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ONTOLOGICAL ERROR OR PRAGMATIC CONVENIENCE? REVISITING THE DEBATE OF CORPORATE MORAL AGENCY AND RESPONSIBILITY

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Bharunda, the strange bird, had two heads and a common stomach. One day, one of the heads found a delicious fruit and on seeing this, the other head also wanted to taste the fruit but the first head refused to let it have it. Enraged, the other head soon found a poisonous fruit and consumed it. The poison reached the common stomach and both the heads perished.

-Panchatantra

Abstract

Does it make any sense to assign the status of moral agency/personhood and moral responsibility to an inanimate entity like a corporation? Even after intense debates and the writing of a number of volumes on the nature of corporations, this question still remains a live one not only in the domain of philosophy but also in other disciplines like law, sociology, and management. Three major views have been developed with regard to the aforementioned issue. First one is holism which argues that corporations are moral persons like human individuals and should be held morally responsible for their actions as well as omissions. Second one is methodological individualism which argues against holism. It argues that the actions of corporations can be reduced at least 'in principle' to the action of individual members without the loss of any meaning. It argues that corporations are legal agents but not moral agents. The third view is called moderate view which holds that the corporations are agents of different kinds and should be held morally responsible for their wrong action. While holism and moderate view hold corporations morally responsible for their action as well as omission, methodological individualism states that moral agency and responsibility cannot be assigned to inanimate entity like corporation. In this paper, I will argue in the line of methodological individualism of John R. Danley. Carrying forward the position of Danley, I would argue that the assignment of moral agency to corporation could neither be an ontological necessity nor a pragmatic one. Ontological and pragmatic necessity to assign agency and responsibility to

inanimate entity like corporation could make sense only from social and legal point of view and not from moral one.

Key Words: *Moral agency, corporate person, corporate responsibility, holism, methodological individualism, ontology, pragmatic necessity.*

Introduction:

What kind of entities are corporations? Is it a conglomeration of individual members or something more than the conglomeration of individuals? Corporations are granted as legal persons with certain legal rights and duties. Technically, the corporation is a juristic person with single or group of individuals. But when it comes to assignment of moral agency to corporations, it becomes a matter of debate among philosophers. In this paper, I would argue that the source of this debate arises partly because of our usage of natural language and partly because of pragmatic necessity. The kind of power corporation exhibit in the society; with slight negligence it can brought amok. One belief is that the assignment of moral agency and responsibility would tackle this pragmatic concern. I would be arguing that this concern could be tackled by assigning legal personhood and legal duties or responsibility to corporations. For that it is not necessary to assign moral personhood and moral responsibility to corporations. My argument would be echoing the position of methodological individualism. To substantiate my argument, I would be taking the views of John R. Danley who argues that corporate moral agency could be reduced to moral responsibility of individual members within the corporations. Before entering into the argument let me make it clear that the term “corporation” can refer to various entities like educational institutions, churches, banks, charitable entities etc. In this paper, while discussing the assignment of moral agency to corporations, I would be restricting the use of corporation to business entity having certain legal rights and duties like human persons.

Often in our day-to-day conversation we make certain statement about corporations like “the Corporations X priorities sustainability over profit only’ or “the Corporation Y polluted the river through its mass production”. Our statements give us the impression that our ascription of action predicates to inanimate entities are true. The entire debate of moral agency and responsibility arise because of the ascription of action predicate to corporations. If anything wrong happens by the corporation then we take our common usage of ascription of action predicate in literal sense and start making moral judgement about the corporation. Can we

