

Reflections on Corporate Moral Responsibility and the Problem Solving Technique of Alexander the Great

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Journal of Business Ethics

ISSN 0167-4544

J Bus Ethics

DOI 10.1007/s10551-011-1032-5

Journal of Business Ethics

Volume 65, No. 3
May (II) 2006

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Reflections on Corporate Moral Responsibility and the Problem Solving Technique of Alexander the Great

John Hasnas

Received: 31 August 2011 / Accepted: 1 September 2011
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Abstract The academic debate over the propriety of attributing moral responsibility to corporations is decades old and ongoing. The conventional approach to this debate is to identify the sufficient conditions for moral agency and then attempt to determine whether corporations possess them. This article recommends abandoning the conventional approach in favor of an examination of the practical consequences of corporate moral responsibility. The article's thesis is that such an examination reveals that attributing moral responsibility to corporations is ethically acceptable only if it does not authorize the punishment of corporations as collective entities, and further, that this renders the debate over corporate moral responsibility virtually pointless.

Keywords Corporate moral responsibility · Collective punishment · Shared intention · Collective responsibility

Introduction

One of the legends associated with Alexander the Great tells of his effort to untie the Gordian knot while wintering in the Phrygian city of Gordium in 333 BC. The Gordian knot was a complex knot of exceeding intricacy with both ends concealed in its interior. A prophecy held that whoever could untie the knot would become king of Asia. After struggling in vain with the knot for some time, Alexander sliced it in open with his sword, permitting him to easily unravel it. And, indeed, Alexander went on to conquer the

Persian Empire and become king of Asia (Arrian 1971). Ever since, the "Alexandrian solution" to the problem of the Gordian knot has stood for the proposition that bold strokes are sometimes needed to cut through intractable problems.

For the past three decades, business ethicists have grappled with the question of whether corporations can bear moral responsibility as collective entities. They have approached the question in a straightforward manner; first attempting to compile a list of the characteristics something must possess to be a moral agent, and then examining the nature of the corporation to determine whether it possesses each of the necessary characteristics. To this point, however, scholars have generated little agreement about what the necessary characteristics are and still less over whether corporations possess them. Proponents and opponents of corporate moral responsibility have staked out irreconcilable positions, and the debate is a contentious and ongoing one. As a result, the problem of corporate moral responsibility has become a rather knotty one.

In this article, I suggest that it may be time to try an Alexandrian solution to the problem. In the second section, I provide an abbreviated history of the scholarly debate over corporate moral responsibility that highlights its intractability. In third section, I suggest that the debate's intractability may be due to the fact that both sides are asking the wrong question; that by focusing on the relationship among abstract concepts rather than practical consequences, both sides are ignoring considerations crucial to the resolution of the debate. In fourth section, I argue that consideration of the practical consequences of attributing moral responsibility to corporations leads to the conclusion that corporate moral responsibility is ethically acceptable only when it is without practical significance. Finally, in the fifth section, I conclude.

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A Condensed History of the Corporate Moral Responsibility Debate

It is impossible to provide a full and accurate account of the scholarly dialectic on corporate moral responsibility in an article as brief as this one. Hence, I make no effort to do so. Rather, I present a highly telescoped history of the debate, touching only on significant or illustrative developments; a highlight film, if you will.

The opening thrust in the debate, which resembles nothing so much as an intellectual fencing match, came from Peter French's seminal work, *The Corporation as a Moral Person* (French 1979). There, French identified what he believed to be two necessary and sufficient conditions for moral responsibility: (1) causation—that a potential subject of moral responsibility be capable of acting so as to be the cause of an event and (2) intentionality—that “the action in question was intended by the subject or that the event was the direct result of an intentional act of the subject (French 1979, p. 211).” French then argued that because all corporations have institutional decision-making procedures—what he labeled corporate internal decision (CID) structures (French 1979, p. 211)—corporations can both cause events and act intentionally. These CID structures “accomplish[] a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision (French 1979, p. 212).” Thus, “[a] functioning CID Structure *incorporates* the acts of biological persons (French 1979, p. 212).” When a corporation takes an action pursuant to its CID structure, “it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so, in other words, as corporate intentional (French 1979, p. 213).” French claimed that this was sufficient to show not only that corporations are proper subjects of moral responsibility, but also that they are “full-fledged moral persons and have whatever privileges, rights and duties as are, in the normal course of affairs, accorded to moral persons (French 1979, p. 207).”

Opponents of corporate moral responsibility parried this thrust with the claim that corporations could not satisfy either of French's conditions. For example, Manuel Velasquez attacked French's initial causation requirement on the ground that corporations lack the ability to act. He argued that

moral responsibility for an act...can be attributed only to that agent who originated the act in his own body, that is, in the movements of a body over which he has direct control. In corporate agency, action does not originate in a body belonging to the corporation to whom the act is attributed, but in bodies belonging

to those human beings whose direct movements constituted or brought about the act that is then attributed to the corporation. Consequently, whether considered as a fictional legal entity or as a real organization, corporations do not originate acts in the manner required by attributions of moral responsibility—namely, by directly moving one's own body (Velasquez 1983, p. 7).

Others argued that corporations are unable to form intentions. Michael Keely asserted that corporations cannot be moral persons because “organizations have no intentions or goals at all (Keely 1979, p. 149).” Keely contended that although an organization's CID structure “may serve to identify organizational behavior, [it does] not ordinarily establish the organizational *intent* of that behavior or that it has any real organizational intent at all (Keely 1979, p. 151).” Indeed, although French's appeal to CID structures can show that corporations can act “in the sense of *producing* an effect, it is a large leap to the claim that it can act in the sense of *intending* an effect (Keely 1979, p. 152).” Similarly, John Ladd argued that as formal organizations, corporations are capable of only means-end rationality (Ladd 1970). He recognized that given a pre-determined goal, corporations can make empirical judgments about the best means to achieve it, but contended that corporations have no mechanism by which they can process or evaluate normative propositions. Consequently, corporations cannot produce *moral* intentions—intentions to act rightly or wrongly in a moral sense. Thus, “for logical reasons, it is improper to expect organizational conduct to conform to the ordinary principles of morality (Ladd 1970, p. 499),” and hence, corporations cannot be moral agents (Ladd 1984).

