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Date June 2, 1986

PERSONHOOD AND CORPORATE AGENCY:
CORPORATIONS AS INTENTIONAL SYSTEMS

A Thesis

Presented for the

Master of Arts

Degree

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Michael Watkins

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DEDICATION

This thesis is dedicated to my mother and father for their unconditional and constant support of me and my goals despite the various and often unrelated paths my life has taken.

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ABSTRACT

In 1878 the Fourteenth Amendment to the Constitution deemed corporations to be "persons." The task of this thesis is a philosophical inquiry into the conditions which might constitute personhood and an application of those findings to corporations.

Most philosophers have argued along the lines that what constitutes personhood is the fulfillment of a set of conditions which often include having beliefs, desires, and intentions. This has led many philosophers to conclude that for corporations to be persons there must be a corporate analogue to individual intentionality such that it make sense to talk about corporations having beliefs, desires, etc. Since intentional states such as beliefs and desires are often considered "mental" states, these philosophers see their task as either locating what might count as the "corporate mind," or else arguing that such an endeavor is futile and that ipso facto corporations should not be considered persons. The argument in this thesis is that much of the work in corporate ontology has been misguided by taking this tack. If intentional states are viewed as ascriptions to the system itself (e.g., the human being, the corporation, the computer) rather than being states of the "mind," then many (although certainly not all) of the obstacles to our considering corporations as persons will have been removed.

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INTRODUCTION

Corporations perform actions which often have a far more profound impact on society than the actions of individual human beings. But what can be said of the ethics of corporate acts? Are corporations, in some metaphysical sense, moral agents like us, and in what ways are they like us? Or would it be more accurate to portray the corporation as a mere persona ficta, a machine which lacks those qualities of human beings which make us moral creatures? Perhaps we are mistaken to view corporations as agents at all and should consider corporate acts as being reducible to the actions of the individual agents which work for the corporation. A quick review of these alternatives is in order.

Corporations as Placeholders

One proposal is that a corporation is merely a singular placeholder for the sum of the persons which make it up. So although we say the Hooker Chemical company is responsible for improper waste disposal in the Love Canal region, we really mean that various individuals, individuals who may be successfully hiding behind the corporate curtain or the boardroom door, are responsible. It was, after all, individuals who made those decisions. Without human beings corporations could not exist. As Christopher Stone states:

> The corporation itself, it is said, 'does no act, speaks no word, thinks no thoughts." Viewed as a legal phenomenon, it acts only through its agents. From this it would seem to follow that when the law aims to control corporations, it should concern itself simply--and directly--with the corporation's constituent human beings (Stone 1975, p. 3).

This view is naive. It is true that corporations require persons to act; however, corporations are not merely the sums of their human parts, i.e., a corporation is not identical to the people who act on its behalf. As Stone illustrates, we might compare a corporation to a courtroom jury. The jury has a particular structure and a set of organizational and procedural guidelines. In a particular case the members might be divided as to what the verdict should be. If it is a murder case, for instance, we might imagine six jurors deciding that the defendant is guilty of first-degree murder, four deciding on second-degree murder, and two deciding that the defendant acted in self-defense. The final verdict, however, might not be the same as any of these individual judgments. For instance, the jury might decide on manslaughter even though none of the jurors initially believed that guilty of manslaughter was the appropriate verdict. The manslaughter verdict is a joint decision, one appropriately ascribed to the jury itself rather than to any of its members.

If this picture is also correct of corporate actions then it would seem to follow that, although individuals may be responsible for their decisions, they need not be held

accountable for (at least some) corporate decisions. We would then be wise to view corporations as moral agents and the corporate arena as one where moral ascriptions are both applicable and appropriate. But it is the appropriateness of such ascriptions, i.e., moral ascriptions made to corporate entities themselves, that is often brought into question. Are corporations properly moral agents?

The Corporate Machine Model

John Ladd and Patricia Werhane argue that corporations are really more analogous to machines than to persons. As Werhane states, "each employee in a corporation, like each part in a machine, plays an important role in achieving corporate ends, but any weak or dissident employee, like any malfunctioning part, could be, and should be, replaced in order to operate at maximum corporate efficiency. Therefore, while corporate activities are rule-governed, these rules, as impersonal operating procedures, preclude rather than imply moral agency" (Werhane 1981-82, p. 35).

Werhane seems to assume that machines cannot be persons. But philosophers have, for some time, considered the possibility of some machines being considered persons, e.g., fourth-generation computers. Moreover, certainly the human machine is made up of rule-governed parts as well. In fact, if physicalism is correct, all human mental activity might one day be described in purely physicalistic

terms. Thus, the claim that corporations are analogous to machines and are made up of impersonal parts does not further Ladd and Werhane's argument.

At this point we have reviewed two possibilities. The first possibility was that corporations are merely placeholders for individual agents. In this case, although we might say IBM is responsible, we really mean that individual agents working for IBM are responsible. We rejected that view because, as Stone's example shows, there are descriptions of collective actions which are nonreducible. The second possibility is that, although some ascriptions we make to corporations are nonreducible, corporate agency is nonmoral since corporations are made up of impersonal parts and are, therefore, more analogous to machines. But, as we have seen, this second option begs the question since it assumes that machines cannot be persons. Moreover, since human persons are also composed of "impersonal parts" which are "rule governed," perhaps there is an analogy between humans and machines that Werhane and Ladd overlook. What is required here is an account of the conditions which constitute personhood.

Personhood and Corporations

It is generally assumed, and rightly so, that any answer to the question of what counts as a moral agent must use human beings as an analogy. Moreover, since not all

human beings are considered moral agents the issue of what counts as a moral agent reduces to a question of what it is about those human beings who are considered moral agents which constitute themselves as such. That is, what do human moral agents have that non-(moral)agents don't have? It is sometimes further assumed that once the conditions are found for separating persons from non-persons we will have the necessary and sufficient conditions which anything must meet to be considered a moral agent. For many philosophers those conditions have included such things as rationality, intentionality, second-order intentionality, verbal communication, and self-consciousness. Although it might be argued that such a list is anthropomorphic (and indeed it is!), I will proceed in similar fashion. There are several ways to attack this problem that do not involve lists of conditions, etc., perhaps by means of conceptual analysis of borderline cases. Yet in such cases one's intuitions are to be tested against our understanding of humanity. By the very nature of the problem, it is impossible to escape being anthropomorphic since the study of personhood is, to borrow Dwight Van de Vate's term, "auto-involved."

The temptation, however, is to assume that ascriptions of intentionality, rationality, beliefs, etc. refer to mental properties which we might locate and identify. And if this is assumed it makes sense to talk about persons as

natural kinds, or at least as entities which can be picked out as having those necessary and sufficient conditions for being persons, whatever those conditions might turn out to be. At this point the conjuring trick has begun and we want to say that if such things as corporations are persons then they must "really" be capable of intentionality, etc. This means that corporations must have a locus for so-called mental ascriptions where such things as intentions and beliefs might reside. As a result many writers such as Michael Keeley argue that "if we cannot point out the collective analogue to individual intent, organizations are strange looking persons. They don't look much like metaphysical persons, and they don't look much like moral persons" (Keeley 1981, pp. 153-4). The question is: what do metaphysical persons look like, or, to borrow from Keeley, what would the collective analogue be analogous to? Here the answer "individual intent" will not suffice since intentionality is the issue.

The challenge here is intellectual honesty in the face of the temptation to give into our culturally and traditionally developed intuitions. That intuition is, first, to think of a person as an entity to which various mental ascriptions can be correctly ascribed, and, second, to think of various mental ascriptions as referring to mental properties, rather than being normative ascriptions which refer to the entity itself and which are non-reducible.

In response to this intuition, Peter French has argued that corporations are persons because they are non-eliminable subjects of second-order intentional ascriptions (French 1979, p. 210). That corporations are, at times, non-eliminable agents should be clear from Stone's example of the jury which was discussed earlier. Although I disagree with the details of French's argument, I do agree with his general position. I will later discuss French's position in greater detail and respond to his critics, most notably Tom Donaldson and John Ladd.

Overcoming the Tradition

In this thesis I intend to invoke a more sophisticated view of mental states in order to address the issue of corporate personhood. Borrowing from Dennett's theory of intentional systems, it is my contention that much of the work in corporate ontology has been led astray by assuming a naive view of the mind.

Daniel Dennett proposes that we should view ascriptions of so-called mental states, e.g., intentions, as states properly belonging to the entity itself (person or non-person), as simply one of the ways in which, for practical reasons, we talk about particular entities. By taking Dennett's approach we will be less likely to talk about necessary and sufficient conditions for personhood since the conditions which we will choose are not things

which can be found, in some archaic sense of "find," but are simply our ways of talking about persons. Those ways of treating persons reflect a decision to treat something as person, i.e., to talk about it and treat it in a particular way.

My primary goal in this thesis will be to show what corporate ontology might look like if we abandon various assumptions about "mental states," e.g., intentions, beliefs, desires, etc., and rely instead on how we talk about those states and in what situations we make particular ascriptions. As Dennett states, "when one runs into perplexities when talking about things (in this case, minds, sensations, thoughts and the like) it often helps to shift one's focus and talk about how to talk about those things, about 'what one would ordinarily say' under various circumstances, or (if one is not enthralled by ordinary language) what one ought to say under various circumstances" (Dennett 1978, p.250). I will argue that by taking this stance, although it will not offer a final solution to the question of whether or not corporations are persons, many of our barriers from considering corporations to be persons will have been removed.

