

# Corporate Vice

Stephanie Collins

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## Abstract

Vices are often attributed to corporations. We hear that casinos are ‘greedy,’ mining companies are ‘ruthless,’ or tobacco companies are ‘dishonest.’ This chapter addresses two questions. First, are such corporate vices reducible to the vices of individual role-bearers? Second, which traits of corporations are properly labelled ‘vices’? The chapter argues that corporate vice is sometimes irreducible to the vices of role-bearers: corporations can be vicious ‘over and above’ the traits of role-bearers. It further argues that different corporations should be held to different standards: what it means for a casino to be ‘vicious’ is different from what it means for a mining company to be ‘vicious,’ for example.

## Introduction

Vices are often attributed to corporations. We hear that casinos are ‘greedy,’ mining companies are ‘ruthless,’ or tobacco companies are ‘dishonest.’ Are such vices reducible to vices of role-bearers?<sup>1</sup> And which traits of corporations are properly labelled ‘vices’?

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<sup>1</sup> In other words: is ‘nominalism’ or ‘realism’ the correct approach the corporate vice? According to nominalism, corporate vice exists in name only: corporate vice is nothing more than a collection of vicious individuals. According to realism, corporate vice exists in and of itself: corporate vice is distinct from the vice of its constituent members and the corporation can, therefore, be at fault in way that are different from that of its constituent

This chapter addresses these questions, starting from recent social ontological literature.<sup>2</sup> I argue that corporations' vices are irreducible to vices of role-bearers. Instead, corporate vice is composed of a complex melange of structures, procedures, cultures, practices, norms, and emotions—each of which exist at the irreducibly corporate level. I then propose a standard for corporate vice that follows neo-Aristotelean virtue ethics. The proposal is that a corporation is vicious when it fails to promote that aspect of human flourishing around which the corporation is characteristically or distinctively oriented. Thus, virtues and vices *exist* irreducibly at the corporate level, but *which* traits are virtues and vices is determined by those traits' contributions to human flourishing.<sup>3</sup>

Before beginning, a caveat. This chapter makes an ontological and moral argument, not a legal one. I assume (in broadly Aristotelean spirit) that the law should be used to encourage corporate virtue. Yet I am neutral on which precise methods the law should use to do this. I take no stand on whether the law should use carrots or sticks, for example, or how exactly the

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members. On nominalism versus realism, see Carlos Gómez-Jara Díez, 'Corporate Criminal Liability in the Twenty-first Century: Are All Corporations Equally Capable of Wrongdoing?' (2011) 41 *Stetson Law Review* 41.

<sup>2</sup> Recent legal theory has addressed adjacent questions, such as whether current law has the resources to address corporate character and what the notion of 'corporate character' has to offer law. The present paper complements these contributions, but focuses more squarely on philosophical issues. Mihailis E. Diamantis, 'Clockwork Corporations: A Character Theory of Corporate Punishment' (2017) 103 *Iowa Law Review* 507. William S. Laufer, 'The Missing Account of Progressive Corporate Criminal Law' (2017) 14 *New York University Journal of Law and Business* 71. Jason Baer, *The Inquiring Mind: On Intellectual Virtues and Virtue Epistemology* (Oxford University Press 2011). William S. Laufer and Matthew Caulfield, 'The Promise of Corporate Character Theory' (2018) 103 *Iowa Law Review* 101. Mihailis E. Diamantis, 'The Law's Missing Account of Corporate Character' (2019) 17 *Georgetown Journal of Law and Public Policy* 865.

<sup>3</sup> This proposal develops an idea from Stephanie Collins, *Organizations as Wrongdoers: from Ontology to Morality* (Oxford University Press 2023).

law should punish corporate vice. Of course, regulatory frameworks are important scaffolds for corporate virtue, and a full account of mechanisms for avoiding corporate vice would give specific guidance to the regulatory context. My question, though, is a prior one: what *is* corporate vice?

## **1. Corporate Character Traits**

### ***1.1 Traits of Individuals***

For those drawn to ontological parsimony, we might begin by trying to understand corporate vices as vices of individuals. Perhaps a corporation has vice V if and only if the corporation's role-bearers have vice V. Call this the traits-of-individuals view of corporate vice.<sup>4</sup>

The traits-of-individuals view has variations, depending on who counts as a 'role-bearer.' For example, are shareholders of for-profit corporations 'role-bearers'? What about low-level employees, proxy agents, or external stakeholders? It's not obvious that we should defer to the corporation's organizational chart—or its own conception of role-bearers—when answering this question. After all, our goal is moral assessment. For the purposes of moral assessment, we should be wary of allowing the corporation to 'forsake' the character traits of certain individuals by quietly omitting to include those individuals within the corporate role chart. There is a moral question, then, about who is a 'role-bearer' for the purpose of using role-bearers' vices as the 'reduction-base' for corporations' vices.

