of the rational self-interest of the individual, in order to avoid an existence that would otherwise be 'nasty, brutish and short' (Hobbes 2001, p.531). The threat of violence posed in the state of nature meant that protection from the sovereign was the 'least-worst' option. There are a number of consequences of establishing a Sovereign; the primary intended consequence is the protection of the life of the individual, which would be constantly threatened by others in the state of nature. Therefore, the only situation in which rebellion would be legitimate is where the life of the individual is threatened by the state. This 'self-defence right' is 'the privilege or liberty to defend one's body if it is attacked, or to do what is necessary to procure the means (e.g. food, shelter) to assure bodily survival' (Hampton 1999). From this exception, and the fundamental aspects of Hobbes' state of nature, it seems clear that the ultimate demand on the state is that it protects the life of the individual, and if the state fails to meet this demand then the contract with the individual is void.

Rousseau continued the tradition of using the State of Nature to explain his political philosophy, but offered a different account of the pre-societal state to that offered by Hobbes. According to Rousseau, individuals in the State of Nature have very limited contact with one another. Rather than constant violent competition for scarce resources, there would be precisely enough resources for the population due to the balance of supply and demand as regulated by nature. Rather than being governed by rational self-interest, individuals would be subject to 'amour de soi' which leads them to seek out the basic means for survival, but not necessarily at the expense of their neighbour. This self-love however also causes a desire for human progress, instigating private property, which in turn leads to the development of civil society and industry (Rousseau, 2001).

According to Rousseau the state of nature was blissful but unsustainable. With the introduction of private property and the concept of ownership came the threat of a 'war of all against all' as people fought for ownership of land and means of production. This constant

threat of violence, akin to Hobbes' conception of the state of nature, is the reason a state is established. Central to this process is the role of freedom and autonomy - in the state of nature man is *born free* and it only through the process of establishing the civil society that he is put '*everywhere in chains*' (Rousseau 2001, p.722). Although there are fundamental differences in their conception of human nature, there are striking similarities in the social contracts described by Hobbes and Rousseau; namely that the primary purpose of the state is to prevent the 'war of all against all', but at the expense of man's natural freedom.

Locke's account of the state is the first to explicitly identify *consent* as a necessary (but not sufficient) criterion for the legitimacy. Fundamental to his account is the concept of 'natural rights' – Locke maintained that all men were born equal and free and in possession of natural rights that can only be transferred to another man or institution with the consent of the natural holder (Locke, 2001). The state is therefore legitimised by the conditional transfer of the rights of individuals to the state. The state does not have any inherent rights of its own. Another central concept is that of the Law of Nature, derived from Locke's belief that mankind is created by God, which holds 'one is...bound to preserve himself' (Locke 2001, p.645). The religious roots of this mandate are important, as Locke believed this was an obligation owed by humanity to God to preserve the race of mankind, rather than the selfish predilection for ruthless self-interest described by Hobbes (Wolff, 1996). Like Hobbes and Rousseau, Locke uses the state of a nature as an explanatory tool to account for this transfer of some natural rights from individuals to the State. For Locke, the State of Nature is simply the condition of existence in the absence of the state (Simmons 1999). The primary characteristic of the state of nature is therefore the absence of a legitimate authority to enforce the Law of Nature (the preservation of life), and it is this void which is filled by establishing a state; he state is therefore, at a minimum, contractually bound to preserve the life of the individual.

Thus it seems reasonable to conclude that at the very least; a fundamental condition for the legitimacy of the state is that *it is able to afford its population better protection of life than could be offered in the states' absence.*

Consideration of the Social Contract has highlighted at least one vital indicator of a legitimate state; namely the protection of the lives of its citizens. That is, a legitimate state is one where the lives of its citizens are better protected and preserved than they would be without the state. This will be a starting point for the operationalization of legitimacy. Further indicators will be sought, but the preservation of life is clearly significant, and it is of particular relevance

to the case study being presented here. As this research is concerned with the provision of life saving drugs, consideration of the life-preserving role of the state compared with that of private corporations is of central importance. If it is established that the corporation has adopted a life-preserving function then it may be concluded a) that the state is failing to fully fulfil its obligations of the social contract and b) that a comparable social contract is emerging between the corporation and society (this point will be discussed in detail below). Therefore it may be possible to conclude that the legitimacy of the state is, to some extent, being transferred to the corporation to the detriment of the state. This argument is facilitated by the substantial literature (see Donaldson 1982 and 1989, Dunfee 19991, Donaldson and Dunfee 1995, 1997, 1999, Douglas 2000, Wempe 2005 and 2009, van Oosterhout et al 2006, van Oosterhout and Heugens 2009) which applies the social contract to business in order to establish what corporations are required to do in order to legitimise their presence and power.

2.5 The Social Contract and Business

The Social Contract for business ethics is considered in this thesis for two main reasons. First, it will be argued that if the social contract mechanism can be used for identifying the legitimacy of the corporation and that of the state, a comparison between the two will therefore be made easier. Second, if it can be established that there is a social contract between both society and the state and between society and the corporation, it may be possible to a) identify some legitimating criteria for both and b) establish whether there are terms common to the two contracts. If it can be established that there are common terms between the contract society has with the state and that it has with business, then the risk of legitimacy transfer between the state and the corporation is clear – where only one actor can fulfil a specific criteria, it does so at the expense of the legitimacy of the other actor. For example, in a country such as South Africa which is suffering from an HIV epidemic, if both the state and corporations have the contractual obligation to protect the life of the individual, but the life-saving anti-retroviral drugs are being provided by corporations, the state will have forfeited an opportunity for legitimacy that the corporation will have seized. Therefore our next task is to establish if there are commonalities in the nature of the legitimacy of the state and that of the corporation, as evidenced by the application to the social contract mechanisms to both institutions. Our subsequent task, undertaken in this section, is to use the approach outlined by social contract theorists to identify at least some of these of these legitimising criteria. These criteria will inform methodological decisions in research stage two, as we seek to understand the legitimacy of the state and corporations in South Africa.

A workable social contract theory for business ethics is a relatively recent development. Donaldson and Dunfee's Integrative Social Contracts Theory (ISCT) as proposed in their book *The Ties That Bind* (1997) and an earlier article (1995) is widely considered to be not only the best application of the social contract to business ethics, but also one of the pre-eminent theories in the field of business ethics as a whole (Hasnas 1998, Boatright 2000, van Oosterhaut et al 2006, Heugens et al 2006). The appeal of this approach is its ability to address both philosophical issues of ethics and the practical issues of day to day business (Hasnas 1998, Van Oosterhaut et al 2006, Heugens et al 2006) which is as strength of the social contract approach in all fields where theory and practice must converge, including of course politics.

As argued by Donaldson (1982) when he was first developing the arguments which would later feed into the book *The Ties That Bind*, the social contract and the search for legitimation is relevant to any 'artefact'. That is, where humans have chosen to create an entity some reasons must exist for *why* we have chosen to create it, and *why* we have chosen to create it in the way that it is. Therefore it is relevant to business in the same way it is to the state, as both are societies' creations. Donaldson further justifies the application of the social contract to business by arguing that business interacts with society on a huge scale and for this interaction to occur there must be some agreements being enacted. The social contract mechanism is a way of identifying what these agreements are. Donaldson identifies some potential damages which may be = caused to society by business so (increased pollution, diffused responsibility, distortion of power and alienation) and some advantages which may be offered 'in exchange' (economies of scale, the chance for increased income, efficiency and also diffused responsibility) (Donaldson, 1982, p.45). Here we see a further parallel with the discussion of the social contract in political philosophy and therefore with the legitimation of the state, as the Social Contract theory was first posited as a way of exploring the rightful limits of a state's inevitable impact on society and the best way to maximise the advantages, just as the ISCT suggests we do for business.

Thus, the parallels between the legitimacy of the state and the legitimacy of the corporation are being established; both the state and the corporation are human creations, they both interact with society both pose risks (as well as benefits) to society which must be justified. The successful application of the social contract to the field of business ethics therefore demonstrates a) the utility of the social contract to any field where power requires justification and b) the similarities between what is required to justify the power of the state and that

which is required to justify the power of the corporation.

There are however some differences between the traditional social contract and that being proposed by ISCT, which shall become clear. As with the accounts offered by Hobbes, Rousseau and Locke, the foundations of ISCT lie in a state of nature. Donaldson and Dunfee envisage a pre-organised production situation where there is only individual production. In this situation, and behind a Rawlsian style veil of ignorance regarding the economic characteristics of the individual, a contract between business and society is imagined to emerge. Significantly however, for Donald and Dunfee, while the veil of ignorance protects the individual from knowledge of their *economic* status, they would be aware of their '*underlying senses of right and wrong*' (Donaldson and Dunfee, 1999, p.27). This is a deviation from the traditional veil of ignorance, but one which is justified by Donaldson and Dunfee by emphasising that the ISCT is intended as a theory for *business* rather than the structure of society as a whole, and therefore the mechanisms will be adapted to suit economic rather than broader social issues.

The theory proposes a social contract on two levels; the first is the 'macrosocial' and the second is the 'microsocial'.

The 'macrosocial contract' would protect the rights and wrongs (those recognised by individuals 'behind the veil'), which are moral judgements shared by all humans, regardless of culture, and could be identified through 'convergence in religious, political and philosophical thought' (1995, p.96). The values specified would form the terms of the macrosocial contract and are labelled 'hypernorms'.

In an attempt to avoid universalism the theory also recognises that morality is to some extent culturally bound, and that economic activity in particular is more effective when it is conducted in a way that is consistent with the local culture. Donaldson and Dunfee therefore posit the existence of 'moral free space' within which communities create their own contracts, so-called 'microcontracts' which will stipulate community norms. These microsocial contracts are deemed 'authentic' in so far as they are culturally consistent and 'legitimate' if they not inconsistent with the hypernorms.

As accounted for by Douglas (2000) and Wempe (2005) this theory can properly be seen as an amalgamation of Donaldson's previous work (1982, 1989), to which the 'macrocontracts' roots can be traced, and of Dunfee's work (1991) to which the roots of the 'microcontracts' can be traced. This synthesis has been identified as a source of one of the theory's main strengths - its

ability to offer both normative and positive guidance to manager; as the hypernorms offer an overarching morality to which all decisions must conform, and the microsocial contracts can be observed, and are indeed derived from, community specific practice. This second point is of particular importance to the aims of this research. As explained by Wempe (2009) and van Oosterhout and Heugens (2009) the microsocial contracts offer a uniquely empirical approach to business ethics, which means that the terms of the (micro) social contract can be observed. As shall be discussed further below, this shall inform our attempt to identify specific legitimising criteria of business.

While there has been a general consensus that the application of the social contract to business ethics is both welcome and appropriate (see Rowan 1997, Boatright 2000, Douglas 2000, Wempe 2005, van Oosterhout et al 2006 and Heugens et al 2006, among others), there is also a considerable body of literature critiquing aspects of the ISCT, largely with a view to improving, rather than refuting, the theory.

Broadly, these criticisms can be divided into two categories; the first deals with ethical foundation of the hypernorms and the second deals with the operationalization of consent within the micro-social contracts, and I shall deal with each in turn.

Hypernorms

As Dunfee (2006) recognises, hypernorms have acted as a lightning rod for criticisms of the ISCT. Donaldson and Dunfee have 'resolutely refused to provide a comprehensive listing of substantive hypernorms' (Dunfee, 2006), which has raised a number of questions. The most fundamental criticism, levelled by Rowan (1997), is that if founders of ISCT are not able to identify hypernorms, then there is no evidence that hypernorms do in fact exist. Further concerns have been raised from a number of sources regarding the source of justification for hypernorms (Rowan 1997, Boatright 2000, Wempe 2005). Crucially, Donaldson and Dunfee's suggestion that hypernorms can be identified where there is a 'convergence of religions, political and philosophical thought' (Donaldson and Dunfee, 1995, p.96) has led to criticisms that they are confusing 'is' with 'ought' (Rowan 1997). Further, by suggesting that hypernorms can be observed Donaldson and Dunfee seem to be offering an empirical positivist account of ethics, which offers no defence against the infinite regress associated with this kind of morality (i.e. no justification is offered for *why* the hypernorms are morally correct, just the assertion that they *are*) (see also Rowan 2001). Douglas goes further, arguing that regardless of the source of the hypernorms' legitimacy, they do not belong in the ISCT at all because they are

not justified by the contracts themselves, and are rather principles which are in some way universally acknowledged. The rejection of hypernorms altogether is a minority view – most commentators simply request some example hypernorms with an account of their justification, something which Donaldson and Dunfee have declined to offer. The decision not to give examples does have some support – Van Oosterhaut et al respond to hypernorms' critics by accusing them of committing the 'contractualist fallacy'. This is defined as '*the erroneous assumption that the contractualist argumentative structure uniquely determines a single set of substantive action-guiding norms that guide and constrain everyday business life*' (p.522) Therefore, those guilty of committing this error are seeking something that the social contract mechanism is not intended to provide. Rather, the social contract is intended to allow the identification of *structural* and *procedural* hypernorms – not *substantive* hypernorms. That is, it provides guidance on the correct *process* for establishing hypernorms, but the hypernorms themselves must be established by the contractors themselves. This certainly seems to be the perspective of Donaldson and Dunfee, but does not fully address the criticisms regarding the hypernorms – there seems to be a general agreement that the ISCT *cannot* offer an account of what the hypernorms are, but the disagreement is to do with whether or not this is a problem.

I would suggest that there is a more important, but closely related challenge facing the 'hypernorms' element of the theory. As argued by Douglas (2000) and Wempe (2005) hypernorms represent a significant deviation from the traditional social contract approach. By positing a 'shared morality' of any kind the ISCT loses some of the power of a normative argument that starts from a position of universal self-interest. Debates regarding altruism and human nature will continue without resolution, but the traditional social contract is able to argue that even in the 'worst-case scenario', assuming man is most naturally in state of 'war of all against all' (Hobbes, 2001. p.186) the Social Contract offers a rational account of why co-operation emerges. The ISCT is not able to adopt a comparably strong position, arguing as it does from the assumption of a universally shared morality. Thus the ISCT suffers from the same problems as any Universalist theory of ethics; namely accusations of moral imperialism and the challenge of infinite regress as attempts are made to identify the source of the posited universal morality. As Wempe (2005) argues, reliance on a shared morality as a starting point for the social contract exposes the ISCT to accusations that it fails to establish *why* there is a social contract between business and society in the first place, in the way that the classical theories are able to account for why there is one between the state and society. ISCT focuses on what the obligations of the parties might be, at the expense of properly establishing why

there may be obligation in the first place. This question is as important, if not more important, in the business context as it is in the political context, as the existence of social obligations for business is hardly a universally accepted fact. It is particularly important for this research as questions regarding legitimacy transfer are only sensible if it can be established that there is a similar contract between society and the corporation as there is with society and the state.

However, despite this divergence, there is a fundamental commonality between the classical social contract and the ISCT which goes some way to addressing this problem - the role of consent.

Consent

Consent is implied by the ISCT in two possible ways. The first is in the very invocation of a contract, which as we saw in the discussion of the social contract in section 12.5 (see Locke 2001 in particular) is considered to be a form of consent in itself. This brings the same criticisms that the traditional social contract is open to, namely Beetham's objection that a social contract is 'fictional' (Beetham 1991), and the ancillary criticism that so therefore is the consent. However, as argued by Hasnas (1998), the social contract theory is not intended to posit anything other than a hypothetical contract, and therefore accusations that the contracts aren't 'real' are not problematic for social contract theorists, as they are arguing that there *would* be a contract *if* such ideal circumstances could be established. However, as Hasnas also points out, there is a more serious problem, which is that even if a hypothetical contract is not a problem, hypothetical consent may be. This is because consent is the 'moral basis' of the contract (Hasnas 1998) and therefore for the moral basis to be sound, the consent must be 'real'. This may indeed be a problem, and it is one that is often overlooked by those that conflate what agents actually consent to, and what they *would* consent to *if* they had a choice (such as Heugens et al 2006).

The second possible way in which consent in the ISCT could be understood is that offered by Donaldson and Dunfee when they explain that for them consent must be grounded by *voice* and *exit* (Donaldson and Dunfee, 1999). According to Donaldson and Dunfee the norms of the microsocial contract must be '*grounded in consent, buttressed by the rights of individual members to exercise voice and exit*' (p.43). By this they mean that for the consent of the individual to be meaningful they must have the opportunity to voice dissent and to leave the community if they so choose. At this point there is some cross-over between the discussions in earlier in this chapter regarding legitimacy and consent, and in particular Beetham's claim

that there is such a thing as legitimating acts (Beetham, 1991) which are active expressions of consent. This seems to be similar to what is being said by Donaldson and Dunfee – i.e. that failure to exit or express dissent, given the opportunity to do so, *is* to express consent. Therefore the moral basis of the ISCT is not hypothetical consent, but real and ongoing consent which is constantly expressed and renewed.

While this may overcome some of the challenges regarding the moral basis of a hypothetical contract, there have been a number of critical responses regarding the usefulness of this account of consent. Such criticisms are particularly significant for the ISCT, as much support of the theory is based on its practicability.

It has been argued that 'voice' and to a greater extent 'exit' are not realistic options for many of the stakeholders or contractors of the ISCT, and therefore these provisions are not useful ways of establishing where there is meaningful consent (Buren 2008, Rowan 2001). As argued by Rowan, the opportunity for exit is particularly ambiguous in the business context where *'the line between voluntary agreement and coercion is known to be fuzzy'* (p.383). When it comes to leaving employment as a way of withdrawing consent there is an indistinct boundary between where such an action is undesirable for the employee, and where it is outright impossible. In a situation where exit was not a reasonable option it would be fair to say that the employee was under coercion to stay. For example, an employee who is unhappy with their employers' treatment of workers, but who has no reasonable expectation of employment elsewhere could not be said to be 'choosing' to stay. Rowan believes this to be a serious problem for the theory, but it need not be. Donaldson and Dunfee argue that for consent to be meaningful exit must be an option. And the critics of this are actually saying the same thing, while also pointing to the fact that exit is often not an option. While perhaps failing to acknowledge the extent to which this is relevant, ISCT is able to account for situations where exit is not possible. Donaldson and Dunfee state *'to the extent that exit and voice are impermissibly repressed, they are also de jure incapable of generating binding norms under ISCT'* (1999, p.43). The conclusion from this is not that the ISCT has misunderstood the nature of consent, but that in reality, many stakeholders are in a position that makes consent difficult if not impossible. Therefore ISCT is helping us to identify an aspect of business which is unethical. This surely is the point of business ethics.

From this discussion two things have become clear; firstly, the social contract approach to establishing legitimacy is appropriate for both business and the state. Secondly, for a

corporation to be legitimate there must be *consent* from the society - the fact that it poses benefits as well as risks accounts for why such consent might be forthcoming. Essentially, as with the state, for the social contract with business to be valid and the corporation to be legitimate, life must be better for the stakeholder with the corporation than without it (because this is the only situation to which a rational stakeholder would consent). This raises obvious questions about who counts as a stakeholder, and on what criteria this should be decided, but for our purposes we can assume that the term covers at least so-called 'primary' stakeholders, that is those that have '*contractual, or otherwise legally recognised, interests*' (Donaldson and Dunfee, 1999). This narrow definition is sufficient to include employees, who will be the focus of this research

2.6 The Social Contract, Business and the State

From this discussion we can see that the social contract mechanism can be meaningfully applied to both the state and to business. Given the definition of stakeholders offered by Donaldson and Dunfee we can see that 'participants of the contract with the corporation will have 'legally recognised interests' – with the inherent assumption that they are also part of a legal system and presumably therefore a state. The point here is that the social contractors with a corporation will also be social contractors with a state, and both institutions are legitimised by the extent to which they improve the lives of those with which they have a contract. According to classical economic theory, the benefits and threats posed by the state will differ substantially from those posed by the corporation – the state holds the privileged position of being able to actively enforce its rules, and punish those who breach them (Stark, 2000) while for the corporation coercion consists of their ability to offer workers' the opportunity to maximise their financial returns and minimise their exposure to financial risks (Donaldson and Dunfee, 1999). Therefore, according to this view, while the structural nature of the social contracts with the state and the corporation might be similar, the *terms* of the contract; i.e. what each institution offers society in exchange for consent to power, will differ. This traditional assumption of difference may be the reason that despite using the same mechanism, i.e. the social contract, the legitimacy of the state has been considered in isolation to that of the corporation in the academic literature.

However, as has been presented earlier in this chapter the functions of politics and economics are no longer clearly distinct. The role of the corporation is evolving, as demonstrated by the very presence of a social contract theory of business ethics and the unprecedented growth in corporate social programs and concerns, (discussed in more detail in Chapter Three). The

growing interaction between state and market has meant that the terms of the contract between society and the state and society and the corporation can no longer be assumed to be wholly different. It is therefore possible that there is a kind of competition between the two to meet the similar requirements of their separate social contracts. For example, the state in a country where there is an HIV epidemic may be required to provide its citizens with ARVs in order to fulfil the terms of its social contract. At the same time, a corporation whose employees are suffering the worst of the epidemic may also be required to provide its employees (who are also citizens of the state) with ARVs in order to fulfil the terms of *their* social contract. If the corporation is able (and willing) to address the problem when the state is not, the corporation fulfils their obligations *at the expense of the legitimacy of the state*. This is because the provision of ARVs is a zero-sum game; there can be only one provider per-recipient. The application of the social contract to business as well as to politics reveals significant concerns regarding the effects of business' involvement in this kind of social welfare; concerns which have yet to be addressed by the literature. If the research presented here is able to identify at least *some* ways in which the legitimacy of the corporation threatens that of the state, an important phenomena will have been observed, which will have consequences for the best-practice of CSR in developing countries.

In order to achieve this we first need to identify at least some of the terms of the social contract between business and society, in order to establish a) whether the contract is being fulfilled, and b) whether there is a cross-over with the terms of the social contract between society and the state.

Some successful attempts at applying the ISCT to real-life business situations in order to establish both hypernorms and norms have been made (Reisel and Sama 2003; Cave and Mayer 2007). For example, Reisel and Sama (2003) consider the case of pricing life-saving drugs and attempt to identify the relevant hypernorms. As they are considering a global issue where there are conflicting community norms (i.e. between those who feel they should be priced for maximum profit and those who would consider the interests of the drug-users) they follow Donaldson and Dunfee's instruction to identify and give priority to the *global* norm (Reisel and Sama 2003). They appeal to a 'consensus globally that preservation of the lives and basic health of the world's poor is equally important as that associated with the world's richest' (p.381) to identify the hypernorm of Rawlsian justice, arguing that in the context of life-saving drugs social efficiency should take precedence over economic efficiency. In the course of this argument the authors identify some well-justified *procedural* hypernorms, such

as the inclusion of NGOs in the relevant decision making, and a strong role for intergovernmental organisations (IGOs) in solving global problems, but they struggle to justify the substantive hypernorm of Rawlsian justice, based as it is on an assumption of a global consensus, rather than any empirical evidence. As discussed above, this is a serious challenge for the 'hypernorm' element of the ISCT, but does not necessarily undermine the utility of the microsocial contract and norms.

In order to identify some norms of a *microsocial* contract Cave and Mayer (2007) consider the issue of a corporations' responsibility to invest in urban regeneration in America. By following Donaldson and Dunfee's suggestion that authentic norms (that is, those that express the terms of the microsocial contract) can be empirically identified by examining what the community itself has to say about various values through things like codes of practice, statements and the media, Cava and Mayer consult extensive survey data regarding the extent to which American businesses were engaging in this kind of project. In addition, they considered case studies of Starbucks, Marks and Spencer and Coca-Cola who have all engaged in Urban Prosperity Initiatives (UPIs). They also refer to the widespread support of the media for responsible business, and the fact that '*corporate codes and professional codes will seldom explicitly state that the corporation should do nothing that is not calculated to serve immediate bottom-line interests, or must not contribute to "community building" as a "good neighbour"*' (p.272-3)

They are therefore able to empirically demonstrate that community investment is a legitimate and authentic norm according to the criteria presented by Donaldson and Dunfee.

Donaldson and Dunfee give some clear indications as to how best identify these community specific norms in chapter four of *The Ties That Bind*. While warning against the dangers of misleading proxies of norms, they identify some which they believe to be relatively reliable. They are:

- Many people in the community believe it exists and are able to express it in words
- Inclusion in a formal professional code
- Commonly listed in the media as an ethical standard for the relevant community
- Commonly referred to as an ethical standard by business leaders
- Identified as a standard in competent opinion surveys

(1999, p.105)

These indicators, it is suggested, should form the norm-identifying process, with the advice that 'direct research on attitudes competently done is ... the best evidence for the purposes of identifying ethical norms. The questions used in the research should ascertain the respondent's views concerning the rightness/wrongness of the behaviour. The more specific the practices identified, the more helpful the research' (1999, p.106). This advice was followed in the primary research conducted for this thesis, which consists of an investigation of the attitudes of the specified community.

Donaldson and Dunfee offer advice on sampling, although their primary concern seems to be that students should not be used to establish the norms of the broader business community, and instead suggest that 'experienced practitioners' be consulted as they are most likely to be familiar with the norms associated with an organisation. While this seems reasonable to some extent, it seems to omit a raft of workers and other stakeholders. In large corporations, particularly those whose operations cross national boundaries, targeting research at 'experienced practitioners' risks ignoring the very communities most likely to be worst affected by business' operations. Donaldson and Dunfee do, to some extent, acknowledge this in their theory of stakeholder identification, recognising that there are more challenges in recognising the appropriate communities across cultures and countries for consultation, but they do not offer any real solutions to this problem favouring instead the pragmatism of addressing each situation in turn. As commented above, a narrow conception of 'primary stakeholders' was used for identifying participants in this research, as identifying all employees and their dependents as stakeholders is a relatively non-contentious. In following this approach experienced practitioners were consulted, but so too were employees and representatives of the wider community.

Therefore, this research will follow Donaldson and Dunfee's recommendations for identifying proxies of the relevant local norms, by consulting with community members about the rightness and wrongness of relevant business activities. This will allow a comparison of the terms of the social contract between business and society with those of the contract between society and the state, following which we will consider evidence of legitimacy transference.