In this thesis I will first examine suggested necessary and sufficient conditions for personhood and show why such attempts have failed. Second, I will take a look at Dennett's conditions for personhood and show why, as

Dennett claims, they do not constitute both necessary and sufficient conditions. Briefly, the argument is that if any set of conditions for personhood is taken strictly then we could never know, even in our own cases, whether or not we are persons. Rather than meeting these conditions all of us approximate them as ideals. None of us is ever completely rational, etc. Third, I will show how corporations, on Dennett's view, might also be seen as approximating these ideals. That is simply to say that there are times when it is helpful and appropriate to talk about corporations as meeting the conditions for personhood and, in fact, to treat them as persons. Last, I will briefly analyze the question of whether or not corporations are persons and show that the question might be taken in various ways. The answer to whether or not corporations are persons is: to various extents, depending on what is actually being asked and the context in which it is asked.

I hope to show that the traits which are generally associated with personhood, e.g., rationality, intentionality, desires, etc., are normative and social rather than inner and subjective. As Richard Rorty states, we should "not be tempted to think that the possession of an inner life, a stream of consciousness, is relevant to reason. Once consciousness and reason are separated out in this way, then personhood can be seen for what I claim it is--a matter of decision rather than knowledge, an

acceptance of another being into fellowship rather than a recognition of a common essence" (R. Rorty 1979, pp. 37-8). I will now turn to a discussion of personhood.

CHAPTER I

CONDITIONS FOR PERSONHOOD

Corporations include persons and those persons are capable of being moral agents. This much we can (and must) assume. Whether corporations are or "count as" persons and thus as moral agents, or whether persons within corporations remain moral agents in the course of acting for corporations are matters still unsettled. This work is primarily devoted to the question of whether or not corporations are persons, although I hope that the methods employed here might be applicable to other issues in business ethics. There are two questions: the first concerns what constitutes personhood, the second is the ontological status of the corporation. It would seem that if we can answer these two questions we can simply take our knowledge of the corporation and compare it to our conditions for personhood. This is the approach most often taken in philosophical studies of corporate ontology. The thesis of this work, however, is that complete answers to those two questions are not obtainable without greatly simplifying and thereby distorting what are very large and complicated matters.

The temptation is to assume that a study of 'personhood' is an investigation of the necessary and sufficient conditions which constitute personhood, and this often assumes a particular philosophy of "mind." In

business ethics, as in most applied philosophy, the ramification is that the philosopher then further assumes that she is in a place to say that the lawyer, business executive, economist, M.D., etc. has used the word rightly or wrongly in particular situations, that we are somehow able to clarify what they meant or presupposed when they employed the term. My conclusion, however, will be that we should rather see ourselves, in the words of Richard Rorty, as "just enlarging a linguistic and argumentative repertoire, and thus an imagination. Beyond this traditional humanist task, we can do only what lawyers do--provide an argument for whatever our client has decided to do, make the chosen cause appear the better" (R. Rorty 1982, p. 222).

We will not, in the end , be able to say that corporations should or should not be considered persons based on our special metaphysical vantage point (i.e., the position that we know or can find sufficient conditions for personhood). We can only try to make sense out of what we (i.e., society) have decided. In this light, this chapter of the thesis is a study of personhood pointing out the general assumptions which might lead us to look for sufficient conditions and the reasons that I feel such a search is wrongheaded. The final two chapters are an application of the results of the analysis of this chapter to corporations. There I will show how a commitment to a

naive view of mind is often carried over into corporate ontology and what a study of corporate ontology might look like once those commitments are abandoned.

Personhood

The primary problem with any question like "is that a person?" or even "what is a person?" is that there is no single unifying definition of 'person.' The answers to these questions will at least in part depend upon the context. If a lawyer is asked whether or not IBM is a person she will likely answer yes. On the other hand, if the "average" adult is given a list which includes a small child, an adult, and a corporation and is asked which is not a person he or she will likely pick the corporation. The lawyer might pick the child.

The reason for the different answers is that 'person' has several different senses. Among these is a legal sense. A person in the legal sense is an entity which is recognized as a person under the law. The set of legal persons in this country includes most adult citizens and corporations. For many purposes it does not include children or retarded adults. 'Person' is also used to differentiate human beings from everything else. The child is a person in this sense thereby deserving special treatment as opposed to her pet dog which is not. Many philosophers would also include a category entitled

"metaphysical persons." The corporation might be a legal person, for instance, without being a metaphysical person. The child, on the other hand, is not a legal person, but it might very well be a metaphysical person. And the Martians who are capable of moral contemplation and conversation with Earthlings might be metaphysical persons, although they are not human beings. It is this last use of 'person' which I will focus on here, although I am not of the opinion that the different senses are wholly separable.

Metaphysical Persons

Part of what it means to be a person is being capable of playing certain social roles in various social contexts (e.g., carrying on a conversation). A child is considered a person to an extent, and the reason is that he or she is capable of certain performances. The child might not be able to use language, but we know when the child is in pain, hungry, etc. In fact, we know all too well. The same might, of course, be said of animals. But it is also true that some animals are treated more like persons, that is, more like us, than rocks are. And that is true, at least in part, because we share with them certain central properties such as sentience.

We will later see that we also share important properties with some corporations. Corporations, for instance, are often treated as persons partly because they

engage in something like an Anscombean legal/moral question-and-answer game. That is, they are capable of (i.e., they are allowed to, and sometimes engage in) playing both the role of accuser and the role of defending themselves when accused of moral (not just legal) improprieties. It isn't clear that a corporation must be considered a person any more than a child must be. But that it can be considered a person at all is certainly dependent on its being capable of certain performances. In the same way we might consider our Martian a person, but not if it is incapable of caring, rational thought, or communication.

I take these performances to be indicative of the conditions for personhood. Simply meeting certain conditions for personhood, even if they do turn out to be necessary, might not be sufficient, however. As Van de Vate states, "what does a demonstration prove if no one is obliged to witness it?" (Van de Vate 1971, p. 164) We might imagine, for instance, a possible world where corporations, children, and Martians are not considered persons, and we might also imagine a world where the same entities are persons. R2D2 or C3PO, the robots every child loved from the movie Star Wars, might easily be considered persons. In fact, they were persons. We might easily imagine them as moral agents, that is as engaging in discussions about the rightness and/or wrongness of a

particular act. We are able to feel for them, even put ourselves in their shoes (or on his tracks, in the case of R2D2). They could be our friends and heroes (at least if we could speak R2D2ese).

We might also imagine the very same R2D2 (or C3PO) in a very different social environment. (This is actually trickier than one might guess, maybe even impossible. In a sense, the same R2D2 in a radically different social situation is not the same R2D2.) In our revised movie R2D2 is merely an experiment. Perhaps the scientists contemplate whether or not R2D2 is a person. Perhaps they even argue that he is a person, but he isn't, at least not yet. When the scientists go home R2D2 is left in the lab, perhaps turned off. (The reader might remember the robot in the series Lost in Space. The robot is treated like a person much of the time. But when the Doctor has had enough of the robot, he turns him off.) No one takes him seriously (in a broad and very important sense) (Van de Vate 1971). The computer is only a project, a number. (Is it any wonder that we abhor being known only as a number?)

Amelie Rorty points out that the decision as to what is or will be a person depends in part on how we feel about it and what our political and social preoccupations happen to be (A. Rorty 1976, p. 323). We might then think of "personhood" as an honorary status or membership as in a club. Perspective members must meet certain conditions,

but their meeting those conditions does not guarantee membership. They also must be acknowledged as members by those who are already recognized as members in the community. Although this is not formally done as in an organization, something like this certainly occurs. It follows that knowing the conditions for personhood will not be sufficient for our knowing what is and what is not a person since no set of conditions will guarantee an entity's acceptance as a person by us. We will also need to look at interactions to see in which contexts certain entities are responded to as persons.

So far I have merely asserted that there is no list of sufficient conditions for personhood and possible reasons for why such conditions do not exist. But to assume this at this point would be to beg the question. We first need to look at various candidates for conditions of personhood to see if, in fact, any of these might be necessary and sufficient. I will now examine some of the more prominent candidates and, borrowing heavily from Dennett, discuss the relationships of those candidates. With Dennett I will conclude that there is no list of sufficient conditions for personhood because: 1) as Dennett argues, the conditions for personhood are ideals and are only approximated at best, 2) personhood entails a decision on the parts of members (i.e., persons) to acknowledge an entity as a person, and 3) as I have already suggested, 'person' plays

various roles in different contexts and I see no hope or need in finding a unifying thread among those roles. As Amelie Rorty states, "the concept of person is not a concept that stands still, hospitably awaiting an analysis of its necessary and sufficient conditions...Such legislation--enshrining general and necessary preconditions as essential paradigms--is tantamount to arbitrary rule" (A. Rorty 1976, p. 301). Before discussing the inevitability of this conclusion, however, I would like to discuss some of the attempts to avoid it. I will first look at Kripke's natural kind argument and show that, although various writers have borrowed from Kripke to make a case for there being necessary and sufficient conditions for personhood, Kripke's own claim pertains only to the problem of identity among human beings. I will then turn to Peter French's attempt to find nonnatural, necessary and sufficient identity conditions for personhood. Since French borrows heavily from Kripke, it is important that we first understand Kripke's view.

