

## **Responsibility Incorporated**

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### **1. The requirements of corporate responsibility**

The Herald of Free Enterprise, a ferry operating in the English Channel, sank in the 1980's, drowning nearly two hundred people. An official inquiry found that the company running the ferry was extremely sloppy, with poor routines of checking and management. 'From top to bottom the body corporate was infected with the disease of sloppiness' (Colvin 1995, 17). But the Courts did not penalize anyone in what might seem to be appropriate measure, failing to identify individuals who were seriously enough at fault. As one commentator puts it, 'the primary requirement of finding an individual who was liable ...stood in the way of attaching any significance to the organizational sloppiness that had been found by the official inquiry' (Colvin 1995, 18).

This paper argues that in a case like this it can be perfectly proper to hold the corporate entity responsible, even though none of the individuals involved did any great personal wrong. The paper provides a defense of the claim that full-blown responsibility may attach, not just to individuals, but to corporate entities: to commercial corporations, political parties, churches, informal associations, and the like. The thesis is that just as individuals can be held responsible for actions, being subjected to praise or blame for what they do, so the same can be true of corporate entities like these — corporates, as I will sometimes call them. Such entities can be held responsible in a manner that parallels but does not reduce to the practice of holding individuals responsible.

To hold an individual more or less fully responsible for an action, by criteria inscribed in common practice, is to assume three things: first, that the person was an agent proper and faced a significant choice, involving the possibility of doing something good or bad, right or wrong; second, that the choice was up to the person: it was, intuitively, within the agent's control; and third, that the person was a normal believer with evidence available supporting beliefs that that is how things were. I refer to the three requirements of full, personal responsibility as: the agent-choice requirement, the control requirement, and the believer-access requirement.<sup>1</sup>

In this paper I put aside the difficult issues of what it is exactly for someone to be in control of a choice (Pettit and Smith 1996; Pettit 2001) and what it is for someone to enjoy believer-access (Rosen 2004).<sup>ii</sup> Those issues arise equally with personal and corporate responsibility and need not concern us in the current discussion. I also put aside the question as to how exactly we should analyze the attitude of holding agents responsible: taking them to be blameworthy, and blaming them, or taking them to be praiseworthy, and approving of them; whatever analysis applies, it will apply equally in the individual and the corporate case. The only point I would make is that there is a difference between holding someone responsible in the attitudinal sense and intentionally imposing a sanction.<sup>iii</sup> The focus here will be on how far corporates should be held responsible, not on how far they should be subject to a regime of sanctions, as in tort or criminal law.

Applying our three conditions, a corporate entity can be held fully responsible for doing something, so far as it satisfies these requirements.

- Agent-choice. This corporate entity was a proper agent, facing a significant choice between doing something good or bad, right or wrong.
- Control. The choice was within the control of the corporate.
- Believer-access. The corporate was a normal believer, with evidence available on those and related matters.

I want to argue that certain corporate entities are constituted in such a way that, for many choices, they can meet conditions of this kind and count as fit to be held responsible for what they do. They will be responsible in their own right, not just because individuals in their midst are responsible in a more or less familiar, personal sense for their part in what is done; they are emergently responsible, as I shall say, not just derivatively responsible. When a corporate entity is emergently responsible for something, then individuals may to varying degrees inherit a sort of member-responsibility. To the extent that it is their corporate — their company, their church, their association — they will almost certainly be positioned to feel pride or shame in what is done. And they may deserve a degree of praise or blame — they may rightly feel righteous or guilty in some small measure — so far as they identified with what was

happening or at least did not dissociate themselves or protest: they were complicit in the corporate performance (Kutz 2001).

To assert the possibility of emergent corporate responsibility, with this associated member-responsibility, is consistent with allowing that there is also a further sense in which individuals may be responsible for a piece of corporate right-doing or wrong-doing. Some members may be responsible in this further sense so far as they played an active role in what the corporate did, and were personally responsible for assuming that role; they could have refused or failed to do so and didn't (Graham 1987, 12). This sort of individual responsibility I will call enactor-responsibility as distinct from member-responsibility. Individuals will have member-responsibility for something in virtue of their corporation being emergently responsible for it; individuals will have enactor-responsibility so far as it was by their hands that the right or wrong in question was done.

The defense of my view of corporate responsibility will take up five more sections. In sections 2-4, I show in turn how each of the three requirements for emergent responsibility can be fully realized in a corporate body. In section 5 I illustrate the view taken and show how emergent responsibility may attach to a corporate, even when no one may incur much enactor-responsibility. And then in section 6 I illustrate the practical import of allowing that corporates may be emergently responsible for what they do.<sup>iv</sup>

One last observation. Although I think that corporate entities can be agents, and indeed responsible agents, I do not believe that how they fare matters independently of how individual human beings fare. Other things being equal, it is important for human beings that they have the right to incorporate, and it is important therefore that the corporates they form have corresponding agency rights. But that is the only reason we need acknowledge for why the rights of corporates in our culture and our law are normatively significant. Corporate entities have rights in their own name, as they have responsibilities in their own name, and in that sense they mimic individual agents. But we may hold, consistently with this, that those rights make a claim on us only because of their significance for individual members and stakeholders. We can acknowledge the role of corporate entities in our lives while thinking that the only reason why some social arrangements are better than others is ultimately that they are better for individual human

beings. We can admit corporates into our ontology and still remain normative individualists (Pettit 1993).

## **2. Corporates and the agent-choice requirement**

The agent-choice condition has two components, requiring that there is an agent present and that that agent faces options that divide significantly on an evaluative axis, some being good, others bad, or some being right, others wrong. This condition will be occasionally unfulfilled for individual agents, because the options available in a given choice do not involve significantly different alternatives. If it fails in general with some individuals, that will be because they are out of their minds and not fit to constitute agents proper. Things are exactly parallel with corporates. They may occasionally find themselves faced with alternatives that do not divide significantly on the good-bad or right-wrong axis. But they will fail the agent-choice condition in general, only if they fail to be agents in any proper sense; in particular, fail to be emergent agents that have an agent-identity distinguishable from that of their individual members.

The question, then, is whether corporates have to be denied emergent responsibility, on the grounds that they are not emergent agents, not agents in their own right. I shall argue that they can be emergent agents. I do not mean that they can vary independently of variations in what individual agents do, as in a view associated with certain strands in nineteenth-century, German thought (for an overview, see Runciman 1997). I mean only that, by grace of how individuals act and adjust in certain circumstances, corporates can emerge as agents with an identity of their own — agents distinct from the individuals who construct them (List and Pettit 2006).

In order to constitute an agent in its own right, a corporate entity will have to mimic the performance of an individual person at some basic level. It may not have consciousness, it may not have emotions, it may not even have perceptions. But there are other conditions that it will certainly have to meet:

- It must have certain goals at which its agency is directed;
- it must have a system of representations or beliefs that reveal, as required, how those goals can be served, and in what combinations;

- it may also have a system of normative representations that bear on what goals or means are desirable, what beliefs credible, and so on; and
- it must have a robust capacity to form and update its representations more or less rationally and to pursue its goals more or less rationally, in accordance with those representations.