The riposte was delivered by scholars such as Thomas Donaldson and Patricia Werhane, but only after first taking French to task for overstating his conclusion. Donaldson and Werhane argued that being an intentional causal agent is not sufficient for moral personhood, and hence that French had not shown that corporations were full moral persons. Donaldson pointed out that both a cat about to attack a mouse and a computer alphabetizing a list of names can be said to act intentionally, yet neither thereby qualifies as a moral person (Donaldson 1982, p. 22). Werhane similarly claimed that French's argument could not establish corporate moral personhood because “although [corporations] indeed have some of the characteristics of persons, they lack the autonomy necessary to perform primary actions, one of the conditions necessary to be ascribed full personhood (Werhane 1985, p. 57).” In addition, Donaldson contended that there were good reasons to believe that corporations cannot be moral persons. As French recognized, his argument implied that

corporations “have whatever privileges, rights and duties as are, in the normal course of affairs, accorded to moral persons (French 1979, p. 207).” But Donaldson claimed that this is either undesirable—do we really want corporations to have the right to vote?—or impossible—what could it mean to say that corporations have the right to worship as they please or to pursue happiness? (Donaldson 1982, pp. 22–23).

Yet despite their criticism of French, both Donaldson and Werhane argued that corporations can bear moral responsibility. This is because full moral personhood is not necessary for moral responsibility—although all moral persons are morally responsible, subjects that do not satisfy all the requirements of moral personhood can nevertheless be morally responsible agents. To demonstrate this, both Donaldson and Werhane supplied their own set of conditions for moral agency.

According to Donaldson, to qualify as a moral agent, a corporation need only “embody a *process of moral decision-making* (Donaldson 1982, p. 30).” This requires (1) “[t]he capacity to use moral reasons in decision-making,” and (2) “the capacity of the decision-making process to control not only overt corporate acts, but also the structure of policies and rules (Donaldson 1982, p. 30).” Donaldson claimed that many, if not most, corporations meet these two requirements. While admitting that corporations “are unable to think as humans,” he argued that corporations can be morally accountable in the sense that “with the proper internal structure, corporations, like humans, can be liable to give an account of their behavior where the account stipulates which moral *reasons* prompted their behavior (Donaldson 1982, p. 30).” Further, there is no reason why a corporation’s internal decisions procedures cannot be applied self-referentially so that it is the corporation itself that controls the creation and “maintenance of the corporation’s decision-making machinery (Donaldson 1982, p. 30).” Hence, although not moral persons, corporations can nevertheless be morally responsible agents.

Werhane’s conditions for moral agency were essentially the same as French’s conditions for moral personhood: (1) the capacity to act, and (2) the ability to form intentions (Werhane 1985, pp. 57–59). Werhane contended that corporations have the capacity to act because they can undertake secondary actions—actions taken by individual corporate agents who are authorized to act on behalf of the corporation by the corporate charter and by-laws as interpreted and amended by the board of directors, corporate management, and market forces (Werhane 1985, pp. 52–56). These are true corporate actions because they “cannot be redescribed in terms of the actions of constituents (Werhane 1985, p. 56).” Further, Werhane agreed with French that the corporate structure incorporates the intentions of individual human beings.

[A] corporate intentional system combines the sum of the decision-making procedures carried out by boards of directors, stockholders at annual meetings, management, foremen, and other employees, with the advice of outside agents such as lawyers, accountants, and public relations persons, which together form collective “corporate” “intentions” that are exhibited in “corporate decision-making,” corporate “action,” and organizational goals (Werhane 1985, p. 56).

Thus, although corporations are not moral persons, they “like persons, are and should be, held morally responsible for actions within their control (Werhane 1985, p. 59).”

Skeptics such as John Danley and Manuel Velasquez parried this riposte with the claim that the proponents of corporate moral responsibility had not shown that corporations could form intentions. Danley accused them of equivocating on the meaning of “intention” to stretch it to apply to corporations (Danley 1990, p. 204), arguing that when used in the appropriate sense “[i]ndividuals within the corporation can intend, lust, have malice, afterthought, and so forth, but the corporation cannot (Danley 1990, p. 203).” In the same vein, Velasquez argued that corporations do not possess the integration of body and mind required for intentional action because

an act is intentional only if it is the carrying out of an intention formed in the mind of the agent whose bodily movements bring about the act.... The underlying reason for corporate policies and procedures being unable to generate intentional action is that the concept of intentional action...is rooted in the concept of an agent with a certain mental and bodily unity that corporations do not have (Velasquez 1983, p. 8).

Peter French then returned to the fray with a second thrust. Sufficiently persuaded by objections such as Donaldson’s and Werhane’s, French abandoned his claim that corporations were full moral persons (French 1995, p. 10). Accordingly, he tempered his position by recognizing that to be morally responsible, one need only be a moral “actor (French 1995, p. 10).” He then revised his set of necessary and sufficient conditions for moral responsibility, arguing that to be a moral actor an entity must have (1) “the ability to act intentionally (French 1995, p. 10),” which he now defined as having “purposes, plans, goals, and interests that motivate some of its behavior (French 1995, p. 10),” (2) “the ability to make rational decisions and to consider rational arguments regarding their intentions (French 1995, p. 12),” and (3) “the facility to respond to events and ethical criticism by altering intentions and patterns of behavior that are harmful (or offensive) to others or detrimental to their own interests (French 1995, p. 12).”

French then adapted his earlier argument to show that because corporations possessed CID structures, they satisfied each of these conditions.¹

French also responded to skeptics such as Danley and Velaquez by noting that their objections were based on the assumption that intention requires the presence of human desires and beliefs, which, indeed, corporations cannot possess.² French argued that this is incorrect—that intention requires only the ability to plan. Plans may flow from desires and beliefs in the case of individuals, but such desires and beliefs are not necessary for plans, and therefore are not necessary for intention. He argued that

To intend to do something is to plan to do it.... My intention seems to have little to do with my current desires and beliefs. In fact, desires and beliefs are, at most, only tangentially involved. My plans and my commitments to those plans are at the heart of my intentions (French 1996, p. 148).

And because corporations' CID structures produce corporate plans, corporations can act intentionally.