Kripke and the Natural Kind Argument

Kripke's Naming and Necessity is an extended argument for the necessity of natural kinds. Kripke is willing to treat human beings as natural kinds, and thus holds that any given human being, named by a "rigid designator" which picks out that individual in all possible worlds, is

identifiable by its genetic origin in a given sperm and egg. Any given human being has essential characteristics by means of which it can be identified, though we may be uncertain what those characteristics are. Kripke is offering an essentialistic account of human beings, but not of person. Thus, his position is compatible with mine.

According to Kripke a name designates a particular individual through time. When a person is born there is an initial "baptism." The child is given a name which then "rigidly designates" that child. The way in which this designation continues is through a causal process. As Kripke states, "when the name is 'passed from link to link', the receiver of the name must, I think, intend when he learns it to use it with the same reference as the man from whom he heard it" (Kripke 1980, p. 96). In this way a name's referent can be causally traced back to the initial baptism.

At this point we are able to pick out that one individual which we call by a certain name. The name uniquely designates that individual. And what is essential about that individual? According to Kripke the essential characteristic will be that characteristic without which we can not imagine a possible world where we could identify it as being what it is. For example, the essential characteristic of water is H_2O. We cannot imagine a possible world, that is a world like ours with this one exception, in which

there could be something which is not made of H_2O which would be water. 'Water' then rigidly designates that stuff which is made of H_2O. In the same way we cannot imagine a possible world in which a human being, e.g., Elizabeth, could have been born of different parents and still be the same human being. As Kripke states, "how could a person originating from different parents, from a totally different sperm and egg, be this very woman?" (Kripke 1980, p. 113) We could not, it seems, imagine a possible world in which a person originating from different sperm and egg could be the same person. This suggests that the concept of a person should be discussed in genetic terms. A person is who she is by virtue of being born of the union of a given sperm and egg.

Although this is a plausible account of naming and personal identity it doesn't address our question of what constitutes legal or moral personhood, and it's not clear that Kripke means for it to. His use of 'person' is synonymous with that of 'human being.' He has attempted to solve the problem of the identity of human beings, but he has not provided a way for us to tell whether or not any given thing is a person. To be able to identify it through time or classify it as human is insufficient for our purposes. History shows that there have been human beings who were not persons, e.g., slaves, young children, unborn fetuses, etc. Their status as nonpersons was not just

legal. They were neither treated nor acknowledged as persons by persons. It is also imaginable that there be nonhuman persons. We might contemplate including computers or Martians as persons, for example. Our earlier example of C3PO in a case in point. We can, it seems, imagine a possible world in which something <u>is</u> a person and <u>is not</u> human. Being genetically human is neither sufficient nor necessary for being a person.

It does not follow, however, that there are no characteristics which might identify persons in all possible worlds. It might be the case, for instance, that we simply do not know at present what those characteristics happen to be. After all we haven't always known the essential characteristics of water, gold, etc. The thing for us to do then is to continue with our mental experiments attempting to arrive at those things without which we would not call an entity a person. I will later argue, in fact, that such an endeavor can bear considerable fruit. There seem to be several structural features a thing must have if we are to call it a person. On the other hand, we will not find, as I will show later, the necessary and sufficient conditions which will allow us to use 'person' as a natural kind term. Before turning to that alternative, however, I would like to discuss Peter French's attempt to find nonnatural kind conditions for personhood.

The Empirical Generalizations Argument

Borrowing from the works of Putnam and Kripke on natural kinds, French concludes that if corporations are to be considered moral entities they must be considered persons. Hence, either 'person' names a natural kind, but 'moral person' does not, or 'person' does not name a natural kind. As French states, "'person' clearly cannot both be the name of a natural kind and being a person be interdependent with or a necessary precondition of being a moral person, if corporations can be moral persons" (French 1983, p. 241).

It follows that the first step for French, if he is to maintain that corporations are persons, is to show that 'person' is not a natural kind term. Otherwise French would have to show that there is an identity between human beings, who are normally considered to be persons, and corporations in much the same way as there is a taxonomical identity between all the things which we call humans, birds, or water. This would certainly be unlikely.

Instead French takes the other tack. He argues that 'person' is not a natural kind term. For it to be a natural kind term 'person' would have to be a rigid designator. The word would then apply to the same thing in all imaginable, or possible worlds. For instance, if in another world there was a substance which served all of the functions which water does on Earth, e.g., it looks like

water, is used like water, etc., but is not composed of H_2O, it would not be water. 'Water' does not gain its meaning simply by virtue of the ordinary means of identifying it; rather, it is (and this is the "is" of identity) H_2O. But as French correctly points out "our philosophical tradition certainly has not identified 'person' as a natural kind term (French 1983, p.242). We have, for instance, contemplated the possible future extension of the term 'person' to such things as Martians and fifth generation computers. This would suggest that the use of 'person' is custom-governed. And there is nothing to suggest that 'moral person' would be any different (unless, of course, 'moral person' is really gratuitous and doesn't have any use at all).

French argues, however, that this conclusion is too hastily made. In fact, after realizing that 'person' is not a natural kind we are still left with two possible alternatives. The first possibility is to say that 'person' is custom-governed. If this is the case then, as French points out, "kind membership may be extended despite radical structural differences among members" (French 1983, p. 249). The second possibility, and the one French suggests, is that we appeal to another type of "kind" besides rule governed and custom-governed kinds. This third type French calls "empirical generalizations governed-kinds" (French 1983, pp. 249-254). The extension

of such a term will be determined by empirically verifiable generalizations which function in much the same way as the taxonomical classifications work with natural kinds. Exactly what generalization will govern 'person'? According to French "the empirical generalizations that govern the extension of 'person' cluster around such states, primary of which is intentionality, that can be ascribed to entities by us on the basis of observed outward manifestations" (French 1983, 249).

A Response to French

The first and primary problem with this account is that it is doubtful whether or not such kinds exist. It would seem, for instance, that nouns are either natural kind terms or they are simply ruled by convention. French, unfortunately, does not offer a list of other words which might fall into this new and mysterious category. All we have is 'person'. That being the case, let us take a closer look at the need for placing 'person' in this unique set of possibly only one.

French states that

> the key question ought to be, 'are we free, conceptually speaking, to shorten or lengthen the list of capacities included in the functional definition of person?' If we are unconstrained in this, we could declare an open door policy that admits all manner of living things and many artifacts to the club as suits our social, legal or moral tastes. But such a policy would render the concept of 'person' about as useful as that of 'stuff' or 'thing' (French 1983, p. 248) [scare quotes mine].

In response, it seems that French wavers to and fro between making an empirical claim about language and presenting a normative claim about how we should use the word 'person.' The empirical claim would be in regard to what we are free to do conceptually. What kinds of usages of 'person' do our linguistic practices allow? The normative judgment, on the other hand, warns us of what might happen if our linguistic behavior were not thus and so.

Since French does not appear to offer any justification for his apparent empirical claim, let us assume, for now, that his intent is the latter. The question then: is it true that if 'person' is ruled only by convention that we would render 'person' "about as useful as that of 'stuff' or 'thing'" [scare quotes mine] (French 1983, p. 248). The answer is an unequivocal no! To say that a term is ruled by convention is not to say that we are free to use it any way we like, and it is not to say that structural similarities do not play a role in the extension of the term. It might very well be the case, however, that there is no way of knowing whether or not 'person' will be extended to include certain things because there is no way to know what our response to them, once we encounter them, will be. As Amelie Rorty states, "whether we shall, when the time comes, classify Venusians as persons will certainly depend on what they are like, on whether we like

them, and on our political and social preoccupations when the issue becomes a live one" (A. Rorty 1976, p. 323).

This hope of grounding 'person' in some kind of essentialism is understandable. Although I think it is quite obvious that French's fear of 'person' becoming no more useful than 'stuff' or 'thing' is unwarranted, there are certainly other fears which are more real. For instance, what now determines whether or not corporations are to be considered persons? If it is simply a matter of deciding to call a corporation a person rather than finding out whether or not, in fact, it is a person, the same thing can be said of particular groups of human beings. For instance, it has been argued in the past, and to some extent in the present, that blacks, women, and other minorities are not persons. Presently, in fact, there are some who would argue that children are not persons until they have reached a certain age, and there is an ongoing debate over the status of the unborn fetus. This is quite understandably a serious concern since, to some extent anyway, our moral arguments are dependent upon particular groups having a status which protects their rights. Perhaps it would then be helpful to discuss the structural similarities of those things which we call persons. Indeed, thus far we have only responded to French's critique of convention-governed words. The more important consideration is the role which intentionality and other

possible conditions play in our extension of 'person.'