The traits-of-individuals view admits of further variations. It must answer the question of how many, or which, role-bearers need to have a trait, for the corporation to have that trait. Does a corporation have vice V only *all* members have V, or only if *most* members have V, or only if the *directing* members have V? The last of these options can be associated with the

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<sup>4</sup> I use the cumbersome label 'traits-of-individuals' to distinguish the present nominalist position from an alternative nominalist position considered in Section 1.2

‘identity theory’ in criminal law, according to which a corporation is liable only when the ‘directing mind’ has acted with fault.<sup>5</sup> Yet many corporate behaviours might be determined by character traits that are not held by directors, but rather by lower-level role-bearers. Traits of directors need not be dispositive.

I mention these options to illustrate that the traits-of-individuals view is not straightforward, as shown by the different ways that different jurisdictions have sought to grapple with these issues. The view contains complex choice-points. Our responses to these choice-points will likely be influenced by such factors as the corporation’s structures, procedures, culture, and so on. For example, it would seem natural to say *all* role-bearers’ traits matter, and all matter *equally*, in a corporation with a democratic culture. And it would seem natural to say that *proxy agents*’ traits should be considered, in a corporation that delegates many decisions to proxy agents. But the questions of whether a corporation has a ‘democratic culture,’ and whether it ‘delegates decisions,’ are questions of the corporation’s structures, procedures, and culture. These factors introduce a more ‘holistic’ approach to corporate vice. So, if we were drawn to the traits-of-individuals view because we wished to side-step such messy ‘holistic’ factors, we might be disappointed. The view is not as parsimonious or simple as it first appears.

Even without adjudicating the above-mentioned choice-points, the traits-of-individuals view is inadequate. Corporate vice is not simply a matter of role-bearer vice—whoever the role-bearers are, and in whatever proportions. A corporation can have a vice that no role-bearers have and a corporation can fail to have a vice that all role-bearers have. Consider dishonesty. It’s possible that all role-bearers are scrupulously honest in their private lives—we would ascribe ‘honesty’ to them considered as humans independent of the corporation—but

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<sup>5</sup> This is the dominant model in Australian criminal law, following *Tesco v Natrass* (1972) AC 153.

nonetheless the corporation is vicious, because the role-bearers strictly compartmentalise their home-life from their work-life. It's also possible that all role-bearers are liars and cheats in their personal lives, while the corporation is structured so as to prevent any lying or cheating when individuals are performing their roles. So moral assessments of individual role-bearers *qua private agents considered independently of the corporation* cannot be where we look, when assessing corporate vice.

This may seem obvious, but it is important. We often look to individuals' private lives when assessing corporate character. We might think Tesla is arrogant because we think Elon Musk is arrogant. Or we might think Apple is generous because we think Tim Cook is generous. Indeed, individual vice might be *good evidence* for corporate vice. Musk's individual arrogance might be *good evidence* for the hypothesis that Tesla is also arrogant, because of the *influence* Musk has over Tesla. Yet corporate vice is not *constituted* by individual vice. When considering Musk as a private individual, his influence over Tesla is best conceptualised as the influence one agent has over another. To test whether Tesla is arrogant, we need to look to Tesla itself—particularly, at attributes I will elucidate in Section 1.3.

## ***1.2 Traits of Role-bearers***

The second individual-based view says that corporate character traits are character traits members have *within and because of their roles in the corporation*, or, as I will say, 'qua role-bearers.' This is the 'traits-of-role-bearers' view. The traits-of-role-bearers view has several advocates in the small philosophical literature on collective virtue, so it is natural to extend the view to corporate vice.<sup>6</sup>

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<sup>6</sup> There are several advocates of the traits-of-role-bearers view. Reza Lahroodi, 'Collective Epistemic Virtues' (2007) 21 *Social Epistemology* 281. Miranda Fricker, 'Can There Be Institutional Virtues?' in T.H. Gendler and J. Hawthorne (eds), *Oxford Studies in Epistemology* (Oxford University Press 2010). T. Ryan Byerly and Meghan

The traits-of-role-bearers view has the same smorgasbord as the traits-of-individuals view—a smorgasbord including options for who counts as a ‘role-bearer’ and what proportion of, or which, role-bearers’ traits are relevant. The traits-of-role-bearers view avoids the counterexamples raised above, since it focuses only on facts about role-bearers that are determined by, or otherwise related to, their role in the group. Facts about role-bearers’ personal lives do not come into this view’s assessment of corporate vice.

