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The Moral Responsibility of Firms: For or Against?

When business behaves badly, who is held morally responsible? The firm or the individual?

The post-financial crisis world is becoming a more business-critical one. There are unprecedented levels of scrutiny of large corporations and their actions and those who fall foul of the law face a more severe backlash than before.

This is breathing new life into the debate around corporate moral responsibility and the extent to which business organisations can be correctly said to have moral responsibilities and obligations. In philosophical terms, the question is posed as one of the "moral agency" of organisations. Nonetheless, in practice, we speak readily of BP "being responsible" for the Gulf of Mexico oil spill—it is considered morally blameworthy—and actions are taken against the company. Under Anglo-American law, at least, a corporation such as BP is considered a legal person, but is it a moral person?

It is often argued that only individual human beings can be morally responsible and that the actions of a firm are those of its individual members. Corporate moral agency raises the possibility that a corporation can be considered morally responsible and accountable for an action but no individual person. The recent INSEAD-Wharton ethics conference, **The Moral Responsibility of Firms: For or Against**? brought together fresh perspectives and the latest ideas on this issue.

Making the case for corporate moral responsibility

The first set of speakers we gathered were all proponents of corporate moral agency, but they approach the problem in different ways. Peter French, the Lincoln Chair in Ethics, Professor of Philosophy at Arizona State University and an early proponent writing over thirty years ago, argued that acts of individuals within a corporation become the intended acts of that corporation on the basis of a Corporate Internal Decision (CID) structure. French shared his latest thinking on "corporate diachronic moral responsibility"—responsibility over time. French asked: "Is BP today morally responsible for the Deepwater Horizon disaster of April 2010?" French offered two ways of addressing the problem, by looking at firm operational mechanisms and corporate self-narratives as indicators of agent sameness. French noted that the moral responsibility of firms and individuals are not mutually exclusive; both BP and its managers can be morally responsible for the Deepwater Horizon disaster.

Katsuhito Iwai, Distinguished Fellow at The Tokyo Foundation, advanced his view of a "two-story" conception of the corporation, according to which, corporations can be ethical agents because they can be thought of as rational agents free to choose ethical ends in spite of shareholders' pursuit of profits. Philip Pettit, the Laurance S. Rockefeller

University Professor of Politics and Human Values at Princeton University, made his argument in support of corporate moral agency on the basis of five key claims, including the claim that the corporation is a "conversable agent". The corporate group makes commitments via its words and generally lives up to them and we hold corporations responsible if they don't keep to their word. In his view, the corporation has a voice of its own, distinct if not different from those of its members. Like French, Iwai and Pettit urged that we can and should hold both individuals and groups responsible, avoiding a potential responsibility deficit where only a group is held responsible and not the individuals involved.

Other speakers also advanced the case for corporate moral agency. Michael Bratman, Professor of Philosophy at Stanford University, Christian List, Professor of Political Science and Philosophy at the London School of Economics, Raimo Tuomela, Professor of Philosophy at the University of Helsinki and Geoffrey Hodgson, Research Professor of Business Studies at Hertfordshire Business School, focused on intentionality. Bratman extended his work on the shared agency of small groups to suggest it might also apply to larger more complex organisations, such as firms. For Bratman, shared intentions of a group and shared framework policies entailing commitment to action are sufficient conditions for group intention. This understanding also gives rise to the possibility of "discontinuities", where there can be group intentions that are not the shared intentions of the members of the group.

List observed that we hold human beings morally responsible because they are intentional agents (in contrast to, say, an avalanche). We can hold firms responsible where three jointly necessary and sufficient conditions are found: 1) Normatively significant choice (possibility of doing something good or bad, right or wrong); 2) Access to relevant information (the agent understands and has the evidence available to make judgments about the options); 3) Control over the choice of option. These conditions do not hold for all collectives (e.g., crowds, stampedes). Tuomela identified "we-mode" groups as groups organised for action on the basis of "we-thinking". He differentiated between extrinsic and intrinsic intentionality, observing that even a we-mode group is not literally an agent (person) and thus cannot be responsible in terms of intrinsic intentionality because it only has extrinsically intentional attitudes. However, group responsibility may be something extrinsically attributed to groups and thus many organised groups can be regarded as morally responsible. Hodgson argued in favour of accepting collective intentionality on the grounds that a firm is greater than the individuals who make it up.

Those opposed

Four speakers opposed to the idea of corporate moral agency, both on theoretical grounds and in light of its implications also made their case. Thirty years ago, Manny Velasquez, of Santa Clara University, in response to French, claimed that corporate acts do not originate in the corporation but in the corporation's members. He asserted that every organisational act is causally produced by its organisational members; drawing a parallel with a wind-up toy, he pointed to the winding-up of the toy as indicative of the individual responsibility for the actions of the toy. Citing the example of misconduct at National Semiconductor, Velasquez made the case that it is important to reject the idea of moral responsibility of organisations because it lets individuals off the hook, innocent parties get punished, and it takes away the incentive for individuals not to again engage in misconduct.

