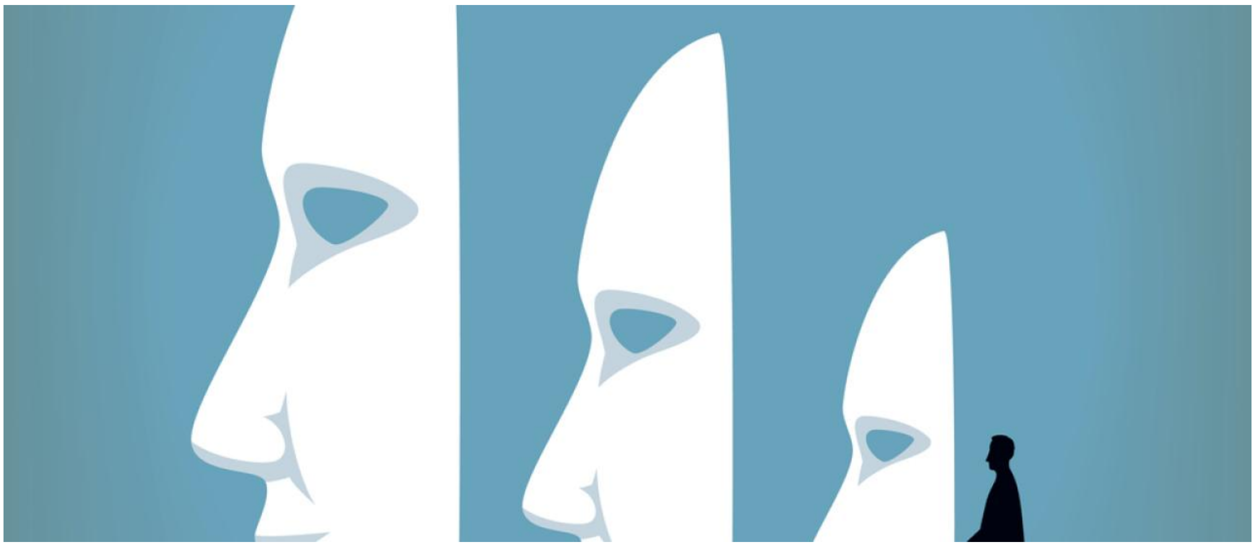
Who Is Responsible for Corporate Misconduct?



By N. Craig Smith , INSEAD Chaired Professor of Ethics and Social Responsibility, and Eric W. Orts, Wharton Professor of Legal Studies & Business Ethics

With incidents of corporate misconduct never far from the headlines, the philosophical question of whether firms should assume responsibility for individuals' actions has practical consequences.

VW may have taken a big step towards resolving its emissions scandal in the United States with its recent guilty plea (at a cost of more than US$4.3 billion!), but its troubles in Europe are far from over. Luxembourg has launched **criminal proceedings** and more countries may follow after the European Commission made it clear it felt member states **had not done enough** to crack down on emissions test cheating.

It seems safe to assume that VW's cheating was not the act of a single rogue engineer, but when scandals like this occur, where does the moral

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responsibility lie? Is it solely the responsibility of the individuals who developed and implemented the software? Or is the firm itself, which likely put pressure on employees in various ways, also to blame? If so, to what extent? And what does it mean to say that a business as an entity is morally responsible?

With the global financial crisis behind us and seemingly few lessons learnt, and as business scandals like VW's misdeeds continue to dominate headlines, these seemingly arcane questions, once largely the domain of academics, are becoming increasingly mainstream. In our recently published book, ***The Moral Responsibility of Firms***, we gather the thoughts of some of the world's leading philosophers and business ethicists and find that positions differ markedly, with compelling underlying arguments on both sides of the debate – and important practical consequences.

Is there a "corporate person"?