ascribe action predicate to corporations above and over the action of individuals members of the corporation? Even if we ascribe action predicate to corporation, then does it imply that corporation is an agent like human being? If any disaster happens due to corporate action, usually we blame the corporation like we blame a human being. Our blaming gives the impression that corporation is an agent like human being and deserve moral responsibility like human being. Ascription of agency and moral responsibility to corporation creates a lot of problems in the domain of morality. What sense does it make to assign moral agency and responsibility to an inanimate entity like corporation? Three major theories have been developed with regard to this question. The first theory states that corporations can be viewed as a person/agent like any human being and should be held morally responsible for its actions. This view is called collectivism or holism. One of the main proponents of this theory is Peter A. French. Another theory is methodological individualism which is a reaction against holism. This theory states that corporations cannot be viewed as moral persons/agents. Only human agents are subject to moral scrutiny and not inanimate entities like corporations. Each act of the corporation can be translated into or reduced to the action of individual members within the corporation. One of the proponents of this view is John R. Danley. The third theory views corporations as agents who are unlike us, but nevertheless should be held morally responsible for their wrong acts. This is a moderate view which stands in between collectivism and individualism. One of the chief proponents of this theory is Thomas Donaldson. In this paper, I would be arguing in the line of methodological individualism of John R. Danley by rejecting the idea that corporations are moral agents and they can be held morally responsible as held by Peter French and to some extent Thomas Donaldson. In the coming section, I would be briefly discussing the idea of holism of Peter A. French and how John R. Danley rejects his idea that corporations are not persons. And in the next section, I would develop the argument that assignment of moral agency and responsibility to corporation can neither be an ontological necessity nor a pragmatic one. Both the necessities can be taken care of by legality. Ascription of moral agency and responsibility to corporation would be superfluous and metaphorical usage of our language.

Section-I Corporate moral agency: The debate between holism and methodological individualism

In this section I would be dealing with two view points with regard to the debate of corporate moral agency and responsibility. First, I would be dealing with corporate holism or collectivism

of Peter A. French and then methodological individualism of John R. Danley. According to Peter A. French, corporations are like biological human beings. Therefore, they are subject of morality. They can be considered moral agents with moral responsibility for their actions and omissions. In this context French writes,

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 moral persons.¹

French considers that the rights and duties of the corporations as a whole are greater than the sum of the rights and duties of the individual members within it. He acknowledges that the corporation is a fictional person or *personae fictae*. Yet he equates fictional person with biological person because corporations act with intention or intentionality. The question is: how a fictional person enables its intentionality or forms an intention? According to French, it is through corporate internal decision structure (CIDS). Though individual decisions are synthesized into corporate decisions through CIDS yet through CIDS it is not possible to trace back to any single individual member whose decision shaped the corporate policies. For this reason, French assigns an independent status to CIDS through which corporate acts with certain purposes and objectives independent of its individual members. According to French, CIDS is a combination of three elements:

- (i) Responsibility flow chart which shows the power structure of a corporation
- (ii) Procedural rules and
- (iii) Policies structure and decision of the corporation.²

All the authorities viz., managers, a CEO including all other employees are connected to each other through flow charts that demonstrates who is responsible to whom. French equates the function of the corporation to the function of our brain. The way we cannot reduce the entire action of a human being to the firing of neurons, in the same way the action of the corporation cannot be boiled down to the action of individual members. French explains the function of CIDS with an analogy of chess game that is played on a computer. Each piece in the chess i.e., the king, queen, rook, bishop and pawn are grammar and their movement is determined by the rules of the game. Likewise, the grammar of corporate decision making is understood by an organizational grid sheet. When we look at the game of chess, we look at the sum total of pieces moving rather than the move of a single piece. Recognition rules determine and justify the corporate acts. Recognition rules within the CIDS are formed by consulting written documents

¹ French, P, "The Corporation as a Moral Person", *American Philosophical Quarterly*: 16, (1979), 207.

² French, P, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984), 48.

and policies. As French puts it,

By my account, recognition rules within the corporate Internal Decision Structure determine and justify the corporate intentional character of corporate actions. They warrant the identification of particular decisions as corporate, but they cannot be justified. That rule is a recognition rule of a CID Structure is a factual matter.³