As Miranda Fricker points out when advocating the traits-of-role-bearers view, the view is committed to a kind of non-reductionism: “the individual features in question ... are not found at the level of individuals considered independently from the group, for the individuals only have that feature if they are wearing their group-member hat. Some practical identities of individuals are ... intrinsically group-involving...”<sup>7</sup> Because of this, the traits-of-role-bearers view requires an account of when individuals are ‘wearing their group-member hat,’ and of the mechanisms by which individuals can come to exhibit certain character traits *only* when playing their roles. Thus, the role-bearer account will need to be supplemented by a story of corporate-level traits, such as the one I will give in Section 1.3, even more strongly than did the traits-of-individuals view.

Yet the traits-of-role-bearers view is still reductionist in spirit, like the traits-of-individuals view was: according to both views, the *character traits themselves* are housed

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Byerly, ‘Collective Virtue’ (2016) 50 *Journal of Value Inquiry* 33. Miranda Fricker, ‘Institutional Epistemic Vices: The Case of Inferential Inertia’ in I.J. Kidd, H. Battaly, and Q. Cassam (eds), *Vice Epistemology* (Routledge 2020). Anita Konzelmann Ziv similarly suggests that organisations’ virtues are largely a matter of how *members’* virtues “aggregate and converge.” Anita Konzelmann Ziv, ‘Institutional Virtue: How Consensus Matters’ (2012) 161 *Philosophical Studies* 87. Likewise in the legal literature: Diamantis argues that “[w]hat matters for corporate honesty is not whether employees are honest round-the-clock, but whether they are honest while on the job.” Diamantis (2019, n 2).

<sup>7</sup> Fricker (2010, n 6).

entirely within individuals. These individual-level character traits are *caused, supported, or explained* by corporate-level phenomena, but the traits belong to individuals. To illustrate, Fricker gives an example of an appointments committee that is committed to equal opportunity. Despite each member deriding equal opportunity in their private lives, each member ‘goes along’ with equal opportunity for committee purposes.<sup>8</sup> Each member is committed to equal opportunity—with associated character traits—in their *capacity as group member*. These commitments are explained by group-level facts (such as corporate procedures, norms, or practices). Nonetheless, the commitments—and the character traits themselves—reside within the individuals.<sup>9</sup>

This traits-of-role-bearers view gets something right. When enough role-bearers have a well-entrenched disposition to exhibit a certain character trait while acting within their roles,

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<sup>8</sup> Fricker (2010, n 6). Both Lahroodi (n 6) and Fricker (2010, 2013, 2020 n 6) use Margaret Gilbert’s notion of a “joint commitment” to explain what it is for an individual to ‘go along’ with something and therefore exhibit a character trait qua group member. Margaret Gilbert, *On Social Facts* (Princeton University Press 1989). To have a character trait qua group member, on Lahroodi’s and Fricker’s views, is to be party to a *joint commitment*, together with other members, to exhibit the character trait as a body. Apart from the problems raised in subsequent paragraphs for the traits-of-role-bearers view, I believe the ‘joint commitment’ version of the view is inapt for large corporations: it’s incredibly rare that (enough) members of large corporations will be party to any joint commitments with one another, let alone joint commitments to exhibit certain character traits as a body. So ‘joint commitment’ accounts of group character traits will produce an implausible dearth of group character traits in the real world, since they require a level of cohesion that overlooks worker alienation.

<sup>9</sup> Again, Fricker uses Margaret Gilbert’s (n 8) theory of ‘joint commitments,’ on which commitments are group-level. But the joint commitments do not arise out of group-level facts like those theorised in Section 1.3; they rather arise out of individuals’ several acts of acquiescing to the joint commitment. The phenomenon of group-level facts that facilitate role-bearer vice is also explored by Penny Crofts, ‘The Townspeople of Derry in Stephen King’s *IT*: Bystanders and Responsibility for Evil’ in W.S. May (ed), *Encountering Pennywise: Critical Perspectives on Stephen King’s IT*. University Press of Mississippi 2022.

this will often be *sufficient* for the corporation to have that character trait—particularly in closely-held corporations. Of course, different members can—often, will—exhibit different character traits. Thus, a corporation might come out as partly generous, partly miserly, and partly somewhere in-between, if different role-bearers exhibit these traits while performing their roles. Yet this complication works in the theory’s favour, yielding *gradations* of corporate character: the more members (or the more important the members are) that exhibit a character trait, the more the corporation has that character trait. We might then say that a corporation has many character traits—including many conflicting character traits—to some small degree. ‘Full’ or ‘maximal’ exhibition of any given character trait would be rare, requiring all role-bearers to exhibit the trait while performing their roles. Again, this bug may be a feature: on Aristotelian virtue ethics, full virtue (and, we might add, full vice) *is* extremely rare.

