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FEGReG
Financial Ethics and Governance
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**The moral status of the corporation, collective responsibility,
and the distribution of blame**

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This is a draft of a chapter to be published in a book being edited by Francesco Perrini and Antonio Tencati of Bocconi University, Milan, Italy. The book will be published by Edward Elgar.

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Introduction

The moral status of the corporation is a foundational issue in business ethics. A long-running debate has considered whether a corporation can be considered a moral agent in its own right, akin to an individual human agent. As Moore (1999, p. 330) comments, the views are ‘essentially twofold and diametrically opposed’. Some think corporations¹ are moral agents, while others disagree.

As befits such a long-running and important debate,² several review articles have been produced (e.g. Danley, 1999), in addition to the literature reviews that precede any attempts at novel analysis. Moore’s (1999) review covers most, if not all, of the many significant papers on this topic over the years,³ considering the principal arguments on both sides of the debate. As he notes, the debate on the moral status of the corporation can be seen as a particular case regarding collective responsibility – an issue that has been extensively discussed in the general philosophy literature, where concerns have included attribution of blame to particular races or nation states.

In this chapter, rather than revisiting the business ethics literature and reviewing it anew, I take a step back and undertake a review of the philosophical literature on collective responsibility. This is not to imply that previous business ethicists have not also referred to the philosophical literature. However, in reviewing that literature I wish to bring out a particular issue that I regard as having been ignored or under-played by previous authors – namely, the distribution of blame. I

¹ They are generally referring to *business* corporations.

² Important to academics, that is; it is doubtful whether the debate is of much perceived significance or interest to managers of those corporations.

³ An important exception is the later paper by Velasquez (2003).

pay particular attention to the work of Sverdlik (1987) who, like most other protagonists in the debate within the philosophical literature, is concerned with the general nature of collective responsibility rather than its particular application in relation to business corporations.

The term ‘collective responsibility’ clearly involves two elements. As in the literature on collective responsibility, the element on which I wish to focus in this paper is ‘collective’. However, I will first make a few points about ‘responsibility’, with the principal aim not of finding some essentialist definition but of ensuring that it is sufficiently clear for the purposes of this chapter how I am using the term.⁴ Given the tenor of the debate on corporations, I am particularly interested in blame and its relationship to responsibility and obligation.

On responsibility and blame

‘Responsibility’ and ‘obligation’ are closely related terms in everyday discourse. Thus, for example, if I fail in my legal obligation to drive with due care and attention, I am liable to be held legally responsible for the consequences. This reflects the etymological roots of the word; Lucas (1993) notes the origins of the word ‘responsibility’ in the Latin *respondeo*, I answer,⁵ and an important element in the meaning of the term is the idea of being answerable for one’s actions. In everyday speech, we are accustomed to speaking of being responsible for something before the event (often some form of obligation), but such usage nevertheless carries with it an implication of being answerable or accountable after the event. The philosophical literature seems to concentrate on this *ex post* aspect of responsibility. Thus,

⁴ Even then, I am less interested in providing a rigorous definition than in providing a broad indication sufficient to get the argument moving. I hope that readers will be able to regard ‘responsibility’, ‘blame’ and related terms as placeholders into which they can insert their own definitions without doing damage to the argument.

⁵ See also Lewis (1948).

Eshleman (2004), for example, summarizes the notion of being morally responsible for something, such as an action, as being ‘worthy of a particular kind of reaction – praise, blame, or something akin to these – for having performed it’. I suggest that both academic literature (e.g. textbooks and case studies) and popular discourse (e.g. newspapers) tend to focus on *ex post* blame when it comes to the putative responsibilities of business corporations – especially in the case of ‘scandals’, which do so much to raise the profile of business ethics as an issue (Cowton, 2008).

An ‘action’ considered blameworthy may include the failure to do something that was demanded of me, an obligation (Dent, 2005). Whether I should be praised for something I was obliged to do is a moot point, but in the literature on collective responsibility, the focus is very much on blaming (Smiley, 2005); and Sverdlik (1987), whose paper I examine in greater depth below, for the purposes of his analysis treats responsibility as meaning, roughly, blameworthiness.

Thus, although the work of authors such as H.L.A. Hart (see Finnis, 2005) demonstrates that responsibility is a rich and complex concept, in the literature on collective responsibility it can be characterized as being concerned with blameworthiness for failure to meet some obligation, where that obligation is here taken to be a moral one in some sense.⁶ And it is the ‘collective’ aspect of ‘collective responsibility’ that attracts the most debate. In the following section, I review the principal strands of the debate in the philosophical literature.