Dennett's Conditions of Personhood

Dennett claims that the philosophical literature has put forward at least six candidates for the necessary and sufficient condition for personhood (Dennett 1976, p. 177). The first and most common candidate is that persons are rational beings. As Rawls states, "a person may be regarded as a human life lived according to a plan" (Rawls 1971, p. 408). The second possibility is that a person is a being to which consciousness, mental or intentional states can be applied (a la Strawson). The third condition, and the one which will play the central role in this work, is that something is a person by virtue of an attitude taken toward it. This condition suggests that, rather than our discovering that something is a person and then treating it as such, our treating something as a person constitutes it as such. As Amelie Rorty states, "humans are just the sort of organisms that interpret and modify their agency through their conceptions of themselves" (A. Rorty 1976, p. 323). And to quote Dwight Van de Vate, "if a decision is ever made to admit robots to person status, robots themselves will have as much voice in the decision as anyone--*if* anyone...can be said to have a voice in decisions such as these, beyond recognizing them once they have been collectively made" (Van de Vate 1971,

pp. 164-65). Related to this, the fourth condition is that for a thing to be a person it must be able to reciprocate the stance taken toward it as a person. The fifth condition, and the one that has become increasingly popular in social philosophy, is that a person must be capable of "verbal" communication (Warren 1981, pp. 417-422). This condition would exclude, as far as we know, nonhuman animals from the status of personhood. It would also handily exclude the seriously retarded, the unborn, and even very young children. To quote Mary Anne Warren, "if the criteria of personhood are as I have described them, then it obviously follows that killing a new-born infant isn't murder" (Warren 1981, p. 422). And the sixth condition is that the distinguishing characteristic of personhood is the ability to be conscious in a particular way. This has usually been unpacked as some sort of self-consciousness.

Dennett's argument is that each of these conditions as they are listed is dependent upon its preceding condition, i.e., condition five is dependent upon four, etc. The only stipulation is that conditions one through three are mutually interdependent. Dennett's conclusion, as we shall see, is that these conditions offer necessary but not sufficient conditions for personhood. The reason that they cannot offer sufficient conditions is that personhood is a normative concept which will not yield such conditions.

One corrective to Dennett's argument is that many of the examples which he gives for his third condition are misrepresentative. Dennett's third condition is simply that we take a stance toward it as an Intentional system. The passages from Rorty and Van de Vate, however, suggest that we must take a stance toward it as a person. I will argue, in fact, that anything closely approximating all of Dennett's conditions must already be considered a person. That is, for us to treat an entity as meeting Dennett's conditions we must have already made a decision to treat it as a person. I will return to this at the end of the chapter.

Intentional Systems

The first three conditions for personhood are definitive of what Dennett calls Intentional systems. As Dennett states, "an Intentional system is a system whose behavior can be (at least sometimes) explained and predicted by relying on ascriptions to the system of beliefs and desires" (Dennett 1976, p. 179). According to Dennett it is obvious that not all Intentional systems are persons since we ascribe beliefs and desires to many sorts of animals in order to predict their behavior. In fact, we can even use the same procedure to predict the behavior of certain machines, e.g., computers. If this is so then the class of Intentional systems is much larger than the class of persons.

The obvious reply, of course, is that persons are that subset of Intentional systems which really have beliefs and desires. But, Dennett argues, any attempt to depict what counts as really having a belief or desire will either name conditions which are too strong, or import conditions which have been named further down Dennett's list (Dennett 1976, pp. 180-1). For now Dennett wants to remain neutral about the ontological status of so-called mental states like beliefs and desires. The ontological status of beliefs, desires, intentions, etc. will play a central role in whether or not corporations are persons since, if persons are those things which really have beliefs and desires, that is beliefs and desires which are reducible and localizable in the head, then we would expect corporations to have some kind of collective analogue.

But Dennett, as well as Stich, R. Rorty, Wittgenstein, and others, has argued that beliefs and desires are non-reducible. I will not respond here to the functionalist (e.g., Fodor) who believe that such states are reducible, or to the scientific realist (e.g., Churchland) who argues that such states are not reducible making talk about such states ontologically vacuous. That debate, although it is central to my philosophical project, is outside the scope of this thesis. I will instead take a side in the debate and apply it business ethics, thereby following the best

tradition of applied philosophy. The approach that is being forwarded here is thoroughly nominalistic and pragmatic.

The philosophical tradition, which is more often than not carried over into applied philosophy, is resistant to such an approach partly because it pushes aside what have been philosophy's mainstream questions rather than answering them. Whenever a philosopher suggests that certain questions are nonsensical because they make assumptions we have no right to make, the traditional philosopher shouts "foul!" But as Wittgenstein reminds us:

> How does the philosophical problem about mental processes and states and about behaviorism arise?--The first step is the one that altogether escapes notice. We talk of processes and states and leave their nature undecided. Sometime perhaps we shall know more about them--we think. But that is just what commits us to a particular way of looking at the matter. For we have a definite concept of what it means to learn to know a process better. (The decisive movement in the conjuring trick has been made, and it was the very one that we thought quite innocent.) (Wittgenstein 1958, pt. 1, sect. 308).

Much of the work in corporate ontology, for instance, has assumed that beliefs, desires, and intentions are attributes of the mind and have therefore felt committed to either find such a collective "mind" or assume that, seeing the cost of making such an ontological commitment, corporations are simply not the kind of things which can be considered persons. My interest, once again, is not in the debate in the philosophy of mind. As I suggested in the beginning, I am concerned with what corporate ontology

might look like without the Cartesian baggage. Following the tradition of the linguistic turn as exemplified in the works of Wittgenstein, Ryle, Dennett, Rorty, and others, I will shift what has often been the focus of previous discussions of corporate ontology. Rather than discussing The Corporation, Mind, and Personhood, I will focus more on what we ordinarily say when discussing corporations, persons, intentions, beliefs, etc.

Second-order Intentionality and Reciprocity

Given this focus, and seeing that Intentional systems include many things which are not persons, it is necessary to turn to Dennett's fourth condition, and here we return to French's discussion. According to this condition a thing is a person if it is able to reciprocate a stance. In other words, any Intentional system capable of taking an Intentional stance toward something else, that is its being able to treat another entity as an Intentional system, would qualify it as a second-order Intentional system. As Dennett states, "an Intentional system S would be a second-order Intentional system if among the ascriptions we make to it are such as S believes that T desires that p, S hopes that T fears that q, and reflexive cases like S believes that S desires that p" (Dennett 1976, p. 181). Obviously, if the fulfillment of this condition is sufficient for personhood then French has his foot in the door since

French wants to argue that second-order intentionality is a necessary and sufficient condition for personhood.

The question is: are there second-order intentional systems which do not qualify as persons?. Dennett offers two possible cases. The first is an account given by Peter Ashley.

> One evening I was sitting in a chair at my home, the only chair my dog is allowed to sleep in. The dog was lying in front of me, whimpering. She was getting nowhere in her trying to "convince" me to give up the chair to her. Her next move is the most interesting, nay, the only interesting part of the story. She stood up, and went to the front door where I could still easily see her. She scratched the door, giving me the impression that she had given up trying to get the chair and had decided to go out. However, as soon as I reached the door to let her out, she ran back across the room and climbed into the chair, the chair she had "forced" me to leave (Dennett 1976, p. 183).

What seems to make this a case of second-order intentionality is that the dog apparently wants to produce a belief in the master that she wants to go out.

Dennett claims, however, that it is possible to avoid the second-order ascription by viewing the dog as a good behaviorist who has conditioned Ashley to go to the door whenever she scratches. What we would need is a case where an animal does something novel to produce an action as a result of inducing a false belief. But such cases do seem to exist. Dennett points out that it is quite common for low-nesting birds to feign injury in order to lure another animal away from their nests. The obvious response to this example is that the bird's action is purely instinctive.

But as Dennett correctly points out,

> we must be careful not to carry this disparagement too far; it is not that the bird does this trick 'unthinkingly,' for while it is no doubt true that she does not in any sense run through an argument or scheme in her head..., a man might do something of similar subtlety, and of genuine intelligence, novelty, and appropriateness, and not run through the 'conscious thoughts' either (Dennett 1976, p. 185).

It follows that if by second-order intentionality we simply mean some "higher intentionality" then second-order intentionality can not serve as a sufficient condition for personhood. It casts too large a net. Moreover, even if these counter-examples did not exist, and if corporations do exhibit second-order intentionality (a possibility which will be discussed in the next chapter), it is not clear which of two alternatives would follow: 1) that corporations thereby qualify as persons, or 2) that corporations themselves represent a counter-example to the reciprocity thesis. French would appear to have arbitrarily legislated the extension of personhood.

This takes us to Dennett's fifth condition, verbal communication. Here Dennett employs Grice's theory of meaning to show that verbal communication is dependent upon the condition of reciprocity. According to Grice non-natural meaning is determined by the intentions of the speaker and the hearer's recognition of them. His definition is as follows:

"U meant$_{nn}$ something by x" is true if, for some audience A, U uttered x intending:

(1) the utterance of x to produce some response from A.

(2) A to think (recognize) that U intends (1).

(3) A to fulfill (1) on the basis of his fulfillment of (2) (Grice 1969, p. 257).

If Grice's definition is correct and if nonnatural meaning is a feature of nonnatural (verbal) communication, it follows that Dennett's condition five rests on condition four since the second intention in Grice's formula would require not only second, but third-order intentionality. Moreover, as Dennett points out, genuine reciprocity requires third-order intentionality. If the audience does not recognize the speaker's intention there has been no communication.

This fifth condition would seem to distinguish all persons from nonpersons. But, as Dennett points out, the concept of a person is normative. In taking a stance toward something as a person we are acknowledging that it has certain rights and obligations. In other words, it is a moral entity. And if it is accountable for its actions there must be some reason for holding it accountable. According to Dennett we can hold persons accountable because they are Anscombean agents. They are participants in language games of asking questions and giving answers about reasons, motives, values, justifications, excuses, and responsibility. A necessary condition for playing

these games is that the agent be in a privileged position to answer questions about its actions. In other words, it must be self-reflective. If it is not capable of self-reflection there is no reason to ask it why it did what it did. It cannot play the game. As Van de Vate states, "the primary function of the concept of a person is to define social situations...We mean by a 'person' what can put on a human performance..." (Van de Vate 1971, p. 162).

