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Corporate Versus Individual Moral Responsibility

C. Soares

ABSTRACT. There is a clear tendency in contemporary political/legal thought to limit agency to individual agents, thereby denying the existence and relevance of collective moral agency in general, and corporate agency in particular. This tendency is ultimately rooted in two particular forms of individualism – methodological and fictive (abstract) – which have their source in the Enlightenment. Furthermore, the dominant notion of moral agency owes a lot to Kant whose moral/legal philosophy is grounded exclusively on abstract reason and personal autonomy, to the detriment of a due recognition of the socio-historical grounds of moral social conduct.

I shall argue that an adequate theory of responsibility is needed, which does not only take into account individual responsibility, but also collective and corporate responsibility, capable of taking into consideration society and its problems. Furthermore, corporations are consciously and carefully structured organisations with different levels of management and have clearly defined aims and objectives, a central feature upon which I shall be focussing in this paper.

KEY WORDS: agency, corporate moral agency, individual, individualist, moral responsibility, nominalists, realist

1. Introduction

Is a corporation an entity in relation to whom we can apply the ideas of moral responsibility such as agency, rationality, and autonomy? How can we apply responsibility and blame to a corporation? For the upholders of the theory of individual responsibility rooted in methodological individualism and its related metaphysics, one cannot ascribe moral responsibility to a corporation, only to “flesh-and-blood” individuals who are moral persons. However, I argue

that corporations have sufficient structural complexity to be agents whom it makes sense to call to account for their actions and them consequences of those actions. It may not be possible for corporations to be responsible in the way that individuals can be, but they can be responsible in a way appropriate to corporations.¹

2. A metaphysical issue: nominalist or realist?

J. Braithwaite and B. Fisse in an article, “The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Accountability” argues that methodological individualism, especially the kind advocated by Hayek amounts to a dualist ontology. On the one side are individuals; on the other corporations. Individuals are observable, and therefore, real; corporations are abstractions without the possibility of direct observation (Fisse and Braithwaite, 1998, p. 476).² If it is so, it is not possible to ascribe moral accountability³ to a corporation, and ideas such as agency, autonomy and rationality do not apply to a corporation. John Ladd appears to agree with this view, when he says:

We cannot and must not expect formal organizations, or their representatives acting in their official capacities, to be honest, courageous, considerate, sympathetic, or to have any kind of moral integrity. Such concepts are not in the vocabulary, so to speak, of the organizational language game (Ladd, 1970, p. 499).

In the “game” of corporations moral responsibility is a word without meaning.



The debate around this problematic have two contestants: nominalists and realists. For the former, corporations are collections of individuals, or aggregations of human beings.⁴ For the latter, a corporation has an existence and a meaning as well as a moral/legal personality of its own. Both of these views have implications for moral and legal responsibility. If we accept that corporations are merely aggregations of individuals it is difficult to ascribe moral responsibility. In this nominalist view, corporations do not exist apart from its members; any blameworthiness or responsibility can only be obtained from the culpability of an individual servant or employee. This would leave one with the problem of deciding whether the corporation should be responsible for the behaviour of all of its employees or only for some of them. On the realist view, corporations do represent something beyond individuals, which means that following from this point of view, it may be possible to find a new candidate for attributing responsibility.

3. Question of rational agency

Behind the controversy involving these two positions in metaphysics, stands another crucial but related issue, namely, about rational agency. Can we apply to a corporation, ideas such as, agency, rationality, autonomy?

Peter French first sets out the individualist answer as follows:

(a corporation) is understood to be nothing more than a contractual nexus, a collection of self-interested humans acting either as principals or agents with respect to each other. . . . The agents, agency theory assumes, only work for their principals because of what those agents expect personally to gain from the relationship. A corporation is but the financial and contractual "playing field" for a number of individual dealings, and it has no existence independent of those dealings (French, 1997, p. 148).⁵

However, French goes on to reject it, and argues that corporations are moral persons in the sense that they are entities and they are intentional actors. He sees corporations as entities

with dominant roles to play in our society. Therefore, in this view, corporations are more than mere collections of individuals, which means that they are capable of moral decisions and, hence, susceptible to moral blame (Goodpaster, 1982, pp. 132–141).