⁶ There is an interesting exchange in which Downie (1969) accuses Cooper (1968) of having failed to identify *moral* responsibility in his tennis club example (an example that I find unpersuasive in any case), to which Cooper (1969) responds that his papers had the ‘escape clause’ of stating ‘moral or social responsibility’. Downie’s error, while perhaps suggesting a lack of close reading, is indicative of the general assumption that collective responsibility means collective *moral* responsibility.

On ‘collective’ responsibility

The construal of groups as moral agents in their own right is controversial; as Sverdlik (1987, p.61) comments, talk of collective responsibility is ‘apt to excite deeply-conflicting sentiments’. On the one hand, it engenders hostility because of association with thinking, such as heredity guilt and racism, which treats an individual on the basis of their membership of some group rather than on the basis of what they themselves have done. On the other hand, ‘it is said that the notion of individual responsibility is to some degree outmoded in an era when much human activity is organized collectively and cooperatively’ (Sverdlik, 1987, p.61), for example nation-states declaring and conducting war – to which, one might add, corporations playing a central role in modern economies and societies. One fear is that the ability to attribute moral blame in relation to some of the most morally-troubling events might be lost.⁷

Some of those who are in favour of attributing moral blame to ‘collectives’, as moral agents in their own right, point out that this is the way we talk – a common sense move, reflecting ordinary language. Others, cognisant of how language can mislead, do not necessarily rely on this but nevertheless point to the fact that collectives can and do perform actions (Copp, 1979).

Not surprisingly, such a view has come under attack. Normative individualists argue that the notion of collective responsibility is unfair and violates principles of individual responsibility. They see undesirable echoes of ‘taint’ (see Appiah, 1986-87) or ‘tribalism’ (see McGary, 1986) when collective responsibility is being advocated. At a basic level, to blame an individual for an action they have not done is unfair. I work for a particular university; indeed, I hold a senior position within it. Yet to hold me responsible for any and all morally blameworthy actions carried out in

⁷ See French’s (1972) edited volume on the My Lai massacre, for example.

the name of the University of Huddersfield would, I suggest, be unfair.⁸ I might have no knowledge of all or some of those actions; nor might I be expected to have knowledge of such actions. I might disapprove of those actions if and when they come to my attention. Or I might have disagreed with those actions when decided upon and I might even have attempted, unsuccessfully, to prevent their occurrence. Alternatively, it might be the case that I am to blame, wholly or partially, for an action perceived by, say, an external critic as morally blameworthy on the part of the University; but the final apportionment of blame surely requires a more careful and extended analysis of what happened, who did (or did not do) what, and my own position, actions and obligations in relation to what happened. In other words, while “the University” might be a reasonable starting point for identifying blame, in either case (whether it is in some sense my fault or not) further analysis of the actions and obligations of individuals needs to occur before blame can be said to finally come to rest somewhere. And to blame me, or any other individual, with any degree of finality, before such work has been undertaken is, I would suggest, unfair. To do otherwise is, in effect, to impose guilt merely by association. Normative individualism therefore seems to be the appropriate stance to take. This is not to say that all members of a group cannot be blameworthy, but it is what they have or have not done in relation to their responsibilities that matters, not their membership of the group as such.

Methodological individualists, on the other hand, take a slightly different route, in arguing that it is *not possible* to associate moral agency with groups as distinct from individual members. Milton Friedman (1970) famously takes this position, when he states that corporations cannot have responsibilities; only

⁸ I should note, of course, that I am not suggesting that the University of Huddersfield does engage in morally blameworthy actions. This is merely a thought experiment.

individuals, or individual executives, can. An early example in the collective responsibility literature is Lewis (1948), who – apparently motivated by concerns over ‘war guilt’ – begins by asserting that responsibility belongs essentially to the individual, though he does surprisingly little in the remainder of the paper to argue his case.⁹ Stronger arguments have been made around the issues of intention and agency; groups, it is claimed, cannot form an intention and so cannot be blamed; they do not engage in ‘*genuinely* collective actions’ (Smiley, 2005, emphasis added).