Corporate decisions are shaped through procedural rules. Corporate actions followed after rules are being satisfied. And policies are made in order to achieve the goals of the corporation. Policies also show the beliefs and the way the corporation intends to act. By explaining it this way we can see that French is creating a conceptual person and ascribing responsibility to it. Now the paper would explicate the nature of corporations from the view point of methodological individualism of John R. Danley who takes the stance of traditionalism. The paper would discuss John R. Danley's repudiation of Peter French's holistic theory of corporations. The view of traditionalism stands on the opposite of the view of holism or collectivism⁴. This view holds that the actions of collectives or a group can be reduced at least "in principle" to the actions of individuals who constitutes the group. In other words, only persons i.e., entities with particular physical and mental properties, can be morally responsible. The view of traditionalism is often called methodological individualism and holds that a corporation cannot be held morally responsible. According to this view, corporations do not have any moral status beyond their individual members. Explanations of a corporation's action, intention and belief can be restated with reference to the actions, intentions and beliefs of its individuals. It is only the individual agent who enjoys the status of moral responsibility. It can be seen that Danley is through and through traditionalist from his article entitled "Corporate moral agency: the case for anthropological bigotry". Danley argues in favor of actual or biological persons. In his view, only a biological person can be held morally responsible and not corporations. Corporations do not act in a strict sense where action has been understood in terms of physical movements. It is the human persons as members act within the corporation. A corporation is a fictional entity with a legal distinction but not a moral one. In Danley's words,

I contend that corporations should not be included in the moral community; they should not be granted full-fledged moral status.⁵

³ *Ibid.*, 53.

⁴ Collectivism is sometimes called corporativism in business ethics.

⁵ *Ibid.*, 279.

Danley leveled French's view as corporativism. French argues that corporations should be viewed as both legal and moral members of the community. Corporations can have "intentions" and can be held accountable or liable for their actions. According to Danley, corporations cannot "intend" anything. The individuals that comprise a corporation are ultimately responsible for its actions. The collection of individuals cannot be considered a person and cannot be held morally responsible. Danley's view is a reduction from corporate actions to individual action. There are not two distinct actions as French says. According to Danley, all corporate action can be reduced to the individual actions of the members of the corporation.

Danley sees a number of problems with the collectivist position.

- Firstly, collectivists hold corporations as moral persons on the basis of CID Structure. It is the CID Structure which makes the corporation capable of making a decision. But according to Danley, the CID Structure does not reflect the ways decisions are actually made in corporate settings. In actual business practice the rules are seldom followed strictly. So, decisions do not get made in accordance with CID Structure. In fact, some individuals have more power than others and politics is involved in decision making. Sometimes ideas are not followed through proper channel. So, CID Structure seems unrealistic as to how the corporation acts.
- Secondly, if the CID Structure does not reflect how decisions are made, it ceases to be a normative criterion for determining which actions are corporate actions and which are not. What does he mean by this? Actually, the CID Structure is supposed to show how decisions ought to be made. Suppose the CID Structure is never followed and we modify the rule to reflect how the decisions are actually made with various individuals having power. Then what we are doing is that we are showing how it is done but we do not say that it ought to be done in this way. Here we lose the normative force. We simply describe how the rules are made and we do not prescribe how it ought to be made.

First of all, CIDS is unrealistic. And if we describe how it actually works, then it will lose its normative force, since we are only describing how it works and not how ought to work. If the CID structure (including the corporate charter) did define corporate actions, then the result would be that a corporation could never act illegally. It is because structure determines the action. But we do know that corporations are engaged sometimes in illegal practice. This poses a problem for the collectivists: how do we hold a corporation accountable for illegal acts if in

fact the CIDS ensure that the corporation only acts within the domain of rules? It is not proper to hold like Danley that corporate decision seldom follow the structure. It is not possible that all the time corporate decisions cannot follow CIDS. Seldom deviating from CIDS will not cease a corporation to be a moral agent.

In addition to the above problems Danley criticises French on the grounds of using “intention” in an equivocal sense, though French used the word ‘intend’ in the same way traditionalists use it. According to Danley, the ascription of intention to biological person is different from the ascription of intention to the corporation⁶. A new sense of intent could lead us to say that plants, animals and machines also have intentions. But French does not respond to Danley. This remains a serious problem for him.

