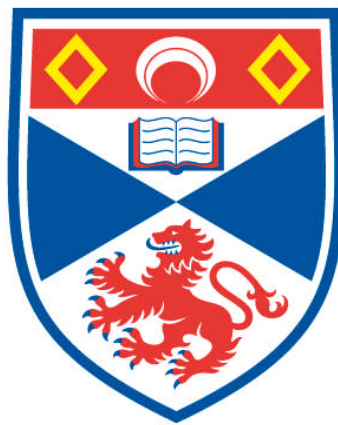


# **BUSINESS ETHICS & COLLECTIVE RESPONSIBILITY**

**James Dempsey**

**A Thesis Submitted for the Degree of PhD  
at the  
University of St Andrews**



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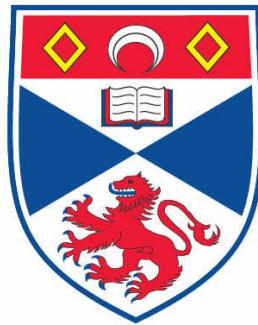
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# Business Ethics & Collective Responsibility

James Dempsey



UNIVERSITY OF  
**STIRLING**

This thesis is submitted in partial fulfilment for the degree of

PhD

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*For Jonna*

### **1. Candidate's declarations:**

I, James Dempsey, hereby certify that this thesis, which is approximately 77,600 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

I was admitted as a research student in September, 2008 and as a candidate for the degree of PhD in Philosophy in September, 2008; the higher study for which this is a record was carried out in the University of St Andrews between 2008 and 2013.

Date: 15/08/2013 Signature of candidate:

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I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of PhD in Philosophy in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree.

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## ABSTRACT

*The idea that ‘business ethics’ picks out a distinct discipline within ethical theory is contentious; in particular, it is unclear why theoretical approaches to moral and political philosophy cannot satisfactorily address ethical concerns in the context of business activity, just as they can in the context of other human activities. In response, I argue that some features of the business environment require more focused analysis than currently available. This environment is characterised by the presence of large social groups – business organisations – that are not political in nature, but yet wield considerable power and are the vehicles for complex forms of collective action.*

*The most pressing ethical concern raised by such collective action is collective moral responsibility. I develop an account of collective responsibility that is tailored to business organisations and that combines a number of strands of moral thought – a desert-based account of moral responsibility that is of a kind with that typically applied to individual humans; a pluralistic account of how collective responsibility is generated that is rooted in irreducible group-level properties; and a moderate approach to social ontology that sees nothing mysterious in ‘distinct’ collective entities.*

*From this starting point I develop two detailed models that illustrate how business organisations can constitute distinct collective entities that may be held morally responsible. The first shows how such organisations may satisfy the conditions required to hold moral agency, which is typically assumed to be a prerequisite for moral responsibility. The second breaks with this tradition and argues for the possibility of ‘non-agential’ moral responsibility in cases where complex organisational structures mediate the actions of the moral agents that populate them. I conclude by showing how this distinct organisational-level responsibility, far from insulating organisation members from personal culpability, illustrates quite distinct standards against which such individuals may be judged.*



## CHAPTER I. INTRODUCTION

### 1. *Business Ethics*

Business ethics as a distinct academic discipline has only been around for a few decades. As might be expected with such a young discipline, there is still a considerable lack of clarity over what kind of enterprise it is. In part this is because scholars from a wide variety of different backgrounds have produced work under the broad heading of business ethics. The main distinction to be drawn here is between empirical, social scientific studies based in social psychology and management studies; and normative ethical work based in the traditions of moral and political philosophy.

My interest is exclusively on the normative side. Normative theorising in business ethics has undergone a number of cycles in the last thirty years, and a central question in these developments has been whether there is anything *distinct* about business ethics as a theoretical undertaking. If there is nothing distinct then business ethics is reduced to an application of existing theories of moral and political philosophy to the particular questions that arise in a business context, where these questions are not of a fundamentally different kind or order to those that arise in other walks of life. Indeed, one stream of theorising treats the business environment in just this way and proposes approaches to dealing with the ethical challenges it throws up by reference to mainstream moral theorising. Thus Aristotle (Solomon, 1992, 1993), Kant (Bowie, 1999), pragmatism (Buchholz & Rosenthal, 1997), and libertarianism (Freeman & Phillips, 2002), for example, are all drafted in to tackle these challenges. A competing school of thought, however, sees something in the business environment that is in need of its own quite specific treatment. Donaldson and Dunfee (1994, 1995, 1999) identify this as its 'artifactual' nature, Badaracco (1997) develops a framework based on the idea of 'defining moments', and Frederick (1995) argues for a 'new normative synthesis'.

Meanwhile, recent debate has turned focus to ways in which ethical challenges in business may be illuminated by reference to political rather than moral philosophy. Philips and Margolis (1999) appeal to Rawls in arguing that in fact approaches to morality in the political realm do not transfer to questions about other social institutions, such as business; but they have been criticised for following Rawls too closely by those who think that the two areas of investigation at least have relevant features in common (Hartman, 2001; Moriarty, 2005). Others have

focused on specific questions in business ethics and tried to determine the extent to which answers derived from approaches to political philosophy are plausible (Hsieh, 2004, 2009). I consider the connections between business ethics and moral and political philosophy in more detail in chapter two. One challenge in addressing them is to determine exactly what kind of undertaking 'business ethics' *is*, how broad its scope and what kind of questions it should try to address. In this respect I argue that the feature of business that sets it apart most distinctly from other activities is the way that it is organised, specifically the existence of large business organisations where individuals engage in complex coordinated activities, and that instantiate complex relations of both ownership and power. Business ethics finds its most distinct purpose in addressing the ethical impact of such organisations.

This said, the question of the applicability of theories designed to tackle the morality of either individual action or political society to the domain of business organisations is not susceptible to a simple answer. There are similarities between the relevant questions to ask, and the theoretical apparatus appropriate to answering them, in each domain and as such lessons can be learnt. However, there are also differences that require a different focus in each case. The distinctness of business organisations generates one such difference. It requires us to focus on the details of morality as it is relevant to a kind of human collective that is not a political society. In particular, it requires us to focus on the morality of collective action and its implications for the obligations and accountability that accrue as a result. It is on this subject that my project is focused. While I discuss collective action, obligations, and accountability in the context of business organisations, I pay particular focus to moral accountability as the archetypical instantiation of 'moral responsibility'. I argue that in the context of business organisations it becomes multifaceted and particularly difficult to handle from a theoretical perspective, and attempt to set out the basis of a theoretical structure that will do it justice. In this way business ethics moves away from considerations that are well explored by either moral or political philosophy (although it still maintains connections to both) and so justifies its place as a distinct field of study.

## 2. *Pluralism*

At the heart of my analysis of the moral significance of business organisations is the identification of a number of related debates: what are business organisations? How should we conceive of collective responsibility in these organisations? What is the appropriate notion of *moral* responsibility to apply? Debate on the appropriate answers to each of these

questions has been fierce. My approach is to dissolve these tensions by adopting a broadly pluralistic attitude towards them. Advocates of one position or another are often so focused on arguing for the plausibility of their point of view that they take the implicit or explicit position that any alternative answers to the question in hand are impossible and their advocates mistaken. However, on the questions above this need not be the case, and indeed there is good reason for thinking that it is not.

Consider the question of the kinds of things that corporations are. Different positions to take on this question are that corporations are agents (and perhaps also *moral* agents), or that they are non-agential systems, or groups of individuals engaged in joint action, for example. However, while the plausibility of any of these analyses must be judged on its own merits there is little reason for thinking that if a corporation *can* be an agent, then any corporation *must* be an agent. Some may be agents, while some may be best understood as an aggregate of individuals. Indeed, it may well be appropriate for a given corporation to be thought of as *both* of these things. Thus for any particular situation under consideration it may be appropriate to assign responsibility on the basis of the existence of a corporate agent, *and* the existence of a non-agential system, *and* the operation of a group of interrelated individuals. Pluralism in the characterisation of business organisations is at the centre of the analysis I will offer of how such organisations generate and distribute moral responsibility. Chapters four, five and six develop this analysis and offer a justification for such a pluralistic approach.

Running parallel to the debate on the kind of thing that business organisations are is the debate on how groups of individuals generate moral responsibility and whether it is possible for there to be a distinct kind of collective responsibility which is not reducible simply to an aggregation of the responsibility of individuals. Again, not only do I accept that it is possible for groups to generate both ascriptions of responsibility that are reducible to aggregations of individual responsibility, and some that are not, I also argue that different accounts of collective responsibility are not mutually exclusive. Therefore, a single group may generate responsibility in different ways, if the way in which its activity is coordinated varies from case to case. The essence of collective responsibility, I claim, is the generation of distinctive group-level properties that play an irreducible role in the generation of responsibility. An irreducible 'group intention' is an example of such a property. Sometimes a group may operate in a way that generates some such properties, and sometimes it may not. Again, each account of how collective responsibility is generated must be assessed for plausibility, but the plausibility of

one does not necessarily tell us anything about the plausibility of others. A full account of collective responsibility will thus be inherently pluralistic.

A third question that is centrally important to the arguments I will make concerns the fundamental nature of moral responsibility, in the sense of moral accountability for past events. This is another question for which competing answers are taken to be mutually exclusive. In broad terms there are two such answers. The first is that someone is morally responsible for an event in the past just in case they deserve to be held responsible for that event. Exactly what the nature of moral desert is here requires some cashing out, although typical conditions to invoke are that there is a causal relation between the individual and the event, and that the causation occurred as a result of the individual exercising at least a minimal amount of awareness and control. The second answer is that someone is morally responsible in cases where favourable consequences will follow from such an ascription of responsibility<sup>1</sup>. In many cases practical judgments will be the same as the best consequences will flow from ascribing moral responsibility to those that deserve it, but the nature of the judgments will still be very different. Moreover, the two will come apart in some cases, for example when holding (non-deserving) family members of offenders responsible for the relevant misdemeanours results in the offenders coming under effective pressure to change their ways. I take the view that both these conceptions of the basic nature of moral responsibility are plausible and, moreover, may both be accepted without contradiction. Nonetheless, for the current project I focus exclusively on the conception of moral responsibility as desert-based. I develop a fuller account of how such responsibility should be understood in chapter three.

### *3. Summary of Arguments*

I start the development of my position in chapter two by clearing the ground for my later focus on moral responsibility in business organisations. I reject the thought that considerations of morality simply do not apply to the business environment, and I consider what it means for different bodies of theory to be more or less distinct from each other. I consider whether such distinctness in the case of business ethics may be found in the nature of economic activity that

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<sup>1</sup> Even where the justification for an ascription of moral responsibility appeals to favourable consequences there will still at least be some conceptual limits on the kinds of events or outcomes for which responsibility may be ascribed to an individual or group. Given that I will focus on a desert-based account of moral responsibility I will not try to specify exactly what these limits must be.

is central to business, but also reject this possibility. I then focus on the nature of business organisations, and in particular their relation to ascriptions of moral responsibility, providing some initial reasons for thinking that these questions may present distinct challenges to ethical theory, and supporting this analysis with examples from the business ethics literature.

In chapter three I focus on the notion of moral responsibility. In considering the relation between business organisations and moral responsibility too much focus tends to be given to the challenges posed by the nature of organisations, and not enough to the challenges inherent in the notion of moral responsibility itself. The term 'responsibility' is used in many different ways, and so in one way or another infiltrates almost every aspect of our moral thought. I explore different taxonomies of responsibility terms, such as those of Fischer & Tognazzini (2011), Miller (2007) and Vincent (2011), and focus on the notion of moral responsibility as 'backward-looking' responsibility, where an ascription involves holding someone accountable for past events. 'Backward-looking' responsibility can be distinguished from 'forward-looking' responsibility in the sense of future obligations, although it can itself be subdivided into a number of related concepts. I address the question of what conditions must be satisfied in order for any particular ascription of backward-looking responsibility to be justified and show how recent theorising on this question focuses on the centrality of directing reactive attitudes, such as praise or blame, at the subject of the ascription. Moreover, the justificatory basis for these attitudes is that the subject *deserves* them. I adopt this understanding, and show how it differs from accounts of moral responsibility that focus on the importance of instrumental outcomes.

I then provide an account of what it means to deserve to be held morally responsible in this way. The main condition that is identified in the literature is that the subject has acted with sufficient freedom. I extend this condition by arguing that while having acted with sufficient freedom does make a subject potentially deserving of moral responsibility, it is not necessary. Rather, I develop an account of 'moral ownership' for actions and outcomes that underlies the importance of freedom. I then argue that such ownership can be generated in ways that go beyond the free actions of human individuals. Two such ways are through the actions taken by non-human agents, such as corporate agents; and in the mediation of the actions of individuals by complex systems, such as the systems that underpin many business organisations. The first extension is controversial since it allows collective agents to be held morally responsible even though they cannot fulfil the conditions that human agents must

satisfy in order to be fit to be held responsible. The second extension is controversial since it allows ascriptions of moral responsibility to entities that are not agents at all.

Having clarified the notion of moral responsibility, I turn to its application to collectives in general, and business organisations in particular, in chapter four. This application raises new challenges, in particular identifying the subjects of ascriptions of moral responsibility, and what they are supposed to be responsible for. I survey different approaches to addressing these questions, particularly those of French (1984), Gilbert (1992, 2006, 2008), List & Pettit (2011), Miller (2001, 2006, 2009), and Velasquez (2003), and draw upon them to develop the basis for my later account of moral responsibility in business organisations. Underpinning my analysis is a kind of pluralism that allows for moral responsibility to be generated in different ways depending on the constitution of the collective in question. In some cases, responsibility may simply be generated by individuals in a way that is unaffected by the existence of the group. While such a position is uncontroversial I also examine the much stronger claim of 'methodological individualism' that holds that *only* individuals may be the subjects of responsibility ascriptions. I conclude that not only is this thesis somewhat unclear, it is fundamentally mistaken. I argue against it by developing my pluralistic picture of collective responsibility.

The basic idea is that an ascription of responsibility is 'collective' when it appeals to properties that exist irreducibly at the collective level. Different versions of collective responsibility are possible depending on the kind of collective at hand, and the properties that it possesses. I explore what these properties may be with reference to Miller's model of 'joint action', Gilbert's account of 'joint commitments' and 'plural subjects', French's work on organisational structure, and List and Pettit's account of the possibility and requirements of group agency. Moreover, this last work suggests that in many cases not only are the properties that generate collective responsibility *possible* at the group level, but they are also necessary if the group is not to function in a way that is susceptible to the violation of basic rules of rationality. By developing my account of collective responsibility based on collective properties I show firstly how the different perspectives surveyed, while often being presented as mutually exclusive, can actually exist coherently side by side, and even within the same organisation. I also show how such groups can in principle generate genuine moral responsibility of the kind set out in chapter three.

Having made a general argument for the claim that a single business organisation can generate moral responsibility in different ways, I now construct a more detailed argument for how this

works in practice. In doing so, I develop two models of collective responsibility that are particularly important for business organisations, and show how they are compatible. In chapter five I focus on the ways in which business organisations generate moral agency at the collective level, building on the theoretical models outlined in chapter four. List and Pettit (*op. cit.*) set out how formal and informal organisational structures generate decisions at the group level which are not simply a function of the individual attitudes of those who populate the organisation. However, they do not focus on how the differences between informal and formal structure affect the way collective properties, and hence moral responsibility, are generated. Neither do they consider how such structures are instantiated differently in actual organisations. I address these questions with reference to French's account of the 'Corporate Internal Decision' (CID) structure. I also show how the agency that such organisations generate endows them with moral ownership of their actions and the outcomes they bring about, and hence genuine *moral* responsibility. I conclude chapter five by considering some additional complications. While it is possible to model business organisations based around a simple formal or informal collective structure, in practice business organisations are better understood as an amalgamation of several distinct groups, each with their own structure and method of coordination. Any satisfactory account of moral responsibility in such organisations must take account of this intermediate level at which moral responsibility may be ascribed.

While business organisations may be genuine moral agents, there is also an aspect of such organisations which is non-agential. In chapter six I show how corporations exhibit the features of 'non-agential systems', and argue that such systems may nonetheless be ascribed genuine moral responsibility. While some authors, notably Shockley (2007), have made a case for groups that are not agents being ascribed moral responsibility in their own right, this is a controversial position. I offer a new account of how non-agential groups may be correctly held morally responsible. A system, in the sense in which I use the word, picks out an organisation based upon a particular kind of structure. This is a formal (explicit) structure where the decisions that can legitimately be made within the organisation are severely constrained. All decisions regarding values to be pursued are pre-determined, and the function of the organisation is to collect and process factual information, and to take decisions regarding competing courses of action that best enable the realisation of these values. The only properties that exist at the collective level are factual propositions about the world and decisions on how to act in light of these propositions. However, I propose that when such systems are constituted in certain ways they can accrue further properties which are sufficient to allow them to be held morally responsible. I set out and explore two other properties which

are jointly sufficient for a system to be susceptible to being held morally responsible. The first is that they are complex. Complexity in this sense refers to the number and detail of the rules that the system instantiates. Once the number and detail exceed a certain limit, determined by the epistemic capability of individuals, those individuals are no longer capable of understanding the full implications of their actions. In this case a 'gap' is created between the responsibility that it is appropriate to ascribe at the collective level, and that which can be ascribed to the aggregate of individuals. The 'remainder' of moral responsibility is properly ascribed to the system itself. The second property that the system must have is that it is created and operated by moral agents. If this is not the case, then no moral responsibility is generated in the first place. This is an example of how moral ownership of outcomes can be generated by a mediation of moral agency. Business organisations, I argue, often satisfy these conditions for non-agential moral responsibility.

Having focused on the significance of the existence of business organisations for moral responsibility at the collective level, I turn to the question of how they affect ascriptions of responsibility to the individuals that populate them. This is a big question, and I do not attempt a comprehensive answer to it. Rather, I put in place what I take to be a first step by investigating the different ways in which an individual may contribute to the outputs of a business organisation; the different components of individual action that are necessary in order for a collective to generate properties that produce moral responsibility. In doing this I identify five categories of activity into which individual actions in the context of business organisations may fall: participation in one off joint commitments; participation in ongoing joint commitments that establish organisational structure; acting so as to fulfil a role established through an ongoing joint commitment; acting in a way that employs the resources established by such ongoing commitments, but that those commitments do not authorise; and acting to join an existing organisation or to leave an organisation.

With reference to these categories of action, I set out the combinations of activity that must occur at the individual level in order to for each of the models of collective responsibility that I have discussed to be generated. I also outline particular challenges that an analysis of individual responsibility based on this account would face, and give particular emphasis to the epistemic limits under which individuals in organisations must operate. I conclude by straying slightly from my expressed focus on backward-looking responsibility in acknowledging some particularly difficult challenges that arise for accounts for forward-looking responsibility (or obligation) in the context of business organisations. In this respect I take particular note of the



challenge posed by morally significant systems. These organisational entities are responsibility-bearing, but are not agents (let alone moral agents) and so cannot be required to fulfil obligations, to avoid certain outcomes or make amends for harms caused. Equally, members of morally significant systems are epistemically constrained in such a way that makes holding *them* to such obligations ineffective. The main conclusion I draw is that in many cases the main obligations generated will be to avoid the existence of morally significant systems to the greatest extent possible, and these will fall on governments just as much as individuals engaged in such organisations.

## CHAPTER II. WHY COLLECTIVE RESPONSIBILITY?

### 4. *The Challenge for Business Ethics*

The idea of 'business ethics' provokes varied and sometimes violent reactions, from the common refrain that 'business ethics is an oxymoron', to the comment of Robert Townsend in his classic management book *Up the Organisation* that '[i]f you *have* to have a policy manual, publish the *Ten Commandments*' (Townsend, 2007: 98)<sup>2</sup>. These sound bites point to a genuine challenge for any attempt to establish a satisfactory theory of business ethics. This challenge can be expressed in the form of a dilemma: on the one hand, it asks us to justify the claim that notions of 'ethics' apply to the context of business activity at all; on the other hand, if we can do this, it asks why we cannot simply use existing theories of ethics to tackle the issues that arise in this context – why do we need a new type of theory? Of course it is possible to talk about 'business ethics' without taking this to mean anything beyond a standard application of ethical theory to pretty standard ethical questions, albeit in situations we happen to classify as 'business'. However, not only would this make the notion of business ethics pretty uninteresting, it would run counter to the way the term is actually used. Academic journals specialise in business ethics, papers are written about it, MBAs run courses on it, business people are trained in it and asked to justify their actions in the context of it. It would be strange, in this context, to conclude that there really isn't much mileage to be gained by referring to *business* ethics at all.

My primary aim will therefore be to explain why we do talk of business ethics, to justify this practice, and in doing so to put in place the basis for addressing certain ethical concerns that arise in the business environment that are not well handled by standard treatments in moral or political philosophy. I will not focus on the first horn of the dilemma mentioned above, the idea that ethical considerations are irrelevant to business situations, yet this idea should also not be dismissed as misguided without examination. I therefore will start by reflecting on whether there is any good reason for thinking that notions of ethics do not apply to the business environment.

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<sup>2</sup> To be fair to Townsend, his comment is more intended to illustrate the faults with the ways in which policy manuals are commonly written, but it also illustrates the point of view of corporate ethics that I am trying to capture here.

## 5. *Business as an 'Ethics Free' Zone*

One reason, I take it, that we often hear assertions that ethics is 'irrelevant' to business is that there is a desire to highlight what the speaker believes to be the unsuitability of applying 'personal morality' to a business context. This objection is best tackled by showing that there are better ways of thinking about the requirements of morality that allow it to cohere with our understanding of business. I come on to this task shortly. Here, I am more concerned with arguments against the idea of ethics in business which could support the conclusion that such investigation is irrelevant even if it could be made theoretically coherent.

There are two, possibly related, lines of thought to pursue here. The first is that removing ethics from the conduct of business is, itself, ethically justified since such a move is instrumental to an ethically desirable outcome. An argument such as this would likely appeal to a version of Adam Smith's 'invisible hand' whereby (supposedly) the self-interested activity of each individual combines to produce results that are to the benefit of all, and the benefit of society<sup>3</sup>. However, Smith's observation that economic efficiency is promoted by organising economic affairs in this way – both through the incentives it promotes, and the effective use it makes of dispersed information – can only be interpreted as promoting the removal of ethics by the crudest interpretation of the thesis. This can be seen in a number of ways. Firstly, if we believe that the invisible hand is a perfect arranger of economic affairs and always produces results which are most beneficial to society, the argument in favour of organising economic affairs this way is an ethical one. The justification for allowing individuals to pursue their own interests is that overall the interests of all are served.

While this analysis ensures ethical considerations enter at the level of the organisation of the economy, it is still consistent with the thought that business can be 'ethics free' for the individual participants in the economy – all they have to think about is pursuing their individual interests<sup>4</sup>. But this view cannot be sustained either. Completely free pursuit of self interest – the extreme form of the invisible hand – is not a good way of organising economic affairs. The recent financial crisis is a good example of what happens when such a system is allowed to develop. The imposition of ethical requirements on business participants, that constrain their pursuit of self-interest, would address these problems. Self interest would then be a guiding

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<sup>3</sup> Smith most famously sets out this argument in the *Wealth of Nations*, for example Smith (2008): 291-292

<sup>4</sup> Even this analysis is open to challenge, since the pursuit of self-interest in this case becomes the ethical thing to do. Thus ethical considerations are, in a sense, present at the individual level.

principle for activity except when it breached principles established to protect the good of society.

An objection to this way of introducing ethics into business appeals to the practice of regulation. Although completely free markets cannot be justified by an appeal to the good of society, according to this objection it is not necessarily the responsibility of individual participants to curtail that freedom. Rather this job falls to a regulatory authority and, as long as participants adhere to regulations, they need not engage with ethics in their individual conduct. Indeed, it may be argued that regulation is the best or only plausible way to curtail individual actions, particularly in the presence of various collective action problems<sup>5</sup>. However, this suggestion is not as straight forward as it appears. To start with there are many forms of regulation; what they have in common is that they provide oversight of the actions of market participants but, for example in the case of self-regulation, it may be the market participants themselves (as a group) that are responsible for such oversight. Thus market participants are not entitled to operate in an 'ethics free' zone, even though they are called upon to engage with ethical issues collectively rather than individually. Here it may be insisted that in many cases it is not the market participants who regulate themselves, but rather it is the government or a government agency that properly assume that role.

Even in this case, however, it is hard to sustain the idea of market participants being licensed to operate without the restraint of ethical principles at the individual level. The reason for this is that it is highly unlikely that such market-level control will be able to legislate for every situation that will face market participants. As was also evidenced by the financial crisis, innovation in particular markets is often rapid, and even where it is not it is hard for formal regulations to capture every situation in which the pursuit of self-interest should be constrained. Considerations such as this have led to suggestions that 'business ethics' should consist in market participants voluntarily omitting to exploit market failures when they are in a position to do so (Heath, 2006). Thus, an investigation of the 'invisible hand' defence of business as an ethics free zone, even where the notion of 'ethics' used is as sympathetic as possible, shows that defence to be unsuccessful.

A further important point here is that I have so far been operating under the assumption that 'business' will be undertaken within a market system. While there are ethical challenges that must be answered in order to justify use of such a system<sup>6</sup>, since the end of the Cold War there

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<sup>5</sup> For a classic articulation of such a collective action problem see Hardin (1968).

<sup>6</sup> See, for example, Miller (1998).

has been no serious competitor to markets as a general system of economic organisation. Nonetheless, this does not mean that there will not be particular cases to consider where there appear to be strong ethical arguments against the use of markets. For example, we do not currently allow markets to exist in human organs for transplant, yet it is not prohibited to distribute such organs in other ways. While there is a lot to be said on all these subjects, this discussion at least shows that there are serious problems with the claim that the instrumental benefits of markets justifies thinking of 'business' as an 'ethics free zone'.

The second line of thought that might be invoked to argue for the irrelevance of ethics to business activity appeals to the notion of 'dirty hands'. This idea is usually discussed in the context of action by political leaders and, as Coady (2011) notes goes back to Machiavelli, who can be interpreted as supporting the idea that the political process operates 'above' morality (*ibid.*). More recently, it was Michael Walzer who coined the term 'dirty hands' and developed an account of the idea (Walzer, 1973). There are different ways to interpret what is meant by this term. Without becoming embroiled in the detail of this debate, I will set out some of the main discussion points highlighted by Coady (*op. cit.*) to illustrate why it offers little support to the idea that ethics is irrelevant to business. The above interpretation of Machiavelli notwithstanding, most discussions of dirty hands do not claim that ethics does not apply to the political realm, but rather that it can be overridden in certain circumstances. Thus Walzer, in his most considered treatment of the subject focuses exclusively on conditions of 'supreme emergency', where a political community faces destruction unless its leaders take action which violates strong moral requirements (for example, the British bombing of German civilian populations in the Second World War).

On this view, however, politics is not 'ethics free', although ethical considerations may not be the only ones to take into account. Indeed, it is contested whether such 'overriding' of ethical considerations actually just illustrates another aspect of morality or whether it appeals to considerations beyond morality. Thus an appeal to the notion of 'dirty hands' does not look promising as a way of demonstrating the general irrelevance of ethics to a domain. A further challenge in the case of business activity is to explain how the dirty hand analysis could be extended beyond the political sphere. While the destruction of a political community is the kind of extreme case that could, perhaps, justify extreme measures, it is hard to imagine an analogue to 'supreme emergency' in the economic sphere. Take the example of a business that is about to fold, might the owners be permitted to bypass morality for the sake of keeping

it afloat? It is hard to feel the kind of urgency in this situation that could motivate such a conclusion.

Although the notion of dirty hands does not give us the ethics free zone we were looking for, a related idea in the political sphere could be more promising, and this is 'political realism'. Coady (*op. cit.*) characterises the 'dirty hands' thesis as challenging whether ethics is always dominant and contrasts this with the question of whether it is *comprehensive*, in other words whether it applies in all situations across all domains. It is this challenge to comprehensiveness that is more closely aligned with the idea that ethical ideas may be irrelevant in business life. In the political realm, this thesis is the mainstay of political realism. However, even in the case of politics the notion is obscure and its claims are ambiguous (*ibid.*), and this is before we consider the challenge of translating the idea to the economic realm. At bottom, then, while there are some positions that might appear to offer the prospect of freeing economic activity from the scope of morality, none of them are particularly appealing. While I appreciate that it may be possible to pursue some of these lines of investigation with more vigour than I have been able to do here, I will rather consider this sufficient evidence to focus my attention on the question of whether ethical considerations in business can be satisfactorily addressed by more general approaches to ethics.

## 6. *What is a Distinct Ethical Theory?*

The challenge is now to identify the appropriate type of theory with which to tackle ethical considerations in business. In particular, it is to determine whether we can get by perfectly well with existing theories of moral or political philosophy, or whether there are features that are particular to the business environment and that are distinct enough to require theoretical treatment that justifies categorisation under a new heading of 'business ethics'. In order to do this, it will be important to spend some time determining what is meant by a 'distinct' kind of theory and how the need for such a theory might be articulated. The place to start is with a distinction that is often made within ethical theory, between what might be termed 'individual' moral theory, and political philosophy. The way these kinds of theory are individuated is with respect to their context of application, a way of distinguishing ethical theories that is conducive to the idea of business ethics. But in what way, if any, is the distinction between individual and political morality supposed to work? The first thing to notice is that the two kinds of theory ask different (although sometimes overlapping) questions. We can ask of an individual whether they have a virtuous character, or act in a way

that is right, or in such a way as to promote what is valuable or good. Within a group of individuals organised into a society or state, other issues arise: how can it be legitimate for an individual or group of individuals to wield authority over the others within a state? Where activity is organised for the mutual benefit of all, how should the proceeds of that activity be divided amongst the group? The first of these questions, of the legitimacy or otherwise of political authority, has been the enduring challenge tackled by political philosophy as a distinct discipline; the second, focused through the lens of social justice, the particular preoccupation of political philosophers since the subject's revival in the 1970s.

Another distinction between these two kinds of theory is that each has originated and tended to favour certain normative frameworks. One notable example of this in political philosophy is social contract theory, founded on the basic idea that within a social group we can arrive at binding ethical rules by describing contractual relationships between the members of that group (although there are different ways in which this mechanism is fleshed out)<sup>7</sup>. However, to say that political philosophy asks different questions from individual moral philosophy and that it favours different normative frameworks does not really get to the heart of the distinction between the two. To see this we must ask *why* these questions and frameworks differ, what motivates these distinctions? The answer here goes back to the original distinction noted, that they are ethical investigations undertaken in different contexts, of different subject matter. We ask different questions, and use different tools for answering them, because we are presented with different challenges in each case.

The entities that provide the focus for what I am calling theories of moral philosophy are individual humans, or people. In the realm of the political, however, further entities come to the fore – many individuals are collected into societies or states which have their own distinct characteristics. Within these groups, it is no longer sufficient to consider each human just as an individual; the ethical contours are distinctly shaped by the fact that individuals are also, for example, citizens of a state – or even officers or rulers of a state. In addition, this political activity is typically supposed to be undertaken with a particular purpose in mind. Thus Hobbes (Hobbes, 2008) and Locke (Locke, 2010) focused on the way that political organisation allows a collection of individuals to move away from the 'state of nature' in their relations with one another<sup>8</sup>; in a similar vein, Rawls notes early on that the purpose of political activity (given a

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<sup>7</sup> Even in cases such as this there will tend to be overlaps between the two fields. For example David Gauthier's approach to moral philosophy is firmly rooted in the contract tradition (Gauthier, 1987).

<sup>8</sup> Although, of course, they differed on how pessimistic they were regarding humankind's prospects in such a state.

certain understanding of society) is to 'specify a system of cooperation designed to advance the good of those taking part in it' (Rawls, 1971: 4).

This way of identifying kinds of ethical theory therefore requires a way of demonstrating that the context of business is sufficiently distinct from other contexts in which we might ask ethical questions, in some normatively significant way. Of course, saying this requires further clarification as to what would count as a normatively significant feature of business that is particular to that context, and here there may be different strategies. In the final two sections of this chapter I consider what such features of the business environment may be. I start by surveying recent normative work in business ethics and – to the extent that it attempts to set business ethics apart as a distinct discipline – identify the different ways in which it has tried to capture the distinctness of the business environment. I then draw on these ideas to justify the focus I will take in the remainder of this project, a focus on the particular challenges that 'business' generates for accounts of moral responsibility, given the complex ways in which individuals combine to act collectively.

## *7. Approaches to Business Ethics*

Recent theoretical treatments of business ethics, by which I mean accounts developed since the subject's re-emergence under that heading in the late 1970s, do not fall neatly into the categories that I distinguished above – those of identifying new questions that must be tackled, developing new theoretical constructs, or identifying underlying features of the subject matter itself – but this framework is useful as a way of introducing different contributions<sup>9</sup>. Consider, first, an approach that does not attempt to portray 'business ethics' as a distinct undertaking beyond the application of an existing theory of moral philosophy to the business environment. This is the approach of Bowie (1999), who invokes an interpretation of Kant's moral philosophy in order to identify and address ethical questions in business. While Bowie asks questions that are, in a sense, specific to the business environment, such as what the rights of employees should be in formulating the rules and policies that affect them, and what principles should govern a moral firm, these questions are framed as ways of rephrasing more general questions asked by Kant. They are therefore not 'distinct' questions in the way I

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<sup>9</sup> The selection of writings on business ethics that I discuss here is far from a comprehensive survey, but is sufficient to illustrate the range of approaches that have been taken, and to situate my current project within that range.



have used the term, and the framework used to answer them is one quite straightforwardly drawn from existing moral theory.

A step towards a theory of 'business ethics' is taken by Solomon (1992, 1993) who observes that 'it is by no means clear what a theory in business ethics is supposed to look like or whether there is any such theoretical enterprise' (Solomon, 1993: 98). He is concerned that any straightforward application of existing moral or political philosophy to the business context is not really an undertaking that can be much distinguished from standard theorising in these subjects. His solution is distinctly Aristotelian. On Solomon's account business ethics must ask what it is to be a virtuous individual within the community of the business organisation, a question that can only be answered by understanding the nature of 'business' as a fundamental human 'practice'. This concern for the nature of business as a distinct practice, and the significance of business organisations as communities, starts to differentiate the idea of business ethics, although situated within a strongly Aristotelian framework.

If Bowie and Solomon draw strongly on existing theory, an approach to business ethics theorising which is often held as distinct is that of 'stakeholder theory'. Developed by Freeman (1984), originally as an approach to strategic management, stakeholder theory has been adopted as an approach to normative theory in business. Its basic idea is that in order to achieve a corporation's aims, managers must take account of the interests of many different 'stakeholder' groups, such as suppliers, customers, financiers, etc. As a contribution to normative ethics, stakeholder theory has been taken to argue that the interests of all of these groups have a claim on the firm, not just those of shareholders. Interpreted in its most basic form, stakeholder theory can be criticised for failing to say anything beyond the obvious – that shareholder interests cannot override all other considerations. Such a formulation, however, is as unhelpful as it is obvious since it simply leaves open the questions of *which* other considerations are important, and *how* they should be balanced. Various answers have been offered to these questions: that a fiduciary duty to shareholders be augmented by a non-fiduciary duty to others (Goodpaster, 1991; Langtry, 1994); that answers are to be determined by a proper formulation of public policy towards corporations (Boatright, 1994); or that duties be governed by a notion of fairness, such as a principle of 'fair play' between stakeholders (Buren, 2001; Phillips, 1997; Phillips & Reichart, 2000). Others have taken normative stakeholder theory to contribute little beyond a reaffirmation that managers have a moral duty to use stakeholder analysis as a strategic tool to maximise shareholder returns (Jensen, 2002). In offering a defence of stakeholder theory as a normative undertaking, Freeman and

Phillips (2002) argue that it is underpinned by libertarian principles, particularly a strong emphasis on the value of individual freedom and the concomitant importance of responsibility. The normative implications of stakeholder thinking should be drawn in light of these commitments.

Freeman and Phillips' analysis touches on a number of different ways in which business ethics theorists have tried to identify the distinct nature of their enterprise, tying in with the framework I mentioned earlier: through arguments for the distinct nature of 'business activity'; the way that individuals engaged in such activity should be characterised; the importance of collective action to generating business results; and the way in which these features invite analysis in terms of particular values or principles, or by particular theoretical constructions. Their approach (given its roots in strategic management) also intersects with another question that has been, in different guises, a focus of attention for business ethicists of all persuasions – how to understand the relation between normative theorising and 'empirical' approaches.

This last question is a venerable one in philosophical thought, often captured by asking about the relationship of 'facts' to 'values', or between what 'is' and what 'ought' to be, and remains relevant to all branches of ethical investigation. It has found a particular outlet in trying to unify two streams of work that both go under the heading of 'business ethics' but that rarely connect with each other: normative theorising by philosophers, and empirical studies based particularly in business schools, in management theory and in social psychology. For example, Rosenthal and Buchholz (2000) turn to the tradition of American pragmatism to argue not just that factual and value-based enquiries must draw from each other, but that they are in effect two sides of the same coin: 'the difference is a difference based on contextual and functional considerations, not on ontologically distinct types of data: facts and values' (*ibid*: 404). A more ambitious project is found in Frederick (1995) who identifies a series of values that are based both in fundamental human nature and in the cultural environment in which we operate. He argues for a 'new normative synthesis' that draws on both normative and social scientific research and that results in a set of 'convergence theorems' that capture the common understanding of the ethical imperative of business present in all of them.

However, such convergence results risk being uncontentious, and so unhelpful in making progress with genuinely difficult ethical issues in business, without some way of extrapolating to difficult cases. In suggesting how his project may be taken forward, Frederick references the work of Donaldson and Dunfee (1994, 1995, 1999) whose project aims to bring together in one

theory a number of the features that would mark out business ethics as a distinct undertaking. Part of their explicit motivation is to reconcile the empirical and normative streams of business ethics investigation, and they do this through the construction of a new normative theory for business that allows room for the empirical discovery of (legitimate) norms at the level of individual communities. This theory allows for such local norms on the basis of 'hypernorms' which are universal moral rules that determine the bounds within which local norms must fall. This theory is justified on the basis of a mechanism based in the social contract tradition, and that postulates two 'levels' of contract – a 'macrosocial' contract that sets the ethical framework for business as an enterprise, and 'microsocial' contracts which are entered into by communities and are allowed (and binding) provided they meet conditions set at the macro level. Donaldson and Dunfee's approach is augmented by an explicit characterisation of the subject matter of business, which they say is 'artifactual' where this captures the fact that it is 'almost entirely the product of human design' (Donaldson & Dunfee, 1999: 14). I take it that this observation is one way of noting the centrality of business *organisations* to the practice of business.

This focus on the significance of business organisations was important to Donaldson's earlier work (Donaldson, 1982), which shared an interest with other writers such as French (1984) and Werhane (1985), in corporations as the focal point of what is distinct about the business environment. These approaches to business ethics drew heavily both on theories of responsibility and on the ontology of social groups to develop new ways of understanding the relevant moral questions and the appropriate perspective from which to answer them. More recently, this line of thinking has been developed further, particularly by Philip Pettit and Christian List in their work on group agency (List & Pettit, 2011; Pettit, 2007). It is with this tradition that my project is most closely associated, and so I say a lot more about these authors in what is to come. An alternative direction in which investigation of corporations has been pursued is towards the idea of the 'corporation as political body'. In this vein McMahon (1997) argues for a perspective of the business organisation as the centre of certain kinds of power, power that can only be legitimate through the exercise of the democratic process with respect to that organisation's members.

This line of thinking connects with a popular recent avenue of enquiry in business ethics which has moved away from traditional theories of moral philosophy and instead investigated how the resources of political philosophy may be best exploited. As Heath, Moriarty, & Norman (2010) point out in their paper *Business Ethics and (or as) Political Philosophy*:

‘Judging from the range of issues covered in journals like *Business Ethics Quarterly* and the *Journal of Business Ethics*, it is not an exaggeration to characterize “business ethics” as concerned with the evaluation, justification, or critique of all of the following: market systems; the regulation of markets and firms; the self-regulation of firms; and the activities of businesses or the individuals working for, or interacting with, businesses.’ (*ibid*: 428)

They go on to investigate how particular approaches to political philosophy may be translated to help us understand the business context. So, for example, one avenue that they explore is whether large corporations might be considered part of Rawls’ ‘basic structure’. While this approach would amalgamate questions of business ethics with those of political philosophy, other appeals to Rawls allow more room for the distinctness of the business environment, for example those present in the work of Hsieh (2004, 2009). In particular in his 2004 paper *The Obligations of Transnational Corporations: Rawlsian Justice and the Duty of Assistance* Hsieh starts from a position in political philosophy, Rawls’ account of the duties of nation states in *The Law of Peoples* (1999), and argues to a position in business ethics that focuses on corporate obligations. The strength of this account is that it does not attempt to say that transnational corporations *are* nations or should fall under the remit of political philosophy, but rather it explores what we can say about such organisations as distinct subjects of moral theory given Rawls’ position as a fixed point of input. The conclusion he reaches is that if nation states do not fulfil their duties under political morality, then since shareholders of transnational corporations are also citizens of those states, shareholders can acquire this duty and pass it on to those corporations. The argument takes as its starting point a theory of political responsibility, but the particular obligations that it identifies for transnational corporations are not themselves political. Rather, they are derived from a distinct argument about the status of corporations and their shareholders.

