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11 Collective Intentions

PHILIP PETTIT

We all know, or think we know, what it is for a singular agent to have an intention and how to go about telling what their intention in a given case is. But things are not at all so clear when it comes to plural or collective agents. Or so at any rate I mean to argue.

The argument should be of some interest, as the divination of collective intention is often a pressing problem in legal and political life. It arises with respect to bodies like a legislature, for example, when interpreters seek to identify the intent of this or that constitutional provision, this or that law, or this or that administrative decree. And of course it regularly arises in contexts, legal or moral, where there is an issue of whether a collective agency exhibits *mens rea* and can be held responsible in the associated sense.

My argument is this. First premise: there is no intention without a minimum of rationality on the part of the relevant agent. Second premise: collectives can display that minimum of rationality only so far as they collectivise reason, as I shall put it. Conclusion: only groups that collectivise reason can properly have intentions. The first and second sections deal respectively with the two premises, while the third section sets out the conclusion and looks at some of its implications.

First Premise: No Intention Without Rationality

The conditions required for the existence of intentions can be summed up in a single word: 'rationality'. Intentions, for the purpose of this discussion, are plans that shape an agent's actions at a time and across different times.[1] If we are to see certain subjects as centres of intention in

1 Michael Bratman, *Faces of Intention: Selected Essays on Intention and Agency* (1999).

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this sense, then we must be able to represent them as forming beliefs and desires in a more or less rational manner and then as rationally forming intentions—and performing actions—on the basis of those beliefs and desires.[2]

Here, intuitively, is why. The intention-forming subject has to be able to represent its environment in a more or less reliable fashion and then to pursue its desired goals in a manner that makes sense according to that representation. And that is just to say that the subject must form beliefs about its environment in a more or less rational way and that it must act in such a manner that, if the environment is as represented, then the action is a rational means to advancing its desired goals. The subject must be rational in evidence-related and action-related ways; it must be well-behaved on both these fronts.

Or at least that must be the case within intuitively feasible limits and under intuitively favourable circumstances. We are ready to think that a machine counts as a mathematical calculator, even though it doesn't work with numbers above a certain size or complexity, or under conditions of electromagnetic interference. And so we will be ready to think that a certain subject counts as a belief-desire system—and as a system, therefore, that can form intentions—even if it doesn't always operate to expectations. It may not work well when it comes to achieving consistency among very complex beliefs, for example; and it may not work well under the influence of alcohol.

I am going to take it as an assumption that an intention-forming system has to satisfy such minimal constraints of rationality. The assumption should not be difficult to accept. It is not clear how we could ever get to think of a mute system—say, a non-human animal—as forming intentions if we did not find it responsive to evidence, and poised for action, in the manner envisaged. And neither is it clear why we should take the words of a talking, intention-avowing system seriously if we did not find that its words could be taken as expressions of more or less rationally formed and effective states: if we did not find, as we say, that its words could be taken at face value.

Is this all that there is to say about the conditions required for the existence of an intention in any agent, whether that agent be singular or plural? Not quite, for we can readily specify the requirements of rationality

2 Daniel Dennett, *The Intentional Stance* (1987); Philip Pettit, *The Common Mind: An Essay on Psychology, Society and Politics* (1993, paperback edition 1996); and David Braddon-Mitchell and Frank Jackson, *The Philosophy of Mind and Cognition* (1996).

that bear in particular on intention. I shall mention three plausible candidates: consistency, closure and completeness, each of which has a theoretical and a practical aspect.

An agent will satisfy the relevant form of consistency, theoretical and practical, so far as it holds only by such beliefs, and sticks only to such intentions and actions, as are rationally co-tenable with the things it is rightly said to intend. We would have real difficulty in taking an agent seriously as a centre of intention if the intentions it avowed, or the intentions we were supposed on any other basis to ascribe to it, did not satisfy such a consistency constraint; or at least if it did not satisfy such a constraint under intuitively favourable conditions and within intuitively feasible limits.

An agent will satisfy the relevant form of closure, theoretical and practical, so far as it forms all those beliefs and intentions, and performs those actions, that are rationally required by the things it is rightly said to intend. The idea here is that if such an agent intends to perform a certain action, for example, and if performing that action rationally requires its forming a certain belief—say, the belief that it is able to act—or doing something else as well—say, adopting a certain means—then it will comply. Or at least it will comply under the usual qualifications to do with favourable conditions and feasible limits.

