

Ronald Dworkin's Group Fetishism

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The main purpose of this paper is to point out how questions of group responsibility should *not* be answered. This is done by criticizing Ronald Dworkin's discussion of the moral justification of imputing responsibility in tort law to a corporation's shareholders. Dworkin suggests to treat corporations as moral agents and to apply principles about individual fault and responsibility to them, and then to ask how the corporations' members should be seen to share in that fault or responsibility. It is argued that Dworkin thus commits the fallacy of "group fetishism": He presupposes that the group may have moral characteristics that are neither identical with nor derived from the moral characteristics of its members. In addition to criticizing Dworkin's approach, the paper briefly points out the direction from which such questions *should* be approached.

Questions regarding group responsibility are among the most difficult ones in applied ethics. My concern in this paper lies with one kind of such questions. According to common legal practices (either national or international), in cases of various kinds, people are forced to pay the price required for redressing a tort for the occurrence of which they cannot be blamed. In some of these cases, those forced to bear the loss are identified by—that is, are forced to bear the loss in virtue of—their belonging to a certain group, for example, a nation or a corporation. Officially, it is the group that is identified as responsible for securing remedy, but the obvious result is that the individual members of the group find themselves paying the price. How, if at all, can such legal practices be morally justified? Should the citizens of Iraq compensate Kuwait (or its citizens) for the damages inflicted by Saddam Hussein just because

they are citizens of Iraq? Should the shareholders of a corporation compensate those damaged by a defective product manufactured by the corporation?¹

I will deal with the latter of these questions. I will focus on Ronald Dworkin's treatment (in *Law's Empire*)² of the issue of the moral justification of imputing responsibility in tort law to corporations' shareholders. I will argue that, in his discussion of this issue, Dworkin commits the fallacy of "group fetishism," as I will call it. The fallacy is explicit in Dworkin, but I think that he exemplifies a general erroneous approach toward questions of group responsibility, so exposing it may be relevant to other discussions in applied ethics; for example, a discussion of the above-mentioned question regarding the Iraqi citizens.³ Dworkin's basic approach to the issue might be described as an anti-reductionist approach, one that assigns an indispensable role to the group. In addition to criticizing this anti-reductionist approach and, thus, suggesting how questions of group responsibility should *not* be answered, I will briefly point out the direction in which such questions *should* be approached, a direction that might be described as "reductionist" or "individualistic." (These labels, though, might be misleading. As we shall see, the approach that I advocate is not committed to the (specific normative) claim that the moral responsibility of individual members of a group for compensating victims, for example, presupposes that they can be morally blamed for the damage in question. Toward the end of the paper, I will illustrate this point.)

The case that Dworkin discusses is the following: Suppose that an automobile manufacturer produces defective cars that cause the death of hundreds of people. "What sense," Dworkin asks, "does it make to say that the corporation is morally responsible to compensate victims from the corporate treasury, with the consequence that its shareholders must bear the loss" (*Law's Empire*, 169)? Suppose that no specific person is to be blamed. Dworkin suggests to frame the question in the first instance as a question about corporation responsibility.

We suppose that the corporation must itself be treated as a moral agent, and then we proceed by applying our facsimiles of our principles about individual fault and responsibility to *it*. We might say that everyone who has had full control over the manufacture of a defective product has a responsibility to compensate those injured by it. No individual employee or shareholder has had the control, but the corporation *has*. Then, we ask, as a further and subsidiary question, how the various members of the agents of the corporation should be seen to share in that fault or responsibility" (170). We thus have a working *personification*: "For our conclusion about the group would then be in any way prior to any conclusions about individuals; we would have relied

on principles of responsibility that draw their sense from a practice or way of thinking to which the personification is indispensable (171).

I think that the main problem with this suggestion is the assumption that we can impute moral responsibility to the group, prior to and independently of imputing moral responsibility to individual members. I do not contest the claim that real responsibility of individuals can be derived from real responsibility of the group to which they belong. What *sense* can be given to the idea of group responsibility (and thus, to the idea of such a derivation), though, is a crucial question, and I contest the possibility of imputing real moral responsibility to the group, in any sense that makes such a derivation substantial or, in other words, in any sense that makes the responsibility of every individual substantially dependent upon the group responsibility.