From the literature presented here we can see that there are contemporary understandings of power and legitimacy which can be meaningfully applied to both corporations and to states. This is an important finding for this thesis as it will allow us to compare the legitimisation

process of the power of both institutions in a systematic and balanced way. By using the notion of soft (Nye, 1990 and 2004) and neo-Gramscian (Cox 1983, Gilpin 1987, and Gill and Law 1989) power we can explore the relationship between the power of the corporation and that of the state, and by using the Social Contract we can explore the relationship between the legitimacy of the two institutions. The commonalities identified through the application of the Social Contract to the state and the corporation are also significant because they offer an indication that the power relationship between the state and the corporation is indeed changing (Strange 1995, 1996 and 2002) and that the urgency for legitimate business is increasing (Donaldson and Dunfee 1999) – this lends support to our assertion that the research questions addressed in this thesis are of contemporary importance, as we examine the implications of these phenomenon in the context of a developing country.

There is a body of literature which considers what specifically is required of business by society, which will inform our research as we consider what the effect of business' changing role is on the legitimacy of the state. In the following chapter we discuss the current debates relating to Corporate Social Responsibility and its place in the current political and legal context, demonstrating further that our research will both inform current debates and address a significant literature gap.

3. Corporate Social Responsibility, Business and the State

This section will present the literature concerning the role that business is currently playing in society. Specifically, we will discuss the way in which business is treated by international law, before considering the literature relating to the role of businesses in development, focussing on businesses and development in the South African context. As explained by Bantekas (2004) where international law addresses corporations it has traditionally done so in the form of ‘soft’ law, because binding (‘hard’) international law ascribes legal responsibilities to states rather than other institutions such as businesses. The role of business in international law is significant for two reasons. The first is that as discussed in chapter two, one way of establishing the terms of a social contract between business and society is to identify applicable industry and ethical standards. These standards are often expressed in terms of international human rights (soft) law such as the UN Global Compact, a policy initiative for business covering areas of responsibility such as human rights, labour and the environment. Therefore we must first consider international law relating to business and society, which will help us to establish the terms of a social contract between business and society. However, while the norms and industry standards discussed in this chapter will be used as an indication of some of the terms in the social contract between business and society, this literature review does not constitute sufficiently rigorous research for establishing concrete macro-norms. These will be identified in the primary research presented in chapter six, and further research in to the macro-norms indicated by industry norms is recommended in chapter seven.

The second reason for presenting this literature is that it raises a number of relevant issues, which allow us to identify a gap in the literature. Specifically, the literature relating to international law and business’ social responsibilities reviewed in this section shows that there is an emphasis on self-regulation and (unenforceable) soft-law (Joseph 1999, Kinley and Tadaki, 2003-4, Weissbrodt 2006, McCorquodale and Simms 2007, Arnold 2010). Considered alongside the discussions presented in chapter two this adds further support to the argument that the power relationship between the state and corporation is changing, as corporations are being given ultimate responsibility for their conduct, and perhaps to some extent for the welfare of their stakeholders – who are also citizens of the state. As shall be demonstrated, while these issues are introduced or addressed in the literature, the implication of this changing relationship on the legitimacy of the state has yet to be considered.

3.1. Human Rights, Business and the State

As identified in the discussion of the social contract for business ethics in chapter two, global

standards such as the Universal Declaration of Human Rights and other ethical codes offer a useful insight into the legitimisation criteria of corporate power. Donaldson and Dunfee argue that ethical and industry standards should be taken as indicators of relevant norms for the contract between business and society because they are manifestations of the norms recognised by the community (1995, 1999). However, if these indicators are to be used we must first understand what these industry standards are indicators of, and what this tells us about the existing contract between business and society on a global scale. For the purposes of this research, the treatment of business in international law is particularly relevant, because international law by definition operates beyond the state and therefore addresses both state and non-state actors. This allows us the opportunity to make a relatively fair comparison of the role of business and that of the state within one arena.

International law has become increasingly concerned with the human rights responsibilities of corporations, which offers a particularly interesting insight into the concerns of political actors regarding private actors. As shall be discussed in this section, the Universal Declaration of Human Rights (UDHR) is indicative of the beginning of an international debate regarding which actors are responsible for the protection of human rights, a debate which was initially characterised by the belief that this is primarily the responsibility of the nation state. However, recent changes have demonstrated that this belief is shifting, and that businesses are increasingly expected to show some willingness to protect human rights in the countries in which they operate.

This change in expectations is of fundamental importance to this thesis because it is an indication that the responsibilities of the state can be legitimately extended to non-state actors; in this instance the responsibility to protect human rights. Human Rights are particularly interesting because they are deemed by the UNHCR to be 'inalienable'. This has the consequence that while the state may traditionally have been seen as the primary bearer of the responsibility to protect and promote human rights, a failure or inability on the part of the state to do so does *not* constitute justification for the protection and promotion of human rights to be abandoned. The question then arises 'if a state does not/ cannot protect human rights, but those human rights still must be protected, who steps in?' As is argued in much of the literature discussed in this section, MNCs are seen by many to be a plausible solution to this problem. This is largely to do with the perception that corporations have both the power to violate and the power to protect human rights. Echoing aspects of the IPE debate presented in chapter two, it is widely thought that while MNCs are often implicated

in human rights violations (often with the complicity of the state), they also have the ability (which is perhaps lacked by the state) to protect the human rights of a population.

Many corporations have declared their commitment to protect human rights, often as part of their CSR programme (Kinley and Tadaki, 2003 – 2004). As discussed in chapter two, it can be argued that a legitimate state is necessarily one which protects its citizens from violation of certain human rights. Therefore if it can be argued that companies have the same obligations as states with regard to human rights, it is possible that they may also adopt some of the legitimacy if they fulfil these obligations. The legal discourse regarding business and human rights has revolved around a number of themes. The most prevalent theme is the implications of the power of the corporation, with many (Joseph 1999, Kinley and Tadaki, 2003-4, Ruggie 2007) arguing that with great power comes great responsibility. This entails a discussion regarding the true extent of the power of MNCs, as well as the nature of the power of the state, and the implications that this has for the responsibility of both. Other academics (Casell 1995-6, Frey 1997, Paust 2002) focus more on the specific responsibility of the corporation. Many of the academics discussed here (Joseph 1999, Cragg 2000, Paust 2002, Kinley and Tadaki 2003-4, Ruggie 2007) argue that while the MNC should have increased responsibility they must not simply assume the responsibilities of the state, as doing so would be to allow the state to relinquish responsibility by simply shirking it. There is consequently an academic debate regarding which responsibilities, if any, should be adopted by the corporate sector, and on what grounds. Some argue that the corporation's responsibilities should be established in a way comparable to the state (Muchlinski 2001, Arnold 2010), while others argue that the corporation should have the legal standing of an individual in international as well as domestic law (Paust 2002, Ruggie 2007). However, what is clear in the literature is that while the power of MNCs entails responsibility, there should be well defined limits to this responsibility, although there is little discussion of the reasons for this beyond broad indications that it threatens the role of the state. The research presented in this thesis will investigate what happens when corporations assume state-like responsibility in order to address this gap.

3.2. With Great Power Comes Great Responsibility?

Questions regarding the power and responsibility of states and corporations have been explored in chapter two in the context of IPE, and remain central to the legal discussion regarding the state, business and human rights.

It has been noted by some that corporations are increasingly self-regulating, and are doing so in response to the inability or unwillingness of some states to impose adequate regulation. Hopkins (2007) claims that corporations must take responsibility because the governments and international organisations have universally failed to, and Sagebien and Whellams (2011) acknowledge that Corporate Social Responsibility (CSR) has been 'called into action as a way to fill in 'governance gaps'' (p.484). This view is supported by Scherer and Palazzo (2007, 2011), who argue that CSR is a manifestation of the post-Westphalian order, characterised by the weakening of democratic controls and the rule of law within nation states and the growth of the political power of corporations.

However, while the nation state may not be best-place to regulate multinational corporations, there may not be an institutional regulatory vacuum. International law is arguably evolving in response to the new governance challenges being posed by MNCs. For examples, the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises (hereafter referred to as the Norms), which were, according to John Ruggie, called for because:

'Transnational corporations have greater power than some states to affect the realisation of rights... and "with great power should come great responsibility". Therefore, these corporations must bear responsibility for the rights they may impact. And because some states are unable or unwilling to make them do so under domestic law, there must be direct and uniform corporate responsibilities under international law.' (2007, p.9)

The view that MNCs have great wealth and therefore great power is supported by a number of legal scholars, as well as the IPE scholars discussed above (see Strange 1996 and 2002, Cassell 1995-6, Joseph 1999, Paust 2002, and Weissbrodt 2006 among others), and the 'with great power comes great responsibility' argument is often appealed to in the way it was by Ruggie (in particular see Kinley and Tadaki, 2003-4). However, while the simplicity of the maxim has some appeal, it is also argued within this literature that the responsibility of MNCs should never take precedence over that of the state, even where the power of the former exceeds that of the latter (Joseph 1999, Kinley and Tadaki 2003-4) This is demonstrated in the first General Obligation of the Norms, which opens 'States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights' (UN,

2003).

Joseph (1999), Kinley and Tadaki (2003-4) argue that MNCs have assumed some state-like qualities and should therefore assume some state-like responsibilities, while also recognising that many state responsibilities are not appropriate for imposition on MNCs. Joseph (1999) describes how International Human Rights Law (IHRL) has evolved to impose human rights duties on MNCs indirectly, via the state. However, along with Ruggie and others, she also recognises that in developing countries the MNCs might be more powerful than the host state. This means that not only are they able to resist the attempts of the host state to impose human rights obligations, but that they may also be able to threaten host states with disengagement if such imposition is attempted. On a practical level *'where such disparity of power exists, it seems unrealistic to depend exclusively on host states to hold MNEs accountable for human rights violations.'* (p.177)

There is therefore a problem with the system being commented upon by Joseph, in that the state has responsibility for allocating human rights responsibilities to MNCs, but in some cases the state lacks the ability to fulfil this responsibility.

In order to overcome this dilemma Joseph suggests two options; the first is that the corporations' home state takes responsibility, in the way that they would for their own citizens abroad. The second option is that a state-sanctioned international tribunal be established, with direct authority over the conduct of MNCs. While the first option is identified as the most feasible, it is suggested that the second is the most desirable, as it *'would constitute a welcome paradigmatic shift away from the state-centric focus of international law.'* This would be welcome precisely because although the system remains state-centric, the *'nation state has lost the monopoly on global power which justified that exclusive power. Indeed, MNEs are some of the major usurpers of that power.'* (p.186) Therefore the change in the world needs to be reflected by a change in the system.

3.3. Responsibility on What Grounds?

While it is established that corporations should have some responsibilities and that there must be some limits to these, the question remains how exactly to establish what the rightful responsibilities of business are. The role of proximity is prominent in Joseph's analysis, and while the exact meaning of the term in this context is not established, the conclusion is that a high level of proximity to human rights violations is required in order for the MNC to be considered responsible. This point is made through a series of examples, and

the only case given where an MNC should be held directly responsible is where an employee violates human rights on the company's behalf and with the company's full knowledge. In other, more removed cases, such as where a company is engaging with abusive governments, the corporation should refrain from assuming the role of the state by imposing de-facto economic sanctions. While this is consistent with Joseph's initial position that responsibilities cannot be transplanted wholesale from states to corporations, it does allow MNCs to avoid legal responsibility in a number of discomfiting situations. For example, Joseph suggests that corporations should respect local law without interference as long as the corporation does not economically benefit from doing so.

According to this argument, legally sanctioned employment discrimination against minorities and women may be pursued, as long as the employers do not benefit economically from doing so. This would imply that a corporation's responsibilities were limited to their most immediate effects, issues like protecting their employees and responsibilities to the wider community would be disregarded as a corporation would only have to refrain from the direct violation of human rights. This pragmatic approach to allocating responsibility is not a satisfactory way of understanding the role of business or of accounting for their increased responsibility. By using 'proximity' as the fundamental criteria for responsibility, Joseph is ignoring the complexity of businesses relationships with the community in which it operates. As described in chapter two, corporations have an influence over states and governments which exceeds their 'proximity' to policy makers and their proximity to the implementation of these policies. And as shall be discussed in detail below corporations have a complex relationship with the societies in which they operate, relationships which cannot be characterised solely, or even primarily, by their 'nearness' to actors and impact. In order to fully understand their relationship with the states and societies in which they operate, this complexity must be recognised.

Other academics take a less pragmatic approach, suggesting that MNCs have a greater range of responsibilities. Cassell (1995-6) and Frey (1997) propose a continuum of responsibilities, which allows for the complexity of the relationship between state, society and corporation. While this approach is also based on a sense of 'proximity; the term is used to mean something more than 'nearness'. Cassell describes a five-level model according to which an increased 'proximity' corresponds with an increase in responsibility and Frey presents a four stage continuum where responsibility evolves along similar lines. Their accounts deviate significantly from Joseph's in that their notion of 'proximity' seems to refer not only to

immediacy, but also to the extent that the corporation is able to have a positive effect. However, both Cassell and Frey provide examples where MNCs are in a position to prevent to violation of human rights by the state and place them towards the more-responsible end of the continuum of responsibility. According to both accounts, the only clear and direct responsibility of the MNC is to not violate human rights within their own operations.

The scalar argument for responsibility seems to be able to account for a complex relationship between state, society and corporation, but it seems also to suffer from a conflation between what an MNC *has* to do and what they *should* do. Both the continuum described by Cassell and that discussed by Frey seems to shift somewhere in the middle from discussing what MNCs are *obliged* to do, and what it would be morally preferable for them to do. This is an important distinction, but one which is not addressed in these accounts. For example, Frey argues that an MNC *must not* fire someone for belonging to a trade union even if asked to do so by the host government, but that an MNC *should* consider the human rights implications of operating in state where there are pervasive human rights violations. This distinction is of fundamental importance to the research of this thesis as it tells us something important about the nature of responsibility. Firstly, it suggests that there is a connection between power (in the sense of 'ability') and responsibility, and secondly, more specifically, it tells us that a limit can be placed on the legal or otherwise formal requirements that can be legitimately be placed on a corporation. Without a clear delineation of what the mandatory responsibilities of the corporation are, any empirical research into the extent to which corporations are or are not fulfilling these responsibilities will not be possible. Therefore, while the scalar approach is useful in indicating that there *are* differences between what a corporation must do and what they should do, it is not helpful in concretely identifying where this division lies.

Some have identified the distinction between what a corporation should do and what a corporation must do as being the difference between *duties* and *responsibilities*. Arnold (2010) suggests that this is what is being described by John Ruggie as Special Representative to the Secretary General (SRSG) in 2009 in his tripartite framework of corporate responsibility to respect human rights. The policy framework outlined by Ruggie had three elements; (1) the **state duty to protect** against human rights abuses by third parties, including business; (2) the **corporate responsibility to respect** human rights; and (2) greater **access to remedy**, judicial and non-judicial, for victims. Arnold suggests that 'duty' might refer to moral or legal obligations, while 'responsibility' entails the invocation of praise or

blame. Therefore it would be appropriate to legislate in order to ensure that corporations fulfil their duties, but not their responsibilities.

However, Arnold dismisses this division arguing that to place the moral duty exclusively with the state poses a risk to the enforcement of the respect of human rights, because many states are unable or unwilling to impose adequate regulation and enforcement. Therefore to hold only states morally and legally responsible while subjecting MNCs to only praise or blame may lead to a situation where no-one is protecting human rights. As with Cassell there is an implied reference to power here, as there is an assumption that it is precisely because MNCs *can* make an impact on human rights (positive or negative) that they *do* have a moral responsibility and therefore *should* have a legal responsibility, or in other words 'with great power, comes great responsibility'.

Arnold makes an important point regarding the distinction between duties and responsibilities, but his subsequent response to the tripartite framework is inadequate. In saying that states have duties and corporations have responsibilities, Ruggie is offering an account of the way things *should* be; the state *should* be both willing and able to protect human rights. Arnold however is offering a pragmatic critique, saying that states sometimes *are not* willing and/or able to protect human rights and that therefore other actors must step-in. There is no inconsistency here, as the normative and the pragmatic statements can be concurrently valid.

Another possible way of establishing the responsibilities of the corporation while maintaining the role of the state is through the allocation of 'legal personality' to corporations. This has precedent in domestic law where the legal responsibilities of corporations are derived from their 'legal personhood'; this means that in some legal aspects the corporation can be treated as an individual; that is it can sue and be sued, own property and enter into contracts (Paust 2002). Paust (2002), like Ruggie (2007) believes that the legal personality of MNCs is a tool which should be used in order to maximise the responsibility of MNCs through international law, arguing that it is in fact already being used in the Alien Tort Claims Act (ATCA) which allows the prosecution of crimes committed outside the US in American Courts, and under which corporations have the right to sue, but can also be defendants (however, despite its international reach the ATCA lies in the domain of U.S. domestic law). Paust (2002) argues the same approach should be taken by international law as the majority of laws and regulations regarding human rights, including the UDHR, are not

restricted in applicability to the state, and are therefore applicable to '*private persons and entities*' (p.810). If this is the case then MNCs, and other private actors would have very similar, if not the same, responsibilities to protect human rights as states. This is an interesting argument because it suggests that MNC responsibilities correspond to those of states not because MNCs have assumed state-like qualities, but because they have non-state-like qualities; that is, because they can accurately be described as '*private persons and entities*'.

Taking the perspective of many of the IPE scholars discussed above (Cox 1995, Gilpin 1987, Strange 1996) Muchlinski (2001) argues that the power of corporations has evolved to be incomparable with that of individuals and it is therefore no longer appropriate for MNCs to have the legal standing of a private person. In support of this, it is pointed out that MNCs are now able to interact with supranational bodies, in a way that would be inconceivable for a private person. Further, as argued by Joseph (1999), there are additional complications with the legal personhood of corporations. Notably, legal personhood implies rights – in fact, it implies *human* rights, which creates a situation where the MNC may theoretically be able to argue that their rights are being infringed when state-like human rights obligations are imposed on them as this will limit the corporations' freedoms.

While there are problems with the legal personality of corporations in domestic law, there is another fundamental problem regarding their *lack* of legal personality in International Law. This problem also relates back to the arguments made by many of the IPE and Legal scholars discussed earlier that the power of MNCs is growing while that of the state is diminishing. As pointed out by Kinley and Tadaki (2003-4), Weissbrodt (2006) and McCorquodale and Simins (2007), MNCs by their very nature transcend domestic boundaries and so the application of domestic law becomes problematic. At the same time, international human rights law has evolved to protect individuals from human rights abuses by the state, which is in turn charged with protecting individuals from human rights abuses by third parties, such as corporations. Subsequently, international human rights law does not recognise MNCs as legal subjects. However, as argued elsewhere in this literature review, the state's power is often rivalled by that of the MNC, and so MNCs are left to operate in a legal space devoid of enforceable regulations.

For this reason a number of arguments have been put forward for creating new regulatory systems to ensure that MNCs are held responsible for their human rights records. Kinley and

Tadaki (2003-4) recognise that in the current system domestic law is theoretically best positioned to deal with this issue, but due to the inability of some states to enforce regulation, an alternative must be found. Resting on an assumption that domestic law is, and always will be, unable to effectively regulate MNCs Kinley and Tadaki argue that international law is the only effective tool for dealing with MNCs, but in order to do so corporations must also be recognised as legal subjects in international law in the same way that they are in domestic law; that is, they must be given legal personality. Once this was established, existing voluntary codes of conduct, soft law regulations and guidelines could be re-conceived as legally binding.

This argument suffers from the same problem as Arnold's argument against the distinction of duties and responsibilities; namely that it rests on a pragmatism that ignores questions regarding what the state's role should be, and the importance of defending this proper role. McCorquodale and Simins (2007) reject the assumption that domestic law will never be able to effectively regulate MNCs. Instead, they propose a system whereby home states are held responsible for the human rights records of their companies operating abroad, in the same way they are responsible for their citizens when they are abroad.

The debate as to who should be responsible for the actions of MNCs relates back to the divisions between realists, neo-realists and structural realists presented in chapter two. The argument that the responsibility should remain with the home nation state is very much a realist position, maintaining the exclusive primacy of the state. Kinley and Tadaki's suggestion that the time is ripe for a new supranational institution is more in keeping with structural realism, as it foresees a system where the power of the nation state is exerted via non-governmental institutions. However, while Strange (1996) saw this diversion of power from the state as a danger to state sovereignty, Kinley and Tadaki are proposing it as a way of controlling the power of corporations, and limiting their damaging effects. There is therefore the possibility, according to this argument, that allowing some devolution of power to supranational institutions will in fact act to preserve the power of the state.

The legal literature presented in this section has offered us an account of how the role of the corporation is changing, or may change, in relation to that of the state in terms of international human rights law. As has been discussed, it is suggested that there is a general trend, in soft law at least, towards increased responsibility for corporations with regard to human rights. Therefore the sectorial norms that we will be using as indicators of the terms of

the social contract dictate that a legitimate corporation takes at least some responsibility for the human rights of its stakeholders. This lends support to this research as it is evidence that society does demand some responsibility from business, and the primary research conducted for this project will provide some indication of what these responsibilities are.

The evidence of a macro-norm requiring that business assumes some responsibility for the human rights of its primary stakeholders echoes assertions made within IPE that if the power of MNCs is increasing then so too must their responsibility. These claims have a pragmatic appeal, in that they seem to offer solutions to a number of problems. Firstly, they address concerns that MNCs have the power to affect human rights where they operate and secondly they respond to the problem of governments being unable or unwilling to prevent this. However, what is not considered in this literature is the effect that this increased responsibility will have on the role of the state. As previously discussed, there is the risk that allowing MNCs to assume responsibilities that the state cannot or will not fulfil will perpetuate the impotence of the state. As shall be considered by this thesis, this may threaten the legitimacy of the state, which will in turn negatively affect the state's ability to fulfil its role. The risk therefore is that by rushing to a pragmatic response, i.e. responding to the problem and allowing social welfare to be provided by corporations rather than considering the roots of the problem and why the state is not doing so, the legitimacy of the state will be undermined, possibly to such an extent that the very viability of the state is at risk. It is therefore important to establish legitimate criteria for allocating responsibilities to corporations in order to avoid allocating responsibility based solely on the fact that the state is failing to fulfil its own legitimising functions. By investigating the impact of social welfare provision by corporations this research will consider the effects of transferring responsibilities from the state to the corporation, and in doing so identify under what conditions, if any, such transference is indeed legitimate. Having established the way in which the responsibilities of business are understood under international law, we must also consider the way in which these responsibilities are addressed by businesses themselves. This is particularly important given the voluntary or 'soft' nature international law in this respect, which means that the ultimate responsibility and power in this respect lies with the corporation rather than the regulator.

4. HIV and Business in the South African Context

As discussed in chapter two, the political and social impact of businesses' involvement in non-business issues is of particular concern in developing countries due to the existing challenges facing the state. The research is therefore considering a case study of the impact of corporate provision of social welfare in South Africa, focussing on the provision of anti-retroviral (ARV) drugs to HIV positive workers and their families by employers.

There is a significant body of literature on the impact of the HIV/ AIDS epidemic in South Africa, including discussion of the role and response of corporations. The economic and social impacts of the epidemic have received attention, as has the political impact of both the crisis and of the corporate response. The threat to government legitimacy posed by the epidemic has been discussed by other academics; for example Mattes (2002) argues that HIV/AIDS threatens South Africa's faith in democracy as it undermines the government's ability to deliver the promised social and economic achievements. However, what has yet to be considered is the impact of the corporate response to the epidemic on the legitimacy of the government; the HIV/AIDS related CSR programmes may mitigate the effects of the epidemic, but they may also have effects on the legitimacy of the government. The research presented here will address this gap.

4.1 The Political Impact of HIV and AIDS

The impact of HIV and AIDS on South African politics, economics and society is immense and the figures go some way to explaining why: in 1992 HIV prevalence among antenatal clinic attendees was 2.2% (Avert). In 2001 it had risen to 24.8%, in 2005 it peaked at 30.2% and in 2007 it stood at 28% (South African Department of Health 2007). In 2010 75% of premature deaths were attributed to AIDS, and according to UNAIDS data from 2010 there are 1.9 million AIDS orphans in the country who have lost either one or both parents to AIDS. These figures paint a picture of a virus that disproportionately affects the young, and of a crisis that emerged rapidly.

An epidemic of this size is unlikely to leave the political establishment unaffected, but as argued by Youde (2001), Barnet and Whiteside (2002) and Mattes and Manning (2004) the South African state is particularly vulnerable given the country's relatively recent transition to democracy. Mattes (2002) and Mattes and Manning (2004) summarize the necessary factors for democracy as political, economic and attitudinal. They argue that the epidemic threatens

to undermine these fundamental requirements for an effective democracy, as political institutions will be damaged through loss of staff, and economic growth will decline. In discussing the attitudinal effect of HIV/AIDS it is argued that faith in democracy will be undermined as it fails to deliver its promises of economic growth, social stability and improved quality of life, and crucially, that *'the pandemic may reduce the importance which people attach to democracy simply because of the competition of more urgent priorities'* (p.205). Indeed, this does seem to be a significant threat; particularly as the country has yet to establish a long-standing tradition of democracy. As Youde (2001) argues, newer states tend to lack the legitimacy and stability of older states and therefore need to be able to invest significant time and resources in consolidating the new political systems. At the same time, they are also likely to have relatively low levels of state capacity and will be poorly prepared to respond to unforeseen crises, such as the rapid onset of HIV and AIDS in South Africa. Newer states therefore face a circular problem as they need to establish their legitimacy, but are also the least able to respond to the crises which threaten it.

The effects of HIV/AIDS are likely to be particularly damaging due to the fact it targets people in their most economically productive years (Ford et al 2002, Mhone 2002, Mattes and Manning 2004). The impact of this on industry is discussed below, but there will also be damage done to the civil service which, as argued by Youde (2001), Barnet and Whiteside (2002), Whiteside (2002) and Mattes and Manning (2004) is vital to the effective running of a democratic state. The proper functioning of government will be challenged in two significant ways; firstly, civil servants are likely to have higher benefits than those working in the private sector (Barnet and Whiteside, 2002) and therefore HIV positive employees will cost the government money. Secondly, as civil servants become ill and leave work the effective running of the infrastructure of democracy will be severely challenged simply through a lack of trained staff (Barnet and Whiteside 2002, Mattes and Manning 2004). This, it is argued, will challenge the legitimacy of the government as it will make the delivery of public services, including those necessitated by the epidemic, increasingly difficult. Although this is not explicitly discussed in the literature, there is an implicit assumption here that the government derives its legitimacy, at least in part, from the delivery of public services, which would include the treatment of HIV and AIDS. If this is the case, the government's failure to provide these services will undermine their legitimacy. However, what has not been addressed in the literature is whether private actors may assume the legitimacy that the state would have gained had it responded effectively to the crisis and been the primary provider of the life-saving treatment.