It would then seem that we have arrived at a point where we can claim to have sufficient conditions for personhood. Dennett argues, however, that no sufficient conditions can be found because the concept of a person is "inescapably normative" (Dennett 1976, p. 193). Furthermore the last three conditions are idealizations. Nothing is capable of meeting them if they are construed strictly. We approximate to being reciprocal, to being moral agents, to being capable of intentional communication. As Dennett states, "human beings or other entities can only aspire to being approximations of the ideal, and there can be no way to set a 'passing grade' that is not arbitrary" (Dennett 1976, p. 193). None of us are completely rational, for instance. Indeed, Dennett goes so far as to say that "there is no objectively satisfiable sufficient condition for an entity's <u>really</u> having beliefs, and as we uncover apparent irrationality under an Intentional interpretation of an entity, our

grounds for ascribing any beliefs at all wanes..." (Dennett 1976, p. 193). If these conditions were each strictly necessary for personhood it would seem to follow that none of us are (really) persons. To again quote Dennett, "were the six conditions (strictly interpreted) considered sufficient they would not ensure that any actual entity was a person, for nothing would ever fulfill them" (Dennett 1976, p. 193). Moreover, if these conditions are not strictly necessary then they are not jointly sufficient either. For even their idealized sum fails to capture the sense in which to regard a creature as a person is to make a normative evaluation about him. If these conditions were taken to be sufficient then nothing would qualify as a person because nothing would ever, strictly speaking, meet these conditions.

Personhood as a Normative Concept

Obviously there are persons who would have been nonpersons at another time in our history. There are also examples of persons who have become nonpersons, at least if person is taken in the strict sense of being a full-fledged member of the community. It would then seem that the questions to ask are "how does one become a person?" as well as "how might a person become a nonperson?"

The second of these questions is the most manageable. When we think of persons becoming nonpersons we think about

cases where, for one reason or another, a person loses his/her status as community member. Examples would certainly include the insane. And at least one of the reasons that the insane are no longer persons is a breakdown in the reciprocal interactions between them and us. They are no longer capable of putting on a human performance, and, as a result, no real encounter is possible. It seems certain, in fact, that Dennett's list of conditions would have to be met before such encounters could take place.

But this is a simplification of the problem. We humans have learned to interact with other humans. We "put ourselves in their shoes." And this ability is certainly linked, at least in part, to our training as humans as well as our biological links with other humans (and even other animals). We learn the criteria for knowing how others feel. A nonhuman would have a difficult time meeting Dennett's conditions unless it could put on a human performance (i.e., act like us) since our ability to treat an entity as a moral agent, to engage in a moral question and answer game with it, even to communicate depends on our sharing at least some common ground. (This is very similar to Wittgenstein's claim that we share Lebensformen. Without some commonality between us and another entity, we would not be able to find our feet with them.) Reciprocity, at least for now, seems dependent upon our abilities and the abilities of other persons to act human,

to recognize moods, expressions, desires, and each other.

That is only part of the story, however. Women and blacks have presumably always had this ability and yet have not always been persons in the strict sense. Their inclusion certainly involved more than just putting on a human performance. As Van de Vate states, "what does a demonstration prove if no one is obliged to witness it?" (Van de Vate 1971, p. 164) One might be tempted to argue that others were forced to recognize them as persons. But as A. Rorty and Van de Vate point out the struggle to become a person is a moral one. It is a struggle to get persons to feel an obligation to see you as a person. Without this feeling of obligation no real encounter can take place. Just how one accomplishes this task is unclear. But it is certain that for anything to have met all of Dennett's conditions the moral struggle must have been won, at least partly and temporarily. To treat an entity as a morally accountable agent which is self-reflective and capable of reciprocation (i.e., capable of treating other persons as persons) is to have acknowledged its personhood, to have already made a decision about it. That is, in so far as there is really ever a decision made other than acknowledging the entity as a person once it has become one (Van de Vate 1971, pp. 164-65).

It is therefore impossible to tell in advance just what will be a person since the decision will not be made

by purely objective standards. Indeed, as we have seen, no such standards exist. As Amelie Rorty states, "there is no point speculating about what we shall say in transitional periods, and certainly none in legislating in advance what we shall decide" (A. Rorty 1976, p. 323).

CHAPTER II

CORPORATE AGENCY

The task of this chapter is to apply our knowledge of personhood from the preceding chapters to corporations. The question for us is whether or not corporations are or can properly be treated as persons. First, a review of the territory already traversed is in order.

Using the works of Kripke and French, I discussed the possibility of finding both necessary and sufficient conditions for personhood. The attempt to consider persons a natural kind was quickly discarded since one can easily imagine possible worlds where there are great structural dissimilarities among various entities which we might call persons. The next hope was in French's attempt to find nonnatural necessary and sufficient conditions for personhood, foremost of which is intentionality. However, intentionality has been ruled out as a sufficient condition for personhood. Moreover, French's fear of allowing that 'person' is convention-governed is unfounded. Borrowing from Dennett, I then surveyed the various candidates for the conditions of personhood and found a list of conditions which seemed to be necessary and sufficient. As I demonstrated, however, they are <u>not</u> sufficient. The reason is that 'person' is inescapably normative and socially determined.

Given this view of 'person' we can not hope to

discover an absolute and permanent answer to whether or not corporations are persons. Moreover, as this chapter will demonstrate, the complexities and the opacity of the corporate structure are such that a final all-inclusive decision as to which of Dennett's conditions the corporation meets cannot be reached. These "nonfindings" make it impossible to definitely answer the question: are corporations persons? I will begin with French's discussion of the corporation.

Peter French and Moral Agency

One attempt to depict the corporation as a person is that of Peter French. French argues that corporations may be regarded as persons because they are capable of second-order intentionality. According to French, to show that a corporation is a full fledged member of the moral community, we must be able to describe an event as being the expression of the intention of a corporation (French 1979, p. 211-12). French's position actually has two parts. First, for anything to be morally accountable for the occurrence of an event it must first be the cause of the event; and second, it must have intended the event, i.e., it must have intended what its actions brought about. As French states, "I want to argue that having the power to act, and acting intentionally, constitutes a necessary and sufficient condition of moral citizenship" (French 1979,

SM, p. 7). Moreover, "(t)o be a moral person is to be an agent. To be an agent is to be able to act intentionally" (French 1979, SM, p. 7).

French illustrates these points by citing an example wherein a corporate executive votes "for" a particular action. In this case, the corporate executive (X) votes "for" the action because he is bribed, while the corporation (C) decides "yes" through the use of the corporation's internal decision (CID) structure in order to obtain higher profits. This situation, according to French, can be described as X intends Y, and C intends Z. By this description, C is an agent of intent responsible for Z and, thereby, qualifies as a moral agent (French 1979, pp. 213-4).

French's argument has two major components. First, intentionality on this view can only be attributed to acts under particular descriptions. The reason is, according to French, that "attributions of intentionality in regard to any event are referentially opaque with respect to other descriptions of that event" (French 1979, SM, p. 10). For example, if X intends to kill Y but kills Z thinking that Z is Y, then under one description X is not morally responsible because he did not intend to kill Z. But X did intend to kill and is therefore both causally and morally responsible for Z's death.

The second component is what French terms "collateral

intentionality" (French 1979, SM, p. 22). By collateral intentionality French means that one agent can be an agent of someone else's actions (particularly in an organizational structure). For instance, if X does A, and Y does B in response to X having done A, and if X was aware that having done A would cause Y to do B, then X is responsible for B because he collaterally intended for Y to do B. When a manager orders an employee to perform a particular action, we might hold the employee accountable (depending upon the circumstances), but the manager is collaterally responsible for the action done at his bidding.

French and the Moral Status of Corporations

French argues that descriptions of a corporation as intending an act are possible by understanding the corporation's internal decision structure. The CID structure of a corporation consists of an organizational flow chart which delegates the corporation's hierarchy of responsibility and levels of decision making, and a corporate policy which determines the way in which corporate activity is to be achieved. For instance, when a corporation considers a major decision several facets of the organizational structure are involved. Various departments are responsible for marketing strategy, feasibility studies, cost analysis, legal procedures, political assessment

(especially in the case of multi-nationals), etc. All of these studies are made or assigned by departments which are recognized on the organization's flow chart and which are directed by the corporation's policy guidelines. Information is then assimilated, perhaps by other departments, and reports are given to executives who are responsible, through the CID structure, for making the final decision. The decisions are therefore corporate decisions made for corporate reasons even though biological persons are used to bring about corporate action. For this reason, according to French, corporate decisions are not reducible to decisions by the aggregate of its members. Thus, the corporation as well as its agents can be considered members of the moral community.

French attempts to demonstrate corporate intentionality through a redescription of corporate decisions where the actions of the corporation, through the decisions of its members within the CID structure, can be described as corporately intended. For example, if executives X,Y,and Z are taking a vote on a particular action (let us call it A), their decision, because it is made within the structure, is the corporate decision to do A. Even if X votes for A for personal reasons, the action can still be described as the corporation's decision. In this regard, X might intend result B rather than A, but the decision can be redescribed as the corporation intending A since the

corporate guidelines are such that X,Y, and Z voting for A will determine that C chooses A. Therefore, according to French, the corporation's intent is founded on a re-description of an event, thereby qualifying the corporation as a moral person. That redescription is possible because of the corporation's organizational structure and its policies. Before spelling out my own response to French I will consider one set of inadequate criticisms of French's view.