In these very basic respects, a corporate entity will have to simulate the performance of an individual. It will have to exemplify the profile of an entity worthy of being interpreted from within the intentional stance, in the manner of certain humans, animals and perhaps instances of artificial intelligence (Dennett 1987). It might conceivably do so in the manner of a simple animal, without any normative beliefs bearing on the goals to adopt, the means to take in pursuit of them, the sorts of beliefs that are evidentially persuasive, and so on. Or it might do so, more plausibly, in the manner that we human beings exemplify. We human beings do not just adopt goals, select means and form beliefs, after all; we are also capable of taking normative claims into account, whether in performing well or in apologizing for not having performed well. And we can do this at a corporate as well as an individual level.

How much rationality will be required in a corporate entity? At the least, enough to ensure that should it be presented with manifest evidence of irrationality — assuming that it is more like us than like simple animals — then it will not prove insensitive to such evidence. It will routinely adjust so as to conform with palpable requirements of rationality, except in the rather special event that there are no reasons for living with inconsistency rather than resolving a question one way or another.<sup>v</sup>

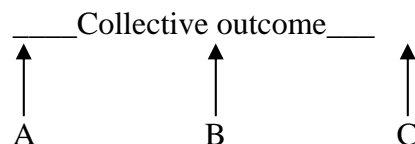
It should be clear that many groups will not constitute agents in this sense, even groups in which the members act to some common effect. There are two varieties of group in which members act to a common effect but without constituting novel agents. The first involves co-action, as it is sometimes called, the other joint action. Because they do not form novel agents, these entities do not deserve to be called corporates. We might describe them as congregates, since the medieval Latin word for an organized corporate entity, universitas, was contrasted with the term, congregatio, which was used for any collection or gathering of people (Canning 1980; 1983).<sup>vi</sup>

Congregates display co-action when individuals act to a common effect without anyone necessarily being aware of the contributions of others, or indeed of the effect they produce together; or, if there is such awareness, without anyone necessarily seeking or indeed shunning that outcome. Without any awareness of the common effect, people may pursue bargains on an open market and combine to drive prices to the competitive level. And with awareness of the common effect, but without any wish to achieve or avoid the effect created, people in congested traffic may each blow their horn in frustration and cause a general racket. Both illustrate the first, co-action variety of congregate.

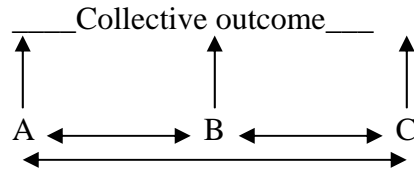
In the second kind of congregate, participants will not only be aware of one another and their potential contributions but will each endorse and target an outcome that they can achieve in common (Tuomela 1995; Bratman 1999; Gilbert 2001). This congregate involves unforced, joint action, as distinct from mere co-action. In acting jointly, to gesture at an analysis, each member of the joint-action congregate intends that they together achieve the relevant outcome; each intends to do his or her bit; each believes that others will do their bit; each intends to do his or her bit because of this belief; and all of this is above board, as a matter of shared awareness (Pettit and Schweikard 2006). Examples are where people assume different roles in helping a swimmer in difficulty; or each sing their allotted part in a choral performance; or each make the required move in a team exercise.

The sorts of congregates mentioned can be mapped out in diagrams, where upward, single-headed arrows represent people's contribution to action and sideways, double-headed arrows represent their awareness of one another. The diagrams may serve at least a mnemonic purpose.

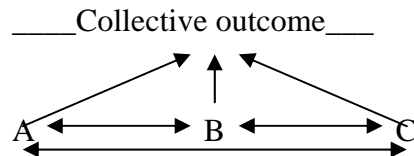
Case 1. Unwitting co-action



Case 2. Witting co-action



### Case 3. Joint action



There can be no suggestion that a novel institutional agent emerges in the case of the co-action congregate; everything that is done is the work of individual agents. But neither does a novel agent emerge just on the grounds that there is joint action. Usually joint action is fairly episodic, being focused on a particular task at a particular time, so that there is no question of a novel center of goals, representations and action appearing. But even if a pattern of joint action involves enduring commitments and recurrent choices among the partners, it need not give rise to any such center. The individuals may allow one another each to act for the common end according to his or her own beliefs, for example, so that no common system of representations, and so no common agent, is engaged. The appearance of joint action, just on its own, leaves that possibility open.

When we engage in joint action with others, of course, we will naturally think in terms of what ‘we’ are doing, as signaled in the analysis I sketched. But the ‘we’ in terms of which we think in such a case need not refer to any entity that is guaranteed, say in virtue of the steps that we the members take, to display the pattern of goals and representations, and the robust rationality in the updating and implementation of those states, that is needed. For all that joint action requires, we may only be focused on the completion of a task or set of tasks, without any intention to constitute a single system of representation for the guidance of those acting in pursuit of that end (pace Gilbert 2001).

But though none of the congregates mentioned has to constitute an emergent entity, what should now be salient is that there is nothing to stop people acting jointly with a view, precisely, to ensuring that such an entity materializes. Joint action may not

guarantee the appearance of an emergent agent but it can certainly be employed to bring such an agent into existence.

Suppose that a number of people converge on wanting to advance certain causes; decide that these goals should be pursued on the basis of a single set of representations, descriptive and perhaps normative; and agree on an arrangement for determining who on any occasion is to act for those ends, according to those representations: who is to act or speak in the name of the group. Being committed to this way of doing things, the individuals will have to develop a means of forming, updating and empowering a coherent set of representations that will guide the actions of its representatives; they will have to establish a corporate, internal decision structure (French 1984, Ch 4; French, Nesterku and Risser 1992, Ch 2). And so they will bring into existence an entity that meets the existence conditions for an agent. There will be a center of goals and representations distinct from any of the individuals and there will be a procedure in place for the rational revision and implementation of those states. The members will jointly intend the creation and maintenance of that entity, though they may not jointly intend, of each action performed via its agency, that that action in particular be adopted.

The analysis of joint action at which we gestured earlier explains how members may enact an intention that they together achieve this sort of end: each will intend to do his or her bit; each will believe that others will do their bit too; this belief will serve in everyone to support that intention; and all of this will be above board, as a matter of shared awareness. We can easily imagine this pattern materializing with the participatory sort of association, where each member takes an explicit and more or less equal part in ensuring that the requisite conditions are satisfied. But the pattern of joint intention can just as easily involve a hierarchical organization.

