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V. THE CORPORATION AS A MORAL PERSON

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I

IN one of his *New York Times* columns of not too long ago Tom Wicker's ire was aroused by a Gulf Oil Corporation advertisement that "pointed the finger of blame" for the energy crisis at all elements of our society (and supposedly away from the oil company). Wicker attacked Gulf Oil as the major, if not the sole, perpetrator of that crisis and virtually every other social ill, with the possible exception of venereal disease. It does not matter whether Wicker was serious or sarcastic in making his charges (I suspect he was in deadly earnest). I am interested in the sense ascriptions of moral responsibility make when their subjects are corporations. I hope to provide the foundation of a theory that allows treatment of corporations as members of the moral community, of equal standing with the traditionally acknowledged residents: biological human beings, and hence treats Wicker-type responsibility ascriptions as unexceptionable instances of a perfectly proper sort without having to paraphrase them. In short, corporations can be full-fledged moral persons and have whatever privileges, rights and duties as are, in the normal course of affairs, accorded to moral persons.

II

It is important to distinguish three quite different notions of what constitutes personhood that are entangled in our tradition: the metaphysical, moral and legal concepts. The entanglement is clearly evident in Locke's account of personal identity. He writes that the term "person" is "a *forensic* term, appropriating actions and their merit; and so belongs only to *intelligent agents*, capable of law, and happiness, and misery."[1] He goes on to say that by consciousness and memory persons are capable of extending themselves into the past and thereby become "concerned and *accountable*."[2] Locke is historically correct in citing the law as a primary origin of the term "person." But he is incorrect in maintaining that its legal usage somehow entails its metaphysical sense, agency; and whether or not either sense, but especially the metaphysical, is interdependent on the moral sense, accountability, is surely controversial. Regarding the relationship between metaphysical and moral persons there are two distinct schools of thought. According to one, to be a metaphysical person is to be a moral one; to understand what it is to be accountable one must understand what it is to be an intelligent or a rational agent and vice-versa; while according to the other, being an agent is a necessary but not sufficient condition of being a moral person. Locke holds the interdependence view with which I agree, but he roots both moral and metaphysical persons in the juristic person, which is, I think, wrongheaded. The preponderance of current thinking tends to some version of the necessary pre-condition view, but it does have the virtue of treating the legal person as something apart.

It is of note that many contemporary moral philosophers and economists both take a pre-condition view of the relationship between the metaphysical and moral person and also adopt a particular view of the legal personhood of corporations that effectually excludes corporations *per se* from the class of moral persons. Such philosophers and economists champion the least defensible of a number of possible interpretations of the juristic personhood of corporations, but their doing so allows them to systematically sidestep the question of whether corporations can meet the conditions of metaphysical personhood.[3]

III

John Rawls is, to some extent, guilty of fortifying what I hope to show is an indefensible interpretation of the legal concept and of thereby encouraging an

[1] John Locke. *An Essay Concerning Human Understanding* (1960), Bk. II, Ch. XXVII.
[2] *Ibid.*
[3] For a particularly flagrant example see: Michael Jensen and William Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics*, vol. 3 (1976), pp. 305–360. On p. 311 they write, "The private corporation or firm is simply one form of legal fiction which serves as a nexus for contracting relationships . . ."

anthropocentric bias that has led to the general belief that corporations just cannot be moral persons. As is well known, Rawls defends his two principles of justice by the use of a thought experiment that incorporates the essential characteristics of what he takes to be a pre-moral, though metaphysical population and then "derives" the moral guidelines for social institutions that they would accept. The persons (or parties) in the "original position" are described by Rawls as being mutually self-interested, rational, as having similar wants, needs, interests and capacities and as being, for all intents and purposes, equal in power (so that no one of them can dominate the others). Their choice of the principles of justice is, as Dennett has pointed out,[4] a rather dramatic rendering of one version of the compelling (though I think unnecessarily complex) philosophical thesis that only out of metaphysical persons can moral ones evolve.