Let me clarify this claim: We may say that a certain group is morally responsible for something *in the sense* that each and every member is responsible for it (wholly or partly). The claim that a group is morally responsible for something in this sense certainly formally entails claims regarding the moral responsibility of the individual members, but such entailments are *only* formal; they cannot really *ground* individual responsibility. The fact that such entailments hold does not mean that the responsibility of every individual depends on the responsibility of the group, for the responsibility of an individual *X* who belongs to the group is consistent with the lack of responsibility of an individual *Y* who belongs to the group and, thus, with the lack of responsibility of the group in the sense of "group responsibility" that we have assumed. In other words, when one's responsibility is derivable in this way from the group's responsibility, one's responsibility would not vanish even if the group's responsibility did. Such entailments presuppose that the entailed individual responsibility has *another normative source*—group responsibility in the sense under discussion cannot be a real, normative source of individual responsibility. (This is reflected in the fact that in spite of the formal symmetry between the group responsibility and the individual responsibility (i.e., the fact that the group is responsible *if and only if* all the individuals are), there is no material symmetry. The only possible way to determine that the group is morally responsible in the sense under discussion is to determine, with respect to each and every individual member, that he is morally responsible: That it is possible to determine with respect to any individual whether he is responsible without considering whether the group is morally responsible.)

The group responsibility that is required for Dworkin's purpose should then be of a stronger sense than the one that I have just described. It should be

such that the moral grounds that justify imputing it not be derivable from the grounds that justify imputing responsibility to the individual members. Otherwise, it would not be indispensable. Nonetheless, this would only be possible if the group had an independent moral status; if it were a moral agent. Dworkin does not go so far as to say that the corporation *is* a moral agent. He only says that the corporation *must be treated as a moral agent*. This makes all the difference in the world. We can certainly treat the corporation *as if* it were a moral agent, but since it is *not* a moral agent, it does not (and cannot) *really* have any responsibility, and if so, we cannot of course impute real responsibility on that basis to the group's members. The as-if, the nonreal, cannot give rise to the real. Moral responsibility cannot be created *ex nihilo*.

If there is no independent justification for imputing responsibility to the individuals, no justification will emerge from taking them to constitute a corporation. In light of Dworkin's assumption regarding the indispensability of personification in the cases under consideration, the truth of this claim is a matter of logic, for this assumption imposes a constraint on the present discussion; namely, that it should ignore those facts concerning the corporation's members that transcend what is (formally) required for making them members of the corporation. The present discussion should ignore such "empirical matters" concerning the activity of the members and their interconnections, like their (active or "passive") contributions to specific decisions or to general decision-making procedures, since, were such activity and interconnections to constitute the corporation's responsibility, this responsibility would depend on individual responsibility, and this is in conflict with Dworkin's approach, which highlights the indispensability of personification. We should then treat the corporation as a theoretical construction—that is, ignore these empirical matters regarding the members that transcend the facts required for making them members of the corporation.⁴ Now since there is nothing in such a theoretical construction that you do not put in it (or that does not *logically* emerge from what you put in it), no new substantial normative claims—ones that are (logically) irreducible to claims about the individual members' responsibility—can emerge from taking the individual members to constitute a corporation. We may say that only "logically emergent features" of the corporation—those of the corporation's features that can be deduced or figured out from features of the members and the way in which they are organized to constitute the corporation—are relevant to the present discussion; yet, such features cannot give rise to substantial normative claims that are logically irreducible to claims about the individual members' responsibility.⁵

There are, probably, good reasons for conferring upon corporations the status of *legal* entity. Perhaps some of these reasons are moral reasons; that is, ones that are related to the fact that it is *morally* justified to attribute various legal rights and obligations to corporations. There may thus be a natural temptation to assume that corporations have a moral status, but we should resist this temptation, for all possible moral reasons for attributing rights and obligations to corporations concern the implications that such attributions have *for the corporations' members* (e.g., that *the members* will bear the loss in the case under discussion).⁶ If so, the only *justifiable* sense in which we can regard a corporation as having a moral status is a sense in which every proposition concerning such a moral status is reducible—with no residue—to a proposition or a set of propositions regarding the moral status, the rights, or the obligations of the individual members.