The risk of legitimacy transfer is particularly significant in the case of South Africa. As discussed, new states find it difficult to respond to crisis, and there is also a general consensus that the South African government's initial responses were particularly damaging. Although the implications of this are not drawn out in the current literature it seems likely that the failure of the government to effectively address the crisis may have exacerbated the threats to legitimacy discussed above. The South African government, and in particular President Mbeki, did not accept the link between HIV and AIDS until 2000, preferring instead to attribute the epidemic to sociological factors such as poverty (Barnett and Whiteside 2002, Mackintosh 2009). It was left to civil society groups such as the Treatment Action Campaign (TAC) to legally challenge the pharmaceutical companies to offer their life-saving ARVs at affordable prices (Kasper, 2002). Even once the TAC had won this battle, and gained substantial public support, the government continued to delay the provision of ARVs to the South African public (Ford et al, 2002). Despite promising that ARV provision would be rolled out through the public sector by 2004 (Dickinson and Innes, 2004) it was not until 2008 that ARVs became widely available to the South African public (TAC, 2008). Ford et al (2002) argue that due to the government's response *'The opportunity for South Africa to avert a catastrophic result from the HIV/AIDS epidemic has passed'* (p.18), going on to argue that not only had the government failed to provide their own effective response to the problem, but their unclear and conflicting advice undermined the programmes being run by other bodies.

The corporate response to the epidemic must therefore be understood in the context of this vacuum of government response. Dickinson (2004) suggests that the government inaction gave corporations a rare opportunity to side with civil society, which is why businesses became involved in the campaign to make ARVs widely available (but also why the corporate response was not more proactive, as discussed below). The response of businesses - and of the mining industry in particular - is considered in the following sections.

The implications of the government's slow response extend beyond the tragedy of hundreds of thousands of people dying of a treatable illness. As argued by Bezuidenhout et al (2007), where corporations have stepped in to provide treatment to their HIV positive workers, it is as an acknowledgement of government failure. Mattes (2002), using data from the 2002 Afrobarometer, attributes the weak support for democracy in South Africa in part to Mbeki's attitude to HIV and obstruction of ARVs. Hickey (2002), Barnett and Whiteside (2002) argue that health care is a public good, and access to it is a human right. Therefore the rightful provider of ARVs is the government, and in failing to do so they were violating the human

rights of their citizens. Webb (2004) argues that this failing exposed the South African government to a legitimacy challenge from NGOs, who attain 'technical legitimacy' – that is, they become legitimate by being a better provider than the government. This thesis will consider whether there is a similar challenge from corporations as they provide public goods and protect human rights through their CSR programmes. As discussed in sections 3.5 and 3.6 this may be of more concern due to the motives of business in providing development programmes, and also their ability to do so effectively (see in particular Blowfield 2005, Jenkins 2005 and Newell and Frynas 2007).

4.2 The Economic Impact: HIV/AIDS and Industry

In considering the economic implications of the epidemic there are generally two prevalent concerns; the direct impact on business in terms of labour cost and a shrinking consumer market, and macroeconomic implications such as reduced growth and FDI. As shall be discussed, these economic issues also have political ramifications.

Ford et al (2002) argue that companies face increased costs in the form of increased medical benefits for sick employees and death benefits for their families, to which Randall (2002) adds the costs of absenteeism and high labour turnover. However, along with Randal, Barnett and Whiteside (2002) and Marais (2011), it is suggested that wherever possible companies will pass these costs on. Ford et al argue the costs will be passed on to consumers, while Barnett and Whiteside (2002) have expressed concerns that the high unemployment rate in the country will allow the companies to pass these costs on to the households of the sick by increasing flexible working and thereby avoid paying benefits. However, as Ford et al point out, the illness affects skilled and semi-skilled workers as well as unskilled, and so while corporations may be able to avoid the cost of benefits, health care, life insurance and funeral costs, they will not be able to avoid the cost of recruiting and retraining workers to replace those lost.

Further, companies will find it difficult, if not impossible, to avoid the impact of the epidemic on their domestic consumer base. As AIDS is most prevalent among the economically active, whole households will be affected if the breadwinner falls ill (Ford et al, 2002). In addition the cost of healthcare, where it is not provided by the government or employers, will significantly reduce household expenditure on other things. Therefore the impact of the crisis on business seems inevitable as both their workforce and their consumer base are compromised.

Despite the impact on business, there are suggestions that corporations are failing to respond adequately to the crisis, which Kelly et al (2002) attribute to the belief among managers that

their workers are relatively unaffected. This leads many managers to ignore the impact of HIV on their business, even where this impact is significant. Dickinson (2004) supports the assertion that corporations and individuals have been keen to 'other' the problem of HIV. However, Dickinson adds that businesses are also taking advantage of being in the rare position of being on-side with civil society groups in calling for the government to do more, and therefore business has focussed more on condemning the government's inaction than on taking action themselves.

Further, it is suggested that there is a long-standing distrust between trade unions and employers. This is, in part, a legacy of the perceived collusion between business and the apartheid government, which has meant that even where business *has* proposed responses to the epidemic, unions and workers have been reluctant to accept (Dickinson, 2004). Therefore, even when businesses have acknowledged the extent of the problem and are prepared to take steps to address it, the long-standing distrust between workers and management means that the operationalization of these plans will face serious challenges. As argued by Ford et al (2002), Hickey (2002) Dickinson (2004) there are a number of reasons why ARVs should have been provided by the government rather than employers, including economy of scale and the long-term economic benefits to the state of a healthy population. However, the enduring distrust between large firms and their vulnerable workers seems to be an equally persuasive reason. It demonstrates that the roles of the state and the corporation are different, as demonstrated by the clamour from civil society groups such as TAC for governments to provide ARVs (Kasper 2002, Ford et al 2002), in contrast with the distrust of employees when their employers attempt involvement in their healthcare (Dickinson 2004). While employees may look to their employers for a decent wage and safe working conditions, they look to their government to preserve their life wherever possible, as is established by the Social Contract theorists (Hobbes 2001, Rousseau 2001, Locke 2001) discussed in chapter two. The HIV/AIDS epidemic in South Africa is an example of where these traditional roles are distorted, and the effects of this on the position of the state should be considered.

In addition to the direct impact on business through increased labour costs and reduced consumer market, there is also a consensus that HIV/Aids in South Africa will have considerable macroeconomic implications (Ford et al 2002, Mhone 2002). Mhone (2002) predicts that the increased cost to business and the reduction in domestic consumption will lead to stagflation and reduce international investment. As discussed above, the South African economy is modelled to attract foreign investment, and as such would suffer significantly from

a decline in FDI. Low growth would also have political ramifications. Youde (2001) and Mattes and Manning (2004) argue that there is a well-established link between wealth and democracy, and that poor countries are more likely to make a successful transition to democracy when there is economic growth and a reduction in inequality. Conversely, economic crises pose one of the greatest threats to democratic stability. Acknowledging that data is scarce, Barnett and Whiteside (2002) estimate that every person with HIV in South Africa cost the country between 3,000 and 4,000 rand, and so it seems that an economic crisis may be precipitated by the health crisis, or at the very least that economic growth will decline. As argued by Youde (2001) and Mattes (2002), democracy was embraced by South Africa because of what the new system offered, and this included economic growth and increased employment. If the HIV/AIDS epidemic thwarts the realisation of these goals it may be responsible for undermining the legitimacy not only of the current government, but of the democratic system itself. While some attention has been paid to both the political and economic impacts of the crisis, and on the link between them, no attention has been paid to the effect of the corporate response to the crisis on political institutions. The issue is particularly important given the vulnerability of the state due to the epidemic, and due to the inevitable challenges facing any new political system. As discussed above, there are certain functions which a state must fulfil in order to be legitimate, and meeting these minimum criteria for legitimacy can never be more important than when the government is on the brink of a legitimacy crisis. Therefore, the South African government's failure to effectively respond to HIV/AIDS may have significantly undermined its legitimacy. As will be discussed in the following section, the duties of the government were to some extent performed by private companies who offered treatment to their employees and beyond, and there is the possibility that this has further undermined the legitimacy of the state, as shall be considered in this thesis.

In 2003 Rosen et al published an article in the Harvard Business Review entitled 'AIDS is Your Business', in which it is argued 'if you are an executive in a corporation with operations in South Africa or one of its neighbours, chances are that anywhere from 10% to 40% of your workforce is HIV positive' (p.82). The article includes data which shows that the mining industry had the highest estimated percentage of HIV positive workforce globally. Bezuidenhout et al (2007) and Dickinson (2004) argue that the mining industry's response can be attributed to evidence such as this, which demonstrates that it is cost effective to treat HIV positive employees. This relates to points made in chapter two and again in this section, regarding the motivation of firms, and the implication of their motivation when they become

involved in development. As argued by Barnet and Whiteside (2002), different companies might come to different conclusions when presented with the same data, meaning that some will provide life-saving treatment and others won't. Further, firms may value the lives of their employees differently, and Mattes and Manning (2004) warn of a situation where firms provide treatment only to their most highly skilled workers. This is arguably further evidence that it should not be left to corporations to respond to national health crises.

The HIV/AIDS epidemic in South Africa is a national crisis to which the government failed to respond. As discussed, the wide-ranging effects of the epidemic pose a clear threat to the legitimacy of the government (Youde 2001, Barnet and Whiteside 2002 and Mattes and Manning 2004). However, what has not been considered is what the impact of the corporate response to the crisis has been on the legitimacy of the state. As discussed in chapter two, social welfare provision by corporations can be both a manifestation of and a contributor to the power of corporations (Prietyo-Carron et al 2006, Scherer and Palazzo 2011), Utting 2007, 2011) as business is able to extend its influence into the social welfare of developing countries. Given the extent of the crisis facing South Africa, and the vacuum of responsibility created by the government's failure to respond, it is possible that the provision of ARVs by corporations poses a particular threat to both the power and the legitimacy of the South African state. As the research presented in this thesis is concerned with the impact of social welfare provision by corporations on the legitimacy of the state, the provision of ARVs by companies in South Africa is an ideal case study of where the risk of corporate involvement in social welfare undermining state legitimacy is present.

The discussion presented in this chapter makes two important contributions to this thesis; firstly an account is offered of the academic and real-world context of the issues being addressed by this research, demonstrating that there are current concerns in a number of fields relating to the changing nature of business responsibilities, the way in which business is executing these responsibilities, and the effect of this on the development agenda and on stakeholders.

Secondly it demonstrates the existence of a significant cross-disciplinary research gap – namely the implication of this phenomenon on the legitimacy of the state - which will be addressed by this research. Therefore the research presented in this thesis will make an important contribution to on-going academic discussions in the legal, business and international development fields, while also addressing a research gap that lies somewhere between them.

Literature Review Conclusion

The literature reviewed in chapters two and three will inform this research in a number of ways. The literature addressing the fundamental concepts of power and legitimacy (Beetham 1991, Nye 2006) presented in chapter two has allowed us to establish that there are conceptions of power and legitimacy which can be meaningfully applied to both the state and to the corporation, and there are two significant implications of this. Firstly, the account of 'soft' power (Nye 1990, 2004) or 'hegemonic' power' (Cox 1983, Gilpin 1987, and Gill and Law 1989) suggests that the power of the state and that of the corporation may be similar in nature, which is evidence that in certain circumstances the corporation could assume state-like power. The second implication is that our ability to use the same mechanisms to identify legitimacy and legitimating criteria for the state and the corporation– the social contract (Donaldson and Dunfee 1995 and 1997, Hobbes 2001, Rousseau 2001, Locke 2001) – means that we will be able to undertake a meaningful comparison of the legitimacy of the state and the corporation, and perhaps identify where a transfer of legitimacy between the two has taken place. Specifically, we have identified that the protection of life is a fundamental requirement of legitimacy according to the social contract, which has informed our decision to use a case study of the provision of life-saving ARVS.

Further, the review of literature in the fields of International Political Economy, Law and Business has demonstrated that many of the concerns of this thesis are shared by academics across disciplines, and will therefore define the parameters of this research as it addresses a cross-disciplinary research gap. The IPE scholars discussed in chapter two raised issues relating to the changing nature of state power, and the role that the corporate power plays in this new dynamic (Susan Strange 1995, 1996). International Human Rights Law academics questioned what the social responsibilities of business are, given the power of business and its attendant ability to do great harm and, arguably, great good (Joseph 1999, Kinley and Tadaki, 2003-4, Ruggie 2007). The role of self-regulation was discussed as were the implications this would have for business conduct (Joseph 1999, Muchlinski 2001, Kinley and Tadaki 2003-4, Weissbrodt 2006, McCorquodale and Simins 2007, Ruggie 2007). Further, this literature was used as evidence that there is a macro-norm in the contract between business and society that business must assume some responsibility for the human rights of its stakeholders, although the primary research discussed in the following chapters will be used to explore what these responsibilities are. A growing body of literature on the role of CSR in development recognised business' growing role in addressing issues of underdevelopment (Blowfield 2005, Newell and

Frynas 2007, and Utting 2007), but questioned whether business is the best agent for development, and identified possible risks with such an approach (Glover 2007, Berkemeyer 2009, Sagebien and Whellams 2011).

There is therefore ample evidence of an on-going current discourse, albeit in different disciplines, concerned with the changing power relationship between the state and the corporation and the implications of this for the social responsibilities of business. What has not been considered is the implications of this for state legitimacy. IPE considers the implication of corporate growth on state power; Law considers the extent to which corporations should be legally required or encouraged to assume social responsibilities, and Business considers what this assumption means for business and for development, but there is as yet no consideration of what this assumption means for state legitimacy. The fundamental (relevant) concerns of each discipline and of this thesis are presented in Figure 3.1.

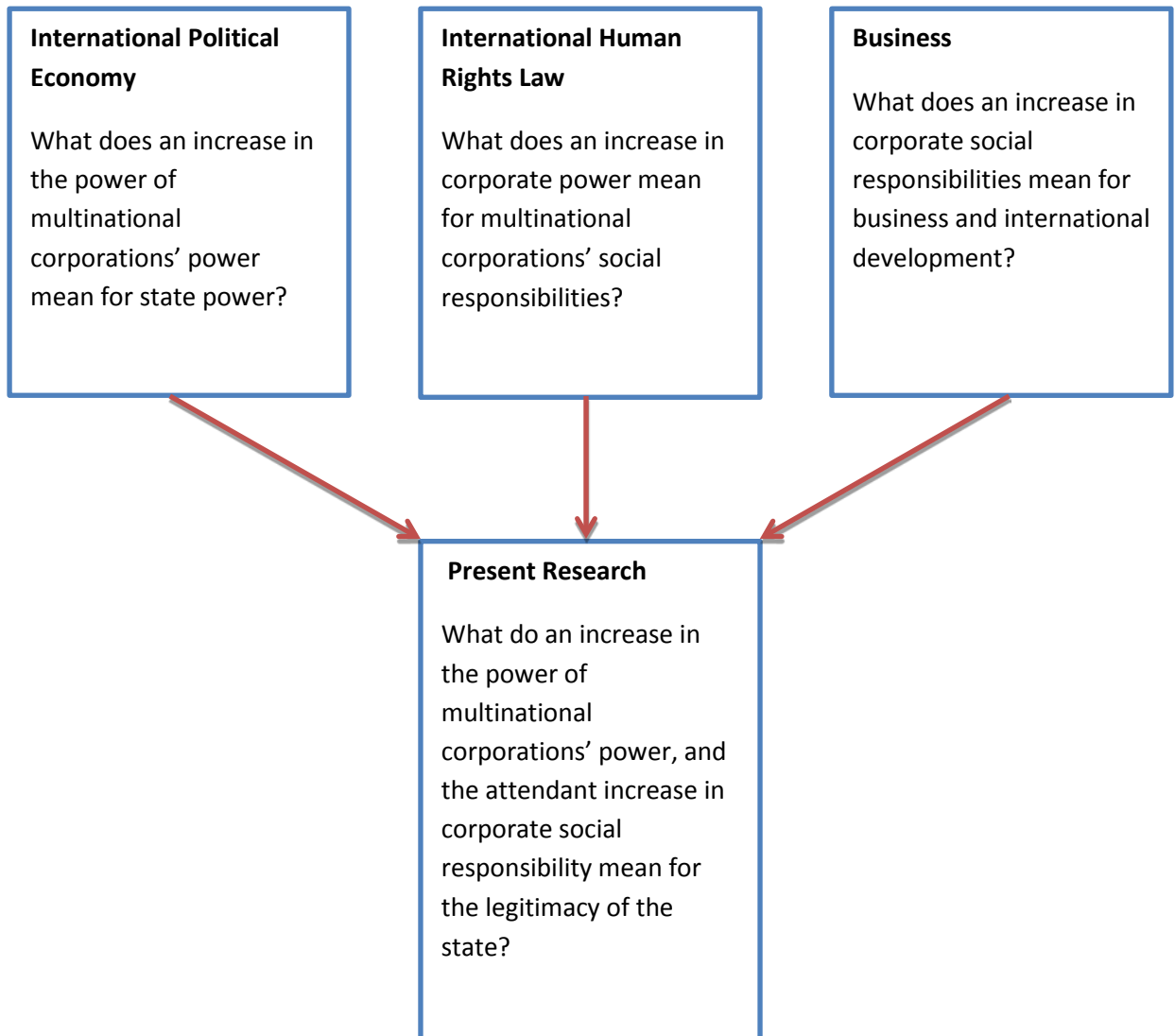


Figure 3.1 – the relationship between discourses in IPE, International Human Rights Law, Business, and the research being presented in this thesis.

This literature will define the parameters of our research as we consider the effect of social welfare provision by corporations on the legitimacy of the state, using a case study of anti-retroviral provision to workers by their employer. The research will be informed by the extant discussions, drawing as it does on the premises of IPE that the relationship between state and corporate power is changing, on the premise presented in the legal literature that with great power comes great responsibility, and on the questions raised in the business literature regarding business as an agent of international development. However the research presented here will also make a contribution to these discussions by adding the dimension of legitimacy and asking what the impact of these phenomena is on the legitimacy of the state.

5. Methodology

5.1. Introduction

The empirical research conducted for this thesis will address the literature gap identified in the previous sections. Specifically, it will investigate the effect of social welfare provision by corporations on the legitimacy of the state. In order to do this a case study of antiretroviral (ARV) provision by companies in South Africa will be conducted.

The case study approach has been adopted for two reasons. Firstly, a case study is a useful way of exploring a new research area. As the relationship between corporate involvement in social welfare and legitimacy is an unexplored area, the research presented here provides a demonstration of why this relationship is worthy of further consideration (Siggelkow, 2007). Further, as explained by Eisenhardt and Graebner (2007), individual case studies exist as discrete analytic units, and are therefore suitable for early-stage research in to a phenomenon as it is not necessary for case study research to be building on previous research. However, multiple case studies will allow for comparison and extension, and therefore further research is recommended in Chapter Seven. Secondly a case study approach is appropriate because it will allow the research to include the consideration of various contextual factors, rather than attempting to isolate phenomena from their context (Yin, 2009). This is particularly advisable when researching a relatively new area, as it allows the researcher to suspend judgement regarding which contextual elements are significant, as was the case with the research presented here.

A single case study was undertaken due to restraints of time and resources, although as discussed above, an advantage of case studies is that they maintain their utility as discrete analytic units, and therefore the findings of a single case study can be used to develop useful theory.

As discussed in the Literature Review this particular case study has been chosen for a number of reasons. The consideration of the social contract in political philosophy in chapter two demonstrated that a fundamental requirement of state legitimacy is the protection of the life of the citizens. The provision of anti-retroviral drugs, lifesaving drugs, is a contemporary example of a legitimising action. The South African national context is particularly interesting because, as discussed in chapter three, the corporate response occurred in the context of an ineffective state response (Randall 2002, Dickinson 2004, Dickinson and Innes 2004, Hamann and Bezuidenhout 2007, Bezuidenhout et al 2007) and therefore the risk of legitimacy transfer

may be particularly significant. This is compounded by the relatively new democratic nature of the state which means that the legitimacy bestowed by the democratic process is particularly vulnerable.

The objective of case study research is to present a rich, detailed account of a contemporary phenomenon (Yin 2003), rather than to make generalisations. Therefore a single-case study may be useful for the depth of understanding offered by specific contexts (Thomas 2011). Further, due to the unique characteristics of the case study a single, in-depth study is appropriate, although it may be used to inform relevant multiple-case studies in the future (Eisenhardt and Graebner 2007, Thomas 2011).

5.2. Epistemology and Ontology

This research employs a critical realist approach, as developed by Bhaskar (1975, 2011). Critical Realism maintains the ontology of realism; i.e. that there is an external world which exists independent of perception, but rejects what Bhaskar terms the 'epistemological fallacy' (Bhaskar 1998). The epistemic fallacy is the mistake made by positivist epistemology, which assumes that what 'is' can be expressed in terms of what is known, or 'that ontological questions can always be transposed into epistemological terms' (Bhaskar, 1998, p.27). Instead, critical realism assumes that reality can only be known via the perception of the 'knower'; that is we do not have direct access to the external world, but can access it via our perceptual 'lens'. When applied to social science research this means that the researcher can only access the phenomena being researched through their own perceptions, which will influence the emerging findings. Therefore a certain degree of reflexivity is required of researchers, in that they must be able to acknowledge the role of their own perception in the analysis of their data. Further, Critical Realism is particularly appropriate for the research being presented in this thesis because, as explained by Easton (2010) it recognises the significance of various structures, including political and economic structures, in the generation of social phenomena. In particular, Bhaskar's critical realism advocates the importance of relationships in the investigation of social phenomena, which is the primary concern of this thesis (as it considers the relationship between social welfare provision and legitimacy). Therefore the social structures which influence our subjective perception are at least as worthy of investigation as external phenomena – more so perhaps because they are accessible in a way that objective facts about the world are not (Patomäki and Wight 2000).

The research being presented here is to do with the effect of a certain set of structures; i.e.

those associated with the provision of ARV drugs to employees by employers, on a certain set of events; i.e. the bestowal of legitimacy on a state by citizens. Critical realism's primary aim is to account for these kind of relationships (Easton 2010), and maintains that the only way to understand the relationship is through research in to what can be empirically accessed, i.e. experience, in order to identify that which cannot be, such as structures. Therefore, the methodology being employed here, where data is collected regarding the experiences and attitudes of individuals in order to better understand the relationship between the provision of social welfare and legitimacy, lends itself well to a critical realist epistemology.

This epistemological approach is particularly useful when considering concepts that are challenging to define, such as legitimacy. By acknowledging our inability to access an objective 'truth' about legitimacy while also recognising the importance of understanding it in a context-dependent manner we are able to see the value of this research, as it will allow us to investigate a social phenomenon without requiring the false assumption of knowledge regarding the 'truth' of legitimacy as a concept. Critical Realism has been advocated as an approach to a range of social sciences, including in Organisational Studies (Easton 2010) and International Relations (Patomäki and Wight 2000) and may therefore lend itself well to this cross-disciplinary research.

5.3. Research Aims

The research presented in this thesis will examine the impact that the adoption of social welfare responsibilities by corporations through their CSR programmes has on the legitimacy of the state.

The following research questions will be addressed:

1. What is the relationship between social welfare provision and the legitimacy of a) the state and b) the corporation?
2. What are the consequences when some of these social welfare responsibilities are assumed by corporations in terms of
 - a) The legitimacy of the corporation and;
 - b) The legitimacy of the state – i.e. have corporations adopted some of the legitimacy of the state along with the functions of the state?

In order to answer these questions quantitative analysis was undertaken using World Values Survey responses, Corporate Social Investment figures and health spending data from the

World Bank in South Africa to identify any possible relationships between perceptions of government legitimacy and corporate investment in social projects.

For more a more in-depth understanding of the relationship, interviews were conducted with those receiving treatment from their employer and those involved in the provision of the treatment. Specifically, the interviews were intended to establish:

- Attitudes to the presence of the corporation
- Attitudes to the CSR programmes specifically
- Attitudes to the role of the state
- Attitudes regarding the corporation and its assumption of state-like roles
- Attitudes regarding the state and the phenomena of the corporation assuming state-like roles

The responses at this stage will allow us to address research question one as participants identify their understanding of the relationship between the provision of social welfare and the legitimacy of the provider, and will also allow us to address research question two as participants will be asked to identify the impact of provision by employers on the legitimacy of both the employers and the state. The implications of the findings of research stage one and two will be considered together in order to present an account of the relationship between CSR and state legitimacy supported by both descriptive and numerical data.

5.4 Research Stage One

Stage One will consist of quantitative research undertaken to establish the relationship between the corporate provision of social welfare, as indicated by non-government spending on health and Corporate Social Investment (CSI) in South Africa, and perceptions of state legitimacy. Figure 4.1 shows the variables which will be used in this stage and their source.

The following will be used as indicators in the quantitative analysis:

Variable	Indicator	Source
Social welfare provision by the state	Public spending on health	The World Bank
Social welfare provision by the	Private spending on health	The World Bank

corporation	CSI expenditure	Triologue CSI Consultancy
The legitimacy of the state	WVS response to question regarding confidence in the government, and attitudes to democracy	The World Values Survey
The legitimacy of the corporation	WVS response to question regarding confidence in major companies	The World Values Survey

Figure 4.1 Variables used in this research, what the variable an indicator is of and the source of the relevant data

Data on public and private spending on health in South Africa has been accessed via the World Bank website. Public spending includes recurrent and capital spending from government (central and local) budgets, external borrowing and grants (including donations from international agencies and nongovernmental organisations) and social (or compulsory) health insurance funds (World Bank Indicators). Private health expenditure includes direct household (out of pocket) spending, private insurance, charitable donations, and direct service payments by private corporations (World Bank Indicators).

HIV prevalence rates, also provided by the World Bank, were included in the analysis to allow us to track the extent to which public and private healthcare expenditure responded to the epidemic, in order to understand whether private or public healthcare providers responded adequately.