An agent will satisfy the relevant form of completeness, theoretical and practical, so far as it forms or is disposed to form beliefs and intentions on all of those issues that are rationally relevant to the things it is rightly said to intend, and so far as it acts or is disposed to act on those beliefs and intentions. Suppose that it intends to bring about some goal G and that whether it does so by this means or that—this salient means or that salient means—depends on the belief it comes to form as to which is easier. Well then, we will generally expect it to form a belief on the required matter. Or, as always, we will expect this under favourable conditions and within feasible limits.

Second Premise: No Collective Rationality Without Collectivising Reason

The first premise of my argument sums up the drift of two decades of discussion in the philosophy of mind. But the second premise of the argument takes me into relatively new territory. It is a proposition that

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becomes salient and compelling only in light of the doctrinal paradox, as it is sometimes called, that has recently received attention in jurisprudential circles.[3] I have discussed various aspects of the paradox elsewhere and my presentation here draws heavily on those discussions.[4]

The doctrinal paradox arises when a multi-member court has to make a decision on the basis of received doctrine as to the considerations that ought to determine the resolution of a case: that is, on the basis of a conceptual sequencing of the matters to be decided.[5] It consists in the fact that the standard practice whereby judges make their individual decisions in a case, and then aggregate them, can lead to a different result from that which would have ensued had they decided instead on whether the relevant considerations obtained, and let those decisions dictate how the case should be resolved.

A good example of the doctrinal paradox is provided by a simple case in which a three-judge court has to decide whether a defendant is liable for breach of contract.[6] According to legal doctrine, the court should find against the defendant if and only if it finds, first, that a valid contract was in place, and second that the defendant's behaviour was such that it would have breached a contract of that kind, had a contract been in place; the judge's decision on the second issue will be by way of an *obiter dictum*, of course, if he or she does not think that a contract was in place. Now imagine that the three judges, 1, 2 and 3, decide as follows on those issues

3 Lewis Kornhauser and Lawrence Sager, 'Unpacking the Court' (1986) 96 *Yale Law Journal* 82; Lewis Kornhauser, 'Modelling Collegial Courts: I Path-Dependence' (1992) 12 *International Review of Law and Economics* 169; Lewis Kornhauser, 'Modelling Collegial Courts: II Legal Doctrine' (1992) 8 *Journal of Law, Economics and Organization* 441; Lewis Kornhauser and Lawrence Sager, 'The One and the Many: Adjudication in Collegial Courts' (1993) 81 *California Law Review* 1. See too B Chapman, 'Law, Incommensurability, and Conceptually Sequenced Argument' (1998) 146 *University of Pennsylvania Law Review* 1487; B Chapman, 'More Easily Done than Said: Rules, Reason and Rational Social Choice' (1998) 18 *Oxford Journal of Legal Studies* 293; and G Brennan, *Collective Irrationality and Belief* (1999).

4 Christian List and Philip Pettit, 'The Aggregation of Reason: An Impossibility Result' (paper presented at the Isaac Levi Conference, Columbia University, New York, November 2000); Philip Pettit, 'Deliberative Democracy and Discursive Dilemma' (2001) 11 *Philosophical Issues* (forthcoming); Philip Pettit, 'Groups with Minds of their Own' (paper presented at Yale University Political Theory Workshop, September 2000).

5 B Chapman, 'Law, Incommensurability, and Conceptually Sequenced Argument', above n 3.

6 Kornhauser and Sager, 'The One and the Many: Adjudication in Collegial Courts', above n 3.

and on the derivable matter of whether the defendant is indeed liable. The 'yes' or 'no' on any row represents the disposition of the relevant judge to accept or reject the corresponding premise or conclusion.