Possible responses to methodological individualists include: first, that while intention is important, the role of negligence in attributing moral blame suggests that it is not essential (see Appiah, 1986-87); and second, that although groups do not form intentions as such, they have equivalent processes that mean that we can talk of collectives taking decisions and performing deliberate actions. This seems a reasonable point, and to deny it seems little more than to reassert that individuals can be held responsible and groups cannot. French pursues such an approach when focusing on corporations, employing the notion of the ‘corporation’s internal decision structure’. As later writers have pointed out, there are some problems with his notion, but I do not think it fundamentally undermines the general point that business corporations, at least, amongst collectives could be considered to form intentions.¹⁰

This latter point has led many defenders of collective responsibility to be careful to identify it only with certain cases, and business corporations are an obvious example – perhaps the classic case, as apparently rational, goal-seeking and organized collectives. Thus, the people on the train in Feinberg’s (1968) example, subject to a Jesse James robbery, are not a group; in Held’s terms (Held, 1970), they are just a

⁹ Though as Smiley (2005) correctly observes, his paper does contain ‘moral outrage’, which suggests that his motivation is normative rather than strictly methodological.

¹⁰ My position is that I do not find intention to be a crucial issue. I give one reason below, but I note that it cannot be relevant for a normative individualist.

random collection of individuals, where randomness is seen in terms of lacking decision methods beyond those possessed by all persons (cf. Bates, 1971, on this criterion). Thus, according to some writers, some – but not all – groups can have moral responsibility attributed to them. Attributes such as formalization and continuity would seem to play a part in identifying such ‘collectively responsible’ groups.

However, the identification of a responsible group still raises the issue of what happens to blame when a moral obligation has not been fulfilled. Assuming that membership of the group can be determined,¹¹ it seems strange to blame the group without blaming members of the group. What, then, would be being blamed? I recognize that there might be questions of legal responsibility and liability. However, I am concerned with the different – if sometimes related – issue of *moral* responsibility and blame. Furthermore, the argument of this paper can be seen as pre-legal (Velasquez, 2003); the law differs from time to time, from place to place, and can be changed. It might be argued that all members of the group should be blamed equally, but that raises the unfairness issue mentioned earlier; there seems no *a priori* reason to view all members as equally culpable, and some might be deemed to have no culpability at all. It might be suggested that the group be redefined to exclude those with no blameworthiness, but in that case individual responsibility (present or absent) is being used to determine apparent collective responsibility, which removes the need for a concept of collective responsibility. Moreover, if a group as such cannot be blamed but individual members of a group can, perhaps to varying degrees, where (again) is the need for a concept of collective responsibility? Furthermore, for those who find it persuasive, Ockham’s Razor – the principle that entities are not to be

¹¹ Itself not always an easy matter.

multiplied beyond necessity¹² – might be invoked here; for William of Ockham, ‘only particular beings, and in the social sphere only particular human beings, really exist’ (Lukes, 1973, p.47).

This line of reasoning is consistent with a strand of writing on collective responsibility that investigates how moral responsibility can be distributed across members of a group – and which, in a sense, is therefore not really about collective responsibility at all (Smiley, 2005), at least in the sense intended by many writers. In the following paragraphs, I discuss Sverdlik’s (1987) paper in order to examine the issues involved more closely.

Although not the most recent analysis of collective responsibility, Sverdlik’s paper does take account of most of the earlier literature, which had already identified many of the central issues previously mentioned in this paper. In summarizing his argument, I will omit the detail of his examples and concentrate on the substantive points.

Having noted the deeply-conflicting sentiments that talk of collective responsibility is apt to excite, Sverdlik (1987, p.61) comments: ‘Obviously what is called for is a careful sorting out of the arguments – in other words, analytical philosophy.’ His first significant move – a useful one – is to distinguish between ‘collective’ and ‘corporate’ responsibility.¹³ On his view, *collective* responsibility is

the idea that individual persons within a group are responsible for an outcome produced collectively. That is, responsibility is apportioned to individuals and to them alone. (p.62)

On the other hand, with *corporate* responsibility,

¹² *Entia non sunt multiplicanda praeter necessitate* (Blackburn, 1994, p.268).