Donaldson and Criticisms of the Moral Person View

Tom Donaldson argues that French's position rests on an assumption that corporations are able to perform intentional actions, and it isn't clear to Donaldson that corporations are the kinds of things which can perform intentional acts. As Donaldson states, "flesh and blood persons clearly perform them when they act on the basis of their beliefs and desires, yet corporations do not appear to have beliefs, desires, thoughts, or reasons" (Donaldson 1982, p.21).

Donaldson is obviously assuming that for an act to be an intentional act, it must have been performed in connection with the agent's desires, beliefs, thoughts, or reasons, and that a corporation is not the kind of entity that is capable of desires, beliefs, etc. In order to support his point Donaldson owes us an account of beliefs,

desires, etc. from which it would follow that flesh and blood persons have them and corporations do not. This might be attempted through a Searlean account of intentionality where intentionality is only a property of biological entities (Searle, 1980). Unfortunately such an account is not given by Donaldson, and therefore in light of Dennett's Intentional System Theory there is no reason to simply accept Donaldson's claim. Whether or not coporations, computers, or human beings <u>really</u> have intentions is an open question and one that I will not address. The aim of this thesis is, instead, to discuss the possibility of appropriately ascribing intentions to such entities. If we need to know what intentions <u>really</u> are in some <u>stronger</u> ontological sense, then we cannot yet intelligently ask whether or not corporations have intentions since we would not know what it is that we are looking for.

As we saw in the last chapter, ascriptions of intentional states are made from an Intentional stance toward some system. When we ascribe beliefs and desires we are adopting an Intentional stance toward a system. We do, as I will point out in the next chapter, ascribe beliefs and desires to corporations. Moreover, we cannot say that corporations don' t <u>really</u> have beliefs and desires since, as Dennett points out, any attempt to say what <u>really</u> counts as beliefs and desires ends "by putting conditions

on genuine belief that (1) are too strong for our intuitions, and (2) allude to distinct conditions of personhood farther down [Dennett's list of conditions]" (Dennett 1976, p. 180-81).

French, surprisingly, never addresses the issue of corporate beliefs and desires. As French puts it, it is only necessary "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" (French 1979, p. 211). As we have seen, French argues that the corporation's internal decision structure is the redescription device that allows us to say that certain events are intended by the corporation itself.

Donaldson, however, insists that there be a collective analogue to the locus of individual intentionality if we are to say that corporations have intentions. To use once again Donaldson's quote of Michael Keeley, "if one cannot point out the collective analogue to individual intent, organizations are strange looking persons. They don't look much like metaphysical persons, and they don't look much like moral persons" (Donaldson 1982, p. 22). But such a demand is unwarranted simply because, once again, it isn't at all clear that with individual intentionality there is anything for the corporation to be analogous to.

Donaldson also complains that "if corporations are

made up of rules, policies, and power structures, then we can tell what counts in the context of those rules, policies, and structures; but we cannot tell clearly from these what the combined rules, policies, and structures themselves intend" (Donaldson 1982, p. 22). But the fact that a corporation is made up of rules, etc. does not entail that the corporation is identical to the sum of its separate parts. French is not concerned with what the rules, policies, and structures intend; his interest is with the intentionality of the corporation. The CID structure does not tell us what the corporation intends, rather, it merely licenses our ascribing certain intentions to the corporation. Due to the CID structure, there are some actions which can appropriately be described as corporate acts since the CID structure prevents our being able to reduce at least some corporate acts to the sum of the corporation's individual agents.

There are clearly times when we say, and it makes sense to say, that the corporation acts. Donaldson argues, quite rightly, that we cannot say that whatever a corporation does it also intends since "corporations, like people, may have different opinions about what a given corporate act is intended to accomplish" (emphasis mine) (Donaldson 1982, p. 22). But it doesn't follow that corporate intentionality is any more mystifying than the intentions of biological persons. As Kenneth Goodpaster

states, "the 'mind' of the corporation...is at least as inscrutable as the mind of an individual when it comes to moral reasoning, so it should not come as a surprise that such matters are hard to ascertain after the fact" (Goodpaster 1984, p. 309). Moreover, the above quote from Donaldson suggests that corporations do have intentions. How else might corporations have different opinions about what a given act "is intended to accomplish."

Donaldson argues, however, that even if corporations are capable of intentionality it doesn't follow that they are moral agents. After all, he suggests, many animals and even computers may act intentionally, but we would not conclude that because of that they are persons. This argument is, of course, a straw man since, for French, a person must be capable of second-order intentionality and the cat and the computer (as we know it today) will probably not qualify. But even if we agree with French's organizationalist view that there are events which we might properly say were intended by corporations, it doesn't necessarily follow that we must embrace the position that corporations are persons. As we have seen, second-order intentionality cannot serve as a sufficient condition for personhood. Perhaps, in the end, corporations should still be viewed as being more analogous to machines than to persons.

The Organizational View

The corporation is more than just the collection of its agents. As Tom Donaldson points out, when a corporation buys another corporation it is not equivalent to its management or its stockholders buying the corporation since we can say that the corporation still owns the other corporation after its present management and stockholders have all passed away. But to say that a corporation is more than just the collection of its agents does not necessarily entail that the "more" implies moral agency (Donaldson 1982, p. 19). John Ladd, for instance, perhaps the most influential of the organizationalists, argues that actions made within and for a corporation must logically be attributed to the corporation. But it does not follow that moral predicates can also be applied to corporate acts. In fact, according to Ladd, because of the nature of organizations it is inappropriate to make moral ascriptions to corporations.

Ladd's contention is a logical one. He is concerned with the moral implications of what he calls the "ideal of rationality." The argument is that certain facets of the organizational "ideal", a notion he borrows from Weber, are incompatible with the ordinary principles of morality. The ideal for an organiation is for it to act on the principle of utility, for all of its actions to most efficiently bring about the organization's goals. Any action which

does not most efficiently bring about organizational goals, e.g., make the most profit or grant the organization the greatest amount of security, is not rational. Rationality, according to Ladd, is context dependent. Rationality is meaningless without the context of goals, and organizational goals are determined at the organization's charter. General Motors was originated for certain ends, e.g., to make cars, to make a profit, etc. Those goals came into creation with the organization and provide the context for what counts as rational for that organization.

This problem is a logical problem necessarily flowing from the concept of the formal organization. "Ideally" corporate decisions will be based on the principle of utility with those ends being the corporation's only concerns. Ladd's claim is not empirical. Corporations, he admits, only approximate the ideal to various degrees. The ideal type is a normative concept, albeit not a moral one. The corporate ideal is what organizations strive toward. As Ladd states, his account "is 'not a description of how administrators decide so much as a description of how good administrators decide.'"(Ladd 1970, p. 491)

As an analytic tool Ladd uses Wittgenstein's notion of language-games stressing Wittgenstein's insistence that language and action are interwoven. For example, the "ideal" or rational move in chess is the one which, broadly speaking, follows the rules. The rules include the ways in

which moves can be made and entail the end which competitors are striving toward. Simply making an empirical observation of two players playing chess is insufficient in telling us what the game is about since either or both players may make moves which, from the perspective of someone who knows the game, are irrational, i.e., bad moves. What makes a move good or bad, according to Ladd, is based on the principle of utility. Moreover, according to Ladd, the rules of a game itself are insulated from criticism by those playing the game. It would be inappropriate for someone playing chess to complain that the Queen has more mobility than the King, or even to decide that the appropriate end of the game should be a draw. To do so would not be to play chess differently, Ladd claims, it would be to play another game entirely. By analogy, Ladd argues that the organizational game has certain constitutive rules and these rules do not allow for the ordinary principles of morality. As Ladd states, "such concepts are not in the vocabulary, so to speak, of the organizational language-game. (We do not find them in the vocabulary of chess either!)" (Ladd 1970, pp. 499-500)

The Rules of the Game

The first rule of organizational decisions is that "ideally" individuals within the organization make decisions for the organization, what Ladd calls nonindividual

or "social choices." It follows that the logic of decisions attributed to organizations is different than those made to collectives. A person who makes a decision for an organization has made a decision which is not properly his. In Hobbesian language, the individual is only the actor, but the organization is the author. Organizational authority requires this "abdication of choice"; it is part of the language-game of organizational decisions (Ladd 1970, p. 494). Social decisions, by definition, are those choices which are attributed to the organization itself and not to a collection of individuals. As Richard DeGeorge makes the point:

> A corporation has a public face and its public face is corporate. Its responsibility when looked at in this way is also corporate. In dealing with other firms, in dealing with customers, in dealing with government, it always deals in its corporate mode. The corporation act, commits itself, delivers and produces goods, abides by or breaks the law, and so on. When, from a moral point of view, we judge the actions of the corporation, we hold the corporation responsible and accountable. We are not, in most cases, either knowledgeable or particularly concerned with the individuals within the corporation (DeGeorge 1981-82, p.7).

Ladd's second rule of the organizational language-game is that the decisions which can be called rational are those which further the organization's goals. Every formal organization must have a goal. And this goal, whatever it might be, is an essential element in the language-game of formal organizations just as trying to capture the king is an essential element of chess. The logical function of

the goal is to provide the priorities to be used in making organizational decisions and evaluations. According to this view, to make a decision which is not justified by an organizational goal would be unintelligible (just as it would be if someone began knocking the pieces down in chess). "Rationality" is then relative to the goals which have been chosen. The reference to a goal is required before the notion of rationality is intelligible (Ladd 1970, p. 497).