The entire discussion of the corporation as a person really boils down to the notion of responsibility. If you consider the corporation as a moral person and treat it like a person then there will be a number of problems when it comes to responsibility. Corporation do not feel remorse, do not feel regret. They may be able to provide compensation in some way. But definitely there is the problem with punishment. In what way can we punish the corporation for its wrong act? If we try to punish a corporation, let us say we put the corporation into death. Death is the greatest punishment we assign to individuals. If we assign the similar kind of punishment to corporation then it would be like closing the corporation. By closing the corporation, we are letting a number of individuals suffer, not the corporation. Corporations do not suffer because suffering is biological and psychological phenomena. Corporations are not biological or psychological being. Can the corporation act with (com)passion the way human beings act? In what sense does the corporation intend? Does it act maliciously? Premeditation and acts of (com)passion are lacking in corporations. Intention is linked with moral responsibility.

According to Danley, suppose we take the view of French seriously and ascribe personhood to the corporation, then the feelings of moral outrage are directed to fictional beings. When I am disturbed by environmental pollution by the corporation, to whom can I direct my complaint? There is no physical being that is causing the pollution. And also, we cannot punish the individual members within the company. Danley finds this strange. If biological members are

⁶ Danley, J.R, “Corporate Moral Agency,” *A Companion to Business Ethics*, Frederick, R.E, eds., (Malden:Blackwell Publishing Ltd, 2002), 253.

punished for corporate crimes, then they are “scapegoats” and “sacrificial lambs”.⁷ We cannot hold biological people accountable for what they did not do. It is like blaming the firing of neurons for a murder. It would be silly if we hold the neuron responsible when an individual commits murder. Crimes without criminals become a possibility if we hold French’s view.

Danley comes up with an alternative approach, a machine approach, in order to deal with the nature of corporations. According to him, corporations should be treated as machines. In the words of Danley,

The corporation is more like a machine than an organism. Like machines they are human inventions, designed by humans, modified by humans, operated by humans. Like many machines they are controlled by the few for the benefit of the few.⁸

According to Danley, our concern should be directed toward the operators and designers of the machine. We should look into the parts of the machine if the machine is not functioning properly. Similarly, we should find out the individuals within the corporation that create hazardous situations in the name of corporation. Individuals are part and parcel of the entire corporation. Danley conceives corporation as a machine and the individual members are like the parts of that machine. One of the possible arguments could be that there are certain cases where it is easier to hold corporation responsible but it is hard to hold individuals responsible for the wrong that takes place within the corporation. Then taking the side of methodological individualism, it could be replied that there is legal responsibility to tackle this kind of situation. By ascribing moral responsibility in complex situation like this we would not gain anything except psychological solace.

Section-II Corporate moral agency: Neither an ontological nor a pragmatic necessity from moral point of view

In this section, I would be arguing against the idea of holism by taking the side of methodological individualism of John R. Danley. The main argument for rejecting holism would be that it is neither an ontological necessity nor a pragmatic one to assign moral responsibility to inanimate entity like corporation. The first argument is that moral responsibility is the corollary of the notion of moral agency. Since corporations could not be

⁷ Danley, J.R., “Corporate moral agency: the case for anthropological bigotry”, *An Introduction to Business Ethics*, Chryssides, G.D and Kaler, J.H, eds., (Thomson Learning, 1993), 285.

⁸ *Ibid.*, 286.

considered as moral person, it would imply that corporations are not morally responsible. I do accept that corporations are legal agents with legal liability or social responsibility. But I do not consider corporations to be moral agent and can be assigned moral responsibility. Assigning moral agency and responsibility would not have any extra benefit over the assignment of legal agency with legal liability. The essence of moral personhood is consciousness, emotions and moral awareness. Corporations lack all these features. Corporations do not have emotions like human individuals. Human individuals can genuinely intend or feel guilty or remorse for their action whereas corporations intend through its executive board members and it does not *feel* guilty or regret or empathy like human beings.⁹ Feeling is something biological and psychological phenomena pertains to biological beings. Moral awareness is one of the features of moral agency. Having moral awareness means to have a sense of good and bad. In a nutshell, having moral awareness means to have the ability to make moral judgement. Even human individuals like mentally retarded persons or insane persons who do not have the sense of good or bad and therefore, they are not considered full-fledged moral agents. They lack the ability to make moral judgement. Another essential aspect of moral agency is free will. Corporations do not have genuine moral freedom. Their acts are constrained through power structure and system's bureaucracy.