¹³ This should not be confused with ‘corporate responsibility’ as increasingly used by business people when referring to businesses’ ‘corporate social responsibility’ (CSR).

the group is treated as a being distinct from its members and responsibility for wrongdoing is attributed to it. If one supposes that corporate responsibility is possible then it is an open question whether the individuals in the group are also responsible for the outcome or whether the group as such is alone responsible. (p.62)

The distinction between the two is at the heart of debate, even if the terms are not always employed as Sverdlik uses them. What Sverdlik terms 'collective' responsibility is the sort that Smiley (2005) suggests is really not collective responsibility, in the sense of being a non-distributive phenomenon, at all. What she has in mind is what Sverdlik refers to as 'corporate' responsibility. There is thus some scope for terminological confusion here, but as long as Sverdlik's employment of the terms is borne in mind, his distinction is useful in posing the choice with clarity.¹⁴ The question is: what does he do with that distinction?

Sverdlik remarks that one may accept one and deny the other, but he is correct in remarking that one is more likely to accept collective responsibility than corporate responsibility 'since the latter has many more presuppositions, both ontological and moral' (pp.62-63). For example, he comments that, for corporate responsibility to obtain, it is necessary to establish that groups exist and can act rationally. As I have already indicated, that does not seem unreasonable, at least in some circumstances, even if groups are never exactly like individuals. He also states that for his definition of corporate responsibility to obtain, it is necessary that such groups can be properly blamed if they neglect to do obligatory actions. That is really just a restatement of the problem.

¹⁴ I suggest below, though, that later in his paper, he slips into using 'collective responsibility' in the conventional manner, without reference to his distinction.

Indeed, his point about which form of responsibility is the more likely to be accepted carries little or no weight as a part of his argument. We know that the controversial issue is whether groups can be blamed. The general philosophical treatment of moral responsibility is rooted in a consideration of individuals, and the underlying issue in the debate being considered here is whether groups, quâ groups, are different from individuals in respects which some writers take to be critical. The thought that people are more likely to accept his notion of collective responsibility (based on individuals) than his notion of corporate responsibility because the latter is more problematic is thus the starting point for his argument, not a move in it. It is thus, again, just a restatement of the problem and begs the issue.

The next distinction Sverdlik makes is more important, namely one between responsibility for *results* or *outcomes*¹⁵ on the one hand and responsibility for *acts* on the other. He goes on to comment that '[r]esponsibility for outcomes is a matter of being responsible for acts that contribute to the existence of the outcome' (p.65). Furthermore, he notes that '[w]herever there is responsibility for a result, there is responsibility for an action that causes, at least in part, that outcome, but the converse is not true' (p.65). There might be no external outcome (of any moral significance) for two possible reasons. First, the nature of some acts means that they need not have external outcomes; Sverdlik cites as examples dance, masturbation and pre-marital sex.¹⁶ Second, an act might fail in its intended outcome; for example, I shoot at someone but the bullet harmlessly misses.¹⁷ On the other hand, it does not seem possible to think of cases where responsibility for an outcome cannot be paraphrased as involving the person's being responsible for an action that at least partly produced

¹⁵ He uses the two terms interchangeably.

¹⁶ I leave it to the reader to decide whether these examples are the most appropriate or helpful.

¹⁷ See my earlier comments on intention too.

the result, leading Sverdlik to conclude that ‘responsibility for actions is logically the more fundamental idea’ (p.66). From this, it is possible to infer that ‘more than one person can be morally responsible for an outcome even though it is true that every person is only responsible for his or her own actions’ (p.66). These points are fundamental to Sverdlik’s argument, and he uses them to provide a telling insight into the debate on collective *versus* corporate responsibility.

Sverdlik’s reading of the debate, with which I tend to concur, is that advocates of collective¹⁸ responsibility hold that more than one person can be responsible for an *outcome*, whereas their opponents tend to say that a person is responsible only for his or her own *actions*. He then argues that the latter is the more fundamental idea and summarizes the result of his argument as follows.

I claim, then, that the principles underlying collective responsibility are no different from those underlying the acts of a single individual. If all that people who defend the idea of collective responsibility mean is that more than one person can be responsible for an outcome then there is no argument.¹⁹ But, if proponents of this view mean to suggest that this idea represents some supplementation or modification²⁰ of the idea that people are only responsible for their own actions then they are radically mistaken. It would be unfair, where we are considering a result produced by more than one person, to blame a person for a result that he or she did not intend²¹ to produce. (p.68)

¹⁸ Given his chosen terminology, he means *corporate* responsibility here.

¹⁹ I.e. his ‘narrow’ definition of collective responsibility. Smiley (2005) states that almost all of those now writing about it ‘agree that collective responsibility would make sense if it were merely an aggregative phenomenon’.