Data on CSI spending has been accessed via Triologue, a South African consultancy. As discussed in chapter three of the literature review the term 'CSR' is rarely used, and the term CSI is preferred. The figures supplied by Triologue are self-reported by companies, and include the following, which are consistent with the 'umbrella' definition of CSR we accepted in chapter three (Frynas and Blowfield 2005), and would include spending on corporations on ARVs:

- Spending by a dedicated CSI function or department
- Spending on social investment by company divisions or operations that are not part of a central CSI function

- ‘License-to-operate’ spending on social investment such as spending for local economic development (LED) requirements in the mining sector
- Donations to goods or services
- Donations of employees during work hours

(Dialogue

2012)

Indicators of legitimacy will be taken from the World Values Survey, and consist of responses to survey questions regarding confidence in the state and confidence in major companies, as detailed below in Figure 4.2. This data has been used in previous studies to investigate a range of social phenomena, including the relationship between globalisation and values (Inglehart 2000), the extent of mass support for democracy (Inglehart 2003) and to identify state legitimacy (Gilley 2006, 2006). Although there are some significant differences in the indicators used in these papers due to the differing aims and scope of the studies, the successful utilisation of WVS responses as indicators of social values, support for democracy and the legitimacy of a political system lends support to the decision to use them in this research. Specific details about the statistical methods employed at this stage of the research will be presented in chapter five.

World Values Survey Question	Possible Responses	Use in this study
Q. Could you tell me how much confidence you have in the government?	A Great Deal/ Quite A Lot/Not Very Much/ None At All / Don't Know	To be used as a proxy for state legitimacy – As discussed in chapter two, ‘the government’ refers to those in power, by virtue of the state, at a given time. The more confidence the respondent has in the government, the more legitimate the state will be deemed.
Q. Could you tell me how much confidence you have in parliament?	A Great Deal/ Quite A Lot/Not Very Much/ None At All / Don't Know	This was used a proxy for an indicator of state legitimacy, as the question was not asked in South Africa in the 1982 and 1996 survey.
Q. Could you tell me how much confidence you have in major	A Great Deal/ Quite A Lot/Not Very Much/ None At All / Don't Know	To be used a proxy for corporate legitimacy – the more confidence the respondent has in major corporations

companies?		the more legitimate they will be deemed.
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Figure 4.2 World Values Survey questions to be used in this research, possible responses offered to participants and the way in which the data will be used in this research

Challenges and Limitations

At this stage I will be using secondary data and there are challenges relating to the limits of the data available; for example the CSI figures are available for 1998 – 2007, during which time only three World Values Survey questionnaires were conducted. While this prevents us from implementing a time-series analysis, it will grant us insight in to current attitudes, as well as to how they have changed over a ten year period which, when coupled with the findings from research stage two will allow us to present a rich description of the legitimacy of the state in South Africa, as well as suggesting trends and relationships.

Further, the ‘private spending on health’ figures taken from the World Bank were identified by subtracting ‘public spending on health’ from ‘total spending on health’, and therefore includes more than that just money spent by corporations. This is not a significant challenge to the analysis as the figures are being used as an indication of government and non-government response, but nonetheless this does mean that the figures cannot be used as an indicator of specifically corporate spending on health.

The limitations of available data is indicative of the fact that CSI (or CSR) in its current form is relatively new, therefore this data offers a valuable insight into a burgeoning trend, which may be expanded on in the future. The findings of this stage will be considered along with those of the qualitative research, identifying trends in legitimacy indicators, suggesting possible relationships and ensuring that the findings are supported by two separate measurements (Bryman and Bell, 2003).

5.5 Research Stage Two

The primary research will consist of interviews conducted with those affected by the provision of anti-retroviral drugs by a corporation and those involved in the delivery of this treatment. This stage will address research questions one and two as it investigates the relationship between social welfare provision, in the form of antiretroviral provision, and legitimacy. The findings from this stage will also offer an insight in to the consequences of social welfare provision via CSR on the legitimacy of the corporation and the legitimacy of the state.

A total of 20 interviews were conducted. This sample size was based on the considerations presented in Kvale and Brinkman (2009), specifically; time, resources, and the law of diminishing return. As the fieldwork was almost entirely conducted in South Africa over a one month period 20 interviews was a realistic goal given the limited time available. As can be seen in the analysis in chapter six some degree of saturation was achieved as a number of prevalent themes emerged, which is indicative of the law of diminishing returns; i.e. conducting more interviews would have been increasingly unlikely to yield new results. One focus group with students enrolled in a Masters' degree in Development Studies at a South African university was also conducted. Participants from this group came from a range of backgrounds and all had professions outside of their studies, including a lecturer, a farmer and a number of NGO workers. This focus group was conducted at the very start of the research process and findings from the focus group were used to identify key aspects of the South African context which I may not have previously considered. As citizens of South Africa the focus group participants were also able to make a valuable contribution the research questions, by discussing what they felt to be the responsibilities and duties of the state and of the corporation.

Analysis was conducted using the grounded theory approach and where possible theoretical sampling was employed.

Theoretical Sampling

Theoretical sampling (where sampling is determined by the emerging theory) was employed as an approach consistent with grounded theory (Glaser and Strauss 1967). In practice this means that interviewees were identified based on the concepts which have emerged from previous interviews. The advantages of such an approach are that it allows the researcher to explore important concepts which they may not have considered prior to the fieldwork. This approach is therefore particularly helpful for the research being presented here where the relative novelty of the topic may have meant that relevant concepts and categories would not have been identifiable before embarking on the research.

The initial contact point for the research was the Chief Medical Officer (CMO) of Anglo American, Dr. Brian Brink. From his unique position as the CMO of South Africa's largest private sector employer (Guardian 2011), which also runs the world's largest voluntary testing and counselling program (Guardian 2013), he was able to provide a detailed overview of the practical aspects of the provision of ARVs in a corporate setting, as well as an understanding in to the unique features of the South African context. From these insights ideal subsequent interviewees were then identified; i.e. recipients of the treatment, providers acting within

different corporate contexts, and the traditional and faith healers who had an informal working relationship with Anglo American's corporate offices. A snowballing technique (Bryman 2008) was implemented in so far as contacts were pursued in all interviews where it was appropriate. In practice this was limited to the interviews with practitioners as the emphasis placed on confidentiality when interviewing participants meant that it would not have been appropriate to request contact with other people known by the interviewee to be HIV positive. For this reason the initial contact also acted as 'gatekeeper' for identifying and accessing participants who were receiving treatment (King and Horrocks 2010). This worked well as he had both the authority to grant access and the ethical responsibility to protect the confidentiality of the participants. Unless otherwise stated in Figure 4.3, participants identified as 'Recipients of Treatment' (Recipients) were employees of Anglo American receiving ARVs from their employer. Sampling was therefore determined by a combination of theoretical sampling, snowball sampling and the use of a gatekeeper, and in this way an adequate number of interviews was conducted with a range of individuals. Participants can be broadly categorised as 'Providers of Treatment', 'Recipients of Treatment' or as 'Academic Experts'. A breakdown is provided in Figure 4.3.

Tag	Role	Institution	Industry
R01*	Recipient of Treatment	VWSA	Auto
R02**	Recipient of Treatment	VWSA	Auto
R03	Recipient of Treatment	Anglo American	Mining
R04	Recipient of Treatment	Anglo American	Mining
R05	Recipient of Treatment	Anglo American	Mining
R06	Recipient of Treatment	Anglo American	Mining
R07	Recipient of Treatment	Anglo American	Mining
R08	Recipient of Treatment	Anglo American	Mining
P01	Service Provider	Anglo American	Mining
P02	Service Provider	VWSA	Auto
P03	Service Provider	Industry Body	Auto
P04	Service Provider	Traditional and Faith Healer	Health
P05	Service Provider	Anglo American	Mining
P06	Service Provider	Contracting Firm	Mining
P07	Service Provider	De Beers	Mining
P08	Service Provider	Anglo American	Mining
P09	Service Provider	Anglo American	Mining
P10	Service Provider	Chamber of Mines	Mining
E01	Academic Expert	University of Witwatersrand	Academic
E02	Academic Expert	Independent	Academic

Figure 4.3 Participants' coding, role and institution

* Employee receiving treatment for TB only

** Employee receiving treatment for TB and HIV

Treatment Recipients were sought as participants in order to address both research questions. In their dual role as citizens of the state and beneficiaries of their companies social welfare provision this group is uniquely placed to comment on both the relationship between social welfare provision and the legitimacy of the state and the corporation, as well as the consequences of social welfare responsibilities being assumed by corporations. Six of the treatment recipients interviewed were employed by, and receiving treatment from, Anglo American (although they were from different sites). Two recipients who were interviewed came from Volkswagen South Africa. The decision to include participants who were receiving treatment from a company other than Anglo American - and from outside the mining industry - was taken in order to increase the number of recipients involved, which was important because of the unique contribution this group offered to the research questions. Further, a diversity of views was not considered to be disadvantageous as the emerging theory demanded that the fundamental criteria for this group of participants was that they were receiving healthcare from their employer, as this was what was required in order to address the research questions, focussing as they do on receiving treatment from employers. Therefore the defining feature of the case was that it was research in to the provision of ARVs by employers in South Africa, and the employees receiving treatment from VWSA certainly meet these criteria. As VWSA provide ARV treatment off-site it was particularly difficult to access participants who were receiving ARV treatment. The on-site clinic did however provide treatment for TB onsite. For this reason the two recipients from VWSA were both receiving TB treatment from the company, and one was also receiving ARVs from the company. This does not undermine the contribution of these participants to the research because as recipients of treatment they were both still able to comment on relevant experiences and the effect it had on their attitudes to the government and their employers.

Those involved in the provision of treatment to employees were interviewed in order to understand how these individuals understood their role and the role of their corporation in relation to the state. They were able to comment on the way in which corporations perceive their role in relation to the state, as well as on their personal expectations of the state. Specifically treatment providers were invited to comment on whose responsibility it was to provide anti-retroviral treatment to workers and why, and to comment on the way in which treatment was actually being provided in South Africa. The data produced by these participants firstly addresses research question one because expectations relate to legitimacy; i.e. if the expectation is that the state provide the ARVs, then not doing so compromises their legitimacy. Secondly this data addresses research question two because the providers of

treatment are able to comment on the consequences of their provision of treatment in terms for the legitimacy of the organisation they are working for and for the legitimacy of the state.

Academic experts were sought because of the importance of understanding the South African context and how this might relate to the way in which the concept of legitimacy should be understood. The academics consulted had themselves conducted extensive research into CSR and CSI in South Africa and were therefore able to offer an insight in to the way the roles of the state and the corporation were understood in the country.

The interviews were unstructured. The process of gaining informed consent entailed explaining to the participants the purpose of the research which was usually sufficient guidance to ensure relevant responses. However, an interview guide in a Key-Point format (King and Horrocks 2010) was used in order to ensure a degree of consistency and as prompt for the interviewer to ensure all relevant points were covered. Interviews took between 30 and 60 minutes, and were conducted in private. They were all conducted at the interviewees place of work, although treatment recipients were interviewed at the medical clinics where they received treatment (these were all at their place of work, either on-site at a mine or factory, or in the head-office).

The interview guides for treatment recipients and treatment providers can be found in Appendices A and B. The expert academic interviews were entirely unstructured.

Categories and Concepts

The process of categorising the concepts was primarily based on the identification of key terms and concepts used by the participant. Where there was a common theme in a number of concepts they were grouped together as a category. For example, 'Praise for Corporate Treatment' and 'Superior Corporate Treatment' were grouped together as all references in both of these categories expressed 'Positive Feelings about Corporate Treatment', which became a category. Categorisation was driven by the focus of the research and the identified concepts, and it was assisted in part by common sense (i.e. identifying when two people were talking about the same thing). As the interviews and focus group were undertaken in order to identify attitudes to the state and to the corporation, and how these related to the provision of anti-retroviral drugs, many of the categories relate specifically to positive or negative attitudes to the state or the corporation, or the relationship between these, and/or to the provision of ARVs. Some concepts did not relate to any others, and were therefore also considered to be separate categories. However, most concepts could be identified as

belonging to broader categories, indicating that some degree of theoretical saturation had been reached. A full breakdown of all categories and concepts can be found in [Appendix C](#).

Challenges

There are a number of challenges associated with this research stage, both ethical and logistical. The following logistical challenges were identified:

- Access – The success and validity of the research depended in large part on obtaining access to the appropriate community. This was challenging both in terms of geography and culture. This researcher is based in London with limited contacts in South Africa, and there were challenges with physically accessing the geographic location where potential interviewees are based. Consideration was given to the cultural differences and potential barriers, particularly given the sensitivity regarding health and sexually transmitted diseases and the enduring stigma related to HIV and AIDS.
- Ethical considerations –
 - *Informed Consent* – no mitigating factors were identified which would justify withholding information about the project from participants and therefore free prior and informed consent was obtained from every participant. While not necessarily an obstacle, this reduced the discretion available to the researcher with regards to tailoring information in order to achieve maximum participation.
 - *Confidentiality* - A prominent issue that has emerged during research is the stigma attached to being HIV positive. Confidentiality of respondents and interviewees was therefore carefully considered. This posed two specific challenges. The first challenge was reassuring participants of the confidentiality and ensuring that the interviews take place in a situation where the participants feel comfortable and confidentiality can be reasonably assured. For this reason wherever possible interviews were conducted in the place where the HIV positive participants received their treatment. This was a place where they felt their confidentiality was guaranteed and the staff involved in arranging the logistics of the interviews understood the importance of confidentiality and tact. The second challenge was presenting the findings of the research in a way that ensures the participants will not be identified. This was addressed by anonymising the quotes used in this report. Offering confidentiality encouraged an honest response from the participants while protecting them from any negative repercussions from their participation

(Bryman and Bell, 2003)

The primary concern when conducting this stage of the research was dealing with a stigma-laden topic in a sensitive way. A number of qualitative studies relating to HIV across a range of fields have been conducted in South Africa (including but not limited to Campbell et al 2005; Newman et al 2006; Strebel et al 2006; and Madiba and Cinti-Sigaga 2012) demonstrating that if carefully managed this topic can be researched responsibly using interviews and focus groups.

5.6 Research Limitations

A mixed method approach was undertaken in order to maximise the advantages offered by both qualitative and quantitative research. However, while quantitative data is often preferred due to the potential for valid and reliable results, the limits of the available data mean that the findings of research stage two will be particularly significant. The sample for research stage two is relatively small, due to the limits of time and resources. However, as discussed above some degree of saturation was reached as a number of repeated categories and concepts emerged which suggests that some meaningful findings could be drawn from the sample.. By using both quantitative and qualitative methods we will be able to minimise the limitations of each stage while ensuring that the findings are supported by more than one measurement (Bryman and Bell, 2003).

A further consideration is that the characteristics which make South Africa such an interesting case study also make it unique, which limits the wider applicability of the findings. Again, this does not undermine the research aims, rather by focussing on a context where these issues are most pertinent we are able to use this research to build an empirically sound theory (Eisenhardt and Graebner 2007) while demonstrating that the relationship between CSR and government legitimacy is one worthy of further consideration (Siggelkow 2007).

There are a number of practical challenges related to research stage two. The first challenge, as discussed above, relates to the high level of stigma associated with being HIV positive (Campbell et al 2005). The process of recruiting HIV positive participants demonstrated that the vast majority of workers who were receiving treatment were not willing to disclose their status to a researcher. Therefore the treatment recipients who did agree to be interviewed are not representative of all workers receiving treatment. Three of the six treatment recipients who were interviewed had previously been involved in corporate campaigns to raise awareness and encourage testing, suggesting that they may have been influenced by the

'company line' on accessing treatment, which may have affected their responses. The second challenge, which also may have contributed to a sampling bias, was the language barrier. There are 11 official languages in South Africa and the majority of the population are not proficient in English (The Economist 2011). This applies primarily to the rural population which, given the migratory nature of mining workforces (Hamann and Bezuidenhout 2007), meant that there was a particular problem in accessing treatment recipients who were proficient in English. Given the sensitivity of the topic the decision was taken not to involve an interpreter, as an extra person in the room would have compromised confidentiality. Therefore all of the interviews were conducted with fluent English speakers, which constitutes a selection bias. Limiting participation for treatment recipients to those who are comfortable discussing their HIV status and who are fluent English speakers was unfortunate but unavoidable. By its very nature, research into a highly stigmatised area will only be able to access those who are less affected by the stigma, and the related problems with using an interpreter further limit access in a multi-lingual, diverse country such as South Africa. As the research presented here does not aim for generalizability these selection biases do not undermine the value of the findings, but should nonetheless be noted.

6. Research Stage One – Quantitative Analysis

6.1 Introduction

In order to address the research questions (listed below), public and private spending on healthcare in South Africa, spending on Corporate Social Investment (the term most commonly used in South Africa to refer to what we have termed Corporate Social Responsibility, see Fig 2005 and 2007, Hamann and Bezuidenhout 2007, and Bezuidenhout et al 2007), and attitudes to the government and major companies as measured in the World Values Survey are presented in the following section.

As identified in the previous sections, the research questions are:

1. What is the relationship between social welfare provision and the legitimacy of a) the state and b) the corporation?
2. What are the consequence when some of these social welfare responsibilities are assumed by corporations in terms of
 - a) The legitimacy of the corporation and;
 - b) The legitimacy of the state – i.e. have corporations adopted some of the legitimacy of the state along with the functions of the state?

In this section the indicators identified in the earlier methodology section (see Figure 4.2 in Chapter Four) will be plotted against each other in order to establish whether there is a relationship between them, and if so to establish what the nature of the relationship may be. Due to the limited availability of the relevant data it has not been possible to do time-series' analyses such as regression but, using SPSS and Excel, descriptive statistics have been produced and plotted in order to present the available data in a way that allows us to discuss possible relationships with reference to the themes and issues identified in the Literature Review. The qualitative research conducted in Research Stage Two will allow us to explore these issues in-depth, and will there complement the quantitative research of stage one.

6.2 Findings and Observations

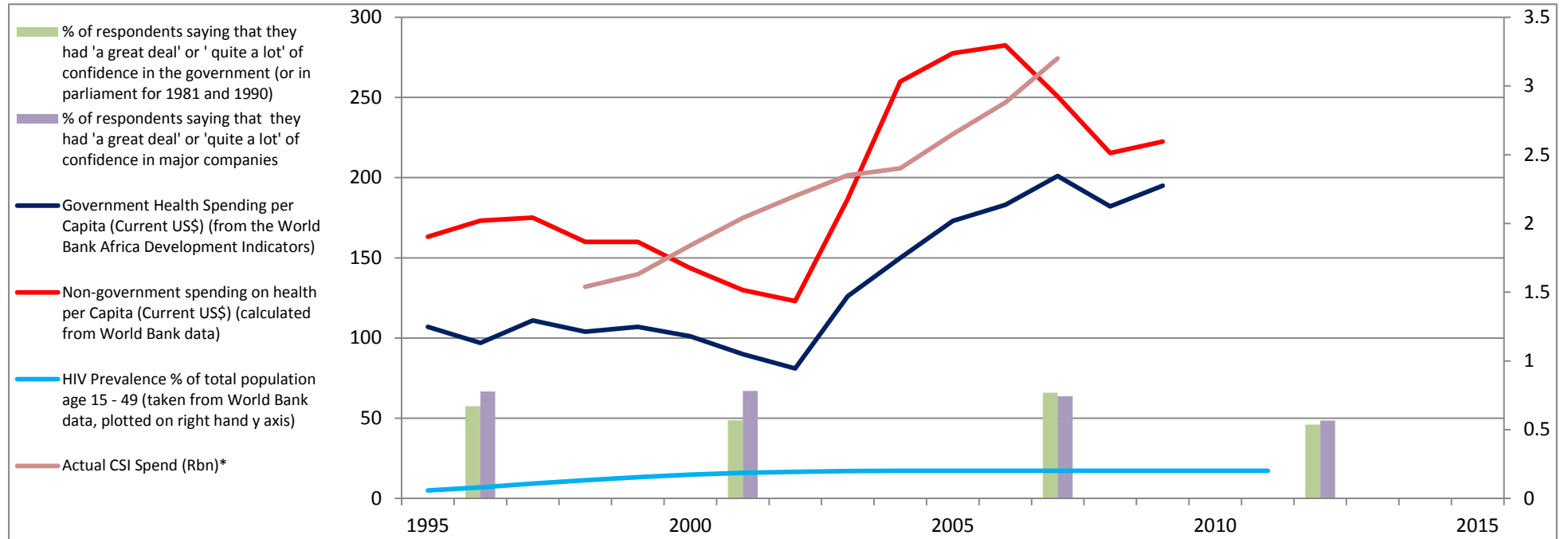


Figure 5.1 – WVS response, private and public spending on health, CSI spending and HIV prevalence, shown with timeline of key relevant

1980	1987 – First black South African diagnosed with AIDS	1992 – The National AIDS Coordinating Committee of South Africa (NACOSA) is formed, comprising of political parties, trade unions, academics, business organisations and civil society	2003 – South African government launches mother-to-child HIV transmission prevention program	2009 – President Zuma announced a commitment to testing all children exposed to HIV and offering treatment to all HIV+ children	October 2012 – 80% of all people in South Africa needing treatment for HIV/ AIDS are receiving treatment
1982 – First HIV diagnosis in South Africa	Early 1990s – AngloAmerican begins treatment and prevention programs for HIV+ employees in South Africa	2000 – Mbeki denies a link between HIV and AIDS	2004 - South African government launches adult HIV treatment program	2010 – 55% of all people needing treatment of HIV/AIDS are receiving treatment	2015

Figure 5.1 (above) presents the data being analysed in this section, and shows the following things:

- HIV prevalence rates rose steadily and have now plateaued
- Government and non-government spending on health in South Africa has been erratic, although the relationship between the two has remained relatively consistent
- CSI spending seems to be steadily increasing
- Confidence in Major Companies has been higher than that in Government, apart from in 2007
- Generally however, confidence in Major Companies has been high, while confidence in Government has been less stable

This data provides a valuable starting point for our research, indicating a clear trend in CSI expenditure and a clear relationship between government and non-government spending in health. As this research considers the relationship between non-government healthcare provision and legitimacy (for which 'confidence' is an indicator) these relationships are worthy of consideration.

6.3 Public and Private Health Expenditure

The World Bank provides data from the Africa Development Indicators project on public (government) spending on health as a percentage of total health expenditure and data on total expenditure on health per capita. From this we were able to calculate the spending on health per capita by non-public (private) sources. Figures are in current US\$, and were sourced in 2013.

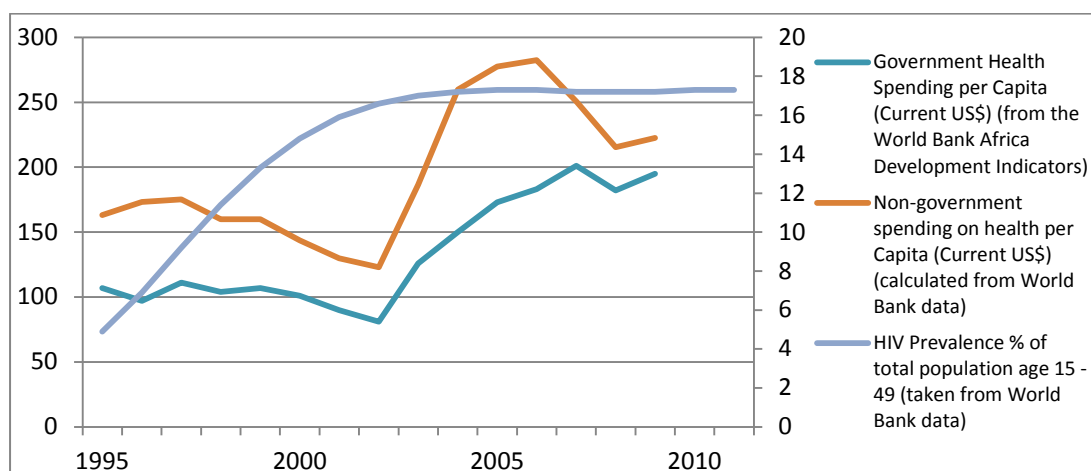


Figure 5.2 – Government spending on health and non-government spending on health 1995 – 2009, and HIV prevalence rates 1995 - 2011

Figure 5.2 shows that overall both public and private spending on health in South Africa have risen since 1995, and that spending from both sources has risen (and fallen) with a relatively steady relationship between public and private spending. There was a dip in the early 2000s (data is per capita, but there was no corresponding a spike in population), which corresponds with the height of the South African government's denial of a link between HIV and AIDS (see Figure 5.1). The steep rise beginning in 2003 may be attributable, at least in part, to the change in government policy, acknowledging the link between HIV and AIDS and consequently the importance of anti-retroviral treatment. The way in which private spending fell and rose in accordance with government spending may be linked with the lack of infrastructure through which private bodies were able to distribute ARVs while government policy was obstructive – once the Government acknowledged the need for the distribution of ARVs and other forms of prevention and treatment, it may have become easier for other actors to become involved and to spend money on this kind of response.

It is worth noting that private spending consistently outstrips government spending, with the difference being most significant in 2004 when private spending on health care (\$259.83 per capita) was near double government spending on the same (\$150 per capita). Again, this is probably attributable in part to the increased NGO, charity and corporate response to the HIV crisis while the government's programmes were still in their infancy stages.

It is also worth noting that although private spending consistently outstrips public spending, the relationship between the two sources of funding remains remarkably steady. Given the arguments discussed in the Literature Review that corporate programmes may be in response to an inadequate government response (e.g. Frynas 2005; Hamann and Kapleus 2004), we would expect that private spending on health would increase at the same time as, or slightly after, a decrease in government spending. This is not borne out by the statistics. One possible explanation for this is that the increase in private-spending is in response to increased governmental demand – that is that as the government becomes increasingly responsive to social and environmental challenges it is creating expectations that private actors do the same.

Focussing specifically on HIV this is plausible explanation for the post -2003 figures, as the South African government had finally committed itself to a comprehensive response to the crisis. However, given the government's initial response to the HIV epidemic (see chapter three, Barnett and Whiteside 2002 and Mackintosh 2009) this seems an unlikely explanation for the correlation between public spending on health, private spending on health and CSI as the government was not responding to the HIV epidemic while private bodies increasingly were. Therefore while there is some evidence of 'crowding in', it is unlikely to be a result of corporate spending on health reflecting

the concerns of the government in the pre-2003 period, although this may explain the relationship post 2003. However, as shown in Figure 5.2, the relationship between government health spending and non-government health spending remains remarkably uniform throughout the entire period considered, therefore the relationship is likely to be due to the same cause or causes throughout the 1995 – 2009 period. One possible explanation for the relationship between government and non-government health spending may be that government investment acts as a signal to the private sector that health spending should be a priority.