An even more distinct position is taken by Phillips and Margolis (1999) who argue for an applied ethical theory of business organisations that is distinguished from both political and moral philosophy. This argument is based on the claim that organisations should be distinguished in a number of important ways from states on the one hand and individuals on the other. It relies, for instance, on an appeal to supposed differences in entrance and exit conditions between states and business organisations; differences in the legitimacy of holding organisational purposes and aims; the permissibility conditions for assessing the contributions of members, and members assessing the desirability of membership; and the nature of power in collective as opposed to ‘individualistic’ situations.

To sum up this brief overview of the recent history of business ethics theorising, many different ideas have been developed or adapted firstly to identify, and then address, the relevant questions that are generated by business activity. My intention has not been to adjudicate between these approaches or label any as better than or worse than another. Rather, it has been to sketch different ways in which authors have framed their projects as exercises in *business* ethics, and the reasons they have given for doing so. These reasons have broadly conformed to the framework I set out at the beginning of this section, which looked at the differences in the appropriate questions to ask, in theoretical mechanisms used to answer those questions, and in the basic nature of the subject matter of which they are asked. My project is situated in this body of work, insofar as it takes as a point of departure the centrality of business organisations to the investigation of business ethics, and the belief that such organisations generate challenges for ethical theory that are not well handled in ‘traditional’ approaches to moral and political philosophy. In particular, it is questions of responsibility, derived from the complex nature of collective action in business organisations, which require particular attention. Thus I am not trying to reinvent, but rather to augment the body of business ethics thinking, and in a way that strikes me as most fundamental to the nature of the enterprise. In the following section I develop and justify this idea further.

#### 8. *Business, Economic Activity, and Collective Responsibility*

My starting point in setting out the particular line of enquiry I will follow is the idea of ‘business’ as an activity. In discussing the activity of ‘business’ I am not trying to capture exactly the common usage of the word since a lack of clarity in such usage is part of the problem; rather I am trying to develop a plausible account of how we should understand the idea for the purpose of ethical theory. While ‘business’ is quite a vague term, it is at least clear that it relates to the organisation and management of economic production. On this basis, one approach to take to the identification of the subject matter of business ethics would be to say that it encompasses everything to do with economic production. Indeed, this conclusion would only be strengthened by a survey of work that is undertaken under the heading of business ethics, as Heath *et al* (*op. cit.*) point out.

To pursue this thought, and to consider whether it points to something ‘distinct’ about the business context, it is worth focusing some more on the notion of economic production. Generally speaking we can say that it involves the combination of human labour with natural resources to produce goods and services that are of value to individuals. Economic production

in the modern world will almost inevitably involve a huge range of parties and participants. It will incorporate national governments and transnational political institutions; these political organisations will establish the basic framework within which production and the decisions that govern it will be undertaken – whether centralised and planned within the political institutions themselves, or decentralised to private individuals who will operate via a market system. In the case of decentralised production decisions, political institutions will still exert a greater or lesser control on activity through laws and market regulations. Governing all these decisions will be, at least in principle, the guiding purpose that motivates those political institutions, which we can identify roughly as the promotion of the interests of the political societies of which they are institutions<sup>10</sup>. As noted by Heath *et al*, these aspects of economic production have routinely been discussed under the heading of business ethics. However, it is quite clear, I think, that this is not the kind of subject matter that can be established as ‘distinct’ in the way required to set business ethics apart from other kinds of ethical theory. The reason for this is that all these aspects of economic production will rightly be identified as parts of the political realm – decisions made and actions taken by political institutions in pursuance of political purpose, albeit relating as they do to the production of goods and services. There seems no obvious reason why standard approaches to political philosophy cannot handle this subject matter quite satisfactorily.

Similarly, at the other end of the scale, economic production will be an individual matter. Individual people will participate as both producers and consumers. They will decide what goods and services to buy and from whom; they will also decide what kind of work they want to be engaged in and how they should conduct themselves in this work. These are all decisions that people make regarding their conduct in a personal capacity. Therefore, these aspects of economic production will all be part of the individual realm, and as such the subject matter will be susceptible to analysis by standard approaches to individual moral philosophy. So far, then, investigation of the notion of economic production has not provided us with any distinct kind of subject matter that might require a new kind of ethical theory.

Indeed, having outlined these political and individual aspects of economic production, it might be the case that we can stop there. After all, some such production can be described completely in these terms. We might take as an example simple barter economies where individuals produce goods and services and offer them in exchange to other individuals; at the other extreme we can think of economies that are entirely centrally planned, where decisions

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<sup>10</sup> I leave aside here the difficult question of how such interests should be identified.

on production and distribution are taken exclusively within political institutions, which then employ individuals directly in order to carry out these decisions. In these cases it would appear that any ethical considerations surrounding economic production can be tackled by approaches designed to address political and individual morality. Thus it is not a focus on economic production which provides a distinct subject matter and context for business that would allow business ethics to be established as a distinct kind of ethical theory.

However, the vast majority of modern economic production does incorporate a further element that is not obviously native to either the individual or political environment. This element again concerns the production decisions of private individuals, but rather than each using their labour and other resources in isolation to generate goods and services, they group together, combine these resources and in doing this are able to generate greater levels of wealth. This combination brings into existence an additional kind of social grouping, one that is not a *political* grouping. For a start, it is organised around a much narrower purpose than a political society, focused particularly on the promotion of economic interests (exactly *whose* interests are important here is a further question). Within this social group, that we can call a 'business organisation', there are also generated particular roles whose features are shaped by the contribution that the role holder makes to the economic enterprise – thus we have employees, managers, directors, shareholders, and so on. While the holders of these roles will be individuals whose actions come under the remit of individual morality, the fact that they are role holders adds something which is not obviously dealt with by such individualistic approaches.

It is this intermediate realm of economic production, as conducted by business organisations and the roles that they generate, that defines 'business' in the sense that is relevant to the task of establishing distinct subject matter for theories of business ethics. It is this distinct subject matter that offers the potential to create the space for theories of business ethics to sit beside existing theories of moral and political philosophy. The challenge now becomes to justify this assertion and identify *what* it is about business organisations that makes them distinct. It is worth, at this point, noting that while the nature of business organisations requires an approach to ethical theory distinct from those of individual moral philosophy and political philosophy, the aspects of those organisations on which this conclusion is based may not be unique to the business context. So, for example, organisations in other fields, such as sports clubs or churches, may share these features. If this is the case, then there will be reason

for putting talk of business ethics to one side, and focusing instead on organisational ethics. These are questions for later, however.

The grounding feature of business organisations as collectives is their capacity for, and promotion of, collective *action*. These organisations are purposeful collectives that are voluntarily joined (and left), and that legitimately assess performance and instantiate power relations, because they are formed to *do* something. Phillips and Margolis (*op. cit.*) rightly point to questions that are prompted by the fact that businesses engage in collective action, questions that are not well addressed by, or directly relevant to, ethical investigations that focus either on individuals or political society. However, there are more fundamental questions to do with the nature of collective action that they do not discuss, and it is these on which I focus my project. The first is the nature of collective action itself. When a group of individuals come together to achieve something they may do this in a variety of ways, employing various mechanisms to coordinate their activity. Some of these methods of coordination do not result in any more than an aggregate of individual actions, but some do. Some ways of coordinating a group result in the generation of properties that reside at the level of the group and are not reducible to properties of its individual members, for example the collective may act in a way that no individual acts, or it may intend to act in a way that does not correspond to any individual intention. The possibility of irreducible group level properties resulting from collective action opens up the possibility of the existence of distinct collective entities<sup>11</sup>; I make a more detailed argument for this conclusion in chapter four.

This consequence of collective action leads to further questions regarding the moral analysis of business organisations. A close corollary of the idea of action in moral thought is the idea of *responsibility*. In particular, once an agent satisfies certain conditions they are classified as a *moral* agent and are held to be susceptible to ascriptions of responsibility in certain circumstances. The possibility of collective action and irreducible group level properties has implications for such ascriptions of responsibility. On the one hand it has implications for what moral agents may be held responsible *for*, for example in cases where new kinds of irreducibly collective action are generated. On the other hand, it has implications for whom or what may be identified as a suitable subject of responsibility ascription. If it is possible for all the properties that endow moral agency to be instantiated at the collective level, then it will be possible to ascribe moral responsibility to a collective entity that is not reducible to the

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<sup>11</sup> The possibility of collective entities of this kind is addressed by investigations in social ontology, and such questions have been central to one stream of thought in business ethics theory – although one that has not been much pursued in recent times – as outlined in the previous section.



individuals that comprise it. My project focuses on these implications of collective action for ascriptions of moral responsibility in business organisations.

## CHAPTER III. RESPONSIBILITY

### 9. *Moral Responsibility*

The previous chapter argued for the claim that if 'business ethics' is going to be a meaningful idea then we need to demonstrate how it is different from other kinds of ethical investigation. It then gave initial reasons for thinking that a correct account of moral responsibility in the context of business organisations will be complex and multifaceted, so making the business environment particularly hard to handle from an ethical perspective. In the remaining chapters I expand upon and substantiate this line of argument. The first step to doing this is to get a firm handle on the notion of moral responsibility. This will not be a 'full' theory of moral responsibility, but rather a partial theory that focuses on those aspects that are important for the coming arguments.

The first task will be to disambiguate the kind of responsibility in which I am interested from other related ideas, many of which we also refer to through different uses of the word 'responsibility'. I will focus on what is often termed 'backward looking' responsibility, which involves the ascription of moral accountability to someone or something for what has happened in the past. It is investigating how this kind of responsibility is ascribed that will reveal some of the most interesting complexities introduced by the existence of business organisations. The most obvious alternative is often called 'forward looking responsibility', where this is synonymous with obligations, or responsibilities, that we have to do things in the future. While I will not address such obligations explicitly, sometimes it will be impossible to disentangle questions of backward and forward looking responsibility. An investigation of backward looking responsibility reveals a further division of questions that might be addressed under that heading. In particular, (1) what kind of properties something must possess in order to be a possible subject of such responsibility ascriptions; (2) the conditions that must be satisfied in order for any particular ascription to be justified; and (3) what follows from a successful ascription of responsibility to an appropriate subject. I will address the second of these questions in this chapter and then use this answer to tackle the first question in the remaining chapters<sup>12</sup>. I leave question (3) to another time. Business organisations, I will argue,

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<sup>12</sup> Given that my aim in addressing question (2) is to support the answers I develop later to question (1), the account I develop here is not comprehensive but rather focused on the task at hand. To this end, I aim to clarify the relation that someone or something must have with a past event in order for them to be morally responsible for that event. It is not intended to set out all the features of events that generate responsibility of different degrees for their owners.

generate moral responsibility in a number of ways through properties that they possess *as collectives*. This responsibility accrues both to the organisations as distinct entities, and to the individuals that populate them.

Answering the second question requires an explicit account of what it *means* to be morally responsible. In the final sections of this chapter I defend an account of backward looking moral responsibility that holds that the basic condition of application is that the subject *deserves* to be held responsible. This is distinguished from accounts that ascribe responsibility on the basis of the beneficial consequences of doing so. Moreover, to acquire moral desert for an event (action, outcome, etc.) in the past is to have a particular kind of ownership, namely moral ownership, of that event. I set out an account of what it is to have moral ownership of this kind. This account allows me to substantiate the later arguments I offer for why business organisations can be held morally responsible despite not satisfying the strict conditions of moral agency usually thought to be necessary for such ascriptions.

My position can be clarified further in two ways – by outlining some orthodoxies that exist in standard accounts of moral responsibility, and how my position compares to them; and by setting out explicitly those elements of a full theory of moral responsibility that I will not try to address. The first orthodoxy is that ‘moral responsibility’ only refers to ‘backward looking responsibility’, and so a theory of moral responsibility will be limited to an investigation of this concept. While I will focus on backward looking responsibility, it is not obvious that backward looking responsibility should be privileged above other morally relevant uses we normally make of the word ‘responsibility’, and it is also hard to see how a comprehensive understanding of any of these notions can be achieved without acknowledging the others, and how they are related. A second orthodoxy in treatments of moral responsibility is that only moral agents can be responsible in this way. This assertion I explicitly deny, although I accept that being a moral agent is *sufficient* for being a suitable subject of moral responsibility. Through my development of the idea of ‘moral ownership’ I show how such ownership can be achieved by business organisations even when they do not satisfy the normal conditions for moral agency that would apply to individual humans. In doing so, I explain how moral ownership is related to the notion of ‘freedom’ which is normally invoked to underpin accounts of what it is to have moral agency. Finally, a full theory of moral responsibility must set out ‘possible objects of responsibility ascriptions (e.g., actions, omissions, consequences, character traits, etc)’ (Eshleman, 2009). This is another area that I will not explicitly address. Of course, an answer to this question will be implicit in what I have to say about organisational

responsibility. I will, in general, talk about responsibility accruing as a result of moral ownership of actions and outcomes. Nothing I say, however, precludes my analysis being extended to omissions or, perhaps, character traits – although both these possibilities introduce further complexities, such as a requirement that the subject of ascriptions has a recognisable ‘character’, and an investigation of these complexities is beyond the scope of the current project.

#### *10. Backward Looking Moral Responsibility*

It is important to break down the idea of ‘backward looking’ responsibility more fully into its component parts, since a detailed grasp will be required if I am successfully to argue that such responsibility can be applied in the context of business organisations in ways that reject various standard assumptions regarding its application. In addition, it is instructive to situate backward looking responsibility in the context of a broader range of related responsibility notions. A particularly comprehensive taxonomy of such concepts is presented by Nicole Vincent (2011). She sets out what she terms a ‘structured taxonomy of responsibility concepts’, taking as her inspiration HLA Hart’s passage that demonstrates just how flexible the language of responsibility is (Hart, 1968: 211). The six distinct ideas to which ‘responsibility’ can refer, according to Vincent, are as follows (Vincent, 2011):

1. Virtue responsibility – picks out the idea we employ when we call someone ‘responsible’, meaning that they are the kind of person who typically does good things and has good intentions. It says something about their character.
2. Role responsibility – is the use of ‘responsibility’ that is interchangeable with ‘duty’. Such responsibilities are derived from the roles an individual plays, although Vincent is careful not to imply that such responsibilities are only derived from institutional, social or conventional roles, or that the question of who has what responsibilities can be settled simply by examining the roles themselves.
3. Outcome responsibility – captures the use of the word to indicate that blame (or praise) should attach to an agent for the outcome of their action, or for the action itself.

4. Causal responsibility – this use of ‘responsibility’ simply picks out a causal relationship between the thing that is responsible and that which it is responsible for, and thus in itself has no moral content.
5. Capacity responsibility – when used in this way, ‘responsibility’ indicates that an agent has the necessary capabilities for moral agency. Normally these capabilities are mental (Vincent references Hart’s description of the “cognitive” and “volitional” capacities of folk psychology (Hart, 1968: 218)), although Vincent suggests that non-mental capacities might also be important.
6. Liability responsibility – is the sense of responsibility that captures how someone should be treated or what they should do to set things right as a result of something that they have done. Vincent notes that, used in this way, we normally talk of someone ‘taking responsibility’ or being ‘held responsible’.

The first thing to note is that several of these usages of ‘responsibility’ necessarily connect the subject of responsibility with events that happened in the past, notably *causal* responsibility, *outcome* responsibility, and *liability* responsibility. Causal responsibility will feature as a precondition in any account of backward looking moral responsibility – in order to be morally responsible for an event the subject of responsibility must have at least some causal connection to the event<sup>13</sup>. This is not to say much, however, and is a minimal and uncontroversial condition. This leaves what Vincent calls ‘outcome’ and ‘liability’ responsibility. The division between these two ideas suggests that there is a distinction to be drawn between being morally responsible, in a minimal sense, for a past event, and there being any practical consequences that should follow on the basis of this conclusion. This is a distinction which is mirrored by Miller (2007), although he approaches it in a different way. Miller also talks about outcome responsibility saying that, in the case of outcome responsibility (unlike with purely causal responsibility) it is legitimate to credit or debit the agent with the outcome at hand<sup>14</sup>. He then goes on, however, to talk about the way in which people are held *liable* for the things for which they are accountable. Whereas Vincent identifies a new notion of ‘liability responsibility’ which is to be employed alongside outcome responsibility, Miller tackles this

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<sup>13</sup> I say ‘must have some causal connection to the event’ although this condition is perhaps contestable in the case of consequentialist accounts of moral responsibility. This said, it is plausible that a causal connection is conceptually necessary to the notion of moral responsibility even when applied on a consequentialist basis.

<sup>14</sup> To be clear, causal responsibility will be a condition of outcome responsibility, but outcome responsibility also brings with it this idea of being able to credit or debit an agent in line with the event caused.

question by identifying a particular mode of applying other notions of responsibility. Thus he distinguishes between 'identifying responsibility' which involves determining who meets the relevant conditions for responsibility, and 'assigning responsibility' which involves attaching costs and benefits to an agent whether or not the normal conditions for 'identifying responsibility' are met (Miller, 2007: 84).

There are a number of interesting points to note on the analyses offered by Vincent and by Miller. Vincent's 'outcome responsibility' is the equivalent to Miller's idea of 'identifying outcome responsibility' while Vincent's 'liability responsibility' corresponds to Miller's 'assigning outcome responsibility'. One important question to address is whether *anything* follows from simply, in Miller's terms, 'identifying responsibility'. The thought appears to be that the conditions that must be satisfied in order for a successful ascription of responsibility to be applied are not the same as those that must be satisfied for practical consequences to follow. However, Vincent includes within her outline of outcome responsibility the idea that praise and blame are due simply through a successful ascription. Therefore, at least *some* practical consequences follow. Miller does not have anything to say on this question specifically, but in principle does not seem committed even to the appropriateness of praise or blame following from a proper 'identification' of responsibility. A further question is *what* conditions must be satisfied in order for either outcome or liability responsibility (in Vincent's terms) to be ascribed. While a full answer to this question will be extensive, an important aspect of it will be whether the conditions for outcome responsibility are necessary but insufficient to ascribe liability, or whether it can be justified for someone to be held liable for past events even though they are not outcome responsible for them. It seems clear that Miller would accept that outcome responsibility is not necessary for liability, while Vincent does not tackle this question explicitly.

My approach will tackle these questions as follows. I will work with a notion of 'backward looking' moral responsibility that does not make an explicit distinction between meeting the conditions to be held responsible, and meeting conditions to be held liable to consequences. Rather, to be morally responsible in this way just *is* to be liable to at least a minimum level of practical consequences, where this minimum level relates to the appropriateness of praise or blame. Whether more extreme consequences are due or not will depend on, firstly, meeting the basic conditions for moral responsibility and, secondly, meeting further conditions based on the exact circumstances and whether there are aggravating factors in play. Thus the 'basic' conditions for an application of moral responsibility will be sufficient for a basic level of

liability, and necessary (but insufficient) for greater levels of liability<sup>15</sup>. In this respect, I follow closely the account of Fischer & Tognazzini (2011) who identify a number of ‘levels’ of moral responsibility, which I set out in more detail later in this chapter. To be clear, and in line with the distinction I made in chapter one, the appropriateness of ascribing each level of responsibility will be determined by what the subject *deserves*<sup>16</sup>.

As I outlined at the start of this chapter, however, questions of the practical consequences that follow from successful ascriptions of moral responsibility are not my concern here. Rather, I am interested in the conditions that must be satisfied to apply the most basic level of responsibility and, at the end of this chapter, I set out an account of these conditions based on the idea of ‘ownership’. I then focus on a prior question, which is to determine the properties that something must possess in order to be a potential subject of such responsibility. This is a question that is also captured in Vincent’s taxonomy under the heading of ‘capacity responsibility’, although she follows the standard assumption that whatever these properties turn out to be, they will be ones which establish the subject as a moral agent. This, as I have said, is an assumption that I will challenge.

### *11. Conditions of Application, Not Consequences of Application*

I have started to develop some conceptual clarity around the notion of backward looking responsibility with the discussion in the previous section and this can be advanced further with reference to a discussion started by Gary Watson (1996). Watson identifies two ‘faces’ of (backward looking) responsibility: ‘attributability’ and ‘accountability’. This discussion is continued by Fischer and Tognazzini (2011) who try to analyse in more depth than Watson these concepts of responsibility. This analysis can be mapped onto the breakdown of responsibility ideas that I have presented so far. As a starting position, it is reasonable to think of the idea of ‘attributability’ as corresponding to Vincent’s notion of ‘capacity responsibility’, thus addressing the properties something must have in order to be a possible subject of

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<sup>15</sup> I should reemphasise here that my concern is with *moral* responsibility alone. There are other contexts in which responsibility is ascribed, notably the legal context, where its conceptual structure may be quite different. Insofar as this is the case, my current analysis does not apply in those contexts.

<sup>16</sup> In chapter one I said that I am open to pluralist understandings of moral responsibility, where an account based on considerations of desert could sit next to and be compatible with an account based on consequentialist considerations. I am still adhering to that view here, while arguing that for the purposes of developing the desert-based account we must exclude such appeals to consequences. This also excludes the possibility of determining levels of liability based on consequentialist considerations even when the judgment of basic responsibility is made on the basis of desert.

responsibility. On the other hand, we may think of the idea of ‘accountability’ as elucidating the different kinds of consequences that will be appropriate for someone who has satisfied the conditions of attributability and has acted in a certain way. This approach, it may seem, leaves out a crucial question which is what it means for someone to be morally responsible in the first place. While it is true that Fischer and Tognazzini do not investigate in detail the conditions under which someone will be morally responsible (in other words, they do not provide a detailed answer to my question (2)), they offer some considerations that are relevant to this question. They take the important step of integrating the notions of ‘satisfying the conditions for moral responsibility’ and ‘being susceptible to practical consequences’. To be accountable is *both* to be responsible *and* to face the consequences of that fact. This is an approach that I endorse, as I emphasised earlier in my rejection of Miller’s distinction between ‘identifying’ responsibility and ‘assigning’ responsibility. Thus, in discussing accountability, they *are* discussing what it means to be responsible as well as the consequences that should be faced on this basis.

Fischer and Tognazzini’s analysis follows what they term a series of ‘analytical’ or ‘conceptual’ stages, the idea being that the different responsibility concepts are related in a hierarchy such that the appropriateness of the application of later concepts relies, at least, on the criteria for the application of earlier concepts being met. The first of these stages is a ‘precondition’ for moral responsibility: the possession of agency. While this is set outside the stages that make up ‘attributability’, in terms of the distinctions already made it makes sense to bundle all these stages together under the heading of ‘capacity responsibility’. In identifying this precondition they situate their analysis very much in the traditional debate on theories of responsibility, with its accompanying assumptions. This orthodoxy continues in the framing of the following dialectic, which takes as its focus the relationship between an individual, Sam, and a particular action, A.

Following the first ‘precondition’ stage, the next questions to ask about Sam’s moral responsibility with respect to action A, or in Watson’s terms, the first ‘face’ of responsibility that is relevant, concern attributability – the conditions for being a subject of responsibility. Following Watson’s terminology, Fischer and Tognazzini start by asking whether, in A-ing Sam ‘counts as a *sensible target of aretaic appraisal*’ (*ibid*: 383, italics in original). ‘Aretaic appraisals’ are appraisals that ‘concern the agent’s excellences and faults – or virtues and vices – as manifested in thought and action’ (Watson (1996) as quoted in Fischer and Tognazzini). They are *not* necessarily moral appraisals, but rather appraisals that simply *reflect on* the agent



in either a positive or negative way. Thus, some conduct of an agent we may consider to be exemplary or faulty, yet not make a moral judgment regarding it. Watson identifies some terms that may be used to reflect aretaic appraisal: cowardliness, self-indulgence, lack of wisdom (*ibid.*). To be a 'sensible target' of such appraisal is just to be '*the sort of creature whom it might make sense to appraise aretaically*' (Fischer & Tognazzini, 2011: 384). They give the example of dogs as the kinds of agent that should not be so appraised, the idea being that the difference between humans and dogs is the relevant kind of difference that makes humans appropriate targets<sup>17</sup>. So far, then, we have two conditions for being a possible subject of responsibility: the 'precondition' of agency, and the suitability of aretaic appraisal.

However, being a sensible target of aretaic appraisal is not, Fischer and Tognazzini argue, all there is to the idea of attributability. In order to understand what it is to be an appropriate subject of accountability judgments we need to know more about what we do when we make such judgments, and Fischer and Tognazzini here invoke the powerful idea introduced by P.F. Strawson, that of 'reactive attitudes' (guilt, indignation, resentment, etc.) (Strawson, 2008). If accountability judgments require the targeting of reactive attitudes, then the capacity condition must require that, in addition to being a sensible target of aretaic appraisal, the subject of such judgments is also '*a sensible target of reactive attitudes*' (Fischer & Tognazzini, 2011: 385). It may seem that this addition to the notion of attributability is unnecessary since to be a sensible target of reactive attitudes just *is* to be the kind of thing that it makes sense to appraise aretaically. Fischer and Tognazzini drive a wedge between the two ideas, however, by reference to the example of psychopaths who may be characterised as being unable to respond to moral reasons. They contend that while psychopaths may still be considered cowardly or self-indulgent (and so aretaically appraisable) their inability to respond to moral reasons makes them inappropriate objects of reactive attitudes.

The combination of aretaic appraisability and being the suitable object of reactive attitudes, together with the precondition of being an agent, exhausts the idea of attributability and thus offers a three point analysis of the idea of 'capacity responsibility'. It is worth noting here that there is still a lot to say on this question, since Fischer and Tognazzini do not attempt to expand on *what it is* to be an agent, and *what it is* to be a suitable target of aretaic appraisal or reactive attitudes. One way of understanding my project is as approaching these questions from the opposite direction. Rather than focusing on the conditions something must satisfy to

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<sup>17</sup> Using the difference between humans and dogs to illustrate the relevant kind of difference makes sense, although it does not quite chime with their earlier examples – for example, it does not sound strange to think that a dog could be described as cowardly.

be a suitable subject of responsibility I rather, in this chapter, address the question of what it *means* to ascribe responsibility. To be a suitable subject of responsibility then just is to be something that it makes sense to think of as potentially responsibility bearing, given this meaning. Specifically, I develop the idea of moral responsibility as following from the subject having a certain kind of moral ownership over events. To be a suitable target of responsibility just is to be something which can exercise such ownership. In this sense the answers I give can be thought of as complementing the work of Watson, and Fischer and Tognazzini, as well as extending their analysis beyond the case of standard human agents.

These questions of capacity responsibility – or attributability – addressed, Fischer and Tognazzini do briefly consider the conditions that a suitable target of responsibility must satisfy in order to be found responsible for a given action. For a start, they need to have been doing something morally wrong, or praiseworthy, or even if they were doing something wrong, they may still have an excuse for so acting. As an example of doing something that is not morally wrong, Fischer and Tognazzini describe a situation when someone stamps on someone else's foot, but does so to kill a dangerous spider that was resting there. They accept that it seems a fine line between such cases and those in which someone acts wrongly but has an excuse, but maintain that such a distinction can be made<sup>18</sup>. An example of the latter kind of case would be, they suggest, a mother saving her child from drowning at the expense of not saving five other children<sup>19</sup> (*ibid*: 389). This 'gap' between attributability and accountability is the space that an answer to my question (2) should fill. Fischer and Tognazzini's discussion of moral wrongness and excuse provides a high level answer, but again much more can be said regarding *what it is* to do something morally wrong, or to have an excuse. My discussion of moral ownership later in this chapter is intended to provide a more substantive answer.

Fischer and Tognazzini now proceed to discuss the notion of accountability directly. This notion, as already outlined, focuses on the practical consequences to which an individual may be susceptible as their moral culpability becomes more serious. While my later discussion does not depend on these distinctions, there are interesting points to extract from the analysis. The basis for their understanding of accountability is, as noted already, Strawson's 'reactive attitude' account. They thus move through a number of different 'stages' of accountability that may be ascribed to an individual with respect to a given action. Each stage is comprised of two

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<sup>18</sup> This distinction might in fact be better explained with reference to the more common distinction between a *justification* for an action – which shows why the action is not morally wrong – and an *excuse* – which shows why the action was not morally blameworthy, even though wrong.

<sup>19</sup> They note that such an action is plausibly morally wrong on both utilitarian accounts, and deontological accounts (such as Kant's) that do not allow such partiality to be taken into account.

parts – the first being the appropriateness of the individual being a subject of accountability of the kind under consideration, and the second being whether anyone else is actually justified in *targeting* the individual with reactions of the appropriate kind (this emphasises the central significance of the moral community in actual responsibility practices). The idea here is that in order to hold someone else responsible, even though they are in theory susceptible to be held responsible in this way, a person needs to be in a certain position of authority. For example, an accomplice to the wrongdoing will not be in such a position<sup>20</sup> (*ibid*: 392). The importance of determining not just whether a person satisfies the conditions for a certain kind of responsibility, but also whether anyone is in an appropriate position to *hold* them responsible, is a subtlety that is not brought out in the earlier taxonomies of responsibility terms that I discussed.

Having said this, the two parts of each stage of accountability reintroduce, to a degree, Vincent's distinction between outcome responsibility and liability. The interesting difference is that, whether an individual is liable for any practical consequences on the basis of their responsibility is not dependent on any further features of them or their action or the outcome that they occasion. Rather it is dependent on features of *other* people – specifically whether anyone else is in a position whereby they could justifiably enforce consequences. We might wonder here whether, if there were not, the individual would be under an obligation to bear the consequences voluntarily herself. Fischer and Tognazzini consider five 'stages' of accountability, with the repercussions of each being more serious than the preceding one. They start with simply the direction (but not expression) of reactive attitudes towards an individual. This is then followed by outward expression of those attitudes, the imposition of sanctions and rewards, the imposition of suffering and pleasure, and finally subjection to eternal damnation or bliss. While the final stage may seem somewhat strange, their intention is to accommodate within their account arguments made by Galen Strawson that rely on such extremes to express the idea of 'ultimate' responsibility<sup>21</sup>. The idea is that the conditions that must be satisfied become more stringent as the repercussions become greater.

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<sup>20</sup> This example of the accomplice is meant to illustrate the sense of normative 'authority' which is invoked here. In particular, it is clearly not meant to capture just the kind of formal authority that is derived from, say, occupying a position in a business organisation.

<sup>21</sup> Galen Strawson refers to the notion of 'true' or 'ultimate' moral responsibility to capture the idea that he thinks is really of interest in debate on moral responsibility. To be susceptible for such responsibility for what he does, an individual must be ultimately responsible for who he is. On the question of what it is to be held ultimately morally responsible, Strawson says '[o]ne dramatic way to characterize the notion of ultimate responsibility is by reference to the story of heaven and hell: 'ultimate' moral responsibility is responsibility of such a kind that, if we have it, it *makes sense* to propose that it could

There are two further interesting points that arise from this discussion that are worth highlighting. The first is that Fischer and Tognazzini at least imply that it will only be justifiable to hold someone accountable if they satisfy the (normal) conditions for accountability of that kind. In other words, they implicitly endorse a desert-based account of holding accountable and imposing sanctions. This stands in contrast to consequentialist or pragmatic arguments for holding a person liable even though they do not 'deserve' it. This is a distinction I tackle in the next section. The second point to highlight is that, at the end of their paper, Fischer and Tognazzini speculate that the basic applicability conditions built into the notion of attributability may themselves be subject to variation depending on the level of accountability that will be ascribed. Here they highlight Galen Strawson's claim that a person cannot be held responsible if luck has played a part in the development of their constitution. But since this is the case for everybody, no one can be held responsible. Fischer and Tognazzini suggest that Strawson may be highlighting a higher standard of attributability – a higher level of capacity necessary for capacity responsibility – that may be required when eternal damnation is at stake, but that, arguably, is not required for lesser cases such as when we are considering holding someone accountable through reactive attitudes. This raises the interesting possibility that there may be multiple possible answers to my question (1), regarding the conditions for something to be an appropriate subject of moral responsibility, depending on the 'level' of responsibility we are looking to ascribe. I do not pursue this line of thought explicitly, but given that I argue that there are a range of different ways that the conditions for being a suitable subject of moral responsibility may be satisfied, my approach is compatible with this suggestion.

## *12. Desert as the Basis for Moral Responsibility*

In the remainder of this chapter I focus on what I have termed my question (2), the question of what conditions must be satisfied in order for a particular ascription of moral responsibility to be justified. The first part of this is to give an account of what it is that is doing the normative work when we say that someone or something is morally responsible for an event in the past. I have already started to uncover some of the issues that will be at stake here when I have talked about the distinction between desert-based and consequentialist accounts of responsibility. This distinction arose in the contrast Miller makes between 'identifying

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be just to punish some of us with torment in hell and reward others with bliss in heaven. It makes sense because what we do is absolutely up to us.' (G. Strawson, 2004)

responsibility' and 'assigning responsibility' (Miller, *op. cit.*), and also in Fischer and Tognazzini's implicit adoption of the desert-based approach. This point is particularly important since the relationship between accountability and liability to sanction explored in the last section is closely tied to this implicit reliance on desert, as expressed in reactive attitudes.

There are two broad traditional views of what we are doing when we hold people morally accountable for past events. One is the consequentialist view that we are acting so as to ensure an optimal future state of affairs, and that this is facilitated by holding people responsible; the other is that we are judging, and treating, people on their merits – we are praising or blaming them because they *deserve* it (Eshleman, 2009). As Eshleman describes it, both accounts start by thinking of the subject of accountability ascriptions as an agent; the consequentialist then takes the point, and justification, of the practice of holding accountable to be that it will shape the agent's future actions in a desirable way. The merit-based view, on the other hand takes the point, and justification, to be that the agent deserves to be praised or blamed based on past actions. These justifications will follow through to the further claims about if and how the agent should be held liable in other ways for their actions. These two distinct accounts of holding accountable have quite different implications for when and how it is justified (and even if it can be at all).

The difference most extensively discussed is in the relationship between accountability and freedom. A deep commitment of the merit-based view has typically been taken to be that the actions or outcomes for which the agent is held accountable are ones that they chose freely or, to put it another way, they exercised control in selecting<sup>22</sup>. This conclusion seems intuitively correct, since it would seem strange to say that someone *deserved* praise or blame for something that they could not control or in a situation where they had no freedom to choose otherwise. The consequentialist view, on the other hand, does not obviously require this same link to free choice – provided holding accountable *influences* the agent's actions in a desirable way, it makes no difference (on this account) how this influence occurs or what can be said about the agent's freedom in acting. This distinction between the two traditional accounts of holding accountable is particularly significant given an ongoing debate about the nature of the world, i.e. whether it is deterministic or not. A deterministic world is best thought of as a kind of closed system, where everything that occurs is determined completely by previous states of the world, even including human actions. In such a world, the thought

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<sup>22</sup> For an account of moral responsibility based on the notion of control, see Fischer and Ravizza (1999).

goes, any action anyone undertakes would be predetermined to occur by the state of the world even before they were born. The traditional thought is that merit-based accounts of holding accountable are incompatible with a deterministic world (because of the implications of determinism for human freedom), whereas consequentialist accounts are compatible (*ibid.*).

I broadly agree with how Eshleman sets out this distinction; however two further points are important that add some additional subtlety. The first is that it is possible to distinguish between accounts of moral responsibility that are consequentialist in broad terms, and those that we might call 'instrumental'. While both justify ascriptions of responsibility based on the expectation that desirable outcomes will follow, in a broad consequentialist approach what counts as a 'desirable outcome' is open to quite flexible interpretation. In particular, it is coherent to define 'people being treated as they deserve' as a (perhaps *the*) desirable consequence that ascriptions of responsibility are intended to pursue. In this case the merit-based and consequentialist accounts of moral responsibility become virtually identical. It is clear, however, that the consequentialist approach is meant to offer something that is quite distinct from merit-based approach. Here it is useful to introduce the idea of an *instrumental* basis for moral responsibility. Such an instrumental account would be a kind of consequentialist account, but it would be interested only in a limited range of consequences – those that follow from the way in which an ascription of responsibility alters the behaviour of its subject and the change in consequences that this altered behaviour occasions. I take it that when Eshleman talks about consequentialist accounts, he really means instrumental accounts of this kind, and I will follow him in using the term in this way. A further potential subtlety is introduced with what may be termed 'useful fiction' accounts of ascribing moral responsibility. Such an approach would borrow something from both the desert-based and consequentialist accounts. It would accept that the only proper basis for ascribing moral responsibility is what individuals deserve, but it would also note that good consequences can follow from the practice of ascribing responsibility, even when it is not deserved. In this way consequentialist considerations are not employed to justify genuine ascriptions of responsibility (since this is not possible), but rather an analogue of moral responsibility, based in the same consequence-generating practices. It is an approach such as this that appears to be behind some of the 'pragmatist' approaches to corporate responsibility that have been developed in business ethics<sup>23</sup>.

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<sup>23</sup> On such pragmatist approaches, see Dubbink & Smith (2011).

The second important point to add concerns limits to the things for which someone may be ascribed responsibility. On the consequentialist account, particularly the narrower instrumental account, it is the way in which behaviours are influenced and the results this achieves that are important, not the desert of those who are influenced. However, the concept of moral responsibility itself must impose some limits on the situations in which it is ascribed. Suppose it were the case that an individual, A's, behaviour could be beneficially modified by holding him responsible for the Jack the Ripper murders, even though he has no connection with them whatsoever. Perhaps the pressure imposed would lead A to be particularly concerned about the welfare of those around him, and that this would be a good thing. Still, it seems mistaken to say that what is being done in this case is ascribing *moral responsibility* to A for the murders. That is, there is something in the concept of moral responsibility that shows such an application to be mistaken, no matter what consequences result. Presumably, an adherent to the consequentialist understanding of moral responsibility would want to set these conceptual limits quite broadly so as to avoid their approach collapsing into one dependent on the identification of desert, and it may well be the case that this would be possible. Given that I will not be pursuing a consequentialist approach in what follows I will not try to define what such limits must be, leaving this debate for another time.

Nonetheless, the distinction between instrumental fiction, consequentialist and desert-based approaches to moral responsibility could be significant for the kinds of question that I will consider later, those related to whether it is appropriate to hold a business organisation accountable in its own right. Answers to such questions tend to focus on whether organisations are reducible to their individual members, and even if they are not whether they could reasonably be thought of as free agents, despite the fact that it is quite normal to say things such as 'the bank should be held accountable for its disastrous trading activity'. But if we were to take the instrumental fiction approach to holding accountable, it is not so clear that we need to know whether 'what we really mean' by 'the bank' is simply an aggregate of individuals or not, or whether such an entity can 'really' have independent agency. What is important, presumably, is whether our practice of blaming 'the bank' is conducive to the production of desirable outcomes, and if this involves acting as if the bank is an agent with appropriate characteristics, then so be it. If we were to take the merit-based view, on the other hand, it would seem that we need to take these questions much more seriously. We would then not be interested in the consequences of blaming the bank, but rather whether the bank deserved to be held accountable, and this brings with it a lot more assumptions about the nature of the entity itself.

The thought that it is natural to take the merit-based conditions to be the correct ones is a standard assumption in recent work on moral responsibility, and has increasingly been built into responsibility theory over the last fifty years, with research (such as that of Watson, and Fischer and Tognazzini) focusing on subtleties within merit-based accounts rather than on adjudicating between them and alternative accounts (Eshleman, *op. cit.*). To characterise the debate on the basis of moral responsibility as being between desert-based and consequentialist accounts would be to miss an important third possibility, however. When introducing the importance of notions of reactive attitudes to their account, Fischer and Tognazzini mention the work of P. F. Strawson. Strawson sets out his views in his 1962 paper “Freedom and Resentment”, and while it is true that he focuses on reactive attitudes, the role such attitudes play is different to the one they play in Fischer and Tognazzini’s account. Strawson’s view is that both merit-based and consequentialist accounts of moral responsibility are misguided; in particular both seek ‘to overintellectualize the facts’ (*ibid.*). The reason for this is that, for Strawson, reactive attitudes are not simply a mechanism by which members of the moral community express their feelings and impose sanctions on other members as a result of finding them morally responsible; rather, it is the fact that human nature leads us to form such attitudes that provides the basic justification for ascriptions of responsibility in the first place. He says that ‘[t]he existence of the general framework of attitudes itself is something we are given with the fact of human society. As a whole, it neither calls for, nor permits, an external ‘rational’ justification’ (*ibid.*).

Strawson is seeking to defuse the tension that exists between consequentialist and desert-based accounts of moral responsibility, where one of the major issues of debate between them is over the significance of the possibility that the world is deterministic. As Strawson describes it, consequentialists seek to avoid the conclusion that determinism would undermine moral responsibility by justifying ascriptions of responsibility on the basis of the beneficial way in which they shape behaviour; desert-based accounts, however, find that consequentialist approaches cannot avoid the kind of conceptual error I outlined earlier and insist that a concept the application of which is based on anything other than desert just is not a concept of moral responsibility. However, such theorists then either have to accept the impossibility of responsibility under determinism, or have to resort ‘to the obscure and panicky metaphysics of libertarianism’<sup>24</sup> (*ibid.*).

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<sup>24</sup> ‘Libertarianism’ here refers to the metaphysical thesis that constitutes a denial of determinism, and an explanation of how this enables free will, and not the quite different thesis in political philosophy that goes by the same name.