But Rawls is remarkably ambiguous (and admittedly so) regarding who or what may qualify as a metaphysical person. He admits into the category, in one sentence, not only biological human beings but "nations, provinces, business firms, churches, teams, and so on,"[5] then, perhaps because he does not want to tackle the demonstration of the rationality, etc., of those institutions and organizations, or because he is a captive of the traditional prejudice in favor of biological persons, in the next sentence he withdraws entry. "There is, perhaps, a certain logical priority to the case of human individuals: it may be possible to analyze the actions of so-called artificial persons as logical constructions of the actions of human persons . . ."[6] "Perhaps" is, of course, a rather large hedge behind which to hide; but it is, I suppose, of some significance that in *A Theory of Justice* when he is listing the nature of the parties in the "original position" he adds "c. associations (states, churches, or other corporate bodies)."[7] He does not, unhappily, discuss this entry on his list anywhere else in the book. Rawls has hold, I think, of an important intuition: that some associations of human beings should be treated as metaphysical persons capable on his account of becoming moral persons, in and of themselves. He has, however, shrunk from the task of exploring the implications of that intuition and has instead retreated to the comfortable bulwarks of the anthropocentric bias.

IV

Many philosophers, including, I think, Rawls, have rather uncritically relied upon what they incorrectly perceive to be the most defensible juristic treatment of collectivities such as corporations as a paradigm for the treatment of corporations in their moral theories. The concept of corporate legal personhood under any of its popular interpretations is, I want to argue, virtually useless for moral purposes.

Following many writers on jurisprudence, a juristic person may be defined as any entity that is a subject of a right. There are good etymological grounds for such an inclusive neutral definition. The Latin "*persona*" originally referred to *dramatis personae*, and in Roman law the term was adopted to refer to anything that could act on either side of a legal dispute. [It was not until Boethius' definition of a person: "*Persona est naturae rationabilis individua substantia* (a person is the individual subsistence of a rational nature)" that metaphysical traits were ascribed to persons.] In effect, in Roman legal tradition persons are creations, artifacts, of the law itself, i.e., of the legislature that enacts the law, and are not considered to have, or only have incidentally, existence of any kind outside of the legal sphere. The law, on the Roman interpretation, is systematically ignorant of the biological status of its subjects.

The Roman notion applied to corporations is popularly known as the Fiction Theory. Hallis characterizes that theory as maintaining that "the personality of a corporate body is a pure fiction and owes its existence to a creative act of the state."[8] Rawls' view of corporate persons could not, however, be motivated by adherence to the Fiction Theory for two reasons. The theory does not demand a dichotomy between real and artificial persons. All juristic persons, on the theory, are creations of the law. The theory does not view the law as recognizing or verifying some pre-legally existing persons; it argues that the law creates its own subjects. Secondly, the theory, in its pure form at least, does not regard any juristic persons as composites. All things which

[4] Daniel Dennett, "Conditions of Personhood" in *The Identities of Persons* ed. by A. O. Rorty (Berkeley, 1976), pp. 175–196.
[5] John Rawls, "Justice as Reciprocity," in *John Stuart Mill, Utilitarianism*, ed. by Samuel Gorovitz (Indianapolis, 1971), pp. 244–245.
[6] *Ibid.*
[7] John Rawls, *A Theory of Justice* (Cambridge, 1971), p. 146.
[8] Frederick Hallis, *Corporate Personality* (Oxford, 1930), p. xlii.

are legislatively created as subjects of rights are non-reducible or, if you will, primitive individual legal persons. (It is of some note that the Fiction Theory is enshrined in English law in regard to corporate bodies by no less an authority than Sir Edward Coke who wrote that corporations "rest only in intendment and consideration of the law."[9])