The traits-of-role-bearers view is further supported by a metaphysical picture on which corporations are *materially constituted* by role-bearers. On this picture, whenever role-bearers perform their roles, those performances are attributable to the corporation.<sup>10</sup> Note that ‘performances’ here includes not just behaviours, but emotions, feelings, attention, observation, inclinations, and so on. This wide conception of ‘performances’ is important for a conception of corporate vice on which the vicious person is disposed to behave in certain ways *for* vicious reasons, *with* vicious emotions, *acting on* vicious inclinations, and so on.<sup>11</sup> Human role-bearers are clearly capable of this rich suite of agential performances; thus, on the traits-of-role-bearers view, corporations are capable of them too.

While the traits-of-role-bearers view articulates an important and common basis for corporate vice, it does not provide a *complete* account of corporate vice. This is because role-

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<sup>10</sup> I defend this metaphysics in Collins (n 3).

<sup>11</sup> This Aristotelean conception is richer than that theorised by Diamantis (2019, n 2), who conceptualises character as *mere* tendency to behave.



bearer vice is not *necessary* for corporate vice. Corporations can exhibit a vice despite no role-bearers exhibiting that vice while performing their roles. Suppose one role-bearer is forgetful qua role-bearer, another is miserly qua role-bearer, and another is selfish qua role-bearer. This combination—when combined with the organisation’s procedures, structures, and so on—can result in *the corporation as a whole* being callous. No member alone is callous qua role-bearer (they are instead forgetful, miserly, and selfish), but when the members’ traits *interact* with the corporate structures and procedures, the overall result is group-level callousness. Thus, we need more than role-bearer vice, for a full account of corporate vice.

And even if one or more relevant members are callous-qua-role-bearer, it’s still true that the callousness is an irreducibly group-level trait if the trait is *multiply realizable*—that is, if the group-level trait *could have been* manifested or constituted by a range of varied individual-level traits, such as forgetfulness, miserliness, or selfishness.<sup>12</sup> The corporation’s callousness could have been realized in numerous ways at the individual level while remaining the same corporation-level trait, even if it just so happens that the trait was in fact manifested by callousness in individuals. Moreover, corporate-level facts (such as corporate culture, norms, and policy) have an important role in shaping, rewarding, and punishing role-bearers’ character traits. The corporation’s callousness should not be identified with, or reduced to, the particular individual-level character traits that happened to realise it in the actual world, if there were multiple possible individual-level realisers of the same corporate trait.

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<sup>12</sup> Carl Gillett, ‘The Metaphysics of Realization, Multiple Realization and the Special Sciences’ (2003) 100 *Journal of Philosophy* 591. Christian List and Kai Spiekermann, ‘Methodological Individualism and Holism in Political Science: A Reconciliation’ (2013) 107 *American Political Science Review* 629.

### *1.3 Traits of Corporations*

If corporations' traits are irreducible to members' traits (whether qua private individuals or qua role-bearers), then in what do corporations' traits consist? A broadly functionalist approach to group agency is currently popular among philosophers and legal theorists.<sup>13</sup> On this approach, 'agency is as agency does.' To characterise the agency of corporations—including their vices—we look at whether the corporation functions as an agent over time and circumstances. This is determined by corporate structures, procedures, cultures, practices, norms, and emotions—each of which, I will argue, exist irreducibly at the corporate level.

First, consider a corporation's structures. A corporation's structures specify how corporate roles relate, primarily through lines of reporting and delegation.<sup>14</sup> A corporation's structures specify how the corporation's constituent parts (humans) must relate to one another, for the corporation to exist. The structures also specify how the corporation relates to external entities. The relations are representable in an organizational chart or constitution, whether formally written down or not. Following recent analyses of ordinary objects (like tables), the totality of a corporation's structures can be understood as the 'recipe' for how the constituent

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<sup>13</sup> In philosophy: Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press 2011). Bryce Huebner, *Macro cognition* (Oxford University Press 2013). Brian Epstein, *The Ant Trap: Rebuilding the Foundations of the Social Sciences* (Oxford University Press 2015). 2015; Frank Hindriks, 'Collective Agency: Moral and Amoral' (2018) 72 *Dialectica* 3. Stephanie Collins, *Group duties: Their Existence and Their Implications for Individuals* (Oxford University Press 2019). Collins (n 3). In legal theory: Diamantis (2017 n 2). Diamantis (2019 n 2). Lisa Siraganian, *Modernism and the Meaning of Corporate Persons* (Oxford university Press 2020). Penny Crofts, 'Aliens: Legal Conceptions of the Corporate Invasion' (2021) 34 *Law & Literature* 387. **Bant, this volume.**