In the hierarchical case each will play a more or less specialized part; some will play much larger parts than others; and the satisfaction of the conditions for agency will be guaranteed in many cases by more or less hard-wired routines or procedures of decision-making. In such a hierarchical organization, be it a company or church or school, there may be a distinction between the members who constitute the agency — say, the shareholders of the company — and the employees who are hired to do specific

jobs (Miller 2001). But there will be some group of individuals who jointly intend, implicitly or explicitly, that there be a corporate structure in place for the pursuit of various ends, according to a single system of representation.

This all shows that the agent-choice requirement for corporate responsibility can certainly be satisfied. The joint action of individuals can lead to the formation of corporate entities that constitute agents, under the account given of the conditions for agency. And if there are such agents then, inevitably, many of the choices they face are liable to involve matters of evaluative significance. Both components in the agency-choice requirement can be fulfilled.

A question opened by this discussion is whether joint action, as analyzed, is necessary for the appearance of any plausible corporate entity or whether it represents only one possible way in which corporate agency might materialize. The assumption that joint action is always necessary is plausible but, more important, it makes things harder rather than easier from the point of view of arguing for corporate responsibility. In what follows, there, I shall take that assumption as granted. Not every member may willingly or happily acquiesce in the joint intention assumed, or do their bit in furthering it; there may be a degree of duress or fear or pressure involved. But under the assumption made, every member will have a conception of the entity to the formation of which they contribute in some measure, and each will act intentionally in making this contribution. Willingly or unwillingly, they will each act out of an intention that together they create the agent targeted; willingly or unwillingly, they will each play their part in doing this; and so on.

### **3. Corporates and the control requirement**

Imagine now that individuals have conspired, in the manner described, to establish a center of goals and representations, and an arrangement for ensuring that its goals are pursued according to its representations. The pursuit of the corporate goals may be implemented on a given occasion by a designated member or employee, or by a subset of the members, or perhaps by the members as a whole. Does this ensure that the second requirement for responsibility is also going to be satisfied? Does it guarantee that

whatever action is taken, it will be true that the action was in the corporate's control: that it was up to the corporate to take it or not?

It may well seem not. A corporate entity, as we have been envisaging it, will always have to act through representative individuals. The action ascribed to the corporate will be performed by those representatives or it will materialize in virtue of distinct actions performed by representatives, individually or collectively, at a time or over time. But doesn't that mean that whenever an action is said to be within the control of a corporate, it is within the control, more basically still, of the representatives? Doesn't it mean that while we may speak at an abstract level of the corporation being in control of this or that intervention, the concrete reality will always involve control by some individual or set of individuals?

It is no response to this problem to say that the individuals who act in the name of a corporate on any occasion will have been authorized or employed to act in that way by the corporate; they will be acting only as delegates. For authorizing is itself an act and if the corporate authorizes a delegate, then it must do so in virtue of some individual or individuals, some designated authority, authorizing that person. Hence the problem will recur one stage back. The act of authorization may look at an abstract level to be within the control of the corporate but the more concrete reality is that it will be within the control of the authorizing individual.

The problem raised comes of the fact that control in the relevant agential sense cannot apparently be shared between a corporate and its representative. There is a hard choice to be made between taking the corporate to be in control of any action performed in its name and taking the representative performer to be in control. Since any control exercised by the corporate is exercised in virtue of the control exercised by the representative, however, the more appealing option in that hard choice will be to say that it is the individual or individuals representing the corporate who are really in control of whatever is done, not the corporate itself. And if we do say that, then we will have to acknowledge that there is no emergent, corporate responsibility. We will have to go along with the lesson of the catchphrase: 'Corporation don't commit crimes; people do' (Colvin 1995, 10).

The problem that arises here comes about, it should be noticed, because those who act in representation of a group will always be acting as intentional agents, not as zombies: not as automatons mainlined by a group mind. There is a logical possibility that this mainlining relationship might hold between a group and its members but it is empirically implausible.

Consider the way bees may behave in forming a new hive (Seeley 2001; on general background see Wilson 2001). Under a recent story, half the bees in a hive move away with the queen at the end of each season, leaving a daughter of the queen in possession of the hive. Initially they swarm outside the old nest, then move to a nearby tree that provides a little shelter, and then send off scouts in search of a location for a new hive. The scouts return at regular intervals and each performs a dance that indicates the distance, direction and the quality of a candidate location for the new hive that it has found. At any time a number of such dances are being performed for the benefit of the swarm but after a couple of days the dances converge and then the swarm moves off to the location indicated by the surviving dance.

With a group of bees like this it is natural and useful to ascribe swarm-level goals, representations and actions: that is, to adopt the intentional stance towards the group and treat it like a single, composite agent. But while there is every reason to ascribe such attitudes and actions to the swarm as a whole — it displays sufficient complexity and flexibility — there is little or no reason to do this with the individual bees. For all we can tell, they may be responding in a quite mechanical way to chemical and other signals. The swarm may relate to the bees in the way an intelligent organism relates to its cells. The swarm may be intentionally minded, as an organism may be intentionally minded, while the bees, like the cells, are more or less mindless automatons.

The mainlining proposal is that a similar mode of organization might exist amongst human beings, giving rise to corporate behavior. If such a mode of organization did obtain, then we might have little hesitation in saying that anything done by a representative individual — done more or less mechanically rather than intentionally — was really in the control of the group; it would only be the group, after all, that had an intentional presence in the action.

But there is no reason to think that people ever coalesce in this total manner or ever play their parts in this blind fashion. Did they do so, then there would be areas of their behavior — those associated with performing as required by the controlling group — in which they would not have normal intentional control but would be subject to the control of the collectivity. And there is little or no evidence that people are ever out of intentional control in the systematic manner needed: little or no evidence that they are selectionally predestined or causally predetermined to behave as life in such a coalescence of minds would require. Indeed, it is even difficult to imagine what might constitute plausible evidence of such psychologically subversive control (Pettit 1993, Part II).

Back, then, to our problem. Given that corporates only act intentionally via the intentional actions of their members, can they really have the sort of control that would be required for emergent responsibility? Can they have a form of control that does not boil down, without residue, into the control of a particular individual or set of individuals?

The general issue in the background of the problem raised is how control can be shared across different levels: the lower level of action by this or that individual and the higher level of action by a corporate of whom that individual is a representative. A consideration of natural systems in which there are different levels of control will give us a useful perspective on this issue. It will provide us with a model of how control can be shared between corporate organizations and the individual agents who are their members or employees.

Consider a natural process in which water in a closed flask is brought to the boil and, as a consequence, the flask breaks. Let us assume that what happens in the process is that as the water boils — as the mean motion of the constituent molecules reaches a suitable level — it becomes likely to the point of near-inevitability that some molecule will have a position and momentum sufficient to break a molecular bond in the surface of the flask; and that this in fact happens, leading to the collapse of the flask. What causes the flask to break in such a case?