Matrix 11.1

	Valid contract?	Breach?	Liable?
1	yes	no	no
2	no	yes	no
3	yes	yes	yes

There are two ways in which the court might in principle make its decision in a case like this. It might have the judges do their individual reasoning and then aggregate their decisions on the conclusion—the liability issue—on, say, a majority basis. Since the conclusion does not command majority support, the defendant would go free. Or the court might have the judges aggregate their decisions on the individual premises—the contract and breach issues—and let the resulting, collective judgments on those premises determine what it rules on the conclusion. Since each premise commands majority support, the result in this case is that the defendant would be found liable. The doctrinal paradox, as presented in the jurisprudential literature, consists in the fact that the two procedures described yield different outcomes.

This sort of paradox will arise, not just when legal doctrine dictates that certain considerations are conceptually or epistemically prior to a certain issue—an issue on which a conclusion has to be reached—and that judgments on those considerations ought to dictate the judgment on the conclusion. It arises more generally whenever a group of people discourse together with a view to forming an opinion on a certain matter that rationally connects, by the lights of all concerned, with other issues. It constitutes a discursive, not just a doctrinal, dilemma.

For an example that is close to the case just discussed, consider an issue that might arise for politicians rather than for judges. The issue is whether to build a new public prison or not. Let us suppose, for simplicity, that everyone involved in the decision-making committee—this might be the cabinet, a party committee, or whatever—agrees that three considerations should determine the issue. The committee members involved are to make the decision on the basis of considering: first, whether a new prison is desirable overall; second, whether a public prison

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would serve the community better than a private prison; and third, whether a decision in favour of a public prison would be electorally feasible: that is, would not significantly reduce the government's chance of re-election. If a member of the committee thinks that a prison is needed, that a public prison would be better than a private, and that building a public prison would be electorally feasible, then he or she will vote for the prison; otherwise they will vote against. And so each will have to consider the three issues and then look to what should be concluded about the prison.

Imagine now that after appropriate dialogue and deliberation the members are disposed to vote on the relevant premises and conclusion in the pattern illustrated by the following matrix for three members.

Matrix 11.2

	Prison needed?	Public better?	Electorally feasible?	To build or not?
1	yes	no	yes	no
2	no	yes	yes	no
3	yes	yes	no	no

If this is the pattern in which the members are inclined to vote, then a different decision will be made, depending on whether the group judgment is driven by how members judge on the premises or by how they judge on the conclusion. Looking at the matrix, we can see that though everyone individually rejects the prison, a majority supports each of the premises. If we think that the views of the members on the conclusion should determine the group decision, then we will say that the group conclusion should be to reject the prison: there are only 'no's' in the final column. But if we think that the views of the members on the premises should determine the group decision, then we will say that the group conclusion should be to build the prison: there is a majority of 'yes's' in each of the premise columns.

The doctrinal or discursive paradox generalises in many different ways. It may arise with disjunctive as well as conjunctive reasoning, since a disjunctive set of premises, P or Q, will support a conclusion R just in case the negation of the conjunctive set of premises, ¬P and ¬Q, supports that conclusion. It may arise whenever there are three or more propositions involved. It may arise whenever there are three or more persons involved. And it may arise even if we allow the rejection of the premises to leave

some individuals with an open mind—they fail to say 'yes' or 'no'—on the conclusion.

What does the paradox show? Negatively, that even if the members of a group each have a perfectly consistent set of judgments on a range of issues, still majority voting on each of the issues can lead the group to an inconsistent set of collective judgments. And positively, that if the members of the group are to ensure the consistency of their collective judgments on such a range of issues, then they will have to restrict majority voting and, more generally, restrict responsiveness to the views of their individual members. They will have to ensure that the discipline of reason is applied at the collective level to the views they endorse. They will have to collectivise reason rather than just being content to find that members are individually rational.

In the examples given, the members restrict responsiveness to individual views, and ensure collective rationality, by letting the collective judgment on the conclusion be determined by the collective judgments on the premises. But they might equally have taken other steps to collectivise reason. They might have explored where majority voting on each issue would lead and then, in the event of a collectively non-rational output, decided on which vote to amend; this could involve a reversal of the conclusion vote, or a reversal of one or more premise votes. Or they might have authorised some agency or individual to decide on the amendment required in the event of a collectively non-rational profile of views; the decision might have been left to a chairperson, for example.