A further explanation for the steady relationship between government and non-government spending on health may be that government investment in health infrastructure facilitates non-government spending in health. If this is the case, it indicates that there is a relationship between government and non-government welfare provision, and that as of 2009 government spending facilitated non-government spending. This may be significant if evidence is found that corporate spending on healthcare has a negative effect on attitudes to the government and government legitimacy. This is because there will then be evidence that government spending increases non-government spending on health, but that non-government spending on health has a negative impact on the legitimacy of the government. A conclusion such as this would suggest that the facilitation of government spending should be prioritised over that of non-government spending on health, as government spending on health would promote non-government spending on health without compromising the legitimacy of the government.

While the reasons for the fluctuations in public and private health expenditure and the epidemiology of HIV in South Africa are not being explored in this thesis, the time-line shown in Figure 5.1 as well as the data regarding HIV prevalence indicates that the considerable investment in health between 2002 and 2007 may be responsible for a reduction in transmission rates (which would correspond with a flattening of prevalence rates), which would therefore be followed by a reduction in investment as the demand for treatment would fall along with transmission rates.

6.4 Corporate Social Investment

Figure 5.3 shows spending on health from public and private sources and CSI expenditure. The data for CSI expenditure is taken from Trialogue, a South African CSI consultancy and is reporting research conducted with around 100 companies in South Africa from a variety of industries (breakdown of respondents by sector to be inserted here). Therefore the data should be seen as indicative of possible trends in CSI spending in South Africa. CSI is defined in this research as:

- Spending by a dedicated CSI function or department

- Spending on social investment by company divisions or operations that are not part of a central CSI function
- ‘License-to-operate’ spending on social investment such as spending for local economic development (LED) requirements in the mining sector
- Donations to goods or services
- Donations of employees during work hours

(Triologue 2012)

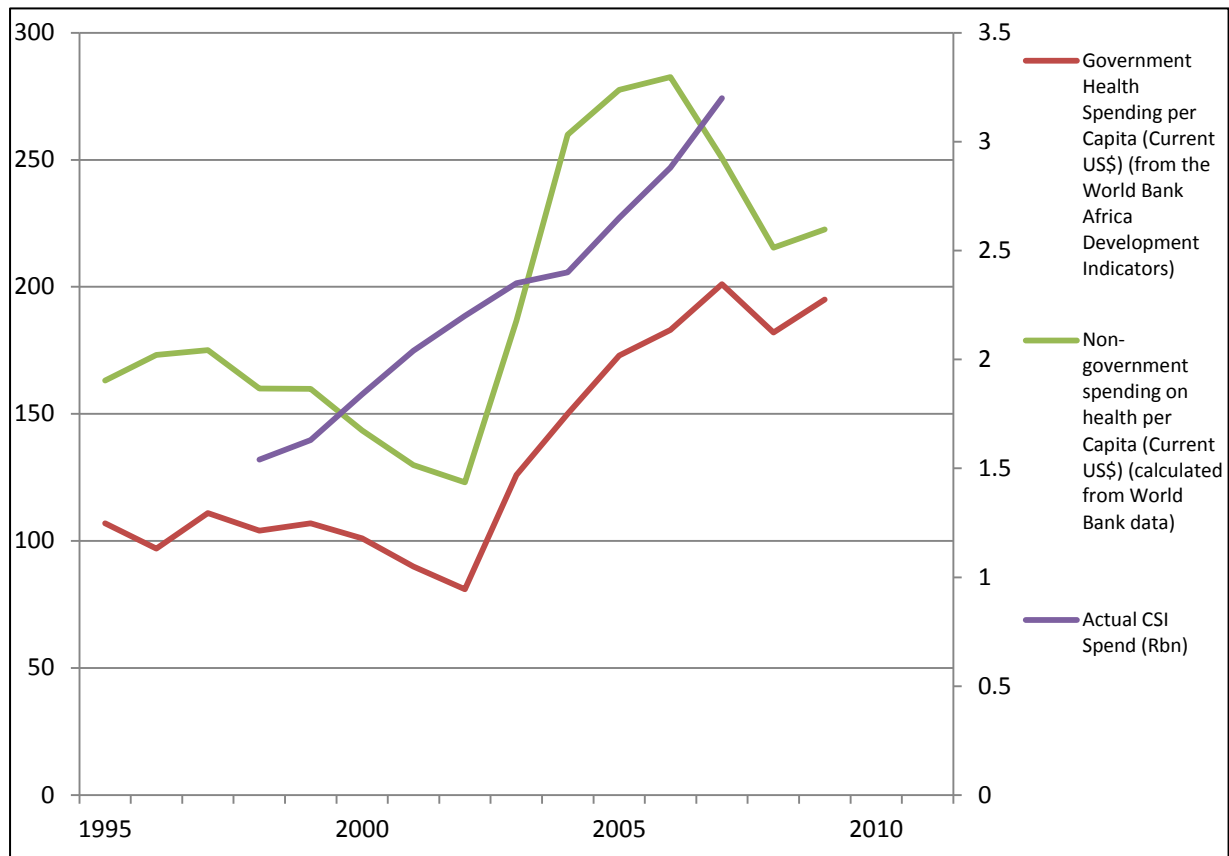


Figure 5.3 – Government and non-government spending on health 1995 – 2009 and CSI spend 1998 - 2007

The data in Figure 5.3 shows that CSI spending has increased at a steady pace since 1998 (the earliest data available), avoiding the erraticism of public and private spending on health. This may be because companies are able to distribute their CSI spending in a variety of ways and with a degree of

flexibility, and therefore when there are challenges in making contributions to health they can allocate funds to another social or environmental issue. CSI spending seems to be continuing to increase while public and private spending on health is decreasing overall. This may be because the major investment in HIV prevention and treatment has been made, and HIV prevalence rates have now plateaued (see Figures 5.1 and 5.2).

The World Bank and Triologue data on public and private spending on health and Corporate Social Investment by companies in South Africa shows that private spending on health is consistently higher than government spending on health and that CSI is growing at a considerably steadier rate than public (or private) spending on health. One implication of this is that non-government funding of social and health related projects is both greater and more reliable than government funding.

This research considers non-government responses to healthcare needs and South Africa seems to be an appropriate case study for examining the impact of a significant private-sector response to a public health crisis, as the private sector response seems to have been considerable - particularly when compared to the government response (see Barnett and Whiteside 2002, Ford et al 2002; Mackintosh 2009). As we are using spending on health as indicators of social welfare provision by the government and business, this World Bank data suggests that the social welfare provision of business exceeds that of the government. Therefore if, as suggested in our application of the Social Contract in Chapter Two, where the provision of social welfare in the form of protecting or preserving life by states (Hobbes 2001, Locke 2001, Rousseau 2001) or by corporations (Donaldson 1982 and 1989, Dunfee 19991, Donaldson and Dunfee 1995, 1997, 1999) legitimises an institution, it would seem that *ceteris paribus* in this context the legitimacy of companies may exceed that of governments.

In order to better understand the relationship between spending on health/ CSI and attitudes towards the government and major companies, data from the World Values Survey will also be considered.

6.5. World Values Survey

Background to data and analysis

The world values survey (WVS) is a global research programme which maps changing values and the impact of this on social and political life around the world (World Values Survey 2012). Six 'rounds' of research have been conducted since the project started in 1981 (see Figure 5.4).

Round	Year Survey was Conducted in South Africa	Sample Size in South Africa
1981 – 1984	1982	1596
1989 – 1993	1990	2736
1994 – 1999	1996	2935
1999 – 2004	2001	3000
2005 – 2008	2007	2988
2010 – 2014	Not Known (2012 used for analysis)	3531

Figure 5.4 – World Values Survey information for South Africa

No technical information is available for the 1981 – 1984 or 2010 – 2014 rounds in South Africa, but for all other rounds the surveys were conducted via face to face interviews. The sample was randomly selected but stratified by race (strata were white, black, coloured, Asian) for the 1989 – 1993 round; by community size for the 1994 – 1999 round; by community size and gender (achieving a 50/50 gender split) for the 1999 – 2004 round and using random and probability sampling in 2007. Participants are asked around 250 questions (depending on wave and responses) covering topics such as democracy, empowerment, attitudes to gender, diversity and religion.

The question identified from the WVS for use for use in this research is:

‘I am going to name a number of organizations. For each one, could you tell me how much confidence you have in them: is it a great deal of confidence, quite a lot of confidence, not very much confidence or none at all?’

Respondents were asked about institutions including the armed forces, the press, labour unions, the civil service and environmental organisations and were given the options:

‘A Great Deal/ Quite a Lot/ Not Very Much/ None at All’

Responses to the question as it relates to government and major companies have been used for this research; apart from in Figure 5.5 where the response to the question as it relates to parliament is shown for the years 1981 and 1990, as the question was not asked about government. This may be because the government was not deemed by the survey to be legitimate and/ or because the unpopularity of the government meant that responses to the question would not be useful. The descriptive statistics for confidence in the government (or parliament for 1982 and 1990) and for confidence in major companies are shown in Figure 5.5.

	Confidence: Major Companies		Confidence: Government (Parliament 1982, 1990)	
	Number	%	Number	%
1982				
A Great Deal	258	16.2	251	15.7
Quite A Lot	557	34.9	437	27.4
Not Very Much	500	31.3	492	30.8
None at all	267	16.7	405	25.4
Missing	14	0.9	11	7
1990				
A Great Deal	665	24.3	578	21.1
Quite A Lot	1214	44.4	1087	39.7
Not Very Much	508	18.6	651	23.8
None at all	103	3.8	204	7.5
Missing (No answer)	246	9	216	7.9
1996				
A Great Deal	789	26.9	705	24
Quite A Lot	1169	39.8	983	33.5
Not Very Much	499	17	722	24.6
None at all	214	7.3	307	10.5
Missing (No answer/ NA/ Don't Know)	264	9	218	7.4
2001				
A Great Deal	690	23	618	20.6
Quite A Lot	1321	44	847	28.2
Not Very Much	613	20.4	964	32.1
None at all	172	5.7	493	16.4
Missing (No answer/ NA/ Don't Know)	204	6.8	78	2.6
2007				
A Great Deal	789	26.9	705	24
Quite A Lot	1169	39.8	983	33.5
Not Very Much	499	17	722	24.6
None at all	214	7.3	307	10.5
Missing (No answer/ NA/ Don't Know)	264	9	218	7.4
2012 ¹				
A Great Deal	561	15.9	513	14.5
Quite A Lot	1154	32.7	1113	31.5
Not Very Much	1073	30.4	1085	30.7
None at all	533	15.1	689	19.5
Missing (No answer/ NA/ Don't Know)	211	6	131	3.7

Figure 5.5 – A Breakdown of response to the World Values Survey Question ‘how much confidence do you have in a) The Government and b) Major Companies, 1982 - 2997

¹ Data from Wave 6 – here referred to as ‘2012’ was only available in aggregated form, and to 1 decimal point, which is why the individual response numbers do not add to the total

The data was then prepared using SPSS and the responses recoded to reflect whether it was 'positive' (i.e. a response of a 'great deal' or 'quite a lot' was recorded) or 'negative' where a response of 'not very much' or 'none at all' was recorded), or not answered or not known.

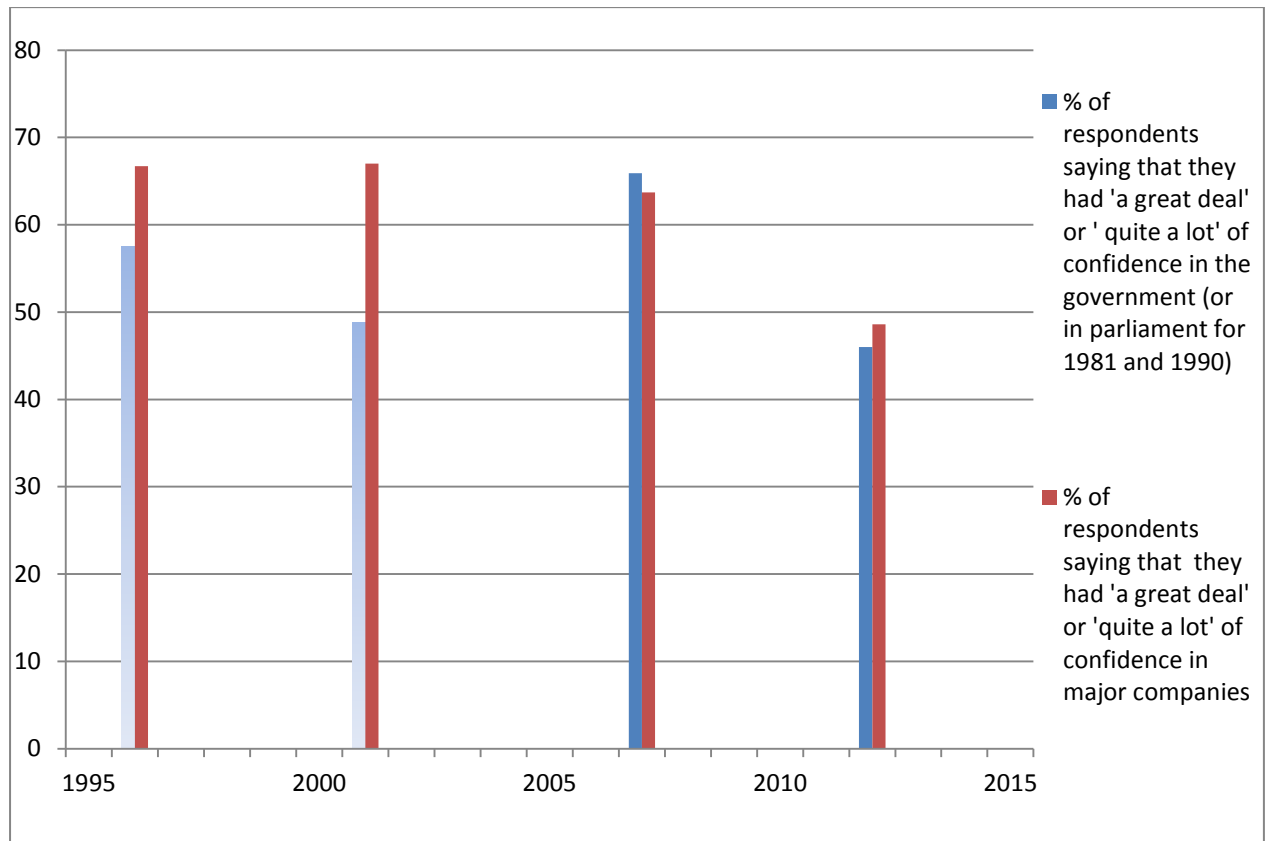


Figure 5.6 – World Values Survey responses to the question 'how much confidence do you have in a) The Government and b) Major Companies, 1982 – 1997

The WVS data shows that confidence in major companies tends to be high, falling below 50% (to 48.6%) only once, and usually outstripping confidence in government (or parliament), although this relationship is reversed in 2007. The fluctuations in 'confidence in government' may be indicative of the changeable political situation in South Africa during the post-apartheid years, and in particular may reflect the response of South Africans to the achievements of the democratic government relative to expectations. It is possible that the notable increase in confidence in government in 2005 is a reflection of the fact that expectations and actual achievements are becoming more aligned. As argued by Mattes (2002) the high-hopes for institutional reform in South Africa created something of an anti-climax when many of the initial promises were not met. Confidence in major companies has remained relatively stable since 1990, which may be indicative of the fact that expectations for the major companies have similarly remained relatively constant – i.e. a society expects more from its democratically elected government than it does from major companies operating in the area. The

fall in confidence in government in the most recent wave of the World Values Survey may be a result of a relative decline in the popularity of the ruling ANC party (general election results since the end of apartheid shown in Figure 5.7)

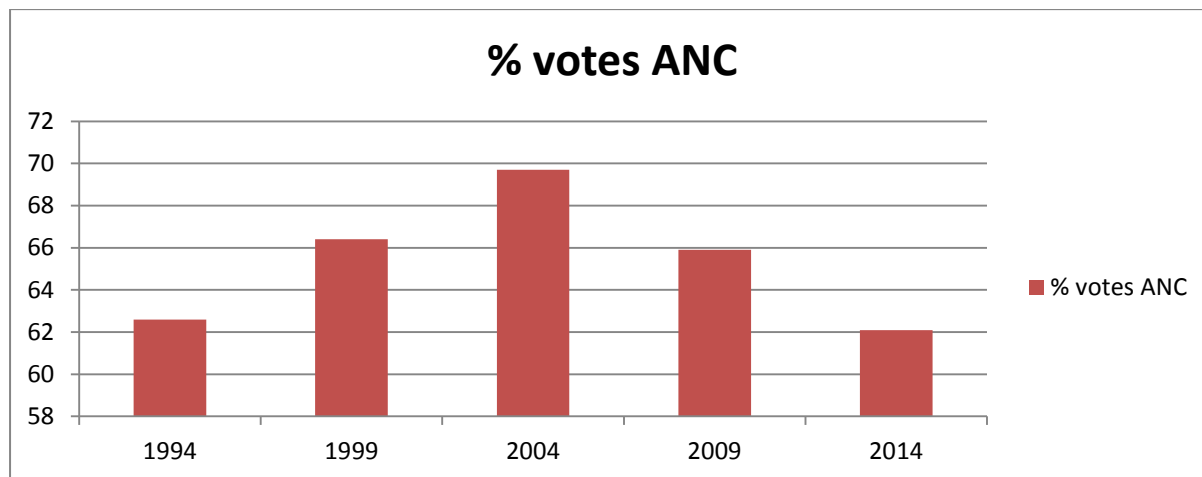


Figure 5.7 – Percentage of total votes won by the ANC in South African general elections since 1994

As mentioned above, Figure 5.6 shows that the relationship between confidence in government and confidence in major companies was reversed in 2007, when confidence in government exceeded that in major companies. Although this relationship reversed again in the most recent round, with confidence in major companies once again outstripping confidence in the government, there was a significant drop in the confidence in companies from the previous round (from 63.7% in 2001 to 48.6% in 2007). This may be indicative of an increase in the expectations that society has of major companies, meaning that companies have to work harder in order to meet these expectations. As the South African society becomes accustomed to democracy and the expectations that this brings in terms of social programmes and accountability they may also expect more from major companies, and as their expectations rise, their confidence in companies to meet these expectations may be challenged.

Therefore the drop in confidence in major companies to 48.6% in the latest WVS round may be indicative of a gap between expectations and delivery by major companies. One indication of the 'delivery' of Major Companies (relative to social expectations) may be spending on Corporate Social Investment, shown in Figures 5.1 and 5.3.

One possible reason for the increased confidence in government and decreased confidence in major companies in 2007 may be that the national HIV/AIDS response is a multi-sectorial one, meaning that corporations, governments and civil society are working together. As shown in the timeline in Figure 5.1 the initial government response to the HIV/AIDS crisis was to form the National AIDS

convention of South Africa (NACOSA), which was a conference involving government, business, civil society, health workers and other representatives (Jönsson and Jönsson 2012). There is therefore the possibility that the increase in CSI spending and private spending on healthcare (where it goes towards multi-sectoral initiatives) as shown in figure 5.3 may improve government programmes and therefore contribute to government legitimacy rather than to the legitimacy of corporations. This may be explained by the lingering mistrust that many (Hamann and Acutt 2003, Hamann and Bezuidenhout 2007, Fig 2005 and 2007) argue is felt towards corporations, which are implicated in the apartheid legacy in a way that the post-apartheid government is not. Therefore, when there is success as a result of a multi-sectoral initiative, it may be easier for the population to credit the government rather than the corporation. If this is the case, it would suggest that where CSR contributes to a coordinated response, working with the government, it does not challenge the legitimacy of the government, and may in fact contribute to greater government legitimacy. The results from the latest WVS round to some extent support this as the confidence both in companies and in the state has dropped by similar amounts; 15.1% and 19.9%. For both indicators this is the largest change in confidence from round to round, suggesting that in the two most recent rounds attitude towards government and to companies are shifting in tandem. The possibility that the legitimacy of the state and of corporations is positively linked will therefore be considered in the qualitative research of Stage Two.

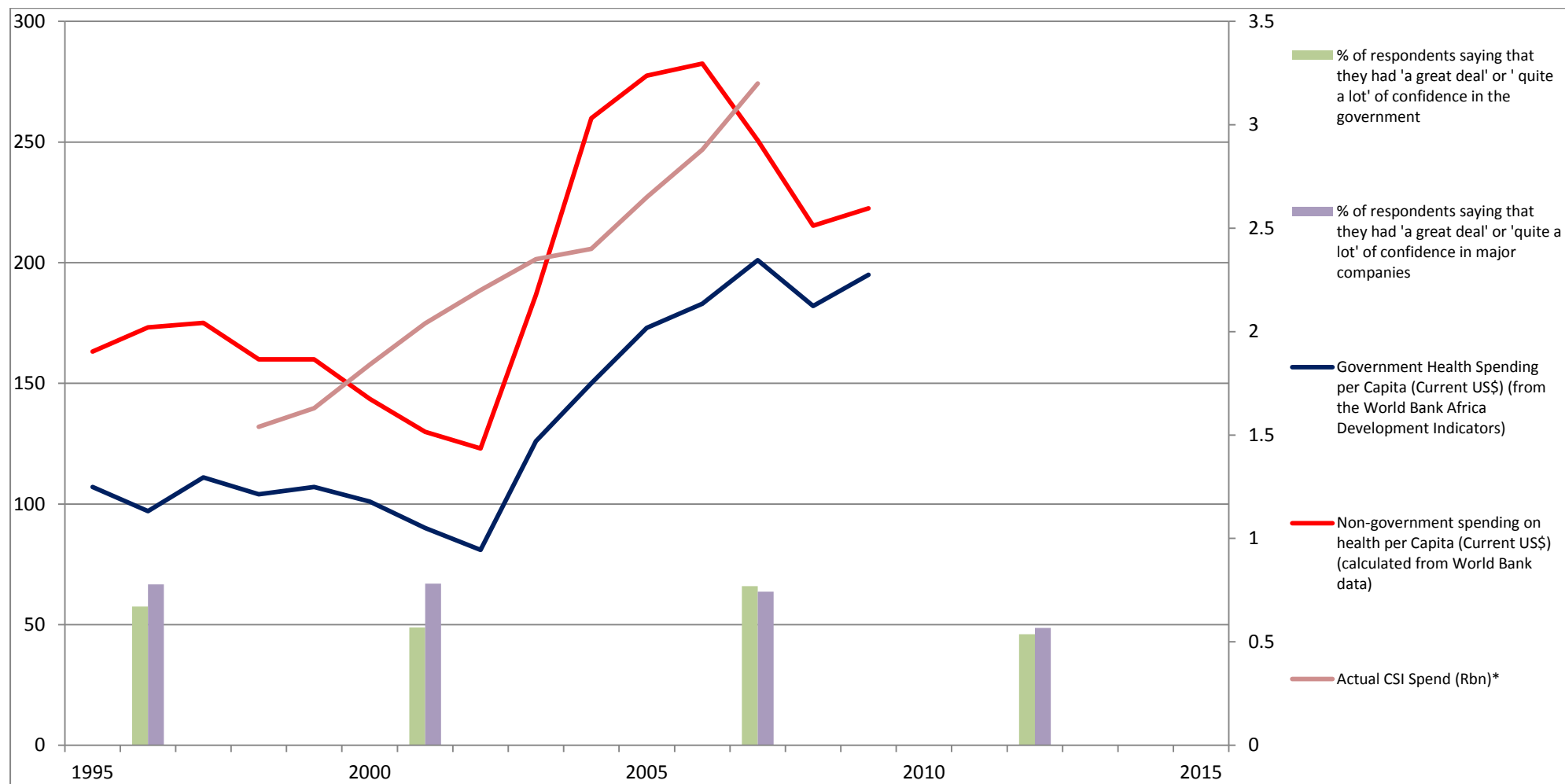


Figure 5.8 – World Values Survey responses to the question ‘how much confidence do you have in a) The Government and b) Major Companies, 1982 – 1997; World Bank data on government and non-government spending on health 1995- 2009 and CSI spending data from Trialogue.

Nonetheless, the statistical data presented in this chapter must be treated with caution given its limitations. The relationship between attitudes to the government and attitudes to major companies, and the way in which they are affected by the provision of social welfare will be investigated further in this thesis, and Research Stage Two affords us the opportunity to gain a deeper understanding of why the attitudes to government and to major companies changed as they did. The interview analysis presented in the next chapter investigates the possible trends identified in this chapter as participants were asked about their expectations of the government and of major companies with reference to their provision of social welfare. They were also asked about ways in which these expectations have or have not been met and we will aim to understand the effect this has had on their attitudes to government and to business.

Further, we have suggested that the changing relationship between confidence in government and in major companies may be due to the multi-sectorial nature of the more recent response to HIV and AIDS, meaning that where corporations and government work together it is the government which is legitimised, perhaps because of the legacy of distrust left by apartheid towards all institutions who were seen to be colluding (Hamann and Acutt 2003, Hamann and Bezuidenhout 2007, Fig 2005 and 2007). Therefore interviewees will be asked about who they believe is responsible for various treatment programmes, including their own, as well as who they think *should* be responsible for this kind of social welfare provision, and why.

As the primary focus of this research is to establish whether there is a link between social welfare provision in the form of anti-retroviral drugs and legitimacy, interviewees will be encouraged to identify legitimising criteria for both institutions and explain the impact they believe corporate provision of ARVs has had on their attitudes to the legitimacy of their government. The interview guides are included in [Appendix A and B](#).

7. Research Stage Two – Interviews and Focus Group

7.1 Introduction

As described in Chapter Four, the second research stage consisted of interviews with those involved in the delivery of anti-retroviral treatment via corporations, a traditional and faith healer, those receiving the treatment, a focus group with South African students from a range of backgrounds and two academic experts. Analysis consisted of identifying concepts which were grouped in to categories. These categories constitute the major findings of this research, and are used in Chapter Seven, along with the findings of Research Stage One, to develop a theory which addresses the research questions.