Both views see some of the truth, according to Strawson, but equally are also mistaken in important ways. The consequentialist approach relies on the idea that moral responsibility can be based on forming 'objective' attitudes to healthy adult humans similar to those we might form to the young or mentally incapacitated, where such attitudes are intended simply to guide behaviour. However, Strawson maintains that this is nearly impossible given our nature as human beings – rather we tend to form 'participant reactive attitudes', which reflect the degree of good or ill will towards us that we perceive in the behaviour of others, and that thus reflect in large part what we think they deserve. While this is not a fault of desert-theorists, they go too far by being 'unable to accept the fact that it is just these attitudes themselves which fill the gap in the [consequentialist] account' (*ibid.*). Our normal practices of making judgements of moral responsibility are ones that reflect our basic human nature. The mistake that both sides make in the debate on determinism is to think that these practices need to refer to external, objective standards in order to be justified.

Strawson's account has been very influential in theorising about responsibility, not least in illustrating the element of our conception of responsibility that depends irreducibly on relations within a moral community. Indeed, this is reflected strongly in the 'accountability' part of the attributability and accountability debate. Nonetheless, this more recent debate accepts the insight while not going so far as to suppose that external standards of accountability are not possible. Indeed, it seems possible to take our practices of holding responsible as a starting point, while detecting in those practices a basic logic that may be assessed independently, where this assessment can then inform and lead us to alter the practices we follow. An endorsement of a Strawsonian picture of accountability would also have interesting implications for ascriptions of moral responsibility in the business environment, especially to business organisations. For example, we could ask whether it is internal to our practice of holding accountable that we make accountability ascriptions of organisations, while at the same time not treating those organisations as agents, or believing that such talk is just shorthand for the accountability of individuals. If it could be shown that our *practice* of holding organisations accountable worked in this way, then it would be true that they were accountable in this way (the possibility of external scrutiny of this practice notwithstanding).

This discussion presents three options that could be pursued in order to argue that the business environment presents particularly complex challenges for accounts of moral responsibility. I could argue that the now standard desert-based approach to accountability

does not tell the whole story, and that consequentialist accounts of responsibility practices, recently neglected, might find renewed life in collective environments such as business organisations. This is especially the case given that merit-theory conditions tend to include references to kinds of agency that are controversial when applied to collectives<sup>25</sup>. I could, alternatively, take a Strawsonian line and argue that a distinct way of holding organisations accountable is in fact internal to our responsibility practices, and that this makes it true that organisations are accountable in this way. Both these options offer potentially fruitful ways of proceeding in an investigation of organisational accountability, and given my earlier endorsement of pluralism in theoretical approaches to moral responsibility, ones that I do not rule out. Desert-based accountability debate is very much predicated on the assumption that the individual is the locus of accountability, and thus tends to come with a denial of distinct organisational accountability built in. It may be the case that we need a very different approach to organisational accountability. This said, I am not going to pursue these approaches here, but rather argue that there *is* a way of interpreting desert-based accountability such that it can be applied in non-standard ways in the context of organisations. Given both the focus on desert-based accounts in the philosophical literature, and the natural tendency to associate responsibility with desert in common usage, it would be unsatisfactory to think that the kinds of responsibility ascriptions found in organisations must be of completely different kind, simply because they do not fit in with traditional assumptions. In order to do this, I need to investigate what the notion of desert amounts to.

### *13. Desert as Moral Ownership*

As I have set out the account of moral responsibility with which I will work, the basis upon which anyone or anything may be held morally responsible is that such responsibility is deserved. Given that my overall project is to show how business organisations throw up novel ascriptions of moral responsibility, the burden of the investigation passes to some degree onto an investigation of desert. In particular, it passes on to an investigation of how novel subjects may nonetheless be deserving of being held morally responsible, or how more common subjects may deserve to be held responsible in novel ways or for novel things. In order to make such arguments I will need to say more about the concept of moral desert, what some of its features are, and how it may be applied. I will also need to explain how it relates to other

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<sup>25</sup> Indeed, many treatments of corporate responsibility seem to appeal at least implicitly to consequentialist considerations, for example Donaldson (1982); Werhane (1985); Wolf (1985).

relevant concepts besides responsibility, for example moral agency. Some of the most common questions that an investigation of desert must tackle are set out by Shelley Kagan:

‘What, if anything, are the metaphysical presuppositions of desert? Are these conditions met? Assuming that desert is not to be rejected on metaphysical grounds, is it indeed a genuine value, or is it, rather, a merely purported value we should nonetheless reject for one or another moral reason? And if it is a genuine value, does it matter intrinsically, or only instrumentally? What is the relevant desert basis, by virtue of which some people are more deserving than others? What is the relevant reward magnitude, to which the more deserving have a greater claim? And does it matter when the more deserving receive the reward that they deserve?’ (Kagan, 2012: 19)

Some of these questions are not directly relevant to the current investigation, but others are useful as a guide to the issues at stake. The metaphysical presuppositions of desert are important, since I will argue that business organisations can be morally responsible in their own rights, independent of the individuals that comprise them. If this is to be the case, then these corporate entities must be able to meet the metaphysical requirements for deserving to be held responsible. A related question is whether desert is an intrinsic value, or whether it is only valuable instrumentally. It is related since if assigning desert, and holding responsible on that basis, is only instrumentally valuable then it is not clear that we need put in place any metaphysical criteria for being a potential subject of desert. The only criterion would be whether the further values to which this practice is instrumental were served or not<sup>26</sup>. But if people getting what they deserve is *intrinsically* valuable, then it matters much more who or what can be a subject of desert, and why. That is to say, if desert is only instrumentally valuable, then the distinction made earlier between desert-based and consequentialist-based accounts of moral responsibility seems to dissolve, since desert itself would only be founded on consequentialist considerations. As I have already made clear, I am pursuing a desert-based conception of responsibility to the exclusion of consequentialist-based accounts and so I am interested in a defence of the intrinsic value of desert. The final question of particular relevance raised by Kagan asks what the ‘relevant reward magnitude’ is, or in other words what is it that people who are more deserving, deserve? Here thought about desert can gain from thought about responsibility. Since if what someone deserves is to be held responsible in

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<sup>26</sup> It could be countered here that certain metaphysical conditions are internal to the concept of desert, and so it would be incoherent to apply the notion when these conditions are not met, whether such application was undertaken to promote intrinsic value or instrumental value. Since I am interested in accounts of desert based on intrinsic value anyway, I will not pursue this debate here.

the appropriate way, then we can learn more precisely what they deserve from analysis of the appropriate ways in which people are held responsible.

Of the other questions raised by Kagan, I will not consider whether desert is a genuine value, or merely a purported one that we should reject (for example, we might reject desert if it is not a value we should endorse as part of our considered moral outlook; perhaps we might conclude that it is a primitive, unreflective value). In part I think that desert, and moral responsibility founded upon it, *are* genuine moral values. And anyway, I am particularly concerned with questions of moral responsibility that make the business environment distinct, and this line of questioning challenges notions of desert and moral responsibility quite generally. I also will not spend time considering in detail which ‘desert bases’ are relevant, that is, determining on the basis on which some people are more deserving than others. My account of moral ownership is intended to clarify the relation that someone or something must have with a past event, in order for them to be morally responsible for that event. It is not intended to set out the features of events that are good or bad, and hence that generate moral responsibility of different degrees for their owners<sup>27</sup>. A final point that is worth making here is that, perhaps obviously, it is *moral* desert that is important for the purpose of establishing moral responsibility. Moral desert is ‘desert on the basis of morally appraisable characteristics, so that to ascribe moral desert to someone is to judge that person as a moral agent, or from a moral perspective’ (Olsaretti, 2009). So, to be morally responsible for something, the subject must deserve to be held responsible based on morally appraisable characteristics. Moral desert can be contrasted with other ways in which the language of desert is employed. For example Olsaretti is interested in desert as the basis of distributive justice, and the characteristics that determine what someone deserves from this perspective are not, according to her, ones that are morally appraisable – for example, someone’s contribution to productive effort<sup>28</sup>.

The most important task for my project is to set out the preconditions, or as Kagan puts it ‘metaphysical presuppositions’ that something must meet in order to have the capability for moral desert, and thus for moral responsibility. These conditions can be likened to the earlier ideas of ‘attributability’ conditions, and ‘capacity responsibility’. Even those who have thought desert a rather thin concept accept that a basic precondition for its application is ‘a minimum

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<sup>27</sup> These ‘features’ of events include those that might justify an action that would otherwise be morally wrong, or excuse an action that is wrong but not susceptible to moral condemnation given the circumstances.

<sup>28</sup> This point should not be confused with the (true) claim that statements about what individuals deserve as a matter of distributive justice have moral force.

degree of voluntariness' (Lamont, 1994)<sup>29</sup>. What this 'minimum amount of voluntariness' requires, however, is not straightforward to determine. As Lamont goes on to say, '[i]t seems clear that, for a quality to count as a ground for desert, the person concerned must, in some sense, be able to 'take credit for' that ground' (*ibid.*) and voluntariness is supposed to be the basis for assigning credit. There is, indeed, a long tradition of thinking that the basis of moral desert, and hence responsibility, is the ability to act freely. Debate on the appropriate notion of 'freedom' is extensive (O'Connor, 2010). O'Connor sets out three broad foci for accounts of freedom. He emphasises that each is based on a 'freedom-conferring characteristic', but that these characteristics are not necessarily incompatible with each other; rather, accounts of freedom have tended to develop in response to specific challenges and this has shaped their direction. The first broad characteristic that is said to be central to freedom is the ability to engage in rational deliberation. One way this could be cashed out is as the ability to act on the basis of desires; however, this approach appears unsatisfactory since it seems clear that simply acting on a desire is not enough to confer the kind of freedom associated with moral responsibility. After all, non-human animals quite clearly desire things, but we do not think of them as free in a morally significant sense (*ibid.*). Such desire-based accounts could be amended in order to capture better the aspects of rational deliberation that go beyond simply following desires. Here O'Connor notes the tradition that, since Plato, has tried to characterise the psychological complexity that characterises human freedom, and that typically distinguishes between the 'animal' and 'rational' parts of our nature. The rational part incorporates an ability to shape desires through judgments of what is good for us or what is valuable. Freedom can in this way be associated with acting on such rationally generated desires or, perhaps better, with the *ability* to use judgment to shape desires (whether or not we act upon them) (*ibid.*).

This kind of account O'Connor identifies under the heading of 'rational appetite' accounts, most closely associated with the medieval Aristotelians, particularly Thomas Aquinas. The general feature they have in common is the centrality of being able 'to deliberate about possible actions in the light of one's conception of the good' (*ibid.*). The downside of such accounts is that they seem susceptible to counterexamples in which judgments about value are themselves driven by factors which undermine freedom, for example compulsive desires or external manipulation. It is worth noting that the kind of desire-focused models of freedom

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<sup>29</sup> Lamont argues that in order to identify appropriate desert bases we must look beyond an analysis of the concept of desert itself, and ask why we are employing that concept. This question introduces other value judgments which will inform the desert judgment. However, even Lamont seems to allow that the notion of desert (as an intrinsic value) can inform us of the preconditions for its application.

outlined here have played an important role in debate on the nature of collective responsibility. One way of arguing for collective responsibility is to identify features of collective organisation that are analogous to the relevant features of individuals to whom we ascribe responsibility, and a popular focus for such accounts has been the mental states necessary for 'free' action, such as desire and belief<sup>30</sup>. 'Corporate' desires have been located, for example, in implicit and explicit company policies. Interestingly, the weaknesses of such accounts in the individual case – particularly counterexamples that seem to show desires or judgments of value are driven by factors which undermine freedom – have been accepted by some authors discussing the corporate case, but they have gone on to argue that such accounts are 'close enough' to satisfactory accounts of moral responsibility to endow organisations with a particular kind of collective moral responsibility<sup>31</sup>.

A further augmentation of desire-focused accounts of freedom is provided by Frankfurt (1971), although O'Connor (*op. cit.*) categorises this approach as moving beyond notions of rational deliberation, to focus instead on 'ownership'. Frankfurt's idea is that the essence of freedom should be identified not with acting on standard desires to do or have things, but rather with whether or not we act on desires *to have* those desires. These second-order desires are ones that are supposed to reflect the 'true self' of the individual. The standard example here is of a drug addict – while he desires to take drugs, he desires not to have the desire to take drugs. If he nonetheless succumbs and takes the drugs he is not free in the appropriate way, whereas if he resists that urge (in line with his higher order desire) he is acting freely. While Frankfurt makes some distinctions between free *action* and free *will*, the main objections made against his account focus on why second-order desires are so significant (*ibid.*). It is not clear that in most situations we identify more with our rather abstract thoughts about the kind of things we would like to desire, as opposed to the much more immediate desires themselves. Moreover, the kinds of worries that can be levelled at theories based on first order desires also seem applicable to second order desires, in particular that they could be brought about by factors that undermine freedom. On this, however, it seems that Frankfurt is prepared to bite the bullet. He accepts that factors that bring about second order desires may be things over which individuals do not have free control. Nonetheless, he does not think that this prevents second order desires being the appropriate mark of freedom with respect to moral responsibility. In

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<sup>30</sup> See, for example, Donaldson (1982), French (1984), and Werhane (1985) for examples of such approaches; these are discussed in more depth in the following chapter.

<sup>31</sup> It is interesting to ask why these authors think moral responsibility can be generated in these cases. One possibility is that they are adopting a pragmatic position; a second is that they think that the bar for desert-based responsibility can be set lower than the level that human individuals actually achieve. These are questions I consider further in the following chapters.

this way he is a compatibilist between free will and determinism. Insofar as accounts of collective responsibility that are based on analogies between organisational features and human minds can be successful, it seems to me that an account based on a Frankfurtian model of second order desires shows the most promise – the idea of ‘ownership’ is centrally important. I argue for this claim and I develop an outline of such an account below.

This discussion of individual freedom and its relation to possible accounts of collective or corporate freedom tends to work on the basis of a certain conception of the nature of individuals, particularly the nature of their minds. Moran (2001) calls this conception ‘theoretical’ insofar as dispositional states such as beliefs, judgments, and desires are taken to exist in some static mental realm with which the individual then interacts. The fact that individuals have privileged access to *their* mental states is what distinguishes those states from the mental states of other people. Moran, however, follows the tradition of Sartre<sup>32</sup> and before him Descartes in arguing that theoretical explanations of self-consciousness miss features that are clearly distinct from consciousness of ‘external’ entities. Thus we do not encounter our own beliefs in the way we encounter objects in the external world. Equally, our interaction with the desires of other people is quite distinct from our interaction with our own desires. Moran uses the idea of being able to ‘avow one’s state of mind’ (*ibid*: 100) to highlight this difference, where this is contrasted with being able to attribute oneself with that same state of mind. Whereas we might attribute states of mind to other people, avowal incorporates particular first-person features, such as the ‘immediacy’ of our access, that it can be made without reference to evidence, and that it appears integrally linked to our rationality. The idea of avowal Moran explains through a further idea of ‘transparency’. When we avow a certain dispositional state, for example through a statement about a belief, our focus is on the facts that are believed, not the belief as such. Thus our belief itself is transparent since our belief is manifest in our engagement with what is believed – we do not have to look inwards to find something distinct that is the belief (*ibid*: 101).

This alternative picture of the mind suggests particular challenges for accounts of collective responsibility that seek to argue that organisations can be free in just the same way as individuals. The structural or mechanistic interpretation of the ‘theoretical’ explanation lends itself to organisational analogies that identify corresponding features in the structure and processes of those organisations. Moran’s picture, however, focuses on the importance of the phenomenal character of the first-person experience, and the link between this experience

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<sup>32</sup> For a discussion of Sartre’s conception of the mind see McCulloch (1994), especially chapters 5-7.

and freedom. It is entirely unclear how an analogy could be drawn between features of a collective and such phenomenal experience, which is perhaps why such a line of argument has not been attempted. If *this* is the kind of freedom that is required as a precondition of moral desert, and to establish the sort of responsibility we ascribe to individuals, then we need a different way of approaching collective responsibility. Three options suggest themselves: to conclude that collectives cannot hold responsibility; to argue that it is possible for the responsibility of collectives to be derived in some way from the freedom of their members (perhaps, for example, through a supervenience relation); or to argue that collectives can be morally deserving of responsibility even though they cannot act freely in the way that individuals can (or, perhaps, at all). It is this third line of argument that I will explore, although in doing so I will also draw on the relation between organisations and their members expressed in the second line of argument.

The debate over the exact nature of the freedom of action required to ground moral desert can at times seem somewhat beside the point. With the exception of extreme sceptical arguments that doubt the existence of moral desert, and moral responsibility (on the basis, perhaps, of deterministic worries) there is no doubt that individuals do possess the kind of freedom necessary. Understanding the exact nature of the relevant kind of freedom becomes important when we want to extend applications of desert and moral responsibility to entities, such as corporate entities, where we have genuine grounds for questioning whether this is appropriate or not, and dealing with marginal cases involving individuals. However, it is here that we should stop and consider whether being 'free to act' in the appropriate way is the real basis of a capacity to deserve to be held responsible. My contention is that it is not. Rather, a much better way of capturing the basis of this capacity is to return to an idea introduced by Frankfurt, and say that the object of desert (be it an action or whatever) is *owned* (in a moral sense) by the thing that is deserving and hence responsible. Free action is still important here since in normal situations it is free action which establishes such ownership – if a person acts freely, then they own their action and its results. The idea of moral ownership is thus exemplified by the relation between an agent and their freely undertaken action, but it is not exhausted by this relation. Here I am using 'ownership' as a technical term that is a distillation of the essence of free action, and the relationship between an individual, their action, and the outcome it occasions. Ownership, as a concept, is intended to show how far that relation can extend and under what conditions.



To justify this claim, I must say more about this notion of moral ownership. Here I will give two other examples of ways in which moral ownership may be generated that diverge from the usual model of an individual owning their free actions, and the outcomes of those actions. I will say some more by way of justification, and then in the later chapters I will use the model of moral ownership developed to support different pictures of corporate responsibility (where the corporation deserves to be held responsible on the basis of its moral ownership of the relevant objects). The plausibility of these explanations will provide further support to the underlying claims about the centrality and nature of moral ownership. My strategy, therefore, is to pose two questions, the answers to which will be mutually supportive: which conditions must be satisfied in order for a particular ascription of moral responsibility to be justified; and what properties must something have in order to be susceptible to judgments of moral responsibility? The independent plausibility of each account, and the fact that they complement each other will make the overall picture more compelling. This element of justification will thus work in the style of a Rawlsian ‘reflective equilibrium’<sup>33</sup>.

The first distinct way in which moral ownership is generated, is through the free action of a non-human agent, for example a corporation, where this action is undertaken in a genuinely reflective manner. It draws on the idea of the kind of free action that underpins the desert and responsibility of individuals, but importantly it does not depend on the non-human agent being able to mimic all the features of a human agent, or even all of those that endow the human agent with the kind of free action that grounds *their* moral ownership of the action. The idea is that the conditions necessary for the capacity to own an action in a morally significant way vary depending on the nature of the agent. Despite the debate over the exact nature of human freedom, and despite the possibility that it requires a capacity for phenomenological experience, this debate is only indirectly relevant to the question of whether a corporate entity can exhibit a kind of free action that grounds claims that it owns that action, and thus that it deserves to be held accountable for that action. This is true *even if* that same variety of free action is not sufficient to ground similar claims about human individuals.

The burden of evidence for corporate moral agency is, according to this picture, often misplaced in two related ways. One way it is misplaced is to assume that what defines a human moral agent also defines a corporate moral agent, whereas the proper focus is to ask

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<sup>33</sup> For more on reflective equilibrium as a method of justification in normative theory, see N. Daniels (1996), Rawls (1971, 1974).

directly what defines a corporate moral agent. The other way it is misplaced is to think that assuming a different standard for corporate moral agency, as opposed to human moral agency, could only be justified by abandoning the link between agency and moral ownership, desert and responsibility. The assumption is that we are no longer interested in whether the corporation owns the action in a morally interesting way, or can be thought to be morally deserving of being held responsible; rather we have reverted to a consequentialist approach to thinking about agency and responsibility. But this need not be the case. The operative idea here is that of 'reflective agency'. In order to develop an account of corporate reflective agency I return to Frankfurt's account of second order desires as the appropriate mark of freedom (Frankfurt, 1971). As I noted earlier, this account has come under pressure when used to ground moral agency in humans. These criticisms aside, I develop a Frankfurtian account of second order desires in organisations that, I argue, supports corporate moral agency.

So, corporations can be moral owners of their actions, even when they do not meet the standards required of humans for free action. I will expand and substantiate this claim in chapter five. The second way that moral ownership may be generated that is not directly connected to human free action is when an institution (such as a business organisation) creates certain outcomes, not through its agency, but through the operation and configuration of its systemic processes. Here, the idea is that there are many situations in which organisations do not function like agents, but nonetheless where they produce outcomes that are properly attributed to them as organisations. The processes and systems that organisations instantiate in these cases are complex enough to create a gap between the actions of any given individual or individuals and the final outcomes produced by the organisation. In such cases, those outcomes (or at least part of them) are properly owned by the organisation itself. We can say here that the organisation *mediates* the reflective actions of its members. The *moral* nature of this ownership is established since the organisation is intervening in a naturally occurring relationship of moral ownership (between individuals and their actions) and decoupling those individuals from full ownership of the outcomes of those actions. In doing so, the organisation itself assumes that ownership. I develop this claim further in chapter six.

I do not claim, and it may well not be the case, that these examples exhaust the ways in which moral ownership may be generated. Rather than explore this question in more depth here, I will rather try to draw together the general features that exemplify moral ownership, so providing a better picture of the underlying notion:

*Ownership is generated by an origination or mediation of reflective agency.*

As I have said, the focus on reflective agency goes back to the Frankfurtian notion of a person owning their action in a morally significant way as a result of being able to formulate second-order desires, and ensuring that those desires are effective at shaping her behaviour. The criticism of Frankfurt was that by appealing to second-order desires as the sign of moral ownership we do not necessarily avoid the problems afflicting an appeal to first order desires – it is not clear that second order desires are more voluntary than first-order, and indeed they could be thought more obscure and less a part of the individual. Perhaps, then, it is not second order desires that best capture ownership in the case of individual humans. But this does not mean that they cannot be the basis of ownership in the case of organisations. Such an account will be fully developed in later chapters. What at least seems important is the element of *reflection*. While the notion of reflection may be instantiated differently in the cases of different entities – humans and corporate entities – what it amounts to is a capacity for self awareness that enables the reflective entity to identify certain aspects of the world as *theirs*, to take a stance on these things, and act in light of them as appropriate. Reflection is therefore the basis of ownership since it is through reflection that ownership is *taken*. If second-order desires have an appeal, it is that, insofar as they are conscious desires, they seem to introduce an element of reflection. The same could be said, however, of appeals to ‘rational appetites’ that require desires to be formed in light of a conception of the good, or of accounts that emphasise the need for control, or even of Moran’s idea of being able to ‘avow’ one’s state of mind. What they all share is the centrality of conscious, rational reflection on a course of action as opposed to just a mindless pursuit of unreflective desires. To emphasise the point made earlier, exactly *how* reflection is properly undertaken may vary depending on the entity under consideration. Perhaps corporate entities must follow different models of reflection from individual humans.

The other important aspect of this explanation of moral ownership is that it can be generated by a *mediation* of reflective agency, and not just an origination of such agency, where mediation involves creating a ‘gap’ between what individuals may be held responsible for, and the total responsibility that is due in a particular situation. This addition captures the thought that human artefacts may be the subjects of moral desert and responsibility in their own rights. The possibility of such ascriptions sits well with our natural ways of talking about desert and responsibility. We say that corporations, and other types of organisation, deserve to be held responsible in certain situations. Those situations may be ones in which the organisations

exhibit their own version of reflective agency. They may, however, be ones in which they adapt and shape the reflective agency of their members and in doing so come to acquire ownership of the outcomes of that agency. To see the plausibility of this idea, consider a close analogy to the moral case, that of aesthetics. We praise a great painting, for example, for its aesthetic qualities and in a way that amounts to more than simply praise for the way the artist employed his talent in creating it. A complex artefact such as a painting can mediate the artist's talent in a way that enables it to take ownership of some of the value itself. It is in a similar way to this that human artefacts can mediate reflective agency and so take ownership of its outcomes and the moral desert that is due as a result.

I started off this discussion wanting to know what underpins desert-based moral responsibility in order to facilitate my later arguments about moral responsibility in the context of business organisations. I have thus talked about moral responsibility, desert, agency, freedom, reflection, and ownership. That is a lot of concepts to employ in an explanation, and the picture is at risk of getting somewhat complicated. It is worth, therefore, setting out clearly the relations that have emerged between these concepts. On the account of moral responsibility with which I am interested, someone or something is morally responsible just when they deserve to be held morally responsible. Further, someone deserves to be held morally responsible for something when they have a particular kind of moral ownership of that thing. Moral ownership of object *X* by person *P* is established when *X* is a result of the reflective agency of *P*<sup>34</sup>. Various competing accounts of what it is for a person to exhibit reflective agency have been surveyed, and this debate goes on under the auspices of a general search for a satisfactory account of what it is to act freely.

However, while this account of moral ownership works well when the owner is a human individual, it is unnecessarily restrictive when considering other potential owners, such as business organisations. The general point is that the case for considering such subjects as owners, in the moral sense just explained, should be addressed on its own merits and on its own terms. It need not take as its starting point the conditions required for individual humans

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<sup>34</sup> For the sake of simplicity here I only consider responsibility for things that *P* has affected positively through the use of his agency, rather than negatively through an omission to engage his agency. Further, this condition might be augmented by saying that ownership is established when the reflective agency of *P* causes *X* in the right sort of way. This addition would take account of the kinds of situation, highlighted by Donald Davidson in his famous example of the climber, when a non-standard causal link threatens to undermine the condition that is being proposed (Davidson, 1980). For example, imagine that by exercising my reflective agency and reading a book on a train I become so engrossed that I leave my phone behind when I leave. While the exercise of reflective agency has resulted in my leaving my phone, it has not done so in the right kind of way to establish my moral ownership for the loss – at least on the account I'm giving here.

to attain moral ownership. Following this line of reasoning, moral ownership of an object  $X$  by entity  $E$  is established when  $X$  is a result of the reflective agency of  $E$ , and 'reflective agency' is construed in a sense appropriate to the nature of  $E$ . Moreover, moral ownership may alternatively be established when  $X$  is a result of the reflective agency of individuals and  $E$  mediates the effects of that agency in such a way as to create a 'gap' between individuals and the outcomes of their actions, and so acquires at least some of the ownership that would normally accrue to those individuals.

## CHAPTER IV. COLLECTIVE RESPONSIBILITY

### *14. Collective Responsibility and Collective Action*

My aim is to show how business organisations generate novel moral challenges through their influence on moral responsibility: by showing that they generate moral responsibility in quite distinct ways; and by showing how they can generate such responsibility in multiple different ways. In this chapter I focus on the second of these challenges. In the literature on collective responsibility there are many different models that explain how groups of individuals may generate moral responsibility in ways that go beyond the individual case. Most of the time, the proponents of these models appear to take it that their approach is *the* correct approach, and is mutually exclusive with other explanations. I will argue that many of these models are not in fact mutually exclusive, and indeed can all be present together in complex groups, in particular in business organisations. This makes the picture of moral responsibility generation in business organisations complex, although I will show how it is coherent. In doing so, I will also show how the various accounts of collective responsibility that I consider tie in with the discussion in the previous chapter, insofar as they are all based on a mechanism that generates moral ownership of the kind I outlined there. I do not attempt an exhaustive survey of all the approaches that have been taken to moral responsibility in groups. Rather I use examples to illustrate a progression in which properties that can properly be said to exist at the level of the group play a greater and greater role in the actions and outcomes for which responsibility is ascribed. This in turn affects who or what may be held responsible, and what they are responsible for.

Moral responsibility is, at root, based on morally significant (reflective) actions. Even in the last chapter where I briefly set out the idea that in some cases organisations may be held morally responsible even though they are not agents, the reason that this is the case is that they mediate morally significant actions. So any account of collective responsibility will start with an explanation of the nature of collective action that underpins it. In what follows I start with what I take to be the simplest model of action in a group and illustrate it with an example. I then develop more complex models and show how each, while distinct, can co-exist with the others.

### *15. Individual Responsibility in Groups*

When we think of how moral responsibility may be generated in the context of groups, in particular business organisations, the simplest cases are those in which the group has little or no significance. In these cases, while the individual concerned happens to be a member of the group he acts on his own and in an individual capacity and so in order to understand the moral responsibility generated we need not go beyond the standard considerations for individual moral responsibility. This can be true even if the actions that the individual takes only make sense in the context of the group, or are only enabled by his membership of the group. It can also be true even if the reason that an action is morally significant is that it breaches an obligation that only exists because the individual is a member of the group. Here I must be careful, however, since there are ways that a group can make an action possible that do result in that action becoming more than simply one that accrues to the individual, but I will come to these shortly.

As a practical example, take the case of a 'rogue trader' at a bank. A well known example is the activity of Nick Leeson that caused the collapse of Barings Bank in the 1990s through activity described as 'unauthorised, fraudulent and speculative' (Allix, 2013). A more recent example is that of Kwaku Adoboli at UBS who lost \$2.3bn through unauthorised trades. This second case is perhaps not such a good example for my current purpose since at the time of writing Adoboli is appealing his seven year prison sentence on the basis that he was pushed to take the risks by the bank, and that rule breaking was rife (V. Daniels, 2013) – considerations which move his actions away from being purely individual since they at least suggest an important role for organisational factors in the determination and execution of the action. At any rate, the actions of a truly 'rogue' trader are ones that count as purely individual. They are unauthorised by the organisation, unknown to it, and go against background expectations and culture. They are thus not taken for or on behalf of the organisation, but rather purely in pursuit of the interests of the individual concerned, even though they are enabled by the position and infrastructure that the organisation puts in place. Such actions are clearly ones that can generate moral responsibility for the individual since they conform to the standard way in which someone comes to own an action or outcome – through their own freely undertaken activity.

Another important point to make here concerns the source of individual responsibility. At the moment all I have in mind is individual responsibility that derives from an individual action, and it is for this reason that the group to which the individual belongs is not relevant.

However, this way of generating individual responsibility should not be confused with ways in which individuals come to be responsible through the part they play in collective actions. Here the relationship between what is going on at the individual level and the collective level is important to get clear. Individuals can perform purely individual actions, but they can also contribute to collective actions. Individual actions generate individual responsibility, and (I'll allow for the sake of argument for now) collective actions generate collective responsibility. But, in addition, there are ways in which individuals may be held individually responsible for the part they play in the collective action. Exactly how these relations work and how they are justified is the substance of particular accounts of collective action and collective responsibility. Before coming on to such accounts, however, it is important to consider a line of argument that objects to the idea of collective responsibility *per se*.

#### 16. Methodological Individualism

A long tradition of thought in philosophy of the social sciences holds that the basic unit of analysis in collective situations is the individual, and that any analysis that appeals to collective entities can be reduced without remainder to an analysis in terms of individuals alone. This line of thought is clearly highly relevant to the question of the nature of collective responsibility, since it would entail that any analysis of moral responsibility that appealed to collective entities could be reduced to an analysis of purely individual responsibility. Such a position is known as methodological individualism (MI). Arguments for MI start from the seemingly unobjectionable observation that, when we come to explain socio-economic phenomena, we must give a prominent place in our explanation to the individuals engaged in the relevant activity. Although the history of such an approach goes back much further, the term 'methodological individualism' was coined by the economist Joseph Schumpeter in 1908 (Hodgson, 2007). It was picked up by Austrian School economists Friedrich Hayek and Ludwig von Mises in the 1940s, and then employed by Hayek's friend Karl Popper who introduced the term to philosophers (*ibid.*). However, as Hodgson argues, exactly what the MI position is meant to hold is quite ambiguous. He goes on to identify three such ambiguities.

The first is in the scope of the MI proposition – is it meant to apply to *any* explanation of socio-economic phenomena, or is it just one valid perspective for such explanation? Schumpeter himself took it to be one method of explanation that was complementary with others, although recent accounts of MI tend to take it as showing that *only* explanations that are based exclusively in individuals are coherent (*ibid.*). The second ambiguity is in whether MI is



making an assertion about what *exists*, i.e. a claim about social ontology (only individuals exist, not 'collective entities'), or whether the point is to argue that *explanations* of social phenomena must only make reference to individuals (*ibid.*). In Hodgson's view these two claims are often confused, but they are neither synonymous nor entail each other. It is perfectly consistent to hold that the only things that exist are individuals, but that it is not possible to capture fully the nature of certain social phenomena and explain their occurrence without reference to non-individual terms and ideas. I take a different view to Hodgson, which I set out in §19 below, and that depends on reading less into ontological claims than is commonly supposed. The third ambiguity is whether MI requires explanation to be conducted 'in terms of individuals, or individuals *alone*' (*ibid.*). If it is the former, then it is an uncontentious theory since the significance of individuals is hardly disputed; if it is the latter then MI is in danger of going too far, since it appears to rule out appeal to elements such as the relations between individuals. It is unclear how we could explain social phenomena without basic reference to these relations (*ibid.*).

The first point to highlight from this brief overview is that MI is most commonly framed as a theory about explanations of social phenomena. However, the arguments employed by MI are often taken to have implications beyond such explanations. As mentioned above, one type of conclusion that may be drawn is ontological, about the kinds of entities that exist and in particular about the possibility of social entities being ontologically distinct. Another type of conclusion is normative. When extended to the normative field, MI becomes a theory about the possible subjects and objects of normative theorising, and about which normative conclusions may be drawn. It is these normative conclusions that are particularly relevant to questions of collective responsibility. For example, MI would deny that a collective entity such as 'a corporation' could be a subject of moral responsibility distinct from the individuals that make it up. In terms of the conception of moral responsibility I developed in the previous chapter, this would entail denying that a corporate entity could ever have moral ownership of an action or event. Clearly, however, these three types of implication that may be drawn from MI arguments are connected. Whether or not we want to argue that distinct corporate entities can be morally responsible in their own rights, such entities may appear (irreducibly) in an explanation of how we hold individuals responsible, and the things for which we hold them responsible. Equally, any argument for distinct corporate responsibility will be significantly affected by the position we take on the possible ontological status of sociological entities.

So the second point to draw from this brief overview is this: a general appeal to methodological individualism is too vague a strategy to deny the coherence of accounts of collective responsibility in the context of organisations. It is not clear exactly what is being denied and on what grounds. As should be clear by now, I will not accept the stronger claims associated with MI, those that would conclude that there is no such thing as collective responsibility. In order to make my argument, and to make clear exactly which MI claims I am refuting, I will firstly consider an explicit argument from the corporate responsibility literature which draws on MI to deny the possibility of anything other than individual responsibility in the context of business organisations. In the rest of this chapter, I will then show that there are various ways that we can formulate accounts of collective responsibility that avoid the genuinely troubling parts of this argument. This approach will provide a much more focused refutation of the general and vague anti-collectivist tendencies of MI while acknowledging some important insights that arise in particular lines of argument that it advocates.

Miguel Velasquez (2003) makes an argument for corporate moral responsibility that draws on central aspects of MI. He argues for the position that we should not consider a corporate organisation 'as anything other than a multitude of inter-related people each of whom is more or less morally responsible for what the organisation does (what [he calls] the "individualist" view), and [that we should] reject, therefore, the idea that the corporate organisation has some additional share of moral responsibility that is distinct from the responsibility that can accrue to each of its members' (Velasquez, 2003: 531). From this statement we can already identify an element of the MI position that Velasquez is endorsing: the normative conclusion that sociological entities cannot be the (irreducible) subjects of responsibility ascriptions.

Equally, there is at least the suggestion that he is less worried about incorporating sociological entities into the *explanation* of how individuals come to be responsible, allowing that they may be held responsible 'for what the organisation does'. Indeed, Velasquez goes on to say that '[m]y aim is to take some small steps toward debunking the view that a corporate organisation is some kind of ghostly moral agent, what some have called an "invisible person" and others have said is "no collective name for individuals, but a living organism and a real person, with body and members and a will of its own"' (*ibid*: 532). Velasquez, it thus appears, takes himself to be adjudicating between 'individualism' and 'collectivism', where the latter amounts to the postulation of sociological entities that are people, as real and distinct as the individuals that make them up. This position is often likened to the theory in biology that postulates a mysterious *vis vitalis*, or 'life force', that is the source of life in organic organisms. The idea is that collectivist positions are 'emergentist' in the sense that they are committed to a similar

kind of mysterious life force or consciousness that animates something that is the 'organisation' and that exists independently from the individuals that populate the organisation. But this theory in biology is now discredited, for good reason, and likewise the analogous position in social theory is also highly implausible.

Insofar as Velasquez's approach, rooted in MI, takes issue with this 'emergentist' approach to collective responsibility, it makes an important point. However, what Velasquez does not consider is whether there are other 'collectivist' positions that do not have such unpalatable implications. Indeed, as I will show in the remainder of this chapter, collectivists can adopt much more modest positions while still offering more than stark individualism, ones which are in fact compatible with the more modest assertions of MI. Before coming onto these, however, it is worth seeing how Velasquez develops his argument as it illustrates some of the issues at the heart of the collective responsibility debate. Velasquez attributes the following argument to collectivists (*ibid*: 539):

1. 'If X has properties that cannot be attributed to its individual members, then X is a real individual entity distinct from its members.
2. 'But corporate organisations have properties that cannot be attributed to their members.
3. 'So the corporate organisation is a real individual entity distinct from its members.'

Velasquez accuses collectivists of making an 'elementary logical mistake' since '[a]s any teacher of elementary logic knows, every collection of objects (no matter how unrelated the objects are) has properties that can be attributed only to the collection as a whole and not to its individual members (and vice versa)' (*ibid*: 539-540). To illustrate this, he gives the example of grains of sand stacked into a pile. While the pile may be 'big', none of the grains of sand are big. The same is true of corporate groups, which may correctly be attributed properties that are not possessed by any of their individual members. But as Velasquez goes on to argue, 'this fact does not turn the corporate organisation into a new real individual entity any more than any random collection of objects is constituted into a new individual entity by the fact that it has characteristics that cannot be attributed to its members' (*ibid*: 540). This is a question I address explicitly in §19.

Collectivists, at least in Velasquez's terms, proceed from the argument above by claiming that corporations can be causally responsible and possess intentions to act in their own rights, so

establishing that they can be moral agents in their own rights. However, according to Velasquez such arguments are fallacious. Although corporations may be said to act in ways that cannot be predicated of their members, this is just an example of playing on the logical mistake set out above. Indeed, the possibility of such 'corporate' actions establishes nothing about the existence of a distinct corporate entity. Moreover, it certainly establishes nothing about what caused those actions to occur. Such actions are entirely consistent with the only causal agents being individual humans. To the second part of the collectivist claim, Velasquez responds that, while we must accept that it is common practice to attribute intentions to corporations, we attribute intentions to all kinds of things (for example cars, when we say that they are 'trying' to start in the morning) and such attributions are only metaphorical. The fact that corporations exhibit goal-oriented behaviour does not make a difference to the claim that any ascriptions of intentions to them are metaphorical; other things, for example human collectives like 'markets' exhibit such behaviour, but we would not think that a market was an agent (*ibid.*). Sometimes we use such metaphors to describe phenomena that mimic intentional behaviour; sometimes we use them to indicate that we should treat an entity as if it possessed intentionality. But in neither case is intentionality genuinely present. In the remainder of this chapter I argue against Velasquez's view. In particular, I argue that despite it being unremarkable for collectives to be attributed with properties that are not possessed by any of their members, this unremarkable fact has significant implications. I do not claim (as Velasquez thinks collectivists must) that the presence of some properties at the collective level licenses the imputation of all properties necessary for moral responsibility at the collective level. But rather that, in the case of some collectives, the properties which may be seen to exist unremarkably at this level are, nonetheless, sufficient for this purpose.

Velasquez takes a strong stance with respect to this argument. In his view, it will never be possible for collectivists to make a convincing argument for treating ascriptions of intentionality to corporations as anything other than metaphorical. This is because intentionality is something which can only be generated by a single conscious mind, something which organisations will never have. Thus 'if an organisation has intentions, beliefs, and desires, it must have a conscious mind, a mind with a unified consciousness that encompasses within a single field of awareness all of its nonpathological intentions, plans, beliefs, and desires [...] The corporation as such does not have such a unified consciousness.' (*ibid.*: 550). This conception of intention and the consciousness that must support it is quite closely related to the conception of the human mind offered by Moran (*op. cit.*) as outlined in the previous chapter. The arguments for collective responsibility in the rest of this chapter deal in different

ways with these objections that Velasquez sets out. None of them posit the existence of an ‘emergent’ corporate entity with its own distinct mind, and so in various ways deny the need for such an entity to exist in order for a distinct form of collective responsibility to be possible. For example, in the next section, the relational account of collective responsibility is rooted firmly with individuals and their intentions. Later arguments for distinct organisational intentionality deny the characterisation of intentionality offered by Velasquez and show how an alternative conception is both plausible and can be possessed by corporations. Here I refer back to the discussion of moral ownership in the previous chapter and suggest that it is acceptable to posit that corporate intentionality may be of a different kind from human intentionality, and yet both may ground moral ownership of certain actions. I also suggest the idea, which I develop further in chapter six, that corporations may own certain outcomes without the need to appeal to corporate intentionality at all. This is the case where the corporation mediates the intentional actions of others.