²⁰ Such as ‘corporate’ responsibility implies.

²¹ Sverdlik has a broad interpretation of ‘intention’, with an extended discussion of negligence and recklessness in the context of attributing moral blame.

Thus, while it might make some sense to speak of a group's being responsible for an outcome, perhaps as a first approximation, when it comes to moral blame, analytically it makes sense to proceed by attributing it on the basis of the actions – or inaction – of individuals. This is not an eliminativist move, seeking to 'analyze away' the group, but it is reductionist. In terms of what I might call the 'economy of moral blame', not only are there dangers in referring to collectives in many cases (see the earlier comment on unfairness), but just as important, there seems no *need* to attribute blame to groups as entities in themselves, since there does not seem to be any blame 'left over' after attribution, in the appropriate manner, to individuals – important though groups and group dynamics might be as features of the social world.

Conclusion

Sverdlik's analysis, which I find broadly persuasive, seems to leave corporations without moral agency, responsibility, blameworthiness and so on. However, I do not want to imply that it makes no sense to speak of corporations having responsibilities or, indeed, of their being blameworthy as a result of what they have or have not done. I am not suggesting that ordinary language is necessarily in need of replacement or significant reform. Thus it might make sense, subject to the facts of the matter, to blame BP for the Gulf of Mexico oil spill in 2010. However, I see this as a first approximation; a perfectly reasonable one for anyone external to BP, but merely a first move in determining blameworthiness nonetheless.²²

It would be wrong to blame all BP employees, though, not to mention all its many subcontractors and suppliers. It might be practically difficult to carry out, but in principle there are individuals who have responsibilities and, to the extent that they

²² I am assuming that apportioning blame is, in one way or another, a justifiable activity. Exactly how and when it might be justified is not my concern here.

have failed to fulfil them in ways that are causally related to the Gulf of Mexico oil spill, they are to blame – not the other, unconnected employees. To ostracize or disapprove of a person, following the Gulf of Mexico oil spill, simply for being a BP employee is unjust in much the same way as it would have been unjust to blame all Germans for the Second World War (see Lewis, 1948). I would further suggest that simply ‘leaving’ blame as resting with BP, rather than treating it as a first approximation, risks failing to identify and blame culpable individuals. This should not be taken to imply that those individuals acted alone though; it is of the essence of corporations that they are collaborative endeavours. The point is that individuals have responsibilities in such settings.

My position respects, for certain purposes, ordinary language. I have argued that it is reasonable to talk as if business corporations have moral responsibilities, but at least when it comes to the identification of blame, the process should seek to identify culpable individuals and, in doing so, absolve from blame other individuals. Thus, as explained earlier, my position is not eliminativist (I still talk of business corporations), but when it comes to moral blame it is ultimately reductionist, based on normative individualism.

For the business ethics literature I suggest that this implies at least two things. First, I hope we can move on from the corporate moral agency debate. Corporations cannot, in the final analysis, be subject to moral blame – yet we may continue to speak of them as if they can be as a kind of first approximation or shorthand. I think this gives Moore (1999) what he seems to be seeking when he comments that

both views have their strong points, although it does seem ... that the arguments in favour are more convincing than those against.²³ This is partly on the strength of the arguments (and the criticisms of the case against...), *but partly also that the acceptance of corporate moral agency seems to be a better reflection of “reality” in the sense of how most people interpret the world around them.* (p.339, emphasis added)

Thus, I suggest that we can engage in some talk of apparent corporate moral agency without needing to find a convincing theoretical justification for corporate moral agency as such.²⁴ Second, there is a need to understand how to distribute blame within business corporations. This will be a practical task contingent upon the circumstances of particular cases. The complexity of particular cases might make this challenging, but the organized nature of business corporations ought to support the tracing of responsibility; and if it is not possible to trace responsibility in detail, this might be taken to be an issue of governance and responsibility allocated accordingly. A focus on the principles and practicalities of the distribution of responsibility and, where circumstances demand it, blame in business corporations seems to me to be a more productive endeavour than seeking (and failing, in my view) to establish that corporations are moral agents in their own right.

²³ I disagree on this point, as indicated earlier.

²⁴ From a theoretical point of view, Moore does not seem to find a convincing case for his preferred position, just a balance in favour, which does not seem altogether satisfactory.

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