Corporate plans might differ from those that motivate the human persons who occupy corporate positions and whose bodily movements are necessary for the corporation to act. Using its CID Structure, we can, however, describe the concerted behavior of those humans as corporate actions done with a corporate intention, to execute a corporate plan or as part of such a plan (French 1996, p. 152).

Manual Velaquez parried French's second thrust by arguing that French's CID structures simply could not do the work required to transform individual intentions into corporate intentions. Velaquez characterizes the type of intention people attribute to corporations as "as-if" or

metaphorical intentionality. He states that "[t]he fact that we attribute intentional qualities to groups—including corporate organizations—that are not attributable to their members, then, does not imply that those groups have real intentions. The intentions that we attribute to groups are metaphorical, based on analogies to the literal intentions we attribute to humans... (Velasquez 2003, pp. 545–546)" Velaquez then rejected the ability of French's CID structures to create corporate intentions.

The problem with French's claim...is that there is nothing about procedures and policies that can enable them to transform a metaphorical intention into a real one. Procedures and policies, however simple or complex, cannot create group mental states nor group minds in any literal sense.... Human intentions, beliefs, and desires are mental; that is, they are essentially, by definition, the sort of things that can be present to, and in, our conscious minds: the sorts of things that we can be conscious of. This means that if an organization has such intentions, beliefs, and desires, it must have a conscious mind, a mind with a unified consciousness that encompasses within a single field of awareness all of its nonpathological intentions, plans, beliefs, and desires.... The corporation as such does not have such a unified consciousness (Velasquez 2003, pp. 546–550).

This time the riposte was delivered by Denis Arnold, who claimed that Velaquez had missed the point of French's recharacterization of corporate intentions in terms of plans rather than desires and beliefs (Arnold 2006). Arnold argued that although talk of corporate desires or beliefs may be metaphorical, talk of corporate plans or "commitments to future actions (Arnold 2006, p. 284)" is not. Abstracting from the work of Michael Bratman (Bratman 1987, 1999), Arnold contended that such plans or commitments may consist of true shared intentions. Shared intentions consist of the mutual intentions of individual parties to engage in a joint activity, the meshing sub-plans of the intentions of the parties, and the common knowledge of the parties of the first two conditions (Arnold 2006, p. 286). Thus, Arnold concluded that corporate intentions—which consist of the shared intentions of the individuals who comprise the corporation as integrated by the corporation's CID structure—are genuine, real intentions.

The ongoing nature of the corporate moral responsibility debate is evidenced by the fact that a parry to Arnold's riposte was delivered in a working paper presented at the 2010 Society for Business Ethics conference by David Ronnegard (See Ronnegard, text on file with the author). Ronnegard analyzed Bratman's work on shared intentions (Bratman 1987, 1993) to show that it could give rise to corporate intentions only when literally all members of the

¹ "It is the corporation's CID structure that allows it to be an independent rational actor on the social scene, and that converts various human behaviors and actions into corporate intentional action" (Ibid., p. 15).

² Indeed, French concedes that his earlier work embodies the same assumption, which he now recognizes to be incorrect.

At the base of my earlier view was the widely-held position that intentionality should be understood in terms of a desire/belief complex. That position is flawed; indeed, it is downright wrong.... Corporations cannot, in any normal sense, desire and believe. In my earlier accounts I redescribed desires and beliefs into corporate policy in order to match the model. Many objected that I had overly formalized the notions of desire and belief to fit the Corporate Internal Decision (CID) Structure approach I had created. With them I am now prepared to say that if intention is no more than desires and beliefs, then corporations will fail to make it as intentional actors (French 1996, p. 148–149).

corporation shared the relevant intention; a finding that implied that corporate CID structures could not create true corporate intentions.

A third thrust toward corporate moral responsibility has recently been supplied by Philip Pettit. In his article, *Responsibility Incorporated* (Pettit 2007), Pettit introduced his own version of the necessary and sufficient conditions for moral responsibility: (1) value relevance—the subject “is an autonomous agent and faces a value relevant choice involving the possibility of doing something good or bad or right or wrong,” (2) value judgment—the subject “has the understanding and access to evidence required for being able to make judgments about the relative value of such options,” and (3) value sensitivity—the subject “has the control necessary for being able to choose between options on the basis of judgments about their value (Pettit 2007, p. 175).”

Pettit argued that corporations satisfy the first condition because they can (1) qualify as agents, and (2) act autonomously. Corporations qualify as agents “when members act on the shared intention that together they should realize the conditions that ensure agency (Pettit 2007, p. 179),” which they do by acting in accordance with a constitution “whereby the members of a group might each be assigned roles in the generation of an action-suited body of desire and belief and in the performance of the actions that it supports (Pettit 2007, p. 179).” Further, corporations can act autonomously because the corporation’s judgment cannot be reduced to the judgment of the individuals who comprise it. Thus, “[a]utonomy is intuitively guaranteed by the fact that on one or more issues the judgment of the group will have to be functionally independent of the corresponding member judgments, so that its intentional attitudes as a whole are most saliently unified by being, precisely, the attitudes of the group (Pettit 2007, p. 184).”

Pettit claimed that corporations satisfy the second and third conditions as well. They can form value judgments “over a certain proposition when the proposition is presented for consideration and the group takes whatever steps are prescribed in the constitution for endorsing it (Pettit 2007, p. 186).” Thus, they are “able to form a judgment over any proposition that members are capable of presenting for consideration and of adjudicating by means of a vote or something of the kind (Pettit 2007, p. 186).” Further, they are value sensitive because they

may control in a reason-sensitive way for the performance of a certain action by some members, maybe these or maybe those. [They] will do this, by maintaining a constitution for the formation and enactment of [their] attitudes, arranging things so that some individual or individuals are identified as the agents to perform a required task, and other

individuals are identified as agents to ensure that should the performers fail, there will be others to take their place as backups (Pettit 2007, p. 192).

Given that Pettit’s argument, like its predecessors, depends on the idea that members of corporations act on shared intentions when they act in accordance with the corporation’s constitution, it is reasonable to believe that Pettit’s account of corporate moral responsibility will not be the last word on the subject.

Are We Asking the Wrong Question?