7.2 Concepts and Category Analysis

As can be seen in Figure 6.1 there was significant variation in the frequency of the identified categories, and while all of the categories are worthy of consideration as findings, the dominant categories – i.e. those which were referred to most frequently by the highest number of participants can be considered to offer the strongest evidence and will therefore be applied to the research questions outlined above.

Category	Number of Participants	Frequency	Category	Number of Participants	Frequency
Negative feelings about state treatment	17	33	The Role of the individual	3	5
Positive feelings about corporate treatment	12	29	Inequality in treatment	3	4
The role of the state	12	14	Choice	3	3
Treatment beyond employment/ employees	11	26	Negative feelings about the government	3	3
Treatment and the business case	11	19	Being treated at work (disadvantages)	2	4
Shared or blurred responsibilities of state and corporation	9	30	Public/ Private Pricing of Drugs	2	4
Positive feelings about state treatment	8	9	Values	2	4
Trust in corporations	7	16	Lack of trust in corporation	2	2
Being Treated at Work (advantages)	6	9	Accountability in CSR	1	1
Limitations of Private Health Insurance	6	7	An absence of government	1	1
The role of the corporation	4	8	Pessimism About the Future of State Treatment	1	1
Mining industry as first responder	4	4	Corporations avoiding undermining government legitimacy	1	1
Limitations of state capacity	3	5	The Role of the individual	3	5
Inequality in treatment	3	4			

Figure 6.1 All categories by number of times mentioned and number of individual participants who mentioned them

From Figure 6.1 we can see that there are six dominant categories (highlighted). They are mentioned much more than the other categories, and by more participants. Therefore I shall address each of these categories and how they relate to the research question in detail.

Category One - Negative Feelings about State Treatment

The most common category to emerge from the interviews and focus groups refers to a range of negative feelings which were expressed about the treatment provided by the state. As can be seen in Figure 6.2 this category contains three concepts. It is perhaps surprising that, given the prevalence of this category, it does not contain more, which is an indication that the responses of various participants contained within this category were relatively consistent with each other.

Before considering specific expressions of this category, it is worth commenting on the difference of this sentiment when expressed by a recipient, a provider of treatment and an academic expert; i.e. the former is likely to be commenting on their own experiences or fears whereas the providers and experts are likely to be commenting more generally. Figure 6.3 shows the breakdown for this category by role:

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Recipient of Treatment	19	8	100%
Service Provider	9	5	56%
Expert	2	1	50%
Focus Group Participant	3	3	27%

Figure 6.2 Breakdown for category 'Negative Feelings about State Treatment'

Figure 6.2 shows that 100% of those interviewed who were receiving treatment from their employer had negative feelings about receiving treatment from the state, suggesting that this is a significant concern this group of participants.

Given the focus of this research; i.e. provision from corporations, none of the recipients were receiving treatment from the state. However, they all had other sources of information to draw on such as the experience of friends and family or their own past experience.

One particular fear which emerged in the course of the interviews was that of being ridiculed or

exposed at state clinics. For example, R04 described how:

'I really do not trust them (state clinics) that much, because er a lot of the people, obviously through the media that I've er heard or listened to speaking, they are being ridiculed alright? There's an element of slight exposure you know out there you know the public...'

Another common concern was the lack medication and service provision. Two recipients told stories about people who had to queue up outside a state clinic for hours, only to be turned away because the clinic had run out of medicine. R01 described his personal experience:

'I went there (the state clinic) for the first time, I arrived quarter past eight in the morning, I left ten past five in the evening, I wasn't even helped, come back tomorrow'

One participant (R08) explained:

'My sister works at the TB (state) hospital, and she knows how it is there, it's been ordered so long ago, it's just not coming, and then those people go two, three weeks, the same hospital, but there's no medication for them'

Another (R02) identified a similar problem:

'The main complaints are the medications, erm, some of them they don't get it on time, I mean even here (the corporations' clinic) there could be delays, but I don't think as much as missing two months, or three months, and then probably the care it's just different.'

Another theme within this category was a perceived sense of indifference or lack of dedication from state hospital staff. R05 explained that they thought the state failed to treat people well because:

'Probably I think for them it's just the norm for them, they deal with a lot of people who are positive, and most of the people who use the government clinics, they come very too late.... So if then when someone comes in they are already writing them off, without even trying anything...'

R07 said something similar, stating:

'Go locally, you will find clinics without medication, you find clinics understaffed you know, not proper care... And if you are HIV positive and can still walk, you can still talk, you are still working, they will say "go to the local clinic". Now they want you to come back to them when you can no longer do anything for yourself, then they say "what is the use of giving that man a treatment, because he's going to die anyway'

More generally individual respondents expressed the belief that state hospitals were less likely to give patients the latest or best drugs (R07, R02) and less likely to do blood tests as frequently as they should (R06).

These responses build a picture of at best a state health service perceived to be inadequate, and at worst a real fear state of treatment being akin to death sentence (c.f. the view that the state will not treat a patient on the assumption that it is too late). A possible caveat is that on the whole these participants do not have direct experience of receiving treatment from the state, and therefore these views are not based on personal experience. This however does not undermine the relevance of the finding to the research questions, as the legitimacy of the state will be based on perceptions and an understanding of the way the state serves society as whole, rather than direct personal experience. Therefore the dominance of this category provides firm support for one of the premises of this research, namely that in this particular case the state is failing to meet the healthcare needs of the population. As stated in Chapter Two this can be seen to be a breach of the social contract, particularly when the healthcare in question is directly life-saving. There is consequently the risk that the breach of the social contract will lead to the diminishing legitimacy of the state. However, as shall be discussed at the end of this section, there is little evidence that this is the case.

This category was also referred to by just over half of the service providers who participated. As mentioned above, there are some differences in the way in which they discuss their negative feelings about state provision; specifically, they are less likely to be referring to personal fears or experience of treatment.

However, there were some commonalities. For example, service providers also referred to the inadequacies of state provision, although with more specificity. P05 explained that the services offered at his clinic would differ from those offered by a State clinic:

'I mean that's very sophisticated, you've got to do the bronchoscopy, you see that's not going to happen (in the) public service, the general public service'

There were also three references from service providers to the queues and lack of medication at state clinics. P03 stated:

'The challenge there is accessing treatment because there's few clinics and more people. So, you drive to Addo (a nearby state clinic) you will see the clinic on the road, there's a little clinic on the side of the road if you're driving down and there's always queue, people are standing up to the door, around the building'

A company doctor echoed this view;

'State sector is the biggest problem Sian in this country is the lack of infrastructure. It is terrible... And the waiting time, it's unbelievable. Last week there were reports in the newspaper about the hospital in Port Elizabeth, how this one guy waited three days and three nights before he got attended to'

Another (P04) stated:

'You know, in our public clinics you have to wake up about 4 o'clock in the morning to see a Doctor, one doctor per hospital, so it's very bad. And then by 12 or 1 o'clock the hospital is closed they tell me you must come back tomorrow'

In general, the concerns expressed by those involved in the provision of treatment were, perhaps unsurprisingly, related to logistical challenges such as lack of resources (P03), and a lack of infrastructure and staffing (P02). This view is supported by one Academic Expert (E01), who also mentioned the lack of availability of drugs in the state sector, as did F11 during the focus group.

Amongst these participants there is the strong sense that the government provision of treatment is simply not very good. This suggests that there is reason to be concerned about the consequence of a state's failure to provide life-saving healthcare, because they are indeed failing. The remaining five dominant categories and relationship between the categories go some way to explaining what these consequences actually are for the legitimacy of the state.

Category Two – Positive Feelings about Corporate Treatment

While Category One demonstrates a prevalent sense that state healthcare is of a poor quality, Category Two is evidence of positive feelings about corporate treatment. As shown in Appendix C, there are only two concepts within this category and the responses are relatively uniform. In many instances they also track with the criticisms of the state treatment; i.e. corporate treatment is succeeding precisely where state treatment is seen to be failing. This category was most often referenced by those receiving treatment (see Figure 6.3), which is unsurprising as it is this group of people who have direct experience of being treated by the corporation. This offers an interesting comparison with the findings of Category One, where participants were more likely to be basing their views on information from other people or the media.

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Recipient of Treatment	25	8	100%
Service Provider	4	4	40%

Figure 6.3 Breakdown for category 'Positive Feelings about Corporate Treatment'

The two concepts included in this category are 'Praise for Corporate Treatment' and 'Superior Corporate Treatment'. As shown in Appendix B these concepts are distinct in that the former refers to statements where the praise is not in comparison with another provider or experience.

The praise for corporate treatment tended to be quite specific, referring to instances of where the participant felt the company had done particularly well, for example R05 highlighted how well the company clinic had done when transferring medical records. Another, R06, complimented the clinic staff on how open and approachable they were. Although he did not relate this to state treatment, it is worth noting the contrast with the way in which people described state treatment in Category One; i.e. where they are 'ridiculed', 'exposed' and 'written off'. There were also more general compliments; R07 described his company's program as '*one of the best country-wide*' and another (ACO2) was moved to tears describing their feelings at being offered free treatment:

'...it's a buzz. I really enjoyed that, it's lovely'.

On the whole where comparisons were made, they were to state services although there were some references to private health providers. For example, R05 explained:

'... so probably if I need to compare now Anglo and the private sector I'll still go for Anglo, because I think it's generally my care, not the profitability of the company'.

The positive comparisons tracked quite closely with the criticisms of state treatment identified in category one. The most common experiences were to do with quicker/ easier access, access to better medication. For example,

R02 compared his experiences to that of his girlfriend, who was also HIV positive and receiving treatment from the state:

'My girlfriend she's using the government treatment off-site clinics and hospitals, so from my side I would say they do get treatment but... it would take longer to get the treatment outside, than inside,

if you are working you get it very easily'

R06 explained that there was an improvement in his partners' health after she stopped receiving state treatment and began receiving better treatment (with fewer side effects) from his employer:

'so since she has been treated by the Anglo clinic there were a big change I think, a very big change, because also, before she was, the medication she was using, they were so strong'

And R07 described how in the past the state would only treat you if your CD4 count was below 200 (a CD4 count below 200 is one of the definitions of AIDS), whereas the company would treat earlier;

'Like for example we are always one step ahead in whatever we are doing.... I remember when we were starting treatment at the CD4 of less than 250, the government was then, they could initiate treatment if the CD4 was less than 200'

The same participant described that due to the high quality of treatment from the company it would be impossible to tell that someone was receiving treatment;

'you know if you look at a state employee, who is on program, who is on treatment, and look at the company employee, there's two great differences... Our employees, if they come in here and say they are HIV positive you can say "no way", serious'

The service providers also gave specific examples of superior treatment, for example P05, a mining clinic Doctor explained that his clinic was better equipped than a state clinic would be:

'But you see, what they (the company) have also, because they own a hospital here, you've got the beds. You know the average government hospital they haven't'

And there were also more general comments suggesting superior treatment.

'... when private sectors, business, look after their employees, they don't do a half job, they do a full job. We go extra mile.'

Categories One and Two have established that in general participants feel that companies are providing a significantly better service in terms of healthcare provision than that state, but it is not necessarily suggested that they feel this is a problem. In order to understand what this means for the legitimacy of the State there must also be some understanding of what people feel the role of the state is, or what it actually needs to do in order to be legitimate. If a legitimising role of the state is to directly provide good healthcare, then the findings of Category One – namely that the state is

not doing this- would suggest that there will be a real problem with the State's legitimacy, and Category Two suggests that the corporation is gaining legitimacy as their provision of treatment engenders positive feelings from the recipients. If however the provision of good healthcare is not considered to be a fundamental function of government, then we must consider alternative interpretations of the data.

Category Three – The Role of the State

Category Three is crucial for addressing the research questions, as it helps to explain whether there is indeed a relationship between social welfare provision, in this case healthcare provision, and the legitimacy of the state. As discussed in Chapter Two, the social contract shows that there are certain expectations which the state must meet in order to be legitimate. If it is the case that participants feel that it is important that the state be their healthcare provider, and the state is not fulfilling this role, then the terms of the social contract are not being fulfilled and the legitimacy of the state will be undermined. Findings in this category were ambivalent, as there is some evidence that participants felt the government should have responded better, but this seemed to be based more on a technical disagreement with the government's initial scientific stance (that HIV does not cause AIDS) than with any sense that the government had failed to do its duty. Therefore it is not possible to conclude from this category that the state's role was or is to provide ARVs to the population and it is similarly not possible to conclude that there is a positive relationship between the provision of social welfare and the legitimacy of the state. We shall consider the implications of this for the research questions at the end of this section.

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Service Provider	9	8	80%
Academic Expert	1	1	50%
Recipient of Treatment	3	3	38%

Figure 6.4 Breakdown for Category 'The Role of the State'

As shown in Appendix C there are four concepts within this category, but three dominate; namely 'Lack of Government Response' (mentioned seven times), 'State responsibility to provide treatment' (mentioned twice) and 'Expectations of the State' (also mentioned twice). The failure of the government to respond is highlighted in the Literature Review in Chapter Three (Barnett and Whiteside 2002, Dickinson and Innes 2004, Ford et al. 2002, Mackintosh 2009), and the findings

from the fieldwork certainly support the narrative that the government's initial response was problematic. An academic expert and four of the service providers specifically identified Mbeki and his government as failing to provide treatment. E02 explained:

'...that was the problem was that government was doing nothing, for a long time, certainly in the 90s so, when Mbeki lost power, which is sort of the end of 98, beginning of 99, he had to leave before they could actually roll anything out, so the you know I would've understood that the corporations would have been taking the lead'

A doctor (P10) who had been working in the Department of Health during Mbeki's Presidency expressed frustration at the government's response:

'...in a way for me the lesson was politics can be powerful, more powerful than science, because here was a minister of health who is trained as a medical person, but if the President is saying "no, I don't believe HIV causes AIDS" and all of these other things, and then she promotes that, and it's because politics really trumps everything'.

This sentiment was echoed by the other practitioners who mentioned this concept, with a company doctor describing how the South African Coalition on HIV (now Health) and AIDS (SABCOHA) was formed at a time when *'very little was being done by the government'*.

The response of some participants to this failure suggests that this was a significant deviation from what people felt the state *should* have been doing. One company doctor stated:

'The majority of our population expect the state to deliver, and even business, when you get a big epidemic like HIV or TB or any other thing... Business looks on government and says 'sort that out'.... Don't let this epidemic get in the way of our business'

Crucially however, this was not his own view. His company had rolled out a huge HIV treatment and prevention program which covered all employees and their families.

Similarly, another service provider, P08, explained her view:

'I don't know how to put this one, part of me says we tend to say government must do this, government must do that, government you know we shift everything to the government. My theory, I turn it around, I say first of all, who gave me the HIV? It's not the government'

Among recipients of treatment there was a mix of optimism for the future of state healthcare (R05)

and the sense that they would actually prefer to receive treatment from the corporation because of the convenience of getting treatment at work (although these comments are categorised as 'Being Treated at Work – Advantages, as they were not often contextualised within discussions to do with the role of the state). For example, R03 described how easy it was for her to access her treatment;

'... if I need to collect I can go now, even call, say "I'm going to collect you can get my file out", I don't have a problem to say I'm collecting. Go across, see a sister, collect my meds, if they are doing bloods they do them, if they are not it is fine, I go on my way. But they (people not receiving treatment from other sources) have to take time off as in literally take the day off'

The findings in Category Three suggest an ambivalent attitude to the role of the government. While many service providers noted that the government did not respond well, suggesting that there was at least some sense that they should have responded better, there was little evidence amongst those receiving treatment that this affected their attitude to the State. Firstly, they were less likely to comment on the role of the state at all (see Figure 6.4) and secondly, when they did it was broadly positive, expressing hope for the future and a satisfaction with the treatment they were currently receiving.

As shown in Categories One and Two there is a general belief, in simplified terms, that the State does not provide good treatment, but that companies do. However, relating these findings to Research Question One, it is not at all clear that there is a positive relationship between state-provided social welfare and the legitimacy of the state. In fact, it seems that there may be a more complicated relationship between the provision of social welfare and the State than was anticipated. The responses discussed above suggest that although there is a perception that the state is not providing good treatment, there is little disillusionment with the state as an institution as a result of this. A number of participants explained that they did not think it was the state's responsibility to provide treatment (with the implication therefore that it would not be a problem that the state is not providing good treatment). Category Two (Positive Feelings about Corporate Treatment) demonstrates that treatment recipients and providers are pleased with the treatment being provided by companies. Considered in combination, Categories Two and Three suggest that there is limited dissatisfaction with the failure of government to provide treatment and general satisfaction with the treatment that is being provided (in this case by corporations), and little evidence that the provision of ARVs by companies leads to a decline in the legitimacy of the state. Therefore the relationship suggested by Research Questions One (i.e. that there is a direct positive relationship between the provision of social welfare and the legitimacy of the provider) seems unlikely, although

there is evidence of a more complicated relationship. Specifically, it is possible that as long as *someone* is providing, the service the state's legitimacy is not undermined, and may in fact be bolstered. Category Five (Treatment and the Business Case) offers an explanation as to why it is business which picks up the mantle of ARV provision, and Categories Four (Treatment Beyond Employment and Employees) and Category Six (Shared or Blurred Responsibilities of State and Corporation) offer evidence that corporations are fulfilling a large remit, offering treatment beyond their employees, to families and communities, which may offer some explanation as to why there is not a strong sense of disillusionment, or de-legitimisation, amongst the research participants.

Category Four – Treatment Beyond Employment/ Employees

Category Four covers all references to the provision of treatment to non-employees, as they relate to an employee of the company; i.e. those who have retired from the company, the family or partner of an employee, employees while they are on strike or contractors, while Category Six covers references which were contextualised within broader society.

Category Four introduces the idea that a company's remit as healthcare provider extends beyond employees. The two main findings under this category are somewhat incongruent with each other; the first is that corporate employee treatment programs are remarkably inclusive, covering as they do partners and family, as well as workers on strike. The second finding is that there is great distress attached to the idea of retirement because it means the corporate-sponsored treatment will end. Therefore the provision of treatment by corporations is inclusive, but time-limited. In addition to this, the employment status of contractors was an unexpectedly prevalent theme, referred to eight times by six different participants, suggesting that there is some concern around where the responsibility of the corporation ends, although on the whole the trend seems to be that treatment should be, and is, offered to contractors. All of these findings offer caveated support to the idea that a corporation's role as healthcare provider extends beyond its role as employer, the caveat being that this role tends to end when the term of employment ends.

The breakdown of response by role is shown in Figure 6.6:

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Recipient of Treatment	13	6	75%
Service Provider	11	4	40%
Academic Expert	1	1	50%
Focus Group Member	1	1	<1%

Figure 6.5. Breakdown for category 'Treatment Beyond Employment/ Employees'

Figure 6.5 shows this category was most commonly addressed by those receiving treatment. It was both used as a way to express concern about the future (R07, R08) and as a way of explaining the benefits of receiving treatment from the corporation (R05, R06).

R07 explained that the temporality of company treatment was a great concern for him, particularly given the inadequacies of state treatment:

'I'm worried I'm now like close to 50 years in age, I will retire soon, and I'm worried that what am I going to do if there is no cure, and then I must now not get treatment from the company, I must now go and get treatment from the very same facilities that are killing people day in, day out, you know?'

R06 was less fearful, but had nonetheless made a plan for post-employment treatment – including a contingency plan in case the state facility runs out the drugs that he needs:

'Look I'm going to pension soon, most probably when I go to pension, to save a few pence... I'll go on government, if I don't get that medication go to my private doctor let him get prescription and buy it myself, and just make sure my medication I take every day'

More common than fears about the future were references to the inclusivity of the treatment being provided by the company. Four of the treatment recipients described the way in which the corporation treated them and their partner, and related this to their child being born HIV negative. R05, for example, explained:

'... and then when I met my husband, I mean he was my boyfriend before then, so I had to tell him after a while, and then he came and tested.... and he is negative, so when it was time for us, we got married in 2008, and then after two years we wanted a baby... they (the company clinic) told us many options, so because my viral load has always been under zero or undetected, so they told us its

OK to do the normal way, and the baby's also negative, so it's fine'

R06 described how both he and his partner were HIV positive, and his partner was initially being treated by the state, but then moved to being treated by his employer:

'...there was a certain time when she was sick and you know I started to think "one day I will be sick like her", but now we take this treatment very seriously and now she's OK, and the (company) clinic they've also supplemented her medication and they've changed the medication she was getting from the government clinic. So she started to change, to be better, then we consult our clinic doctor that we were planning to have a baby, so yeah we have a four month beautiful daughter, which she's HIV negative'.

The treatment providers also made reference to the treatment of the family, with one company doctor (P07) explaining the pragmatism behind providing treatment to the employee and their partner:

'...the decision was taken... to actually offer treatment... to the life partner and employee.... (we) were not going to go ahead with and offering only to worker until we could come up with a game plan... because... it was a bit pointless offering treatment when this was by and large a sexually transmitted disease, and you didn't give it to the other partner'.

In addition to treating non-employees, providers also discussed the provision of treatment to employees who were on strike, and the importance of ensuring that healthcare was not contingent on not being on strike. I spoke to one company doctor shortly after a long-running strike had come to an end, and he explained:

'The company's policy has been that even though people are on strike, the contribution to medical aid (through which employees receive their treatment) will continue, so the company has not stopped the contribution whatsoever, so they always had access to healthcare'

Another healthcare provider (P08) explained that not only was the company committed to providing healthcare during strikes, the Unions would allow nurses to go to work during a strike:

'No no no, we don't stop that (healthcare during a strike). That is why we have to go to work all the time. When they mine is on strike if I (a patient) knock on the door, they must give me. And also they (the Unions) assent to that. They can say "stop stop stop" to everyone, but they say "sister go go go", because they can't get help and they need that help'

This is significant given the complex industrial relations in South Africa, and particularly in the mining industry, where strikes are relatively common. Therefore the way in which corporations respond is arguably a useful indicator of how they view their role as healthcare provider. The fact that companies and trade unions consider the provision of healthcare to be independent of their tumultuous relationship suggests that when it comes to health there is a general consensus that the most important thing is for there to be adequate treatment available, and less important who is providing it. This would support the evidence offered in Category Three that healthcare provision is seen to be provided by a range of sources rather than being uniquely associated with an employer, the state, or a private source, and that this situation is acceptable to those providing and receiving treatment.

The employment status of contractors and the impact of this on their eligibility for company sponsored treatment was a surprisingly dominant theme. This is possibly due to a recent shift in policy by Anglo American to offer the same treatment to contractors as employees. Many of the interviews were conducted with Anglo American employees and as the company is an industry and country leader it is likely that this decision has also influenced discussion elsewhere. It is nonetheless an interesting and important dimension to the topic as it continues the discussion of the extent of a company's remit to provide healthcare. On the whole this was mentioned in passing, either in reference to situations where the participant had themselves been a contractor (R05, F1), or in the process of discussing who gets treatment and how (R03, R07).

One company doctor (P06), who worked for a contracting firm, explained why contractors were in a precarious position for healthcare:

'(Contractors) are generally uninsured for all the reasons I have given you, they're uninsured by use, so we don't offer them a medical insurance, because of this high turnover, it's just not cost effective for the company, to have this we just cannot get even with the scales of the economy, we cannot leverage off that because of this high turnover'

A member of the focus group explained how vulnerable contract workers were in academia:

'So then, what we are seeing right is that those of us who are seen as consultant lecturers or contract workers are disadvantaged because they the employers are not progressive, in terms of updating their policies, so that we are in line with the current legislation or the regime. So there are those discrepancies as well. So, if you are not permanent then you really have it rotten, you know?'

However there were also discussions around how corporations were in fact providing equal

treatment to contract workers as to full-time employees. R07 explained that in his company contractors would approach the company for treatment:

'The contractor would say like I'm bringing fifty guys, or a hundred guys, to participate in this program because we are tired of absenteeism, we are tired of hiring new guys on a daily basis you know'

Another recipient, who is also a counsellor at the company, explained her attitude to her company's decision to offer equal treatment to contractors:

'So we have a lot of contracting people that I'm passionate about, and I want to see things happening with them. And these are the people who have the most challenges, these are the people who are having problems in terms of time off, because they need to go attend the clinic let's say to collect, your normal day, as in collecting their meds, they would need to take time off, unlike me, if I need to collect I can go now.... I don't have a problem'

The findings in Category Four suggest that companies are providing good healthcare to people beyond their employees. This is significant because Research Question Two is to do with what happens when corporations provide social welfare to a society. The dominance of this category suggests that the research participants also think this is significant, to the extent that some credit their company's healthcare provision to the HIV negative status of their baby. Therefore if it is the case that social welfare provision bestows legitimacy then this would seem to be a likely situation for such a bestowal to occur. However, a crucial aspect of this research is whether there is a transference of legitimacy from state to corporation when the corporation provides social welfare, and this does not seem to be occurring. As demonstrated by Category Three it is not at all clear that people feel the State should be providing these services, and therefore there would be no loss of legitimacy in their not doing so. Indeed, as shall be demonstrated by Category Six, there is in fact a sense that the corporation is the most suitable provider. Therefore while the company may gain legitimacy as a result of providing good treatment to its employees and beyond, this does not seem to be at the expense of the legitimacy of the state.

Category Five – Treatment and the Business Case

This was another surprisingly dominant category, although recipients were less likely to identify this category than service providers (see Figure 6.7). This is not surprising as it is not their job to consider the benefits to business of their treatment. What is striking however is that three of those consulted demonstrated a sound insight in to the reasons why their employers were supplying them with

treatment, and generally expressed approval of this approach. As shown in Appendix C there are three categories in this concept, two diametrically opposed (the business case for and the business case against offering treatment) and one tangentially related (the statement that treatment is not being offered as part of CSR program).