The Fiction Theory's major rival in American jurisprudence and the view that does seem to inform Rawls' account is what I shall call "the Legal Aggregate Theory of the Corporation." It holds that the names of corporate bodies are only umbrellas that cover (but do not shield) certain biological persons. The Aggregate Theory treats biological status as having legal priority and corporate existence as a contrivance for purposes of summary reference. (Generally, it may be worth mention, Aggregate Theorists tend to ignore employees and identify corporations with directors, executives and stockholders. The model on which they stake their claim is no doubt that of the primitive partnership.) I have shown elsewhere[10] that to treat a corporation as an aggregate for any purposes is to fail to recognize the key logical differences between corporations and mobs. The Aggregate Theory, then, despite the fact that it has been quite popular in legislatures, courtrooms, and on streetcorners simply ignores key logical, socio-economic and historical facts of corporate existence. [It might prove of some value in clarifying the dispute between Fiction and Aggregate theorists to mention a rather famous case in the English law. (The case is cited by Hallis.) It is that of *Continental Tyre and Rubber Co., Ltd.* vs *Daimler Co. Ltd.* Very sketchily, the Continental Tyre company was incorporated in England and carried on its business there. Its business was the selling of tires made in Germany, and all of its directors were German subjects in residence in Germany, and all but one of its shares were held by German subjects. The case arose during the First World War, and it turned on the issue of whether the company was an English subject by virtue of its being incorporated under the English law and independent of its directors and stockholders, and could hence bring suit in an English court against an English subject while a state of war existed. The majority opinion of The Court of Appeals (5–1) was that the corporation was an entity created by statute and hence was "a different person altogether from the subscribers to the memorandum or the shareholders on the register."[11] Hallis aptly summarizes the judgment of the court when he writes that "The Continental Tyre and Rubber Co., Ltd., was an English company with a personality at law distinct from the personalities of its members and could therefore sue in the English Courts as a British Subject."[12] The House of Lords, however, supporting the Aggregate Theory and no doubt motivated by the demands of the War, overturned the Court of Appeals. Lord Buckley wrote "The artificial legal entity has no independent power of motion. It is moved by the corporator. . . . He is German in fact although British in form."[13] This view has seen many incarnations since on both sides of the Atlantic. I take Rawls' burying of his intuition in the logical priority of human beings as a recent echoing of the words of Lord Parker who in the Continental Tyre case wrote for the majority in the House of Lords: ". . . the character in which the property is held and the character in which the capacity to act is enjoyed and acts are done are not *in pari materia*. The latter character is a quality of the company itself, and conditions its capacities and its acts and is attributable only to human beings . . ."][14]

In Germanic legal tradition resides the third major rival interpretation of corporate juristic personhood. Due primarily to the advocacy of Otto von Gierke, the so-called Reality Theory recognizes corporations to be pre-legal existing sociological persons. Underlying the theory is the view that law cannot create its subjects, it only determines which societal facts are in conformity with its requirements. At most, law endorses the pre-legal existence of persons for its own purposes. Gierke regards the corporation as an offspring of certain social actions having then a *de facto* personality, which the law only declares to be a juridical fact.[15] The Reality Theory's primary virtue is that it does not ignore the non-legal roots of the corporation while it, as does the Fiction Theory, acknowledges the non-identity of the corporation and the aggregate of its directors, stockholders, executives and employees.

[9] 10 *Co. Rep.* 253, see Hallis, p. xlii.

[10] "Types of Collectivities and Blame," *The Personalist*, vol. 56 (1975), pp. 160–169, and in the first chapter of my *Foundations of Corporate Responsibility* (forthcoming).

[11] "Continental Tyre and Rubber Co., Ltd. vs. Daimler Co., Ltd." (1915), K.B., p. 893.

[12] Hallis, p. xlix.

[13] "Continental Tyre and Rubber Co., Ltd. vs. Daimler Co., Ltd." (1915), K.B., p. 918.

[14] (1916), 2 A.C., p. 340.

[15] See in particular Otto von Gierke, *Die Genossenschoftstheorie* (Berlin, 1887).

The primary difference between the Fiction and Reality Theories, that one treats the corporate person as *de jure* and the other as *de facto*, however, turns out to be of no real importance in regard to the issue of the moral personhood of a corporation. Admittedly the Reality Theory encapsulates a view at least superficially more amenable to arguing for discrete corporate moral personhood than does the Fiction Theory just because it does acknowledge *de facto* personhood, but theorists on both sides will admit that they are providing interpretations of only the formula "juristic person = the subject of rights," and as long as we stick to legal history, no interpretation of that formula need concern itself with metaphysical personhood or agency. The *de facto* personhood of the Reality Theory is that of a sociological entity only, of which no claim is or need be made regarding agency or rationality etc. One could, without contradiction, hold the Reality Theory and deny the metaphysical or moral personhood of corporations. What is needed is a Reality Theory that identifies a *de facto* metaphysical person not just a sociological entity.