It follows for Ladd that moral decisions are not part of the language-game of organizational decisions just as morality isn't a relevant consideration for what move to make in chess. This is not to say that organizations cannot have moral goals, e.g., organizations like The Red Cross. But the daily activities of the organization are neither morally commendable nor reprehensible. The actions of organizations are merely rational or irrational. Social decisions cannot be governed by the principles of morality since for a decision to be "rational" it must only take into account organizational goals. Secrecy and deception in organizations on this account would be as morally neutral as bluffing is in poker. Organizations may pay lip service to morality, but, "rationally," only to further organizational goals (Ladd 1970, p. 500).

For Ladd we should view organizations as being analogous to machines. (I will return to this analogy

later in a brief discussion of Patricia Werhane.) To expect them to adhere to the principles of morality is a category mistake. These conclusions, once again, relate only to ideal-types. Corporations approximate being "rational" to various degrees. But Ladd's argument is that his depiction represents the organizational "ideal," the ideal which organizations, by their very nature, strive toward and approximate to various degrees.

The result is that actions are subject to two different kinds of standards, i.e., the standard of rational efficiency (utility) and the standards of ordinary morality (Ladd 1970, p. 501). Our expectations are built on a double standard, one for the individual in her public capacity and one for the individual in her private life. For example, Ladd suggests that nobody would think of condemning a movie star for lying about her use of a product for a commercial. But the same person would certainly be reproved for the same lies to friends in her private life (Ladd 1970, p. 501).

Ladd's argument against French then is that, although the language-game of social decisions allows for <u>actions</u> to be attributed to organizations, it does not allow for morality since the only relevant principles in rational decision-making are those related to the objectives of the organization. If we think of organizations as machines rather than persons, says Ladd, it is easy to see that

organizations cannot be expected to have any moral obligations. Therefore, the only way to make the rights of individuals relevant to social decisions is through pressure, most often legal. And we should not confuse our holding corporations legally accountable with holding them morally accountable since the only way to control corporate activity will be by administering enough pressure so that taking the rights of individuals seriously will be the "rational" thing for corporations to do.

A Response to Ladd

I agree with Ladd that there is a kind of moral schizophrenia between what counts as a rational decision for bringing about particular goals and the ordinary principles of morality. It isn't clear, however, that the "moral schizophrenia" which Ladd points out is peculiar to organizations. Individuals often have "goals." And the "rational" decision to bring about those goals will at times conflict with the principles of morality. In fact it is when moral principles come into conflict with themselves or with cherished goals that moral decisions become problematic.

Organizations are certainly capable of making moral decisions which come into conflict with what is "rational" for bringing about corporate ends. According to Ladd, however, such decisions are irrational from the standpoint

of bringing about corporate goals. But often the moral decisions of individuals are irrational in bringing about individual goals. (Although perhaps more rational in a broader context.) And there is nothing particularly new about that.

Ladd would of course suggest that what is different about the individual in her public role is that the decisions are not owned by her. She acts for the organization and we would not hold her blameworthy for "social decisions." But recent court cases seem to suggest just the opposite. A recent legal precedent now makes individuals criminally liable for their "social decisions." In response to Ladd's own example, we do in fact hold movie stars accountable for lying on commercials, and our rebuke is as moral as it is legal. As Sissela Bok states, "deception in bargaining and selling is rarely as mutually and freely accepted as in games. Even when it is, there may still be reason to ask whether it can overflow into other practices, so that persons <u>not</u> consenting to the deception are misled..." (Bok 1978, pp. 132-3).

Ladd does argue that individuals in their public capacities are simply playing a game, the rules of which cannot logically be questioned. But morality can certainly enter into our games even if it is not part of the rules of the game. Ladd's contention that morality does not enter into the organizational game just as it doesn't in chess is

a false analogy simply because, generally speaking, moral problems don't arise in chess. But what if, as it happened in the last world chess championship, a tournament begins to threaten the health of a competitor? What if a certain activity, perhaps intentionally stalling the tournament by playing every game to a draw, seriously endangered the other player's mental health? Would we say that there is no moral responsibility since the rules of the game allow for a player to cause the mental breakdown of the other player in the course of winning the championship? Postponing the game may be "irrational" from the point of view of winning the tournament. But being "rational" under one description in such a situation might still be immoral, and it seems that moral assessment is quite appropriate.

Nonetheless, Ladd still has another argument he might advance. Organizations are still more analogous to machines than to persons. Although moral considerations might arise in games, as we have just seen, games aren't really analogous to organizations after all. Individuals in games might disengage from "rational" decision-making when moral dilemmas arise. But within organizations the individual is dispensable. Although an individual might make a moral decision in opposition to what would be "rational" for corporate ends, the corporation might simply replace her with someone who will make the "rational" choice. So we must still decide whether or not

corporations themselves can be properly considered persons. Returning to Dennett's conditions, I would now like to discuss which of those conditions might be properly applied to corporations and the consequences of those results.

CHAPTER III

CORPORATIONS AS PERSONS

In the last chapter I discussed French's attempt to show how the corporation can be considered a person as well as several problems raised by Donaldson, Ladd, and others of French's position. Most of those objections were found to be insufficient either because they make unwarranted assumptions, or because of important misunderstandings of French. One problem with French's view is more problematic, however. It might still be argued, for instance, that intentionality, and even second order intentionality, constitutes agency, but not moral agency. As I argued in chapter one, ascriptions of intentionality do not constitute a sufficient condition for treating an entity as a person. It is important at this point to recall Dennett's conditions and illustrate which of those conditions corporations might meet.

The Corporation and Dennett's Conditions for Personhood

Fulfillment of the first three of Dennett's conditions is sufficient for regarding something as an Intentional system, that is, "a system whose behavior can be (at least at times) explained and predicted by relying on ascriptions to the system of beliefs and desires" (Dennett 1976, p. 179). The corporation obviously meets these conditions. To find evidence we need look no further than today's stock

market analysis. The following are a few examples from Peters and Waterman's excellent book on American corporations.

> IBM has seldom put products on the market that are right in the forefront of new technology. UNIVAC and others have all showed the way; IBM has learned from others' mistakes [emphasis mine] (Peters and Waterman 1982, p. 178).
> 'My guess... is that Deere will come out with its rotary combine within two years... and try to benefit from competitors' early mistakes' [emphasis mine]. (The Wall Street Journal) (Peters and Waterman 1982, p. 179)
> Owing to good luck, or maybe even good sense, those companies that emphasize quality, reliability, and service have chosen the only area where it is readily possible to generate excitement in the average down-the-line employee (Peters and Waterman 1982, p. 180).

These examples not only show that corporations are often treated as Intentional systems, but that second-order intentional ascriptions are often made about them as well. For example, IBM must believe that UNIVAC and others have a particular desire. Not only do we treat IBM as an Intentional system, but IBM is certainly capable, and quite often does, take an intentional stance toward others.

A more obvious example of corporate second-order intentionality is in the ad wars among various retail merchants. Retailers consider ad information top secret since, e.g., if Target (a national retail chain) obtains future ad information from K-mart, the acquired information enables Target to undercut K-mart by running a similar ad at the same time as K-mart and at reduced prices. In this way both Target and K-mart will run many of the same items,

but Target's prices will be cheaper. Given the cost of running a national ad campaign and the importance to K-mart's corporate image of "having the lowest prices," such undercutting is very expensive. The problems in keeping ad information secret, however, are considerable. There are simply too many people involved. Merchandise has to be ordered, ad space has to be obtained in newspapers, magazines, etc., people in various departments within the store (not just store management) have to be informed to plan for pricing and displaying merchandise, and so on. The rule of thumb within retail chains is: ad information always leaks. In response to this problem many companies intentionally leak false information. The ploy is to trick other companies into thinking something like "the Robotoman 3000 walking, talking robot will retail for $29.97 at K-mart June 22nd." Then, just before the ad breaks, the ad proofs are changed to read, e.g., $25.97. Target might then run their ad for $28.97, thinking that it will have undercut K-mart by one dollar. Unfortunately for Target it was tricked, and K-mart's ad undercut Target's by three dollars. K-mart, in this example, is being treated as a second-order Intentional system due to our description of its taking an Intentional stance toward Target. We ascribe to K-mart the belief that Target intends to undercut K-mart's ad prices. Based on K-mart's intentional interpretation it coaxes Target to behave in a particular way,

i.e., putting the robot on sale for $28.97, by inducing a false belief, i.e., that it (K-mart) is running a particular ad at a price four dollars higher than what it really intends. It follows that K-mart, at least at times, meets Dennett's first four conditions.

Of course Donaldson and others might argue that corporations are not the kind of things which are capable of really having beliefs or desires. Although we talk about IBM believing something about UNIVAC, "belief," it might be said, is being used metaphorically. On the view I am advocating--that of intentional system theory--this is an irrelevant point. Our taking a particular stance or attitude toward IBM justifies our belief ascriptions. The challenge for Donaldson is to offer an account of what beliefs <u>really</u> are. As I have argued, such an account cannot be given.