Every corporation creates a general set of policies (as well as an image) that are easily accessible to both its agents and those with whom it interacts. When an action performed by someone in the employ of a corporation is an implementation of its corporate policy, then it is proper to describe the act as done for corporate reasons or for corporate purposes to advance corporate plans, and so as an intentional action of the corporation (French, 1995, p. 27).⁶

From this point of view, one can say that corporation's social interactions with others fall, at least, into four categories:

1. Interchanges between individual agents.
2. Corporations interacting with individual agents.
3. Corporations interacting with other corporations.
4. Corporations interacting with society.

As an example of the first category: Mr. Ruben, one of the managers of Body Shop and I meeting on a street of Manchester; the second: the Body Shop billing me for a kind of skin product and responding to my objections; the third: the Body Shop arranging to bank with the Co-op Bank instead of Barclays Bank; the fourth: the Body Shop creating a school for handicap children in Bangladesh.

Corporations in their relations and actions, as is obvious, have far more power and control over many others than individual agents because they, by and large, structurally constitute the situations in which individual agents have to operate and make choices. For instance, in a recent article in *The Guardian*, John Pilger wrote about the inhuman conditions and low wages in which people are forced to work and live, to be able to survive under the *dictum* of globalisation where big companies such as Gap or Nike exercise their power, depriving the workers of a free and dignified life.⁷

According to French all corporations have internal decision structures (CID) that supply the basis for attributing moral agency to them. He identifies two elements in these structures, the first is related to “an organizational flow chart” and the second involves rules that enable one to go between individual and corporate decisions (1997). The CID structures have two kinds of rules: organisational and policy rules. He compares the former to the descriptive rules of sport events, like the rules of a basketball game. These organisational rules in corporations distinguish between and clarify the role of each member, “delineate stations and managerial levels, and plot the lines of authority, subordination, and dependence among and between such stations and the organization” (French, 1996, p. 41). The policy rules are what he calls, “recognition” rules, because they provide “affirmative grounds for describing a decision or an act as having been made or performed for corporate reasons in the structured way” (French, 1997, p. 150).

We can say with T. Brytting, that “together they form the ‘letter’ and the ‘spirit’ of the company” (2000, p. 89). It is even possible for the CID structure to be so tightly construed that individual responsibility and freedom no longer makes sense. However, French argues that, in practice, it makes sense to talk about actions, which are informed by the corporation’s plans, aims and interests beyond those of the individuals who work inside the company. Under those circumstances the corporation is a moral agent in its own right with a strong sense of its corporate culture. The corporation identity depends upon their ability to consolidate their culture in terms of articulating a domain of shared meaning. As Keith Pheby argues, “at the heart of this structural closure lie processes of communication, operating internally by defining a common conceptual framework for the realisation of common desires, and operating externally by a process of reality construction which determines the organisation’s mode of interaction with other systems within its domain” (1997, p. 78).

4. Corporate moral agency

Corporate moral agency enables the possibility of describing an event in two ways: First, the intentional action of the individuals, and second, the intentional action of the corporation for which the individuals work. This means that intentionality is not only confined to the level of the individual. Take a sentence like the following which one might read in the daily papers: “Corporation X today signed an agreement with Government Y to lower the price of certain drugs it sells to Y”. The corporation in question has certain rational goals in mind – for instance, Government Y has already started legal proceedings against it for over-pricing, that Y has threatened to take its custom to a rival, etc. However, the corporation can only achieve its goals and interests through the actions of certain designated “flesh-and-blood” individuals. In the example cited, its CEO, a certain Mr A would have put his signature to the same document as the Minister for Health of Y, a certain Mr B. Mr A, not in his capacity as CEO of Y, but as a mere shareholder of Y, might be very unhappy about the corporation’s action, as he personally could stand to lose out on his dividends as he has shares in the corporation. The corporation’s interests and goals could diverge from those of the individual within the corporation in any one specific context. All this means is that corporations have rational reasons for behaving in certain ways because they have interests in pursuing their established corporate goals despite the temporary, conflicting self-interests of managers and directors.

In this non-mysterious sense, we can say that corporations are intentional actors, capable of being motivated to respond not only to internal challenges but also to external ones. As intentional actors, why then should they not have responsibilities? But responsibilities to whom? Commonly, corporations are said to be responsible to its shareholders; by this is meant that should shareholders be displeased with their annual dividends, they could sell off their shares, or try to get rid of the CEO, etc. These actions appear to cause no difficulty. No-body seems to find it unintelligible to hold the “fat cat”

responsible for the slump in the corporation's fortune; some people find it, however, morally offensive why "fat cats" in our present culture are seemingly "rewarded" for their incompetence. But the latter difficulty is only morally bizarre; from the theoretical point of view of holding someone responsible for the down-turn in the corporation's fortune, every one seems to be clear that it is the CEO and/or other top managers, rather than the porter at the front door or no-one who could be said to be responsible.