### *17. Relational Accounts*

Miller (2001, 2006, 2009) offers an account of collective responsibility that only makes very modest claims of a kind that adherents to methodological individualism may find objectionable. He starts by setting out the notion of collective action that underpins his account, using the ideas of ‘collective’ and ‘joint’ action interchangeably<sup>35</sup>:

‘Roughly speaking, two or more individuals perform a joint action if each of them intentionally performs an individual action, but does so with the true belief that in doing so they will jointly realise an end which each of them has. Having an end in this sense is a mental state in the head of one or more individuals, but it is not necessarily a desire or an intention. However, it is an end that is not realised by one individual acting alone. I call such ends “collective ends.” (Miller, 2006: 177).

To illustrate this idea of joint action, Miller gives the example of bank robbers lifting a safe onto the back of a truck. Each robber performs an individual action, which is lifting his side of the safe, but each does so believing that the others will perform their actions, and each has as an end that the safe will be situated on the truck. Thus they together perform the joint action

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<sup>35</sup> As I noted in chapter three, I focus exclusively on cases in which joint actions are undertaken. These cases are not identical to those in which joint actions are attempted, but fail, or in which they are not attempted at all (where perhaps they should be). These different situations may bring in additional complexities for the analysis and, to the extent that they do, I put them to one side in what follows.

of lifting the safe onto the truck. When it comes to ascribing responsibility for actions such as those performed by the bank robbers, we must, according to Miller, consider things at two levels. Each robber is individually responsible for his own contributory action, for lifting his side of the safe, and none of the others is responsible for this. However, they are collectively or jointly responsible for the joint action of lifting the safe onto the back of the truck. This responsibility – both individual and joint – is *moral* responsibility when the action is morally significant. Moral significance may be established by the inherent nature of the action, its goal, or its foreseen or unforeseen consequences (*ibid.*).

So, in the case of the bank robbers, we may say that each is morally responsible for their contributory actions, and together they are collectively morally responsible for stealing the safe. Moreover, when it comes to analysing what it means to say that the robbers are collectively responsible, Miller is again rather modest in his claims. It is certainly not the case that there needs to be some distinct new entity with which the responsibility rests, rather ‘each agent is individually morally responsible, but conditionally on the others being individually morally responsible: There is interdependence in respect of moral responsibility’ (*ibid.*: 178). There is not much here, then, for adherents to MI to get upset about. At most there is the existence of a distinct collective action that cannot be reduced to the actions of individuals, but as Velasquez pointed out we should not be surprised if we can predicate things of collectives that we cannot predicate of their members. In many ways, then, Miller’s account is in harmony with MI, and with Velasquez’s arguments against what he views as the collectivist position. Indeed, Miller terms his view an ‘individualist account’ of collective moral responsibility.

Nonetheless, although Miller’s account should be largely unobjectionable to individualists, it is not empty as an account of how moral responsibility operates in groups, and so has substantive implications that adherents to MI may not want to acknowledge. One implication concerns the connection that should exist between an individual’s action and an outcome in order for that individual correctly to be held morally responsible for the outcome. In particular, on a purely individualistic account it is hard to see how we may hold someone morally responsible for an outcome when their action is neither necessary nor sufficient to bring about that outcome. To illustrate this, Miller gives the example of five men who each stab a sixth man, when any three of the stab wounds together would be causally sufficient to kill the man. While it seems clear on the individualistic account that we may hold any of them morally responsible for *wounding*, it does not seem appropriate to hold any of them responsible for

*murder* (*ibid*: 180). At most, we might hold them collectively responsible for the murder, but it is quite unclear what this would amount to without an account of collective action and collective responsibility – especially since the collective action of all five attackers is not necessary to kill the man (the actions of any three would do). But, as Miller points out, his account of collective action and collective responsibility fills this gap in a way that makes it quite clear that each of the five attackers is fully morally responsible for the murder. Each performs his contributory action believing that the others will perform theirs, and each has as an end the killing of the victim. Thus, even though they are each individually responsible for their contributory actions of wounding, they are also jointly responsible for the killing and so each can be held individually morally responsible for murder. This is true even though the responsibility of each for murder is interdependent on that of the others. The key feature of this situation that avoids the overdetermination worry is the aim that they all share (to murder), and towards which all their actions are directed.

Here we can return to the claims made by Velasquez, in particular the thought that, although it is true that collections of people may possess properties that none of the individuals possess, nothing much rides on this fact for the purposes of understanding collective responsibility. While Velasquez's argument is targeted at the kind of collective responsibility generated by a collective entity possessing its own intention-generating consciousness, Miller's approach shows that invocations of the notion of collective responsibility can come in much more modest forms, and ones that still make a difference to our understanding of moral responsibility in the context of groups. Given the focus of my investigation is the way in which business organisations can generate moral responsibility, I see nothing objectionable in Miller's account. It is quite compatible with the requirements for assigning moral responsibility that I set out in the previous chapter; in particular it seems quite natural to say that members of a group performing a joint action of the kind Miller describes *deserve* to be held responsible for that action, since they have joint moral ownership of that action. This ownership is generated by their reflective undertaking of their contributory actions, while having as an aim the collective outcome that will be produced.

To conclude this section I will return briefly to the example I developed in the earlier discussion of individual responsibility in the context of groups, that of the rogue trader in a bank. I want to show how the kind of collective responsibility set out by Miller is entirely compatible with purely individual responsibility being generated within the same organisation. I realise that this claim is not particularly controversial, but it is nonetheless worth developing

the example, since I will continue to use it throughout the chapter, and it is less obvious that Miller's account is compatible with other accounts of collective responsibility that I will set out shortly. Imagine, then, that a rogue trader of the kind described earlier is operating somewhere within a bank. In another part of the bank, however, a group of individuals are together engaging in equally dubious activity. We can imagine that they are involved in rigging the LIBOR interest rate, in a way that apparently became common in some banks<sup>36</sup>, before the practice was exposed in 2012. LIBOR is a measure of interest rates, and its value has a significant effect on the value of some trades undertaken by banks (specifically, some derivatives trades). LIBOR is set each day and is calculated based on submissions from a range of banks on the rates at which they have been able to borrow money. In some banks it became common practice for derivatives traders to tell the individuals making the LIBOR submissions how they would like the rate to move, and for the submissions then to be made on this basis, rather than as a true reflection of the bank's borrowing costs.

Imagine a group of individuals in a bank consisting of derivatives traders and the individual or individuals who are responsible for LIBOR submissions. Each of these individuals engages in certain individual acts. The traders make deals knowing that they will be able to influence the LIBOR rate; they then communicate the rate movement that they require to the LIBOR submitters. The submitters take the traders' requests into account when making their submissions rather than relying solely on the true borrowing costs faced by the bank. Each of these actions is undertaken with the same aim in mind, to manipulate the LIBOR rate in order to manipulate the value of trades in the bank's favour, and each member of the group performs her action believing that the others will perform theirs. As a result, it is highly plausible to claim that moral responsibility is generated and distributed amongst them in the way that Miller describes. They are each morally responsible for their contributory actions, but it is only as a group that they can perform the action of 'manipulating the LIBOR rate in order to manipulate the value of the bank's trades'. Given that the conditions for collective action hold, they can properly be held collectively morally responsible for this action, which is to say that they are each individually morally responsible, interdependent on each of the others also being responsible in this way. The fact that such a generation and distribution of moral responsibility can occur in this case in no way precludes the undertaking of other actions elsewhere in the organisation, such as those of the rogue trader, which can properly be described as solely individual actions generating individual moral responsibility.

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<sup>36</sup> For a very brief overview of LIBOR rigging, see Masters (2012).



## 18. Plural Subject Accounts

I now move on to another account of collective moral responsibility, that offered by Gilbert (1992, 2006, 2008). In many ways Gilbert's account is similar to Miller's, although it is less modest in its collectivist claims, and so requires more justification in face of the challenges of MI. However, it also adds more to the picture of moral responsibility in groups which, if it can be sustained, creates a richer account of the difference that groups make. Here I introduce a notion that will be central to the accounts of collective responsibility that follow: that of *group structure*. Miller's account, as I set it out, simply relied on a number of individuals sharing the same aim and (given that they were all aware of this) coordinating their actions accordingly. However, situations in which individuals act together in this way are the exception rather than the norm, particularly in the context in which I am most interested – that of business activity. Roughly speaking, a group is structured when its activity in any given case is shaped or coordinated – at least to some extent – by pre-existing arrangements that have been agreed by its members with exactly this purpose in mind. Just how such arrangements come about is a question that different theories answer in different ways. Group structure is central to the way in which collectives can come to possess a range of different properties that license ascription of moral responsibility, as we will see. Gilbert bases her view on the idea that a group of people can come together and commit themselves in certain ways that result in them together forming what she terms a 'plural subject'. This process is very similar to that which Miller sets out as the basis of joint action. A plural subject is formed when the members of the group form a 'joint commitment', which Gilbert explains as follows:

'A *joint* commitment, in the sense in which I understand the phrase, is a commitment of two or more people. It is not a conjunction of a personal commitment of one and separate personal commitments of the others. Rather, it is the commitment of them all [...] Joint commitments can have a variety of contents. In general terms, it is always the case that the parties are jointly committed to *X as a body*. Acceptable substitutions for "X" are many: intend, believe, accept, value, despise, hate and so on. To focus on a particular example, what is it to *intend as a body* to do something? This can be spelled out roughly as follows: It is to *together to constitute, as far as is possible, a single body that intends to do that thing.*' (Gilbert, 2006: 100)

Joint commitments are formed when each member of the group expresses to the others that they are in 'a certain broadly speaking mental state' with respect to making a certain commitment, and it is common knowledge amongst the group that all of them have made

such expressions (*ibid.*). Joint commitments may be created in everyday ways, such as two people making an agreement, or they may form over longer periods of time as the expressions of commitment are clarified on behalf of individuals, and common awareness of those commitments spreads. The similarities to Miller's account are clear, with a common awareness amongst the group of features that each of them share sufficing to ground a collective feature of the group. What is missing so far from this rendition of Gilbert's account is an explanation of the nature of collective action and responsibility based on the formation of a plural subject through a joint commitment. The following excerpts summarise this explanation:

'An agent, X, *performs an action*, A, if and only if X intends to perform A, and successfully implements this intention.' (*ibid.*: 104)

'Persons X, Y, and so on (or, alternatively, those persons with feature F) *collectively intend* to perform action A (e.g., get X's piano into a truck) if and only if X, Y, et al. are jointly committed to intend as a body to perform A.' (*ibid.*)

'Persons X, Y, and so on, *collectively perform action A* if and only if X, Y, et al. are jointly committed to intend as a body to perform A and, in light of this joint commitment, relevant persons from among X, Y, et al. perform A.' (*ibid.*: 105)

So, performing an action requires an intention to perform that action, and successfully implementing that intention. In the case of groups, a collective intention is formed through a joint commitment to intend, and that intention can then be implemented by any 'relevant' member of the group to count as a group action. Finally, a group can be considered *morally responsible* when it acts in a way that it knows to be wrong. What 'the group believes' is again to be cashed out, according to Gilbert, in terms of what its members have made a joint commitment to believe. Here we can see how some initial elements of what I have called 'organisational structure' enter into Gilbert's account, and so set it apart from that of Miller. For Miller, the only property of the collective that cannot be reduced to a collection of individual properties is the action it takes – 'lifting the safe onto the truck', for example. However, Gilbert's approach depends on the establishment of other group properties before a group action can get off the ground, properties such as collective intentions and collective beliefs. One notable consequence of this introduction of structure is that a collective action can be undertaken, even when it is not the case that all members of the collective participate through the enactment of contributory actions. 'Relevant members' of the group performing the action is sufficient for it to count as an act of the whole collective since those individuals have been licensed to act on the group's behalf by the existence of the relevant collective

intentions and beliefs. It is in this way that Gilbert goes beyond Miller in ways that may be objectionable to adherents of MI, and in this way that her view has a more distinctly collectivist feel.

This way of understanding group structure also casts light on Gilbert's claims about the existence of plural subjects, and how they should be understood. Indeed, even providing a name for the entity that is created by the forming of joint commitments suggests that it might exist in a more substantive way than Miller's individualistic account would allow. Consider, again, Velasquez's acceptance that groups may possess properties that are not possessed by their members. On Gilbert's account these properties extend to intentions and beliefs and through them, actions. This *structured* account of group action allows Gilbert to refer to her plural subjects as 'collectives' which are to be distinguished from 'aggregates'. This is a distinction that is common in discussion of collective responsibility, and one that will become increasingly important in this and later chapters. In particular, she emphasises that in forming a collective a group will have '*created something new*' (*ibid*: 102). This is an important distinction. Whereas, as per Velasquez, an aggregate of people may have properties that none of its members have, there is a sense in which there is *more* to a collective.

What is this *more*? One way of understanding it is just in the properties that it is appropriate to ascribe to the group, and the relation between the group's possession of certain properties and its membership. On the latter point, a standard feature that is ascribed to collectives, and one that Gilbert endorses, is their ability to persist over time and through changes to their membership. On Gilbert's account this ability is not mysterious, since it depends solely on the possibility of individuals joining a joint commitment on an ongoing basis, and also on them leaving that commitment, without the need to conclude that what we have in each case is a new commitment. To illustrate the reasonableness of this possibility, Gilbert uses the example of a coastal community that has an ongoing joint commitment amongst its members to repel anyone who approaches from the sea. If someone new arrives in the community from inland, is accepted into the community and fulfils the criteria for participating in this joint commitment, it is reasonable to think that they have simply joined the existing joint commitment, and hence become part of the already existing collective. The same collective persists through the addition of a member. Equally, if a member of the community dies, the same joint commitment and collective can survive this death (Gilbert, 2006: 101-104). Gilbert's account also allows a much wider range of properties to be ascribed to groups than Miller allows. These two features – properties that are predicated irreducibly at the level of the

group and that can persist through time – are the basic building blocks of group structure and are made possible by ongoing agreements of the right kind between group members. For Gilbert these agreements are joint commitments. As she makes clear in outlining the nature of joint commitment, the possible subjects of commitment, and hence properties of the group, are numerous – it may intend, believe, accept, value, etc.

We are thus presented with an account with a substantially more ‘collectivist’ flavour than that of Miller. Joint commitment ‘creates something new,’ where this thing is a plural subject that persists through time and changes of membership and may possess a range of different properties. This is all particularly relevant to understanding the implications of Gilbert’s approach to collective responsibility. It is quite straightforward, on Gilbert’s account, to talk of collective moral responsibility. Such responsibility exists in cases where a group of people jointly know that something is morally wrong, yet jointly intend to do it and relevant people from the group do in fact undertake the action successfully. Yet collective moral responsibility of this kind is more removed from the moral responsibility of the individuals that participate in the group than it is in Miller’s account. It is not just the case that collective responsibility is simply an interdependent form of individual responsibility, but rather there are cases where the collective may be morally responsible, but some or all of its members may avoid such responsibility. As Gilbert says: ‘What does the blameworthiness of the collective’s act imply about the personal blameworthiness of any one member of that collective? From a logical point of view, the short answer is: *nothing*. Everything depends on the details of a given member’s particular situation.’ (*ibid*: 109).

For one thing, individuals participating in joint commitments may have excuses for doing so – they may be acting under duress, for example. While this may be enough to excuse the individuals, it is not enough to excuse the collective. Here Gilbert makes a clear distinction between what must be true for a collective to be morally responsible, and what must be true for its members to be responsible. It is not simply a case, as Miller would have it, of them both being, in a way, two faces of the same coin. ‘Is it,’ she asks, ‘possible that no member of a given collective is personally to blame in relation to the collective’s blameworthy action or action?’ The answer she offers is that this conclusion ‘is perhaps unlikely, but appears to be possible’ (*ibid*: 110). For example, the thought seems to be that pressure brought to bear on each member of a collective individually does not amount to pressure brought to bear on the collective itself. Whether the collective acts under duress is a question that can only be answered *at the collective level*. This is an understanding of collectives and collective action

that could not be considered 'individualist' in the way Miller's account could be. Yet equally, it does not go as far as Velasquez assumes necessary to invoke a distinct collective entity. For Velasquez, the existence of a collective entity is not just dependent on some collective properties that cannot be reduced to individual properties, but rather on the kind of collective consciousness that is proposed by the implausible emergentist position.

A further feature of organisational structure that allows the collective to exist at some level of detachment from the individuals that comprise it is provided by a particular kind of joint commitment. These are joint commitments that authorise individuals or sub-groups to act on behalf of the whole group, where such authorisation can extend to determining the exact contents of joint commitments that the group will undertake. Such authorisation may be direct, identifying the person or persons specifically, or it may be indirect, specifying a mechanism (e.g. majority voting) by which the authority will be identified. At any rate, through such authorisation, individual group members may become party to joint commitments of which they are not aware, and indeed of which they may never become aware. Gilbert refers to these as 'non-basic' joint commitments (Gilbert, 2008: 140-141). In such situations, and indeed where individuals are aware of collective actions to which they are party, Gilbert is keen to maintain that it makes sense for those individuals to talk about (and perhaps lament) the things that 'we' did, but still to accept that there is nothing that the individuals did that makes them morally culpable. Importantly, lamenting actions of the collective would include feeling guilt and accepting that the collective should be blamed, thus accepting collective moral responsibility despite not having done anything for which they, individually, feel guilt or can be held morally responsible.

To summarise, Gilbert's account started off very similarly to that of Miller, and indeed the understandings of collective action that underpin both are not dissimilar from each other. But Gilbert's willingness to ascribe properties at the group level that go significantly beyond group actions has established a much greater gap between what might be said of the group versus what might be said of its members. This gap is predicated on the substantive conception of a 'plural subject' that is founded on what I have called 'group structure' and is created through joint commitments. It is exactly this kind of entity that Miller avoids in his discussion of joint action. In particular, Gilbert ascribes the property of moral responsibility at the group level in a way that is not reducible to ascriptions of moral responsibility to individuals. This is a conclusion that would be unacceptable to adherents of methodological individualism. When put in the context of my investigation into how business organisations generate and distribute

moral responsibility, Gilbert's account is again a plausible rendition of how actions and outcomes within groups can be owned, in a moral sense, and hence be the basis for deserving to be held responsible. In establishing a route by which the group can own actions *as a group* where this is not equivalent to a conjunction of ownership ascriptions to individuals, the possibility of irreducible collective moral responsibility is established. It may be argued, however, that while this is a plausible approach, it still does not address the concerns of MI directly; I do this in the next section by considering the relationship between a group and its members explicitly, and what this means for social ontology.

Is Gilbert's account compatible with the others that I have outlined so far, particularly with Miller's account? It might seem that it is not. Taken purely on their own terms, both Gilbert and Miller want their conceptions of collective moral responsibility, and the underlying picture of groups and group action, to apply to any situation where people act together. Thus Gilbert claims that a plural subject is created even by the briefest cooperative act, such as hiking to the top of a mountain together (*ibid*: 105), while Miller argues that his account of joint actions can be used to analyse even complex and long term activities, such as fighting a war (Miller, *op. cit.*: 183-185). However, the more complex and extended a collective enterprise, particularly where membership of the group changes, the more fitting Gilbert's claim that *something else* is created becomes. On the other side, the briefer the interaction and the smaller and more intimate the group, the better Miller's account seems to fit. Ultimately, compatibility between the two accounts may be established as follows: plural subjects, that set a collective apart from its members, are created by group structure that itself is based upon the collective properties established by commitments between group members. Sometimes it is not possible for such properties to be established beyond the most basic one of undertaking a joint action; sometimes even when this is possible, the necessary agreements are not undertaken. In these cases Miller's model is the right one. However, there are situations when the establishment of further agreements – structure – is possible, and in these cases Gilbert's model may be applied.

This can be demonstrated by returning to the example of the bank, and the group involved in rigging the LIBOR interest rate. Let us suppose that there are now two banks involved in the rigging activity. In one bank the practice is well established in both the derivatives team and amongst those responsible for submitting interest rate reports. The group so formed has existed for long enough that there is much common ground amongst all its members. They share beliefs about their practice (let us assume that they know it constitutes fraud) and they

are all aware that this is a shared belief. They also share (and know they share) the intention to continue with the practice. In some cases, they have authorised members of the group to act for them all in determining what deals should be done and what rate movements should be required. Moreover, we can assume that over the time that LIBOR rigging has been a common practice the membership of the group has undergone a steady change as employees have left the bank and new ones have joined. It may be that none of the original group remains at the bank. In this case it is reasonable to think that a collective exists, one that extends over time, and that is not identical to the total of its membership. The essence of this existence is the possibility of predicating certain properties on the collective. Some of these properties cannot be predicated on its members (such as the collective action taken as a whole), some cannot be predicated on all of its members (such as deciding to act in a certain way, where authority for making such decisions has been delegated to an authorised individual), and some cannot be predicated on any of its members for the duration of time that they can be predicated on the group (such as the belief that LIBOR rigging constitutes fraud). In this case it is plausible that a plural subject exists that can also be properly ascribed moral responsibility in a way that is not analysable purely in terms of the moral responsibility of its members.

On the other hand, consider the situation in the second bank. Here, no history of rigging the LIBOR rate exists. Instead, it occurs to one individual (perhaps a member of the derivatives team) that a particularly big deal could be made profitable (and thereby worth undertaking) by a certain movement of the LIBOR rate. He does not, however, want to risk the trade without more certainty that LIBOR will move in the necessary way. This individual goes and talks to the person who is responsible at that time for making the bank's LIBOR submission, and sets out the situation. They agree that this once the submission made by the bank will be adjusted to take into account the possibility of making a profitable trade, and not just the interest rate at which the bank can borrow. They make no plans to repeat this exercise in the future. In this second case it is far less plausible that the two people involved have created a distinct entity, a plural subject, that might hold responsibility in a way that could not be reduced to ways in which the two individuals hold responsibility. While Gilbert's model of collective moral responsibility fits best with the first example, Miller's model of interdependent individual responsibility fits better with the second. The two, therefore, can be rendered compatible in the context of business organisations. One question that remains to be addressed from this discussion concerns the nature of the collective that I have followed Gilbert in calling a plural subject. Talk of such things 'existing' is clearly antithetical to some of the central principles of MI. In the next section, therefore, I take an interlude from the investigation of different

accounts of collective moral responsibility, and consider more directly what the existence of collective entities amounts to.

### *19. Supervenience and Ontology*

I have accepted that Gilbert makes a plausible argument for collective entities 'existing' and being possible subjects of moral responsibility in a way that makes them distinct from their members, and thus in a way that is objectionable to methodological individualism. However, as outlined at the beginning of this chapter, the objections of MI are somewhat confused, and more needs to be said about what such 'existence' amounts to in order to determine whether it is strange and extravagant, or rather really quite plausible. I will argue for the latter view. My argument is based on the idea that too much is typically thought to hang on words such as 'distinct' and 'real', and the main reason for this is that they are usually employed in an unqualified fashion. So, for example, questions will be phrased in the form 'is the collective entity distinct from its members?'; 'is it a real entity?'. This tendency can be seen, for example, in the discussion of the ontological status of corporations offered by Seabright & Kurke (1997). They refer to 'two metaphysical issues' that are relevant to collective responsibility, the first being moral agency, the second being 'the ontology of social collectives'; they then focus their analysis on the second of these issues. Peter French (1984) likewise dedicates significant effort to establishing the ontological distinctness of organisations prior to investigating their moral status.

To see why simply asking whether a collective entity 'exists' is insufficient, we need to ask what it is that confers distinctness on a group. The simple answer to this is the possession of certain properties. Now, as Velasquez points out, it is quite obvious that collections of things will have properties that their members do not – remember the pile of sand that is big, even though no grain of sand is big. It is also obvious that the possession of just any property does not confer additional and extravagant metaphysical properties on the collection, such as consciousness, intentionality, or moral responsibility. Nonetheless, if we were to ask whether the pile of sand exists as a big entity in its own right, I think we would be quite within our rights to answer 'yes'. Here the question of existence is qualified with the phrase 'as a big entity', and 'to exist' in this sense is nothing more than to possess the property of bigness. The claim here is not extravagant at all, just as the source of the property is not mysterious – it is entirely dependent upon, that is it supervenes upon, the physical properties of the grains of sand that form the pile. This relation of supervenience is one that has been employed



elsewhere in explaining the relation between human collectives and their members, for example by Christian List and Philip Pettit (2011), whose account I return to in the next section. In basic terms, the supervenience relation should be understood as follows: properties at one level of explanation supervene on properties at a lower level of explanation when they are entirely determined by those lower level properties; that is, it is necessarily the case that if the lower level properties were to be replicated exactly, the higher level properties would be replicated as well. However, it is not the case that the higher level properties are *reducible* in any meaningful sense to the lower level ones. There may be various configurations of lower level properties that will result in the production of exactly the same higher level properties

To illustrate this relation, List and Pettit give the example of consciousness within an individual (*ibid*: 75). While some might take the emergentist position that consciousness is something ‘over and above what neurons contribute’ and some might deny the existence of consciousness at all (the equivalent of MI about the question of consciousness) the modest position is to say that the properties of the neurons determine entirely the nature of consciousness, but that consciousness nonetheless exists in a way that cannot be captured purely by describing the properties of the neurons. Consciousness supervenes on states of the brain. Returning to Gilbert’s account of collective moral responsibility, supervenience can be invoked to explain how the properties of plural subjects relate to the properties of the members of those subjects. The properties of a plural subject, for example that which exists in the bank with a long history of LIBOR rigging, are entirely determined by the properties of its constituent individuals. Indeed, Gilbert’s account shows how this is the case by setting out what it is for such individuals to form a joint commitment to intend, believe, etc. And the intentions and beliefs so formed are genuine properties *of the collective*, the properties which form its structure. This given, it is not clear what else we need in order to conclude that the plural subject is an entity that intends, believes, etc. in its own right. If this is the case, there is no barrier to concluding that it can be a *real* moral agent, one that is a possible subject of moral responsibility. To say this is to say nothing more mysterious than the plural subject possesses the properties necessary to be a moral agent, where the source of these properties is no more than the individuals that constitute it.

This approach to understanding what it is to be a distinct subject of moral responsibility does not make the mistake that Velasquez seems to think a collectivist account must, which is to jump from the possession of some collective properties to an ascription of further metaphysically extravagant properties the source of which is entirely obscure. It simply shows

that sometimes the properties that can be non-mysteriously ascribed to collectives are sufficient to establish that they are appropriate subjects of moral responsibility, nothing more. As I have said, the use of words such as 'exist' and 'real' tend to create the impression that any account must be 'all or nothing', where the acceptance of certain distinct collective properties must bring with it a flood of implausible ones, but this is not the case. The same is true of the notion of 'ontological distinctness'. When we ask whether a collective entity is ontologically distinct, we might be asking any of a number of very different questions; for example, we might ask whether it is a distinct *physical* entity, or a distinct *legal* entity, or a distinct *sociological* entity. We might also ask whether it is a distinct *moral* entity (where this might be further refined if we distinguish between different kinds of moral entities). The conditions that a collective would have to fulfil in each case will be very different, and would simply consist of possessing certain properties, with the result that it might well be distinct in one sense and not another. Moreover, it is not obvious that any of these categorisations is ontologically prior to the others, so being able to lay claim to being *the* ontological question<sup>37</sup>. The upshot of this discussion is to show that it is a mistake to separate substantive questions of the properties that we may ascribe to collectives in their own rights from questions about their existence or ontological status, or about whether they are 'real' or not. Rather, if the substantive arguments show that such collectives can possess certain properties, properties that are sufficient for them to be considered a thing of a certain kind, then it should be accepted that they exist as a thing of that kind.

## 20. Corporate Entity Accounts

To this point the accounts of collective responsibility that I have surveyed have been getting gradually more 'collectivist' where this involves movements away from the general (although rather vague) position of methodological individualism. The two main accounts I have discussed have focused on the way that individuals act together and I have argued, in line with Gilbert, that by entering into joint commitments group members can endow the group with collective level properties that go beyond simple action. This is the basis of group structure. Given that I am particularly interested in how responsibility can be generated in a business

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<sup>37</sup> It could be argued that while we might be committed to different ontological pictures through the different contexts in which we refer to things, this should not be confused with the existence of different underlying ontologies. However, it is still not clear that in the case of social ontology any of these questions is prior to any of the others and so can fulfil the role of establishing the underlying picture. For more on the difference between these ontological questions, see Hofweber (2012).

organisation I need to say something about how such organisations fit into this picture. The first thing to note is that one of their most striking features is the significant reliance on formal structures that characterises their operation. Such formal structures can be thought of as an instantiation of the kind of organisational structure I have been describing. Indeed, my later accounts of how business organisations generate moral responsibility in novel ways will lean heavily on this fact. While I am by no means the first to note the importance of organisational structure for ascriptions of moral responsibility in and to business organisations, I aim to bring together a number of distinct lines of thought that together complement each other and make for a much more compelling picture than any of them alone. The first line of thought is the normative basis of group structure, as found in Miller and Gilbert. The second is an account of how, in practice, business organisations are structured and the nature of the agreements that establish that structure. I say a lot more about this in chapters five and six, but the basic elements of corporate structure are perhaps set out most clearly by French (1984). French captures the nature of the relevant organisational structures under the title of the ‘Corporation’s Internal Decision Structure’ (its CID structure). This structure consists of several elements: ‘(1) an organisational or responsibility flowchart that delineates stations and levels within the corporate power structure and (2) corporate-decision recognition rule(s) (usually embedded in something called corporation policy)’ (French, 1984: 41). The recognition rules are of two types – those that govern the proper procedures that should be followed by the individuals inhabiting the organisation structure, and those that set out ‘company policy’. Company policy here is understood to include what might be thought of as the ‘basic beliefs’ of the corporation. Having set out the nature of organisational structure in this way, French develops an argument in line with the one I am offering here, based on the claim that understanding this structure allows us to identify a distinct, responsibility bearing corporate entity that exists independently of its members. His strategy is just that outlined in the previous section, of identifying properties that exist only at the collective level and that are sufficient to confer suitability to be ascribed moral responsibility. Unlike Gilbert, however, French does not develop an account of how this structure comes about or how its normative significance is underpinned.

The relevant properties that something must possess in order to be a possible subject of moral responsibility are, according to French (and again, in line with Gilbert), those that confer intentional agency. In his 1984 book *Corporations and Corporate Responsibility*, French sets out one approach to understanding intentionality and I will review here the argument he makes on this basis. In later writing, French changes the conception of intentionality that he

endorses, in favour of Michael Bratman's 'planning account' (French, 1996). Since French uses the same strategy for arguing that corporations can possess his updated version of intentionality this change is relatively minor for the argument presented here. On his original account of intentionality, we first need to be able to describe an event as an action; this given, we must be able to describe the cause of that action as 'some desire combined with the belief that the object of the desire will be achieved by the action undertaken' (*ibid*: 40). The idea is that some events that can be correctly described as an individual acting in this way, can be re-described at a different level as the result of a different agent (the corporation) acting on a different desire. The property of the corporation is distinct from that of the individual.

The result of this analysis is that French needs to show how corporate beliefs and desires come about distinct from those of the people who inhabit the corporation. This is where the CID structure comes in. Thus the CID structure allows the re-description of certain events as intentional corporate actions: they are corporate actions when they come about as the result of the proper exercise of the corporate decision making process in line with company policy, and they can be thought of as being done for corporate reasons – as being the result of a corporate desire coupled with a corporate belief – when they are an 'instantiation or implementation of established corporate policy' (*ibid*: 44). This account of French is brief, but illustrates the point. Other accounts of corporate responsibility that invoke quite a similar strategy include Donaldson's account of corporations as moral agents (Donaldson, 1982), and Werhane's theory of 'secondary moral agents', where corporations act through authorising their members to do things on their behalf (Werhane, 1985). She appeals to the ideas of corporate charters, goals and directives to form the basis of the organisational authorisation process (*ibid*: 54-55). I now have an account of the normative basis of group structure, an explanation of how it can enable collective moral responsibility distinct from the responsibility of the individuals that comprise the group, and an outline of how such structure can be instantiated in business organisations. The final line of thought that I will build into this picture takes the notion of group agency and investigates in much more depth both the nature of this agency and the constraints that are placed upon it. This is the approach developed by Christian List and Philip Pettit.

## 21. List & Pettit on Group Agency and Responsibility

List and Pettit start by covering much of the same ground as the accounts of collective responsibility already surveyed. Firstly, what it means to be an agent, which requires three features:

‘First feature. It has representational states that depict how things are in the environment.

‘Second feature. It has motivational states that specify how it requires things to be in the environment.

‘Third feature. It has the capacity to process its representational and motivational states, leading it to intervene suitably in the environment whenever that environment fails to match a motivating specification.’ (List & Pettit, 2011: 20)

For a group to be an agent, it must just be the case that it exhibits these three features. In addressing the question of what constitutes a ‘group’ List and Pettit distinguish between ‘mere collections’ and ‘groups’ where the latter may survive a change of membership (*ibid*: 31-32). Groups are unified by properties, although these may be of many different kinds, most of which will be irrelevant to questions of group agency or responsibility. This understanding of the nature of groups and their properties is exactly in line with the approach I have outlined to this point. So, a group agent is a group that possesses motivational states, such as desires, and representational states about the world; moreover, it can process this information and act on it in the manner of an agent (*ibid*: 32). Although List and Pettit do not think group intention is *necessary* for group agency, standard cases do involve intention<sup>38</sup>. They thus focus on group agency underpinned by group intention, and this is good since agency in business organisations – my focus – is certainly of this kind. It is here that List and Pettit focus more specifically on what it is for a group not just to exhibit intention, but to constitute an *agent*, which requires more.

They accept that groups can form joint intentions in many different ways – the men lifting the safe onto the back of a truck would be one – but this is not enough to form a group agent. In order for *this* to be the case they must *form a joint intention to become a group agent*. It is only through this additional act that they can go from performing one off intentional actions

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<sup>38</sup> For example, they suggest that natural or cultural evolution may result in a group where all members come to act in the service of common desires and beliefs, although none of them are aware of the group agency so achieved. As they point out, however, while this is a plausible way to model a hive of bees, there is no obvious human equivalent example.

together to forming a ‘single system of belief and desire’ that gives a ‘basis for predicating what they will do together in future [and] for speculating about what they would do under various counterfactual possibilities’, conditions required in order to think of them as a unified agent (*ibid*: 34). This approach, we might think, does not add much to the account developed to this point. The significant addition, however, is the need to have an *explicit* agreement to establish a group agent, through the establishment of a ‘single system of desire and belief’. Indeed, it is not obvious why such an addition is needed. If a group forms collective agreements to desire certain things, and to believe certain things, have they not formed a single system that desires and believes these things? At any rate, List and Pettit go on to add interesting detail that fleshes out the relation between group members and the collective they form together. The most important aspect of this is the relation between the individuals that populate a group agent, and that agent’s rationality. The core of List and Pettit’s argument, very simply put, is that in order for a group agent to act rationally (a highly attractive requirement) that group must operate not just through the aggregation of its members’ attitudes, but it must also have a formal structure that processes those attitudes into outputs. Rationality comes in three kinds – ‘attitude-to-fact’, which requires ‘as far as possible, that [a group’s] beliefs are true about the world it inhabits – and, ideally, that its desires are at least in principle realisable’ (*ibid*: 36); ‘attitude-to-action’ where ‘the group must ensure, as far as possible, that whenever its attitudes require an action, suitable members or employees [...] are selected and authorised to take the required action’ (*ibid*: 37); and ‘attitude-to-attitude’ where ‘[t]he group must ensure that whatever beliefs and desires it comes to hold, say on the basis of its members’ beliefs and desires, form a coherent whole’ (*ibid*.). It is this final requirement that is problematic. As an example, consider the following table, which is a generalisation of one of List and Pettit’s examples, and shows the results of three individuals who engage in majority voting on three propositions, ‘p’, ‘if p then q’, and ‘q’ (*ibid*: 45):

	p	If p then q	q
Individual 1	True	True	True
Individual 2	True	False	False
Individual 3	False	True	False
Majority	True	True	False

Despite the fact that each individual makes judgments which conform to attitude-to-attitude rationality, the group judgements on the three propositions as determined by majority voting

do not. List and Pettit provide similar examples for group preference formation. Having illustrated the point in this way, they then generalise it. Given reasonable conditions that can be imposed on an aggregation function, including rationality (*ibid*: 49), and referencing technical work on the aggregation of group attitudes, they conclude that there is *no possible* aggregation function that can satisfy all conditions, that is they demonstrate an impossibility result. They survey ways out of this result by relaxing the various conditions, and conclude that by far the most promising is to relax what they call ‘systematicity’. What this relaxation means, in basic terms, is that group attitudes may no longer be determined only by the individual attitudes of members. Rather, some attitudes are given priority over others. For example, some may be designated ‘premises’ and others ‘conclusions’. When the premises have been determined by an aggregation of members’ attitudes, the conclusions follow from these premises, not from the members’ attitudes to the conclusions<sup>39</sup>. An extension of this strategy introduces a process whereby responsibility for determining group attitudes to certain premises may be delegated to subgroups of specialists, whose conclusions are then collated to determine group conclusions (*ibid*: 54-58). This conclusion is very important to questions of moral responsibility in business organisations. Not only does it specify a particular kind of structure that might be present – that which allows some decisions to be determined by, or otherwise constrained by, other decisions – it shows how any organisation *must* instantiate such a structure on pain of potential irrationality. It also shows how attitudes that are formed at the collective level can – and indeed in many cases must – be removed from any straightforward function of the attitudes of individual group members. This reinforces their status as irreducibly group level properties.

List and Pettit go on to consider how groups may be structured in practice based on this result and in doing so introduce another distinction that will be central to the coming discussion. This is between structure that is explicit and that which is ‘inexplicit’. Explicit structures are rigid in the sense that they might, for example, fix which propositions the group should consider to be premises, and which conclusions, and exactly how the premises should be determined within the group. As List and Pettit point out, however, such rigidity makes the decision process inflexible – for example, the distinction between which propositions should be premises and which conclusions may be disputed or not obvious, and a rigid explicit structure does not allow the kind of back-and-forth between them that could be appealing, in the manner of a Rawlsian ‘reflective equilibrium’ (*ibid*: 61). The alternative, inexplicit structure, does allow more

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<sup>39</sup> Alternatively the conclusion may be determined on the basis of members’ attitudes, with the collective attitude to one, or all, premises following from this.

flexibility. For example, the group may deliberate from proposition to proposition what their attitude will be, taking into account where necessary the interdependence between propositions. Inexplicit structures thus incorporate the need for feedback between group level attitudes and individual attitudes. A further feature that may or may not be present in group agents is highly relevant for questions of collective responsibility, and this is the ability to ‘reason’. As List and Pettit characterise it, reasoning is the capacity to ‘form not only beliefs *in* propositions – that is object-language beliefs – but also beliefs *about* propositions – that is, metalanguage beliefs (*ibid*: 63). For example, a standard motivational attitude that is relevant to an agent’s intentions is that of desire; it may be the case that the agent desires *X*. A corresponding metalanguage attitude would exist if the agent desired to desire *X* or, alternatively, believed that *X* was desirable.

It is exactly this ability which was captured in my discussion of ‘reflection’ in chapter three, and which I have connected strongly with the capacity to be ascribed moral responsibility. In List and Pettit’s view, explicit and formal organisation structures are not well suited to reasoning since, in a sense, they are hardwired to form beliefs in propositions in a certain way, and as such do not have the need or capacity to form beliefs *about* the propositions they so form. Inexplicit structures are different. They do not necessarily reason (since adjustments to ensure consistency may all take place at the level of individual attitudes), but it is more useful for them to do so since one way to ensure group consistency is to for the group as a whole to form meta-level attitudes over the attitudes on which it has decided. The feedback mechanism which already operates in such groups makes such reasoning a more feasible operation than in a more formal, explicit structure. In the next chapter I develop an argument that shows how such reasoning – or reflection – is possible in both explicitly and inexplicitly structured organisations. I also add in some further complexities: that organisations, in practice, incorporate *both* explicit formal structures, and inexplicit ones, and I address the question of how these structures *come about*. It is fine to consider what kinds of organisation structure make a better or worse agent (and List and Pettit consider this in depth in the second part of their book) but when it comes to considering moral responsibility, the origins as well as the functions of the structure are relevant<sup>40</sup>. A final complexity focuses on how such structures generate genuine moral responsibility, and here I draw on my discussion of how structure can enable genuine reflection to tie the account back the notion of moral ownership set out in chapter three.

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<sup>40</sup> List and Pettit do address this question briefly in their discussion of group responsibility, where they equate designers’ responsibility to the responsibility that parents hold for their children’s actions (List & Pettit, *op. cit.*: 164).



For now, it is important to finish the discussion of List and Pettit by showing how they tackle group responsibility, and how this account is compatible with, and adds another layer to, the different approaches to collective responsibility in business organisations set out so far. List and Pettit have shown that group attitudes – beliefs and motivational states – can be distinct from those of their members, i.e. not a straight forward function of their members’ attitudes. And the possession of such attitudes is central to being a suitable subject for moral responsibility. Not only this, but the generation of these group attitudes is in no way metaphysically extravagant or mysterious. List and Pettit call the relation between the individual attitudes and group attitudes ‘holistic supervenience’. While the group attitudes are not a simple function of its members’ attitudes, they are nonetheless entirely determined by those attitudes (in conjunction with the structure of the group). Their conception of moral responsibility is very close to that which I presented in the last chapter: the justified apportionment of praise and blame is central. This distinguishes moral responsibility from ways in which we might hold people responsible for instrumental (i.e. consequentialist) reasons, and similarly, from ways in which we might hold them responsible in order to further their moral development (*ibid*: 156-157). To have the capacity to be held morally responsible in this sense, List and Pettit identify three conditions a group agent must satisfy<sup>41</sup>:

‘First requirement. The group agent faces a normatively significant choice, involving the possibility of doing something good or bad, right or wrong.

