FROM MORAL AGENCY TO COLLECTIVE WRONGS:
RE-THINKING COLLECTIVE MORAL RESPONSIBILITY

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How is collective moral responsibility possible? This is the major question now being asked about collective responsibility in philosophical circles. But the question is rarely posed in such general terms. Instead, it is posed as a question about the ability of groups to intend and to act. How, philosophers ask, can groups be understood to intend and to act in contexts where they are being held morally responsible for harm? I argue below that this question—and the assumptions that ground it—are misguided and that if we really want to know whether collective moral responsibility is possible we will have to shift our attention away from the ability of groups to intend and to act and focus on their ability to produce bad things and be blamed for them. In other words, we will have to rethink collective moral responsibility itself.

I begin in Part One by agreeing with critics that groups are not able to act and to intend in the sense required by the prevailing notion of moral responsibility. I suggest in Part Two that, contrary to critics, collective moral responsibility is not defeated by the inability of groups to intend and to act, since the ability to act and to intend is not a condition of moral responsibility *per se.* Instead, it is a condition of one particular—distinctly Kantian—notion of moral responsibility. In Part Three, I sketch the contours of an alternative notion of collective moral responsibility and suggest

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that it is both morally acceptable and appropriate to groups such as corporations, clubs, and nation states.

I. Collective Moral Responsibility and the Question of Intentions

Collective moral responsibility is the moral responsibility of collectives, rather than individuals, for harm. Hence, it has groups themselves, rather than group members, as its moral agents, and cannot—*qua* collective moral responsibility—be distributed to group members in the guise of individual moral responsibility. Nor can it be divided up among them. Instead, it has to remain attached to the groups themselves—whether these groups are mobs, clubs, corporations, or nations—and understood as the result of something harmful that these groups have themselves done or failed to do *qua* groups.[1]

Since collective moral responsibility has groups, rather than group members, as its moral agents, it might be thought to be different in kind from individual moral responsibility and to have a structure, meaning, and set of requirements of its own. But, in the works of contemporary philosophers who write about collective moral responsibility, it does not. (I discuss several important exceptions in Part Three.) Instead, it has the same meaning, structure, and requirements as its individualistic counterpart.

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[1] I do not mean to suggest here that collective responsibility is totally independent of the actions of group members. For, it is not. In some cases, we ascribe collective responsibility to groups partly, although never wholly, on the basis of what we understand to be the contributions of particular individuals. In other cases, we use our ascriptions of collective responsibility as a starting point for thinking about whether particular individuals are responsible for harm. Moreover, we are often justified in doing so. But we cannot—even in cases such as these where individual and collective responsibility come together—equate the two or understand collective responsibility as a matter of mere shared individual responsibility. Instead, we have to acknowledge that collective responsibility is the responsibility of undifferentiated wholes. I explore the relationship between individual and collective responsibility, as well as other aspects of collective responsibility, in Marion Smiley, *Collective Responsibility*, *in* Stan. Encyclopedia of Phil. (Edward N. Zalta ed., Summer 2010 ed.), *available at* http://plato.stanford.edu/archives/sum2010/entries/collective-responsibility.

Indeed, it is the same notion of moral responsibility. What is this notion?

While those now writing about collective moral responsibility rarely explore the notion of moral responsibility that they employ, they do make clear that moral responsibility is from their perspective not just a matter of causal responsibility. Instead, it is a matter of both causal responsibility and moral blameworthiness together. Likewise, they make clear that while moral responsibility understood as such may *ground* social and legal responsibility, it is not something that we ascribe to agents after they have acted on the basis of our own criteria of blameworthiness. Instead, it is a *moral fact* about agents: namely, that they caused something bad and are morally blameworthy.[2]