<sup>14</sup> French emphasises structures in his theory of corporate agency. Peter French, 'The Corporation as a Moral Person' (1979) 16 *American Philosophical Quarterly* 207. Peter French, *Collective and Corporate Responsibility* (Columbia University Press, 1984).

parts must relate to one another, for those constituent parts to realise the corporation.<sup>15</sup> The recipe remains constant across changes in the role-occupants (including changes to the CEO), and even across minor changes to the structure itself. A corporation's structure can be vicious by, for example, inhibiting transparency and accountability, or by promoting corruption. Note that viewing a corporation's structure as a locus of vice does not imply or assume that *any* individual role-bearers are vicious: the structure itself can encode vice in how role-bearers are *related*.

Meanwhile, a corporation's *procedures* are the methods the corporation uses to form beliefs, preferences, decisions, intentions, and other (functional equivalents of) mental states.<sup>16</sup> Procedures are ways of *operationalising* the structures. Procedures include formal aggregation rules, alongside bargaining, debate, compromise, conversation, command, consultation, and so on—as seen within boards of directors, shareholder meetings, and stakeholder engagement. A corporation's procedures need not be formal or written down, just as its structure (recipe) need not have a written constitution. Again, the procedures can have vices that are not attributable to any individual role-bearer. These include authoritarianism, managerialism, or officiousness—which can be encoded into procedures despite role-bearers' best attempts to resist these vices during role performance.

Another group-level constituent of corporate character traits is the corporate ethos.<sup>17</sup> As theorised by Pamela Bucy, the corporate ethos is gleanable via examination of “the corporate hierarchy, the corporate goals and policies, the corporation's historical treatment of

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<sup>15</sup> Koslicki analyses ordinary objects in these terms. Kathrin Koslicki, *The Structure of Objects* (Oxford University Press 2008). I Koslicki to organisations in Collins (n 3).

<sup>16</sup> List and Pettit (n 13) emphasise procedures—particularly aggregation procedures—in their theory of corporate agency.

<sup>17</sup> See also [Comino, this volume](#).

prior offenses, the corporation's efforts to educate and monitor employees' compliance with the law, and the corporation's compensation scheme, especially its policy on indemnification of corporate employees."<sup>18</sup> As Bucy notes, "it is not possible to fully, completely, and accurately ascertain a corporate ethos."<sup>19</sup> Moreover, the elements just listed provide an incomplete picture. Ethos arises from norms of practice and behaviour, unspoken but widely presumed standards of success, habits of attention or prioritisation, assumptions about what is sayable and unsayable, perceptions of what is possible and impossible, and other elements that cannot be ascertained purely from the top-down elements mentioned by Bucy. All of these must be examined to ascertain a corporation's ethos—and even then, any assessments about the ethos (particularly by outsiders) are fallible. The result is that we cannot always know whether a corporation is vicious—just as we cannot always know whether a human is vicious.

Like vicious structures and procedures, a vicious ethos is not reducible to role-bearer vice. To see this, consider just one aspect of ethos: norms. Cristina Bicchieri has developed the following influential definition of norms:

A social norm is a rule of behaviour such that individuals prefer to conform to it on condition that they believe that (a) most people in their reference network conform to it (empirical expectation), and (b) that most people in their reference network believe they ought to conform to it (normative expectation).<sup>20</sup>

A social norm can be vicious without any of its individual adherents being vicious. To see this, consider damaging corporate norms, such as norms of overworking. Many people prefer to (in the economist's sense of 'prefer to,' i.e., 'will in fact') adhere to such norms, because they

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<sup>18</sup> Pamela Bucy, 'Corporate Ethos: Reformulating Corporate Criminal Liability' (1991) 75 Minnesota Law Review 1095, p. 1101.

<sup>19</sup> Bucy (n 18), p. 1178

<sup>20</sup> Christina Bicchieri, *Norms in the Wild* (Oxford University Press 2017), p. 35.

believe that (a) most others in their corporation will conform and (b) most people in their corporation believe everyone ought to conform. Yet people might strongly prefer to work in a corporation where (a) and (b) are false, or strongly wish that (a) and (b) were false in their corporation. In this case, the reluctant conformers do not exhibit the relevant vice—say, greed or ruthless ambition—although the norm does.