At one level the molecule that actually triggers the break in the surface is the cause of the collapse. But the fact that the water is boiling is also causally relevant to the event. The boiling temperature of the water consists in the mean molecular motion being at such and such a level and so is constituted by the motion of the triggering molecule together with the motion of the other molecules. Thus it cannot be a cause of the motion of the triggering molecule, and cannot cooperate with that motion as a supportive cause. But it is still causally relevant. Its relevance consists in the fact that given its presence — given that the water is boiling — it is more or less inevitable that there will be some constituent molecule, maybe this, maybe that, that has a position and a momentum sufficient to induce a crack in the surface of the flask.

The relationship between the causally relevant boiling and the causally relevant molecule might be described as follows (Jackson, Pettit and Smith 2004, Part 1). The higher-level event — the water being at boiling point — programs for the collapse of the flask, and the lower-level event implements that program by actually producing the break. The facts involved, put more prosaically, are these. First, the higher-level event may be realized in many different ways, with the number, positions and momenta of the constituent molecules varying within the constraint of maintaining such and such a mean level of motion. Second, no matter how the higher-level event is realized — no matter how the relevant molecules and motion are distributed — it is almost certain to involve a molecule that has a position and momentum sufficient to break the flask. And, third, the way it is actually realized does have a molecule active in that role. Given the fulfillment of such conditions, we can say that the water's being at boiling temperature programs for the breaking of the flask, whereas the molecule's behaving as it does in such and such a vicinity implements that program; it plays the immediate productive role. Both programming and implementing are ways, intuitively, of being causally relevant and so it will make sense, depending on context, to invoke either in causal explanation of the effect; information about either antecedent will amount to important information about the causal history of the event (Lewis 1986).

The analogy with the water gives us a helpful angle on our problem with corporate control. Suppose that the member of a corporate does something in the corporate name, exercising intentional control in the usual manner. Is there any sense in

which the corporate can share in control of what is done? The answer is that it can share in that control so far as it relates as a programming cause to the cause that the active individual represents.

Assume that the corporate is organized for action by routines, explicit or implicit, that assign different jobs to different parties, these being coded in the dispositions of members to recognize and enact their assigned tasks. And assume that those dispositions are backed up by dispositions distributed among the membership to act in this or that corrective fashion, should a job not get done by the designated party. Such dispositions will exist in the members of any corporate entity that has a well-defined internal decision structure and they will ensure that for any task that is targeted for fulfillment by the goals and representations of the corporate, that task will certainly be discharged. Certain individuals will be selected and motivated under such procedures and propensities to do the job. And if they fail to do it, or refuse to do it, then others will be selected and motivated to take their place. By virtue of the routines it embodies in the distribution of member dispositions — by virtue of the institutional software installed in the human hardware — the corporation will program for the performance required; and the individuals who actually undertake the performance will implement that program.

The individuals are the ones who get the job done under this model; they are the immediate causal operatives. But the corporate puts routines in place that allocate that job to those individuals, and that ensure a certain monitoring and back-up by others. In the circumstances those routines are likely to be both necessary and sufficient for individual action. They will be necessary to the extent that had they not allocated the job to certain individuals, it wouldn't have been done. And they will be sufficient to the extent that should the designated individuals fail or refuse to do the job, then the routines will ensure either that they are jolted into action or that some others are recruited to take their place. The routines will have to ensure this for any activities that are essential to the realization of corporate ends; did a corporate not have resilience under individual failure or refusal, then it would not have a robust capacity to further its ends.

Under this program model, the corporate controls things to the extent of arranging matters so that some agents will be there to act in the relevant role, while the relevant

individuals control things to the extent of ensuring that it is they who actually enact the role. The corporate has a degree of control over whether the job in question is going to be done, it doesn't matter by whom. The individuals have a degree of control over whether it is going to be they or others who do the job. And, typically, individuals on their own won't have any more control than this; they will not be able to thwart the corporate entity, for example, by inhibiting others from taking their place and doing the job instead.

It is particularly important to the story I am telling that the programming control of the corporate is structural in character and does not require any supreme commander to exercise it, monitoring the performance of other agents and being ready to call in replacements where necessary (French 1984; Dan-Cohen 1986, Ch.3). Did it require such a monitoring commander, then there would be a question as to whether that individual, and not the corporate itself, was in control; the individual would be in control so far as he or she was indispensable. There may be supervisory individuals in place, of course, but then they themselves will be controlled, under my model, by the impersonal structure. The impersonal structure will exercise control over them, as over others, so far as the associated routines are necessary to prompt the actions required of those individuals and are sufficient to ensure that there will be some individuals available to perform the actions.

So far as the program architecture of control applies to corporate entities, then, there will be no problem about acknowledging that despite the control assumed by those individuals who act in the name of a corporate, still the corporate itself continues to enjoy a different and crucial form of control. In particular, there will be no problem about holding that it enjoys the sort of control over an action that is required if it is to be held responsible for it. Let the representatives of a corporate do something right or wrong. If the corporate has programming control over the action, then it may be held responsible for the action's having been performed. And it may be held responsible for this, despite the fact that the individuals who acted in its name will remain responsible for their being the ones who performed it, and not some others instead. The architecture posited is neither baroque or idiosyncratic.

The role of the corporate routines or procedures, under this story, is akin to the role of decision-making habits in the case of individual agents. But it is often said that if a person's action is controlled by his or her habits, then the person is responsible for the action only if he or she is also in control of those controlling habits: only if control is in that sense regressive or recursive (Hurley 2002, Part 1). And so the same would seem to hold of the corporate structure. Is it plausible, then, to say that a corporate might have recursive control over its own structure and procedures?

I think that control can be recursive in the corporate case for the same reason that it can be recursive in the individual (Pettit 2005). No individuals will have been historically implicated in the formation of their own decision-making capacities — not at least with every capacity — but that does not rule out the possibility of their being virtually in control of how those capacities operate. They will have virtual control over them so far as their capacities include the capacity to deal with any problems or challenges to which capacities give rise, suspending or altering them, as appropriate. And as this is true of individuals, so something parallel can hold of corporates. They can be structured so as to have virtual programming control over their own programming structures. They can be structured, via monitoring and alarm-bell arrangements, so that they are programmed to ensure that any problems that arise in what they program for are themselves addressed. If there is no difficulty for individual responsibility here, there is no difficulty for corporate.

But suppose that a corporate is not actually structured in this way: suppose that it does not have the capacities required for virtual control over its own habits or routines. Suppose that it is as badly organized, for example, as the Herald of Free Enterprise appears to have been. What to say, then? We would take a lenient view, if we treated the corporate on the analogy of a child, a stricter view if we treated it on the analogy of a normal adult. And I think it is clear that we should treat it on the analogy with an adult.