The particular cases given show that under majority voting it is necessary for a group to impose the discipline of reason on itself at the collective level—in particular, it is necessary to restrict majority voting—if it is to achieve consistency. Might the members avoid such inconsistency by other means? Well, they could insist on unanimity, so that a collective judgment would be available on any issue only so far as all go along with a certain view. Or they could deny that the group has to endorse a conclusion just because it endorses premises that entail it. But such moves would compromise the rationality of the group in other ways. While either move might serve to guard the group against inconsistency, the second would involve the rejection of closure and the first would involve the rejection, in effect, of completeness: no group could hope to be

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able to form a collective view on any significant range of issues if unanimity were required for the formation of such a view.[7]

Conclusion: No Collective Intention Without Collectivising Reason

The claims of the first two sections combine to support the conclusion that there is no possibility of collective intention unless a group actively works to ensure that it satisfies the discipline of reason at the collective level: unless it works, in particular, to ensure that it satisfies relevant forms of consistency, closure and completeness. We saw in the first section that any agent that is going to be a centre of intention formation will generally have to satisfy such constraints. And we have now just seen that a plural or collective agent can hope to do so only by collectivising reason. It follows, then, that only a group that collectivises reason can constitute a centre of intention formation.

The General Implications

This conclusion has quite significant implications. Since any group that is going to collectivise reason must have a minimal degree of organisation, it means in the first place that only such organised collectivities can have intentions. The intention-forming group cannot involve just a random selection or a random juxtaposition of individuals: a mere aggregate, as distinct from something properly incorporated into a whole.[8] Thus it must amount to more than the set of pedestrians on a given street, or a crowd at a football match, or even a mob of looters. And it must amount to more than the set of people with red hair, or the set of people who live in areas

7 I say no more here on the general possibilities that arise in the area, as what we have seen is sufficient for the conclusion I wish to draw. Christian List and I have argued elsewhere for an associated impossibility theorem that bears on such matters. Let a satisfactory set of views be required to display strict forms of consistency, closure and completeness. Our impossibility theorem shows that no voting procedure that allows for any profile of individually satisfactory views on a rationally connected set of issues can ensure that a collectively satisfactory set of views will emerge, if it treats both the issues and the members even-handedly: that is, if it does not let the group's views on some issues determine the group's views on others, and if it does not appoint an authority to make required amendments. List and Pettit, above n 4.

8 Peter French, *Collective and Corporate Responsibility* (1984).

with even postcodes, or the set of people who are firstborn to their mothers.

Since any organised group that is going to collectivise reason must be organised so as to authorise certain attitudes and actions, the conclusion means in the second place that not just any organised groups will be capable of forming intentions. They cannot be groups and groupings whose members relate to one another in a distinctive way but who need not jointly authorise anything. Such groups might include families, hobby groups, internet chat groups, and other enduring or episodic networks of individuals.

Groups and groupings whose members do authorise things jointly—and the members will usually relate to one another in the course of doing this—come in a number of varieties.[9] They include organisations which have a specific function to discharge. For example, museums, libraries, trusts and states, as well as more episodic entities like appointments committees, juries or commissions of inquiry. And they also include groups and groupings which do not have any one specific function but which are associated with a characteristic goal, involving the outside world or the group's own members or perhaps a mix of both. Examples in this category might include political parties, trade unions and business corporations, as well as pairs of colleagues involved in collaborative research and sets of friends arranging joint holidays.

There is a general argument why any group or grouping that has a purpose to advance, specific or otherwise, is likely to collectivise reason at some level and is likely therefore to constitute an intention-forming subject. This applies even to groups and groupings which are happy to be able to find only incompletely theorised agreements on many issues:[10] that is, agreements that different people support for different reasons.[11] The lesson it teaches is of the first importance.

The argument I have in mind can be spelled out in these considerations:

- So far as the pursuit of an assumed purpose requires reasoning and judgment—so far as it is not like the goal of a tug-of-war team—any group or grouping is going to generate a history of judgments which it

9 S J Stoljar, *Groups and Entities: An Inquiry Into Corporate Theory* (1973).

10 Cass Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* (1999).

11 Pettit, 'Groups with Minds of their Own', above n 4.

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is on record as making; these will be judgments that shape how it acts in pursuit of the purpose.