Underlying all of these interpretations of corporate legal personhood is a distinction, embedded in the law itself, that renders them unhelpful for our purposes. Being a subject of rights is often contrasted in the law with being an "administrator of rights." Any number of entities and associations can and have been the subjects of legal rights. Legislatures have given rights to unborn human beings, they have reserved rights for human beings long after their death, and in some recent cases they have invested rights in generations of the future.[16] Of course such subjects of rights, though they are legal persons, cannot dispose of their rights, cannot administer them, because to administer a right one must be an agent, i.e., able to act in certain ways. It may be only an historical accident that most legal cases are cases in which "the subject of right X" and "the administrator of right X" are co-referential. It is nowhere required by law, under any of the three above theories or elsewhere, that it be so. Yet, it is possession of the attributes of an administrator of rights and not those of a subject of rights that are among the generally regarded conditions of moral personhood. It is a fundamental mistake to regard the fact of juristic corporate personhood as having settled the question of the moral personhood of a corporation one way or the other.

V

Two helpful lessons however, are learned from an investigation of the legal personhood of corporations: (1) biological existence is not essentially associated with the concept of a person (only the fallacious Aggregate Theory depends upon reduction to biological referents) and (2) a paradigm for the form of an inclusive neutral definition of a moral person is provided: "a subject of a right." I shall define a moral person as the referent of any proper name or description that can be a non-eliminatable subject of what I shall call (and presently discuss) a responsibility ascription of the second type. The non-eliminatable nature of the subject should be stressed because responsibility and other moral predicates are neutral as regards person and person-sum predication.[17] Though we might say that The Ox-Bow mob should be held responsible for the death of three men, a mob is an example of what I have elsewhere called an aggregate collectivity with no identity over and above that of the sum of the identities of its component membership, and hence to use "The Ox-Bow mob" as the subject of such ascriptions is to make summary reference to each member of the mob. For that reason mobs do not qualify as metaphysical or moral persons.

VI

There are at least two significantly different types of responsibility ascriptions that should be distinguished in ordinary usage (not counting the lauditory recommendation, "He is a responsible lad.") The first-type pins responsibility on someone or something, the who-dun-it or what-dun-it sense. Austin has pointed out that it is usually used when an event or action is thought by the speaker to be untoward. (Perhaps we are more interested in the failures rather than the successes that punctuate our lives.)

The second-type of responsibility ascription, parasitic upon the first, involves the notion of accountability. "Having a responsibility" is interwoven with the notion "Having a liability to answer," and having such a liability or obligation seems to imply (as Anscombe has noted[18]) the existence of some sort of authority relationship either between people or between people and a deity or in some weaker versions between people and social norms. The kernel of insight that I find

[16] And, of course, in earlier times animals have been given legal rights.

[17] See Gerald Massey, "Tom, Dick, and Harry, and All The King's Men," *American Philosophical Quarterly*, vol. 13 (1976), pp. 89–108.

[18] G. E. M. Anscombe, "Modern Moral Philosophy," *Philosophy*, vol. 33 (1958), pp. 1–19.

intuitively compelling, is that for someone to legitimately hold someone else responsible for some event there must exist or have existed a responsibility relationship between them such that in regard to the event in question the latter was answerable to the former. In other words, "*X* is responsible for *y*," as a second-type ascription, is properly uttered by someone *Z* if *X* in respect to *y* is or was accountable to *Z*. Responsibility relationships are created in a multitude of ways, e.g., through promises, contracts, compacts, hirings, assignments, appointments, by agreeing to enter a Rawlsian original position, etc. The right to hold responsible is often delegatable to third parties; though in the case of moral responsibility no delegation occurs because no person is excluded from the relationship: moral responsibility relationships hold reciprocally and without prior agreements among all moral persons. No special arrangement needs to be established between parties for anyone to hold someone morally responsible for his acts or, what amounts to the same thing, every person is a party to a responsibility relationship with all other persons as regards the doing or refraining from doing of certain acts: those that take descriptions that use moral notions.