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Recipient of Treatment	6	3	38%
Academic Expert	1	1	50%
Service Provider	12	7	70%

Figure 6.6. Breakdown for category 'Treatment and the Business Case'

The most commonly occurring of these concepts is the Business Case for Treatment, which was mentioned by seven service providers and by three recipients of treatment. All of the service providers identified the reduction in time-off by HIV positive workers as a major motivator for their treatment program, but there was also a detailed description from P01 of why a company started the program in the early days of the epidemic:

'And people started getting sick, and dying, and there at one stage we had to train for every key job where we weren't sure if that people was going to survive, we had to train two people for key jobs, so that if somebody got sick you had a replacement'

This was echoed by the Doctor at the Chamber of Mines (P10), who explained why corporations had been such early responders:

'I think our people saw the business case long ago, which is good because I mean with the magnitude of our epidemic if people had looked at it as more "no, this is just a public..." you know, "let's do whatever little we have", I think people saw that it makes business sense to have healthy workers, and you're productivity levels are maintained, than to, I mean, people would have to be training people on a daily basis (to replace sick workers)'

These comments are supported by the literature in Chapter Three (Randall 2002, Dickinson 2004, Dickinson and Innes 2004, Hamann and Bezuidenhout 2007, Bezuidenhout et al 2007), and the evidence in Categories One to Three, showing that business responded to the epidemic when no-one else would and it is was in business' interest to do so. Therefore it is unsurprising that those

involved in the decisions to provide treatment felt there was a strong business case for doing so. What is perhaps more surprising is that some of the recipients believed that it was in business' interest to supply treatment, and crucially, did not have a problem with this. If anything, it seemed like the business case for treatment implied that business was logically the most suitable provider:

One employee (R04) who is receiving treatment from his employers stated:

'Obviously, the companies have got the responsibility to participate in helping the government (provide healthcare)... if you look at it from a workforce point of view I mean we're here, we're working.... Has got to make sure that it provides from a fitness point of view, from a wellness point of view, it provides health as well, you know to make sure that it's employees are quite competent enough to operate and be productive'.

The comment above implies that companies should provide healthcare precisely because there is a business case for them to do so. This view is supported by the comments from a service provider (P07), who explained that a strong business case was important for good service delivery:

'... so there's a really strong business argument as to why you focus on, on treatment and prevention, so which is good because then it shouldn't be hard to make these internally, like I think it can be seen a bit callously sometimes I think if you just think "oh well, companies do this because its commercially in their interest". But it's important that there is a commercial angle to almost everything because it means that the program will keep on moving on, because everybody understands the value, and it's the right thing to do, for society'

This relates to another category within this concept; 'Corporate Treatment Not CSR', which refers to two instances where two separate service providers, from two different mining companies (P07, P09), emphasised that their company's programs were not considered to be CSR as their funding came from the company's operations' budget. This was considered to be significant as it underlines the fact that they provide the treatment in order to improve operational efficiency, not as an act of altruism.

This supports the emerging evidence that not only are corporations good providers of healthcare, they may in fact be the proper providers of healthcare, and Category Five suggests that this may be by virtue of the fact that it is in their best interest to do so. This has interesting implications for democracy, as in theory it would in the government's best interest for the state to provide healthcare in order to be re-elected, but this does not seem to exist in South Africa. The ANC remains the dominant party, receiving 62% of the vote in 2014. It is therefore arguable that the

government lacks the urgency of the 'business case' for providing treatment which companies have. As one treatment recipient (R07) explained when asked how he felt about the government:

'You know, you can say whatever you want to say, but nobody is going to listen to you, because you are also a government you know? When if you talk good or bad about the government you know when if the dog is barking on the moon, the moon doesn't care'

It should be noted that there were two mentions of the business case against providing treatment. The first was offered as an explanation as to why business did not respond earlier, or better, which was that black labour was so cheap that it was not financially advantageous to offer treatment rather than simply replace the worker. While this may have been true in some instances it is not borne out by the literature or by the evidence presented here. The other mention of the business case against treatment was a reference to how expensive the program run by a mining company was expected to be, and the claim that it was run anyway. However it was later explained that this decision was taken with the expectation that drugs prices would reduce dramatically, and expectation which was borne out.

Category Five shows a broad consensus that it is correct for companies to be providing healthcare, not on moral grounds but on business grounds. This is consistent with the findings in previous categories; namely that the State is ineffective at providing treatment, the corporation is effective at providing treatment, ambivalent feelings to whether the State should be providing treatment and evidence that companies' healthcare remit extends beyond employees. It seems plausible that the corporation is actually fulfilling its expected role in this context, which may in turn mean that it is fulfilling some of the terms of its contract with society. Therefore it may be the case that there is a relationship between the provision of social welfare and the legitimacy of the provider in the case of the corporation, but not in the case of the State, as there is no strong sense that the State is in breach of its social contract by failing to provide good healthcare. Indeed, the fact that there was no sense of disillusionment with the State more generally amongst participants introduces the possibility that the legitimacy of the state may be intact, which suggests the need for further research in to a positive impact of the provision of healthcare by corporations on the legitimacy of the state.

Category Six expands on the notion in Category Four that corporations' remit to provide healthcare may extend beyond employees, but elaborates on this by including reference to the relationship between the role of the corporation and that of the state, and adds further evidence that the corporation may in fact be supporting the legitimacy of the state.

Category Six - Shared or blurred responsibilities of the state and the corporation

As can be seen in Appendix C this is a relatively complex category, containing seven concepts. These concepts were categorised together because they all refer to instances where the participant expressed the view that the role of the corporation and the role of the state in providing healthcare should be, or are, intertwined. Specifically, this took the form of examples of where the state was sharing company facilities (although there was no reference to services being shared the other way round, i.e. with companies sharing state services), corporations offering community healthcare (beyond the employees and their families), and descriptions of a 'portfolio' of healthcare, where treatment is or should be offered by both corporations and the state, depending on context. These concepts were grouped together as they all referred to ways in which the state and the corporation were either working together, or being used together, to provide a seemingly coherent healthcare service. One notable aspect of this category is that all references were positive. That is, where a participant described projects with governments the projects were described as positive developments, and where recipients talked about combining state and company healthcare this was always described as a positive experience, where they got the 'best of both worlds'. This is significant to the research questions and the focus for this piece of work focus on potential negative outcomes of corporations providing healthcare instead of the state (i.e. the diminishing of the legitimacy of the state), and yet the findings under this category do not support this. Rather, they suggest a positive outcome from the involvement of corporations with the struggling state services (as was established with the Category One, described above). The implications of this outcome in terms of attitude to the corporation and the role of the State are discussed in categories two and three, and the implications of this outcome in terms of attitudes to the state will be discussed at the end of this section.

As with 'negative feelings about state treatment' the breakdown of this category by role is important, as treatment providers are more likely to be referring to projects they have been or would like to be involved in, and treatment recipients are more likely to be referring to treatment they have been or would like to be in receipt of. This category was not referred to by the academic experts of focus group participants.

Role	Number of times mentioned	Number of Participants who Mentioned it	As a percentage of role
Service Provider	26	7	70%
Recipient of Treatment	4	2	25%

Figure 6.7 Breakdown for category 'Shared or blurred responsibilities of state and corporation'

Figure 6.7 shows that this category was much more commonly referred to by Service Providers, perhaps unsurprisingly as most of the concepts within the category refer to the running of projects or services. For example, one company doctor (P05) described a mobile clinic which was operating in community near to a mine owned by the company;

'It's actually a joint partnership with the government, Anglo gave the mobile buses to mobile clinics... from a service delivery program providing medicine and two staff member, while government is giving two staff members, as well as the chronic medication they provide, so it's actually working quite well you know delivering a service in the whole community'

Another provider of treatment (P07) described how, in an effort to improve the quality of state doctors employees were being referred to the company trained the local GPs:

'I ran my very own...intervention, at huge cost and expense. To train doctors (we) paid for it, my operating costs... So I've funded the learnership of all those GPs, and we have them on a network list, we've got a referring base of doctors because not every GP actually knows what they're doing about HIV'

The mapping of service provision is made more complex by evidence that patients in South Africa tend to combine state treatment with other sources of treatment, in the case of participants in this research with healthcare from their company. For some this was a result of the company program; as discussed above P07 ran a program which in some instances referred workers to state-employed GPs (but also provided training to these GPs). In other cases it would be because the workers were migrants who returned home to rural areas where the state services would be the only available services, as in the case of the program run by P05. In the case of the traditional healer (P04) the relationship was slightly more complicated, as the service received funding from both the government and from Anglo American, and in turn made referrals to state services.

Another example of the blurred distinction between company healthcare providers and state treatment providers is the fact that the VWSA clinic is a registered national treatment centre for TB, which means that it is a licensed public health provider, although the 'public' to which it provides healthcare is its employees. This perhaps can be best understood with reference to the discussion in Chapter Three regarding the distinction between stakeholders and citizens. The employees of VWSA are citizens of South Africa and as such are treated by a public healthcare provider, but in this instance their role as an employee of VWSA takes precedence and the provider of the healthcare is actually their employer. In this example the blurring of boundaries between state and corporation is demonstrated by the blurring of the role of citizen and employee. This therefore supports the basis of this research; i.e. the claim that there is hazy distinction between the role of the state and that of the corporation in the context of healthcare provision. However, as the responses of the participants suggest, this does not seem to have a negative impact on the way in which they view the State.

When describing the role of the VWSA clinic, the Doctor explained that as TB drugs should be taken as part of a Directly Observed Treatment Schedule (DOTS), treating people at the place of their work makes a lot of sense; they come in to the clinic every day before their shift, take their drugs in front of the nurse, then go to work. This was supported by a recipient of the DOTS treatment (R02), who explained:

'Because when you are eating your treatment outside...they don't know what you are doing, so the doctors in the clinic they can monitor you, what's going on in your life. But here inside its very strict, if you miss your treatment, they will fetch you on the line and say you must get your treatment. Yes, that's a good thing for you, for your health, for your safety, because it benefits you at the end of the day'

In addition to being good for the patient, there was also the view that the provision of healthcare by companies was good for the state. One provider (PO8) explained:

'If I had, for arguments' sake, I have five kids, and my husband, that's a family of seven, and if the company hired seven thousand people, multiply seven by seven, that's forty-nine, that means each company is looking at 49,000 people.... At the end of the day, the government will be left with a smaller group, the people who are not working... And then it will reduce the burden on the government, so the program for the government will run smooth, now that they don't have millions of people that they need to take care of, because this one is taking care of their own... because at the end of the day we are only left with a small group of people.... and they can do the follow-up, they can give a good service to those people who needs it'.

The recipients of treatment expressed support for these projects, suggesting that this was the proper role for companies. For example, R01 stated:

'...obviously the companies have got the responsibility to participate in helping the government. I mean yes we know that the government has got a major responsibility to take care of the people that lives or that are governed by them, but yes the companies share an equal responsibility to make sure that they take part as well'

These expressions of opinion provide clear evidence of the view amongst both practitioners and recipients that the companies' involvement in healthcare provision actually improves the states' ability to provide healthcare. Referring back to the assertion in Chapter Two that the provision of life saving healthcare is part of the social contract and therefore supports the legitimacy of the state, we can see that it is possible that the provision of healthcare by corporation actually increases the legitimacy of the state. If a legitimate state requires that everyone receives life-saving treatment, and the provision of this treatment by companies to employees not only ensures that their employees receive this treatment, but also improves the chances of non-employees receiving it from the state, then there is evidence that the provision of healthcare by companies increases the legitimacy of the state. In reference to Research Question Two it seems that there may actually be a positive outcome for the legitimacy of the state when some social welfare responsibilities are assumed by the corporation.

Other Categories

The six dominant categories fall together to establish a relatively coherent narrative that goes some way to addressing the research question, albeit in an unexpected way. The remaining categories are also worthy of consideration as they largely compliment this narrative. We shall consider the remaining categories in the 'top ten', as they were all mentioned by more than five participants.

Categories Seven to Ten are:

Category	Number of Participants	Frequency
C7: Positive feelings about state treatment	8	9
C8: Trust in corporations	7	16
C9: Being Treated at Work (advantages)	6	9
C10: Limitations of Private Health Insurance	6	7

Figure 6.8 Categories 7 -10 by number of times mentioned and number of individual participants who mentioned them

Taken together the first three of these create a generally positive picture. The positive feelings about state treatment expressed in Category Seven are significant because they refer to a sense that the state is getting better. For example R03 states:

'I know it's a hassle to get on the treatment, but eventually people do get on the treatment and remember earlier when you asked me about how the state is doing in terms of HIV treatment, there has been an improvement.... That much I know about the government'

Similar feelings were expressed by four other recipients and one focus group member. Two providers expressed the view that State services are improving, P07 stated *'There are some phenomenal (state) services, and I think we mustn't forget that'*.

Despite these positive feelings towards state treatment, under Category Eight, six treatment recipients stated that they trusted the corporation to be their healthcare provider, primarily in reference to their employer's respect of confidentiality. For example, R06 explained:

'So far I trust my employer. To tell you the truth they never disappoint me since I have started the treatment, compared to whatever worries in the media...And there's no bad treatment, this I know because after I discover the nurses they explain to me "this is confidential to us", but your line manager should know your status, because sometimes they have to give you certain job that like for instance they cannot, maybe out you on nightshift when you are taking this medication because sometimes they make you too ill and all this, so we have to sit down with them and explain the situation, but it's still confidential. And to tell you the truth, there's no-one from the management side who ever went to confront me and say "I know your status", and I know they know, but they treat me like nothing is happening'

Relatedly, in Category Nine, there was a sense that the practicalities of being treated at work made it a particularly desirable option; not only did it mean that your employers were able to respond to your medical needs as explained above by R06, but it was also a significant time saver. R05 explained why she preferred to be treated at work:

'Within a month I will find time to come to the clinic, it's very easy to come here, and sometimes you don't have hectic days, so it just made sense, you have a clinic at your workplace, why suffer and go and queue somewhere? So it was just convenient to have it here, and yeah it's easy and the chemist is downstairs so everything is just easy.'

Categories Eight and Nine add evidence to the findings in Categories One to Six that companies are particularly well-placed to deliver healthcare. While most of the comparisons made were between company healthcare and state healthcare there were also some comparisons made with private health insurance. The distinction between private and corporate healthcare is not clear, as company healthcare is usually provided via private health insurance, although the companies consulted for this research tended to have their own closed insurance schemes (only open to their employees). However the references included in Category Ten 'Limitations of Private Health Insurance' were all comparisons made between corporate provided HIV treatment and treatment offered from other private healthcare providers. There was some variation in the specifics of the limits being discussed, but the common element was that there were limits to what was covered, in contrast with the corporate-provided HIV treatment which was uncapped. R08 explained the challenges of being HIV positive before he found out his employer would sponsor his treatment;

'My medical aid (health insurance) went more highly, and we decided to get a special order, and my medical aid would only supply me (with ARVs) for six months... and that medication at that moment used to cost something like three and a half or three, eight, nearly four thousand rand, just for month of medication, and they said they'll help me six months, and after that you're left to cash yourself'

In summary, categories Seven to Ten elaborate on the emerging narrative of a more complex response to the research questions than anticipated. Specifically, they constitute further evidence of a general satisfaction with the way in which ARV treatment is being provided – including some limited evidence of positive feelings towards state provision. This complements the findings of Categories One to Six, which suggest that despite the limitation of state provision there is little disillusionment with the treatment being offered more generally, possibly because of the high-quality service being offered by corporations. When applied to the research questions these

findings suggest that there may be a relationship between social welfare provision and the legitimacy of the state, but not between the *state* provision of social welfare and the legitimacy of the state. As a result, the consequences of the social welfare being provided by the corporation may in fact be positive for the legitimacy of both the corporation and the state.

7.3 Research Stage Two Conclusion

The research questions which were established following the literature review in Chapters One and Two suggested a relatively direct positive relationship between the provision of social welfare and the legitimacy of the provider. The findings presented in this chapter present a more complex picture. Category One shows a general sense that the state has not responded well to the HIV epidemic, and Category Two shows that there is a corresponding sense that corporations are providing very good treatment. This is perhaps unsurprising as it is supported by the literature review (Bezuidenhout et al 2007, Mackintosh 2009). Category Three suggests that state's poor response and corporations' strong response has not led to disillusionment or dissatisfaction with the state; in fact a number of participants suggested that it was not the state's proper role to respond to HIV and AIDS. Therefore it is possible to conclude that there is not a direct, positive relationship between state-provision of ARVS and the legitimacy of the State. Categories Four and Five offer an elaboration of what the role of the corporation is perceived to be. In particular, they suggest that it is generally seen to be appropriate that corporations are providing healthcare, and in fulfilling their proper role corporations are gaining legitimacy. Category Six offers evidence that the responsibilities of business and of the state are, in this context, closely related. Specifically, corporations are seen to have a supporting role to government, and in providing treatment they are in fact improving the states' ability to respond to the needs of citizens. Therefore not only might the corporate provision of ARVs not have a delegitimizing effect on the state, it might in fact have a legitimizing effect on the state.

Applying these findings to the research questions leads to the following conclusions:

- Firstly that there *is* a positive relationship between the provision of social welfare by the corporation and the legitimacy of the corporation
- Secondly, that there is not a negative relationship between the failure to provide social welfare by the State and the legitimacy of the State
- Thirdly, that there is a positive relationship between the provision of social welfare by the corporation and the legitimacy of the state

These findings seem to relate to what the roles and responsibilities of the corporation and the state are; i.e. the terms of the social contract with the State and with the Corporation. The findings of this research indicate that the contract between the state and society does not include the requirement that the state provide life-saving treatment in all cases, although there remains the possibility that it does require that treatment be provided, which is the third finding. Evidence for this conclusion is offered by the general satisfaction recipients expressed with their treatment, suggesting that they feel that their healthcare requirements are well met, but this conclusion requires further research. There is also evidence that in this particular context the social contract between business and society does require that business provide some social welfare, as was evidenced in Categories Four and Six, which included expectations that companies' treatment would extend beyond employees and that companies have a responsibility to support government in providing healthcare. Category Five goes some way to explaining why this may be requirement of the social contract- that it makes sense for business, sense for recipients and sense for the State.

The primary research conducted for this thesis offers important insights into the relationship between the legitimacy of the state, the corporation and the provision of social welfare. Findings suggest that corporate provision of ARVS may, in certain contexts, bolster the legitimacy of the state. This finding is significant because it means that corporations may be playing a political role – perhaps unwittingly – by legitimising a political institution. Further, there is the implication that the relationship between business, the state and society may be a positive one, creating a positive-sum game which increases institutional legitimacy as well as improving the welfare of citizens and stakeholders. These and other implications will be considered in full in the conclusion.

8. Conclusion

8.1 Addressing the Literature Gap

This research was undertaken in order to address a fundamental gap which was found between the literature of political philosophy, international political economy and business. The literature reviewed in Chapter One illustrated that there are notions of power and legitimacy which can be applied to both business and the state by using the social contract. This is significant because if, as suggested by the IPE literature (Susan Strange 1995, 1996, Robert Cox 1983, 1995, Stephen Gill and David Law 1989), the corporation is taking over some important functions of the state, then there is the risk that the corporation will also be taking some of the legitimacy of the state, thereby delegitimising the state. This risk, it was argued, could best be understood by appealing to Beetham's account of legitimacy (Beetham 1991) and applying it to the concept of the social contract. Initially employed to identify and explain the requirements of a legitimate state (Hobbes 2001, Rousseau 2001, Locke 2001) it was later adopted by business ethicists to identify society's requirements for a legitimate business (Donaldson and Dunfee 1999). As argued in Chapter Two, where the social contract with the state and the social contract with business share terms, and these terms are filled by business to the exclusion of the state, some legitimacy which would otherwise have been afforded to the state may be adopted by business. This proposed relationship is illustrated below in Figure 7.1.

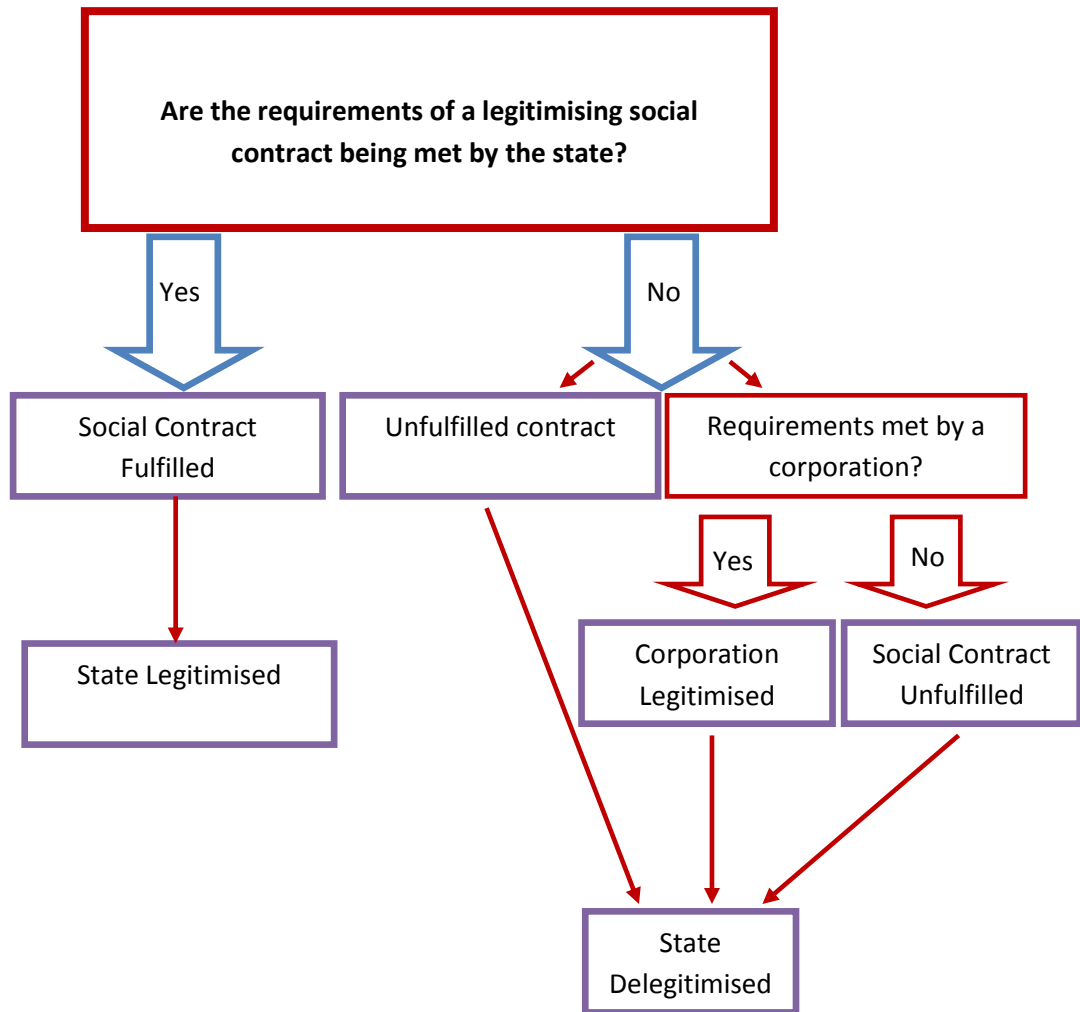


Figure7.1. The relationship between the provision of social welfare and the legitimacy of the state, as assumed at the start of this this research

Chapter Two presented literature in support of the argument that the responsibilities of business and those of the state are less than distinct. Most notably, the literature on human rights responsibilities provides a strong case that business does indeed have responsibilities to the society in which it operates, and that in instances where the state is weak or inadequate these responsibilities will exceed those required by the state - because the power of business will exceed that of the state (see Paust 2002, Cassell 1995-6, Joseph 1999 Weissbrodt 2006, Ruggie 2007). There will therefore be national contexts in which business has assumed some state-like responsibilities because it has assumed some state-like powers. Evidence is presented in Chapter Two that South Africa is one such national context, and that as a result there may be the risk of legitimacy transfer, as depicted in Figure.7.1. The literature reviewed demonstrates that the governments' initial response to the HIV crisis was poor, while that of businesses and in particular the mining industry, was relatively strong. It also demonstrates that because of South Africa's political context, where democracy is relatively new, the legitimacy of the state may be particularly vulnerable (Youde 2001), and as result the risk of legitimacy transfer may be particularly strong.

This research therefore considered the provision of ARVs by corporations in South Africa. In doing so it brings together the social contract theory of political philosophers (Hobbes 2001, Rousseau 2001, Locke 2001) with the social contract theory of business ethicists (Donaldson and Dunfee) to address the concerns raised in International Human Rights Law (Paust 2002, Cassell 1995-6, Joseph 1999 Weissbrodt 2006, Ruggie 2007) and by IPE (Susan Strange 1995, 1996, Robert Cox 1983, 1995, Stephen Gill and David Law 1989) by considering the business practice of social welfare provision by corporations. The literature review presented in chapters two and three demonstrates that these disciplines had not previously been brought together to address a significant and current social issue, such as social welfare provision by corporations.

8.2 The Findings

This research used both quantitative and qualitative methods to address research questions identified from the literature review;

1. What is the relationship between social welfare provision and the legitimacy of a) the state and b) the corporation?
2. What is the consequence when some of these social welfare responsibilities are assumed by corporations in terms of
a) The legitimacy of the corporation and;

- b) The legitimacy of the state – i.e. have corporations adopted some of the legitimacy of the state along with the functions of the state?

The statistical findings in chapter five were not unequivocal but they suggest that – despite the initial expectations in the literature review –there was not a negative relationship between CSI or private spending on health and the legitimacy of the state. As discussed in chapter five, the World Values Survey responses showed that confidence in the government was erratic, changing significantly from round to round, while confidence in companies climbed steadily – until the most recent round (2010 – 2014) when confidence in both companies and in the government dropped. World Bank data showed that although private spending on health consistently outstripped public spending, the relationship between the two was remarkably constant and data on CSI spending showed that CSI spending was very steadily increasing. However, there was no observable relationship between private spending on health and attitudes to the state, suggesting that corporate involvement in social welfare provision does not have a negative (or positive) effect on the legitimacy of the government.

The findings from research stage one were supported at research stage two and analysed in chapter six. While it was frequently acknowledged that the state was not an effective provider of HIV treatment ('negative feelings about state treatment' was the most frequently mentioned category), and a strong sense that businesses were providing treatment well ('positive feelings about corporate treatment' was the second most frequently mentioned category), there was little indication that research participants were disillusioned with the state despite the superior response of their employer to HIV. In fact, it seemed that as the recipients interviewed were receiving good treatment from their employer they were generally well-disposed to the state, with some even suggesting that the state was in fact responding well to the epidemic (although the belief that the private sector was responding better was much more common). Therefore the research conducted for this thesis suggests that there is not a negative relationship between the provision of social welfare by corporations and the legitimacy of the government, which addresses the first research question posed at the start of this thesis, which asks 'what is the relationship between social welfare provision and the legitimacy of the provider'?