- Those past judgments will inevitably constrain the judgment that the group or grouping ought to make in various new cases; only one particular judgment in this or that case will be consistent or coherent with the past judgments.
- The group or grouping will not be able to constitute or present itself as a credible promoter of its assumed purpose if it tolerates inconsistency in its judgments across time; not all the actions shaped by those discordant judgments can be simultaneously represented as advancing the same purpose.
- Thus the group or grouping which assumes a purpose of any kind, whether in relation to the outside world or its own members, must routinely ensure, by whatever means, that the judgments it endorses across time satisfy constraints of consistency.

To sum up the point to which we have been led, then, a collectivity will constitute a centre for the formation of intention only so far as it is an organised, authorising group or grouping. And that is to say that it will constitute a centre for the formation of intention only if it imposes the discipline of reason on itself at the collective level. Many collectivities will do this, for any group or grouping that claims to advance a purpose is bound at some level to collectivise reason.

Two Fallacies

It may be useful to spell out some more concrete implications of the position defended here. I do so by identifying two fallacies, as they must appear in the light of the analysis presented.

Commentators on US politics often say that the American people do not like to have the same party holding executive and legislative power at the same time. And so they routinely comment that, in dividing their support between a Democratic President and a Republican Congress, the American people reveal this intention to divide power. Under the analysis of this paper—perhaps under any serious examination—this comment is downright silly. A group as amorphous as the American people cannot be held to form intentions of any kind, let alone such a sophisticated intention as that which is here attributed to them. The only sense in which we might speak of the intention of such a group is the metaphorical or summative

sense in which we say that a group has any intention that is supported by a majority of its members.[12] The commentators envisaged here are guilty of a fallacy in speaking as they do. The fallacy is one of composition, as it is often described, since it involves illicitly moving from an attribute of individuals—assuming the individuals do intend that power be divided—to an attribute of the group they compose.

This fallacy of composition pairs off with a fallacy of decomposition that becomes equally salient under the analysis sketched here. Consider a case where a group agency, say a committee of some kind, advances a particular line and is clearly worthy of being credited with an intention to do so. Consider in particular a case where on this basis the group is held responsible for what it does, and responsible in a manner involving *mens rea*. The fallacy I have in mind would consist in assuming that, because the group as a whole is responsible in this intention-involving sense, the members of the group must be responsible in the same sense: the intention, and the responsibility, must apply to the individuals into which the group can be decomposed. That this is a fallacy appears in the fact that the committee in our prison example can clearly he held responsible for recommending the building of a public prison if they follow a procedure under which the premise votes dictate the conclusion; yet under that scenario the individual members cannot be held responsible in the same way: after all, each of them voted individually against building a public prison.

I hasten to add that the fact that a group can have such a non-decomposing form of intention and responsibility does not mean that the individuals escape all relevant forms of responsibility. Consistently with the group and only the group having responsibility for recommending the construction of a public prison, each of the individuals involved can be responsible for playing his or her part, say in going along with the decision-making procedure adopted or in voting as he or she does. There are complex issues here but, happily, we need not engage with them in the current context.

A Lesson for the Analysis of Collective Intention

I conclude with a comment on the implications of our discussion for a tendency in recent analyses of collective or joint intention. The usual, if

12 A Quinton, 'Social Objects' (1975) 75 *Proceedings of the Aristotelian Society* 17.

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not the only, approach in such analyses is to take a grouping of two or perhaps three agents and, focussing on this example, to try to identify the conditions under which we would ascribe a collective intention to them.[13] And that approach has led to an emphasis on the need for rich structures of common belief that may be misleading rather than helpful.

The analyses generally agree that, in order for joint intention to appear, there must be common belief present as to what each believes about others, as to how each is ready to act in the event of others acting in a complementary way, and so on. The relevant notion of common belief in play here is reasonably familiar. It will be a matter of common belief among a number of people that p so far as each believes that p; each believes that each believes that p; each believes that each believes that each believes that p; and so on. And so on, most plausibly, in this mode: while not everyone may believe the required condition at each higher level, at least no one disbelieves it at any such level.[14]

There are interesting issues that have been raised in the literature on joint intention, many of them connected with themes we have discussed. For the record, some of the more prominent issues have been:

- the effect-of-intention question: whether it is necessary for collective intention that those who comply are licensed—perhaps licensed on the basis of an implicit agreement—in rebuking those who fail to do their part in advancing or securing the intention;
- the intended-content question: whether it is necessary that each of us in the group intend not just that I, this individual, behave in a certain way—presumably this is necessary—but also that we, the group, do so; and
- the intending-subject question: whether in addition we, the group, must form an intention to do something—at whatever locus this is to be formed—such that this may not reflect anything that I or you intend that we do.