However, difficulties of an insuperable theoretical kind are alleged to arise the moment one claims that corporations ought to be responsible to a wider set of people, other than their shareholders, such as their customers, citizens at large who have to suffer the effects of their actions (like polluting air, water, soil). Surely, this situation is analogous to holding the "fat cat" responsible for incompetence by the morally bizarre act of "rewarding" him/her for incompetence, as in reality, he/she is being held responsible for the incompetence. Sacking (or in polite speech, "stepping down because of pressure") constitutes blame, even if the blame is sweetened by a fat cheque.

Furthermore, these individuals are not ordinary intentional actors, so to speak, but owing firstly, to their power, their actions have impact upon a large number of people. They also have extensive resources enabling them to formulate and articulate certain policies and strategies, for carrying them out, as well as to monitor their outcome.⁸

I argue that, admitting the above, then corporations may even be held to a more stringent level of responsibility than a mere "flesh-and-blood" private citizen, as its field of action is more embracing than that of individual agents. This is the reason why French says:

Business firms in this century occupy social positions roughly equivalent to the prominent posts held in other eras by the church, the nobility, the army, even the feudal lords. They dominate the lives of all but a few members of the community. They control the financial and economic aspects of society and are possessed of monetary power far greater than the world's governments. . . . Corporations today enjoy the prestige associated

with creating and maintaining the scale or worth against which the majority of adults in Western societies judge their own value. . . . Corporations are far from being social fictions (French, 1996, p. ix).⁹

5. Individualist critique

Nonetheless, this view has been subject to critical scrutiny, namely by the individualist side.¹⁰ I cannot discuss in detail all the different points of each critique, but it is important to underline that these positions consider French's view to be flawed, because he compares the corporation's capability of decision-making with that of the human mind, implying that corporate intentionality could be compared to human intentionality. But his critics may have missed the point, namely if corporations can act rationally (and autonomously), it would follow that they can be said to be moral agents.¹¹

But how can this view be sustained against the central charge mounted by the individualist critique? Let us begin by setting out in brief an analysis of what the individual theory of responsibility could mean by the notion of human agency. An individual is said to be an effective agent if at least the following conditions obtain:¹²

1. He/she has desires and emotions.
2. He/she has knowledge of some (though necessarily not all) of the causal connections in the world in which he/she operates.
3. He/she can foresee (to some extent) the consequences of his/her action.
4. He/she is capable of formulating intentions and plans based on 1, 2, 3.

The notion of (moral) responsibility may at the same time be attributed only to those human beings who satisfy the above. That is why, not all human beings are moral agents¹³ – the very young, for instance, do not qualify. Babies have desires, of course, but these are very limited ones; their knowledge of causal connections is again at best absolutely minimal, although not totally absent. In pre-modern times, animals were credited with responsibility but since modernity, they have not been so charged on the grounds

that, as they lack language, they are incapable of being aware (in the way a normal human adult is) of the consequences of their behaviour and, therefore, of the harm they could cause to others.

Next, let us apply the criteria listed above to a corporation. Surely, it is unproblematic to admit that a corporation has desires, purposes and goals (the key ones being to maximise profits and growth), it can and must articulate and formulate intentions and plans, short- and long-term (including its so-called “mission statement”), it is capable of apprising itself of causal connections in the domain in which it operates, it can foresee and monitor (even to a greater extent, as we have seen, than any ordinary intentional actor) the consequences of its actions (although it may choose to turn a blind eye to some of these, and that is common enough). After all, a corporation is not like a loose cannon, a somnambulist, a baby, a mentally retarded or a mad person. As we have already seen, it is essentially a clearly defined organisation with stated aims and objectives, with worked out strategies for achieving them, with resources to monitor closely the impact of its strategies on its customers, its competitors, on governments, etc., and to take steps to revise its strategies in the light of new developments, social, political as well as scientific and technological (Donaldson, 1982). In the free market, no corporation can be expected to survive unless it adapts itself intelligently to the changing world in which it operates. Could such an organisation not be said to be rational and autonomous (its aims and objectives are, after all, self-chosen and defined)?

