

Peter A. French Corporate Moral Agency

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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. I do not know if Wicker was serious or sarcastic in making all of his charges; I have a sinking suspicion that he was in deadly earnest, but I have doubts as to whether Wicker understands or if many people understand what sense such ascriptions of moral responsibility make when their subjects are corporations. My interest is to argue for a theory that accepts 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, I shall argue that corporations should be treated as full-fledged moral persons and hence that they can have whatever privileges, rights, and duties as are, in the normal course of affairs, accorded to moral persons.

2

There are at least two significantly different types of responsibility ascriptions that I want to distinguish in ordinary usage (not counting the laudatory 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) 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 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, a responsibility ascription of the second type is properly uttered by someone Z if he or she can hold X accountable for what he or she has done. 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 delegated to third parties; but importantly, 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 or her 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 in any responsibility relationship.

3

A responsibility ascription of the second type amounts to the assertion that the person held responsible is the cause of an event (usually an untoward one) and 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 liable to account 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.

4

For a corporation to be treated as a responsible 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 short-hand way of attributing intentions to the biological persons who comprise, for example, 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 corporation’s CID Structure (the Corporate Internal Decision Structure) is the requisite redescription device that licenses the predication of corporate intentionality. 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.

5

Every corporation must have an internal decision structure. The CID Structure has 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 “corporate 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 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) as 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 nonidentical 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. 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 person-ality of the corporation.¹

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 of games make certain descriptions of events possible that would not be so if those rules were nonexistent. The CID Structure 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, for example, the Burlington Northern Corporation distinguishes “players” and clarifies their rank and the interwoven lines of responsibility within the corporation. The Burlington chart lists only titles, not unlike King, Queen, Rook, etc. in chess. What it tells us is that anyone holding the title “Executive Vice President for Finance and Administration” stands in a certain relationship to anyone holding the title “Director of Internal Audit” and to anyone holding the title “Treasurer,” etc. Also it expresses, or maps, the interdependent and dependent relationships that are involved in determinations of corporate decisions and actions. In effect, it tells us what anyone who occupies any of the positions is vis-à-vis the decision structure of the whole. The organizational chart provides what might be called the grammar of corporate decision-making. What I shall call internal recognition rules provide its logic.² Recognition rules are of two sorts. Partially embedded in the organizational chart are the 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 the Galbraithian model). A corporate decision is recognized internally 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,”³ 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.”⁴ 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.⁵ Suppose, for illustrative purposes, we activate a CID Structure in a corporation, Wicker’s favorite, the Gulf Oil Corporation. Imagine then that three executives X, Y, and Z have the task of deciding whether or not Gulf Oil will join a world uranium cartel (I trust this may catch Mr. Wicker’s attention and hopefully also that of Jerry McAfee, current Gulf Oil Corporation president).

X, Y, and Z have before them an Everest of papers that have been prepared by lower echelon executives. Some of the reports will be purely factual in nature, some will be contingency plans, some will be in the form of position papers developed by various departments, some will outline financial considerations, some will be legal opinions, and so on. Insofar 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 "X Y Z 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. But the CID Structure, as already suggested, also provides the grounds in its nonprocedural recognition for such an attribution of corporate intentionality. Simply, when the corporate act is consistent with the 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) and Y did a (or as Y intentionally did a) and Z did a (or as Z intentionally did a)" (where a = voted in the affirmative on the question of Gulf 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 implementation of general corporate policy, other things being equal, 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 are, 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 socioeconomic sphere. 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 totally 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 and matters of style that are involved. Radical policy alteration constitutes a new corporation. This point is captured in the incorporation laws of such states as Delaware. ("Any power which is not enumerated in the charter or which cannot be inferred from it is ultra vires [beyond the legal competence] 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 sociopsychology of a group of biological persons. Corporate intent seems somehow to be a tarnished, illegitimate offspring of human intent. But this objection is a form of the anthropocentric bias that pervades traditional moral theory. 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 for a reason, we avoid the temptation of trying to reduce all agents 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 organization 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 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 also 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. 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. A. A. Berle has written:
The medieval feudal power system set the “lords spiritual” over and against the “lords temporal.” These were the men of learning and of the church who in theory were able to say to the greatest power in the world: “You have committed a sin; therefore either you are excommunicated or you must mend your ways.” The lords temporal could reply: “I can kill you.” But the lords spiritual could retort: “Yes that you can, but you cannot change the philosophical fact.” In a sense this is the great lacuna in the economic power system today.⁶

I have tried to fill that gap by providing reasons for thinking that the moral world is not necessarily composed of homogeneous entities. It is sobering to keep in mind that the Gulf Oil Corporation certainly knows what “You are held responsible for payment in full of the amount recorded on your statement” means. I hope I have provided the beginnings of a basis for an understanding of what “The Gulf Oil Corporation should be held responsible for destroy-ing the ecological balance of the bay” means.