‘Second requirement. The group agent has the understanding and access to evidence required for making normative judgments about the options.

‘Third requirement. The group agent has the control required for choosing between the options.’ (*ibid*: 158)

These requirements do not obviously include the requirement to exercise *reflective* agency, which I argued earlier is central to the application of moral responsibility. However, leaving this aside for the moment, it is clear that the first and second conditions are relatively unproblematic given the argument that has gone before. Insofar as group agents exist in the way claimed, they will undoubtedly face normatively significant decisions. And while it will not necessarily be the case that they will be able to make normative judgments about the options,

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<sup>41</sup> It is worth recalling here the argument from the last chapter with respect to the conditions for holding group entities morally responsible. There I claimed that such conditions should be judged on their own merits, rather than being compared to the conditions by which human individuals are judged morally responsible. These conditions can be considered an example of this process in action.

it is possible that they will – it will simply require that normative judgments are put forward as part of the agent's 'agenda', and that it then follows its standard procedure, determined by its structure, for making such judgments. List and Pettit see the greatest challenge for corporate moral responsibility as the third condition (*ibid*: 159-163). The problem is that it would appear that anything that the group does must in fact be done by one of its members. But if a group member does something, then they are in control of it. So if the group member is in control of their action, it can't be the case that the group is in control of that action.

It is the conclusion of this argument that List and Pettit deny, and they do this with reference to the more general question of multi-level causality. Similar issues arise, for example, in theory of mind where a causal story that focuses on neurons in the brain threatens to negate control at the level of the intentional agent. The general question is how both higher and lower factors can be causally relevant at the same time. The answer to this challenge, according to List and Pettit, is to appeal to the notions of a 'programming' cause, and an 'implementing' cause. The idea, in the context of a group agent, is that by the group forming an intention to perform an action it creates the conditions necessary for that action to be undertaken. For example, 'by maintaining procedures for the formation and enactment of its attitudes, arranging things so that some individuals are identified as the agents to perform a required task and others are identified as possible back-ups' (*ibid*: 163). It does not determine exactly which individual or individuals will perform the action, but it makes it highly likely that the action will be done, and so has exercised control in this manner. Of course, the individuals who perform the action also exercise control, but this is entirely compatible with the group agent exercising programming control on the group. Thus both the group and individual agents are susceptible to being held responsible for the action, since each was responsible for it at a different causal level.

This account of corporate responsibility (with the earlier noted addition of the requirement that the agent is capable of reflection of a kind), is compatible with my account of moral ownership of an action being the underpinning condition of moral responsibility. It is also compatible with the picture of collective responsibility developed to this point and can, in a way, be seen as an extension of the model developed by Gilbert. In particular, it has added two significant features to this model. The first is the specification of a kind of organisational structure that allows some collective decisions to be constrained by, or determined by, others and a determination of how such structure is necessary to ensure rationality. The second is a differentiation between formal and informal structure, although List and Pettit do not make

much of this distinction. These insights can be built into the example of LIBOR rigging developed earlier by imagining the larger, formal, structure of the bank in which the relevant teams sit, and how this affects their actions. Imagine again the case of the bank that has a long history of organised cooperation that has resulted in interest rate submissions being fixed to benefit the bank's trading positions. I argued earlier that the group of individuals involved constituted a plural subject and generated collective moral responsibility accordingly. I can now add that they coordinated this activity via an informal structure. Let us now think more about the structure of the decision making process in the bank as a whole. While it is not necessary to spell out this process in detail, let us assume that it is instantiated by a structure that satisfies the three conditions above for a group agent being susceptible to being held morally responsible, and also satisfies my further condition of reasoning about its judgments. The individuals who are directly involved in the LIBOR rigging activity will play some part in this structure, but the structure will be much wider than them.

Suppose that through this process the corporate agent comes to value corporate profit above all, perhaps to the exclusion of any other value. In this case, it could also form a variety of beliefs about its activities and how they relate to the generation of corporate profit. For example, it might well form the belief that certain activities, such as LIBOR rigging, constitute fraud, but equally put no value on, or form any desires over, avoiding fraud. When it comes to having a specific attitude to LIBOR rigging, there may well be no deliberation at the wider corporate level about whether this activity should be undertaken or not, beyond a general corporate intention to increase corporate profit by any means. Going on the preceding analysis of corporate responsibility, the corporate agent will be responsible for any action which complies with this intention. It has faced a normatively significant decision and, based on evidence about the nature of certain actions and their relation to corporate profit, decided on how it will act. This decision now becomes a standing corporate policy, one with which the group formed of the derivatives team and LIBOR setters comply when they decide to set up their ongoing cooperation. While the corporate entity has not specified that they should act in this way, it has programmed for this action. Thus we can hold the corporate agent morally responsible for the fraud. Equally, the previous analysis based on Gilbert's account still stands. The plural subject, we might think, is the agent which enacts the action for which the corporate agent has programmed.

## 22. *Some Closing Thoughts on Collective Moral Responsibility*

In this chapter I have looked at three major approaches to understanding collective responsibility, and contrasted them with individualistic approaches based in the (fragmented) assumptions of methodological individualism. Not only have I argued that each of these approaches makes sense in the context of the characterisation of moral responsibility that I developed in the previous chapter, I have also argued that they are compatible in the context of business organisations. That is, business organisations, given their complex nature and organisation, may generate moral responsibility in a variety of ways. Part of this approach has been to argue for the possibility of collective entities that are distinct from the individuals that comprise them, but also for the claim that accepting the existence of such entities does not have to involve extravagant metaphysical assumptions, as proponents of MI would have it. These conclusions are the basis of the first part of my thesis that business organisations throw up distinct challenges for understanding and ascribing moral responsibility, and hence such analysis represents quite a distinct field of investigation for business ethicists.

The second part of my thesis involves identifying ways in which business organisations not only combine sources of moral responsibility, but also generate new or novel sources. The next three chapters explore this claim. In chapter five I develop the thoughts mentioned briefly in this chapter on the ways in which business organisations constitute special and complex kinds of corporate agents. These thoughts are focused on three things – the way that business organisations combine both explicit (formal) and inexplicit (informal) structures in ways that overlap each other; the significance of the way such structures are created as well as the way in which they are operated; and the significance of the requirement that organisations be *reflective* agents in order to be susceptible to ascriptions of moral responsibility, and how such reflection may be instantiated in such complex and dynamic organisations. In chapter six, I go beyond the corporate agent account of collective responsibility, and introduce a further model. This is a model that has had very little attention since it is based on denying one of the most basic assumptions about moral responsibility – that any subject of such responsibility must be an agent. It is here that I develop my account of moral responsibility deriving from the *mediation* and not just the origination of reflective agency. In the final chapter, I turn to the question of individuals within organisations. While I have mentioned them and their susceptibility to moral responsibility briefly in this chapter, I look more closely at the ways the multi-layered model of collective responsibility that I have developed generates moral responsibility that attaches specifically to the individuals involved. The upshot is that an

individual within a business organisation, far from being overly insulated from the possibility of holding moral responsibility, is open to multiple mechanisms for justifiably being held responsible.

## CHAPTER V. CORPORATIONS AS MORAL AGENTS

### *23. The Challenges of Corporate Moral Agency*

In the previous chapter I surveyed different approaches to understanding how moral responsibility may be generated within a business organisation. The aim with which I started was to show that these different approaches are not in fact mutually exclusive, and indeed the different mechanisms they describe may be present simultaneously within the same organisation. The dimensions along which these accounts differed were in the degree to which they appealed to collective properties, and the ways in which they explained how these collective properties are generated. Different methods of coordinating activity may be used from organisation to organisation, and between different sub-groups within the same organisation, and it is this variation that underpins the different responsibility models. Central to much of the coordination that happens within business organisations is organisational 'structure' – pre-existing arrangements that have been agreed by members with exactly this purpose in mind. Beyond the mutual compatibility of the different accounts surveyed, the discussion also highlighted particular aspects of the collective environment that each illuminates particularly well. In doing so, it also highlighted ways in which the competing accounts may be strengthened. In this chapter I aim to bring together the strengths of each, and the arguments I have made in the preceding chapters, in presenting an account of how business corporations may form moral agents distinct from the individuals that make them up, and generate moral responsibility as a result. In doing so I address what I take to be the most difficult challenges associated with justifying such an account.

One of these challenges is to explain the theoretical basis of the agreements that generate organisational structure, and how its normative significance is underpinned. The resources for this explanation are provided by Gilbert's account of joint commitment and the 'plural subjects' that such commitments form, and to a lesser degree by Miller's account of joint action. A second challenge is to explain how such agreements can establish corporate entities distinct from the individuals that make them up. Again, Gilbert's notion of a plural subject is helpful here, and I also draw on my discussion of ontology in the previous chapter. It is one thing arguing that business organisations can exist as distinct entities; it is another to show that they can be moral agents capable of being subjects of moral responsibility ascriptions on the basis of the actions they take. To address this further challenge I return to my discussion of the nature of moral responsibility in chapter three, as based in moral desert and the moral

ownership of actions. There I argued that the conditions a corporation must meet in order to be an appropriate subject of such responsibility will not necessarily be the same as those we think necessary in the case of human individuals. I expand on this idea in showing how corporations may be moral agents that can hold genuine, desert-based moral responsibility. In order to achieve this I move beyond general assertions about 'organisational structure' and develop an explicit account of how particular kinds of agreements within business organisations establish the structure needed to endow those organisations with moral agency. Here I draw on French's account of structure in business organisations, and the distinction between 'formal' and 'informal' structure as introduced by List and Pettit. I develop this distinction further with examples, and show how either kind of structure can allow for the sort of reflection that is at the heart of moral agency.

As important as identifying the challenges that I do address is to set out clearly the limitations of my arguments. The first is that I do not claim to provide a comprehensive model of collective agency within business organisations or how it may contribute to the generation of moral responsibility. Rather, I am interested in how it is possible for a group to satisfy all the conditions of collective *moral* agency, and generate moral responsibility that accrues to it directly as a result of its actions. Groups that do not satisfy all these conditions may nonetheless possess a form of agency, but I do not pursue the question of the role that this kind of group may play in the broader picture of moral responsibility<sup>42</sup>. This limitation is particularly important in the case of large complex organisations that consist in a number of different sub-groups that are each organised in different ways. Some of these sub-groups may exhibit moral agency, while others may not, and the two kinds of group may interact with each other in important ways. While I do talk about the interaction between such sub-groups, for the sake of avoiding unwieldy complexity, I take them all to exhibit moral agency where this clarification makes a difference.

This point brings me on a question that is quite central to my whole project – what is the scope of a business organisation? There are, typically, many different individuals and groups that are associated with such organisations – the board of directors, the executive management team, the shareholders, employees. There are others that are more loosely affiliated, such as contractors employed on behalf of the organisation. While I use the term 'business organisation' in various ways, I will not give a definitive answer to the question of where its

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<sup>42</sup> Miller's model of joint action may be thought of as an example of how a group may possess agency, but not moral agency, since in that case the group collectively performs an action, but all other activity that leads to the generation of moral responsibility occurs at the individual level alone.

boundaries should be drawn. I am interested in how business activity is undertaken through forms of collective action that generate moral responsibility. I focus on developing a model for such activity, one that involves the interaction of different groups, each of which acts in its own right. Exactly which of these groups is part of *the organisation* is not directly relevant to this task. This is not to say that the question of organisation scope is unimportant. Indeed, it is very important in a world where practical questions of accountability and liability are predicated on legally defined organisational entities. Answering this question is, however, a task that I must postpone to another time.

A final limitation is one that I noted earlier, but will reemphasise here. My analysis of how corporate moral agency generates moral responsibility focuses on *actions* and their outcomes, as the object for which an agent is held responsible. While it is plausible that corporate agents could be held responsible for omissions as well, for example, I do not consider such possibilities explicitly. As a related point, I also do not consider cases where actions or omissions come about through a failure of the corporate entity to act in accordance with the course of action that it has determined is best – a kind of corporate weakness of will. Indeed, on the model I present a corporation would not be morally responsible for actions or inaction that resulted from such a failure. This is not necessarily a weakness in the model, but rather a further complexity that any comprehensive approach would have to incorporate<sup>43</sup>.

#### *24. Origins of a Business Organisation*

The arguments I make throughout this chapter I illustrate with examples from a hypothetical organisation, which I will introduce now at the beginning of its life. This introduction also serves to put in place some detail that is almost always missing in ethical discussion of business organisations – how such organisations come to exist in the first place. I say a lot more about the relationship between the group that establishes – and on an ongoing basis ‘owns’ – a business in §29, but here that relationship is introduced<sup>44</sup>. Let us imagine that three acquaintances get together and decide to start a business, we can call them Black, White, and Green. In fact, they decide to start a bank. In order to do this there are certain formal procedures that they must undertake – they must set up the bank as a legal entity, gain a

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<sup>43</sup> Such complexities will also present analogous challenges for any comprehensive account of individual responsibility.

<sup>44</sup> It is important to emphasise here that the sense in which a group may ‘own’ a business organisation should not be confused with the notion of ‘moral ownership’ that I set out in chapter three, which captures the relation between the subject and object of an ascription of moral responsibility.



banking license from the Financial Services Authority, put in place the infrastructure they will need to operate the business, etc. Assuming they divide these tasks amongst themselves they will, as a group, set up a new bank. Of course, until it actually starts doing some business, what is created is only a bank in a thin sense, but it is a bank nonetheless. How should this activity be characterised? Perhaps the best way is as a joint action in the way that Miller thinks of such actions, where a number of people each intentionally perform actions with the aim of achieving an end that they all share – i.e. setting up the bank. Insofar as there is anything to hold them responsible for, each of the three would be individually responsible for setting up the bank, interdependent on the other two being responsible as well.

I have assumed that the ‘set up’ process can be characterised as a single collective action to which they all contribute. It is not the case that it relies on any pre-existing agreements between them that coordinate their activity, or that it involves interrelated decisions of the kind that cause the problems of inconsistency that List and Pettit raise, and that require a structured decision making process to address. However, pretty soon the three owners will need to make such decisions as they start operating their bank. Consider a particular set of connected decisions that they may have to make, when the time comes to make their first loan, decisions concerning the truth or falsity of the following propositions:

1. If someone meets criteria X, Y and Z they are credit worthy and we should offer them a loan
2. Person A meets criteria X, Y and Z
3. We should offer a loan to person A

If the owners agree what their joint view on each of these questions will be (let us assume they use majority voting for this) without considering how these views relate to each other, they could end up forming a set of decisions that is, overall, inconsistent as the table below shows:

	1	2	3
Black	True	True	True
White	True	False	False
Green	False	True	False
<b>Bank</b>	<b>True</b>	<b>True</b>	<b>False</b>

Pretty quickly it has become the case that the bank needs to have an organisational structure if it is to ensure that it avoids inconsistent decision making. I will consider the kinds of structure that might be employed shortly. It is worth noting at this point, however, that while logical inconsistency might be undesirable as a feature of a decision making process in its own right, business owners will typically want more pragmatic reasons for implementing structure. One such reason is that business organisations are often called upon to articulate their policies towards various propositions, and in such situations inconsistent decision sets can be distinctly problematic. Consider, for example, a bank that is taken to court accused of racial discrimination for denying a loan to a person from a certain ethnic background. The bank will be in serious trouble if it is shown in court to have concluded that the person in question meets its criteria for being offered a loan, but nonetheless it did not make such an offer. Alternatively, consider a situation in the future when the bank employs additional people. The owners have to explain to those individuals how they should undertake their duties. Explaining how the bank has operated to that point by pointing to inconsistent sets of decisions is not going to give them much guidance as to how they should conduct themselves in their roles.

What these examples show is that there is more to inconsistency than simply an unappealing logical relationship, and while business organisations will not *necessarily* exhibit consistency, strong business forces will tend to ensure that they do. Below I will discuss the nature of intentional agency in more detail, but the basic idea will be that to act intentionally is to act in pursuit of some aim or value. When a person makes and acts upon inconsistent decisions she contradicts herself on the question of what is important to her, what values she holds. Alternatively, the decisions may be interpreted as resulting from a further, unstated value or set of values, which overrides that upon which the decision, on the face of it, is being made. This is what happens in the court case example – the implication is that the bank is basing its decision on the value or disvalue it attaches to ethnic origin. These questions of value are central to the idea of intentional agency and, of particular relevance to the task at hand, moral agency. As I will show, if an agent is not consistent, it will not be reflective in the sense required to be held morally responsible. Before coming on to make these arguments, however, I first need to expand on some of the arguments I made in chapters three and four regarding the nature of corporate entities and the standards against which their suitability to be held morally responsible will be judged.

## 25. Corporate Structure Revisited

In chapter four I set out both the idea of corporate structure as the set of pre-existing agreements that coordinate future collective activity, and how the various authors surveyed contribute to our understanding of these agreements. Here I revisit these points briefly, and develop them together into a more holistic picture of organisational structure that will enable me to argue that business organisations may satisfy the conditions of moral agency. List and Pettit emphasise that organisations must typically employ structure if they are to avoid inconsistency. They describe the conditions that these structures must satisfy in order to achieve the goal of establishing a satisfactory corporate agent, with their main conclusion being that this is best done through a structure that allows some decisions to be given preference over others, with the later ones determined or constrained by the earlier ones. List and Pettit also distinguish between an ‘explicit’ or formal structure where ‘the group explicitly uses a given aggregation function, such as majority voting, applies it mechanically to the attitudes of its members, and then enacts the resulting group attitudes in an equally mechanical way’ (List & Pettit, *op. cit.*: 60); and an ‘implicit’ or informal structure that ‘involves a heuristic for determining, from proposition to proposition, the way for the group to go on, perhaps through deliberation, giving the group the flexibility to adjust its attitudes whenever appropriate’ (*ibid*: 61). They show how these structures remove the attitudes of *the group* from those of the individuals that comprise the group. This ties in closely with Gilbert’s account of ‘plural subjects’ as the entity which forms such group attitudes. Gilbert’s explanation of the notion of a ‘joint commitment’ provides substantive theoretical support that both fleshes out the idea of the kind of agreement that creates group structure, and shows why it has normative force (Gilbert, 2008: 134-146). French also endorses the idea that group structure enables irreducibly group level properties, and that such properties enable irreducibly group level responsibility (French, 1984). He contributes a much clearer understanding of what group structure looks like in business organisations and it is this detail that I develop now. While French frames his discussion in terms which suggest that organisations are formally structured, there is nothing in what I say that, at this stage, is meant to favour either a formal or informal approach. To recap, the elements of structure that French sets out are ‘(1) an organisational or responsibility flowchart that delineates stations and levels within the corporate power structure and (2) corporate-decision recognition rule(s) (usually embedded in something called corporation policy)’ (*ibid*: 41). The recognition rules are of two types – those that govern the proper procedures that should be followed by the individuals inhabiting the organisation structure, and those that set out ‘company policy’. Company policy

here is understood to include what might be thought of as the 'basic beliefs' of the corporation.

The elements of structure that specify roles within the organisation, and the proper procedures that must be followed by those role holders, set out how decisions should be taken such that a decision counts as a corporate one. These two elements may combine in different ways. For example, for complex decisions the procedures will specify that some decisions will be made first, and others will be made taking the earlier ones into account. They may also specify the individuals or groups that are authorised to take certain decisions, and the appropriate process by which that decision will be made, particularly in the case of group decisions. This process may include the right to veto or alter decisions, which would likely be held by someone occupying a role more senior in the organisation. Clearly there are many ways that such organisations could, in practice, be instantiated and not all of them would necessarily deal with problems of inconsistency. But others would, and it is reasonable to think that these would be favoured.

The third element in French's structure is not concerned with specifying the process by which decisions should be made. Rather, it consists in the conclusions from decisions that have already been taken, and established as the initial premises upon which any further corporate decisions must be based. This highlights an important distinction between two different kinds of element that might be present in an organisational structure – those that specify the *process* of future decision making, and those that instantiate the conclusions of decisions that have already been made. These conclusions French identifies as 'company policy'. The notion of a company having policies is a common one, but as far as the corporate decision process is concerned, this way of characterising it – as the conclusions of a subset of corporate decisions which should be fundamental to any other decision making, and that are (at least relatively) fixed, is important. In particular, French talks about company policy capturing the 'basic beliefs' of the corporation. Some of these beliefs will, in all likelihood, be factual. For example, a broad construal of company policy will incorporate formal company documents such as annual reports that contain judgments both about the operating conditions that the company has faced over the previous year, and those that are expected in the future. Some of these beliefs will, however, be normative. They will capture what the corporation would prefer to happen, or desires to happen, or what it should aim to achieve, or what it values. For example, it may state that the primary goal of the corporation is to generate long term value for shareholders. It may alternatively (or also) incorporate a statement of values that the

corporation will uphold, such as honesty in all its dealings. The three aspects of corporate structure – an organisation structure, a decision making procedure, and a statement of corporate policy – and the different roles that they play in both structuring the process of making new decisions and capturing the outcomes of pre-existing decisions, are important in the discussion that follows.

## *26. The Moral Responsibility of Corporate Agents*

At the end of chapter three I concluded my account of moral responsibility by saying that fitness to be held morally responsible depends on a subject's ability either to exercise reflective agency (and thereby take moral ownership of the actions and outcomes occasioned) or to mediate such agency. The argument here is intended to show how corporate agents can exercise such agency. I want to put aside the worries that there are ways in which corporate agents will never be like human agents, and even that some of these features are ones upon which human moral agency depends<sup>45</sup>. Rather, the idea is to show how corporate entities may exercise a kind of reflective agency that is sufficient to endow them with the capacity to deserve to be held morally responsible, whether or not it mirrors the relevant features of human reflective agency. The necessary preparation for this argument has been done in the previous chapter and the beginning of this one. To tie these arguments in with my account of moral responsibility, I now need to give a more detailed account of a plausible version of reflective agency that may be demonstrated by a corporate agent. To be clear, it is not the case that such an account is necessary to demonstrate the plausibility of every version of collective moral responsibility I surveyed in the previous chapter. Take Miller's account: while a collective property exists (a collective action), which grounds a distinct account of collective responsibility (and also, according to my earlier argument, the existence of a distinct collective entity), the collective entity does not bear responsibility itself. It performs an action that none of the individuals could perform on their own, and they each, if appropriate, bear responsibility for this action – whatever the requirements are for an action to be undertaken freely and reflectively, these requirements are satisfied by the members of the collective. That is why responsibility only accrues at the individual level.

However, once group structure is introduced, the properties that may be generated at the group level multiply. The collective entity may now make judgments and have preferences,

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<sup>45</sup> Remember here Moran's account of free action and how it depended on the possibility of first person phenomenological experience (Moran, *op. cit.*).

and act on the basis of these functions. And it may do these things even if it is not true that any of the individuals that make it up do these things. The question that arises now is whether it is possible for properties to be predicated at the collective level that are sufficient to ascribe *moral responsibility* to the collective. This is the challenge at hand. Now, however, it is necessary to be more explicit about exactly what those properties are. When they are simply inherited from the individual members of the collective such questions can be glossed over – not because they are uninteresting, but because the challenge for accounts of collective responsibility is typically to put them on the same footing as accounts of individual responsibility, leaving underlying issues with the latter to one side. The place to start in this investigation is with the notion of intention. Despite various differences of opinion on the nature of moral agency, one point of general agreement is that intentional agency is a necessary condition of moral agency. There is, unfortunately, less agreement on the question of what it is to act with intention.

One account of intention that was endorsed by French in his early work is based on the possession of desires and beliefs about the world, together with the ability to act on those beliefs in order to satisfy a desire (French, 1984). Thus the ability to act intentionally is the ability to act on ‘some desire combined with the belief that the object of the desire will be achieved by the action undertaken’ (*ibid*: 40). Although they do not discuss this question in so many words, List and Pettit adopt a very similar account of intentional agency as the basis for their analysis of corporate agents. As set out earlier, they adopt three conditions that something must satisfy to possess agency:

‘First feature. It has representational states that depict how things are in the environment.

‘Second feature. It has motivational states that specify how it requires things to be in the environment.

‘Third feature. It has the capacity to process its representational and motivational states, leading it to intervene suitably in the environment whenever that environment fails to match a motivating specification.’ (List & Pettit, 2011: 20)

The second feature is the requirement to possess desires, and the first to possess beliefs. The third feature simply requires the ability to act on the basis of beliefs in order to satisfy desires. So List and Pettit agree with French on the conditions for intentional agency. Things are not so straightforward, however, as in his later work French changes his mind on the nature of intentionality (French, 1996). Here he adopts Michael Bratman’s ‘planning’ account of

intentionality where '[o]ur understanding of intention is in large part a matter of our understanding of future directed intention... Plans are not merely executed. They are formed, retained, combined, constrained by other plans, filled in, modified, reconsidered, and so on. Such processes... are central to our understanding of... intention' (Bratman (1999), quoted in French (1996)). Thus in order to possess intention, a corporation must be able to instantiate such planning processes. While there is a lot to say on the finer points of intentional action I want to maintain that this detail can be put to one side for present purposes. There are features of intentional agency that are common across accounts, such as the two outlined, and it is these features that are important for the way that intentional agency enables moral agency. Indeed, although French changes his account of intention, he maintains the same strategy for demonstrating that it may be possessed by organisational entities (*ibid.*). The important point is that intentional actions are undertaken in pursuit of something. This could be satisfying a desire or fulfilling a plan, and how these objects of pursuit differ is not of great concern. More generally, the idea is that to pursue something is to value it, and the aim of pursuing it is to realise that value. Talk of desires or plans is a way of cashing out in more detail how the recognition of such value may be instantiated. This sketch of the notion of intention allows me to set up, as a working definition, the idea of intentional agency as the ability to act in pursuit of a value or set of values<sup>46</sup>.

I now turn to reflective agency which is, as I have already argued, equivalent to moral agency<sup>47</sup>. The first question to address here is what it is that the intentional agent is supposed to reflect *upon*. The answer to this is simply *the value*, the realisation of which is the goal of their action or actions. To be reflective just is to endorse the value that is being pursued, in the appropriate way. Of course, this answer requires an explanation of what constitutes an 'appropriate' way to endorse a value, such that it is done reflectively. Here we come back to the thought that when human beings endorse values that they pursue, they do so in a way that is not open to corporate entities. For example, there is an irreducibly first person, phenomenological aspect to the perception and approval of the value. Whether or not this is

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<sup>46</sup> While this sketch of the nature of intention is sufficient for current purposes, I clarify it further and distinguish it from situations in which agents are constrained to pursue certain values, in §34.

<sup>47</sup> Here my account differs from that of both French, and List and Pettit. French is explicit in his claim that intentional agency alone is sufficient to establish moral agency. And while List and Pettit again do not use this exact language, the conditions they set out as necessary to be able to hold a corporate agent as morally responsible (List & Pettit, *op. cit.*: 155) do not amount to more than a certain kind of exercise of intentional agency. In particular, the second condition that requires the agent to be able to make normative judgments is expanded by saying that 'a group agent must be able to form judgments on propositions bearing on the relative value of the options it faces' (*ibid.*: 158). It must be able to pursue value, not reflect upon it.

the case, other accounts of reflective endorsement are available. While they were developed to account for human experience, and as such are controversial, I am interested in whether they are a good way of explaining the reflective behaviour of corporate agents, and this is a different matter. In chapter three I briefly mentioned Frankfurt's account of what it is for an agent to act freely and in doing so to own the action it undertakes (Frankfurt, 1971). It is this account I develop in more depth now as an account of corporate reflection.

Frankfurt starts by pointing out that when we act, we do so on the basis of wants or desires (concepts he considers synonymous). However, it is also possible to have desires whose objects are not the conducting of actions, or their outcomes, but instead whose objects are themselves desires of this previous kind. This distinction he explains by differentiating between first order and second order desires. A first order desire is 'a desire to act in a certain way'; a second order desire is 'a desire to desire to act in a certain way'. These second order desires are central to Frankfurt's concept of free will, which he takes to be central to the idea of a person, and the capacity to hold moral responsibility. To see this, we also need to understand the idea of an 'effective desire'. An effective desire is one that *actually* moves a person to act, and so becomes that person's will. Not all desires are effective desires – each person will have many desires and many of these will conflict; they will also all be of different strengths and thus only a certain desire or desires will move an individual to act in any given situation.

Combining these ideas together, Frankfurt comes up with the idea of a 'second-order volition'. A person has a second-order volition when they have a second-order desire both to possess a certain first order desire *and also* for that first order desire to be their will. This definition allows Frankfurt to conclude that '[i]t is in securing the conformity of his will to his second-order volitions, then, that a person exercises freedom of will' (*ibid*: 15), and it is in the exercise of such free will that we find the essence of a person. Frankfurt does not distinguish between different kinds of person, but he does consider what his approach means for moral responsibility. Put simply, Frankfurt thinks that to have free will of the kind he has described is sufficient to have moral responsibility. He draws this conclusion while at the same time arguing that his approach to free will is quite compatible with a deterministic world view. Provided a person has acted as they desire, and this desire is one that they desire to be their will, it does not matter, on Frankfurt's account, what more we may want to say about where this second-order volition came from, or if they could in some sense 'have acted otherwise' (*ibid*: 19).



Two questions arise from this outline of Frankfurt's account of freewill and the capacity for moral responsibility: (1) can organisational entities be reflective in the sense of forming second-order desires and volitions? And (2) even if they can is such a capacity really sufficient to ground them as moral agents? In the following sections I develop an answer to (1) in the context of the bank example from earlier. This example is also intended to support a positive answer to (2) since it is presented in the language of moral responsibility in a way that is both plausible, and is in keeping with common ways of talking about such situations. While this might be considered a rather roundabout way of supporting a positive answer to (2), it is in line with my strategy of arguing for the possibility of the moral responsibility of corporate entities by making such a possibility the most plausible conclusion, in light of a generally plausible account of the activity of corporations<sup>48</sup>.

### *27. A Simple Informal Structure*

In this section and the next I address the two questions above by developing parallel versions of the bank example, the first based on an informal organisation structure, the second a formal structure. Let us recap on the example of Black, White, and Green, and their bank. They have completed the administrative procedures and put in place the infrastructure they need to operate their bank, and they are now faced with their first operational decision – whether or not to approve a loan to person A. Moreover, they want to make this decision without creating an inconsistent set of attitudes on behalf of the bank to the three propositions proposed. To recap, these three propositions were:

1. If someone meets criteria X, Y and Z they are credit worthy and we should offer them a loan
2. Person A meets criteria X, Y and Z
3. We should offer a loan to person A

The simplest way for them to proceed is just by getting together and reaching an agreement on all three questions. This might involve some debate, and if they disagree they will have to decide how to resolve their disagreement, but one way or another they will be able to agree informally what their answers to the three questions will be in such a way that they are

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<sup>48</sup> As noted earlier, this approach can be thought of as adopting a Rawlsian 'reflective equilibrium' approach to justifying the conclusion that corporate agents can be moral agents.

consistent. Let us suppose that they judge all three propositions to be true. As per List and Pettit, they will have effectively adopted an aggregation function of some kind, one that allows the answers to some questions to be determined or constrained by the answers to others. This function, however, will be implicit, and not readily determinable by observers.

When it comes to making the next loan, to person B, they have the same decision to make. Presumably they will answer question (1), with regards to the standards of credit worthiness, in the same way as before, agreeing on the same criteria. If they do not, then they will realise that something has gone wrong. Perhaps they will go back to the records of their previous meeting. They will either recall why they made their previous judgment and endorse it, or realise they made a mistake in that case. Either way, they will ensure they are, now, consistent with their opinion of what constitutes credit worthiness. They will also judge person B against the criteria and, again, presumably will not make any judgments inconsistent with those they made for the first loan – if they do, they will again have to work out why and agree on what their position will be going forward. This process will be achieved through an extension of, and possibly a revision of, the implicit aggregation function.

Given this brief outline of their decision making process we may ask what intentional actions have taken place, and what, if any, reflection has been exercised over the values to be pursued? In answer to the first of these questions we can say that the bank, understood as a corporate agent, has intentionally loaned money to person A. If Black, White and Green decided to answer ‘true’ to the three questions with respect to person B, then the bank will also intentionally loan money to person B. To see this, the first thing is to identify the central feature of an intentional action – the value that is pursued. In the case of the bank, there is one value encapsulated in the decisions that it has taken – the value of making credit worthy loans. The endorsement of this value is contained implicitly in proposition (1). It is further endorsed by the fact that the bank’s attitudes to propositions (2) and (3) are consistent with its judgments on proposition (1). As I noted earlier, consistency of intentional attitudes is not simply a case of logical form, but is also representative of consistent judgments of value. And consistent judgments of value are necessary if an agent is going to engage in actions which can reasonably be thought intentional<sup>49</sup>. Given this value judgment, the bank’s answers to question (2) capture beliefs it has about the state of the world (features of the potential

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<sup>49</sup> This point is not meant to imply that an intentional agent may not, from time to time, change its mind with regards to its value judgments. Rather, if we are trying to determine whether an action is value-seeking or not, the presence of inconsistent value judgments implies that, whatever is driving that action, it is not a clear determination and pursuit of value.

borrower). Other beliefs about the world are also implicit in the answer to question (1) (the conditions under which a borrower is likely to pay back a loan). And the bank's answer to question (3) is best understood as a decision to act based on this judgment of value and beliefs about the world. We can assume that the bank *qua* corporate agent possesses robust processes for putting its decisions into action – these are part of the administrative infrastructure set up initially by Black, White and Green. Perhaps it was agreed that Green would be in charge of arranging any loans agreed by the bank. The bank has thus acted in pursuit of a certain value – that of making credit worthy loans – based on beliefs about the world – what constitutes a credit worthy loan, and which loans would have these features – and so has, on my account, acted intentionally.

Despite the fact that the bank has acted intentionally, it has not yet acted reflectively. While the bank desires to make credit worthy loans, or in other words endorses the value of making credit worthy loans, it only does so implicitly. It has not at any point considered whether such a value is one that it *should* pursue, or whether it is desirable to have such a desire – much less whether such considerations should override any others that might speak to a decision to make a loan. In Frankfurt's words it has formed no second-order desires, nor considered whether such desires should be effective. To see how the corporate entity that is the bank may engage in such reflection, consider the following two additional propositions that it may consider, through its owners Black, White and Green<sup>50</sup>:

4. Making credit-worthy loans is valuable;
5. Making loans that are profitable to the bank is valuable.

We can imagine that the three owners consider these two new propositions in the same way that they did the earlier ones. Again, they will presumably endorse (4), since such endorsement is implicit in their earlier decisions. If they do not, they will have to accept that they were not, on reflection, proceeding in the right way before. Assuming that their bank is intended to be profit-seeking, and not a social enterprise (maybe they haven't thought through these possibilities properly together, but been each working on their own assumptions), they will also endorse (5). By explicitly considering these two propositions, and reaching conclusions on their truth, the bank (through the deliberation of its owners) has

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<sup>50</sup> In this formulation 'valuable' is effectively synonymous with 'desirable' from the perspective of the corporate entity considering the proposition. It makes no assumptions regarding the basis upon which something is found valuable (or desirable), or the nature or contents of any external standards against which such attitudes may be judged. The issue at stake is whether the corporation should be considered a moral agent, not how it should be assessed on the basis of how it exercises that agency.

endorsed both these values. When it acts in pursuit of either of these values, it is now close to acting reflectively. But, again following Frankfurt, explicitly endorsing these values as ones the bank should hold is not quite enough for reflective agency. It is perfectly possible, as in this case, that more than one value is endorsed or desire approved, and so to say that something is valuable is still not to say that it is endorsed as the goal of the agent's action. It is possible, for example, that a certain value will always be outweighed by another. Sometimes such conflict may be unexpected, and particular to a certain context, and as such could require an *ad hoc* judgment of the group agent to resolve. However, in many cases values will be endorsed by the corporate agent on an ongoing basis, and will predictably interact with each other. This could well be the case for the bank and the values captured in propositions (4) and (5), the value of making credit-worthy loans, and of making profitable loans. Let us assume that these are the only two values that the bank explicitly endorses. To determine how they should be incorporated into the bank's decision making process with respect to loan approval, the three owners could deliberate over the following additional propositions:

6. Profitability is necessary to approve a loan;
7. Profitability is sufficient to approve a loan;
8. Credit worthiness is necessary to approve a loan;
9. Credit worthiness is sufficient to approve a loan.

Clearly, there is the possibility of inconsistency in the conclusions they reach. They could not, for example, consistently hold that profitability is sufficient to approve a loan, but that credit worthiness is necessary<sup>51</sup>. They could hold that either is sufficient, but neither necessary; both are necessary and neither sufficient on its own; or that one is both necessary and sufficient and the other neither. Let us suppose that they decide that (6) and (7) are true, and that (8) and (9) are false. That is, that a loan must be profitable if it is to be approved, and that profitability on its own is enough. Credit worthiness is not required, and neither is it enough on its own to justify a loan. These conclusions are still consistent with holding that credit worthiness adds to the value of the loan, but that it is a value that is completely outweighed by profitability. We can now say that when the bank makes a loan based on the prediction that it will be profitable, it will conduct the action as a reflective agent. It acts in pursuit of a value that it has not only endorsed, but also specified as the one that is to be pursued in this

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<sup>51</sup> The only way they *could* endorse both these propositions is if the two values were connected such that profitability of a loan entailed it was also creditworthy. I take it that this is not the case, and shortly provide an example to this effect.

situation in favour of other values that might also be relevant. In Frankfurt's terms, it has acted on a second-order volition.

The bank can now act in such a way that the corporate agent can be held morally responsible, on my account of moral responsibility. Take the following example: the bank makes a loan to person C, who has applied for one. The terms of the loan are profitable from the bank's point of view, but the information available at the time the loan is made suggests that person C is unlikely to be able to pay the money back as agreed, i.e. she is not credit-worthy. However, person C has agreed to secure the loan on her house, which she owns. So even though C may not be credit worthy in the sense of being able to pay back the loan in the way required, making the loan is still forecast to be profitable for the bank, as it will be able to seize C's house and sell it to make C comply with the terms agreed. Let us suppose that this is what happens, and C is left bankrupt and homeless. Given the judgments that the bank has made on propositions (4) – (9) through the deliberation of Black, White and Green, and the implementation of these judgments in making the loan to C, the corporate entity that is the bank can be held morally responsible for C's plight. It is morally responsible because it *deserves* to be held morally responsible, and this is the case because the bank, as a distinct corporate entity, has taken (moral) ownership of the actions that have brought about the situation in which C finds herself. This moral ownership has been generated by the fact that the bank has decided to make C the loan, in pursuit of a value that it has endorsed (profit), and having determined that the pursuit of this value should be the consideration that determines its actions given other competing values that might be taken into account (C's credit worthiness). These decisions have been taken through the deliberation of Black, White and Green, and to avoid inconsistent decision making the three have reviewed each decision in the light of the others. This means that the final decisions of the group agent have been removed from any simple aggregation of the decisions that the three individuals would reach on their own or if they deliberated on each proposition in isolation. Thus the group agent, supervening on the deliberation of Black, White and Green has exercised reflective agency in making C the loan based solely on considerations of profit, and not on whether C can afford the loan or the likely consequences for C of receiving the loan. The bank is morally responsible for this action, and its consequences. Of course, to say that the corporate entity is morally responsible in its own right is not yet to say anything about the individual moral responsibility of Black, White and Green. I return to this question in chapter seven but suffice to say at this point, given the

circumstances in this case by which the corporate agent makes its decisions, it would be very surprising to conclude that the three bore no moral responsibility<sup>52</sup>.

So far I have argued that a corporate agent can satisfy the conditions for moral responsibility that I set out in chapter three. The example I have given, however, has been of a very particular kind. It has been one where the structure that enables the generation of group level properties sufficient to ascribe moral responsibility is 'inexplicit' in the way described by List and Pettit. In other words, it is created in an ongoing manner through the deliberation process of the individuals who together constitute the organisation's decision making body.

Nonetheless, it is still a structure, distinct from the attitudes of those individuals. Through deliberation and the adjustments of some decisions in the light of others to ensure that the overall set is consistent, the decisions of the organisation are removed from the attitudes of the individuals. As List and Pettit describe, this dislocation is achieved since some decisions are effectively prioritised over others, with the subordinated decisions determined, or at least constrained, in this way. Moreover, while the creation of the relevant structure is ongoing, it is not entirely *ad hoc* or prompted only by the immediate need for action. Questions of value and the weighting of values in guiding action are considered by the decision making body, although the priority that such decisions are given in the overall structure may be inexplicitly determined by the process of deliberation. While this is a perfectly good way to model a corporate agent of the kind described – a small partnership consisting of three individuals – it is not the typical kind of organisation with which we associate the term 'corporation'. Rather, this term conjures up the idea of a large, rather complex organisation, and one with an explicitly articulated organisational structure. I come onto questions of complexity shortly. First, however, I consider how the bank I have been discussing to this point might be reconfigured such that its structures are formal and explicit.