Think of children who do not have requisite resources of virtual control in some area of action. We will not hold them responsible in the ordinary way, though we may hold them strictly liable in order to elicit suitable habits and to 'responsibilize' them (Garland 2001); we do this when we agree to let our teenage children go out for an

evening but insist that they are liable if they miss the late-night bus, or when we let them host a party but insist that they are liable if anything is broken (Pettit 2001, Ch.1). Now think of normal adults who also lack the requisite resources of virtual control in some area of action. Here we are likely to take a very different view. We will hold them properly responsible for what they do, not just strictly liable, so far as we think that they had the capacity to notice the absence of suitable habits and to do something about it; we will blame them for a negligent omission to guard against the absence of such habits. And as we treat normal adults so, intuitively, there will be good reason to treat a corporate. If it lacks the monitoring and regulative capacities required, that will be due to a negligent omission on its part: it was able, intuitively, to put the necessary routines in place, and it didn't.

#### **4. Corporates and the believer-access requirement**

The third requirement for full responsibility, like the first, has two components: first, that the corporate should be a normal believer and, second, that evidence should be available to the corporate in support of beliefs to the effect that the other requirements and any related conditions are fulfilled: it faced a choice, the options differed in value, it had control over which to perform, and so on. There won't be any particular problem with the second component in this requirement, so we may concentrate on the first.<sup>vii</sup> The question is whether a corporate of the kind we have been envisaging can count as a believer, in particular a believer in its own right: an active and suitably rational center of belief-formation.

The fact that the corporate is an agent means that the joint action of members sets up a basis on which we can ascribe a unified set of goals and a unified system of representations; and that we can expect those goals to be served by one or more members, selected under suitable routines, according to the representations. The fact that that corporate has control over what is done by those representatives means, in turn, that there are routines for prompting designated individuals to act, or to be replaced if they fail to act, so that the corporate operation programs for their actions. But both of those requirements could be fulfilled without its being the case that the corporate was truly an independent or emergent center of belief-formation.

The beliefs that guide the corporate in action could be dictated, case after case, by one or a number of individuals, in which event those individuals would seem to be the ultimate owners of responsibility. They would direct the corporate from behind the scenes, as they might manipulate a marionette; the corporate would be an apparatus, agent-like on the surface only, that mediated the effects of people's individual beliefs. The question, then, is whether this is how it is or whether, on the contrary, there is ground for thinking that corporates may be centers of belief-formation in their own right.

There is a standard story as to how participatory corporates form their beliefs, which can be found in Hobbes (1994, Ch 16), in Locke (1960, Bk 2, Ch 8.96) and in Rousseau (1973, Bk 4, ch 2). According to this story, corporate beliefs take the form of on-off judgments — including, in principle, on-off judgments about probabilities — and the judgment of a group on any issue is to be determined by majority opinion, with due qualifications to cover tied votes, factional connivance, and the like.

Suppose, then, that a corporate were to form all its judgments on this basis. Would that mean that it did not constitute a center of belief-formation in its own right? There is certainly some ground for thinking that it might mean this. On every issue where a group judgment is formed, thereby triggering the corporate institutions to produce a corresponding action, it might be said that the majority in support of that judgment — together perhaps with the majorities in support of collateral judgments — is the true bearer of responsibility. Suppose one wanted to complain about how the corporate operated in that instance. The appropriate targets, if they are identifiable, would seem to be members of that majority. A member of the dissenting minority might reasonably reply: don't blame me, I didn't vote for pursuing that goal, or for pursuing it in that particular way.

This observation need not be a reason for scepticism about corporate responsibility, however, because it turns out that no corporate entity can realistically expect to form its required judgments on the basis of majority vote, or anything like majority vote. On this matter the tradition is demonstrably wrong. The 'discursive dilemma', as we shall see in a moment, shows that majority voting among perfectly consistent voters is liable to generate an inconsistent set of group judgments (Pettit 2001,

Ch 5; 2003). And an associated impossibility theorem shows that the problem is general. Take any procedure that treats every individual voter equally, giving no one the status of a dictator; that treats every issue equally, letting it be determined by the votes of the members on that issue; and that is designed to work for any consistent sets of input judgments. No procedure that satisfies conditions of roughly these three types can be guaranteed against producing an inconsistent set of judgments over a connected range of issues, even when all the individuals vote consistently themselves (List and Pettit 2002).

In order to illustrate the problem raised by discursive dilemmas, consider a participatory group of three agents, A, B and C. Imagine that under the pressure of decision and action, they have to form judgments, now on whether p, now on whether q, now on whether r, and yet again on whether  $p \& q \& r$ . All but A might vote for p; all but B for q; all but C for r; and, consequently, none for  $p \& q \& r$ : each would reject it because of rejecting one conjunct. Under a majoritarian arrangement, these votes would have the group holding that p, that q, that r, but that not- $p \& q \& r$ . The position would be as represented in the following matrix.

	p?	q?	r?	$p \& q \& r$ ?
A	No	Yes	Yes	No
B	Yes	No	Yes	No
C	Yes	yes	No	No
Majority	Yes	Yes	Yes	No.

What the matrix shows is that in this case the group faces a hard choice or dilemma. It may opt for responsiveness to individual opinion, in which case it will have to sacrifice collective rationality. Or it may opt for collective rationality, in which case it will have to sacrifice responsiveness to individual opinion.

The threat of such discursive dilemmas is very serious for any corporate entity. Such an entity will exist over time, confronting a range of issues: now whether p, now whether q, now whether r, and so on. Sooner or later it is very likely to face an issue such that a majority judgment is liable to conflict with judgments already on record (List 2006); it might confront the issue, for example, of whether  $p \& q \& r$ , though not necessarily under that perspicuous representation of the connection with the other issues.

If the A-B-C group is to be disciplined rationally in the fashion of a proper agent, it ought to be at least sensitive to the problem involved, and disposed to make adjustments in response to recognizing it. Inconsistency is liable to divide it against itself, recommending inconsistent courses of action. And it is equally liable to undermine any hope of being taken as reliable or trustworthy by other parties, personal or corporate; it can jeopardize the prospect of productive contracts and other relationships.

What, then, is a corporate to do? It might seek to get out of the problem by suspending judgment on one in any set of issues where majority voting would give rise to inconsistency. But that won't work in general. A corporate will only tend to form judgments as the service of its goals requires; it will seek out judgments on a need-for-action basis. Thus, any suspension of judgment is liable to cause problems, preventing the corporate from forming a decision about what to do in some pressing predicament.

There is really only one recourse available.<sup>viii</sup> This is for the corporate to adopt a procedure of judgment-formation that breaches one or other of the conditions under which the general impossibility theorem applies. The procedure might treat individuals as less than equal, for example, say by appointing a special subgroup or officer with the authority to ensure consistency. Or it might treat issues as less than equal, allowing earlier commitments to dictate later ones, or more general commitments to dictate more specific ones. Or, less plausibly, it might seek to reduce the possible profiles of individual sets of judgments that call to be aggregated (List 2002).