After three decades of a debate that has produced relatively little agreement, it is fair to ask what it is about the problem of corporate moral responsibility that renders it so resistant to resolution. At first glance, the approach ethicists are taking toward the problem appears to be an entirely logical one. What could be more reasonable than first identifying the necessary and sufficient conditions for moral agency and then asking whether a corporation is the type of thing that can satisfy them?

Upon reflection, however, we begin to notice that there is something disturbing about the second question. For the question of whether a corporation is the type of thing that can bear moral responsibility contains an assumption—that a corporation is the type of thing to which moral predicates may be ascribed. In this respect, the question has the same character as the notorious query: do you still beat your spouse? Any attempt to answer it implicitly accepts the embedded assumption. It is, however, far from obvious that corporations are things in the sense relevant to the ascription of moral responsibility.

The problem with the arguments offered in support of corporate moral responsibility may have nothing to do with the absence of any particular characteristic associated with moral agency, but with the underlying assumption that corporations are the type of things upon which such characteristics may be predicated. When considering moral agency, it makes perfect sense to ask whether an insane person, or a child, or an animal, or a computer, or an alien can be morally responsible because in each case there is a definite object to ask about. Given the existence of a thing to which it is reasonable to ascribe predicates, one may intelligibly ask whether that thing has the characteristics necessary for moral responsibility. But a corporation, like the White House, Congress, the New York Knicks, and Germany, is not this type of thing. These terms all refer to indefinite collections of objects. They refer to complex networks of constantly changing human beings who are related to each other through certain formal and informal arrangements. Although each of these terms refers to

something real, none of them refers to a thing that has a definite, specifiable set of referents. In this context, the “White House” does not refer to the set of human beings who presently occupy the physical building within which the President resides.

Terms like these that refer to indefinite collections are vitally important to our ability to communicate effectively. They perform a crucial role in facilitating discourse by allowing us to refer to complex human arrangements with the convenience of a single term. Hence, we are perfectly well understood when we say things like the White House is monitoring the oil spill in the Gulf of Mexico, Congress is unable to restrain its profligate spending, and the Knicks play lousy defense. Similarly, we often speak as though we are ascribing responsibility to such indefinite collections. Thus, we say things like the White House is morally responsible for the abuse of detainees in the war on terror or Congress for the budget deficit or Nazi Germany for the Holocaust or corporations for the wrongdoing of their employees. There is nothing wrong with speaking this way as long as we keep in mind that in doing so we are speaking metaphorically. We are using a linguistic shorthand for the unwieldy proposition that some set of difficult to identify members of an indefinite group of people who are related to each other in both formal and informal ways have acted so as to produce morally improper results.

Problems arise, however, when we forget that we are speaking metaphorically. Once we forget that the collective nouns we are using function merely as linguistic placeholders to facilitate communication, we begin to think that the indefinite collections they represent are entities that exist in their own right, and to which properties and characteristics may be ascribed. We are then tempted to decide questions such as whether the White House is morally responsible for the abuse of detainees or Congress for the budget deficit or Nazi Germany for the Holocaust or corporations for the wrongdoing of their employees by asking whether these entities can act, or form intentions, or are autonomous, or exhibit value sensitivity. When we succumb to this temptation, we end up making ascriptions of moral responsibility purely on the basis of the relationships among abstract concepts *without explicitly considering either the practical consequences or the ethical appropriateness of the ascriptions*.

But surely these are crucial considerations. Precisely what the practical effects of the existence of corporate moral responsibility are and whether they are just would seem to be the fundamental threads out of which the question of corporate moral responsibility is woven. Attempting to answer the question without access to these threads would be remarkably similar to attempting to untie a complex knot whose ends were concealed within itself.

Cutting the Knot

In my judgment, continuing the abstract debate over whether corporations can satisfy some set of necessary and sufficient conditions for moral agency would be like continuing to pry at the outer loops of the Gordian knot. I think it is time to try Alexander’s solution, and slice open the knot to expose its concealed ends, which in this case consist of the practical consequences of attributing moral responsibility to corporations. Hence, I suggest shifting our focus from the question of whether corporations can satisfy the conditions of moral agency to the questions of what the practical consequences of the existence of corporate moral responsibility would be and whether the resulting situation would be just.³ This suggests a two step enquiry. We begin by asking what the point is of holding corporations morally responsible in the first place—that is, what difference the existence of corporate moral responsibility makes in the world. Once this has been determined, we then ask whether thus altering the state of the world is ethically justified.

Adopting this analytical approach produces an interesting result. For a close attention to these questions reveals that corporate moral responsibility is ethically acceptable only when it is without *practical* significance.

Consider the first question. What is the practical significance of the existence of corporate moral responsibility? What is the difference between a world in which corporations bear moral responsibility and one in which they do not? I submit that there is only one. In the world with corporate moral responsibility, corporations are liable to punishment, specifically criminal punishment, as collective entities.⁴

³ In fairness, I should note that I am not the first to suggest this. For example, John Danley previously argued that ascribing moral responsibility to corporations is merely “a prelude to many further permissible or obligatory moves” such as being required to pay compensation or be subject to punishment, and that any consideration of the question was “incomplete without incorporating the role it plays in relation to these other moral moves. It is this which is lacking from the previous discussion of ‘intend.’” (Danley 1990, p. 205). Similarly, Manuel Velasquez pointed out that “the concept of moral responsibility is conceptually connected to the concepts of blame and punishment” such that ascribing moral responsibility to a corporation entails “claiming that there are some people in the corporation who should be blamed and punished.” (Velasquez 1983, pp. 10–13). In addition, Christopher McMahon explicitly considered the practical consequences of attributing moral personhood to corporations to demonstrate that “there are moral reasons for denying them the moral status that personhood usually brings with it.” (McMahon 1995, p. 547).

⁴ Strictly speaking, this is not accurate. In a world with corporate moral responsibility, corporations would be eligible for rewards as well as punishments as collective entities. Moral responsibility implies that one is liable to both praise and blame. However, in the present context, the focus is usually on whether corporations may be held liable for wrongdoing rather than whether they may be treated as a proper recipient of reward. Hence, for purposes of concision, I will speak strictly in terms of liability for wrongdoing in the remainder of this article.