How can we think about moral responsibility as a matter of causal responsibility and blameworthiness together? How can we think about it as a moral fact about agents themselves independent of worldly practice? I address these questions much more fully elsewhere.[3] Suffice it to point out here that what enables us to think about moral responsibility in this way is a particular, distinctly Kantian, notion of blameworthiness that many of us might not feel comfortable defending in general but that we nevertheless frequently assume, often un-self-consciously, in our discussions of moral responsibility.[4]

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[2] The conflation of causation and moral blameworthiness here is accepted by almost all of those now writing about the moral responsibility of agents for external harm. John Harris is typical when he writes of moral responsibility: "[W]hen we say that someone was the cause of harm . . . (or at least as *one of* the authors), we are saying that he is responsible *for it* and . . . to blame." John Harris, *The Marxist Conception of Violence*, 3 PHIL. & PUB. AFF. 192, 207 (1974).

[3] *See generally* MARION SMILEY, MORAL RESPONSIBILITY AND THE BOUNDARIES OF COMMUNITY: POWER AND ACCOUNTABILITY FROM A PRAGMATIC POINT OF VIEW (1992) [hereinafter SMILEY, MORAL RESPONSIBILITY].

[4] The Kantian notion of moral responsibility is that which locates the source of moral blameworthiness in an agent's own will—or willful causation of a bad act—and insists that such blameworthiness be understood as independent of worldly practices of blame. Kant developed this notion of moral responsibility primarily in, GROUNDWORK FOR THE METAPHYSICS OF MORALS (H. J. Paton trans., Harper & Row 1964) (1785), as well as in, RELIGION WITHIN

Three things about this notion of blameworthiness are key in this context and distinguish it from other notions of moral blameworthiness. First, it is *moral*, rather than social or legal, blameworthiness and moral blameworthiness of a particular kind: namely, that associated with *moral guilt* and frequently referred to in the language of *moral taint.*[5] Second, it is not relative to worldly considerations but rather a matter of deserving blame in some abstract—and ideal—sense. Third, it is wholly under an individual's own control and has its source in moral agency itself, or, in other words, in the act of freely willing either one's own bad action or harm in the world.

These three features make it possible for us to think about moral responsibility as a moral fact about agents themselves rather than as something that we ascribe to agents as part of our worldly practices of blame. The first two enable us to imagine moral responsibility as untainted by the various contingencies—social, political, and practical—associated with practices of social and legal blame. The third allows us to think about moral responsibility as a matter of both causal responsibility and blameworthiness together, as well as to ensure that blameworthiness does not require further justification once moral agency for harm has been established.

As it turns out, all three of these features are problematic. The first feature, the independence of blameworthiness from particular

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THE LIMITS OF REASON ALONE (Theodore M. Greene & Hoyt H. Hudson, trans., Harper & Row 1960) (1793), where he famously wrote that "[I]nnate . . . guilt . . . is so denominated because it may be discovered in man as early as the first manifestation of the exercise of freedom . . . ." *Id.* at 33. I discuss the Kantian notion of moral responsibility extensively in, SMILEY, MORAL RESPONSIBILITY, *supra* note 3, at 72–101, and refer to several contemporary versions of it in Part II.

[5] The most common way of expressing this notion of moral blameworthiness is *moral guilt* of the kind associated with the value of an individual *qua* moral agent. Jonathan Glover captures the prevailing notion of moral blameworthiness when he writes of moral blameworthiness that it is a moral fact about the worth of persons: a "kind of moral accounting, where a person's actions are recorded on an individual balance sheet, with the object of assessing his moral worth." To say that an individual is morally blameworthy for some state of affairs is to say that "he is a bad person." JONATHAN GLOVER, RESPONSIBILITY 64, 96 (Routledge & K. Paul, 1970).

practices of blame and actual blamers, is very difficult to substantiate. For, while blameworthiness may not require that we actually blame an agent, it does require for its very meaning that we make reference to a particular practice of blame; and once we make reference to a particular practice of blame, we have to acknowledge that while we can—and should—take into consideration what agents actually do to deserve blame, we cannot treat their blameworthiness as completely under their own control.[6]