Dworkin assumes that though no individual member has had the control over the manufacture of the defective product—the corporation *has*. Then he applies the principle that everyone who has had full control over the manufacture of a defective product has a responsibility to compensate those injured by it, and thus arrives at the conclusion regarding the moral responsibility of the corporation. Note that the notion of *control* that this principle employs is an individualistic notion par excellence. It is a notion that presupposes, for example, the (free) exertion of one's will. The idea of extending this principle to other cases of "control," like the control that Dworkin is willing to ascribe to corporations (a form of control that is neither individualistic nor reducible to individualistic controls) is ill-founded because real, individualistic characteristics like the having of free will are essential for *the moral rationale* behind this principle. Drop them, and nothing will justify the principle. The flaw of Dworkin's application of the "principle of control" becomes conspicuous also upon realizing that if control over the process is supposed to yield responsibility in cases of the kind in question, it is only *the individual members'* control that can deliver the goods, for it is *their* responsibility that is at stake. In other words, if control over the process is supposed to be the normative ground of responsibility in a given case, then the individual members' responsibility presupposes the individual members' control; but *ex hypothesi*, in the case under discussion, the individual members do not have control over the process. (Recall that the corporation's "control" is irreducible to individualistic controls.) From whence, then, does their responsibility arise? What premise concerning *their* behavior, failures, or circumstances can be used to yield the consequence regarding their responsibility? Certainly, not one that reports the mere fact that these individuals constitute a group, a corporation.

The correct method of pursuing the issue, I suggest, is to ask from the start whether the consequence of individual shareholders' bearing the loss is morally justified. If it is, it may be useful, for various practical reasons, to speak in terms of the corporation's responsibility and to act in some contexts as if the real question concerns the corporation's responsibility. (For example, it would be ridiculous to sue each and every member.) But such a way of speaking can, of course, play no indispensable role in justifying decisions that bear on the members' responsibility. We should apply "our facsimiles of our principles about individual fault and responsibility" directly to the members and only to the members, while among those of the members' circumstances that should be taken into account in applying these principles are various "empirical matters" that are connected to their being members of the corporation. There may or there may not be a good independent justification for imputing such individual responsibility for compensation in such cases. Perhaps imputing such responsibility is the best way to reduce the likelihood of such events, or the only practical way for adequately compensating the victims' families. (Note that if such facts constitute the members' responsibility—and whether this is so is a specific normative question—then the members' responsibility is not dependent upon their *blame*.)

Another possible direction for justifying the imputing of individual responsibility to the shareholders is that of arguing that since corporations are such that their existence might be a link in possible chains that lead to damages where "there is no one to be blamed" (as Dworkin's discussion presupposes), then everyone who contributes to the existence of the corporation creates the possibility of such cases (and hence, in a sense, *is* to be blamed when such damages occur). Corporations' members are thus viewed in a way analogous to one way in which drunk or drugged people are viewed when committing crimes in situations in which they lack control over their behavior: They are considered responsible for their involuntary "behavior" because they voluntarily put themselves in situations in which they might (involuntarily) commit crimes. Or we can, perhaps, view corporations' members in such situations as ones who create or maintain the existence of a golem (or, for that matter, any machine), while there is a chance that they will lose control over its behavior. The basic idea is that when events that seem to be uncontrolled (or which, indeed, lack "first order control") were made possible by controlled behavior (and may thus be said to have some degree of "second order control"), they should be treated for some moral purposes (certainly not for all) as falling under the category of controlled behavior.

This line of thought no doubt requires much elaboration,⁷ and I do not intend to defend it here. The important point is that if no independent (individualistic) justification is tenable, then we cannot help concluding that no justification that depends on the group's personification is tenable, either (and hence that *no* justification at all is tenable). Perhaps this conclusion seems to Dworkin to be morally intolerable, but the only possible way to show that it is *morally* intolerable is to show that the assumption regarding the lack of individual responsibility on the part of the individual members is morally intolerable. This is the gist of an individualistic/reductionist approach to the issue of group responsibility, an approach according to which, any personification of a group is dispensable; any attribution of responsibility to the group makes sense only if, and to the extent that, it can in principle be cashed out in terms of responsibility of individuals.