Because our interest is in the criteria of moral personhood and not the content of morality we need not pursue this idea further. What I have maintained is that moral responsibility, although it is neither contractual nor optional, is not a class apart but an extension of ordinary, garden-variety, responsibility. What is needed in regard to the present subject then is an account of the requirements for entry into any responsibility relationship, and we have already seen that the notion of the juristic person does not provide a sufficient account. For example, the deceased in a probate case cannot be held responsible in the relevant way by anyone, even though the deceased is a juristic person, a subject of rights.

VII

A responsibility ascription of the second type amounts to the assertion of a conjunctive proposition, the first conjunct of which identifies the subject's actions with or as the cause of an event (usually an untoward one) and the second conjunct asserts that the action in question was intended by the subject or that the event was the direct result of an intentional act of the subject. In addition to what it asserts it implies that the subject is accountable to the speaker (in the case at hand) because of the subject's relationship to the speaker (who the speaker is or what the speaker is, a member of the "moral community," a surrogate for that aggregate). The primary focus of responsibility ascriptions of the second type is on the subject's intentions rather than, though not to the exclusion of, occasions. Austin wrote: "In considering responsibility, few things are considered more important than to establish whether a man *intended* to do A, or whether he did A intentionally."[19] To be the subject of a responsibility ascription of the second type, to be a party in responsibility relationships, hence to be a moral person, the subject must be at minimum, what I shall call a Davidsonian agent.[20] If corporations are moral persons, they will be non-eliminatable Davidsonian agents.

VIII

For a corporation to be treated as a Davidsonian agent it must be the case that some things that happen, some events, are describable in a way that makes certain sentences true, sentences that say that some of the things a corporation does were intended by the corporation itself. That is not accomplished if attributing intentions to a corporation is only a shorthand way of attributing intentions to the biological persons who comprise e.g. its board of directors. If that were to turn out to be the case then on metaphysical if not logical grounds there would be no way to distinguish between corporations and mobs. I shall argue, however, that a *C*orporation's *I*nternal *D*ecision Structure (its CID Structure) is the requisite redescription device that licenses the predication of corporate intentionality.

Intentionality, though a causal notion, is an intensional one and so it does not mark out a class of actions or events. Attributions of intentionality in regard to any event are referentially opaque with respect to other descriptions of that event, or, in other words, the fact that, given one description, an action was intentional does not entail that on every other description of the action it was intentional. A great deal depends upon what aspect of an event is being described. We can correctly say, e.g., "Hamlet intentionally kills the person hiding in Gertrude's room (one of Davidson's examples), but Hamlet does not intentionally kill Polonius," although "Polonius" and "the person hiding in Gertrude's room" are co-referential. The event may be properly

[19] J. L. Austin, "Three Ways of Spilling Ink" in *Philosophical Papers* (Oxford, 1970), p. 273.

[20] See for example Donald Davidson, "Agency," in *Agent, Action, and Reason*, ed. by Binkley, Bronaugh, and Marras (Toronto, 1971).

described as "Hamlet killed Polonius" and also as "Hamlet intentionally killed the person hiding in Gertrude's room (behind the arras)," but not as "Hamlet intentionally killed Polonius," for that was not Hamlet's intention. (He, in fact, thought he was killing the King.) The referential opacity of intentionality attributions, I shall presently argue, is congenial to the driving of a wedge between the descriptions of certain events as individual intentional actions and as corporate intentional actions.

Certain events, that is, actions, are describable as simply the bodily movements of human beings and sometimes those same events are redescribable in terms of their upshots, as bringing about something, e.g., (from Austin[21]) feeding penguins *by* throwing them peanuts ("by" is the most common way we connect different descriptions of the same event[22]), and sometimes those events can be redescribed as the effects of some prior cause; then they are described as done for reasons, done in order to bring about something, e.g., feeding the penguins peanuts in order to kill them. Usually what we single out as that prior cause is some desire or felt need combined with the belief that the object of the desire will be achieved by the action undertaken. (This, I think, is what Aristotle meant when he maintained that acting requires desire.) Saying "someone (X) did y intentionally" is to describe an event (y) as the upshot of X's having had a reason for doing it which was the cause of his doing it.