An unanticipated finding, supported by both research stages, was that there is a complex relationship between the state and non-state provision of treatment for HIV – in practical terms, but also in the way that the provision was understood by recipients. The World Bank data shown in chapter five shows a surprisingly steady relationship between state and non-state spending on

health, and the responses of interviewees presented in chapter six showed that they understood there to be a complex relationship between the responsibilities of the state and corporations, in particular those responses categorised as 'Shared or blurred responsibilities of state and corporation', which was the sixth most frequently mentioned category.

These findings indicate that if there is a relationship between the provision of social welfare by corporations and the legitimacy of the state, it will not be a direct negative relationship, as supposed in the model shown in Figure 7.1, where legitimacy is 'played' for in a zero sum game, because it seems that businesses, the state, and a range of other actors, are working together, and are seen to be working together.

Further than simply suggesting that there is not a simple, negative relationship between the provision of treatment by employers and the legitimacy of the state, the interviews conducted for research stage two in fact offer evidence that corporations are actually contributing positively to the legitimacy of the state. Interviewees expressed the view that it was not necessarily the role of government to provide ARVs, as well as the views that corporations were providing very good treatment and the government was generally doing well. 'Treatment (by businesses) beyond employment/ employees' and 'treatment and business case' were the fourth and fifth most frequently mentioned categories respectively. These responses indicate that while there is awareness that good treatment is not being provided by the state, there is a sense that good treatment is nonetheless being provided, in this instance by the corporation, and that this contributes to (or at least does not undermine) positive feelings toward the state. This, as well many of the responses identified specifically in category four (treatment beyond employment/ employees) and Category Six (shared or blurred responsibilities of state and corporation) demonstrated that the roles of the state and business were far from distinct, and that in fact there was a strongly interrelated relationship between public and private actors in the delivery of ARVs to the employees and non-employees.

This is corroborated by the findings of research stage one, which suggest that the relationship between confidence in the government and confidence in companies in the two most recent rounds of the World Values Survey might be in part due to the multi-sectorial response of government and business to the HIV epidemic, a conclusion which was supported by the steady relationship between public and private spending on health, as well as the literature which showed that the government's response to the HIV/AIDS crisis was to form the National AIDS convention of South Africa (NACOSA) - a conference involving government, business, civil society, health workers and other representatives

(Jönsson and Jönsson 2012). The increase in CSI spending and private spending on healthcare may improve government programmes and therefore contribute to government legitimacy. In chapter five it was suggested that this may be explained by the lingering mistrust that many (Hamann and Acutt 2003, Hamann and Bezuidenhout 2007, Fig 2005 and 2007) argue is felt towards corporations, which are implicated in the apartheid legacy in a way that the post-apartheid government is not. Therefore when there is success as a result of a multi-sectorial initiative, it may be easier for the population to credit the government rather than the corporation.

It therefore seems reasonable to conclude that, given that legitimacy depends on perception (see Chapter Two, Beetham 1991) it is unlikely that where there are so many institutions involved in the delivery of social welfare, there will be a direct link between the social welfare and legitimacy, as suggested in Figure 7.1. Because there are so many actors, including the state and employers, but also private health insurers, trade Unions and various NGOs, involved in the decision making and service delivery it is difficult to see how individual citizens or stakeholders could directly credit one institution for the provision of their life-saving treatment. What seems to be happening is that instead they are grateful to be receiving good treatment (in this case from their employer), which contributes to a general sense that the country is being run well and a positive feeling towards the state. This is supported by the argument made by Coghill and Woodward (2006), who appeal to public choice theory to argue that governments tend to get 'good press' for engaging in public-private partnerships because the public supports the idea of new infrastructure being built without raising taxes. Therefore, according to public choice theory, which maintains that governments are in large part motivated by their desire to remain in office, governments would only engage in projects with the private sector if doing so were to improve the popularity of the government. The research in this thesis suggest that governments may still benefit from positive association with the private provision of public goods, even when this is not the result of a deliberate government strategy. There is nonetheless some reason to believe it plausible that public attitudes to the government improve with improvement in services to the public, regardless of who is providing these services. This interpretation is somewhat undermined by the latest round of the WVS, where confidence in the government dropped by almost twenty percent from the previous round. However, as explained in chapter five this may be due to disillusionment with the ruling ANC party rather than with the state as an institution. It should also be noted that in the latest WVS round confidence in companies also dropped significantly, which also suggests that attitudes to the state and to business may be linked.

Returning to the initial research questions and the relationship between the provision of social

welfare and the legitimacy of the state, as depicted in Figure 7.1, we can see no evidence for the assumed relationship where the provision of social welfare by businesses undermined the legitimacy of the State. The research presented here suggests a slightly different relationship, where the corporation is actually able to fulfil some terms of the social contract on the state's behalf. The primary finding is that the zero-sum game assumed in the model shown in Figure 7.1 does not obtain, and instead corporate activities have the capacity to positively contribute to state legitimacy. This relationship is shown below in Figure 7.3.

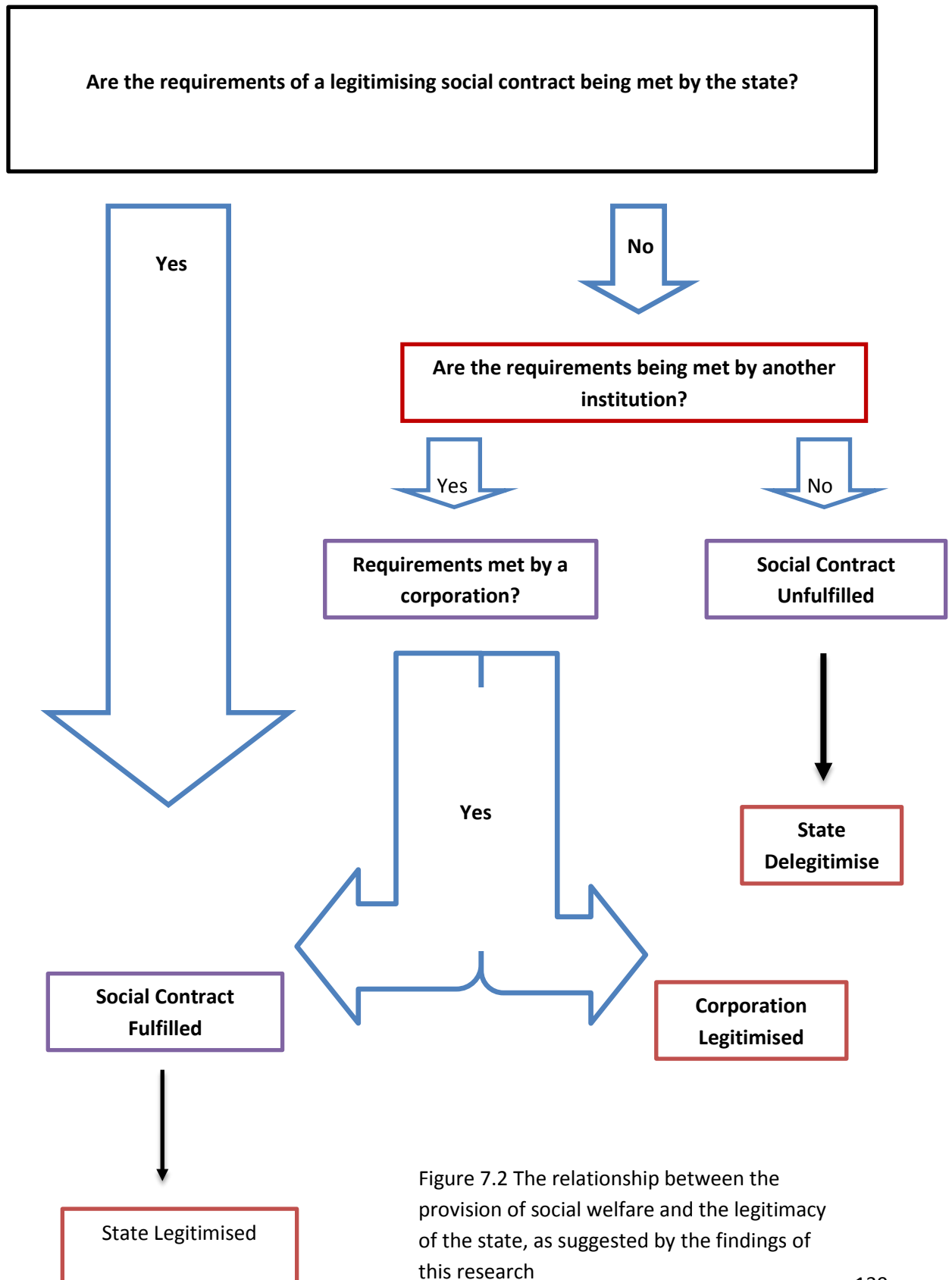


Figure 7.2 The relationship between the provision of social welfare and the legitimacy of the state, as suggested by the findings of this research

This research has therefore considered an issue fundamental to IPE (the relationship between the state and business) and international human rights law (the way in which business' should use their power in society), using the concepts first identified by political philosophers (legitimacy and the social contract), which were then adopted by business. It has done this through a case study of a business practice contextualised within a national political context. Therefore the research gap which existed between these disciplines, as identified in chapters two and three, has been addressed.

8.3 Reflection on Methodology and its Limitations

This research adopted a case study approach because it allows the researcher to observe, investigate and reflect on contemporary events without the need to control any aspect of the researched phenomenon, and crucially the case study approach did not require a separation of phenomena from context (Yin 2009). This proved to be crucial in understanding the research findings, which revealed the relationship between ARV provision and state legitimacy could only be understood with close reference to the South African context. Specifically, the incredibly pluralistic nature of the provision of treatment meant that any simplistic relationship between provision and legitimacy was not realistic. This was only revealed during the second research stage, and had a more prescriptive methodology been employed this finding may not have occurred. Therefore it has been demonstrated that the case study approach was the most appropriate methodology for this research. However, as discussed in chapter four the conditions which make South Africa such a fascinating case study may also make it unique and therefore while the findings can be used to inform future research on business, legitimacy, and the relationship between business and the state, they cannot be used to draw conclusions about these broad themes in other societies.

Both research stages face some limitations. Research stage one yielded some useful indications of the relationship between public and private spending on health, and attitudes to the government and to corporations. However, the lack of available data meant that a more rigorous analysis such as a time-series regression was not possible. This was taken in to account when designing the research for this thesis and research stage one was used to gain some initial understanding of the South African context and to offer some insight in to possible relationships. This was then built upon in the next research stage.

The qualitative research undertaken at stage two entails a number of challenges, largely to do with access. As discussed in chapter four the nature of the fieldwork was such that the sample was

relatively small and to some extent self-selecting because only treatment recipients who spoke English and were comfortable talking about their HIV status could be involved. However, within these parameters, sampling was also theory driven in order to ensure relevant participants were identified. Qualitative research was conducted with a relatively small sample size, although as discussed in chapter four, applying the law of diminishing returns this sample was adequate as a number of categories and concepts repeatedly emerged, suggesting that further research would have yielded fewer novel responses (Kvale and Brinkman 2009). Nonetheless, given the sensitivity of the topic and the limitations of time and resources, the access obtained for this research can be considered strength rather than a weakness. The findings of this research are not generalizable, but this does not undermine the initial aim of the research, which was to provide a case study of an under-researched area in order to increase understanding of the relationship between social welfare provision by corporations and the legitimacy of the state. The findings of this research will provide a sound empirical base from which to build further research, in contrast to the existing scholarship in the IPE literature and, most recently, the emerging Political CSR literature which make various assumptions about the relationship between public and private spheres, and between the legitimacy of the state and that of the corporation, without providing any empirical support for such relationships. In other words, the key value of this thesis stems from its empirical approach to fundamental under-researched questions about state and corporate legitimacy that have begun to be explored in the literature in recent decades.

8.4 Recommendations for future research

The research presented here provides a crucial starting point for further research in to the relationship between the private provision of public goods and the legitimacy of the state. Its value lies both in the way it addresses the original research questions and in the new questions which emerge from the findings.

The most fundamental question perhaps is to do with whether the provision of social welfare by corporations enhances the legitimacy of the state, and therefore the main recommendation for future research is for further consideration of this issue. This research began by reviewing literature which suggested that increased corporate power threatened the power of the state, and investigated whether increased corporate involvement in the provision of social welfare similarly threatened the legitimacy of the state. The findings from research stages one and two suggest that this does not happen, and an alternative hypothesis - that the corporate provision of public goods may, in certain circumstances, bolster the legitimacy of the state – has been suggested. If this is true then there are implications for the way in which the relationship between business and the state is

understood. Specifically, it would seem that the competition between the two institutions which is proposed by some IPE scholars (Gilpin 1987, Gill and Law 1989, Strange 1995), Legal scholars (Joseph 1999, Kinley and Tadaki 2003-4) and business scholars (Matten et al 2003, Scherer and Palazzo 2007) may not obtain. This can perhaps be best understood with reference to the concept of the social contract, which has been appealed to many times in this. The traditionally assumed division between the responsibilities of the state and the responsibilities of business would entail two separate contracts with society, although there may be some over-lapping terms (see Chapter Two). The tension therefore would be in the competition to fulfil these contractual obligations. However, the findings from this research suggest that rather than having two separate contracts, society's contract with the state also entails business, possibly because the state is seen to be responsible for business. Therefore where business meets some requirements of the social contract it is seen to be doing so on behalf of the state. This supposition however requires further investigation. In particular, research in a context other than South Africa would be of value as, in combination with the research presented here, it would allow for some degree of generalizability.

In addition to research in other contexts, the application of the social contract to business ethics could be better understood with a detailed consideration of the implications of the industry and ethical standards which were discussed in Chapter Two, where we explored Donaldson and Dunfee's assertion that terms of micro-social contracts with businesses may be identifiable through the examination of accepted legal, industry and social standards (Donaldson and Dunfee, 1999) A rigorous analysis of these requirements would therefore allow for the specification of some macro-norms governing the contract between businesses and society and would furnish a greater understanding of the relationship between business and society. Examination of legal and non-legal standards in particular may be of value, as it will allow a consideration of the role of the state (as the enforcer of legal requirements) in the social contract with businesses.

Further, in order to overcome some of the challenges discussed above and in Chapter Four, while also contributing to greater generalizability, research in to the provision of social welfare other than ARVs to HIV positive workers is recommended. This research considered the provision of ARVs because it is life-saving treatment, and therefore clearly meets a requirement of the most basic social contract with the state; i.e. to protect the life of the citizens. Therefore this was a most appropriate starting point for an under-researched area. However, in order to allow access to a wider representation of a population a less sensitive area of social welfare should be explored. There are many possibilities for future research in this area, as corporations are involved in such a range of social activities. Any aspect of healthcare provision would be pertinent, and the consideration of

public-private partnerships and shared infrastructure would be of value in addressing a fuller range of the ways in which the roles of business and the state overlap. Further value would be added to the research presented here if future research in this area took the form of comparable country-level case studies, as it would therefore allow a comparison with the research presented here.

Another crucial aspect to be further explored is the conditions under which a state cannot be legitimised by a corporations' involvement in the provision of public goods. The South African case study was chosen as an example of a democratic state working towards good governance; i.e. it is a state worthy of legitimation. It seems likely that there is a minimum level of 'pre-existing' (i.e. legitimacy which exists regardless of corporate involvement in social welfare) which must exist in order for the activity of corporations to have a further legitimising effect. It seems likely that a very different relationship will exist where corporations provide social welfare within a state that lacks fundamental legitimacy, and it is possible that in doing so a corporation would not only be unable to contribute to the legitimacy of the state, but would also be undermining its own legitimacy.

Further research is required to identify whether corporate provision of social welfare offers legitimacy to a state less worthy (or unworthy) of legitimation. A case-study in such national context would add a useful contrast to the case study presented here and would identify criteria which must be met for the findings of this research to obtain.

Finally, the impact of the legitimacy of the state on the legitimacy of the corporation should be further researched. The primary findings from this research suggest that the private provision of public goods enhances the legitimacy of the state, but it is also suggested that it will enhance the legitimacy of the corporation, and perhaps of the corporate sector as a whole. Large scale surveys such as the World Values Survey provide useful insights in to attitudes towards corporations and attitudes to the government, and should be used to investigate the relationship, and the direction of the relationship, between attitudes to corporations and attitudes to the state over a longer period of time than we were able to consider here. Longitudinal research, complemented by findings presented here, will allow for a greater understanding how the two institutions of business and the state are related and therefore provide a valuable insight into the nature of the contract or contracts between business, the state and society.

8.5 Implications for Practice

The fundamental concern of this research was the way in which businesses might impact on the ability of governments to fulfil the legitimate role of the state. Therefore the findings of this research have implications for both business and for governments.

The most significant finding is that citizens - in the South African context at least and possibly beyond - understand the roles of business and of the state to be interrelated. Many of the interviewees felt that businesses' role as a provider of social welfare was supplementary or complimentary to the role of the state, and there was a sense that these actors should all be working together to look after a community that comprises of both citizens and stakeholders. The implication for both actors is that there should be an increased awareness of this relationship. For governments and representatives of the state this may mean taking advantage of the benefits offered by a strong corporate sector and increasing state responsibility for the governance of private sector in order to maximise the boost to state legitimacy which is offered by the private provision of public goods. Specifically, this would mean implementing regulations to maximise the opportunities for business to be involved in the provision of social welfare, in order to ensure a) the role of state remains provision is strong and visible and b) that the social value offered by business is recognised. By ensuring that the role of the state is emphasised the state-legitimising effect of corporations' social activities will be maximised. By encouraging business to be involved in the provision of social welfare states will be increasing the opportunities for such legitimation.

There are implications for business too. As discussed in Chapter Three there is an understanding in the literature that the power of business entails responsibility (see, Strange 1996 and, 2002, Cassell 1995-6, Joseph 1999, Paust 2002, Weissbrodt 2006 and Ruggie). This research suggests that the activities of business do indeed impact on attitudes to the state, as corporations may be able to fulfil terms of the social contract on the behalf of the state. Therefore it is not only the corporation's power to do harm but their potential to good which should motivate the greater involvement of business in social welfare. If business has the power to legitimise states then they must consider the ancillary responsibilities, which will include some consideration of which states they lend legitimacy too, and perhaps the responsibility to refuse to add legitimacy to states which would otherwise be illegitimate, and as recommended above more research is required in order to identify what minimum conditions states must meet before receiving any added legitimation offered by businesses.

This research began with the concern that business may be de-legitimising states through their assumption of state-like responsibilities. The finding that business may in fact be legitimising states by helping states to meet their contract with society does not suggest that the IPE scholars concerned with the rise of corporate-power were wrong; if anything these concerns have become more pressing as it seems business may be able to play some sort of subtle king-maker role, and this research has shown that businesses have the potential to impact on the legitimacy of the

government, but that this potential entails great responsibility.

Therefore a key recommendation for political decision makers, business leaders, civil society and the wider public is to drive a debate on the circumstances under which it is appropriate for businesses to be involved in the provision of public goods, given the potential impacts of this on the state.

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Appendix A – Interview Guide for Treatment Recipients

(Research Stage Two)

Hello, thanks so much for agreeing to take part in this focus group. As explained in the consent form, the findings from this will be used in my Doctoral Thesis, although all responses will be anonymised. If you agree, I would like to tape record the discussion to make sure I don't miss anything. If at any point you feel uncomfortable with the discussion or the questions please do let me know. Also, feel free to contact me if you have any questions or concerns after the interview (give email address).

1). Framing

- What do they do?
- How long have they been in that role/ with that company?

2). Experience of treatment program

- When did they start?
- What prompted it?
- Did they test at work? Why?

3). Evaluation

- Good or bad experience?
- Why?
- Would they prefer treatment provision to be different? How?

4). Treatment Provision and Legitimacy

- Who should be providing treatment?
- Why?
- How do they feel about the company providing treatment?
- Why do you think the company offers treatment?
- Why don't they get treated by someone else - i.e. state or private?
- What do they think about the state?

5). Any other comments?

Appendix B – Interview Guide for Treatment Providers

(Research Stage Two)

Hello, thanks so much for agreeing to take part in this focus group. As explained in the consent form, the findings from this will be used in my Doctoral Thesis, although all responses will be anonymised. If you agree, I would like to tape record the discussion to make sure I don't miss anything. If at any point you feel uncomfortable with the discussion or the questions please do let me know. Also, feel free to contact me if you have any questions or concerns after the interview (give email address).

1). Framing

- What do they do?
- How long have they been in that role/ with that company?

2). Experience of HIV and ARV provision in South Africa

- What kind of treatment do they/ their company provide?
- How (e.g. on site, off site)?
- To whom?

3) Evaluation

- Is the program good, bad?
- Why?
- Is it the same for everybody?

4) Treatment Provision and Legitimacy

- Who should be providing treatment?
- Why?
- Why does the company provide treatment?
- Why does it provide treatment in the way that it does?
- What do they think about state provision?
- What do they think about the state?

5). Any other comments?

Appendix C – Categories and Concepts from Fieldwork

Category	Concept	Concept Note
Accountability in CSR	Accountability in CSR	Participant discusses the importance of accountability in CSR
Being treated at work (Advantages)	Importance of proximity for access	Participant expresses the view that the physical proximity of the corporate treatment facility improves access and therefore treatment
	Monitoring	Participant explained that corporate treatment is good or better because it allows for monitoring of the patient
Being treated at work (disadvantages)	Work-time Appointments	Participant discusses the impact of having medical appointments at work/ during the working day
Choice	Choice (negative)	Participant expresses the view that choice is important, but that they do not have any in choosing the source of their healthcare in a specific instance
	Choice (positive)	Participant expresses the view that they have a choice in where they receive treatment from, and that they exercise this choice.
Corporations avoiding undermining government legitimacy	Corporations avoiding undermining government legitimacy	Participant discusses how corporations avoid acting in a way that undermines government legitimacy
Inequality of Treatment	Inequality of Treatment	Participant expresses concern about the inequality of healthcare provision across the country
Lack of Trust in Corporation	Lack of trust in confidentiality of corporation	Participant discusses instances where the confidentiality of the corporate provider has been doubted or questioned
Lack of trust in Government	Lack of trust in government	Participant expresses the view that they do not trust the government to provide treatment

Limitations of private health insurance	Limitations of private health insurance	Discussion of the limits to what is offered by private health insurers/
Limitations of state capacity	Limitations of state capacity	A discussion of the limitations of state capacity. Non-pejorative.
Mining industry as first responder	Mining industry as first responder	Participant identifies the mining industry as the first responder to the HIV epidemic
Negative feelings about Government	Criticism of government	Participant criticises or expresses displeasure with government more generally
Negative feelings about state treatment	Criticism of state treatment	Participant criticises state treatment. Not a comparative statement
	Inhumane state treatment	Participant describes state treatment as 'inhumane'
	Inferior state treatment	Participant expressed the belief that state treatment is 'worse', in all cases this was in comparison to private or corporate treatment
Negative feelings about the Government	An absence of government	Participant discusses a lack of government in some developing countries
Positive feelings about corporate treatment	Praise for corporate treatment	Participant expresses the view that treatment from corporations is 'good'. Not a comparative statement.
	Superior corporate treatment	Participant expressed the belief that corporate treatment is 'better' (rather than 'good') than other providers, either explicitly related to private or state providers, or simply 'better' than unknown comparison
Positive feelings about state treatment	Praise for state treatment	Participant expresses the view that state treatment is 'good'. Not a comparative statement
Public/ Private Pricing of Drugs	Public/ Private Pricing of Drugs	Participant explains that drugs are much cheaper for state providers to buy
Shared or blurred responsibilities of state and corporation	Corporations influencing government	Description of how corporations have influence on government decisions
	Corporations offering community healthcare	Description of healthcare being offered by corporations to members of a community - not just employees and families

	Corporations Supporting State Services	The view that corporations' role involves supporting government in the provision of healthcare
	Mixing corporate with state treatment	A description of receiving both corporate and state treatment in some combination
	Multisectoral approach	A discussion of actual or ideal responses to healthcare needs involving one or more actors (i.e. state, corporations, private health providers or NGOs)
	Public/ Private partnerships	A discussion of actual or suggested specific health related projects involving corporations and the state working together
	Relationship between the responsibility of the state and the responsibility of the corporation	A discussion or comparison of how the responsibilities of the corporation and the state relate to each other
The role of the corporation	Corporate Responsibility to Provide Treatment	Participant expresses the view that it is the responsibility of the corporation to provide treatment
	Expectations of corporation	Participant expressed specific expectations of what the corporation should be doing
	Lack of corporate response	Participant discusses a lack or absence of the corporate response to HIV
The role of the individual	Individual Responsibility	The view that individuals must play a role in their treatment. Differs to 'personal responsibility' in that it is not expressed in a way that is to do specifically with the participant.
	Personal Responsibility	Participant discusses their own role in their healthcare
The role of the state	Expectations of the state	Participant expressed specific expectations of what the state should be doing
	Hope for future of state treatment	Participant expresses the view that they think state treatment will improve
	Lack of government response	Participant described a lack government response. 'Government' here used instead of 'state' as comments refer to a lack of policy or implementation. Applied to the 'role of the state' category because Government in this context would be acting (or failing to act) as an

		agent of the State.
	State responsibility to provide treatment	Participant identifies providing treatment as a specific responsibility of the state. Differs to 'expectations' as these are not future roles to be fulfilled but inherent requirements.
Treatment and the business case	Business case against treatment	Participant explains why it may not be in a company's best interest to provide treatment
	Business case for treatment	Participant gave described reasons why companies provide treatment that were non-altruistic, e.g. profit motivated, or to keep a healthy and therefore more productive workforce
	Corporate treatment not CSR	Participant explains that providing treatment is not part of a corporations' CSR
Treatment beyond employment/ employees	Contractors	Discussion of the treatment of contractors being in someway different
	Corporate Healthcare Provision During Strikes	Discussion of how/ whether corporations provide healthcare to workers when they are on strike
	Inclusivity of corporate treatment	Description of corporate treatment as being inclusive or wide ranging.
	Treatment after retirement	Participant discusses how to get treatment after retirement
	Treatment of Family	Discussion of whether corporate treatment is extended to family
Trust in corporations	Trust in confidentiality of corporation	Participant expresses the view that corporations are particularly trustworthy in keeping the confidentiality of their patients
	Trust in corporations	A description of the corporation being a reliable or trustworthy source of treatment
Values	Importance of company values	Participant expresses the view that one of the reasons the company provides treatment is because of the company 'values'