Finally, consider corporate emotions. On the Aristotelian picture, full-blooded vice requires vicious emotions. This might seem a non-starter for corporations. On a standard picture, emotions include psychological components alongside phenomenal components: judgments and desires alongside ‘qualia’ or ‘what-it-is-like-ness.’<sup>21</sup> We can account for corporations’ psychological components (judgments and desires) using the functionalist picture: a corporation’s judgments and desires are cashed out, ultimately, in terms of behavioural dispositions and internal mechanisms, including what the corporation rewards and punishes.<sup>22</sup> But what about the phenomenal components? Some argue that corporate phenomenal components are not essential for moral assessments of corporations’ emotions: that when we assess corporations’ emotions, it is enough to assess the psychological components in functionalist terms.<sup>23</sup> Others argue that corporations lack the phenomenal components, though we can assess the phenomenal components of members-qua-members (along lines described in Section 1.2).<sup>24</sup> Yet another option is that members’ phenomenology

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<sup>21</sup> Roland de Sousa, ‘Emotion’ in E.N. Zalta (ed), *Stanford Encyclopaedia of Philosophy* (Metaphysics Research Lab Stanford University 2014) <<http://plato.stanford.edu/archives/spr2014/entries/emotion/>>.

<sup>22</sup> Gunnar Björnsson and Kendy Hess, ‘Corporate Crocodile Tears? On the Reactive Attitudes of Corporate Agents’ (2017) 94 *Philosophy and Phenomenological Research* 273.

<sup>23</sup> Björnsson and Hess (n 22).

<sup>24</sup> Deborah Tollefsen, ‘The Rationality of Collective Guilt’ (2006) *Midwest Studies in Philosophy* 222. Stephanie Collins, ‘“The Government Should be Ashamed”: On the Possibility of Organisations’ Emotional Duties’ (2018) 66 *Political Studies* 813.

is attributable to the corporation, when that phenomenology is experienced by members while performing their roles.<sup>25</sup> Without adjudicating between these options, notice that accounts *can* be given of (the moral significance of) corporate emotions, without positing any ‘spooky’ entity additional to the role-bearers.

In these ways—via structures, procedures, ethos (including norms), and emotions—corporations exhibit character traits irreducible to members’ character traits. Of course, corporate traits are not easily discernible, especially to outsiders: corporations regularly engage in window dressing. To assess their structures, procedures, ethos, and emotions, we often need deep insider knowledge. Even once we have that knowledge, our moral assessment is not complete. We need to know: *which* traits are virtues? Which are vices? The next section addresses this.

## **2. Which Traits Are Vices?**

### ***2.1 Aristotelianism***

The most influential account of vice in contemporary normative philosophy is the neo-Aristotelian conception. On this conception, vice is tied to an entity’s ‘final cause,’ end-goal, or telos. This is what the object is *for*: a knife’s final cause is cutting; a car’s final cause is transport; a human’s final cause is flourishing as a rational animal. A virtue, then, is a disposition, robust across various situations, to act in certain ways with characteristic motivations, emotions, patterns of attention, and so on, in accordance with one’s final cause.<sup>26</sup>

A vice is a disposition, robust across various situations, to act in certain ways with characteristic motivations, emotions, patterns of attention, and so on, in *opposition to* one’s final cause. Some

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<sup>25</sup> Collins (n 3).

<sup>26</sup> Rosalind Hursthouse, *On Virtue Ethics* (Oxford University Press 1999). Linda Zagzebski, *Virtues of the Mind* (Cambridge University Press 1996).

contemporary neo-Aristotelians hold that virtues are traits that make an entity a *good instance* of their kind.<sup>27</sup> Others hold that virtues are traits that enable an entity to confront what is *typically difficult* for their kind.<sup>28</sup> Regardless, an assessment of an entity as virtuous or vicious can proceed only once that entity has been categorised into a kind, where one's 'kind' is determined by one's final cause.

The trick, then, is to divide corporations into *kinds* according to their *teloi*—or else to specify some telos that is the final cause of all corporations—thus producing a barometer for measuring their virtue and vice. Here, we shouldn't stick too closely to Aristotle, whose division of entities into kinds is notoriously questionable. (He distinguished the telos of women (passive generation) from that of men (active generation), and distinguished the telos of natural slaves (who could flourish only vicariously through their masters' flourishing) from the telos of their masters (who could flourish in their own right).) To divide corporations into kinds, we must consider corporate purpose.

## ***2.2 Corporate Purpose***

The notion of corporate 'purpose' has a long history, traceable to antiquity.<sup>29</sup> For much of western history, the legal recognition of a corporation's personhood was granted by the state conditional on the corporation serving a social purpose. It was only in the 19<sup>th</sup> century that the United Kingdom and United States ended the requirement for corporations to have a social

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<sup>27</sup> Jason Baehr, *The Inquiring Mind: On Intellectual Virtues and Virtue Epistemology* (Oxford University Press 2011).