It has become common parlance to talk about how BP **destroyed** the Gulf of Mexico, or pharmaceutical companies **misled** doctors or banks were to **blame** for the global financial crisis. But the idea that corporations act as if they are human seems initially quite implausible. Although companies are composed of real people, there is hardly reason to believe that individuals who place themselves into structured groups create a new and separate human-like moral agent with its own beliefs and desires. Can we really identify a corporation or any other business entity as a moral agent that can intend actions and be held accountable for its decisions? Can it act autonomously, form moral judgments and respond in light of those judgments?

No guilt, no blame

In her chapter in our book, **Amy Sepinwall**, a professor at the Wharton School, suggests that corporations themselves have no capacity for emotion or responsiveness to moral reasoning are therefore unable to experience guilt, and, as it makes sense only to blame those who can experience guilt, corporations do not qualify for moral agency. In other words, it is the individuals inside the corporation, not the corporation itself, who should take responsibility for actions taken in the name of a firm. This is supported by arguments put forward by **David Rönnegard**, a visiting scholar at INSEAD, and **Manuel Velasquez**, a professor of management at Santa Clara University, who insist that individual members of corporations are

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“autonomous and free.” Company-level policies and procedures may influence people in firms, but it is individuals who are ultimately responsible for their decisions and actions.

What then, does this view say about the role of corporate culture? If we were to scrutinise the banks, whose sale of U.S. mortgage-backed securities sparked the global financial crisis, is it sufficient to attribute all the blame to the autonomous actions of greedy individuals or should we consider the culture that facilitated it contributed to the disaster? To what extent, if any, are there grounds for laying some of the responsibility in the hands of the organisation that allowed the misbehaviour to happen and company leaders like VW’s Martin Winterkorn who may have tacitly, if not actively, encouraged it?

The dangers of blaming the firm

There is a danger that by allowing a firm to take responsibility for wrongdoings, innocent people will be penalised and the individuals responsible for the misbehaviour will get off scot-free. According to **Ian Maitland**, a professor at the Carlson School of Management, University of Minnesota, holding corporations morally and legally responsible can encourage firms to create opaque organisations allowing individuals to act with impunity, effectively creating “a scapegoat which diverts legal responsibility from the executives, managers, and employees who have committed wrongful acts.”

In addition, rendering corporations liable to criminal punishment as collective entities can be seen to contravene the most fundamental principles of a liberal society. John Hasnas, a business professor at Georgetown University, notes that by punishing the firm, through fines or business restrictions, we are more likely to be punishing those innocent of wrong-doing, including employees, consumers and shareholders.

Meeting expectations

Taking an opposing view, others argue that a corporation has a voice of its own, distinct, if not different, from those of its members. It is this organisational voice which prompts **Philip Pettit**, a professor of Politics and Human Values at Princeton University, to insist that corporations are indeed fit to be held morally responsible, particularly in regard to actions that breach commonly shared expectations.

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It is also worth considering the possibility that a firm may be morally responsible even if its intentions are not fully shared by all of its members, as suggested by **Michael Bratman**, a philosophy professor at Stanford University. This brings to mind banks as described by John Steinbeck in *The Grapes of Wrath*: "faceless monsters, something more than men …every man in a bank hates what the bank does, and yet the bank does it."

This is not to suggest that individuals cannot be held responsible at the same time. It is fair, for example, to expect that a corporation should be held responsible for distributing contaminated food, while simultaneously arguing that employees who were negligent in the exercise of their duties should be held responsible for their part in the scandal as well.

The idea of corporate moral agency and whether corporations can be treated as individuals was first raised by another contributor to the book, **Peter French**, a philosophy professor at Arizona State University, in his 1979 paper, **The Corporation as a Moral Person**. Although much has been written since this seminal work, the practical consequences of the issue have expanded and the debate continues to rage.

Common ground

Despite philosophical differences that will continue in the years to come, most scholars of business ethics agree that corporations should be doing more to create a culture where bad behaviour is neither condoned nor ignored, and where misdeeds are not covered up but are attributable to both individuals and organisational factors. Better appreciation of moral responsibility in firms will allow managers to structure internal incentives, rules and policies to achieve the economic objectives of firms in an ethical manner. It will also help in providing an appropriate external legal framework to encourage good business conduct.

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