To see why, it will be instructive to review the ways in which the existence of corporate moral responsibility does *not* change the world. To begin with, the existence of corporate moral responsibility does not eliminate the personal moral responsibility or liability to punishment of any individual. In asking whether corporations can be morally responsible for the actions of their employees, we are asking whether corporations can bear moral responsibility in addition to, not in place of, the employees who engage in wrongdoing. Corporate moral responsibility neither undermines nor enhances the moral responsibility of individual corporate employees for their personal conduct.

Next, holding corporations morally responsible has no bearing on their duty to make restitution for wrongdoing on the part of their employees. Restitution does not require that the party making the payment be morally responsible for the harm suffered by the recipient. One who finds a lost item or innocently receives stolen property is obligated to return it to its owner even though he or she is not responsible for the owner's loss. Our system of civil liability requires parties that do not exercise the required level of care to pay compensation to those they have injured even though they have done the best that they personally can to avoid the harm and are not morally blameworthy (Vaughan v. Menlove 1837 and Holmes 1881, p. 108). For harm caused by commercial products and by certain abnormally dangerous activities, compensation is required even though the manufacturer or individual actor is completely blameless (Rylands v. Fletcher 1865; Restatement (Second) Of Torts § 402A). Employers are required to pay compensation for the harm done by their employees even though the employer had no part in causing the harm and was not at fault in hiring the employee. Indeed, *respondeat superior* liability guarantees that corporations will have to pay restitution for the wrongs done by their employees regardless of whether they are morally responsible entities.

On a related point, corporate moral responsibility is not necessary for corporations to be liable for exemplary damages—payments beyond those necessary to compensate the injured party—in civil lawsuits. Although exemplary damages are frequently referred to as punitive damages, they are not punitive in the sense of requiring a finding of morally blameworthy conduct to be awarded. Exemplary damages are regulatory in effect, and are awarded to create an incentive for corporations to undertake efforts to prevent their employees from engaging in recklessly dangerous behavior or acts of intentional wrongdoing.

Corporate moral responsibility is similarly unnecessary for corporations to be subject to administrative regulation. Regulations are imposed on individuals and businesses to cause them to behave in ways that the regulators believe to be conducive to the common good. To be effective, regulation must apply to all market actors, not merely those that

are capable of bearing moral blame. Thus, corporations will be subject to regulation whether they are morally responsible entities or not.

Finally, corporate moral responsibility is not necessary to call down moral censure on corporations or to condemn their corporate culture. As noted in the preceding section, the language of corporate moral responsibility serves an important *expressive* function. Corporations are indefinite groups of constantly changing, formally and informally related individuals. Referring to these amorphous groups as though they were single entities capable of acts of will greatly facilitates communication, especially communication critical of corporate activities. For example, accusing BP as a corporate entity of reckless behavior in its deep water drilling practices makes it easier for critics to focus public attention on those practices, and, by threatening BP's good name, to bring moral pressure to bear on the company to change its behavior. It is fairly obvious that speaking in this way will be more effective at mobilizing the public than will articulating the technically more accurate statement that some difficult to identify subset of the indefinite group of people who presently are or recently were employees of BP and who may have been acting in response to poorly formed or unethical corporate policies or incentive structures acted in a reckless manner in managing BP's deep water drilling operations. But what is important to note is that the *fact* of corporate moral responsibility is not required for people to *speak as though* corporations were morally responsible entities. For purposes of moral suasion, people will employ this metaphorical form of expression whether corporations are morally responsible entities or not. Hence, the existence of corporate moral responsibility will neither enhance nor curtail the public's ability to subject corporations to moral opprobrium.

The same is true of efforts to criticize corporate culture. It is commonplace today to recognize that corporations have an ethical culture or "ethos (Bucy 1991)." A corporation's ethos—which arises from the combination of the organization's internal structural features and the observable behavior of its senior officers and leaders—can affect the conduct of the corporation's employees. Corporations with a good corporate ethos tend to encourage ethical conduct by its employees. Corporations with a poor corporate ethos, at best, fail to encourage ethical conduct, and at worst, incentivize irresponsible or dishonest conduct. Thus, a strong commitment to the maintenance of high ethical standards by senior corporate leaders coupled with rewards for employees who live up to those standards can significantly decrease the likelihood of unethical conduct within the firm. In contrast, an organization whose senior officials are seen to cut ethical corners makes it more likely that low level employees will do so as well. Similarly, a corporation with a clearly demarcated avenue by which employees can report their ethical concerns will have more ability to prevent employee wrongdoing than

one beset by “organizational blocks,” such as a strict line of command or diffuse decision-making authority, that make it more difficult for employees to ensure that they are behaving properly themselves and to report on the unethical behavior of others (Waters 1978).

When a poor corporate ethos is a causal factor in producing unethical action by the firm’s employees, it is natural to speak as though the corporation shares the blame for the wrongdoing with the individual malefactors. For example, several commentators cite Enron’s “rank and yank” compensation system as a significant element in a corporate ethos that encouraged unethical conduct by Enron’s traders (Moohr 2007 and Regan 2007). Under this system, the traders were ranked against each other on the basis of how much money they brought in, with the top performers receiving large bonuses and those ranked in the bottom 10–15% being fired. By elevating financial performance above all other considerations, this compensation system encouraged the traders to ignore ethical and legal constraints in pursuit of revenue. In these circumstances, it would be perfectly intelligible to say that by thus establishing and maintaining a poor corporate ethos, Enron bears part of the moral responsibility for the unethical actions of its traders.

There is nothing objectionable about speaking in this way. This is simply another example of the semantic convenience provided by the existence of terms that allow us to refer to indefinite collections of objects. Saying that corporations are morally responsible for the effects of their corporate ethos is merely linguistic shorthand for the more cumbersome statements that the organizational structure of corporations affects the behavior of its individual employees and that managers have a moral obligation to maintain an ethical corporate culture. Any such assertion of corporate moral responsibility is fully translatable into assertions about human psychology and the ethical obligations of individuals. It does not instruct or authorize human beings to behave differently than they would if the more cumbersome phrasing were employed.

Employing the language of corporate moral responsibility clearly has significant expressive value. It facilitates people’s ability to bring moral pressure to bear on corporations and to call for the reform of their corporate cultures. But people can and will speak as though corporations are morally responsible entities whether they are or not. The actual existence of corporate moral responsibility plays no role advancing these endeavors. In this respect, a world with corporate moral responsibility is no different from one without it. Hence, it is without practical significance.