## 28. A Simple Formal Structure

Earlier I outlined the three main aspects of a corporate structure identified by Peter French. Two have to do with procedures for making decisions – specifying both roles within the

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<sup>52</sup> To emphasise the plausibility of this example, consider the recent adverse publicity attracted by so-called 'pay day lenders'. Commenting on such lenders in the *The Observer* newspaper, William Taylor notes that 'the Office of Fair Trading calculates that 28% of loans are refinanced at least once, providing more than half of their overall revenue. In other words the payday loan business is based on the expectation that borrowers will default because they can't pay back the principal on time and in full' (Taylor, 2013).

organisation and the proper procedures that must be followed by those role holders such that the decision counts as a corporate one. The third aspect of French's structure consists in the conclusions of decisions that have already been taken, and established as the initial premises upon which any further corporate decisions must be based, which French identifies as 'company policy'. This model lends itself to a formal version of a corporate structure. The inexplicit structure described in the previous section was different in that it allowed the roles that individuals played in the decision making process and the procedures that they followed to be worked out as part of their deliberation. Equally, no decisions were singled out ahead of time as being given priority, but such priority was also determined as part of the process. How might the bank structure look if it were formalised?

First, let us consider what the content of corporate policy might be. To recap, such policy records the contents of fundamental corporate decisions, ones that count as premises to any further corporate decisions. In the case of the bank prime candidates for such content are the corporate values – both the values the corporation recognises, and those it should pursue when it must choose between them. Examples of decisions that would be taken on this content are those set out in propositions (4) – (9), above. Suppose that part of the corporate policy of the bank set up by Black, White and Green is a document entitled 'Our Corporate Values'. Moreover, suppose that this document captures exactly the same decisions as those that were instantiated in the informal structure described in the previous section. The document makes clear that the bank values both making credit worthy loans, and making profitable loans, but that profitability is both necessary and sufficient for a loan to be approved, while credit worthiness is neither (no doubt this will be phrased in more corporate language, but the ideas will be the same). In most cases it is reasonable to think that these values will be aligned, but as the earlier example showed this will not always be the case. Perhaps the bank's corporate policy does allow that credit worthiness will be able to enter the bank's decision making process in its own right, but only as a 'tie break' when it must choose between two mutually exclusive courses of action that both have the same expected profitability.

Clearly, in order to judge whether a certain action – for example making a particular loan – conforms with this statement of corporate values it will be necessary for the person or people making the decision to be clear what 'profitability' and 'credit worthiness' amount to. While it need not necessarily be the case that these ideas are expanded upon within corporate policy, they may well be. After all, they are important ideas for any decision makers to understand

correctly, and it seems reasonable to suppose that, even if they were subject to revisions in the future, such revisions would only be infrequent and carefully regulated. Thus the bank may issue another document to form part of corporate policy that defines and clarifies key terms such as these. In the previous discussion of informal structure a similar question was deliberated upon when the bank's owners considered proposition (1), part of which was a definition of credit worthiness.

So Black, White and Green's bank now has a corporate policy. In order to complete its formal structure it also needs to have clearly defined roles and procedures which the role holders must follow in order to make a corporate decision. To illustrate this, I will continue to focus on decisions it makes on issuing loans. Given the information already captured by corporate policy, for any given loan the following decisions will remain to be made:

- I. Does the loan meet the standard of profitability?
- II. Does the loan meet the standard of credit worthiness?
- III. Should the loan be approved?

In terms of the procedure that must be followed to make these decisions, its specification is constrained by corporate policy. We already know that (III) is to be answered based on the answers to (I) and (II), and that the answer to (II) is only relevant as a tie break when there are two equally profitable but mutually exclusive options. The decision procedure also requires a specification of who is authorised to take decisions on (I) – (III) and how they should be taken. The 'who' in this case will, however, be specified in terms of roles within the organisation as opposed to named individuals. Let us suppose that the bank has a simple organisation structure with Black being named senior partner, and White and Green partners. To make a loan the bank decision procedure requires that in each case the answers to (I) and (II) are to be determined by a majority vote of all partners and the senior partner. In case of a tie (perhaps one partner is absent, or more join in the future) the senior partner has the casting vote. To complete the formal structure one final piece of information needs to be explicitly set out, and this is the method by which the bank's decision will be put into action. I will assume that the same solution is reached here as in the informal structure, and that Green is tasked with implementing any loan decisions taken. To be completely accurate, it will rather be the case that a particular role within the organisation is identified as 'partner in charge of loans' and the job of implementing loan decisions is associated with this role. It will also be the case that Green is identified as filling this role at present.



Now in order to consider the nature of the bank's actions given this new structure I will use the example of a new loan that it makes to the imaginatively named person D. Black, White and Green consider D's application and vote on questions (I) and (II). Unfortunately, D's position is almost exactly the same as that of person C from the earlier example, and the bank's partners' vote concludes that the loan meets the standard of profitability, but not of credit worthiness. As per the bank's decision structure, the loan is approved and Green proceeds to issue it to person D. Has the bank, as a distinct corporate entity intentionally issued the loan? The answer is that it has. Again, the central feature of any intentional action is the (consistent) pursuit of value. The value to be pursued in this case is profitability, which is clearly endorsed as a corporate value by its instantiation in corporate policy.

In making a loan to person D the bank has acted in pursuit of a value it endorses – profitability – through a process that ensures decisions taken are consistent with that value. It is valid to say that *the bank* pursues this value since the structure by which the individual attitudes of the partners are translated into the bank's decisions has been followed, and it is one that creates a 'gap' between those individual attitudes and the final decision, i.e. the latter is not a simple function of the former. Moreover, in forming their attitudes, the partners have taken account of relevant corporate beliefs, for example what it is for a loan to be profitable. To summarise: through the partners following the appropriate decision process, the bank has decided to act in pursuit of a corporate value, taking into account corporate beliefs. Therefore, the bank as a corporate entity has intentionally made the loan to person D.

So the bank with its new formal structure can act intentionally. But does it act reflectively? Here there is need for caution. The value of profitability is explicitly captured in propositions embedded in the structure of the organisation, as is its priority over other values in the case of a conflict. These two elements are the basis for reflective endorsement of a value that is the driver of intentional action. However, while the relevant propositions (those labelled (4) – (6) earlier) are embedded in the structure of the formally structured organisation, they only serve as the basis for reflective endorsement of the value of profitability *by the organisation* if it is the case that the organisation is itself responsible for them being there. Let me explain. I have distinguished, with the help of French, between different kinds of rule that may form part of an organisation's structure. One kind governed the appropriate process for making new corporate decisions, a second kind captured the conclusions of previous taken decisions in the form of 'corporate policy'. In order for a formally structured organisation to act reflectively, not only must propositions endorsing and prioritising certain values to be pursued appear in

corporate policy, but there must be a facility within the rules that govern new corporate decisions that allows such propositions to be changed, or removed, or for new ones to be introduced. The alternative picture would have such value propositions ‘fixed’ when the organisation is created but with no ongoing facility for their revision<sup>53</sup>. In such cases it would not be true that the reflective attitudes were those of the organisation itself. Returning to the bank example, let us assume that Black, White and Green not only decide that propositions (4) – (6) will be embodied in corporate policy, but also that there will be an ongoing facility within the corporate decision process whereby certain organisation members can introduce new value propositions for consideration, or propose that existing ones be revised. Given this addition, it is legitimate to conclude that, in the case of making the loan to person D, the formally structured bank has acted reflectively. The bank has, in Frankfurt’s terms, formed a second order desire over the desirability of profitability. Another formulation of essentially the same idea would be to say that it has recognised the value of valuing profitability. It is worth noting that this is a possibility about which List and Pettit appear sceptical. Given that they do not consider reflective agency of this kind necessary to be a potential subject of moral responsibility they only address the question briefly in their discussion of what they call ‘reasoning’ agents. A reasoning agent is one that is able to (and does) form attitudes on meta-propositions – propositions about propositions – which I have argued is the essence of corporate reflective agency. While List and Pettit think that informal structures will enable the agent to possess the capacity to reason, for formal structures this will be difficult if not impossible (List & Pettit, *op. cit.*: 63-64). The example of the bank shows that such scepticism is unfounded.

The final task now is to show how the reflective agency of the formally structured bank generates moral responsibility in the case of the loan that it makes to person D. We can imagine that D’s loan is as ill fated as that of person C in the earlier example, in that D is unable to maintain payments and this results in his house being repossessed by the bank. As with the informally structured bank, the one with the formal structure can, on my account, be held morally responsible for D’s plight and this is because it deserves to be held responsible. The bank, again, has taken moral ownership of the actions which have impoverished D. It has acted as a distinct corporate entity in pursuit of a value it has reflectively endorsed (profit). It has chosen to pursue profit over and above concerns about the credit worthiness of D, which it also values, and with no consideration for the possible negative outcomes for D, on which it has not even taken a view. In these ways, the generation of moral responsibility for the bank

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<sup>53</sup> This kind of organisation is central to my discussion of ‘morally significant systems’ in chapter six.

through its formal structure closely mirrors the generation of moral responsibility in the earlier example, when the loan was made to person C through the operation of an informal structure. What will be different in this case is how the responsibility of the corporate entity relates to that of its individual members. I mention some aspects of this difference in the following two sections, but pick up the question in more detail in chapter seven.

## *29. Ownership<sup>54</sup>*

To this point I have focused on showing how business organisations with either an informal or formal structure can satisfy the conditions for moral responsibility I set out in chapter three. That is, I have shown how they can exercise genuinely reflective agency in line with Frankfurt's model of personhood, and made a case for such agency generating the kind of moral ownership of actions and outcomes that is needed for moral responsibility (even if it is of a different kind to that exercised by individuals). The examples, however, have been simple in a number of ways. They have not, in general terms, considered whether elements of formal and informal structures can be present in the same organisation so creating a complex structure. Nor have they considered the implications of such complex organisations for the ascription of moral responsibility. I come to these general questions shortly. In this section I consider an example of such complexity, but one that is particularly important. It is focused on the way that formal organisation structures come into existence.

I have already set out an outline of this process in §24, and I return to it now. It seems reasonable to characterise the action or actions which give rise to the thing we first call the bank as unstructured collective actions, as described in Miller's earlier account. One example already outlined is the setting up of the administrative processes. Perhaps a better one is the joint action of 'forming a partnership'. Here Black, White and Green all undertake contributory actions, for example each having relevant legal documents drawn up and signing them, with the joint aim of forming a partnership. It is only jointly, though, that they form the partnership. Despite the fact that the birth of the bank requires these unstructured collective actions we may question whether much rides on it from the perspective of moral responsibility. After all, the bank as a distinct entity only acts once structure has been put in place to establish it as such an entity. The responsibility generated by the initial acts of formation will fall individually to the three partners, although the responsibility of each is interdependent on that of the

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<sup>54</sup> As explained in n44, the sense in which a group may 'own' a business organisation should not be confused with the notion of 'moral ownership' as set out in chapter three.

others. But what, if anything, could they be held responsible *for*? By definition, nothing that the bank will actually do has been decided at this point. It may be that there is not much to say here. However, there could be. Imagine that one of the partners has previous convictions for fraud and the others know this. Or that the economic climate is such that the only way for new banks entering the market to stay afloat is for them to exploit vulnerable customers for profit. In either case it is plausible that some or all of the partners setting up the bank could be held morally culpable for their actions. I will not pursue the question further here, since it relates to the individual responsibility of the partners and I want to focus on what can be said about the corporate entity itself.

One way for the corporate entity to come into existence is for Black, White and Green simply to launch into decision making, for example by deliberating about the first loan application they receive. I have already set out in detail how this would work. It would result in the emergence of an informal structure to govern the bank's decision making in a way that is quite un-mysterious. This would not be the case, however, if we are interested in understanding how a formal decision-making structure comes into existence. Imagine that the three partners decide up front that they want a formal structure, or perhaps that after operating for while they decide to put one in place. This structure, to reiterate, will consist in the identification of formal roles within the organisation, with associated duties where necessary. It will also consist in the processes with which the role holders must comply in order for decisions they take to be legitimate corporate decisions. And finally it will incorporate a number of agreed premises within the 'company policy', that will be employed in corporate decision-making. How will they go about bringing this structure into existence? Given the various interrelated decisions that must be made in order to do this, the only answer is that they must debate those decisions amongst themselves and come to agreement on how to proceed whilst ensuring standards of consistency are maintained across the decision set. In other words, they must utilise a decision process with an informal structure in order to put in place the formal structure. As a result we must conclude that an (informally structured) distinct collective entity comes into existence to bring about the formally structured collective entity.

The first question that I will tackle with respect to this situation is what I will call the 'ownership' question. This breaks down in a number of different ways, all of which relate to the relationship between the informally structured collective entity and the formally structured entity that it creates. Is it meaningful to distinguish the two structures from each other? If so, is 'the business' the formally structured entity, the informal one, or a combination

of both? Even if it is meaningful to distinguish the two structures, do they nonetheless combine into a single entity, or must they remain distinct? Does the informally structured collective continue to exist once the formally structured one has come into existence or not? If it does continue to exist, what is the ongoing relationship between the two? To start to answer these questions it will help to have a clear example in mind, so I return to the case of the bank. As I have said, the founders Black, White and Green will need to form an informally structured collective entity to set up their formal structure, which will consist of roles, decision making processes, and some basic decision conclusions captured in company policy. Here are some propositions on which they could form attitudes as part of this process. To start with, those concerning roles:

- i. The organisation will consist of one senior partner and two partners;
- ii. Any further employees will join as partners;
- iii. One partner will be nominated as responsible for implementing any decisions made with respect to issuing loans;

Second, some propositions concerning decision making processes. To be clear, these are only a small subset of the propositions that could and perhaps must be considered. What is important is that they include sets of decisions that could produce inconsistent answers should the decision makers not utilise an informal organisational structure to ensure that this does not happen:

- iv. The approval of the senior partner is necessary to approve a loan;
- v. The approval of the senior partner is sufficient to approve a loan;
- vi. A majority approval amongst the partners and senior partner is necessary to approve a loan;
- vii. A majority approval amongst the partners and senior partner is sufficient to approve a loan;
- viii. The decisions taken by the partnership must be in pursuance of values identified in the bank's 'statement of values';
- ix. Such decisions must also conform to the bank's 'definitions of key terms';

Third are propositions, the answering of which will establish the bank's initial statement of values. I have said several times that 'company policy' consists in pre-established answers to certain questions which are to be a point of reference in the ongoing decision making process, but so far I have not considered how these decisions are made in the first place. This initial set up process by the bank's founders is at least the origin of such statement<sup>55</sup>. Propositions (xii) – (xv) are reformulations of the conditions of sufficiency and necessity of the two corporate values of profitability and credit worthiness, encountered earlier:

- x. Making credit-worthy loans is valuable for the bank;
- xi. Making loans that are profitable to the bank is valuable for the bank;
- xii. All corporate decisions must conform to conditions of profitability;
- xiii. If a decision conforms to conditions of profitability, then it meets the standards for a corporate decision;
- xiv. All corporate decisions must conform to conditions of credit worthiness;
- xv. If a decision conforms to conditions of credit worthiness, then it meets the standards for a corporate decision;

Finally, in addition to the statement of values created by forming attitudes on the preceding propositions, the founders will define certain key terms the understanding of which is necessary to make the content of these values concrete:

- xvi. Profitability is promoted when a decision satisfies conditions X, Y and Z;
- xvii. Credit worthiness is promoted when a decision satisfies conditions A, B and C.

We can assume that Black, White and Green will manage to form a consistent set of attitudes across all of these propositions (and others) and in doing so create the formal structure that will underpin the existence of their bank and its corporate agency; in doing so they constitute an informally structured corporate agent. One possibility is that once the formal structure is in place the informally structured agent simply 'becomes' formally structured; in other words that the two are the same thing, but the one is just a kind of nascent form of the other. This

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<sup>55</sup> The set up process is the origin, but perhaps not the only source of input into company policy. This is because such policy can at least in principle be altered in future with the appropriate decision-making structure in place. As I have already argued, if a formally structured organisation is to be truly reflective, such a decision-making structure is required.

conclusion, however, is not plausible. To see this, it is necessary to get to the bottom of what the identity conditions are for a collective agent supervening on a structured collective body. The answer, I suggest, is that the basic condition is the *continuity of the collective structure*. It is important to be clear what ‘continuity’ does not mean here. It does not mean that the collective structure can never change. After all, informal collective structures can be revised on an ongoing basis as additional propositions are considered. For example, in considering a new proposition the members of an informally structured group may agree that a decision that was formerly considered an initial premise should now be subordinated to the rest of the decision set, in order to maintain consistency. Moreover, in doing so, the views of one of the group’s members may take on a significance that they did not have before. However, the new structure will at least be a recognisable evolution of the previous one.

In establishing the formal structure for the bank, the initial founders are not establishing something which constitutes a recognisable evolution from their informally structured group, something that has continuity with that structure, but rather something that at least in principle could be radically different. There need not be any individual in the informally structured group who wields more power than the others who would be a forerunner to the role of senior partner, for example. As another example, take the values that are established for the formally structured bank. It might seem reasonable to assume that these values, at least, are ones that would also be held by the informally structured group if it engaged in banking activity, but this need not be the case. Black, White and Green are debating the question of what the appropriate values are *for a formally structured bank*. While this is clearly related to the values that the three of them would, if asked, collectively endorse, it is not the same thing. For example, the fact that they are setting up a formally constituted bank could affect their judgments. One of them might say: ‘if it was just the three of us making loans it would be appropriate to take a more compassionate view of our customers, but we’re doing things formally now and we need to be more hard headed’. Such a view could lead to them endorsing the value of profitability as the overriding corporate value, whereas in informal deliberation they would also take account of a client’s credit worthiness and the potential effect on that person of granting the loan.

Given that the formal structure of the corporate entity that is brought into being is thus unlikely to bear clear similarities to the informal structure of the group that established it, there will be no clear continuity between the two, and so it will not make sense to say that they are the *same* structure. An even clearer reason for thinking that the informal and formal

structures are not identical can be established by showing that the informal structure in fact continues to exist distinct from the formal one once the latter has been brought into existence. To see that this is in fact the case, consider the roles that Black, White and Green will fulfil once the formal structure of the bank comes into operation. Within that structure Black will be the senior partner and White and Green will be partners. Green will also be nominated the partner responsible for loans. At the same time, however, all three will continue to be *owners* of the bank. Whatever the constraints imposed upon the actions that the three of them take, *qua* partners, by the formal structure that they have set up, it will still always be possible for them to meet as owners to reassess and reshape that structure as they see fit. When they meet in this way any special authority that Black has as senior partner, for example, is irrelevant. They are no longer forming the decisions of the formally constituted corporate agent, but doing something else – they are acting on the basis of the same informal structure that they used when they set up the bank in the first place. Even though the formal agent now exists on an ongoing basis, it has not removed the possibility that the informal agent will continue to act. For example, Black, White and Green as owners might decide to alter the bank's corporate policy by reassessing their attitudes to some of the propositions they considered when they set it up<sup>56</sup>. Given this possibility it is clear that the informal and formal structures are quite distinct, as are the collective agents that they allow to exist.

What then is 'the bank'? Is it the informal agent, the formal agent, or both together? I do not think that much rides on the answer we give to this question insofar as 'the bank' is just a label we apply in this case. The important thing to recognise is that there are two collective agents, although they are both, at least initially, very closely connected<sup>57</sup>. The more interesting question concerns the implications for ascriptions of moral responsibility as a result of the actions of the formal agent. To illustrate, we can go back to the case of the loan that the formally structured bank makes to the unfortunate person D. I have already made the argument for why this entity is morally responsible for the situation in which D finds himself, and this has not changed. But now there is an additional question to tackle, and this is whether the informally structured collective entity that supervenes upon the attitudes of the bank's

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<sup>56</sup> A further complexity could be introduced through specific rules, adopted in corporate policy, that specify the aspects of policy that can be altered by the ownership group, as opposed to being altered through the decision process of the organisation itself.

<sup>57</sup> The example at hand is a specific example of a generalised set of questions that is highly relevant to modern business corporations – what is the proper way to understand the relationship between owners (usually shareholders) and 'the business'? Are the former a part of the latter? How do they relate to each other and what significance does this have for ascriptions of responsibility for corporate acts? Standard models of corporate governance – notably the principle-agent model – attempt to answer these questions, often unsatisfactorily.



owners bears any moral responsibility. To see that it does, let us return to Frankfurt's original model of reflective agency that I have used as the basis of my account. Frankfurt emphasised that an agent can be morally responsible even if the second order volitions that ultimately dictate its actions can be shown to be completely determined by forces outside its control. And indeed, for our formally structured agent, this is largely what has happened. In the first instance, its decision making structure and processes, its values and its prioritisation of those values have been determined by a force outside its control – the attitudes of the informally structured agent constituted by its owners. As I have also made clear, in order to be a reflective agent it must be possible for the formally structured organisation to alter these aspects of its make-up through the working of its decision processes, but much of the influence of the structure it had when it was created will remain. While this does not reduce its moral responsibility, it does mean that the actions of the bank in making the loan to person D are influenced strongly by the decisions of the informal agent.

As I noted earlier, List and Pettit equate the responsibility that designers of organisations have for the agential performance of those organisations to the responsibility that parents have for the actions of their children. And this analysis seems a good one in light of the model developed here. Informally structured agents thus can exercise sufficient control over the actions of the formal agents they create to be held morally responsible. But they must also satisfy the other conditions of reflective agency as well. To go back to the example, this would mean that the informally structured agent that Black, White and Green form when they deliberate over propositions (i) – (xvii) would need reflectively to endorse and prioritise a set of values, the pursuit of which drives their conclusions regarding the propositions. While it is not necessary that these conditions are met<sup>58</sup>, it is certainly possible that they are. In order for this to be possible, the informal agent must form explicit attitudes on propositions concerning values that it may hold, and form further attitudes on how the values it does adopt should actually guide its actions (particularly in cases where they may conflict). Further, these attitudes must then be effective in guiding the decisions it makes in setting up the formal structure of the bank. I will not rehearse again how it is possible for an informally structured agent to satisfy these conditions, as I showed this in depth earlier in this chapter. What is required, however, is an identification of the values that such an agent may pursue such that it takes the attitudes over propositions (i) – (xvii) necessary to create the formal bank structure

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<sup>58</sup> The possibility of the conditions of reflective agency not being met in this case raises the intriguing possibility of a moral agent being created from the actions of an intentional but non-reflective agent (and hence one not capable of moral responsibility).

that I have described, the one that enables the existence of the corporate agent that makes the loan to person D.

It is quite straightforward to identify values that would satisfy this requirement – they would be exactly the same values that are endorsed by the formal agent. In this case, the owners would reflectively value profitability and credit worthiness, and in pursuit of these values enshrine them in the corporate policy of the bank. However, in my earlier discussion of the distinctness of the two agents I argued that the values of profitability and credit worthiness could be approved by the owners as appropriate for the bank, even though the informal agent that they form does not itself endorse those values for its own pursuit. What values might the informal agent hold such that this could be the case? One suggestion is that the owners simply recognise a general value that attaches to human wellbeing, while prioritising the wellbeing of certain people (themselves and those close to them) over that of people more generally. When it comes to determining the best way to set up the operation of their formally structured bank, it is quite plausible to suppose that the owners will conclude that their goals are best achieved not by tasking the bank to pursue the same quite general imperatives concerning human wellbeing that they assign to themselves, but rather by constraining it much more tightly around the primary goal of profit and the secondary goal of ensuring the credit worthiness of its loans. That is, they will assign the bank values to pursue that, within the scope of the bank's operations, they take to be instrumental to the promotion of the values that they as a group ultimately hold. Having said this, it is important to note that *from the formal agent's perspective* the values it holds are not instrumental, but rather the only and ultimate things that it pursues.

### *30. Evolution and Complex Organisational Structure*

To this point I have shown how both formally and informally structured corporate agents may be held genuinely morally responsible for their actions and the outcomes they occasion. I have also shown how a 'simple' structure of either kind is insufficient as an account of how typical large business organisations work and generate moral responsibility. In particular I have shown how any formally structured corporate entity must be associated with an informally structured entity, most typically constituted of the owners of the corporation, who set up and make ongoing decisions on how the formal structure should function. This 'complex' structure combines two irreducible corporate agents, both of which can bear moral responsibility for the actions and outcomes of the corporation. This is not the only way that such formal and

informal structures may combine in a complex organisation, however. To develop this account of complex structures further, I will expand on the explanation I have just given of the relation between the formal structure of a corporate agent, and the actions of the informally structured group supervening on the attitudes of the corporation's owners. The account that I gave is, generally speaking, a plausible description of what happens when a formally structured corporate agent is set up. It is also a good account of the ongoing interaction between the 'ownership' group and the formal structure. What can be added, though, is that other factors apart from the attitudes of the ownership group may act on and change the formal structure once it is established. It may evolve in ways that are beyond the control of this group. If this happens then, clearly, the link between the actions of the formal agent and the moral responsibility of the informal agent supervening on the ownership group will be weakened or broken completely.

How might such evolution occur? One explanation that I have already set out is that individuals populating the formal roles within the organisation are endowed with the power, through the operation of the approved decision making process, to alter that structure. Another is that, besides the ownership group and individuals acting as formal role holders, other individuals associated with the formal agent acquire the power to alter its structure. Indeed, I will argue that not only do such individuals exist, but that they will often constitute additional informally structured collective agents that are associated with and influence the formal structure that underpins the organisation. In other words, while the ownership group is a special case, it is only a special example of a more general phenomenon associated with large, formally structured organisations such as businesses. The picture that then emerges is of a complex organisation where a number of informally structured collective agents are focused around, and input into, the formal structure of the corporation. To see how this would work, I return to French's original discussion of how corporations are structured. When I have been discussing the notion of corporate policy I have been assuming for the sake of convenience that all the statements of corporate values and corporate beliefs are contained within officially recognised documents that are clearly identified. This has been an over simplification, as closer inspection of French's discussion reveals.

The notion of a 'policy recognizer', the basic unit of corporate policy, is actually quite vague, and French considers different places that they may be found. One place we may look for such information is in the corporate charter, although as French points out most charters simply allow the business to pursue 'any lawful purpose'. If this were the only policy recognizer,

however, then corporate actions 'would be rendered trivially moral (or legal) and totally uninteresting from the moral point of view or from the legal point of view' (French, 1984: 56). This is because any immoral or illegal action undertaken in the name of the corporation would by definition not conform with corporate policy and so would therefore not in fact be a corporate action. Given that we are inclined to believe that corporations can genuinely act illegally or immorally, we need to identify further recognitors of genuine corporate action that go beyond the charter. French introduces the notion of a 'legitimate' corporate activity as one that accords 'with general expectations, patterns, and standards for [an] activity' (*ibid*: 57), and offers the example of it being a legitimate activity of Ford to 'design and manufacture [...] a compact, fuel-efficient, low-cost automobile at the lowest possible production costs' (*ibid.*). A legitimate corporate activity is not, however, necessarily a moral or legal activity; Ford's legitimate activity described could be instantiated by the action of producing the Ford Pinto, a car that had significant (and known) safety flaws (*ibid.*). This is all in line with the analysis I have offered to date. The important question here is what *counts* as a policy recognitor that identifies a legitimate corporate activity.

Formal documents that incorporate quite explicit statements of values count, as we have seen. But other expressions of corporate values can count as well. In particular, values that are not formally recorded in any corporate documentation but that nonetheless have come to underpin activities undertaken by the corporation – through their general acceptance by the individuals that make the decisions and take the actions regarding those activities. In order for this account to be plausible, the situation that I captured in my earlier example of the bank must be extended. While, in that example, it was the ownership group that formed the body of employees of the bank as well, in the majority of corporations the employees are a distinct body, or at least not all employees are owners. The idea here is that, while the employees only have the ability to alter the formal documents if they occupy particular formal roles that allow for this power, and they follow the prescribed process, they nonetheless have the ability to develop and act upon an alternative set of values, as a group, in a more informal way. And, so the idea goes, this set of values can be just as legitimate if not more so than that captured in the documents.

To make this claim plausible, and develop its implications, I will move on from the example of the bank and set out and develop another example that is used by French, based on a corporation that manufactures aircraft. In this example, a salesman working for the manufacturer pays a bribe to an overseas buyer operating on behalf of a foreign company in

order to make a sale. This is in direct breach of a written company policy about doing business in overseas markets. The question now is whether *the company* has bribed the buyer or not. As the act is in breach of the written policy, the initial response will be that it has not. However, French argues that things are not as straight forward as this. It is also important to observe how other members of the corporation respond to this act: if the salesman's board, or direct superiors, endorse the action then this is evidence that *actual* company policy is not that written down in the corporate literature, but something else entirely. How should this situation be characterised? One way would be to say that the employees who have some remit over the actions of the salesman – the individual himself, other sales people doing the same job, the supervisor or supervisors, the board – form an informally structured collective entity that has adopted a set of values that is different from that captured in the corporation's formal structure. Of course, to say this assumes that this group meets the conditions for the establishment of such an agent, but let us suppose for the moment that it does. A further assumption behind the claim that the values of this informal collective constitute *actual* company policy is that the informal collective can be identified with the corporation, rather than the corporation being only and entirely instantiated by its formal structure. But this does seem right. If everyone who works for the business, or at least the people relevant to this action, form the informal collective that holds these values, it would seem strange to say that the corporation did not endorse those values.

French, then, thinks that in this case the values of the informal collective are the true corporate values, and the values instantiated in the formal structure are not (although he does not put it in so many words). However, what French does not consider is whether both these types of policy might be genuine in some sense – perhaps the equivalent of competing desires, with one sometimes winning over the other, and vice versa. Indeed, as we have seen it is perfectly possible for corporations to hold sets of desires that will sometimes generate internal conflict. Let us accept, then, that both the formal set of values and the values of the informal collective are genuine corporate values. Has the company acted intentionally when making the bribe? The answer is clearly yes, since it has acted in pursuit of a value of that it holds (one held by the informal collective entity). Given that this is so, we can now ask the further and crucial question – has it acted reflectively, such that it may be held morally responsible for bribing the buyer? To answer this, I need to say more about how the reflective process may be instantiated in the kind of informally structured collective entity comprised of the employees of a corporation.

Take the case of the aircraft manufacturer. Imagine that senior members of that corporation form part of the informal collective that has been endorsing bribery. They do not wish to change this approach to doing business, but have become concerned that the conflict of this practice with official policy may be causing confusion amongst some sales teams, confusion which risks undermining some potentially profitable deals. In order to address this concern, they hold a confidential meeting with the whole of the sales side of the business to discuss the situation. They set out clearly that there is a conflict of approaches within the corporation's values, and let attendees express their opinions. They then ask them all to accept the policy of bribery when necessary as the basis of their sales approach with overseas buyers. They also offer to relocate any employee who is not happy with this approach elsewhere in the corporation. In this way, it seems clear, the informally structured collective entity that supervenes upon the attitudes of all members of the sales side of the business has explicitly endorsed the value of 'bribery when necessary'. Moreover, it has also explicitly adopted that value as its overriding imperative, to be pursued in cases where it conflicts with other corporate values (whatever their source). In this case, the informally structured collective entity is morally responsible for the bribery that ensues. Since it is also an integral part of the aircraft manufacturing business, that corporation (assuming that this is an entity with broader scope) is morally responsible too.

### *31. Summary*

In this chapter I have developed the basis for what I consider to be a robust model for the moral agency of corporate collective agents. In order to do this I have addressed three related features of business organisations that are particularly challenging for accounts of the moral agency of corporations. The first is their ability to satisfy the conditions for being the subjects of desert-based ascriptions of moral responsibility, in line with the account I set out in chapter three. I started from well established models of corporate agency based on organisational structure. From this, I showed how both organisations based on an informal structure and those based on explicit formal structures can demonstrate the reflective agency necessary for such responsibility. This endowed them with moral ownership of the actions they undertook, and the outcomes of those actions. Importantly, I did not claim that this reflective agency was identical to the agency exhibited by individual humans (who are also moral agents) but rather I made an argument for conditions of corporate moral agency on its own terms. The basis of

this account was Frankfurt's model of second-order desires and their effective translation into action.

Having made the case for the possibility of moral agency in organisations based on 'simple' structures (either a single formal or informal structure) I argued that in order to understand the moral agency generated in large modern business organisations we need to develop more complex models of organisational structure. I started to develop such a model by asking how business organisations come into existence. When it comes to the creation of corporate agents based on formal structures, I argued that any group creating such an agent intentionally must form themselves into an informally structured corporate agent in order to ensure consistency in the interconnected decisions they make. Thus, any formally structured corporate agent must exist in a close relationship with another informally structured agent, both of which may be considered part of 'the corporation'. In the final section I went on to argue that this example of an informal collective of 'owners' interacting with a formal collective entity is not the only complexity that is likely in large business organisations. Rather, it is just one special example of a more general phenomenon – that groups of individuals who fulfil roles within formal organisation structures can also form informally structured agents alongside the formal one. Sometimes these informal agents exert more influence than the formal structure and can come to dominate the behaviour of the corporation (of which they are part). Such a possibility is one way of understanding the notion of 'corporate culture' which is often invoked as a material determinant of corporate actions and outcomes. Therefore, a full picture of the generation of moral responsibility within large business organisations needs to appreciate the existence and interaction of a number of different collective agents within a single organisation. Typically at the centre of the organisation will be a single formally structured agent. But this will interact with, and in some cases be overridden by, the informally structured agent(s) generated by groups of individuals who fulfil roles in the formal structure.

### 32. *Non-Agential Moral Responsibility*

In the previous chapter I developed a model of corporate responsibility based on an analysis of business organisations as moral agents. In particular, I focused on the way that properties necessary for moral agency are generated by the structure of such organisations – both formal and informal. However, business organisations need not be moral agents. They might not be reflective in the necessary ways, and so not constitute appropriate subjects of moral responsibility. They may not even be intentional agents – for example, one way this could be the case is if they are not structured in such a way as to ensure consistent pursuit of particular values. As should be clear from the discussion in the last chapter, debate on collective responsibility generally and in particular on corporate responsibility in business ethics, has centred on such questions of moral agency. Whatever side of this debate is adopted, a basic assumption is that in order to be the subject of moral responsibility, an individual or collective must be an agent of the appropriate kind.

My aim in this chapter is to challenge this assumption and suggest a new way of arguing that there can exist a responsibility bearing, corporate entity distinct from the individuals that make it up. My strategy will be to argue that traditional approaches are mistaken in assuming that, in order for a corporation to be such an entity, it must be a moral agent. While this condition is sufficient for such a capacity, as I have shown, is not necessary. In its place I will suggest an alternative condition that, in fact, may be more easily achievable by corporations: that the entity in question is a *morally significant system*. In doing this I will set out the conditions that a corporation must fulfil in order to qualify as a system of this kind<sup>60</sup>.

While this conclusion is intended to be compatible with the existence of the kind of corporate moral agents described in the previous chapter, the existence of collective agents of this kind is a traditional point of contention in debate on collective moral responsibility. The account of non-agential responsibility I present here offers something of a compromise position between

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<sup>59</sup> Much of the material in this chapter is reproduced in my paper 'Corporations and Non-Agential Moral Responsibility' (Dempsey, 2013).

<sup>60</sup> I am not alone in arguing for the possibility of non-agential moral responsibility. Kenneth Shockley also makes such an argument (Shockley, 2007). His argument differs in important respects from mine, however. He provides a largely linguistic analysis of such responsibility, which differs from the substantive support provided by my discussion of morally significant systems. He also comes to quite different conclusions regarding the appropriateness of punishment resulting from ascriptions of such responsibility.



the two sides of that debate and the intuitions upon which their arguments are founded. These intuitions are implicit in common talk of corporate responsibility, yet they appear to be incompatible and so for many years have divided theorists of corporate responsibility. The first is that it is appropriate to ascribe responsibility to corporations, and (which is closely connected) to direct certain attitudes – such as praise, blame, or anger – towards those corporations<sup>61</sup>. Moreover, the intuition is that when we ascribe such responsibility and hold such attitudes we can understand this behaviour at face value. In particular, we are not thinking metaphorically, nor using such expressions as shorthand for expressions about a number of distinct individuals. Nor are we engaging in a kind of fiction that is instrumental to achieving some further end. This first intuition provides the impetus for accounts that argue for the existence of organisational agents that are distinct from the individuals that make them up, but that are similar to those individuals in the respects necessary to be a subject of moral responsibility (i.e. are moral agents). The second intuition, however, seemingly pulls in the opposite direction. It is that the only kinds of entities that can be full moral agents, and hence the subjects of standard ascriptions of moral responsibility, are individual human beings. The strength of this intuition has led to accounts of collective responsibility that either flatly deny that corporations can coherently be held morally responsible as distinct entities, or allow that they can be by distinguishing corporate responsibility from the kind we ascribe to individuals. These latter accounts appeal to metaphor or instrumental fictions to argue that corporations are agents of a different kind, that generate an analogue of moral responsibility that runs counter to the first intuition<sup>62</sup>. Although I have argued against the validity of this second intuition in the preceding chapter, a toned down version of it may still gain purchase. While it is not the case, on my account, that corporations can *never* be moral agents, there are clearly many cases when particular organisations do not satisfy the conditions for such agency that I have set out. In these cases, to the degree that adherents to the first intuition claim that applications of moral responsibility are appropriate, a genuine conflict still exists.

This new account is thus intended to provide a distinct theoretical explanation of corporate moral responsibility. I referred to this explanation in chapter three when I suggested that organisations could hold moral responsibility not just by *originating* moral agency, but also by *mediating* it. While I do not claim that this theoretical picture is employed consciously in the common way of thinking about such responsibility that endorses both intuitions, it provides a plausible account of the way that people with the intuitions I have described subconsciously

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<sup>61</sup> Indeed, the account of moral responsibility I have set out in chapter three makes these reactive attitudes an integral part of moral responsibility.

<sup>62</sup> For example, Velasquez (2003), as discussed in chapter four.

conceive of such situations. Moreover, it has practical implications. Corporate moral responsibility is rooted in the reactive attitudes that it is appropriate to direct at corporations; but it may go beyond such attitudes to providing an explanation and justification of the demands we place on corporations as a result. Yet if some corporations are not agents, it does not make sense to expect them to respond to these demands as agents. I will pursue this idea more in chapter seven, by suggesting how corporate responsibility can lead to obligations on the part of individuals who participate in, or interact with, that corporation.

### *33. An Example*

To develop my account of morally significant systems – what they are and how they can bear moral responsibility despite not being moral agents – it will be clearest to move away from talking about typical business organisations. Given that I have already argued that such organisations can be moral agents, it will help to focus my account of what a morally significant system is by taking an example that is more clearly not a moral agent. I will then bring this account together with the conclusions from the last chapter to show how business organisations may also be morally significant systems, and indeed may combine both elements of such systems and moral agency. To start this discussion, I will take three examples of statements that assign responsibility for events in the past:

1. The earthquake is responsible for devastating the city;
2. The man is responsible for assaulting the child;
3. The tax system is responsible for harming the disadvantaged.

While (1) is an obvious case of causal responsibility and (2) a case of the typical kind of moral responsibility assigned to moral agents, (3) does not obviously fit into either of these categories. My contention here is that (3) is an example of an ascription of moral responsibility to something (the tax system) that is not an agent. There are several immediate objections that might be made to this claim, which I will set out here before addressing each in turn:

- a. To the extent that we accept that (3) is an ascription of moral responsibility, we are also required to accept that ‘the tax system’ is a moral agent;
- b. While (3) is an example of an ascription of moral responsibility, it is reducible entirely to statements about individual humans – those that designed and operate the system;

- c. To the extent that the statement in (3) applies to ‘the tax system’ as a distinct entity it is, in fact, simply an ascription of causal responsibility similar to that found in (1) and thus has no moral content.

The three claims (a) – (c) are all objections to my claim that a non-agent (the tax system) can hold moral responsibility, thus I must make the case for why my account is the most appropriate to adopt (although it may be the case that we can endorse two or more of them at the same time). In doing so I will also develop a clearer idea of the kind of non-moral properties I take ‘the tax system’ to have in this example, and this will be important later for arguing that it is of a similar kind to corporations.

### 34. Systems

In order to address (a) I need to show that, whatever else is going on in the ascription of responsibility to the tax system, it is not plausible to suppose that the tax system is a moral agent. In doing this, I am also able to expand on the notion of a ‘system’ that is foundational to the account that I will develop. To recap, the conditions for moral agency that I set out earlier were, firstly, the possession of intentional agency. This I summarised as the consistent pursuit of value(s), sidestepping particular accounts of *how* value may be pursued – through the satisfaction of desires in light of beliefs, or through a planning process, for example. The second condition for moral agency was that it is *reflective*. This condition had two parts – the explicit endorsement of the values to be pursued, and the endorsement of a policy to be followed in the event that values conflict. In showing why systems, as I characterise them, cannot be agents of this kind I will also shed some further light on these ideas of intention and reflection.

I take it that the tax system is an example of the more general class of ‘systems’, the members of which have common characteristics. All systems will have inputs and outputs, and the former will be converted into the latter by the processes of the system which will be constituted by the internal structures of the system. Exactly what form these elements take will depend on the kind of system. So, for example, a mechanical system to sort mail into piles according to size will take inputs of piles of unsorted mail, its internal structure will consist in a mechanical filtering mechanism which through its operation will instantiate the process of sorting, and its output will be piles of similar sized mail. Likewise, the tax system will take inputs of information relating to the financial affairs of a population, its internal structure will

consist in a series of rules the following of which produces the process of calculating tax liabilities, and its output will be that final set of liabilities.