Dworkin goes in the reverse order. On his reasoning, the claim that individual shareholders are responsible for compensation is derived from the claim that the corporation is responsible for compensation. But, as I argued, the assumption that we can impute responsibility for compensation to theoretical constructions like corporations prior to and independently of imputing responsibility to their individual members, is not tenable. This assumption is precisely *ethical group fetishism*. It presupposes the claim that the group may have *moral* characteristics that are neither identical with nor derivable from the moral characteristics of its members. (Furthermore, the group's having such moral characteristics is supposed, according to this view, to ground morally relevant characteristics of the members). If, on the other hand, the claim that the corporation is responsible for compensation is justified by appealing to the responsibility for compensation of the individual members, then, of course, this claim cannot be a premise in an argument that vindicates imputing responsibility *to the members*—it would beg the question. Imputing responsibility to the corporation, then, either makes no sense or is unhelpful with regard to the substantial normative question of individual responsibility of the corporation's members.⁸

If we replace the two occurrences of "corporation" (in this last sentence) with "group," we will get a general denial of the anti-reductionist approach that Dworkin represents. I believe that the considerations that have been raised here against Dworkin's approach to the specific question regarding corporations are general; they justify such a general denial and favor an individualistic approach along the lines that I have alluded to, an approach that is applicable to this specific question as well as to similar questions regarding group responsibility.

Notes

1. I am concerned here with the civil aspect of such cases, not the criminal one.
2. Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986).
3. The issue of the morality of war involves many difficult questions regarding group responsibility that cannot be discussed in the present paper.
4. Taking corporations, or groups of other kinds, to be theoretical constructions, may be viewed as an application of Humean nominalism to such entities. I am sympathetic to Humean nominalism, but for the present purpose, I need not rely on its truth, and indeed I do not rely on it. My present claim is that the discussion of the specific moral problem in question should treat corporations *as if* they were theoretical constructions.
5. See Searle's discussion of a system's "logically emergent properties" (as opposed to "causally emergent properties") in chapter 5 of his *The Rediscovery of the Mind* (Cambridge, Mass.: MIT Press, 1992).
6. It might be said that moral reasons for attributing rights and obligations to corporations concern the implications that such attributions have for individual people in general, and not necessarily to the corporations' members. This is true in the (trivial) sense that every decision must take into account possible implications for every individual, and it is certainly arguable that implications for individuals other than the corporations' members might justify attributing obligations to corporations in various cases. (It is possible to object to this claim only on specific normative grounds.) Nevertheless, this rationale for attributing obligations to corporations does not concern corporations anymore than it concerns individuals (as bearers of obligations). The special extra value that the attribution of obligations to corporations has (that is absent when obligations are attributed to individuals), must concern implications for the corporations' members.

Perhaps this claim might still be somewhat misleading, since, as I mention ongoing, in the specific case under discussion the moral reasons for imputing responsibility to the corporation might concern implications *for the victims*. That is, it is possible to argue that the crucial consideration regarding the question of responsibility is that the victims' families should be compensated, regardless of the question of anyone's blame, and that it is the corporation's members who should bear the loss since this is the only practical way of achieving the goal of adequate compensation. But first, whether this line of reasoning is sound, it certainly cannot be understood as if it *ignores* the implication for those who bear the loss. For having even initial plausibility, it must involve the assumption that the implication for them is *morally overridden* by the consideration regarding the victims. So, in this

case, too, moral reasons *for attributing obligations to the corporation* must concern the implications that such attributions have for its members. Second, here, too, the special extra value that the attribution of responsibility to the corporation has, must concern implications for the corporation's members.

7. Among other things, the sense in which each and every member of the corporation may be taken to contribute to its existence is certainly a point that requires refinement. And, certainly, the analogy cannot be stressed too much.
8. For an argument of the same form against what I call "semantic fetishism" in the philosophy of law—the view that semantic theories may play a role in reaching judicial decisions—see my "Legal Interpretation, Morality, and Semantic Fetishism," *American Philosophical Quarterly* 37 (2000): 335–57.