Drawing on multiple examples, Ian Maitland, Professor of Strategic Management and Entrepreneurship at the University of Minnesota, also asserted that the idea of corporate moral agency can give rise to morally unacceptable outcomes, including the possibility of the officers of a firm being unaccountable for its actions. He concluded that the anthropomorphism of the corporation does not humanise the corporation but rather dehumanises individuals. According to David Ronnegard, a visiting scholar at INSEAD, whose recent published work builds on that of Velasquez, at the heart of the matter is whether a corporation can be morally responsible without any of its members being morally responsible. In his view, autonomy debunks the idea of corporate moral agency because autonomy demands that we must be consciously aware of the choices we make and corporate structures (CIDs) are not aware of anything.

While John Hasnas, Associate Professor of Business at Georgetown University, accepts that corporate moral agency might be feasible theoretically, he argued that it only has practical significance as a means of authorising the punishment of corporations as collective entities and he concluded that this is not desirable. Corporate moral agency is not necessary to punish individual wrongdoers within an organisation, to require an organisation to make restitution for the wrongdoing of its employees, to subject an organisation to administrative regulation, or to criticise an organisation. In his view, it is impossible to punish a corporation; the punishment inevitably passes through to consumers, employees and shareholders. To illustrate the unjustness of this approach, Hasnas points out that the Nazis operated on this principle in occupied France during the Second World War, by punishing innocent members of communities where sabotage was occurring to deter acts of resistance.

In response, various participants pointed out that these parties might not be so innocent or should have engaged in sufficient due diligence so as to avoid being in the situation where they are punished for corporate misconduct (e.g., shareholders of banks punished for rigging LIBOR).

The unemotional corporation

Amy Sepinwall, Assistant Professor, Department of Legal Studies and Business Ethics at The Wharton School, University of Pennsylvania, contended that a capacity for emotion is necessary for knowing the difference between right and wrong, thus arguing that corporations are not persons. However, she then asserted that corporate personhood is a red herring and not necessary or sufficient for attention to the corporate rights or moral responsibility of firms; in her view, these are normative and political questions instead. In a similar vein, Kendy Hess, Assistant Professor of Ethics at Holy Cross, observed that the philosophical debate does not have to be resolved to address the important problems of corporate moral responsibility. In contrast, however, she questioned the assumption of human psychology as a necessary condition in determining corporate moral agency. On a more pragmatic level, she also highlighted the messiness of organisational decision-making, questioning the simplistic model of controlling individual decision-makers in organisations and noting the distributive decision-making often found in organisational contexts. Richard De George, University Distinguished Professor at the University of Kansas, observed that the discipline of business ethics does not in fact need to reach a final determination on the question of corporate moral agency as the law clearly accepts that corporations can be held responsible, whether legally or morally.

Other speakers looked beyond the direct question of whether there is moral responsibility of firms to related considerations. Waheed Hussain, Assistant Professor of Legal Studies and Business Ethics and of Philosophy at the Wharton School, offered a "normative functionalism" perspective, suggesting that treating corporations as independent agents serves a particular function. R. Edward Freeman of the Darden School of Business and University Professor at the University of Virginia, also offered a meta-analytic perspective, remarking that the debate is framed by particular uses of language and highlighting the fact that most business activity is not that of large corporations. Teemu Ruskola, Professor of Law at Emory Law, noted how treatment of the question of moral responsibility of firms is coloured by cultural differences in theories of the firm, distinguishing between Western liberal views, state socialism, and Chinese Confucianism. While Ryan Burg, Assistant Professor in the Faculty of Management at the University of Moscow, brought a monetary perspective to the question, asking the audience to imagine an economy that issued a traceable, reclaimable moral currency, in which morally questionable business actions would have less value than moral ones. Finally, Nien-he Hsieh, Associate Professor of Business Administration at Harvard Business School, asked whether, if we assume no corporate moral agency, we can appropriately ground the actions of a firm in individual agency. He explored, by way of contrast with the overriding emphasis on misconduct and punishment in earlier presentations, situations where there are positive outcomes, such as pharmaceutical companies providing access to essential medicines.

Individuals and firms responsible

Theoretically, a strong case can be made for the moral responsibility of firms. However, this does not preclude individual moral responsibility for acts as a corporate member. Moreover, it was also evident that considerable concern exists about corporate misconduct going unsanctioned and the possibility that both good and bad corporate behaviour is profoundly influenced by the extent to which individuals and corporate entities are held morally responsible.

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