Why thinkers and policy makers have been debating about ascription of moral agency and responsibility to corporations? The reason often stems from either pragmatic concern or ontological one or both. I would be arguing that neither one of the concerns is sufficient enough to assign the moral agency to corporation. The kind of immense power the present-day corporations hold today, with little mistake they can cause a great havoc to the society. Therefore, it is necessary to hold them morally responsible. This pragmatic concern could be taken care of by considering corporations as legal entity and having legal responsibility. Assigning moral agency and moral responsibility would not give any extra benefit and defeat the purpose of moral judgement. First of all, corporations are legal persons with legal liability. If they do anything wrong, then they can be held liable on the legal ground. The members within the corporations can remain careful as something wrong done by them may attract legal penalty. This itself is sufficient to regulate the action of the corporation. Legal responsibility can discourage corporations from doing away from wrong actions. But it may not be a ground to encourage corporations to perform duties for the society beyond the prescribed legal duties.

⁹ This view point has been taken by Michael McKenna and David Shoemaker. See Haan, N, d., "Moral Collectivism and the Methodology of Ethical Theory", *Erkenntnis*, (2025).

This could be another pragmatic necessity for assigning moral agency and responsibility to corporations.

It's a fact that individual members identify themselves with the corporation. Assignment of moral agency especially praise can encourage them to do good for the society and blame would discourage them to do away from wrong acts. According to Yuval Noah Harari, usually the members of the corporations identify themselves with the corporation. The corporation becomes a ground or a story which they all share. In this context he writes,

Without commonly accepted stories about things like money, states or corporations, no complex human society can function. We can't play football unless everyone believes in the same made-up rules, and we can't enjoy the benefits of markets and courts without similar make-believe stories.¹⁰

Since members identify themselves with the corporations through common stories, there is a chance that they can act in a good as well as bad manner for the sake of corporation. Similar point of view has been stated by Simon Sinek. Sinek says that the organization has a WHY (purpose) and it hires those people to be its member whose WHY matches with the WHY of the organization. Individual members want to be the part of bigger system.¹¹ So, corporate WHY is always bigger than the WHY of its individual members.¹² This could be a ground for holist to argue for assigning moral responsibility to corporations. But individualists like Harari and others warn us to be aware about the fact that corporation like other social entities create stories to bind us together. Stories should be tool to make group. But the group should not sacrifice their life in the service of corporations. Therefore, Harari writes,

But the stories are just tools. They should not become our goals or our yardsticks. When we forget that they are mere fiction, we lose touch with reality. Then we begin entire wars 'to make a lot of money for the corporation' or 'to protect the national interest'. Corporations, money and nations exist only in our imagination. We invented them to serve us; how come we find ourselves sacrificing our lives in their service?¹³

¹⁰ Harari, Y, N., *Homo Deus: A Brief History of Tomorrow*, (Vintage, 2017), 117.

¹¹ Sinek, S., *Start with why: How great leaders inspire everyone to take action*, (Penguin Random House, UK, 2019), 42.

¹² Sinek calls individual Why as nested Why (specific, aligned purposes of individual member or a group of members) and organizations Why as the trunk that represents the foundational purpose of an entire organization. The nested why must align with the why of the trunk. See Sinek, S., Mead, D., & Docker, P. *Find your why: A practical guide for discovering purpose for you and your team*, (New York, NY: Portfolio, 2017).

¹³ Harari, Yuval, N., *Homo Deus: A Brief History of Tomorrow*, (Vintage, 2017), 118.

From pragmatic point of view people act for the corporations. This is the reason that assigning moral status to corporation would make individuals more aware about their action. Apart from preventing corporations from indulging in wrong acts, moral status can enable them to be sensitive towards society and do better than only maximization of profits. There could be two possible arguments against this idea. First, this point could create diffusion of responsibility. Blaming corporation for the wrong act may hide the responsibility of the individual member or group of members who actually did the wrong and the entire members bear their responsibility. Also, it would allow leaders in the corporation or the group who actually did the wrong escape from the responsibility. The same has already been warned by Danley. Secondly, holding corporation morally responsible from pragmatic point of view would be going against its own interest. Holding corporate morally responsible could create the bystander effect.¹⁴