Ordinary hierarchical corporates will naturally implement policies that give some individuals a special role or the judgments on some issues a special status. But there is a particularly interesting policy that might be adopted in a corporate of a participatory character (Pettit 2006a). Members might take a straw vote on each issue requiring judgment, as it comes up for determination. And then, in the event of a vote producing a verdict that is inconsistent with some prior judgment or judgments, they might reconsider all the judgments in the inconsistent set and see if they can secure agreement on which of them to reverse: perhaps the judgment supported in the straw vote, perhaps another. Were the procedure to work successfully, then the upshot would be a breach of one of the conditions. The reversed judgment, unlike the others, would not be determined by the

majority view — not at least by the original majority view — among members. But this would not be a serious ground for complaint, for the reversal would reflect the second-round view of members as to what judgment ought to be adopted by the corporate.

We began this discussion by noting that if a corporate were to have its judgments fixed by the majority opinion on any issue, as in traditional pictures, then it would not have an emergent character as a center for the formation of belief, and independent corporate responsibility would be put in question. What we have now seen, however, is that if members act jointly to set up a center of goals and representations, then they cannot hope to foist their individual judgments, case by case, onto the corporate entity; no voting procedure could successfully underpin that exercise. They will have to let the judgments of the corporate entity form under a discipline of mutual consistency that rules out the possibility of allowing the judgments to be dictated mechanically by the judgments of individuals. They will have to let the corporate entity constitute a center of belief- or judgment-formation in its own right.

This applies, no matter what procedure of judgment-formation is adopted. The corporate may be participatory in character and adopt the straw-vote approach. Or it may be more hierarchical in nature and authorize particular individuals or subgroups to review problems of inconsistency and make adjustments to avoid them. In any such case, the judgments adopted by the corporate will not be just the judgments willed on it by individuals. They will be the judgments to which it gets committed under constraints of overall consistency. Assuming sincere voting, those judgments will reflect the sense of evidence held by the members who provide the initial inputs. But they will not be generated solely from those inputs. The judgments that the corporate espouses will have to meet two constraints, not one: first, the exogenous constraint provided by the voters' sense of evidence and, second, the endogenous constraint of having to constitute a coherent package.

The important lesson is that, having to achieve consistency in the judgments they hold, corporate entities cannot slavishly reflect the judgments of their members. A participatory corporate such as the A-B-C group mentioned earlier will have to reject one of the judgments supported in the vote, and endorse a position rejected by a majority of

its members, as in judging that not-p or not-q or not-r, or endorse a position rejected by all, as in judging that p&q&r. A more hierarchical corporate will have to achieve the same result and, provided that its judgments are not all left to the determination of a dictator or elite — this would be unlikely if the corporate is formed by unforced, joint action — they will have to be generated in a more or less parallel way. In each case, the corporate will be constructed as a subject of belief that stands off from its members as a subject new and apart: a believer with its own proper routines of belief-formation.

One way of underlining this result is to observe that the position of the corporate in relation to its members will be a little like that which might obtain between an individual person and those he or she consults as advisers, generally accepting any view that a majority supports. The advisee will not be able to go along slavishly with majority opinions since, as we have seen, these can be inconsistent with one another. Presumably the only satisfactory line will be to go along with majority opinion subject to the constraint of not allowing internal inconsistency. That policy will not dictate a uniquely best set of judgments to adopt but it will at least ensure that the advisee remains a believer proper, not just a voicebox of those consulted (Pettit 2006b). In precisely the same way the only satisfactory line for a corporate will be to go along with the views of its members on any issue, whether the views of a majority overall or the views of an authorized subgroup, but to do so only under the constraint of ensuring that this does not lead to inconsistency. And just as the policy will mark out an advisee as a believer in his or her own right, so it will do the same for the corporate.

### **5. Illustrating corporate responsibility**

Under the picture defended in section 2, the corporate, unlike a congregate, is structured to perform like an agent, being constructed so as to have a unified system of goals and representations, and a means of acting on what they recommend. But that still leaves it open to two possibilities, each inimical to its being an emergently responsible agent. The first is that it loses control to the representatives who act or speak ‘out front’ in its name; the second is the possibility that it is subject to the control of those ‘in the back’ who determine what beliefs it shall form and act on. What we have seen in the last two sections is that neither of these possibilities raises an insurmountable problem. Under

suitable structuring, the corporate can have a programming control over what its representatives say and do in its name and it can form its beliefs or judgments under the inputs of its members but in a manner that preserves its ownership of the judgments formed.

All of this is to say that the corporate can satisfy the three requirements for responsibility that we identified at the beginning: agent-choice, control, and believer-access. In order to illustrate this upshot, imagine a corporate entity that involves a commercial company: for simplicity, a participatory company that is owned and effectively run by its employees. And now consider the way in which it may reach a decision on a certain issue, and the sort of responsibility that it may thereby incur (Pettit 2001, Ch.5).

Let the issue be whether to forego a pay-rise in order to spend the money thereby saved on introducing a workplace safety measure: perhaps a guard against electrocution. And let us suppose for convenience that the employees have agreed to make the decision — perhaps because of prior resolution — on the basis of the majority view on three separable questions: first, whether there is a serious danger of electrocution, by some agreed benchmark; second, whether the safety measure that a pay-sacrifice would buy is likely to be effective against the purported danger, again by an agreed benchmark; and third, whether the pay-sacrifice involves an intuitively bearable loss for individual members. If a majority thinks that the danger is sufficiently serious, the safety measure sufficiently effective, and the pay-sacrifice sufficiently bearable, the pay-sacrifice will go through; otherwise it will not.

Imagine now that after appropriate dialogue and deliberation the employees make individual judgments on the four propositions in the pattern illustrated by the following matrix for a sample of three workers; this will be familiar already from the case with p, q, r and p&q&r.

	Serious danger?	Effective measure?	Bearable loss?	Pay-sacrifice?
A.	No	Yes	Yes	No

B.	Yes	No	Yes	No
C.	Yes	Yes	No	No
Majority	Yes	Yes	Yes	No.

What is the company to do? Under the procedure described, it will take a majoritarian vote on each of the first three questions and then let the votes on those questions determine the issue about the pay-sacrifice. The Chair will take a show of hands on each of the first three questions, we may imagine, and then, identifying what they in logic require — I assume that people vote as they judge — announce that the corporate has opted for making the pay-sacrifice. The Chair may not call for a vote on the issue of the pay-sacrifice, and in ignorance of the fact that it is personally rejected by each of the members of the group, may even congratulate the group on its solidarity with the workers under threat and its public spirit in coming to their support.

But suppose now that some external parties have a complaint against the group, say the spouses of the less well-off workers, who think the pay-sacrifice unfair. Who, if anyone, can they hold responsible and blame for the line taken? Who can they remonstrate with? Not the individuals in their personal right, since each can point out, the Chair included, that he or she was actually against the pay-sacrifice. There is often said to be a problem of many hands — a problem with the number of people involved — in ascribing collective responsibility (Thompson 1980; 1987; Bovens 1998). But here there is a more serious problem still: one of no hands rather than many hands.