It is obvious that a corporation's doing something involves or includes human beings doing things and that the human beings who occupy various positions in a corporation usually can be described as having reasons for *their* behavior. In virtue of those descriptions they may be properly held responsible for their behavior, *ceteris paribus*. What needs to be shown is that there is sense in saying that corporations and not just the people who work in them, have reasons for doing what they do. Typically, we will be told that it is the directors, or the managers, etc., that really have the corporate reasons and desires, etc., and that although corporate actions may not be reducible without remainder, corporate intentions are always reducible to human intentions.

IX

Every corporation has an internal decision structure. CID Structures have two elements of interest to us here: (1) an organizational or responsibility flow chart that delineates stations and levels within the corporate power structure and (2) corporate decision recognition rule(s) (usually embedded in something called "corporation policy"). The CID Structure is the personnel organization for the exercise of the corporation's power with respect to its ventures, and as such its primary function is to draw experience from various levels of the corporation into a decision-making and ratification process. When operative and properly activated, the CID Structure accomplishes a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision. When viewed in another way, as already suggested, the CID Structure licenses the descriptive transformation of events, seen under another aspect as the acts of biological persons (those who occupy various stations on the organizational chart), to corporate acts by exposing the corporate character of those events. A functioning CID Structure *incorporates* acts of biological persons. For illustrative purposes, suppose we imagine that an event E has at least two aspects, that is, can be described in two non-identical ways. One of those aspects is "Executive X's doing y" and one is "Corporation C's doing z." The corporate act and the individual act may have different properties; indeed they have different causal ancestors though they are causally inseparable. (The causal inseparability of these acts I hope to show is a product of the CID Structure, X's doing y is not the cause of C's doing z nor is C's doing z the cause of X's doing y although if X's doing y causes event F then C's doing z causes F and *vice versa*.)

Although I doubt he is aware of the metaphysical reading that can be given to this process, J. K. Galbraith rather neatly captures what I have in mind when he writes in his recent popular book on the history of economics: "From [the] interpersonal exercise of power, the interaction . . . of the participants, comes the *personality* of the corporation."[23] I take Galbraith here to be quite literally correct, but it is important to spell out how a CID Structure works this "miracle."

In philosophy in recent years we have grown accustomed to the use of games as models for understanding institutional behavior. We all have some understanding of how rules in games make certain descriptions of events possible that would not be so if those rules were non-existent. The CID Structure

[21] Austin, p. 275.
[22] See Joel Feinberg, *Doing and Deserving* (Princeton, 1970), p. 134f.
[23] John Kenneth Galbraith, *The Age of Uncertainty* (Boston, 1971), p. 261.

of a corporation is a kind of constitutive rule (or rules) analogous to the game rules with which we are familiar. The organization chart of a corporation distinguishes "players" and clarifies their rank and the interwoven lines of responsibility within the corporation. An organizational chart tells us, for example, that anyone holding the title "Executive Vice President for Finance Administration" stands in a certain relationship to anyone holding the title "Director of Internal Audit" and to anyone holding the title "Treasurer," etc. In effect it expresses, or maps, the interdependent and dependent relationships, line and staff, that are involved in determinations of corporate decisions and actions. The organizational chart provides what might be called the grammar of corporate decision-making. What I shall call internal recognition rules provide its logic.