So what are the practical consequences of corporate moral responsibility? If corporations really were the type of entities that can bear moral responsibility, how would the world be different? The most obvious answer is that the existence of corporate moral responsibility authorizes the imposition of criminal punishment on corporations as collective entities.

Moral responsibility is a prerequisite for blame. Blameworthy action merits punishment. The point of asking whether a person or entity is morally responsible is usually to determine whether that person or entity is liable to punishment. Indeed, the reason why the corporate moral responsibility debate is such a lively one is that most of the advocates of corporate moral responsibility believe that it is important to be able to impose criminal punishment on corporations as collective entities, and they recognize that moral responsibility is necessary for such punishment.

Punishment is the infliction of a harm or penalty on a party in response to a transgression.⁵ In most circumstances, inflicting harm on others is a wrong. When punishment is involved, this is not the case. Punishment implies that the infliction of harm is justified, and hence not wrongful. The thing that justifies the punishment is the claim that the party being punished is a morally responsible agent who has engaged in proscribed conduct. Punishment is not designed to compensate injured parties or facilitate the achievement of some social good. It is designed to balance the moral account books.

Criminal punishment consists of the imposition of a penalty prescribed by law for the commission of a criminal offense. A just legal system imposes criminal sanctions only on morally responsible agents. Therefore, moral responsibility is (or should be) a prerequisite for criminal punishment. If corporations are morally responsible agents, then they are properly eligible for criminal punishment; if they are not, then, in justice, they should not be.⁶

⁵ The Oxford English Dictionary gives the definition of “punish” as “an act of a superior or of public authority: To cause (an offender) to suffer for an offence; to subject to judicial chastisement as retribution or requital, or as a caution against further transgression; to inflict a penalty on.” The Encyclopedia of Philosophy lists the essential characteristics of punishment as follows:

Characteristically, punishment is unpleasant. It is inflicted on an offender because of an offense he has committed; it is deliberately imposed, not just the natural consequence of a person’s action (like a hang-over), and the unpleasantness is essential to it, not an accidental accompaniment to some other treatment (like the pain of the dentist’s drill). It is imposed by an agent authorized by the system of rules against which an offense has been committed; a lynching is not a standard case of punishment. (Benn 1972, p. 29)

⁶ At present, corporations are subject to criminal punishment as collective entities. However, the legal standard of corporate criminal liability has been under sustained critical attack by criminal law scholars for decades. See Symposium: Achieving the Right Balance: The Role of Corporate Criminal Law in Ensuring Corporate Compliance, *American Criminal Law Review* (2009) 46, 1323–1534. An important part of the practical significance of the corporate moral responsibility debate is that a demonstration that corporations were not morally responsible entities would greatly strengthen the hand of the academic critics of corporate criminal liability.

When moral responsibility carries with it liability to criminal punishment, the existence of corporate moral responsibility is rife with practical consequences. The Arthur Andersen accounting firm survived the individual guilty plea of David Duncan, the leader of its Enron “engagement team,” on a charge of obstruction of justice, but was destroyed when indicted for the same offense in its corporate capacity, resulting in the loss of over 85,000 jobs worldwide (Ainslie 2006, p. 109). Indeed, it is primarily because of the practical consequences of being able to visit criminal punishment on corporations that the advocates of corporate moral responsibility advance their position. Such advocates frequently argue that the threat of corporate criminal punishment can encourage corporations to take steps to prevent wrongdoing by its agents,⁷ and that the imposition of corporate criminal punishment can express public disapproval of any such wrongdoing that does occur. In addition, imposing criminal punishment on corporations clearly has a negative impact on the financial condition of several of the corporation’s stakeholder groups. Hence, to the extent that the existence of corporate moral responsibility renders corporations liable to criminal punishment, it has significant practical consequences.

But this is precisely where the argument for corporate moral responsibility runs into trouble. For, after identifying the difference the existence of corporate moral responsibility would make in the world, we must pass on to our second question and ask whether thus changing the world is ethically justified. And when we do, we find that imposing criminal punishment on corporate entities is inherently unjust.

In the first place, note the effect of attempting to punish a corporation. At some point in almost every academic article on corporate responsibility, the author trots out the old saw that a corporation has “no soul to be damned, and no body to be kicked (Coffee 1981, p. 386).” This oft-quoted phrase is merely an ancient recognition of the fact

that a corporation is not the type of thing that can experience harm or pain in itself. The difficulty in attempting to punish a corporation—in attempting to impose a harm on an indefinite collection of constantly changing individuals—is that there is no definite object present to absorb the punishment. Any punishment directed toward a corporation necessarily passes through its nominal facade to fall on some set of human beings.

Next, consider that any criminal punishment directed toward a corporation is necessarily financial in nature. Not only can’t corporations be kicked, they can’t be incarcerated. They may be fined, which constitutes the direct application of a financial penalty. They may have licenses revoked or otherwise have their freedom to transact business restricted, but such measures merely constitute the indirect application of a financial penalty—they are punitive only to the extent that they reduce the corporation’s profitability. They may be liquidated, which can be thought of as a corporate death sentence. But since corporations are not literally living things, any “execution” is entirely metaphorical. Liquidation is to be feared only because of the financial losses that result from it.

Who pays when any such punitive financial loss is imposed upon a corporation? To the extent that the loss can be passed along through increases in the price of the corporation’s products, it is the consumers who pay. To the extent that the corporation can assimilate the loss by reducing labor costs, it is the employees who pay. And to the extent that the corporation is unable to pass along the loss to either of these groups, it is the owners of the corporation, the shareholders, who pay.

The characteristic that all of these stakeholder groups share is that their members are innocent of personal wrongdoing. Consumers obviously play no role in any wrongdoing by corporate agents. The employees who lose their jobs due to corporate retrenchment may have had nothing whatever to do with the wrongdoing and been completely unaware of it. And given that the defining characteristic of the modern corporation is the separation of ownership and control, the shareholders had no knowledge of or control over the behavior of the employees who engaged in the wrongdoing. Corporate punishment necessarily falls indiscriminately on the innocent as well as on in place of the guilty. Corporate punishment is inherently vicarious collective punishment.