This takes us to Dennett's fifth condition, non-natural communication. Examples of corporations meeting Grice's conditions for non-natural meaning are readily available. One need only think about cases where corporations leak future mergers. The communication is made to an audience intending that the audience: 1) produce a particular response (buying stock in the company), 2) recognize that it intends for them to buy stock, and 3) buy stock on the basis of their recognizing the company's intent to get them to buy stock (one of the reasons that

people buy stock during such rumors is that they know others will do the same thus pushing stock prices up). It might be charged that corporations do not communicate, only their agents do. But the analogy between the actions of corporations and their communicating is obvious. Just as it is reasonable to say that corporations act since corporate intentions are nonreducible, it is also reasonable to say that corporations are capable of "non-natural communication," or communication whose communicative intent is conventional. Non-natural communication is just another of the actions which corporations perform.

The sixth condition is also easily met. According to Dennett the sixth and final condition for personhood is that it be an Anscombean agent, that it be capable of participating in the moral question and answer game. Examples are countless, but the following one from The Wall Street Journal should suffice.

> E. F. Hutton & Co pleaded guilty to federal fraud charges of operating a massive check-writing scheme to obtain money from many of its 400 banks without paying interest... E. F. Hutton and its parent, E. F. Hutton Group Inc., asked the Securities and Exchange Commission for an exemption from a securities law that would automatically disqualify Hutton as an investment adviser or principal underwriter for several mutual funds and unit investment trusts (The Wall Street Journal 1985, p. 3).

In this example E. F. Hutton is obviously participating in the moral question and answer game. Without this ability corporations would certainly not be considered legal

persons which they are under the constitution. Again, individuals working within the CID structure are making decisions for the corporation. In this case those decisions are corporate decisions which concern the corporation's legal defense.

One Last Word for Nonmoral Agents

It then seems that, even if French is wrong about second-order intentionality being a necessary and sufficient condition for personhood, corporations still qualify as persons since they obviously meet, at least at times, all of Dennett's conditions. But the objection here is obvious and one which has followed us all along. That objection is that a corporation, although it is a non-reducible agent, nonetheless does not qualify as a person. At the very most it is a machine, a very sophisticated machine, but still only a machine. Patricia Werhane, for example, asks us to imagine a mythical corporation, Robotron, which operates solely by computers. Her claim is that we would not ascribe moral agency to the company. Moreover, the case of Robotron is analogous to corporations run by human beings. As she states:

> it would operate like other corporations. It would own property, manufacture products, conduct marketing, correspond with other corporations and with customers, replace obsolete equipment, develop new product lines, write proxy statements, answer SEC inquiries, etc. Robotron would have stockholders and pay out dividends. Only a visitor to corporate 'headquarters' would learn that

> Robotron had no human employees. And such a corporation could be programed to respond to feedback from societal expectations such as requests for anti-pollution devices, safer products, etc. (Werhane 1981-82, p. 36).

Here is a case which seems to fit French's description of the corporation. It has a CID structure which lays out its guidelines and goals. Everything it does is for corporate reasons. Would we conclude that Robotron is a metaphysical person? Werhane's intuition is that we would not. Moreover, Werhane and Ladd suggest that with a better understanding of organizational structures we would realize that Robotron is simply the ideal type of all organizations, except that with other organizations individual persons take the place of the hardware. But Robotron is capable, under particular descriptions, of meeting all of Dennett's conditions for personhood. It has been programmed to "have" certain intentions, to be capable of reciprocity (it responds to social expectations), and there is no reason why it could not act as an Anscombean agent. But, if Werhane's inclinations are correct, we would not consider Robotron a person. Why not?

One reason that Robotron might not be considered a person is that its actions can be described as either caused or collaterally intended by others, i.e., its programmers, owners, etc. Perhaps there would be a greater chance that Robotron might be considered a person if we were not aware of its internal workings. But this is

actually an empirical matter. As I have pointed out, it might be argued that if mechanistic physicalism is true there is no need to ascribe intentions to anything (Dennett 1976, p. 182). We might invoke Lloyd Morgan's Canon of Parsimony to show that nothing meets any of Dennett's six conditions since, theoretically, we would lose no explanatory power by describing a being's actions in purely physicalistic terms. Dennett, for one, believes that this is possible. But even if it is theoretically possible to avoid ascriptions of agency, intentionality, etc., it does not follow that such ascriptions, at least for practical reasons, can or should be avoided.

The Corporate Reality

A major problem with philosophical studies of corporations is that they too often treat corporations as being largely homogeneous. But corporations differ in many ways. Corporations are of different sizes in terms of assets, influence, personnel, etc. They also differ in their organizational structures. It would be surprising if such considerations do not prove to be important. That makes it even harder to understand why such attributes have been more often than not ignored.

With the E. F. Hutton case cited earlier, for example, at least 24 employees were responsible for the company's illegal activities and none of those belonged to the

highest levels of the corporation. Those responsible were, at least to some extent, acting with the corporation's interests in mind. The corporation, as a result of their actions, was able to use up to $250 million on some days interest free over a period of 19 months. The investigation by the SEC took three years and required the initial immunity of over half the 24 employees who were responsible. Eventually all criminal charges against the 24 employees were dropped as part of a plea agreement. As Edwin Meese stated, it "was a corporate scheme" and "no one personally benefited" (The Wall Street Journal 1985, p. 9). This case demonstrates the complexities of the Hutton corporate structure; numerous individuals became involved in a scheme to benefit the corporation and supposedly without the knowledge of any of the top executives. It seems that with corporations the size of, and as loosely held as, E. F. Hutton it will often be the case that ascriptions will be made to it which include any and all of Dennett's six conditions.

In smaller, tightly held corporations such ascriptions to the corporation itself might not be necessary. After the United American Bank collapse in Knoxville, for example, responsibility for the collapse and for the bank's illegal activities was placed on a small number of individuals. This was at least partly due to the fact that UAB was so tightly held and managed. It would therefore

seem that, even in the legal sense, some companies are treated more as persons than others. We ascribe intentionality and agency to some corporations more readily than to others. For example, we often ascribe desires and intentions to General Motors, but such ascriptions to the Atwood Pontiac-Buick dealership in Lenoir City, Tennessee might very well be less common. The reason, in part, is that the internal structure of smaller tightly held corporations are less complex making ascriptions of intent and responsibility easier and more productive on the individual rather than the corporate level. That this is so is reflected by our ordinary practices.

What we have found is that corporations, though constitutionally legal persons, are treated as legal persons to varying degrees for various reasons, and that these reasons are often practical. The more difficult it is to individuate ascriptions due to the size, complexity, and opacity of a corporations internal structure the more likely the corporation will be treated as a legal person. The same is true for deciding which of Dennett's conditions a corporation fulfills.

DeGeorge and a Turn toward Heuristic Considerations

Richard DeGeorge points out that the literature on corporate responsibility suggests several different, seemingly contradictory, models of accessing corporate

responsibility. These range from holding no one responsible, to those which hold only individual agents responsible, to those which hold only the corporation itself responsible, to various variations and combinations of all the above. The question is: which of these is correct? The answer, says DeGeorge, is: "all of them are, if they fulfill the function they are intended to fulfill" (DeGeorge 1981-82, p. 12).

There is a lesson to be learned here from court decisions concerning legal responsibility. As DeGeorge points out, regardless of Chief Justice Marshall's famous line that "a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law," (DeGeorge 1981-82, p.3) there is no one correct way of legally assigning responsibility. To again quote DeGeorge, "laws have certain purposes, and if they are to control in certain ways the actions of corporations and of people within corporations, then they are effective insofar as they fulfill their aims" (DeGeorge 1981-82, p. 12).

Agreeing with DeGeorge, I would suggest that the same is true for morality. Not only is there no one sense of moral responsibility which we might discover and apply to corporations, but the attempt to do so is stifling. It unnecessarily limits our ability to create and control institutions as societal needs emerge. These considerations are of course pragmatic. That is not to say that

immediate effectiveness will be the only test. Just as Ladd reminds us, the ends must still be decided. We must engage in dialectic to establish what we want for and from corporations. This will mean deciding what kind of world we want to live in before we can discuss what will best bring those ends about. Those debates will certainly continue. Part of our decisions will most certainly be based on metaphysical considerations, some aesthetic and emotional. Despite our philosophical biases all of these considerations seem to me appropriate and important if not, in fact, indispensable. But, as DeGeorge states, "a morality which consisted only of...internal judgments, which had no social aspect and accompanied no social practices would not be what we generally mean by morality" (DeGeorge 1981-82, p. 14).

Concluding Comments

The question we started with was whether or not corporations are persons. This question has been refined in the course of my discussion. If the question is "are corporations persons in the sense that they are recognized as legal agents?" then the answer is obviously "yes." If the question concerns the type of ascriptions which we make about corporations, then the answer depends on the corporation, the action being discussed, and numerous other considerations. If the question is "are corporations full-

fledged persons?" in the sense of having all the rights which biological persons have and being treated as persons just like us, then the answer is: no, though to varying degrees. But we already knew that corporations are not persons just like us. To what extent corporations might be considered persons in the future is anybody's guess; although, it is doubtful that corporations will ever be considered persons just like us. The reason, as was suggested at the end of chapter one, is partly that corporations are incapable of certain human performances, e.g., they cannot put on a human face, i.e., they do not express emotion, and they do not command our sympathy. Although many undoubtedly mourned their own personal losses and the losses of their friends after the UAB bankruptcy, few (if anyone) felt sympathy for the company itself. It is hard to imagine the reorganization which might change that.

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