<sup>28</sup> Philippa Foot, 'Virtues and Vices' in P. Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Basil Blackwell 1978).

<sup>29</sup> Leonardo Davoudi, Christopher McKenna, and Rowena Olegario, 'The Historical Role of the Corporation in Society' (2018) 6 *Journal of the British Academy* 17. David B. Guenther, 'Of Bodies Politic and Pecuniary: A Brief History of Corporate Purpose' (2020) 9 *Michigan Business and Entrepreneurial Law Review* 1.

purpose. Many corporations continued to have one *de facto*. Here, ‘social purpose’ is any activity that benefits those beyond the corporation, other than profit-making. A corporation’s social purpose might include charitable donations, provision of public services, or improved welfare for stakeholders.<sup>30</sup>

Some legal scholars have argued that such self-determined and self-asserted social purposes are valuable for instrumental reasons: an “articulated, measurable, and enforceable corporate purpose” enables those who interact with, or participate in, the corporation to know what they are signing up for.<sup>31</sup> So, perhaps a corporation’s Aristotelean ‘final cause’ is its ‘social purpose.’ If so, a corporation has ‘vice’ to the extent it fails to live up to—or, perhaps, fails to have—a social purpose. The *specific* virtues to which we should hold a given a corporation are whichever traits further (or constitute) its social purpose; the vices we should deride it for are whichever traits impede (or decompose) its social purpose.

This conception of corporations’ final causes fails to provide the action-guidance and critical purchase that justify concern with corporate vice: if corporation’s social purpose is *determined and asserted* by the corporation itself, then that purpose can hardly hope to *guide* the corporation. A corporation who looks to this purpose for guidance will spin in circles, like a dog chasing its tail. Perhaps more problematically, *others* can hardly condemn corporations for failing to follow purposes determined by corporations’ actions: an entity cannot but live up to purposes that have been determined by actions it has already performed. Self-determined and self-asserted purposes, then, are not helpful.

One might object: we value self-determined and self-asserted purposes for humans (provided they don’t harm others); so, why not for corporations? In response: virtue ethicists

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<sup>30</sup> Davoudi, McKenna, and Olegario (n 29), p. 20.

<sup>31</sup> Jill E. Fisch and Steven Davidoff Solomon, ‘Should Corporations Have a Purpose?’ (2021) 99 Faculty Scholarship at Penn Law 1309.



do not sort humans into *kinds for the purposes of determining virtue* by looking at humans' self-determined projects or plans. That is, the virtues and vices that apply to humans—bravery, honesty, greed, pride, etc—do not arise from chosen projects or plans. They arise from humans' more general status as rational animals. Thus, humans cannot 'pick' which traits are virtues or vices for them *qua* human beings. Since we do not allow humans to do this, neither should we allow corporations to do so.

Instead, we might characterise corporations' final causes in general terms: perhaps what unites the kind 'corporation'—what *all* corporations are 'for'—is to have some social purpose or other. This provides action-guidance, instructing corporations to inculcate a social purpose within their structures, procedures, ethos, and so on. And it enables critical purchase, licencing criticism of corporations that lack a social purpose. Indeed, a recent overview of corporate social purpose states that “[o]n the most abstract level ... the purpose of corporations is to facilitate valuable activities, such as the production of valuable goods and services in the case of businesses.”<sup>32</sup> Across interviews with 24 business leaders, these authors found overwhelming consensus that corporations should have a social purpose in this sense—but that corporations themselves should determine exactly which purpose, and how it is pursued.<sup>33</sup> This provides action-guidance and critical purchase, while accommodating corporations' self-conceptions.

This is fine, as far as it goes. But it does not go very far: it allows corporations to do whatever they want, as long as they have some social purpose or other. Sometimes, we have reasonable expectations that a corporation will (continue to) pursue a particular social purpose. Moreover, intuitively, different corporations have *different* final causes: what a bank is for

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<sup>32</sup> Nien-He Hsieh, Marco Meyer, David Robin, and Jens Van 'T Klooster, 'The Social Purpose of Corporations' (2018) 6 Journal of the British Academy 49.

<sup>33</sup> Hsieh et al (n 32).

differs from what a school is for, which differs from what a casino is for. This is not just a matter of these corporations having made different *choices*, as one might put on different clothes. It's a matter of them *being* different things: different kinds, constituted in different ways. The catalogue of virtues and vices is different for each, and our conception of corporate vice should capture that fact.