Little argument should be required to establish that such punishment is unjust. As noted above, the thing that distinguishes punishment from the naked infliction of harm is that punishment is *deserved*. Punishment is punishment only when it is imposed in response to some transgression on the part of the party being subjected to it. Unless this is the case, “punishment” is nothing more than coercion. That is why, on the international level, collective punishment is considered a

⁷ It is worth noting that this claim is not obviously correct. In the absence of corporate moral responsibility, corporations are nevertheless civilly liable for the wrongs of their employees. Any intentional wrongdoing or reckless conduct by corporate employees that harmed the interests of third parties would subject the corporation to potentially massive compensatory and exemplary damage awards. It is not obvious that the threat of the relatively small criminal penalties that would be added if corporations could be held morally responsible as well would add any noticeable deterrent effect. However, I do not intend to quibble over this point. In this article, I will assume that the threat of corporate punishment can produce increased efforts at corporate self-policing. This will certainly be the case with regard to regulatory violations or other infractions that do not directly harm third parties where the threat of civil liability is not present; and because of the damaging effect criminal charges can have on a corporation’s reputation, it may well be the case generally.

human rights violation⁸ and is banned as a war crime by the Geneva Convention⁹. Although the wrong of imposing financial collective punishment on a corporation's stakeholders may be an order of magnitude less severe than of the war crimes addressed by the Geneva Convention, it is not distinguishable from it in principle.

A handful of the employees at Arthur Andersen engaged in conduct that the government believed constituted obstruction of justice. Each of these employees was subject to indictment, conviction, and punishment for the offense as individuals. The government nevertheless chose to indict the firm as a collective entity. The result was the collapse of the company, which cost 85,000 employees in 390 offices around the world their jobs (Ainslie 2006, p. 109). Almost all of these employees were personally innocent of wrongdoing.¹⁰ It is difficult to see how assigning punishment to corporations can be ethically justified if the practical consequence of doing so is that secretaries in France get fired for the conduct of executives in Texas.

Enron is the poster child for corporate corruption. If any corporation could be deserving of punishment, it would have to be Enron. Yet no effort was ever made to punish Enron as a corporate entity.¹¹ Why? The obvious answer is that it would be patently unjust to impose punishment on Enron's shareholders who constituted the bulk of the innocent victims of the crimes committed by Enron's executives.

Advocates of corporate moral responsibility frequently argue that the ability to visit criminal punishment on corporations as collective entities can deter wrongdoing. Fear of corporate punishment can motivate managers to institute compliance programs and make efforts to maintain a good corporate ethos that can reduce wrongdoing by employees. I have no doubt that this is correct. The threat of collective punishment is indeed an effective way to motivate people to suppress undesirable conduct by others. That is almost always its purpose. Collective punishment can deter. The problem is not that collective punishment is not effective. It's that it is unjust.

⁸ See Art. 5(3), American Convention on Human Rights (Pact of San José) (1969), entered into force 18 July 1978, 1144 UNTS 123 (“[p]unishment shall not be extended to any person other than the criminal”) and Art. 7, African Charter on Human and Peoples' Rights (1981) entered into force 21 October 1986, OAU Doc. CAB/LEG/67/3 Rev. 5 (“[p]unishment is personal and can be imposed only on the offender”).

⁹ See Art. 33(1), Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949).

¹⁰ In fact, *none* of Andersen's employees were guilty of criminal wrongdoing because the Supreme Court overturned Andersen's conviction on the ground that the government had not proven the consciousness of wrongdoing required by the crime (Andersen 2005).

¹¹ Indictments were brought against corporate executives such as Andrew Fastow, Jeffery Skilling, and Ken Lay in the individual capacity, not against Enron as a corporate entity.

Deterrence can be a legitimate purpose of punishment. There is nothing ethically objectionable about imposing punishment on a *wrongdoer* to discourage others from behaving in a similar way. By associating punishment with transgression, we hope to cause others to refrain from transgressing for fear of a similar sanction. But this form of deterrence is distinct in kind from the form that consists of threatening to punish those who are innocent of wrongdoing to pressure them into suppressing the undesirable conduct of their fellow citizens.

The world would be a better place if we could more effectively deter crimes committed by teenagers. And we undoubtedly could do so by threatening to punish the teenagers' parents for their children's offenses. We do not do so because we recognize that such punishment is no different in principle from the more venal and obviously unacceptable practice of the Nazis who sought to deter acts of resistance by punishing innocent members of the communities in which such acts occurred. Threatening the innocent stakeholders of a corporation with punishment for the wrongdoing of culpable employees in order to force corporate managers to engage in more intensive self-policing is not ethically distinct from threatening to punish the innocent members of a family or a community for the wrongdoing of their relatives or fellow community members.

Advocates of corporate moral responsibility also frequently argue that inflicting criminal punishment on corporations can be a useful means of expressing society's disapproval of the conduct committed by its employees in its name, and thus serves the “expressive function of punishment (Feinberg 1965).” As with the claim regarding deterrence, I do not doubt that this is true. But my objection remains the same. Although it may be an effective way of expressing disapproval, it is not a just way of doing so.

An essential characteristic of punishment that distinguishes it from other penalties may indeed be that “punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those, in whose name, the punishment is inflicted (Feinberg 1965, p. 400). There is nothing ethically objectionable about visiting punishment on a *wrongdoer* in order to express disapproval of his or her conduct. But this is different in kind from punishing those who are innocent of wrongdoing in order to express resentment and indignation toward the conduct of others with whom they are somehow associated.

History repeatedly teaches the evil of punishing on the basis of guilt by association. We have only to recall the investigations of the House Un-American Activities Committee and the blacklist of the 1950s to understand the injustice of condemning people because they are associated

with others who may be engaged in unacceptable conduct. Riots directed against African-American communities in the segregated South were extraordinarily effective means of expressing the larger community's condemnation of the crimes committed by the individual members of those communities. Collective punishment is undoubtedly an effective means of expressing society's condemnation of individual wrongdoing. But it is not a just one.