This explanation gives a central role to the idea of the system's 'structure'. I have already had a lot to say about the structure of organisations, since it featured prominently in my account of corporate moral agents. Indeed, the structure of systems can be explained in similar terms to the structure of corporate moral agents, and this explanation also serves to make clear the distinction between the two kinds of thing. To start with, let us return to the discussion of chapter four when I argued that the basis for determining whether some kind of collective entity could be said to 'exist', independently of the individuals that populate it, is the possibility of predicating certain properties to the collective entity that cannot be predicated to those individuals alone. The different accounts of collective action that have followed have allowed different properties to be predicated at the group level and hence the groups have affected the generation and distribution of moral responsibility in different ways. In Miller's model it was the possibility of group *actions* that allowed for collective – in the sense of interdependent – moral responsibility. In the 'corporate entity' model it was the additional possibility of predicating group attitudes to values and propositions that in turn enabled the pursuit of value to be predicated at the group level, and hence allowed corporate entities to satisfy the conditions to be intentional agents. Further, the possibility of the explicit endorsement of values at the group level, and the prioritisation of values in the case of conflict allowed group-level reflection sufficient to generate moral responsibility.

In the case of corporate entities, it was their structure that allowed them to possess the properties necessary for moral agency. Following French, I divided aspects of formal corporate structure into three kinds – an organisation chart; a decision making structure that specifies how decisions within the organisation should be made (which decisions are subordinated to which, the individuals or groups that have authority to make decisions, and the mechanism by which those decisions should be made, for example); and a set of conclusions that are embodied in 'corporate policy' and are considered relatively fixed for the purposes of all other decision making. In informal structures the first two features are present, although they are fluid and implicit in the deliberations of the group; the third, corporate policy, is by definition particular to formal structures. The question of how the existence of a structure such as this allows the predication of group attitudes to values and propositions, and the explicit endorsement and prioritisation of values by the group, I answered with reference to Gilbert's theory of 'plural subjects' and the work of List and Pettit on group agency.

A particularly important additional point must be noted with respect to formal structures. As I argued in the previous chapter, a formal structure must be established somehow, and this requires input from a source other than the corporate entity which supervenes on that structure – that entity cannot act until the structure which enables it exists. Once the formal structure *does* exist, it may in some cases be possible for the corporate agent which supervenes upon it to act in such a way as to alter that formal structure. Whether this is possible or not depends on the form that the initial structure takes, and how much leeway it allows for certain propositions to be introduced for group deliberation. For example, imagine a corporation whose founders set it up by establishing an organisation and decision making structure, and an initial set of values to guide those decisions. It may also be consistent with this structure that future members of the organisation make decisions that serve to alter either the organisation chart, or the way that decisions are made, or the specification or prioritisation of values.

Notwithstanding this possibility, to the extent that the features of the formal structure are rigid and do not allow for it to be altered by future decisions taken by that entity through the members of the group, there is no sense in which the fact that the structure has certain features can, in and of itself, allow the predication of certain properties at group level. To see what I mean by this, let us return briefly to the example of the bank that I set out in the last chapter. Recall that when the founders of the bank established a formal structure, they wrote the dominance of the value of profitability into corporate policy. Imagine that the organisation structure and decision making process was set up such that it is not possible for a corporate decision to be taken, through the mechanisms of the formal structure, to alter company policy. The corporate entity that supervenes on the formal structure is thereby constrained to pursue profitability in any situation, and no decision taken by the members of the organisation that populate the formal structure can alter this. In this situation, it would be false to say that the formally structured entity has *formed* an attitude on the value of profitability, much less has it formed one reflectively. Rather, the value of profitability is imposed on it from the outside and simply serves to constrain its activity. Thus, when the bank needs to determine whether to offer a loan or not, the need to pursue profitability will constrain the decisions of the individuals that populate its organisation. The ultimate decision to approve the loan or not will still rightly be ascribed to the bank itself, since the formal structure of the bank removes that decision from the attitudes of the individuals deliberating on behalf of the bank. This is the crucial point. The corporate entity does not *form an attitude* on the value of profitability, yet a need to pursue profitability constrains its actions and so is instrumental in determining the

attitudes it does form, in this case on whether to approve a loan or not. But the fact that the formal structure constrains the organisation to pursue one value does not allow us to say anything about the organisation's attitude to that value. And this is true despite the fact that this constraint materially affects decisions that the organisation makes, decisions which *do* allow us to predicate certain properties (e.g. actions such as the approval of a loan) to that organisation.

It is now time to bring this discussion back to the topic at hand – that of defining what I mean by a 'system' and differentiating it from the kind of agents that I was discussing in the last chapter. A system, in the sense that I understand it, is just a form of organisation with a particularly rigid formal structure. Two features of a system are particularly important: (1) the majority of decisions that are relevant to the operation of the organisation have had their conclusions 'fixed' in the equivalent of the system's corporate policy, and (2) there is no mechanism embedded in the formal structure by which the individuals populating the organisational roles within the system can alter these conclusions. When I say 'the majority' of decisions relevant to the operation of the system are fixed, I should be more specific. In particular, all decisions to do with value have been fixed, whether decisions on which values to pursue, or if relevant specific endorsement of particular values and their prioritisation in the case of conflict. Some conclusions regarding propositions about the state of the world may also have been fixed, but not necessarily all of them. Take the mail sorting system I described earlier. Its value system, such as it is, consists in valuing the organisation of mail into piles according to size, and is a fixed feature of the system. What is not fixed, however, is the attitude that the system takes to each piece of mail that it encounters. It is able to form an attitude regarding the size of each piece of mail and it then possesses the ability to act on this new information, according to the constraint it has been put under by the values it has been given, to sort the mail into piles.

It is true that it seems a stretch to call this mail sorting system an 'organisation' in the sense of an organised group of individuals. However, I think the title is appropriate since what the mail sorting system instantiates is simply a very extensive and rigid organisational structure that is of a kind with the formal structures encountered in human organisations. In fact, one way of understanding the mail system is simply as a human organisation where the humans have put in place automated mechanisms to undertake their activity. Where the number and kind of decisions that are fixed within an organisation are extensive, and those that are left open are

fact-oriented, we now often find we have the technological capability to put those remaining decisions in the hands of machines.

The nature of a system is now a lot clearer<sup>63</sup>. Apart from providing such clarity, this discussion was also intended to address an objection to my initial claim that ‘the tax system’ could be an entity that bears moral responsibility despite not being a moral agent. While, as yet, I have not said enough to support this conclusion, I have made it part way there by providing enough evidence to show that the tax system is not a moral agent. Firstly, the tax system can reasonably be understood to be a system of the kind I have described. While the mechanisms of the tax system undoubtedly act in order to promote certain values, those values are not generated by the system itself. Nor is it the case that mechanisms exist such that the individuals that occupy positions within the organisational framework of the tax system could change those values by acting in a way that was in line with its formal structures. In other words, the formal decision making processes do not allow this, and thus those individuals have no authority to do so. Rather, the tax system is subject to strict control by external agencies, in particular by politicians and political parties. Most of the conclusions that must be drawn in order to collect and distribute tax are taken externally to the system and imposed upon it. Those that remain simply relate to collecting sufficient factual information in order to pursue pre-determined goals effectively. This is the equivalent to the mail system measuring the size of letters.

Of course, the kind of information that the tax system must collect is a lot more complex, and in many cases judgement may need to be exercised in order to collect and evaluate it. For this reason, it will not be possible to automate the tax system completely and significant elements of human intervention may be needed. Nonetheless, it fits the criteria for being a system that I have set out – the only properties that can be predicated to the system as an entity are (1) factual beliefs, and (2) actions taken in light of those beliefs and goals that have been imposed upon it externally. As such, the tax system as a system is not a moral agent; it is not even an intentional agent. The table below summarises this conclusion by showing the kinds of attitude that a group entity must be able to form in order to count as being of a certain kind:

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<sup>63</sup> It is worth noting the similarities between this analysis of systems and the notion of a ‘formal organisation’ as used to describe the functioning of certain types of collectives, particularly bureaucracies. On this see Ladd (1970).

<i>Attitude</i> <sup>64</sup>	<i>Type of Entity</i>		
	System	Intentional Agent	Moral Agent
Beliefs about the world	Yes	Yes	Yes
Implicit attitude on value to pursue	No	Yes	Yes
Explicit attitude on value to pursue	No	No	Yes
Prioritisation of conflicting values	No	No	Yes

A final point of clarification is required with respect to this table, and it is one that relates to the distinction between a system and an intentional agent. It may not have been entirely clear to this point how the two types of organisational entity should be distinguished, but the table above helps to rectify this. Systems, I have said, act on the basis of beliefs they form about the world in line with constraints that are imposed on them externally as to what values they must pursue. Intentional agents, meanwhile, act in pursuit of values but ones that they do not explicitly endorse (unless they also possess features of moral agency). It would be easy to conclude that there is not much difference between a corporate entity having values imposed on it externally, and acting in pursuit of values that it does not explicitly endorse, and indeed this way of describing things is somewhat unclear. The important difference between the two is that an intentional agent is still capable of forming (and does form) attitudes which incorporate the implicit endorsement of values, even though it is incapable of reflecting explicitly on those values.

To illustrate this point consider a completely different example. Imagine I have a dog that loves to fetch sticks that are thrown for him. I also have a robot that has been programmed to detect when an object, such as a stick, is thrown and to retrieve that object. The dog, on my account, would be classified as an intentional agent, while the robot would be a system. This difference depends on the attitudes that each forms upon seeing / detecting the stick being thrown. The dog's attitude would include at least two factors: the fact that the stick had been thrown, and a desire to fetch the stick or expectation of enjoyment at fetching the stick or some other impulse towards fetching the stick. The second part of this attitude may be hard to

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<sup>64</sup> The ability to form the final two attitudes, 'explicit attitude on value to pursue' and 'prioritisation of conflicting values', together constitute the capacity to engage in reflection which, as I have argued in §26, is the basis for corporate moral agency.



capture precisely (as we saw earlier with the competing accounts of intentional action). Exactly how it manifests itself in the dog is not terribly important, but the general idea is clear – there is a sense in which the value of fetching the stick is implicit in the attitude that the dog forms upon seeing it thrown. The important difference is that the robot’s attitude would only include one factor: the fact that the stick had been thrown. Both the dog and the robot would then act in similar ways, by fetching the stick, but only one – the dog – would do so because of an impulse generated by the attitude it had formed. The robot would act on an impulse that had been generated by constraints imposed upon it externally, namely the constraint that it should fetch sticks. While in one sense the value of stick-fetching is embedded in the robot, it is not something that *the robot values*.

### 35. *Systems as Subjects of Responsibility*

Having characterised systems in this way, I now have to explain how organisational entities that have the features of a system may be held responsible. To do this I will continue to focus on the example of the tax system with which I started. I will show how such a system can be predicated sufficient properties to allow it to be held responsible as a distinct entity, despite it only being able to form attitudes over factual propositions, as illustrated in the previous section. In order to do this I will have to introduce an additional model of collective action. So far I have considered two such models, broadly speaking. The first was Miller’s account of joint action whereby each individual performed a contributory action while expecting others also to perform contributory actions, and while having in mind an end that could only be achieved by the combination of these actions. The second was the broad account that underpinned the discussions of Gilbert, French, and List and Pettit, which I have argued is one based ultimately on the notion of group structure. On this account there is more to the collective action than simply the achievement of a joint goal that could not be reached individually. There is also the possibility of group attitudes being formed which requires structure of the kind described.

However, as the last section illustrated, the kinds of attitudes that can be predicated of systems are – on the structural model of group action – very limited. Systems are much more limited than moral agents in this respect, and as such are not able to form the kind of reflective attitudes to value that are necessary to generate moral responsibility, at least on the standard agential understanding of such responsibility. It is therefore necessary, if I am to support my claims about the possibility of non-agential moral responsibility, to develop a new model of how collectives can possess properties distinct from the individuals that comprise

them. In a sense this is a new model of collective action, although the account I will provide is quite different from the two I have considered so far. My aim, broadly speaking, is to be able to predicate properties to collectives that satisfy the criteria of systems. In particular, I want to be able to predicate a kind of ownership of outcomes that the system produces. This ownership will satisfy the conditions for moral ownership that, I have argued, is central to moral responsibility.

The key to the account I want to develop lies in understanding better how systems, such as the tax system, are created and in particular the effects of imperfect knowledge on the part of those who create them, and uncertainty in the effects they produce. The process of system creation is, in cases such as the tax system, a complex and ongoing one. Initially, the structure of the system will be established by the initial creators in a way that specifies how informational inputs are processed into outputs of tax liabilities<sup>65</sup>. As the system begins to operate, however, an additional creative process will come into effect. In part this will reflect the occurrence of situations not predicted by the initial creators and therefore not incorporated into the original rules; in part it will result from the way that rules are interpreted which, over time, effectively results in the replacement of the original rule with a new one<sup>66</sup>. The result of this complexity of rule creation is twofold. On the one hand it will often be impossible to determine, for any particular rule, how given individuals should be held responsible for its existence and operation; on the other hand, it will also be impossible to establish exactly the final effect that any rule has on the output of the whole system. This analysis of the tax system is supported by Will Hutton, writing in the Observer newspaper, who describes 'the cumulative impact of the budgets of our post war chancellors' as resulting in a tax system 'riddled with exemptions, cliff-edge withdrawals of allowances, wild step-changes in effective tax rates and irrationalities that hold back investment and enterprise' (Hutton, 2012).

In this way, the system as an entity becomes decoupled from the way it is created such that, in the case of resultant injustice or unfairness, we are unable to capture the full meaning of the responsibility that we want to ascribe by focusing only on the sum of individuals engaged in the creative activity. Whatever we can hold them responsible for, jointly and severally, is

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<sup>65</sup> Here 'initial creators' should be understood to include any individual or group agent that intentionally creates or alters the structure of the system. As such, the distinction I am drawing here is not between system creation undertaken by an 'ownership' group and that undertaken by other agents associated with the system (on which I focused in the last chapter). Rather, I am interested in the distinction between structural changes intentionally undertaken by agents, and those that occur for other reasons.

<sup>66</sup> This process should not be confused with the normal operation of rules that require an ineliminable element of judgment to implement.

insufficient to capture the full meaning of (3), above<sup>67</sup>; in this way a ‘remainder’ of ownership is established for the outcomes in question, one that properly resides with the tax system itself, as a distinct entity. To put the point in straight forward terms – there is a part of the outcome which is, irreducibly, an outcome attributable to *the system* as a distinct entity.

To this point I have made what is, essentially, an intuitive argument for the idea that outcomes can be attributed to systems as distinct entities. However, underlying this argument is a more theoretical point. This point is important since it allows me to return to the idea I started with, which is that systems may be held responsible because of properties that it is possible to predicate to the system itself. The basic property that is doing the work in the argument I have made is one of *complexity*. The system as a distinct entity may possess this property. To understand the exact nature of complexity it must be explained in epistemic terms. An important idea here is that humans are intrinsically limited in their capacity to gather and process information. This phenomenon has been described as ‘bounded rationality’ (Simon, 1957), and has been applied specifically to questions of moral reasoning in business organisations by Dunfee and Donaldson, who talk of the idea of ‘bounded moral rationality’ (Donaldson & Dunfee, 1999). Once a system’s structure develops beyond a certain size, where this is measured by the number and complexity of the rules that it instantiates, it will exceed the ability of any given individual or group agent to understand fully. In other words no agent that may introduce or change a rule, or operate an existing rule, will be able to know fully the implications of their actions<sup>68</sup>. A system possesses the property of ‘complexity’ once it exceeds the limits established by bounded rationality, limits specified in these epistemic terms. This elucidation of the property of complexity both justifies the claim that the outcomes of systems may not be entirely reducible to outcomes that can be attributed to individuals, and also justifies how ‘ownership’ for these outcomes may accrue to the system itself. With this explanation in mind, consider again the example of the UK tax system, above. My argument supports the view that the system evolved in irrational ways, not due to faults on behalf of those who implemented changes and operated the system (although such faults may also have existed) but because those individuals were epistemically limited in ways which prevented them from understanding fully the changing social context in which the system was

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<sup>67</sup> It is a process of creation such as this that Werhane *op. cit.* points to in the context of corporate organisations to establish a distinct corporate moral responsibility. I will also draw on this analogy, although my analysis differs from that of Werhane who classes such corporations as ‘secondary moral agents’.

<sup>68</sup> This point introduces the idea of bounded rationality applying both to individual and group agents. While the limits will plausibly vary by agent and type of agent, the details are not important to the general point.

embedded, and the impacts of their actions in light of these changes and the operation of systemic complexity.

This point can be further illustrated with an example of another system: the stock market. In its basic form the system underlying the stock market is quite simple, allowing equities in public companies to be bought and sold, and in the process establishing the price of those equities. However, if we expand the definition of ‘the stock market’ to include all those trading systems, human and electronic, established by market participants to predetermine trading behaviour, then this broader system exhibits the same complexity that decouples its overall operation from the actions of any given individuals that design or operate it<sup>69</sup>. Take responsibility ascriptions such as ‘the stock market was responsible for the recession and the consequent loss of jobs’; insofar as we can offer an analysis of this statement its ascription of responsibility will not be adequately accounted for by holding individuals responsible. There will be a remainder, and it will accrue to the stock market – the system – itself<sup>70</sup>.

### 36. *Morally Significant Systems*

I have to this point been somewhat equivocal with regards to what it means for a system, as a distinct entity, to acquire responsibility for an outcome that it occasions. In particular, I have not explained how a system may be held *morally* responsible, despite being complex in the way I have just described. In other words the statement about the tax system with which I started is clearly claiming a causal relation between that system and the harm accruing to the disadvantaged; perhaps being a complex system is sufficient to give the collective entity a distinct causal role, but without any moral implications. For example, it might be possible to think of complex systems as simply instantiating a particular variety of collective action problem. In other instances where collective action problems occur, we think their effects suboptimal, but we do not direct moral criticism at the circumstances which led to the problem<sup>71</sup>. At least on face value, however, it appears that it is natural to ascribe a moral role

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<sup>69</sup> On this see Anderson (2011).

<sup>70</sup> It could be objected that the remainder of responsibility should not accrue to the system itself, but rather to other individuals who are in a position to influence the system or its consequences; in a democracy, this might stretch as widely as the voting population. However, the point is that it is the uncertainty with which the actions of any individuals are translated into the working of the system that generates the remainder and requires its reassignment. Identifying more individuals that might be held responsible does not answer this challenge.

<sup>71</sup> To illustrate this point, consider Hardin’s famous example of ‘the tragedy of the commons’. A situation arises in which it is individually rational for each individual to act in a way which is irrational when

to the system. We might imagine, for example, a politician standing up in parliament and making a statement about the injustice of the system. What would be clear here is that she is *blaming* the tax system, and is not simply pointing out an interesting causal connection, blame that is *deserved* by that system on the basis of the harm it causes. She is finding the tax system morally responsible.

Nonetheless, it might still be objected that to the extent that it is *the system* that is being held responsible, it is only causal responsibility that is relevant. Any moral content is directed at those individuals responsible for creating and operating the system, and the complexities of the system simply serve to obscure this fact. To see that this is not the case, and that it is entirely legitimate to ascribe moral responsibility to the system, it is necessary to return to the conditions for moral responsibility that I set out in chapter three and to see how the role of complex systems in mediating action is different from the role that standard collective action problems play in shaping the outcomes of collective activity. A system is morally responsible if it deserves to be held morally responsible, and such desert is generated when the subject of responsibility stands in the relation of 'moral ownership' to that for which they are held responsible. This relation is generated either by the exercise of reflective agency or, as I suggested in chapter three, by the *mediation* of reflective agency. It is the latter relation that is relevant in the case of complex systems.

In order for a system to hold the kind of non-agential moral responsibility I have described three conditions must be satisfied. The first is that it must be a system as set out above. It must take set types of input and through the application of a rule-based structure produce outputs of a certain type. Importantly, the rule-based structure eliminates the possibility of the system forming attitudes on values either explicitly or implicitly. The second condition for non-agential moral responsibility is that the system is sufficiently complex to generate a remainder of responsibility that cannot be properly assigned to the creators and operators of that system; in other words the system itself acquires at least partial ownership of the outcomes it occasions. Finally, the third condition is that the system is the product of the actions of moral agents. While the important remainder of responsibility ultimately accrues to the system itself, it is only because it is a system created by and operated by moral agents that moral responsibility is generated in the first place. One way to look at this third condition is to think of ownership for outcomes transferring from individuals to the system itself once that system

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viewed at the collective level. While this situation is bad for everyone, part of the 'tragedy' is that it occurs despite the fact that no apportionment of blame is appropriate (Hardin, 1968).

reaches the necessary level of complexity. It is only when individuals exist with moral ownership themselves that they may transfer it to the entity that is the system.

The first two of these conditions I have argued for already, but the third is new and it is this that sets complex systems apart from traditional collective action problems. To start with, consider the difference between systems created by humans (as moral agents) such as the tax system and others to which moral responsibility does not accrue. An example of a system that is not susceptible to ascriptions of moral responsibility would be the climate system that produces the weather of a given region, even though such systems can generate huge harms for humans. The relevant distinction between the two types of system is that the one is created by the actions of moral agents and the other is not. The reason that some systems accrue moral responsibility is that such responsibility is generated by the collective operation of moral agents, but it is not possible to distribute it in its entirety to those agents. The system that the collective operation generates must itself account for the remainder. Where there is no generation of responsibility in the first place (such as in the case of the climate system) there is no remainder of responsibility to allocate. I will use the term 'morally significant system' to identify those that are created by agents and that can accrue responsibility in this way. This explanation provides external support for our practice of holding certain systems morally responsible. Importantly, traditional collective action problems, such as Hardin's 'tragedy of the commons' noted above, are *naturally occurring*. The coordination challenges that arise from a situation such as this, where a course of action is individually rational but collectively irrational, are not *created* by humans, although they necessarily *refer* to humans. Conversely, the coordination challenges arising from a complex tax system are entirely the result of the human actions that created that complexity in the first place. They thus generate moral responsibility, although not of a kind that can be fully distributed to individuals.

It may be objected here that the reason it makes sense to ascribe moral responsibility to systems created by moral agents is not because those systems have accrued a remainder of responsibility, but because in doing so we appeal to individuals who are in a position to influence those systems and make the necessary changes. In response I again appeal to my explanation of what moral responsibility *is* – that it is based in the appropriateness of directing reactive attitudes at a subject on the basis of what that subject deserves. Morally significant systems are blamed (and praised) in their own right, as the tax system example illustrates. Moreover, such reactions are deserved on the basis of the contribution that the complex operation of the system makes to the end result, distinct from the identifiable contributions of

any individuals who either design or operate the system. I am not denying the sense of appealing to individuals who are in a position to influence the system; I am only denying that ascriptions of moral responsibility to the system are made on this basis.

### 37. Corporations as Morally Significant Systems

To this point I have focused on establishing that morally significant systems can hold non-agential moral responsibility. The point of this chapter, however, is to show that corporations can hold such responsibility. In order to achieve this aim the final link in the argument must be to show how corporations can be morally significant systems. At the moment my aim is to show how a business organisation may be *only* a morally significant system, and the example I provide is intended to achieve this. However, as in the previous chapter, it is important to acknowledge that real business organisations are unlikely to conform to such a simple model. In the next section I expand upon the idea of business organisations incorporating a number of different models of collective action and collective responsibility by showing how morally significant systems may coexist with collective moral agents within the same organisation. For now I focus on the simple case.

To make this argument it will be sufficient to show that business organisations fulfil the three conditions for being morally significant systems – that they are systems in the sense set out, that they are complex, and that they are created by moral agents. The third condition is quite obviously fulfilled, so the task will be to develop an example of a corporation that is a complex system. Here I do this by developing the case of the bank from the last chapter. To satisfy the conditions for being a system, the bank must be founded on a formal structure. Moreover, this formal structure must be *extensive* and *rigid*. In other words, it must contain a high proportion of pre-established conclusions so leaving little room for the system itself to form new attitudes (and these attitudes must only be possible over factual as opposed to value-based propositions); and it must not be possible for the system to form attitudes which serve to alter that structure. To develop the bank example more fully, we can start by recalling the situation in more detail. Black, White and Green have decided to set up a bank, and have decided that the organisation that they will set up to allow the bank to operate will have a formal structure. In the previous chapter I set out some of the elements of this structure that the founding group may establish, and below is a summary of what a simplified structure may look like once it is in place. I make one change here for the sake of clarity, and this is that the founders of the formal organisation do not operate it themselves. Rather, they appoint employees who will

occupy roles within the organisation as 'loan arrangers'. While the organisation may start out relatively small, over time as it is successful it grows until it employs many loan arrangers spread out across communities throughout the country. We can imagine that the rules that constitute the bank's formal structure are as follows:

- i. The organisation will consist of 'loan arrangers';
- ii. Loan arrangers are responsible for implementing any decisions they make with respect to issuing loans;
- iii. The decisions taken by a loan arranger must be in pursuance of corporate values;
- iv. Such decisions must also conform to the bank's 'definitions of key terms';
- v. All corporate decisions must be in pursuance of the value of profitability;
- vi. If a decision conforms to conditions of profitability, then it meets the standards for a corporate decision;
- vii. Profitability is promoted when the expected discounted value of payments made to the bank resulting from the loan exceed the total costs of issuing the loan.

Loan arrangers are thus charged with making profitable loans. We can imagine that when this formal structure is set up a profitable loan is, for the most part, one made to someone who can afford to repay it without pushing himself past some reasonable measure of financial comfort. This is true even though most loans are secured on an asset such as a house, since the process of forcing the sale of such assets to reclaim the value of loans that have defaulted is time consuming and costly in its own right, and so in practice is seldom pursued. However, imagine that over time there is innovation in the way financial markets work and the model for making loans changes. Now, rather than banks making their money from the payments borrowers make on loans, they sell the right to those returns (and the risk of default) on to third party investors. They now make their money from the fee they receive from investors. In this new world, the profit calculation for the bank has changed. Loan arrangers are still charged with making profitable loans, but now the likelihood of borrower default is a much less significant factor in profitability – the banks get their profit up front by selling the loans to investors, who then take on the risk of borrower default. Rather, the availability of investors to whom the loan may be sold has come to dominate<sup>72</sup>. Let us assume that the investment

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<sup>72</sup> This is, in a simplified sense, exactly what happened in the run up to the financial crisis that started in 2007. The process of packaging and selling on loans is known as 'securitisation' and has been blamed,



market is buoyant, and that as a result loan arrangers focus on making more and more loans, and start lending to people who really cannot afford to repay them while maintaining any sensible level of financial comfort.

More people get into financial distress, more default on their loans, and more have their houses repossessed. These are not effects that could easily have been predicted by the founders who created the bank's structure, and the loan arrangers are constrained to pursuing the most profitable course of action by that structure which they cannot alter<sup>73</sup>. This is a basic form of complexity, where changing conditions result in rules creating unexpected effects. Further complexity results from the potential for rules to be interpreted in different ways. Imagine that the country is divided into a number of quite different communities. One of these communities is particularly close-knit. Loan arrangers in this community realise that the bank is gaining a bad reputation for lending to people who cannot afford it, and this is having a detrimental effect on business. They start to take the view that the cost of issuing such loans includes the expected long term reduction in business that this practice will bring about. For this reason, they tighten their standards of lending to their pre-innovation levels. Over time, loan arrangers move around the company from area to area, and it becomes standard practice to apply these different standards in this one community. The bank is now in a situation where it is applying different standards, with respect to a loan applicant's ability to repay, based on which community that applicant comes from. This again, is not a consequence that could reasonably have been foreseen by the founders who created the organisation's rules, nor even by the loan arrangers who were trying to apply them faithfully in the situations in which they found themselves.

Suppose in this case, however, the founders of the organisation decide to step in. They introduce a new rule that is designed to standardise the organisation's approach to making loans by increasing lending standards across the board. It recognises the value of ensuring customers' 'financial wellbeing' and says that in order to promote this value no loan should be made where the estimated chance of default is over 5%. This rule itself, however, could easily have unpredictable results. Given that it is hard to quantify the chance of default for any given loan, success against this criterion would best be determined by the actual default rates

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amongst other things, for the sharp fall in the quality of loans being issued. This was particularly true in the US 'sub-prime' market, which formed the epicentre of the crisis.

<sup>73</sup> In this case we may think that the founders should step in and change the structure, assuming that they continue to take an active interest in its operation. This may well be the case, but here I am concerned with the activity of the system itself, as the basis of a business organisation. I consider the more complex case in the next section.

observed across all loans. But this aggregated figure may mask considerable inconsistencies across individual loans. The new rule may also result in inconsistent local practices similar to the one it is designed to eliminate. For example, imagine that in one of the other communities in the country it is considered socially unacceptable to default on a loan. If an individual is in danger of defaulting, it is standard practice for their family to step in and prevent this happening. In this community it is still possible for loan arrangers to make loans to people who cannot afford them (and that are detrimental to their financial wellbeing), while knowing that actual default rates will remain low.

In summary, this example of the bank illustrates two things. It illustrates that it is perfectly possible for it to operate as a loan-making business while satisfying the criteria for being a system of the kind I have described. It is based upon a set of rigid rules that constrain it (through constraint of the loan arrangers that populate its structure) to forming attitudes only on factual propositions about profitability and default rates. It is certainly the case that this involves the use of judgment on behalf of these individuals, but this should be expected in the analysis of complex factual propositions. The values that the bank pursues are not *its* values since it forms no attitudes on them, explicitly or implicitly, but rather they take the form of external constraints on its activity. Moreover, the system exhibits complexity insofar as it produces outcomes that, given bounded rationality, would not be foreseeable by the agents that create and operate the system. Some of these outcomes have been described above – differential treatment of borrowers from one community, based on their membership of that community; the changing attitude that the system takes to the risk of borrower default as a result of financial innovation. While this example is quite straight forward, it serves to illustrate even at this level how a business can operate as a complex system. Given that the business is also created by its founders, moral agents, it satisfies the three criteria for being a morally significant system. Insofar as the outcomes of the system are not wholly attributable to individuals for the reasons set out, and insofar as these outcomes are morally significant, the system as a distinct entity assumes moral responsibility for them.

### *38. Complex Models of Corporations*

I have now developed an account that explains what a morally significant system is, how it can hold moral responsibility despite not being an agent, and how business organisations may satisfy the conditions to be such systems. However, as discussed in the previous chapter, business organisations are not typically this simple. There I set out an account of a complex

business organisation that is based around a formal structure, but where this structure is constructed and amended by agents based on informally structured groups associated with the corporation. One such group consists of the founders of that corporation, but others are based upon collectives formed by individuals who hold official roles in the formal structure. In this way a complex account of moral responsibility generation can be constructed. The formally structured agent could act in such a way as to be held morally responsible, but equally so could the informally structured agents. One particularly significant way in which the latter could act is by amending the structure of the formal agent. Given the development in this chapter of the idea of a morally significant system, and the explanation of how it is a kind of formally structured organisation, it should be clear that it is quite coherent to imagine a complex business organisation that incorporates distinct collective entities where at least one of them is a morally significant system. Such a case would not be very different from the model of the complex business organisation developed earlier; the only difference would be that the formally structured collective at the centre of the organisation would be more constrained in the attitudes that it could form, such that it could not form attitudes on values, or attitudes that would enable a change its own structure. It would be a morally significant system rather than a moral agent.

To conclude this chapter it is worth summarising the different kinds of organisational entities that I have discussed, what features they have (particularly with respect to the generation of moral responsibility) and how they may relate to each other. This detail is captured in the following table:

Possible Features	Type of Group			
	Individual	Unstructured Group	Informally Structured Group	Formally Structured Group
Agency	Yes	Yes	Yes	Yes
Beliefs about the world	Yes	No	Yes	Yes
Implicit attitudes to value	Yes	No	Yes	Yes
Explicit attitudes to value	Yes	No	Yes	Yes
Prioritisation of values	Yes	No	Yes	Yes
<b>Possible Status</b>				
Agent	Yes	Yes	Yes	Yes
Intentional agent	Yes	No	Yes	Yes
Moral agent	Yes	No	Yes	Yes
Morally significant system	No	No	No	Yes

In summary I have considered individuals and the kinds of collectives that they may form, of which there are three broad kinds – those without any structure, those based on an informal structure, and those based on a formal structure. All of these types of group may act, in the sense of having actions predicated at group level, and hence all are capable of holding the status of agents in their own rights. This is the only significant property that unstructured groups may hold. Structured groups, on the other hand, are capable of forming attitudes to propositions – both about facts and about values – and so they are capable of being intentional agents (possessing beliefs about the world and implicit attitudes to values) and moral agents (in addition taking explicit attitudes to values and their prioritisation). Moreover, formally structured groups are capable of capturing pre-determined conclusions to certain questions, imposed externally, within their structure in the form of ‘policy’. This means that such groups may be constrained by factors (such as attitudes to value) which do not *belong* to them. This allows formally structured groups to hold an additional status, that of a morally significant system.

An important point to make about all of this is that no group of individuals, who come together for a certain purpose such as to engage in business, *necessarily* possesses these properties. Therefore we might call something a business organisation even though it is not

organised coherently enough to be more than just a collection of individuals who, perhaps, sometimes act as an unstructured group. In complex organisations where different groups operate at different levels of the organisation, some will likely have formal structures, some informal structures, and some will be largely unstructured. The result will likely be messy and hard to analyse. This, I suggest, is another reason why questions of moral responsibility in business organisations have been so hard to answer, and in many cases so hard even to articulate. Not only is moral responsibility generated by various collective entities that exist within the broader organisation, and by individuals, the picture is further clouded by the possible existence of collective entities that do not hold a status sufficient to generate moral responsibility, but that can act and affect outcomes nonetheless. What my analysis has shown is not how to create a neat account of moral responsibility in the context of business organisations. Rather it has shown that we must accept that layers of collective action and collective responsibility present challenges to analysis that may be hard to overcome, even though ignoring them will result in implausible models, which is even less desirable.

## CHAPTER VII. INDIVIDUAL RESPONSIBILITY IN CORPORATIONS

### *39. Individual Actions in Collective Activity*

My aim so far has been to identify ways in which groups, particularly business organisations, generate moral responsibility and what the subjects of responsibility ascriptions should be in these cases. I have focused particularly on how collective properties generate moral responsibility and establish collective entities that may bear it. In this chapter I am interested in how individuals that populate business organisations may be found individually responsible for their actions. As set out in chapter four, the properties that generate collective level moral responsibility supervene on certain actions of individuals. I will label such actions ‘contributory actions’. While not all the actions taken by individuals who are members of organisations will be contributory actions of this kind (they may, for example, not be acting in line with conditions specified by corporate policy) many will be. From the individual perspective it is the possibility of performing, and being responsible for, contributory actions that is the most significant moral upshot of the existence of business organisations. For this reason my analysis in this chapter will focus on identifying and clarifying the varieties of contributory action that individuals may perform in generating the kinds of collective responsibility set out in chapters five and six.

There will, of course, be further questions that must be answered before any *particular* ascription of individual moral responsibility may be justified: what obligations or permissions to act does the organisation member have in a given situation? Are there other factors that could mitigate negative ascriptions of responsibility? I will not try to answer all the questions of this kind that may arise; I will only look to identify the relevant actions of which they may be asked. Nonetheless, this framework by itself has important implications. Often, the fact that moral responsibility can be ascribed at an irreducibly collective level is taken to imply that individuals who form part of that collective can be absolved of any individual blame. By illustrating the nature of contributory actions I aim to show the various ways in which individual responsibility may be *derived* from ascriptions of collective responsibility, even when responsibility at the collective level cannot be reduced to, or distributed to, the individual level<sup>74</sup>.

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<sup>74</sup> The move from collective level responsibility to individual responsibility does not change my focus on backward looking responsibility, and insofar as I talk of ‘moral responsibility’ it should be understood in this way.

#### 40. *The Relation between Collective and Individual Moral Responsibility*

I am interested in identifying kinds of individual action that contribute to generating collective level properties and hence collective moral responsibility. This will require me to specify the links between individual actions and collective properties. Given, however, that my ultimate interest is in moral responsibility, both collective and individual, the question also arises as to the links between the moral responsibility that may be ascribed to an individual for their part in collective activity, and the moral responsibility that resides at the collective level.

As I outlined in chapter four, the relation between the properties of individuals and those of a group is one of supervenience. This means that the group level properties are entirely *determined* by those at the individual level, in the sense that it is necessarily the case that if the lower level properties were to be replicated exactly in another case, the higher level properties would be replicated as well. This is not to say, however, that the group level properties are *reducible* in any meaningful sense to the individual ones, since there may be various configurations of lower level properties that will result in the production of exactly the same higher level properties. Nonetheless, it does make sense to say that the group properties come about *because of* the properties of individuals.

The relation between moral responsibility at the individual and group levels is not of this kind, however. To see why, recall the different models of moral responsibility that I set out in the preceding chapters. The first applies in cases of joint action, as set out by Miller, where responsibility accrues directly to the individuals who are parties to the action. What each individual may be held responsible for requires reference to a property at the collective level – the joint action that none could undertake individually – but the responsibility only comes about as a result of each individual's reflection on their participation in the action, and accrues directly to them. The second model applies in cases where organisation structure allows the group to possess properties such as intention and reflection, and hence constitute a distinct moral agent. In these cases responsibility is generated irreducibly at the group level. Lastly, the third mechanism (which applies to morally significant systems) involves a collective entity being ascribed responsibility that is generated by the individual actions of its members. In none of these situations is it true that a group entity is responsible *because* individuals are responsible, or vice versa, although the reasons for this are different in the three cases.

To start with, take joint actions. Here the only kind of responsibility that is present, as Miller sets out, is 'interdependent individual responsibility'. Individuals generate their own responsibility directly, albeit interdependent with the responsibility of others. This is because it is each individual who intends to pursue the collective action, and reflects upon this choice in a way that generates moral responsibility. Therefore there is no question of him being responsible *because* the collective is responsible<sup>75</sup>. The situation where responsibility is generated at the collective level through the operation of collective moral agents is more complex. In such cases it may well be true that both the collective itself is morally responsible, and so are its individual members. However, the collective would still not be responsible *because* its members are. This is because the property of being morally responsible at the individual level is not one upon which group level properties depend. Therefore it would be incorrect to say that the moral responsibility of the collective is *determined by* the moral responsibility of individuals or that the collective is responsible *because* individuals are responsible. There will undoubtedly be some correlation between the two since there will be cases where, for example, a blameworthy collective action supervenes on a blameworthy individual action<sup>76</sup>. However, this correlation between individual and collective responsibility will not be perfect since the standards against which each action (individual or collective) is judged will be specific to that action and the entire context in which it is undertaken. It is possible that collective responsibility will be generated even when there is none amongst the constituent individuals.

This relation works both ways, and it is therefore equally mistaken to think that individuals can be held morally responsible because the collective of which they are a part is responsible. This observation brings me back to the notion of a 'contributory action'. Individual moral responsibility for actions taken within an organisation will be judged in the context of how those actions contribute to group level outcomes. Still, even in this case the individual would not be morally responsible *because* the group is morally responsible. They would be morally responsible for their contribution to the group's moral failure because they failed to fulfil an obligation; and the group would be morally responsible in its own right. The two kinds of moral

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<sup>75</sup> For joint actions such as this there is no possibility of the collective being responsible *at all*. The only collective property present is collective action, and this property alone is not sufficient to establish a potentially responsibility bearing collective entity.

<sup>76</sup> As an example of such a situation, recall the example I developed in chapter five of the informally structured bank that makes a loan to 'person C', even though it is likely that C will default and lose her house. While issuing the loan is an irreducibly collective action for which the bank as a corporate agent can be held responsible, this outcome is entirely foreseeable to the three partners in the bank when they are deciding on their contributory actions. Therefore there is at least a *prima facie* case for holding them all individually morally responsible as well.



failure (individual and group) have a common causal root, but they remain distinct and are judged separately. This conclusion is, I take it, in line with that reached by Margaret Gilbert in her discussion of the relation between individual and group level responsibility. As Gilbert says: 'What does the blameworthiness of the collective's act imply about the personal blameworthiness of any one member of that collective? From a logical point of view, the short answer is: *nothing*. Everything depends on the details of a given member's particular situation.' (Gilbert, 2006: 109).

The final case is that of morally significant systems. In these organisations the collective itself does not possess the capability to act reflectively and so cannot generate moral responsibility at the collective level. Rather, it is the reflective actions of individuals who populate the system that generate the responsibility for its outputs. The important feature of morally significant systems, however, is their inherent *complexity*. This complexity generates epistemic boundaries which severely curtail the extent to which the individuals can be held responsible for the outcomes of the system. No agent who introduces or changes a rule, or operates an existing rule within the formal structure that constitutes the system, will be able to know fully the implications of his actions. Therefore, those individuals become 'decoupled' from the outcomes of their actions and the responsibility that accrues as a result. However, since the complexity is a property of the organisation, it licenses the transfer of the responsibility that would fall on individuals to the system itself. Here we might say that the collective level organisation is responsible because the individuals that populate it *generate* moral responsibility, but it is not responsible *because* they are responsible. In fact the opposite is true and it is because it is not possible to find individuals responsible for the full impact of their actions that the system itself acquires moral culpability.