6. Conclusion

I argue that the opponents of the notion of corporate responsibility, in adhering to individualism, have also failed to appreciate two things:

- (a) That the notion of a corporation cannot be reduced to the mere behaviour of individuals (who are also abstract in character). Under methodological individualism, the corporation is simply an aggregate of such individuals. However, under the alterna-

tive analysis proposed, the corporation refers to an entity over and above a mere aggregation of abstract/fictive individuals. As we have also seen, the corporation has a tightly focused structure and organisation (CID) within which policies and strategies are articulated, formulated, discussed, discarded or endorsed and then implemented. Obviously, only “flesh-and-blood” individuals can articulate, formulate, debate, discuss, reject/endorse goals and the means for executing them. But these “flesh-and-blood” individuals are not fictive or abstract individuals – they are people acting within a certain social context, fulfilling certain functions, carrying out certain roles.

- (b) Under methodological individualism, social phenomena are explained as the accumulation of the unintended consequences of individual actions, and therefore, no one single individual agent could be blamed for the collective bad that might ensue. Again, the theory of individual responsibility implies a simple-minded view of causation, namely, that the only important type of action is the kind where one individual can single-handedly and, either deliberately or recklessly, bring about the harmful bad consequence, such as when someone, who had lost his temper, deliberately drove the car over his neighbour and killed her, or took the risk of killing her by driving at her, but hoping that she would leap out of his way in time. But not all actions fall under this paradigm. *Ex hypothesi*, collective bads do not fall under it. Corporation A, which tips its toxic waste of type A into the stream, may not poison the stream when such an action occurs in isolation from other like actions, but if Corporation B also tips its toxic waste of type B into the stream, and if Corporation C similarly tips its toxic waste of type C into the stream, etc., the stream would be poisoned. Suppose that one were to pose the simple-minded causal question in turn regarding each of the corporations involved: does the tipping of its toxic waste

cause the stream to be poisoned? The answer, each time, would be no. It is, after all, the accumulation of the unintended consequences of their individual acts of tipping their respective toxic waste, which brought about the stream being poisoned. (Furthermore, the various different types of toxic waste may synergistically cause poisoning of the stream on a greater scale than it would have been the case if they had all tipped out the same type of waste.) So adhering to the theory of individual responsibility would have let all the corporations involved off the hook. But corporations, as we have seen, have large resources and given access to these, the legal fiction of the “reasonable corporation” ought to apply. This is to say, that each of them ought to have foreseen that the tipping into the stream of its own toxic waste could cumulatively lead to the stream being poisoned, and therefore, could reasonably be held culpable if people died from drinking the water drawn from the poisoned stream.

This paper has attempted to show that the theory of individual responsibility, in spite of its strengths, is necessarily inadequate outside its limited domain of applicability. From its perspective, the notion of corporate responsibility is unintelligible. As a result, societies and legal systems – such as the one in England and Wales – in which the theory holds sway, have great difficulties, both in theory and in practice, in understanding and accepting the notion of corporate responsibility in moral as well as legal contexts.

Notes

¹ See, Michael Novak, *The Fire of Invention: Civil Society and the Future of the Corporation*, Rowman & Littlefield Publishers, Inc, New York, 1997.

² Steven Lukes comments that a corporation is eminently observable – Steven Lukes, *Individualism*, pp. 111–112.

³ Under English criminal law (at least in recent years), only one corporation was ever convicted of manslaughter. According to Clarkson there are two

main reasons for this. The first is related to the media, the state and even to the large corporations that shape and influence attitudes. When persons are killed or injured at work it is typical to describe this as “accidents”. The Health and Safety at Work Act 1974 is an attempt to increase safety and prevent “accidents” at work. This is in sharp contrast to the offences that individuals commit outside their workplaces involving harm. These differences of structures contribute to the general sense that death and injuries at work are not crime. See “Boss is Jailed over Canoe Deaths”, *The Independent*, Friday 9 December 1994, pp. 1 and 6. “Peter Kite 45, former managing director of the owners of the St Albans centre in Lyme Regis, was sentenced to three year of imprisonment.” In this case it was not very difficult to find someone to blame due to the size of the company. See also, Clarkson, C. M. V, “Corporate Culpability”, *Web Journal of Current Legal Issues*, 1982, pp. 1–16.

⁴ We can say that the nominalists contestants are embedded in a Hobbesian way of thinking. It is an individualist thought which is instrumental and can be articulated around three main strands:

1. the notion of the fictive or abstract individual;
2. the methodological technique of understanding the whole (society) in terms of its parts (the individuals);
3. the notion of social contract.