By "recognition rule(s)" I mean what Hart, in another context, calls "conclusive affirmative indication"[24] that a decision on an act has been made or performed for corporate reasons. Recognition rules are of two sorts. Partially embedded in the organizational chart are procedural recognitors: we see that decisions are to be reached collectively at certain levels and that they are to be ratified at higher levels (or at inner circles, if one prefers that Galbraithean model). A corporate decision is recognized internally, however, not only by the procedure of its making, but by the policy it instantiates. Hence every corporation creates an image (not to be confused with its public image) or a general policy, what G. C. Buzby of the Chilton Company has called the "basic belief of the corporation,"[25] that must inform its decisions for them to be properly described as being those of that corporation. "The moment policy is side-stepped or violated, it is no longer the policy of that company."[26]

Peter Drucker has seen the importance of the basic policy recognitors in the CID Structure (though he treats matters rather differently from the way I am recommending.) Drucker writes:

> Because the corporation is an institution it must have a basic policy. For it must subordinate individual ambitions and decisions to the *needs* of the corporation's welfare and survival. That means that it must have a set of principles and a rule of conduct which limit and direct individual actions and behavior . . .[27]

X

Suppose, for illustrative purposes, we activate a CID Structure in a corporation, Wicker's favorite, the Gulf Oil Corporation. Imagine that three executives *X*, *Y* and *Z* have the task of deciding whether or not Gulf Oil will join a world uranium cartel. *X*, *Y* and *Z* have before them an Everest of papers that have been prepared by lower echelon executives. Some of the papers will be purely factual reports, some will be contingency plans, some will be formulations of positions developed by various departments, some will outline financial considerations, some will be legal opinions and so on. In so far as these will all have been processed through Gulf's CID Structure system, the personal reasons, if any, individual executives may have had when writing their reports and recommendations in a specific way will have been diluted by the subordination of individual inputs to peer group input even before *X*, *Y* and *Z* review the matter. *X*, *Y* and *Z* take a vote. Their taking of a vote is authorized procedure in the Gulf CID Structure, which is to say that under these circumstances the vote of *X*, *Y* and *Z* can be redescribed as the corporation's making a decision: that is, the event "*XYZ* voting" may be redescribed to expose an aspect otherwise unrevealed, that is quite different from its other aspects e.g., from *X*'s voting in the affirmative. Redescriptive exposure of a procedurally corporate aspect of an event, however, is not to be confused with a description of an event that makes true a sentence that says that the corporation did something intentionally. But the CID Structure, as already suggested, also provides the grounds in its other type of recognitor for such an attribution of corporate intentionality. Simply, when the corporate act is consistent with, an instantiation or an implementation of established corporate policy, then it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so, in other words, as corporate intentional.

An event may, under one of its aspects, be described as the conjunctive act "*X* did *a* (or as *X* intentionally did *a*) ε *Y* did *a* (or as *Y* intentionally did *a*) ε *Z* did *a* (or as *Z* intentionally did *a*)" (where *a* = voted in the affirmative on the question of Gulf

[24] H. L. A. Hart, *The Concept of Law* (Oxford, 1961), Ch. VI.
[25] G. C. Buzby, "Policies—A Guide to What A Company Stands For," *Management Record*, vol. 24 (1962), p. 5ff.
[26] *Ibid.*
[27] Peter Drucker, *Concept of Corporation* (New York, 1964/1972), pp. 36–37.

Oil joining the cartel). Given the Gulf CID Structure, formulated in this instance as the conjunction of rules: when the occupants of positions *A*, *B* and *C* on the organizational chart unanimously vote to do something and if doing that something is consistent with, an instantiation or an implementation of general corporate policy and *ceteris paribus*, then the corporation has decided to do it for corporate reasons, the event is redescribable as "the Gulf Oil Corporation did *j* for corporate reasons *f*." (where *j* is "decided to join the cartel" and *f* is any reason (desire + belief) consistent with basic policy of Gulf Oil, e.g., increasing profits) or simply as "Gulf Oil Corporation intentionally did *j*." This is a rather technical way of saying that in these circumstances the executives voting is, given its CID Structure, also the corporation deciding to do something, and that regardless of the personal reasons the executives have for voting as they do and even if their reasons are inconsistent with established corporate policy or even if one of them has no reason at all for voting as he does, the corporation still has reasons for joining the cartel; that is, joining is consistent with the inviolate corporate general policies as encrusted in the precedent of previous corporate actions and its statements of purpose as recorded in its certificate of incorporation, annual reports, etc. The corporation's only method of achieving its desires or goals is the activation of the personnel who occupy its various positions. However, if *X* voted affirmatively purely for reasons of personal monetary gain (suppose he had been bribed to do so) that does not alter the fact that the corporate reason for joining the cartel was to minimize competition and hence pay higher dividends to its shareholders. Corporations have reasons because they have interests in doing those things that are likely to result in realization of their established corporate goals regardless of the transient self-interest of directors, managers, etc. If there is a difference between corporate goals and desires and those of human beings it is probably that the corporate ones are relatively stable and not very wide ranging, but that is only because corporations can do relatively fewer things than human beings, being confined in action predominately to a limited socio-economic sphere. The attribution of corporate intentionality is opaque with respect to other possible descriptions of the event in question. It is, of course, in a corporation's interest that its component membership view the corporate purposes as instrumental in the achievement of their own goals. (Financial reward is the most common way this is achieved.)