The spouses in this example can only blame the corporate group as a whole and, happily, our model allows them to do this. The corporate has routines in place whereby the Chair is triggered to represent the group in announcing the decision for a pay-sacrifice. In that sense the corporate is in control of the decision; despite the absence of individual support and intention, it acts intentionally to impose a pay-sacrifice (pace George 1983, 19-20). Since the corporate is an agent that makes things tough for the less well-off members, since it is in control of that action, and since it has access to the belief that this is what it is doing, there can be no doubt about its responsibility. It is emergently responsible for what transpires.

The responsibility of the corporate is not due to there being any all-seeing commander at the head of the corporate, invigilating what individuals do and giving his or her acquiescence. Its responsibility derives from its organizational structure — its software — in particular its commitment to routines of the kind that produce the decision for the pay-sacrifice in a case like this. That structure gives it control over what the Chair decides and what the members accept and were that structure of control different, then it would sponsor a different pattern of decision. The role of this structure in the responsibility of the corporate is like the role of an agent's decision-making capacities in his or her responsibility for doing something to which the capacities lead.

Despite its artificiality, this example should help to make salient just what it means for a corporate to be emergently responsible. The members of the corporate will be responsible for what is done only to the extent that as members, in particular members who do not dissociate themselves or protest, they are complicit in what is done; they have what I earlier called member-responsibility for the decision. But, with the possible exception of the Chair, none of them may have any enactor-responsibility. None of them may have done anything in the course of the corporate deliberation that was personally culpable in any way. They will each be able to claim that they were themselves against the pay-sacrifice and so in that sense beyond blame.

I said at the beginning that apart from sharing in the emergent responsibility of a corporate entity, individual members may often have enactor-responsibility for how they themselves behave in enacting the corporate will; after all, they can refuse to play whatever part is assigned to them. But what this example shows is that individual members may almost all behave in a way that that can scarcely attract blame of that kind, and yet the corporate entity do something that might well be regarded as blameworthy.

This possibility is quite a robust one, because there are many ways in which individuals may have only very diminished responsibility for a part they play in an instance of wrong-doing or right-doing for which a corporate can be held responsible. Each individual acting may rightly judge that he or she is not indispensable and that the corporate effect will be realized even if they don't act: this, like the individual soldier in the invading army (pace Parfit 1984, Ch.3). Or they may each act under great duress,

believing rightly that they will suffer greatly if they don't play their part: this, in the manner of the individual member of the Nazi party (Werhane and Freeman 2003, 523-24). Or they may each do better playing their part than not playing it, despite the fact that the effect of everyone behaving in that way makes for corporate ill-doing: this, as in the scenario where each plane in a circus demonstration is flying dangerously fast but may do better by staying at that speed than by unilaterally slowing down (cf Jackson 1997).

Such possibilities arise with congregate as well as corporate entities and in that case they are particularly troubling: they imply that no one can be held fully responsible for the bad that is done. They are not so troubling here, since they do not leave the same responsibility deficit. Despite the fact that individual agents are not responsible in a personal way, it remains possible that the corporate is responsible in the emergent sense and that individuals are responsible as members of the corporate, if not in their individual right.

## **6. On practical import**

The paper is an exercise in what might be called institutional analysis. It is designed to show that given the more or less institutionalized criteria of responsibility assumed in dealing with human beings, and given the institutional mode of existence that corporate entities enjoy amongst us, we ought to regard them as centers of responsibility and ought to hold them responsible for what they do. To fail to assign responsibility to them would be a failure of institutional closure akin to the failure of deductive closure involving in believing that  $p$ , that if  $p$  then  $q$ , but not that  $q$ .<sup>ix</sup>

Not only do we have a reason of consistency, however, to hold corporate entities responsible. The discussion in the last section shows that we also have a reason of a practical rather than a theoretical cast for doing so. That discussion shows that by incorporating with one another human being can do things, and can have effects, such that it is difficult to find them individually responsible — responsible as enactors — for much of what occurs. There is a recurrent problem of many hands or, as it may be, of no hands. And so there will be a serious deficit in the allocation of responsibility, unless we are willing to assign responsibility to the corporates that such agents constitute.

But it is one thing to think that the attitude of holding responsible is appropriate with corporate entities. It is quite another thing to say that our attitudes of blame or approval should lead us to do something by way of sanctioning — penalizing or rewarding — those we find responsible. The answer to that question will turn on how useful and how fair it may be to impose a sanctioning system in expression of our attitudinal responses. The issue that arises at this point, then, is whether and to what extent corporate entities should be subject to the sanctions of the civil and the criminal law.

It is more or less routine practice to hold corporations responsible in tort but there are great variations across legal systems in how far, and under what conditions, they are held criminally responsible. It is generally allowed that there may be important deterrent and corrective benefits attached to subjecting corporate entities to the law of tort and even to criminal law but there are no agreed accounts as to how well this fits with the psychology of corporate entities: how far it represents a fair way of treating them (Wallace 1996). The argument of this paper suggests that while very different sanctions are going to be appropriate in the corporate case, there is no deep reason in their psychology against imposing a sanctioning regime upon them. Like individuals, corporate entities can form intentions and enjoy foreknowledge of where their actions are likely to lead, can be negligent in not guarding against various ill effects on individuals or can be downright indifferent or reckless. And so, like individuals, they can be fairly subjected to the sanctions of law, and to the assignment of responsibility that such sanctions are generally taken to express.

I will not pursue the issue of what legal sanctions are appropriate with corporate entities; that is an independent topic. But it may be useful in concluding the paper to draw attention to three lessons that apply independently of the particular sanctioning regime that it is taken to support. I hope that these will help to underline the practical as well as theoretical importance of appreciating the nature of corporate responsibility.<sup>x</sup>

Under the account developed here, corporates are capable of developing themselves so that they get to be more and more reliable in achieving certain goals, tightening up the structures and routines that program for action. In particular they are

capable of developing themselves to that they get to be more reliable in abiding by suitable norms and laws: they can become more reactive to internal fault and shortfall (Fisse and Braithwaite 1993). A first practical lesson of the argument, then, is that if we want corporates to be reliably lawful and moral in their dealings with people, and with one another, then we should put disciplines in place that presuppose this capacity for self-development and that give corporations incentives to make themselves more effectively accountable. This suggests a regulative rationale for imposing a system of legal sanctioning, civil or criminal.

More specifically, it suggests that we should be prepared to find a corporate responsible for some failure or harm, say on the basis of a negligent omission to develop itself appropriately, even if no individual can be identified as being at fault, not even negligently at fault, in the matter (pace French, Nesterku and Risser 1992, p.95). The lesson would apply, fairly clearly, to the case of the Herald of Free Enterprise. There may have been little fault on the part of any of the individuals involved, since those associated with the disaster could claim that they were following established practices. But it remains the case that the company was an agent, equipped to satisfy all the requirements of responsibility, and so there is no reason why it should not have been found negligent and responsible as a corporate entity.