#### 41. *Epistemic Limits*

The above discussion of morally significant systems gave a specific example of why the extent to which an individual is capable of understanding the full implications of her actions will be relevant to how she may be held responsible for her actions in an organisation. But such considerations are more widely relevant, and to show this I introduce the notion of an action being categorised 'under a certain description'<sup>77</sup>. The idea is that there are many different ways of categorising an action, many different ways in which it may be described, and the

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<sup>77</sup> This idea that a single action may be categorised under different descriptions was introduced by G. E. M. Anscombe (Anscombe, 1957: 11).

epistemic access that an individual has to the implications of her action will determine the appropriate way in which it is categorised for the purposes of ascribing that individual with moral responsibility. This assertion raises the rather big question of what epistemic considerations are relevant to determining the appropriate description of an action for which an individual will be held responsible. One consideration that may be invoked concerns the difference between outcomes that were intended as opposed to those that were merely foreseen. This difference may be relevant for ascriptions of moral responsibility and whether it is or not is a question that is debated under the heading of the 'doctrine of double effect'<sup>78</sup>. I will not dwell on the distinction between intended and foreseen outcomes, however. In large organisations the more common consideration that is invoked to absolve individuals of personal responsibility is that between foreseen and unforeseen outcomes. The idea is that large organisations are complex and so individuals cannot know all the outcomes that will result from their actions. This was the central point in my discussion of morally significant systems.

However, this distinction brings with it a further question that is particularly relevant to the point I am making. If the limit to individual responsibility in a given situation is to be determined by the foreseen outcomes of the action, are these ones that were in fact foreseen, or those that *should have* been foreseen? I think it is clear that my position requires the latter interpretation. There are lots of reasons that an individual may not foresee consequences of her actions, and many of these are ones for which she may be held culpable: carelessness or a failure to plan sufficiently, for example. To allow moral responsibility to depend on actual predictions of outcomes would also imply that organisation members could limit their responsibility by deliberately remaining ignorant of how the organisation works. However, if the relevant definition of an action for the purposes of an individual's responsibility refers to how they *should* understand that action, then we need a standard that specifies how much information we can reasonably expect an individual to gather about their situation. I am not going to try to develop a full standard here, although some considerations are clear: an individual who takes on a role within an organisation has at least a duty to employ reasonable means to work out how the organisation works, what it does, how actions within the role occupied translate into organisational outcomes, and the constraints and requirements associated with that role. As I discussed in chapter six, the parameters of the standard will be set in the context of the fact that humans are subject to 'bounded rationality' generally (Simon, 1957), and when it comes to addressing ethical questions are subject specifically to

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<sup>78</sup> See, for example, McIntyre (2011).

‘bounded moral rationality’ (Donaldson & Dunfee, 1995). It should be acknowledged that although epistemic limitations fundamentally affect individual moral responsibility, particularly in complex organisational environments, it will not be an easy task to specify exactly how these limitations should be specified in particular cases.

#### 42. *Kinds of Action*

The kinds of actions that individuals may undertake in the context of the different models of collective activity that I have set out, actions for which, all things being equal, they may be held responsible, fall into different categories. The first category is that of participating in ‘one off’ joint activities. These are activities that follow Miller’s model of joint action and do not require or presuppose the existence of any other organisational structure. To recap, Miller sets out the idea as follows:

‘Roughly speaking, two or more individuals perform a joint action if each of them intentionally performs an individual action, but does so with the true belief that in doing so they will jointly realise an end which each of them has. Having an end in this sense is a mental state in the head of one or more individuals, but it is not necessarily a desire or an intention. However, it is an end that is not realised by one individual acting alone. I call such ends “collective ends.” (Miller, 2006: 177).

While Miller focuses on joint *action*, his account bears similarities to Gilbert’s notion of ‘joint commitments’. In her initial discussion of such commitments the focus is individuals getting together to do something that is relatively *ad hoc* and not within the context of other pre-existing commitments. The participation of each individual in such joint commitments can be thought of as of the same kind as participation in one of Miller’s joint actions – a one off contributory act in pursuance of a common end. The difference in Gilbert’s case is that the outputs that may result from a joint commitment are broader than just actions. So, for example, we may form commitments to ‘intend, believe, accept, value, despise, hate and so on’ (Gilbert, 2006: 100). The difference between one off joint activities and ongoing collective activities is that the latter are based upon and happen within pre-existing arrangements that I have referred to as ‘organisational structure’. Gilbert’s theory allows for the creation of such structure through the formation of ongoing, long term joint commitments of various kinds. The relevant kinds of commitment are developed more fully by the discussions of French and

of List and Pettit – for example commitments about how group decisions will be made, and whether some will be prioritised over others.

With the introduction of the idea of ongoing commitments that shape and constrain particular individual actions through the creation of an organisation structure, a further category of action for which individuals may be held responsible becomes relevant. These are actions that, rather than bringing about any organisational outcome at that time, put in place organisational structure that will affect future outcomes. An example would be for an individual to participate in a joint commitment whereby authority for determining the group's attitude to certain questions is delegated to one of its members, or a subset of them. So far I have identified two kinds of individual action: participation in a one off joint commitment, and participation in an ongoing joint commitment that creates a structure for future collective activities. The latter kind of action sets the scene for a third kind of activity that an individual may undertake in a collective context, and that is to act so as to fulfil a certain function or role that she has acquired as a result of being part of an organisation, and party to ongoing joint commitments. So, in the example just given, such an action would be undertaken when the individual to whom authority has been delegated takes a particular decision on behalf of the group. An action 'counts' as being of this kind when it fulfils all the criteria that have been set out in the joint commitments that form the organisational structure.

A fourth kind of action that an individual may take in a collective context also relies on the existence of organisational structure, but in a very different way. Such structure endows individuals with powers and authority that they would not possess outside of the organisational role that they fulfil. The ability to make a decision on behalf of a group is one of these, and such decisions may include those governing how individuals within the group or associated with the group are treated. In business organisations an example would be when individuals in management positions and within human resources departments make decisions on who should fulfil which roles, who should get promoted, and how much they should be paid. In legitimate organisational activities of the kind just described the invocation of this power is a necessary part of discharging the role that is being fulfilled. However, such power is open to abuse. In the majority of cases in organisations it will not be possible to constrain the activity of members sufficiently to ensure that they always use the power they have been given to pursue only the legitimate ends for which it was intended. Examples would include managers or human resources employees demanding some kind of personal benefit in return for favourable appraisals or promotion outcomes; they would also include the 'rogue trader'

example where an organisation's resources are employed by the trader to engage in unauthorised market activity. Such actions may either be individual actions if it is just one person alone misusing their authority, or joint actions if a group of people collude to do so. In either case, the action takes on a distinct character since it necessarily involves the misuse of power and authority that was granted to fulfil an organisational purpose.

A final kind of action that an individual may take in a collective context also relies on the existence of joint commitments that constitute organisational structure. I have already considered how an individual may participate in the *creation* of such commitments, but this is not the most common way that people become associated with organisational structure – rather, they join pre-existing commitments. This kind of action has two sides, however, since it is usually the case that joint commitments may be left as well as joined. I will consider the two sides separately. Entry to an existing organisation introduces fewer new considerations than exit. In many ways, from the individual perspective, the act of joining existing joint commitments that constitute an organisational structure is not significantly different from participating in the origination of those commitments. However, it does raise the question of exactly *which* commitments an individual becomes party to when they join an organisation.

This is a question I will address in more depth when considering the ways in which individuals contribute to the different kinds of collective organisation. The basic point of interest, however, is this: in organisations that are based around a structure, not all individuals who are associated with that organisation are party to all the agreements that put that structure in place. This is particularly the case where the structure is formalised and does not include many (or any) mechanisms by which those operating within the structure can alter it. In such cases it is not true that someone joining the organisation (in the sense of being employed by it) is joining the joint commitments that established the organisation. At most it seems that she is agreeing to be bound by the structure that is established by those commitments and fulfil the role within it that she has accepted. This arrangement looks less like an individual *joining* a group, and more like that individual contracting with a group to act on its behalf. Of course there will be many cases where some structural aspects of the organisation are under the control of an individual or a sub-group within the organisation of which she is a part, and in this case she will have some involvement in the collective activity that underpins the organisation.

The other side to the issue – the possibility of exit from an organisation – raises its own challenges for the understanding of individual actions within a group. The general point is that,

assuming exit is a possibility for a group member, it must always be considered as an option when that member is considering how to act. Often in organisations it may seem that an individual is faced with an unpalatable choice, for example when promoting the interests of the organisation (to which they have made a commitment) conflicts with the interests of an innocent third party. Notwithstanding the fact that it will presumably be possible, although difficult, to work out which consideration overrides the other, a potentially superior course of action is to reject the choice as unacceptable and leave the organisation. Equally, we may imagine, there will be situations when leaving the organisation is clearly the wrong thing to do and constitutes an abdication of genuine obligations that fall on the individual.

In the following sections I will discuss how the different models of collective action with which I have been working depend on each of these five kinds of action that an individual may undertake in a collective context. This is the first step in setting out a more comprehensive approach to determining how individuals may be held morally responsible for such activities. I will also illustrate these discussions with some examples that show how such actions may be instantiated in actual business organisations. To conclude this section, however, it is worth summarising again the five kinds of action:

1. Participation in one off joint commitments to act or to espouse some collective attitude (value, believe, etc.);
2. Participation in ongoing joint commitments that establish the structure by which future collective activities will be undertaken;
3. Action so as to fulfil a role that has been established through an ongoing joint commitment, in line with the restrictions placed on that role;
4. Action that utilises the resources generated by ongoing joint commitments to structure group activity (especially power and authority) but does so in a way that is not approved by those joint commitments;
5. Action to join an existing joint commitment and so join an organisation, or to leave a joint commitment and the associated organisation.

#### *43. One Off Joint Action*

I now pull the various discussions together to develop an account of the actions that individuals take in establishing each type of collective activity that I have set out. The first type of collective activity is a one off 'joint action' of the kind described by Miller, and that I have

argued is also a version of Gilbert's 'joint commitment' – a joint commitment to act. Participation in a one off joint action is itself one of the five basic kinds of action that I set out as being available to individuals in different varieties of collective activity. As such, there is not much more to explain here, at a high level, about what individuals can be said to be doing when a one off joint action is brought about. Nonetheless, this relatively simple case illustrates some of the additional complexities that may arise in identifying *exactly* what each individual may be said to be doing, particularly given the existence of epistemic barriers that may vary from person to person.

In my earlier discussion of how a joint action account of collective responsibility may be applied to a business organisation, I used the example of employees of a bank acting to fix the LIBOR interest rate to benefit the bank's trades. These employees consisted of derivatives traders and the individual or individuals who are responsible for LIBOR submissions. Each of these individuals engages in certain individual acts. The traders make deals knowing that they will be able to influence the LIBOR rate; they then communicate the rate movement that they require to the LIBOR submitters. The submitters take the traders' requests into account when making their submissions rather than relying solely on the true borrowing costs faced by the bank. Each of these actions is undertaken with the same aim in mind, to manipulate the LIBOR rate in order to manipulate the value of trades in the bank's favour, and each member of the group performs their action believing that the others will perform theirs. They are each at least *prima facie* morally responsible for their contributory actions, but it is only as a group that they can perform the action of 'manipulating the LIBOR rate in order to manipulate the value of the bank's trades'. Given that the conditions for collective action hold, they can properly be held collectively morally responsible for this action. However, since the only collective property in this case is a collective *action* it is not the case that there exists a responsibility bearing collective entity. Rather, responsibility for the collective action also falls to the members individually, and they are each individually morally responsible, interdependent on each of the others also being responsible in this way.

However, let us now introduce some specific considerations about the epistemic positions of the individuals involved in this action. Take two such people – Joan, who is a new employee and has as one of her duties the handling of the bank's LIBOR submission; and John, who is head of the relevant derivatives trading desk. Suppose that Joan has not received formal training for her new role, but instead it is expected that she will get training 'on the job'. This training may be rather *ad hoc* and so it would not be unreasonable for her to interpret the

instructions that she is given by John as setting out the 'right' way to do the job. John, on the other hand, wants the bank's LIBOR submissions to be influenced by the trades his team has made; specifically he wants to make them as profitable as possible. He thus tells Joan that the appropriate method for setting the bank's rates takes these considerations into account. Let us also suppose that Joan believes him. If this was the case, then she could claim that she never shared a joint aim to 'manipulate the LIBOR rate in order to manipulate the value of trades in the bank's favour', as she never understood that this is what was happening. In order for this line of argument to work several conditions would need to hold. It would need to be true that she was not, in fact, aware that what she was being asked to do constituted manipulation of the rate. In addition, it would also need to be the case that she was not culpable for her ignorance. Whether she was culpable or not would be determined by an analysis of her epistemic position.

One way that she could be held culpable would be on the basis of her judgments about what she should do in light of the evidence available to her. It could be the case that she has ample evidence available to allow her to reach the conclusion that what she is being asked to do is wrong, and she has simply failed to engage with that evidence in a way that might reasonably be expected of her. For example, the nature of the submission process that she is asked to manage may provide such evidence by making clear what its purpose is. A second way in which she could be held culpable for her ignorance would be to show that, while she does not have sufficient evidence to conclude that what she is asked to do is wrong, she *should* have such evidence. Generally speaking, when someone accepts a job he also accepts the obligations that come with that job and so he has a responsibility to know what those obligations are. In Joan's case it would not take much for her to find out for herself the broader context of her bank's LIBOR submissions and to conclude that submitting rates in the way she is asked to by John would amount to rigging the rate in order to benefit the bank in a way that would be inappropriate. If Joan is culpable for her ignorance, then her action still constitutes participation in the joint action of rigging the LIBOR rate. If she is not, then it does not.

This is not to say that Joan's action is not a contribution to *some* joint action, even if she is not a party to the joint action of rigging the LIBOR rate. For example, she will still be a party to the action of 'making the bank's LIBOR submission' since it is clear that she will at least understand that her action falls under *this* description. A final point to make is that the question of whether or not Joan is culpably ignorant of her role in the rate rigging may in part be



dependent on the actions of others. It may be possible, for example, for the derivatives team to ensure that the LIBOR submitters help to influence the LIBOR rate in order to benefit the bank's trades, while ensuring that those submitters are not aware of this fact. This would be a situation in which the derivatives traders participate in the rate fixing, but the submitters do not, and in addition the traders will also have participated in a further action, that of manipulating others to bring about certain effects.

#### 44. *Informally Structured Group Agents*

The structure of a group refers to agreements within that group whereby the individual attitudes of group members are aggregated together to generate attitudes at the group level which are properly considered properties of the group itself. There are two kinds of structure that I discussed earlier, formal and informal, and here I am interested in informal structure. The best way to think of an informal group structure is as a set of ongoing joint commitments that develop alongside the ongoing process of the formation of group attitudes. The individual members of the group concerned are aware of the potential problems that they face in making decisions as a group – lack of consensus, and potential problems of inconsistency – and so they set out to ensure that they avoid them. However, for the most part they avoid them in a rather *ad hoc* way by ensuring at the time they take each decision that it is properly endorsed by the group as a whole, and that it is consistent with the existing set of group decisions<sup>79</sup>. For a decision to be 'properly endorsed' by the group as a whole it is not the case that the decision must be in accordance with what each individual would have decided on his own (this would be a requirement for consensus). Rather, it means that each individual has accepted the procedure by which a compromise has been reached between differing opinions. Although I have described this process as *ad hoc* it is worth emphasising that this does not mean that questions concerning the values that the group endorses, or how they should be prioritised, are only answered implicitly in the practical decisions that the group makes. While they may sometimes be answered implicitly, it will sometimes be the case that an informally structured group will answer these questions explicitly, so fulfilling the criteria of moral agency.

This recap of the mechanics of how a group may form an informally structured moral agent provides the basis for setting out how the individuals in the group are related to the production of such agency. Of the five kinds of individual action in collective situations that I

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<sup>79</sup> Alternatively, it would be possible for the group to reassess previous decisions that they had taken in order to ensure such consistency.

set out above, two are relevant here: (2) participation in ongoing joint commitments that establish the structure by which future collective activities will be undertaken; and (3) action so as to fulfil a role that has been established through an ongoing joint commitment, in line with the restrictions placed on that role. To see in detail how these two kinds of action come together it will again be useful to have an example. I will return to the example I set out in chapter four, that of the bank that is deciding how to make loans. Recall that Black, White and Green were deciding the basis on which they should approve loans. They have agreed that both profitability and credit worthiness should be considered valuable in such decisions, but they need to agree how assessments of these values should be combined to reach a final decision. The table below shows possible conclusions that they might reach, and each of their individual attitudes to those conclusions:

	Credit-worthiness		Profitability		Both	
	Necessary	Sufficient	Necessary	Sufficient	Necessary	Sufficient
Black	No	No	Yes	Yes	No	Yes
White	Yes	No	Yes	No	Yes	Yes
Green	Yes	Yes	No	No	No	Yes
<b>Majority</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>Yes</b>

As the table shows, both the challenges of attitude aggregation are present here. It is clear that the three partners do not agree on how these values should inform their decisions; and it is also clear that a simple majority vote on the matter would be unsatisfactory as it would produce inconsistent attitudes – specifically, they would conclude that credit-worthiness is necessary to make a loan, and profitability is necessary, but that they are not both necessary. To decide what their attitudes will be as a group they will need to discuss their options and come to a compromise. In my original example they agreed that profitability would be both necessary and sufficient, and credit worthiness would be neither. To have both values present would therefore not be necessary, but it would be sufficient. We can imagine how they might come to this compromise. Black and Green may both feel strongly that they should not require loans to be both profitable and credit-worthy since this would make the approval process more complex and time consuming. Given this prioritisation of the decision on whether both are necessary, they must now agree whether loans should be made on the basis of credit-worthiness or profitability. On this decision Black and White may convince Green that at a minimum they are running a commercial business and so they cannot consider making

unprofitable loans, and so profitability is chosen as the basic value against which potential loans will be assessed.

In my earlier example, the collective entity that is formed on this basis goes on to make a loan to a person who is unlikely to be able to pay it off (i.e. not credit worthy) but who has assets (a house) that can be repossessed so making the loan profitable overall, and it is Green who undertakes the issuing of the loan since the three have agreed that he is the one who should typically perform this function. Here, then, we have examples of the two types of individual action that are undertaken in informally structured collectives – each partner has participated in an ongoing joint commitment to establish the structure by which future collective actions will be undertaken by agreeing to the prioritisation of profitability as the value that will be used to judge whether loans should be approved. And by acting in line with this commitment, and others in the broader structure, Green has acted so as to fulfil a role that has been established through an ongoing joint commitment, in line with the restrictions placed on this role. What other issues are illustrated by this example regarding the kinds of actions that individuals take in informally structured groups? One particularly important issue concerns the question of whether each participant in a joint commitment that establishes a group structure can be said to perform exactly the same action, or whether there might be reasons for analysing the contributions of different people in different ways. In particular, given that the participants will likely start with different attitudes, is the action of the one whose attitude is reflected in the final agreement of the group different from those whose personal views are not reflected in this way? With respect to the bank example just discussed, is the action of Black, whose position the group ends up adopting, different from those of the other two?

This question is significant. In a typical business organisation, when the organisation acts in a way that is accepted to be wrong, the search for individuals to hold responsible often turns to those who were promoting the position that the organisation ended up adopting. However, on the account I have described, this would be a bad way of analysing the question of individual responsibility. In particular, it jumps straight from the attitudes held by an individual to the attitudes that end up being formulated at a collective level, and assumes that the greater the similarity, the greater the influence that particular individual had. While there is some sense in this logic, it misses out a crucial intermediate stage of analysis which is to identify explicitly the actions taken by all individuals by which their personal attitudes are translated into group attitudes – their contributory actions. In the case of the bank I set out these contributory actions above. Black both argued that there should only be one dominant value (action one)

and also that the dominant value should be profitability (action two). But Green also performed action one, while White joined in action two; and in the end all three agreed to accept these attitudes as group attitudes (action three). While Black may, in the final reckoning, be assigned greater culpability than the other two, the blame will be shared and the complexity of the situation is only properly acknowledged by engaging in this analysis at the level of contributory action.

#### *45. Formally Structured Group Agents & Morally Significant Systems*

One of the main features of *informal* structure is the close relation that the formation of that structure must have with the ongoing process of collective decision making. The biggest change in the shift from an informal to a formal structure is the way that these two aspects of organisational attitude formation can be decoupled. The nature of an informal structure requires that a revision is always ‘on the cards’ whenever a group decision is made. Given that the body authorised to determine structure in such a grouping is the total of individuals in the group, they must be constantly engaged with the decision making process<sup>80</sup>. This is not true in a formally structured organisation, and there are several implications for the way that decisions are taken.

The group that establishes the formal structure of an organisation – that which I have previously identified as the ‘ownership body’<sup>81</sup> – need not be identical to the group that takes decisions through the mechanisms of that structure. Whereas an informal structure necessitates a mode of operation that is in keeping with a business partnership, a formal structure allows a separation of roles that is more in keeping with a typical business organisation where shareholders are separated from the day to day operation of the organisation. Here, employees are put in place to take decisions according to a pre-established governance structure, but are not authorised to amend that structure. In such cases it may be that the group authorised to amend the structure also takes part in the day to day decision processes, or they may not. This employer-employee relation that is enabled by the formal

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<sup>80</sup> There is the possibility of an informal grouping authorising one of their number to take decisions on their behalf on some subjects, but even here there must be an ongoing feedback process to ensure the group is happy with this arrangement in light of decisions being made.

<sup>81</sup> Note that this group does not need to coincide with that which has legal ownership of the organisation, although this will be the most common way that the individuals with legitimate control over group structure will be determined. As per the discussion of complex structures in chapter five, this ownership body will itself be a collective entity, and the responsibility of individuals within it for decisions it takes will be determined on this basis.

organisation structure introduces new possibilities to the way the organisation goes about making decisions. As with informal structure, formal structure may include decision processes based on voting mechanisms, and prioritisation rules for logically connected decisions. It may also delegate some decisions to individual members or subsets of members. However, given that the structure does not need to be endorsed every time a decision is taken, such delegation may function without an ongoing feedback process in place. This changes the nature of delegated decision making since the decision is now taken with structural constraints as a given, rather than a variable, in the process. It also means that other (employee) members of the organisation are not required to reflect on whether the structure is producing 'desirable' decisions, but rather accept decisions taken by those to whom they have been delegated as fixed inputs to the rest of the organisational process. In other words, the operation of the decision making process becomes more mechanical, since those operating it are not simultaneously responsible for its structure.

Nonetheless, as I argued in chapter five, it is still possible for a group agent based on such a formal structure to acquire the level of reflective agency necessary to be a moral agent. This is achieved when the formal structure is constituted so as to allow those operating it to introduce, and form attitudes over, propositions concerning the values that the organisation will pursue and also to determine how to prioritise those values when they conflict. It will not always be possible for those operating an organisation based on a formal structure to ensure its moral agency, however, since they may be constrained by the structure so that they cannot form attitudes on such value propositions. In such cases it will typically be the case that the determination of corporate values and how they should be pursued has already been undertaken by the ownership group in the set up of the organisation.

The possibility of such pre-determined decisions on value was the basis for the establishment of the kind of morally significant systems I described in chapter six. A system, on this account, is an organisation based on a formal structure where all value-based decisions are fixed as far as the operation of the organisation is concerned. All that is left for the operators to determine are factual propositions so as to enable the most effective pursuit of the predetermined goals. A system becomes 'morally significant' (given that it has been created by humans as opposed to being naturally occurring) when its structure is complex enough that both its creators and operators are unable fully to determine how their actions will be translated into outcomes by the system. In these cases, the degree to which individuals' moral rationality is 'bounded' is

the degree to which the system itself assumes responsibility for those outcomes. I have already described how this process works in my earlier discussion of epistemic limits.

Here I can return to the driving question of this chapter in the context of formally structured organisations and ask what kinds of actions individuals may undertake within them, actions for which those individuals will bear *prima facie* responsibility. The central two kinds of action will be the same as those present in informally structured collectives: participation in joint commitments that establish organisation structure, and actions which fulfil roles that individuals acquire in line with the dictates of that structure. However, unlike in informally structured organisations, individual members need not be involved constantly in the assessment and reassessment of the structure with which they are operating. It governs, but exists independently of, the day to day practices of the organisation. This is true whether the structure is in principle open to amendment by those who work within it (as in the case of formally structured moral agents) or it is not (in the case of morally significant systems). There is, in effect, a greater division of labour between different groups in terms of the actions they undertake. Nonetheless, the two basic *kinds* of action remain the same.

Beyond these two founding kinds of action in formally structured organisations, there are others that an individual may undertake. One type of action that an organisation member may take consists in exiting that organisation, and it is in the case of formally structured organisations that this option becomes particularly significant. The fact that division of labour between different kinds of decisions is a feature of formally structured organisations, results in many members of such organisations having little or no power to alter significant features that determine the organisation's behaviour and outputs. An employee in a formally structured organisation will often, therefore, just have to get on with taking decisions and acting within the constraints imposed upon her. When these constraints require her to act in ways that she considers wrong, the best course of action open to her may not be to remain in the organisation and disobey it or to continue with the untoward action, but rather just to leave<sup>82</sup>. Exit is a legitimate option as a choice of individual action in the context of a formally structured organisation.

The nature of formally structured organisations also makes them particularly susceptible to having their organisational mechanisms hijacked for purposes for which they were not intended. Formal structures endow individuals within them with formal power that they may

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<sup>82</sup> Of course, all things considered she may be under some obligation to stay in the organisation and try to bring about change in some other way, but this would be determined on a case by case basis. The point is she does have another option available.

employ with a certain amount of discretion. When that power is employed in ways that do not conform with the restrictions placed upon its use, then the action is an example of the fourth kind of individual action I identified earlier: action that utilises the resources generated by ongoing joint commitments to structure group activity (especially power and authority) but that does so in a way that is not approved by those joint commitments. This kind of action can be illustrated by returning to one of the examples I used earlier, the case of the LIBOR rigging activity in the bank.

In that example I characterised John and Joan as part of an informal joint commitment to rig the interest rate, but it is also true that they are both part of a formally structured organisation in the form of the bank. Given that John is the head of the derivatives desk and Joan is a new (and junior) employee, John is able to issue what amount to credible threats to Joan by virtue of his position and influence in the organisation, for example with respect to Joan's job security or future career prospects. In addition, John is perceived by Joan to be an authority figure, despite having no formal authority over her. Joan is new in her job and has a meeting with John in which he tells her how he is used to working, and that he expects Joan to participate in the rate-fixing. Prior to this, Joan has been trained in how submissions should be made, and so knows that she should not go along with John and join in the rate fixing. Nonetheless, John's implicit or perhaps even explicit threats may be effective in ensuring Joan's cooperation. Joan joins in the joint commitment to fix the rate, and John has abused his power by using it in a way that was not licensed when it was granted to him. Exactly how both will be judged, all things considered, is a matter for a full assessment of moral responsibility.

#### *46. Individual Obligations in Collectives*

I have now completed my analysis of the kinds of individual action that will be present in the different varieties of collective activity that I have discussed. This, as I have said, is a first step to developing an analysis of individual responsibility in the context of such group actions. I have been very careful throughout to specify that when I talk about moral responsibility I mean backward looking responsibility, where this can be understood in the way set out in chapter three. I have steered clear of other ways in which responsibility language may be used, particularly the sense where 'responsibility' is used to mean 'obligation' and the question at hand looks to the future and asks about the moral requirements for future action. Analysis of obligations – both collective and individual – in the context of business organisations is a separate and extensive project in its own right. Nonetheless, the discussion in this chapter that

relates activity at the individual and collective levels opens up one specific question about obligations in the context of organisations that is particularly pressing – in cases of collective responsibility, particularly where the collective is responsible for some kind of grave wrong, where do the obligations fall to make things right and to avoid repetitions in the future? While I cannot offer anything like a comprehensive answer to this question here, I will try to sketch the outlines of what it would have to look like.

The first thing to be said is that obligations emerging from collective activities will depend significantly on the particular form those activities take. Here there will be some reasonably straight forward cases, those in which the blameworthy collective action is undertaken by a moral agent or set of moral agents that are, as a consequence of holding this status, capable of assuming obligations. This will be the case in joint actions, where the relevant moral agents are the various participants in the joint action, and in cases of collective moral agents, either formally or informally structured. When collective activity of these kinds results in responsibility for blameworthy actions or outcomes it will be moral agents who are subjects of the responsibility and it will be on them that any immediate obligations fall. Of course, in the case of collective moral agents any activity they undertake will supervene on the actions of individuals, and this will undoubtedly result in derivative obligations for those individuals as well. Following on from my earlier discussion of contributory action, it should be clear that the obligations falling on members of a collective moral agent will not necessarily be easily determined simply by understanding the obligations of the collective. It will at least be necessary both to understand the mechanisms by which individual action is translated into collective action, and the level of epistemic access that can reasonably be expected of each individual, before a determination of individual obligation can be attempted.

The picture becomes even less clear in the case of morally significant systems. The reason that such organisations accrue moral responsibility is not because they are moral agents, but because they are *complex* in a way that creates epistemic barriers to those establishing their structure and operating their processes. They therefore are susceptible to ascriptions of moral responsibility generated by their members but that cannot justifiably be assigned to those members. The problem here is that it does not make sense to say that the organisation can be subject to obligations as a result of its culpability, since it cannot act to fulfil such obligations. On the other hand, it is hard to see what obligations may accrue to the individuals that form the joint commitments that establish its structure or that operate the processes thereby established. A basic feature of morally significant systems is the fact that these individuals are



epistemically limited in their ability to understand the consequences of their actions, so assigning them obligations would simply be ineffective. It is for these reasons that the kinds of bad outcomes that result from morally significant systems are particularly pernicious and hard to address. Indeed, it may be the case that the only kinds of action that can genuinely be required in a situation where a morally significant system has generated bad outcomes are those that somehow disband the organisation so it ceases to be one that creates these responsibility effects. These obligations, presumably, would fall on those with the power to succeed in fulfilling them. While such individuals may be members of the organisation that is the system – they may, for example, fulfil the ‘ownership’ function – it may be that it is only external agents that can curtail the effects of the system and this, perhaps, suggests a role for government.

If organisations or those that populate them are incapable of arriving at an organisational structure where adverse ascriptions of responsibility generate clear obligations that will enable improvement in the future, change might be imposed on them externally. One example might be the enforced breakup of large, complex organisations that cannot be fully understood and therefore cannot be managed in a responsible way. It is interesting to note that one of the main criticisms of the large financial institutions in the recent financial crisis, aside from being too big to be allowed to fail, is that they were too big to be managed effectively. Break up of these institutions could therefore be justified on the grounds of removing responsibility-dislocating epistemic barriers, quite apart from the more popular arguments relating to the implicit government support afforded to systemically important institutions. A further challenge might come about in cases where a large complex organisation is not obviously susceptible to being ‘broken up’ without defeating the object of it existing in the first place. The tax system example that I offered in chapter six may be a case like this.

This idea of an obligation to change organisational form gestures at a different, although related, kind of obligation that individuals might acquire as a result of responsibility that is generated at the collective level – the obligation to organise themselves in certain ways. All the discussion that I have offered to this point has started with situations in which different kinds of collective activity are being undertaken – joint action, moral agency in informally and formally structured organisations, the operation of morally significant systems. However, there is no necessity for any of these kinds of organisation to exist at all, and so it is legitimate to ask not only how we should judge their outputs, but whether one kind of organisation should be preferred over another, and whether some should not be undertaken at all. If we could come

to conclusions of this kind – and there is no obvious reason why we should not – then individuals who are undertaking a given activity may find themselves under an obligation, for example, to ensure that their organisation acquires moral agency so that it can be reactive to the appropriate reasons for behaving in one way or another. Such obligations would extend significantly the idea of the ‘responsibilities of business’ that are typically discussed in ways which are blind to the pros and cons of the particular model of business that is supposed to enact the obligations described.

## CHAPTER VIII. CONCLUSION

### *47. A Framework for Organisational Ethics*

In the introduction I described a state of affairs that appeared unsatisfactory: the existence of a field of ethical enquiry that has been labelled 'business ethics', and that has increasingly been treated as a 'distinct' undertaking, despite a lack of clarity as to why business activity requires such attention. If many other kinds of activity in which humans engage can be satisfactorily handled by more general theories of moral and political philosophy what, if anything, sets business activity apart? Here I summarise the contribution that my project has made to answering this question, and also to related philosophical debates with which it has engaged. I also tie up a loose end that remains from my earlier discussions, concerning the degree to which the arguments that I have presented apply to a class of 'organisations' that stretches beyond the domain of business activity.

My starting point has been to latch onto an observation that is at least implicit, and often explicit, in attempts within the business ethics literature to carve out a distinct niche in ethical theory – that the business environment is populated by a variety of social group, the 'business organisation', that is not political in nature but that nonetheless wields significant power within society and generates significant practical outcomes. I have argued that this power and the effects that it generates stem in large part from the way in which these organisations enable their members to undertake certain kinds of collective action. Further, from the ethical perspective the most pressing question raised by collective action is the way that it enables distinct mechanisms for the generation of moral responsibility. Here I have focused on the archetypal understanding of 'moral responsibility' as picking out the way that someone or something should be held accountable for events in the past. I am not the first to focus on these questions. Donaldson (1982), French (1984), and Werhane (1985), for example, all address the question of how business organisations generate moral responsibility through the collective actions of their members. More recently, Pettit (2007), and List and Pettit (2011), focus on the nature of group agency and its implications for moral responsibility in the context of business organisations. However, this answer to the question of what is most central to the ethics of business has been relatively neglected, and one aim of my project is to place it closer to centre stage.

In order to do this I have brought together a number of theoretical elements to create a distinct account of how business organisations enable collective action and generate moral responsibility. Unlike many accounts of collective responsibility that assume a rather thin notion of moral responsibility up front, I have developed a notion that is suited to the task in hand. It is both narrower and broader than typical conceptions of moral responsibility employed in discussions of corporate responsibility. It is narrower since it does not allow that the moral responsibility of business organisations is only an analogue of that which is applied to human individuals, one that is justified by its instrumental benefits in shaping corporate behaviour, rather than the considerations of genuine moral desert that underpin moral responsibility proper. On the other hand it is broader since it locates the root of moral desert not in the free action of human moral agents, but in the deeper idea of the 'moral ownership' of actions and outcomes. While such ownership is generated by the actions of human moral agents, it is also produced in other ways, such as the actions of corporate moral agents, and the mediation of moral agency by complex organisations. My intention is both for this discussion to facilitate understanding of collective responsibility and also to add something to the wider debate on the nature of moral responsibility.

The second main element of my approach has been a unified account of collective responsibility: by drawing on a cross section of treatments of this subject I have shown that they can be combined into one coherent picture, rather than being mutually exclusive (as they are often presented). Collectives vary on the basis of the how, and the extent to which, activity within them is coordinated. The main coordination mechanism I have described I have called 'organisation structure', which consists in pre-existing agreements entered into by organisation participants that determine how organisational activity will proceed in future. Some accounts of collective responsibility assume very little structure (for example that presented by Miller (2001, 2006, 2009)), while others, such as that of French (*op. cit.*), take structure to be central. But in reality organisations exist on a continuum from highly structured to almost completely unstructured. It is also organisation structure that enables the predication of irreducibly collective-level properties, through which organisations can come to be suitable subjects for ascriptions of moral responsibility in their own rights.

By developing this account of property-creating structure my aim has been not only to add something to the field of collective responsibility by showing how approaches that seem at odds are actually compatible, but also to show how each can offer distinct insights that bolster the unified picture created. For example, Gilbert's account of how joint commitments enable

the creation of plural subjects, through the engagement of the joint will shared by the group, provides the kind of basic normative support necessary to explain why agreements that establish group structure can generate the far reaching effects that they do (Gilbert, 2008: 134-146). French's account of *corporate* structure, on the other hand, develops a clear picture of the kinds of structure-creating agreements that are employed by business organisations in the modern world; while List and Pettit illuminate the intricacies of how collective activity is coordinated, the rational constraints upon such coordination, and how it enables the predication of collective-level properties that are central to the generation of moral responsibility. I extend and support this picture further in my discussion of social ontology.

Bringing these discussions of moral responsibility and collective responsibility together my aim has been to develop two models of collective moral responsibility in business organisations that are compatible with each other, do justice to the subject matter, and illustrate the intricacies and complexities that must be addressed. In doing so, I take it that I have shown that, while 'business ethics' may not be a theoretical undertaking that is completely distinct from standard approaches to moral and political philosophy, it at least must tackle challenges that are complex and quite particular to the context of business. My first model adopts what I take to be the standard tactic of showing that business organisations may be characterised as moral agents. It departs from typical approaches, however, in the two ways outlined above. It shows how business organisations may be moral agents (generate moral ownership through agency) even though they do not (and perhaps cannot) fulfil all the criteria necessary for humans to exhibit moral agency; and it works with a notion of moral responsibility that is not simply interested in eliciting favourable changes in organisational 'behaviour', but that is rooted in genuine moral desert. This model of moral agency requires that a collective entity exhibits intentional agency, captured in the idea of the consistent pursuit of values, and in addition that such pursuit is undertaken *reflectively*. Reflection here is cashed out as the formation of second order attitudes on the desirability of pursuing certain values, and attitudes that allow for prioritisation in the case of a conflict of values. The plausibility of these capacities was supported with examples of how business organisations could generate the necessary collective-level properties through the formation of either informal or formal structure. In developing this model of agency-producing structure I showed how those bodies we typically refer to as 'corporations' may often in fact be better understood as an amalgamation of a number of interrelated collective entities, based on overlapping groups of individuals and a mixture of both formal and informal organisational structure.

My second model departs from tradition in more extreme fashion by arguing for the possibility of ascribing moral responsibility to certain business organisations that do not exhibit any form of moral agency. Again, an account of the nature and functioning of organisational structure was central to this argument. I defined a 'system' as an organisation based on a particularly rigid formal structure, where all decisions determining organisational values are taken up front by an 'ownership' group, and the individuals populating the organisational structure are given no leeway to revise this value set. As such, systems may not possess moral agency since it is impossible for such organisations, through their members, to reflect on the relative importance of different values and act on that reflection. Instead I appealed to a different property that the organisation may acquire through the agreements that determine how its members' activity is coordinated and hence its structure established – complexity. The property of complexity I defined by reference to the epistemic limits under which any individual creating and operating organisational rules must operate. Once the number and intricacy of rules reaches a certain level it is impossible for any individual fully to grasp the effects that their actions will occasion, and so they cannot be held fully responsible for these effects<sup>83</sup>. But since this dislocation of responsibility is not due to some naturally occurring coordination problem, but rather the result of the operation of a human system, we are reluctant simply to reduce the overall level of culpability assigned. In these cases, the remainder of responsibility that no longer resides with the individuals with whom it originated accrues instead to the system itself in virtue of its complexity. Such organisations I labelled 'morally significant systems'.

While my focus has been on moral responsibility generated at the collective level in business organisations, I concluded with a brief investigation of the implications of my arguments for individual moral responsibility. In particular, I was concerned to counter a general line of thought that supposes that ascriptions of irreducible collective responsibility, applied to distinct collective entities, shield the individuals in those organisations from personal culpability for what they do. To do this I worked with the notion of a 'contributory action' – an action taken by an individual within an organisation that contributes to the generation of collective level properties and responsibility. In the context of the two models of collective responsibility that I have developed, I showed that far from insulating individuals from

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<sup>83</sup> It may be argued that this excess of responsibility simply accrues to the individuals that made the system 'complex' in the first place. The response to this challenge is that, to the extent that there is a 'tipping point' at which a system becomes complex, this event is unlikely to be planned and rather is itself brought about by individuals operating under epistemic limits. Hence the same dislocation of responsibility applies.

personal responsibility, ascriptions of collective liability open up individuals to the possibility of being called to account for a range of distinct actions. While I emphasised that care must be exercised in describing exactly how each individual should be taken to have acted in contributing to the collective outcome (in particular, the epistemic limits under which each is operating must be taken into account) in principle it would be surprising if collective level responsibility were not a strong indicator of the appropriateness of individual responsibility on the part of organisation members.

In this conclusion I have summarised some of the ways in which I hope I have contributed to our understanding of business ethics. However, in closing I should return to a point I made early on and note that while I have said much about 'business', much of my discussion has been framed in the language of 'organisations'. This should not be surprising, since it is in business organisations that I have located the particular challenges that I have addressed. While business organisations are indeed a special case of social group, particularly in the current highly commercialised world, it would be a mistake to claim that they sit apart from all other ways in which people coordinate their various activities. Other types of organisation that are sometimes mentioned as examples of non-political and non-business groups are sports clubs (or other types of club), or religious organisations. It is undoubtedly the case that there are examples of such groups that bear close similarities to business organisations; and indeed, it is also quite clear that the term 'business organisation' is used to cover a great many types of diverse ways people coordinate their activities. For these reasons, while I have framed my arguments as an exercise in business ethics, it is hard to resist the idea that they are more accurately captured under the heading of 'organisational ethics', albeit where the archetypal organisation to which they are relevant is commercial. The similarities or otherwise of the organisations found within these different fields would provide an interesting starting point for a further refinement of the ideas developed here.

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