It may be objected that this is all a mischaracterization of the situation—that there is nothing unjust about imposing punishment on a corporation's shareholders for the unethical actions of corporate employees.¹² In the first place, punishment frequently imposes harm on innocent parties. When a parent is convicted of a crime, his or her children often suffer significant financial and emotional hardship as a result of the parent's punishment. This does not render the punishment of the parent unjust. Further, when a corporation profits from the unethical actions of its employees, the shareholders reap financial rewards. If shareholders gain from the unethical actions of employees, justice demands that they are likewise subject to punishment for these actions. Finally, shareholders invest in corporations knowing that they may be subject to punitive fines for the improper actions of corporate employees. Because this is the case, there is nothing unjust about imposition of such fines.¹³

None of these arguments can bear scrutiny, however. To begin with, the harm that corporate punishment imposes on innocent shareholders is *not* analogous to the harm suffered by third parties as a spillover effect from the punishment of wrongdoers. Children do indeed suffer harm when their parents are punished. However, such harm is incidental to the punishment of the principal, and is regarded as a regrettable byproduct that should be minimized as much as possible. In contrast, when a corporation is punished, the harm falls on innocent shareholders as principals, not as third parties. They are the first to feel the effects of the punishment, not the dependents of others who are properly punished for wrongdoing. Further, this is the intended, not a regretted, result. Inflicting punishment on the corporation's shareholders is the point of corporate punishment. The threat of such punishment is intended to motivate the corporation to engage in greater efforts at self-policing and cooperate with government investigations of employee wrongdoing, and to express societal disapproval of the conduct of the employees. No effort will be made to minimize the harm suffered by the innocent corporate

shareholders because doing so would defeat the purpose of imposing the punishment in the first place.

Secondly, it is certainly true that shareholders can reap financial rewards from unethical actions taken by the employees of the corporations in which they invest. But what justice demands in such a case is restitution—the disgorgement of the unethically acquired gains in the form of compensation to the defrauded or otherwise harmed parties. Justice may in addition demand the punishment of all corporate employees who either participated in or facilitated the wrongdoing. However, justice does not and cannot demand the punishment of those who acted without personal fault and unknowingly benefitted from the wrongful conduct of others. It is fairly clear that justice does not demand that the innocent recipient of stolen property go to jail for theft.

Finally, acting with the awareness that one is subject to unjust treatment does not render the treatment any less unjust. Mere knowledge that one must satisfy unjust conditions to accomplish one's goals does not constitute consent to those conditions, and even if it did, such extorted consent does not remove the injustice. African-Americans in the segregated South knew that if they chose to eat in restaurants they would be subject to criminal punishment unless they sat in the inferior colored-only section. The fact that they could refrain from eating in restaurants did not mean that they were not being treated unjustly. Similarly, if, in order to participate in the securities market, corporate investors are required to sign a loyalty oath, or donate a percentage of their dividends to the Catholic church, or refrain from criticizing government economic policy, or subject themselves to punishment for actions for which they bear no personal responsibility, the forced choice they are offered does not render the imposed conditions ethically unobjectionable.

In sum, corporate punishment is vicarious collective punishment. Collective punishment is inherently unjust. Hence, to the extent that the existence of corporate moral responsibility authorizes corporate punishment, corporate moral responsibility is unjust. And it cannot be redeemed by demonstrating that the punishment is effective at increasing corporate self-policing or at denouncing wrongdoing. For collective punishment involves punishing the innocent to attain a desired societal end, and as such is incompatible with the Kantian insight that lies at the heart of any liberal society—that individuals may not be used merely as means to the ends of others or of society as a whole. Hence, when the practical significance of the existence of corporate moral responsibility is to pass the harm associated with corporate punishment through to the corporation's stakeholders whether they deserve it or not, corporate moral responsibility is ethically pernicious and must be eschewed.

¹² We leave aside the question of the punishment falling on innocent employees and customers for the moment.

¹³ I am grateful to anonymous reviewers for pointing these potential objections out to me.

Conclusion

For the past three decades, business ethicists have struggled with the problem of corporate moral responsibility. The debate, which has involved intricate analyses of the conditions of moral agency and the nature of the corporation, has been an intellectually engaging one. In this article, I have argued that it may also be a futile one. For the debate has proceeded without proper consideration of the practical consequences that would flow from its resolution.

The existence of corporate moral responsibility does not affect either the liability of individual corporate employees who behave unethically, corporations' duty to provide restitution or otherwise make amends for the harmful actions of their employees, corporations' susceptibility to administrative regulation, or the ability of the public to apply moral opprobrium to corporations or to condemn and call for the reform of their corporate cultures. So, if the advocates of corporate moral responsibility were to prove their point and win the debate, how would the world be a different place? The most significant, if not the only, practical difference would be that corporations would qualify for criminal punishment as collective entities.

To the extent, however, that corporate moral responsibility authorizes the criminal punishment of corporations as collective entities, it is ethically pernicious. When it carries this implication, corporate moral responsibility authorizes a form of vicarious collective punishment that visits evil on those who are personally innocent of wrongdoing in order to achieve a desired societal goal. But no matter how worthy the goal, fundamental ethical principles place some means of achieving them ethically off limits, and inflicting punishment on the innocent is surely among these proscribed means.

The language of corporate moral responsibility can serve an important expressive function. By allowing us to speak as though moral agency can be predicated on indefinite collections of loosely related and constantly changing individuals, it facilitates people's efforts to express moral condemnation of both the behavior of corporate employees and a corporation's ethical culture. Such language is much more efficient at mobilizing public sentiment than are the cumbersome statements required to identify the interactions among an amorphous group of people that produce morally unacceptable results. One might say that the language of corporate moral responsibility reduces communicative transaction costs.

There is nothing ethically objectionable about this use of language, as long as it does not mislead us into thinking that corporations may be punished as collective entities. Hence, my conclusion is that corporate moral responsibility is ethically acceptable only when used for purely expressive purposes.

Twenty-three hundred years ago, Alexander the Great confronted the complexity of the Gordian knot. Rejecting the conventional approach to the problem, he sliced through the knot's coils to reveal its hidden ends, rendering it easily untied. Today, as we confront the complexity of the corporate moral responsibility debate, we can profit from his example. By rejecting the conventional approach to the problem, we can slice through the abstractions associated with attributing moral responsibility to corporations to reveal the practical consequences of doing so. I submit that when we do so, the problem is easily resolved.

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