The other two features of moral blameworthiness are equally difficult to sustain. The second—total control by moral agents over themselves and their actions—requires a very strong notion of free will that may simply not exist if theories of determinism are true.[7] The third feature—the location of moral blameworthiness in the act of freely willing a bad action or harm in the world—i.e., in moral agency itself—becomes difficult to sustain once we acknowledge that an undetermined will may not only not be grounded in moral personality but be by nature a matter of randomness. How, J. J. C. Smart asked many years ago, can the absence of determinism be anything other than randomness?[8]

Not surprisingly, the difficulties associated with the prevailing

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[6] The dependence of blameworthiness on a particular practice of blameworthiness is less obvious in religious contexts than it is in secular contexts, since in religious contexts we are able to posit an ideal blamer, namely, God, and to take for granted that his/her/its criteria of blameworthiness are in some sense ideal and perhaps even objective. But even in religious contexts, moral blameworthiness has to be understood as both part of a particular practice of blame and dependent on an actual blamer to be meaningful. Theologians do not have to worry about such dependence, since, unlike secular philosophers, they do not view moral responsibility as wholly under an agent's control.

[7] The concern here is that if determinism is true, free will is not possible, since freedom of the will—or at least that which grounds moral responsibility as traditionally understood—requires that the agent in question have originated, not only her actions, but the will behind them. To do so is not possible if that will is determined for her by forces external to itself, whether these forces are biological or social. The likelihood that determinism is true has led many philosophers in the Western tradition to ask how free will might be rendered compatible with determinism. Kant himself answered this question in GROUNDWORK FOR THE METAPHYSICS OF MORALS by creating a realm of pure rationality in which moral agents are able to transcend determinism.

[8] *See generally* J. J. C. Smart, *Free-Will, Praise, and Blame*, 70 MIND 291 (1961).

notion of moral responsibility are exacerbated in cases where what an agent is being held morally responsible for are not just his/her/its own actions but external harm itself. For, an agent's causal responsibility for external harm is relative to various social norms, expectations, and projects that have their source in social and political practice, rather than something he/she/it controls.[9] Hence, it would not appear to be the kind of thing in virtue of which an agent could be morally blameworthy.

Since the prevailing notion of moral blameworthiness is so problematic, we might expect those who write about moral responsibility to explore these problems in depth or at least to acknowledge them. But they do not generally do so. Instead, they do two things to make things easier for themselves in contexts where they have to make explicit the conditions under which agents are morally responsible in practice. The first is simply to take the above notion of moral blameworthiness for granted as coherent. The second is to replace "free will" with "intentionality" in the articulation of these conditions.[10]

What conditions must be present if individuals are going to be held morally responsible, not only for their own actions, but for external harm as well? First of all, the agent must have performed an action that was causally responsible for the harm—which, most

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[9] While most of those now writing about causal responsibility in the context of moral agency acknowledge the importance of these social norms, expectations, and projects to the causal responsibility of an agent's action for harm, they do not agree on how these social norms, expectations, and projects are incorporated into our judgments of causal responsibility. For three very different perspectives here see generally John Casey, *Actions and Consequences*, *in* MORALITY AND MORAL REASONING: FIVE ESSAYS IN ETHICS, 155 (1971); John Harris, *The Marxist Conception of Violence*, 3 PHIL. & PUB. AFF. 192 (1974); Dennis Thompson, *Moral Responsibility of Public Officials: The Problem of Many Hands*, 74 AM. POL. SCI. REV. 905 (1980).