The first two may both be said to be reductive in character. The fiction of the abstract individual is an obvious refusal to acknowledge the role of society in which the individuals are necessarily embedded, by ignoring the historical and social contexts within which individuals are born, grow up, mature and die.

Regarding the second, according to the metaphysics of individualism, society as an entity is not real, but a mere aggregation of its components, the abstract individuals, the same for the corporations. On this view, society is but a “logical construction” like the logical construct, “the average couple”. To say that “the average couple in the U.K. has 1.97 children” (P) is not to say that “the average couple” is a “flesh-and-blood” individual like Mr Jones, or Mrs Jones; nor is it to say that there are 1.97 children in the same way that Mrs Jones has 2 children or Mrs Brown has 5. Logically, (P) is just a short-hand way of referring to a series of propositions about non-mysterious flesh-and-blood couples and their children as well as to the arithmetical outcome of dividing the number of children by the number of couples in the U.K. In other words, the ontological “furniture” in the world does not include “the average couple” or

"1.97 children", but only Mr and Mrs A . . . , Mr and Mrs X and their children, Mary, Sara etc. Similarly, "corporations" are not part of the ontological "furniture" of this reductive universe; only (abstract/fictive) individuals are members.

⁵ Peter French, "Corporate moral agency", in *Blackwell Encyclopedic Dictionary of Business Ethics*, ed. by Patricia Werhane and R. Edward Freeman, Blackwell, London, vol. XI, 1997, pp. 148–151. See also, P. French, *Collective and Corporate Responsibility*, and *Corporate Ethics*, Harcourt Brace College Publishers, London, 1996.

⁶ P. French, *Corporate Ethics*, Harcourt Brace College Publishers, London, 1995, p. 27. This view is also shared by M. MacDonald: "Not only does the organization have all the capacities that are taken to ground autonomy – viz., capacities for intelligent agency – but it also has them to a degree no human can. Thus, for example, a large corporation has available and can make use of far more information than one individual can. Moreover, the corporation is, in principle, 'immortal' and so better able to bear responsibility for its deed than humans, whose sin dies with them. 'The Personless Paradigm', *University of Toronto Law Journal* 37, 1987, pp. 219–220." Accordingly to this view, a corporation has moral responsibility for all its actions during its life. Recently IBM faces "a multi-billion dollar lawsuit over the allegations that the Nazis used the company's data processing technology in the mass murder of Jews". See "Holocaust survivors sue IBM over Nazi 'alliance'", *The Independent*, Monday, 12 February 2001.

⁷ John Pilger, "Spoils of a Massacre", *The Guardian*, July 14, 2001, pp. 18–29.

⁸ The really large transnational corporations have assets and turnovers which far exceed the GDP (gross domestic product) of many nation states in the world today.

⁹ P. French, *Collective and Corporate Responsibility*, p. ix. In a similar vein, Anita Roddick says, "In terms of power and influence, you can forget the church, forget politics. There is no more powerful institution in society than business – I believe it is now more important than ever before for business to assume a moral leadership. The business of business should not be about money, it should be about responsibility. It should be about public good, not private greed." *Business as Unusual*, Harper Collins Publishers, London, 2000, p. 3.

¹⁰ The main critics of French's position are Manuel Velasquez, Thomas Donaldson, J. R. Danley and Patricia Werhane. They deny that corporations are moral persons, as only individuals are moral persons.

¹¹ M. Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do", *Business and Professional Ethics Journal* 2, 1983, pp. 1–18. M. Friedman, "The Social Responsibility of Business is to Increase its Profits", *New York Times Magazine*, Sept. 13, 1970. See also P. Werhane, *Persons, Rights & Corporations*, Prentice-Hall, Inc. Englewood Cliffs, New York, 1985. She develops a moderate position on corporate moral agency, based on the notion of "secondary actions." "Because corporate 'actions' are what I have called secondary actions, a corporation is not an independent moral agent. Unlike individual actions, which are presumed to be free choices of autonomous agents, corporate 'action' is an outcome of groups of choices of constituents and agents acting on behalf of the corporate." p. 57. Such a position implies ontological individualism. We can see a detailed discussion about all these positions in the work of John R. Danley, "Corporate moral agency", *A Companion to Business Ethics*, ed. by Robert E. Frederick, Blackwell Publishers, London, 1999.

¹² See, Keekok Lee, *Social Philosophy and Ecological Scarcity*, London, Routledge, 1989.

¹³ However, the proposition that "All moral agents are human beings" is true.

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