### ***2.3 Corporate Telos and Human Capabilities***

I now make a tentative suggestion that captures the preceding thoughts. My suggestion draws on neo-Aristotelean theory, which lends itself to an 'objective list' account of human flourishing: humans flourish to the extent they have (or, perhaps, 'have the genuine opportunity for') the items on a list of goods. The list might include knowledge, happiness, authenticity, friendship, and so on—I am neutral between specific lists.<sup>34</sup> My suggestion is that we can determine the telos of a corporation by asking which item (on the list of objective human goods) is served by that corporation. Thus, a bank's telos might be human autonomy (via financial security); a school's telos might be human knowledge (via education); a casino's telos might

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<sup>34</sup> There are many neo-Aristotelian objective lists. Thomas Hurka, *Perfectionism* (Clarendon Press 1993). Martha Nussbaum, *Creating Capabilities: the Human Development Approach* (Harvard University Press 2011). Guy Fletcher, 'A Fresh Start for the Objective-List Theory of Well-Being' (2013) 25 *Utilitas* 206. Gwen Bradford, 'Problems for Perfectionism' (2017) 29 *Utilitas* 344. One might also consider Lon Fuller's eight principles of the inner morality of law: that laws be general, public, nonretroactive, clear, noncontradictory, practicable, constant, and congruent with how laws are administered. Lon Fuller, *The Morality of Law* (Yale University Press 1964), p. 39. I follow HLA Hart (1965) in viewing Fuller's principles as instrumental to *effective legislation* (HLA Hart, 'Book Review: Lon Fuller, *The Morality of Law*' (1965) 78 *Harvard Law Review* 1281) or perhaps encoding thin values like 'reciprocity' and 'respect for autonomy' (Colleen Murphy, 'Lon Fuller and the Moral Value of the Rule of Law' (2005) 24 *Law and Philosophy* 239), but not as encoding a substantive account of the flourishing human (or corporate) life. The latter is the subject of virtue and vice theory.

be human play (via risk-taking). If these items are on one's preferred objective list of human goods, then these items constitute these organizations' respective purposes—and determine these organizations' distinctive virtues and vices.

This captures much of what goes on when we accuse corporations of being vicious. First, it captures the idea that there are many kinds of corporation, where what it means to be 'vicious' is different for each kind: the kinds are picked out by the different items on the list (or combinations thereof: some corporations serve more than one human good (autonomy and education, say), which implies there are as many kinds of corporation as there are *combinations* of human goods). Each kind has different traits as vices.

Second, the proposal captures the *value* of corporate diversity: the reason why it's good to have a variety of corporations, doing a variety of different things, is because they serve different (combinations of) human goods. It's unlikely that any one corporation will ever serve all items on any reasonable list. Together, though, the variety of corporations can provide a 'patchwork quilt' that covers all items.

Third, the proposal avoids the unpalatable idea that corporate flourishing is intrinsically morally valuable: on the proposal, corporate flourishing is valuable as a *contributor* to human flourishing. To be sure, this is somewhat at odds with the general Aristotelian project: that project relativises virtue and vice to the distinctive flourishing of distinct kinds, without necessarily *instrumentalising* the kinds to one another. But corporations are not are not natural and intrinsically valuable kinds like humans, walruses, and oaks. They are artificial and instrumental kinds, like knives and cars. The 'flourishing' knife or car does something *for someone*. The same, I suggest, is true of corporations.<sup>35</sup>

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<sup>35</sup> This proposal resonates with recent calls for 'corporate purpose.' See <<https://www.ecgi.global/content/corporate-purpose>>.

Fourth, the proposal explains why we feel a sense of betrayal when a corporation goes ‘off-script,’ suddenly claiming to serve a new and different social purpose. Our betrayal captures our sense that the particular good that we expected to be fostered by that corporation cannot straightforwardly be compensated by its now serving a different good. After all, the goods on the ‘human flourishing’ list are incommensurable, under Aristotelian objective list theories.

Fifth and finally, by categorising different types of corporations under different human goods, we can provide more action-guidance and critical purchase than the general ‘social purpose’ account outlined in Section 2.2. We can also—I hope—reconceptualise our relationship to large organisations in a more positive and constructive light: casinos are not entirely evil; they are good to the extent they enable play. They fall into vice by departing from this purpose, for example by fostering gambling addictions that are anything but playful.

### **3. Conclusion**

This chapter has analysed corporate vice as a real, important, and useful notion. It is real because it is irreducible to vices of individuals. It is important because it serves fundamental needs of human beings, as enumerated on neo-Aristotelian theories which list the goods that make humans flourish. It is useful because it holds different corporations to different standards, while holding corporations accountable for character traits.