But interesting though those issues are, the analysis of this paper must raise a question about the focus on small groupings and the consequent

13 Margaret Gilbert, *On Social Facts* (1989); A Meijers, *Speech Acts, Communication and Collective Intentionality: Beyond Searle's Individualism* (1994); John Searle, *The Construction of Social Reality* (1995); R Tuomela, *The Importance of Us* (1995); and Bratman, above n 1.

14 David Lewis, *Convention: A Philosophical Study* (1969).

insistence on the need for rich structures of common belief. The reason is that if we impose such requirements generally on collectivities that are to be held capable of forming intentions, then we may unduly restrict the range of collective intention.

Any collectivity that is to be capable of forming intentions, by the account defended here, must be able to discipline itself by reason at the collective level and it must therefore have the flexible ability to recognise collective irrationality—lack of consistency, closure or completeness—and to respond appropriately. A small grouping might display this flexibility, and yet manifest the rich structure of common belief that is generally posited in the literature. But it is doubtful if any large-scale group could instantiate such a structure of common belief without seizing up.

The costs of maintaining and adjusting the sort of common belief envisaged would obviously increase dramatically with increasing size and complexity on the part of a group. How could a large-scale group be expected to register and respond to a collective irrationality, if such registering and such responding had to involve transformations in structures of common belief? Getting the group to shift in the required respects would be like trying to turn around an ocean-going liner. It would take so much effort and time as not to be feasible.

But happily there is no need for a rich structure of common belief among the members of large-scale, intention-forming groups. There is no reason why each and every member of such a group has to share in anything other than a very abstract common belief to the effect that such and such procedures will generally be followed. Indeed, some members of the group may be involved in the things it does only to the extent that they have a power of protest in the event of not approving of the actions of officials. In order to adapt to circumstances, then—in order to respond, for example, to a perceived inconsistency—officials will not have to consult individual members or establish any form of belief in common with them; they will only have to be sure that the line they take will not cause members to instigate an effective revolt.

We saw earlier that a group or grouping cannot be a centre of intention formation without being organised in quite specific ways. The lesson of these last observations is that neither can it be a centre of intention formation if it is so intensely organised—in particular, so bound to incorporating each and every member into a community of belief—that it loses flexibility and adaptability. The loose-limbed multitude cannot

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constitute an intending agent. But neither can the muscle-bound pachyderm.

12 Bad Faith and Bad Intentions in Corporate Law

SUZANNE CORCORAN

> A truth that's told with bad intent
> Beats all the lies you can invent.[1]

This essay considers the problem of intention in the sphere of corporate law. It considers the problem at three levels: the level of the corporate entity, the level of the corporate organ (for example, the board of directors) and the level of the individual actor. It concerns itself with the integrity of the corporate entity and the propriety of corporate actions and not with the consequences occasioned by them. Propriety in corporate law refers to what is permitted of a particular corporation as a corporation (its integrity), in relation to decisions and actions which are, or will be considered to be, the decisions and actions of that particular corporation.

My argument will be that intention is fundamental to corporate law. I will argue that it is a derivative, complex and artificial notion of intention in which free will, to the extent it exists, derives from what is known as the substratum of the corporation (the membership together with the purpose of the corporation), while responsibility is assigned to the corporate entity itself. This gives the corporation *agency* in a moral sense and anchors it to a certain historical philosophical position in the way that original intent theory provides a starting point for constitutional interpretation. But, as with constitutional theory, the substratum (and thus the free wills that constitute the corporate entity) continues to evolve and extend the intention of the entity in ways which may depart from that original intention. Nevertheless, the constitutional arrangements of a corporation continue to

1 William Blake, *Auguries of Innocence*.

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