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# Corporations Are Not People Too



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## **Punishing individuals instead of firms would be a more effective deterrent to wrongdoing**

During the 2012 presidential race republican nominee Mitt Romney became known for saying that “corporations are people too”. In a strictly legal sense this is uncontroversial. In any other sense its nonsense. Corporations as organisations are *fictional* legal persons before the law, but they need not have all the rights and privileges of *human* legal persons. Increasingly, however, people are starting to anthropomorphise corporations, with devastating consequences.

When we attribute human characteristics to corporations we run the risk of extending to them legal privileges that there is no reason for them to have. For example the Supreme Court case of *Citizens United v. Federal Election Commission* (2010) held that First Amendment rights to free speech apply to corporations. Currently the case of *Hobby Lobby v. Sebelius* is making its way towards the Supreme Court. Hobby Lobby argues that corporations should not have to provide employees with health insurance coverage that conflicts with religious faith, on the basis that corporations should have the right to religious freedom. Extending rights to corporations that compete with the rights of people devalues those rights. For example, a business

corporation's financial resources are not a result of citizens' support for its political ideas, nor do such ideas necessarily reflect the opinions of the corporate members, yet the corporation can bring its vast resources to bear in the public political discourse. In the marketplace of ideas this clearly puts the rest of us real citizens at a disadvantage.

### **Misplaced accountability**

This anthropomorphic way of thinking also stretches to the way we hold corporations accountable for their misconduct. In only the past nine months, banks such as JPMorgan Chase, UBS, Bank of America, and Goldman Sachs have been sanctioned for defrauding or misleading investors for many years. For these transgressions they have been given negligible fines instead of charging any person with wrongdoing. This may be what happens when people misconstrue corporations as persons. We mistakenly believe that a person is being punished when a corporation is fined.

Clearly attributing human characteristics to corporations can have dire legal consequences. But is there any reason to believe that corporations possess characteristics that should afford them similar legal rights as human beings? Corporations can be legally responsible, but can they also be *morally* responsible? Philosophically it boils down to this: can a corporation be morally responsible without any of its members being morally responsible?

### **Corporations cannot be *morally* responsible**

Proponents of Corporate Moral Agency (CMA) argue that corporations share many of the same characteristics as humans, such as the ability to have intentions and to perform actions. Corporations are said to have intentions because the corporate *structure* (e.g. corporate charter) expresses a purpose, and they are said to be able to perform actions because the structure directs members into action. But these arguments are at best analogies to our human capacities and are not the same in any morally relevant sense. Human intentions are mental-states and as such we are consciously *aware* of our intentions. When we perform an intentional action we are aware of it and when we are punished for that action we are also aware of it. A corporate structure is oblivious to all this.

The importance of subjective "awareness" relates to the necessary moral agency condition of *autonomy*, which easily debunks the idea of Corporate Moral Agency. Almost no proponent of CMA mentions the autonomy

condition. They do not because they cannot. There are a number of instructive phrases used to describe autonomy such as: “free will”, “self-determination”, and “self-rule”. These phrases all express that we are the authors of our intentions and actions. In other words, we are able to make choices that are our own, and for this to be the case we must be *aware* of the choices we make. It is this that makes us the authors of our lives and makes us morally responsible for what we do. Corporate structures are not aware of anything and thus cannot be morally responsible for anything.

Furthermore, a corporation cannot be said to have intentions by virtue of the intentions of its members. A corporation must be able to form its own intentions to satisfy the autonomy condition. Only then can the corporation be morally responsible in a manner that is *distinct* from its members. An impossible requirement: inevitably anything that a corporation decides will be decided by one or more corporate members. When Goldman & Sachs is fined US\$550 million (which only amounts to 4.1 percent of last year’s profits) for defrauding investors there is no disembodied corporate entity telling managers to steal from their customers. Corporations are created by people, of people, for people.

Corporations are legal fictions and as such instruments they have no inherent abilities for us to bestow on them equal rights. Shattering this myth should help our legal system focus more on prosecuting those corporate members who are actually culpable of wrongdoing, which will also be a more effective deterrent, as it would punish those who have the awareness to experience punishment.

For more please see: Rønnegard, D. 2013. [How autonomy alone debunks corporate moral agency. Business and Professional Ethics Journal, 32\(1-2\): 77-106.](#)



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