A second lesson is that a traditional defense against the responsibility of a corporate entity for some illegal deed is not going to be available. This is the doctrine that those who do some wrong in the name of a corporate will generally be acting ultra vires, beyond their brief, and that the corporate entity cannot therefore be held responsible for such wrong-doing (Hager 1989; Cane 1996, 151). Thomas Hobbes expresses the central point with characteristic trenchancy: 'if the representative be one man, whatsoever he does in the person of the body, which is not warranted in his letters, nor by the laws, is his own act, and not the act of the body' (Hobbes 1994, Ch.22.9)

This doctrine assumes that the only control that a corporate has over the members and employees who act in its name consists in explicitly authorizing them to do this or that: giving them their letters, as Hobbes puts it. Once we see that a corporate can have a programming, structural form of control over its representative agents, we can require

that it should arrange for control sufficient, at least in general, to guard against representatives doing some wrong, contrary to their brief. This mode of control over representatives will be enough to expose the corporate to charges of responsibility. Arguing that the individual representatives acted contrary to instructions will be no excuse; certainly it will not be anything more than a very partial excuse.

The third practical lesson that I want to draw derives from the general picture under which corporates are agents capable of controlling various responses, and that they remain agents of this kind even when no one is in active, supervising control. The lesson is that just as individual agents may dominate and thereby do harm to others, without actively taking any initiative against them, and even without any ill will, so the same is true of corporate entities. One person dominates others so far as he or she is able to interfere in their life or affairs, and to do so on an arbitrary basis: that is, without being forced to track their avowed or ready-to-be-avowed interests (Pettit 1997; Skinner 1998). Such domination means that people's control of their actions is compromised, even if they do not suffer active interference; they can act as they will only so far as the dominator allows them to do so, choosing not to interfere. To that extent domination in itself is, intuitively, a bad; it is, intuitively, a restriction on people's status as free agents.

Just as individuals can be dominating presences in the lives of others so, even more saliently, can corporate entities. Such entities have indefinite time-horizons, are proof against emotion, and can command enormous material resources (Bakan 2004). To that extent they can represent awesome, dominating presences in the lives of individuals, particularly when they assume the role of an individual's employer or church, or the investor on which the well-being of the local neighborhood or country hangs, or a source on which local politicians crucially depend for campaign finance or favorable publicity. We hear many protests against corporate abuses in public life but the point of this third lesson is that there may be cause enough to protest, even in the absence of active abuse. The power of corporate entities already creates a problem, even if those entities and their leading representatives present the most benevolent of faces.<sup>xi</sup>

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<sup>i</sup> Some of these conditions may be fulfilled without others, leading to familiar scenarios of partial responsibility. Notice that on the account given full responsibility may come about on the basis of a true belief about agent-choice and control but a belief induced by only seeming evidence. That might lead some to want to replace the believer-access condition with one of knower-access.

<sup>ii</sup> Believer-access is usually discussed in the context of determining in a given case whether the failure to form true beliefs on the basis of real evidence counts as blameable — whether ignorance and error are epistemically culpable — or whether the formation of false beliefs on the basis of seeming evidence counts as blameless.

<sup>iii</sup> Although attitudinal blame or approval may have the attractive or aversive aspect of a sanction, if the person is aware of occasioning it (Brennan and Pettit 2004), it is not itself an intentional activity of the sort involved in a rebuke or a penalty and is not subject in the ordinary way to assessment by the usual retributive or consequentialist criteria.

<sup>iv</sup> The point of view that I defend is shared in broad outline, though not always on specific points, with a number of recent authors, in particular with Peter French. See (1984; French, Nesterku and Risser 1992) See too the papers in (Erskine 2003). But my argument is original, I think, and in any case the point of view taken remains a minority position. In the legal discussion of corporate responsibility there are many important

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observations on civil and criminal liability, strict and non-strict liability, and on the range of grounds that may be adduced in support of holding a corporate entity responsible (Cane 2002Ch.5). But while some of the work appears to be moving towards a recognition of what I call emergent corporate responsibility (Laufer 1994; Colvin 1995), the bulk of it bends towards the view that corporate responsibility is derivative from the responsibility of individuals. This tendency probably reflects the fact that the modern contractualist analysis of the commercial corporation treats it as little more than ‘a collective noun for the web of contracts that link the various participants’ (Grantham 1998, 579). It may take a number of forms, whether on the basis of identifying the corporate with its chief officers, or treating the agent involved as a delegate, or imputing vicarious or associative liability (May 1987, 91)

<sup>v</sup> While accepting that at least one of two inconsistent propositions must be false, an agent might do better to live with the inconsistency in the absence of clear evidence as to which is incorrect. This will be possible when the propositions in question — unlike the propositions confronting most corporate entities — can be insulated from action, so that there is no pressure on the agent to resolve the issue one way or another.

<sup>vi</sup> This usage is preferable to speaking of aggregates, as I have done in the past, following (French 1984). The reason is that social choice theory speaks of aggregation in a way that applies both to corporates and to congregates; describing only congregates as aggregates, therefore, could lead to confusion.

<sup>vii</sup> This second component would be missing with a simple animal that was incapable of conceptualizing or recognizing such relatively complex conditions.

<sup>viii</sup> The procedures to be described follow the majoritarian pattern in supposing that groups form beliefs in the mode of on-off judgments. This explains why groups can be subjectively praiseworthy or blameworthy, despite the truth of Frank Jackson’s observation that ‘subjective rightness and wrongness make little sense for groups of persons as such, because it is individuals who have subjective probability functions’ (Jackson 1997, 53).

<sup>ix</sup> Consistently with accepting this claim, of course, one might not think that it is normatively desirable that corporates should have the mode of existence given to them in

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our practice; one might long for the days before the medieval invention of trade guilds and monastic orders, and their conceptualization in the notion of the corporatio (Coleman 1974; Canning 1980). I do not address that issue. In all likelihood corporate entities are with us for keeps, and given they are, my claim is that we have every reason to take them within the scope of our practice of holding agents responsible.

<sup>x</sup> Michael J.Green (2002) explores another possible lesson when he argues that, in view of their greater powers, institutional agents may incur more serious obligations than individual human beings in large-scale spheres such as that of global justice.

<sup>xi</sup> I am grateful for comments received when the paper was presented in Lisbon, at the 2005 Congress of the European Society for Analytical Philosophy, as well as at the Philosophy Society, Oxford University; the Seminar in Intellectual History and Political Theory, Cambridge University; the Legal Theory Workshop, Yale University; the Research School of Social Sciences, ANU. I was greatly helped also by exchanges with Shelly Kagan , Christian List, Doug MacLean, Wlodek Rabinowicz, Ed Rock, and Susan Wolf.