The fact of Tragedy of Commons is another ground to hold that pragmatic concern of assigning moral agency and responsibility to the corporation would fail. It is not necessary that every individual within the corporation would be sensitive towards the corporate decision and actions. Every individual does not identify themselves with the corporations or they do not have a sense of belongingness. Assigning moral responsibility to corporation means appealing to conscience of each and every individual member within the corporation. But the tragedy of common shows that appealing to conscience of people would not be sufficient to prevent people doing the wrong thing within the system.¹⁵ It's about the nature of individual within the system that matters. In the same system there are individual who are very much concerned about the well-being of the system. It is those individuals who identify themselves with the system and develop a sense of belongingness. In the system of tragedy of commons, individuals who cooperates bear the loss and who exploits the system gains.¹⁶ The individuals who exploit the system are the individuals who are alienated from the system. Moral judgement about the system would hardly have any impact on those individual to regulate their behaviors. They would be least concern about the moral judgement about the system. With reference to this argument, another argument could be raised against the idea of corporate responsibility is that

¹⁴ It is a social psychological phenomenon where individuals fail to take necessary step to help a victim due to diffusion of responsibility. It happens because of presence of many individuals. Each individual thinks that the other individual would take the responsibility. The classic case of bystander effect is Kitty Genovese case where Kitty Genovese was murdered before 37 bystanders and nobody called police thinking that the other would inform. See Gansberg, M., "Moral Cowardice", in Pojman, L.P., *The Moral Life: An Introductory Reader in Ethics and Literature*, (Oxford University Press, 2000), 503.

¹⁵ Hardin, G., "The Tragedy of Commons", *Americal Association for the Advanced Science*, (1968), 1246.

¹⁶ Sahoo, A., "The Obligation of Rich Nations Towards Poor Nations: A Fresh Look on the Debate between Moralism and Realism", *Law Review*, Vol. 43, (2023), 103.

it could create a bystander effect. Members who have a sense of belongingness would develop a sense of moral guilt and alienated members would shirk their responsibility to other for their mistake. In this way the purpose of moral responsibility would miss its mark.

As far as the ontological necessity argument is concerned, it could be argued that it's not possible to be morally responsible without being moral agent. It would be quite odd to say that corporations are morally responsible without being moral agents.¹⁷ Moral responsibility is logically connected with the notion of moral agency. I would argue that since corporations are not moral agents, therefore, they cannot be held morally responsible. Our assignment of moral responsibility to corporation is an elliptical responsibility attribution. The assignment of moral agency and responsibility to corporation is metaphorical in nature and not a literal one.¹⁸

Conclusion

I would like to conclude this paper with a short story. One night, in the midst of the cold, a person was meticulously searching for something under a streetlight. Another passerby noticed him and asked what he was looking for. The man replied that he had lost his key. The passerby then joined him in the search. After some time, the passerby asked whether he could indicate the exact place where the key had been lost. The man pointed to a spot a few metres away from where they were searching. Astonished, the passerby asked, "Then why are you looking for the key here?" The man replied politely, "Because there is light here."

The story may sound amusing, but its moral is profound: solutions must be sought where the problem actually lies, not merely where it is convenient to look. In this sense, Peter French resembles the first man in the story. Rather than extending the domain of morality itself, French brings corporations within an already established moral framework. However, as the saying goes, a good law fails in a bad society, while even a bad law may work in a good one. Similarly, the ascription of moral agency and responsibility to corporations has limited significance if the individuals within those corporations lack a sense of moral belonging and accountability. In conditions akin to the tragedy of the commons, the mere attribution of moral status to corporations becomes ultimately futile.

¹⁷ Wehane, Patricia, H., "Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles: Do Corporations Have Moral Rights?", in *Business and Human Rights Journal*, 1 (2015), 5-20. Wehane argues that corporations are not moral persons. They are collective bodies created, operated, and perpetuated by individual human moral agents. He considers corporations as secondary moral agency. I even do not want to say that corporations are secondary moral agents.

¹⁸ Rönnegard, D., *The Fallacy of Corporate Moral Agency*, (Springer, 2015), 25 & 70.