

PRESENTATION

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Can and should corporate agents, such as companies, parties, churches and universities, be held responsible, even in cases in which individual responsibility is diminished? This question is particularly urgent in light of cases such as the sinking of the *Herald of Free Enterprise* on March 6, 1987, in which nearly two hundred people drowned. Although the subsequent official inquiry showed that the company which ran the ferry was extremely sloppy, with shoddy procedures of control and management, no one was penalized because the court could not identify any individual who could be held sufficiently responsible for what had happened.

This, in a nutshell, is the problem addressed by Philip Pettit, Laurance S. Rockefeller University Professor of Politics and Human Values at Princeton University, in “Responsibility Incorporated”, the first of the articles included in this special issue. In addressing the first part of the article’s leading question – *can* group agents be held responsible in such situations – Pettit argues that the conditions that apply for holding individual agents responsible also apply to collective agents. In particular, he is concerned to address various conceptual problems that have hindered understanding why group agents can be held responsible. Two, in particular, should be flagged here. The first turns on the autonomy of collectives *vis-à-vis* their members. Pettit argues that the group’s judgments will need to be functionally independent of the corresponding member judgments if the group’s attitudes and actions are to be internally consistent over time. The second is closely related to the first, and stems from the philosophical and theological tradition according to which control of what a corporation does lies solely with those who act in its name. To deal with this problem, Pettit appeals to the distinction between “programming for” and “enacting” events or actions: if the group agent’s members are individually fit to be held responsible for actually performing its blameworthy action, the group agent itself is fit to be held responsible insofar as its “constitution” arranges for the formation and enactment of its attitudes.

But, and this is the second part of Pettit’s question, *should* group agents be held responsible in situations such as those exemplified by the *Herald of Free Enterprise*? Yes, he argues, and for two reasons. First, individual responsibility is often diminished, as illustrated in the sinking of the ferry, in which case the autonomy of the collective agent allows it to be held responsible for the harm that it arranges to be done. Second, not holding corporations responsible provides a perverse incentive for individuals to incorporate, thereby precluding that they can be held fully responsible. Interestingly, Pettit generalizes his normative defense of corporate responsibility, suggesting that also “potential or embryonic group agents” should be held responsible in situations of collective guilt. Pointing to national peoples (as distinct from states) and to bodies of believers (as distinct from episcopacies and the like), he asserts that holding these groupings responsible for acts made in their name

creates an incentive for their members to put mechanisms into place whereby their spokesbodies can be brought under their political and legal control.

The development of these ideas in “Responsibility Incorporated” builds, implicitly or explicitly, on various strands of Pettit’s previous work: agency, both individual and collective; supervenience; republicanism, democracy, and the ideal of freedom as non-domination; the internal connection between freedom and responsibility. Most generally, the paper is inscribed within the general project of a social philosophy that, as Pettit describes it, is both anti-collectivist, by dint of denying that agency can be reduced to aggregate social forces, and anti-atomistic, by virtue of insisting on the irreducibly social character of human beings.

If these general philosophical issues animate “Responsibility Incorporated”, they also constitute the backdrop of the responses to Pettit’s articles written by Govert den Hartogh, Bert van den Brink, Bert van Roermund and Jan Vranken, and Ronald Tinnevelt.

Den Hartogh’s contribution contests Pettit’s views on the criminal responsibility of collective agents. Holding a collective agent criminally responsible, or so Den Hartogh argues, is either unfair or redundant: the latter, if responsibility can be distributed without remainder among individual persons; the former, if it cannot. In particular, collective criminal responsibility is redundant because individuals can be held responsible individually and jointly – but not as a collective – for whatever is done according to the collective’s constitution. Additionally, there is an important moral reason of fairness for the law to create what he calls “a chain of individual criminal responsibility”, whereby the law establishes how the officials of a corporate agent, or in the last resort its constituting members, can be held criminally responsible.

Van den Brink, for his part, is unhappy with Pettit’s move to make all members of a collective equally responsible for its blameworthy action. Although Van den Brink endorses Pettit’s claim that collectives are autonomous agents, he counters that it is only fair to deem their members equally responsible if those collectives are made up of roughly free and equal members, such as in a genuinely democratic organization. To the extent that corporations do not fit this description, Pettit’s move to distinguish between corporate responsibility for the arrangement of the formation and enactment of the group’s attitudes, on the one hand, and individual responsibility for the instantiation thereof, on the other, loses sight of a third kind of responsibility, namely responsibility for the enactment of corporate arrangements which facilitate blameworthy acts.

Van Roermund and Vranken take Pettit to task for his assumption that there is a continuum between the moral and legal conditions governing collective responsibility. Focusing on private law, they assert that the moral question whether an act should be approbated or praised, which Pettit has in mind when canvassing corporate responsibility, yields to – and even disappears in the face of – the properly legal questions concerning imputability and liability. No less importantly, these legal questions are settled by way of authoritative decisions, which are at some remove from the discursive consensus typical of morality. This gap between morality and law is the outcome of the process whereby potential sources of social conflict become differentiated and institutionalized, such that the discourse of

moral responsibility is transformed into a discourse of rights, duties, liabilities, and immunities.

Tinnevelt, in the fourth and final response, probes and expands on Pettit's suggestion that "potential or embryonic group agents", such as nations and religious congregations, should be held responsible for acts done by their spokespersons. Tinnevelt is skeptical about this suggestion, as Pettit determines neither the conditions under which nations can be meaningfully held responsible nor the scope of their responsibility. Furthermore, Tinnevelt claims that Pettit's account of what it takes to bring the spokespersons of nations under democratic control is insufficient, as it overlooks the crucial role of the political public sphere. Tinnevelt concludes by assessing Pettit's recent forays into the debate about international relations and global justice. If freedom as non-domination is to be realized on a global scale, then its privileged collective agent is a global federal republic, not the state, as Pettit would have it.

In the final and wide-ranging contribution to this special issue, Pettit engages with these legal, political, and ethical appraisals of "Responsibility Incorporated", revisiting and restating his views on corporate responsibility.