It will be objected that a corporation's policies reflect only the current goals of its directors. But that is certainly not logically necessary nor is it in practice true for most large corporations. Usually, of course, the original incorporators will have organized to further their individual interests and/or to meet goals which they shared. But even in infancy the melding of disparate interests and purposes gives rise to a corporate long range point of view that is distinct from the intents and purposes of the collection of incorporators viewed individually. Also, corporate basic purposes and policies, as already mentioned, tend to be relatively stable when compared to those of individuals and not couched in the kind of language that would be appropriate to individual purposes. Furthermore, as histories of corporations will show, when policies are amended or altered it is usually only peripheral issues that are involved. Radical policy alteration constitutes a new corporation, a point that is captured in the incorporation laws of such states as Delaware. ("Any power which is not enumerated in the charter and the general law or which cannot be inferred from these two sources is *ultra vires* of the corporation.") Obviously underlying the objection is an uneasiness about the fact that corporate intent is dependent upon policy and purpose that is but an artifact of the socio-psychology of a group of biological persons. Corporate intent seems somehow to be a tarnished illegitimate offspring of human intent. But this objection is another form of the anthropocentric bias. By concentrating on possible descriptions of events and by acknowledging only that the possibility of describing something as an agent depends upon whether or not it can be properly described as having done something (the description of some aspect of an event) for a reason, we avoid the temptation to look for extensional criteria that would necessitate reduction to human referents.

The CID Structure licenses redescriptions of events as corporate and attributions of corporate intentionality while it does not obscure the private acts of executives, directors etc. Although *X* voted to support the joining of the cartel because he was bribed to do so, *X* did not join the cartel, Gulf Oil Corporation joined the cartel. Consequently, we may say that *X* did something for which he should be held morally responsible, yet whether or not Gulf Oil Corporation should be held morally responsible for joining the cartel is a question that turns on issues that may be unrelated to *X*'s having accepted a bribe.

Of course Gulf Oil Corporation cannot join the

cartel unless *X* or somebody who occupies position *A* on the organizational chart votes in the affirmative. What that shows, however, is that corporations are collectivities. That should not, however, rule out the possibility of their having metaphysical status, as being Davidsonian agents, and being thereby full-fledged moral persons.

This much seems to me clear: we can describe many events in terms of certain physical movements of human beings and we also can sometimes describe those events as done for reasons by those human beings, but further we can sometimes describe those events as corporate and still further as done for corporate reasons that are qualitatively different from whatever personal reasons, if any, component members may have for doing what they do.

Corporate agency resides in the possibility of CID Structure licensed redescription of events as corporate intentional. That may still appear to be downright mysterious, although I do not think it is, for human agency as I have suggested, resides in the possibility of description as well.

Although further elaboration is needed, I hope I have said enough to make plausible the view that we have good reasons to acknowledge the non-eliminatable agency of corporations. I have maintained that Davidsonian agency is a necessary and sufficient condition of moral personhood. I cannot further argue that position here (I have done so elsewhere). On the basis of the foregoing analysis, however, I think that grounds have been provided for holding corporations *per se* to account for what they do, for treating them as metaphysical persons *qua* moral persons.[28]

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