[10] Not surprisingly, such a substitution is very helpful here, since intentionality, unlike free will, can be discovered in the world, and since it is already associated with practices of blame—social and legal—with which we are familiar. But, as I argue in Volitional Excuses and the Primacy of Fairness (forthcoming) (unpublished manuscript) (on file with author), the substitution of "free will" with "intentionality" is nevertheless questionable. For, the point of insisting on free will in the context of moral blameworthiness is that it is supposedly under an individual's own control, and the process of formulating intentions may well be part of a determined psychological process.

of those now writing on the subject agree, is a matter of being a "primary cause" of it. Second, the agent must have freely willed or at least intended that action to the extent that we can say that he/she/it was in control over it and hence is its exclusive source.

How difficult is it for moral agents to meet these two conditions, i.e., act in a way that is causally responsible for harm and do so intentionally? In cases where the moral agents in question are individual human beings, rather than groups, we may disagree with each other about what criteria to use in discerning causal responsibility and intentionality. But we do not find either condition very difficult to meet. Nor should we. For, human beings can act in ways that are causally responsible for harm. Likewise, they can, if they have achieved a certain level of self-consciousness, have intentions.

Things become much more troublesome in cases where the moral agents in question are collective entities, though. This is because the two things that ostensibly render an agent morally responsible for harm in the above sense—performing an action that we can consider causally responsible for harm and intending this action—require consciousness. While collective entities, whether they are corporations, clubs, or nation states, may be capable of formulating policies and causing harm, they do not appear to be capable of consciousness or, for that matter, of having minds. How, then, can they be understood to act or to intend at all?

Critics of collective moral responsibility answer this question in the negative and contend that groups cannot perform actions that are causally responsible for harm or have intentions. H. D. Lewis and J. W. W. Watkins argued early on that actions are associated exclusively with individuals, not groups, and that groups, which do not have minds of their own, cannot make choices or hold beliefs in the sense required by the formulation of intentions.[11] Contemporary skeptics, including Alvin Goldman, Stephen Sverdlick, J. Angelo Corlett, and Jan Narveson, are generally less strident than their predecessors. But, they too, have insisted that collective moral responsibility falls short once we acknowledge the

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[11] *See generally* H. D. Lewis, *Collective Responsibility*, 23 PHIL. 3 (1948); J.W.W. Watkins, *Methodological Individualism and Social Tendencies*, 8 BRIT. J. FOR PHIL. SCI. 104 (1957).

simple fact that collective entities cannot have genuine mental lives.[12]

While skeptics have concentrated primarily on the inability of groups to act and to have intentions, they have also on occasion focused on the notion of moral blameworthiness and drawn attention to what they refer to as the inappropriateness of associating moral blameworthiness with groups. R. S. Downie's concerns here are typical. R.S. Downie argues that while we might be able to sustain notions of group agency, we cannot sustain notions of collective moral responsibility, since the latter requires that the agent in question be morally blameworthy.[13] Jan Narveson goes as far in this context to argue that the bearers of moral blameworthiness *have* to be individuals because only individuals can have moral agency. "Nothing else can literally be the bearer of full responsibility."[14]

How do advocates of collective moral responsibility respond here? Interestingly enough, they do not reject the claim that groups have to be able to act and to intend in order to be morally responsible for harm. Instead, they accept this claim and set out to show that, contrary to critics, groups *are* capable of acting and intending. Unfortunately, as I suggest below, none of their efforts to show that groups can act and have intentions have been wholly successful. Indeed, they all appear to have serious drawbacks of the kind that should make the rest of us pause before we try to talk about group intentions and group actions ourselves.

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[12] *See, e.g.*, Angelo Corlett, *Collective Moral Responsibility*, 32 J. SOC. PHIL. 573 (2001); ALVIN GOLDMAN, A THEORY OF HUMAN ACTION (Prentice Hall 1970); Jan Narveson, *Collective Responsibility*, 6 J. ETHICS 179 (2002); Stephen Sverdlik, *Collective Responsibility*, 51 PHIL. STUD. 61 (1987).

[13] *See generally* R. S. Downie, *Collective Responsibility*, 44 PHIL. 66 (1969). Larry May and Stacey Hoffman capture Downie's central claims here very nicely when they write: According to Downie, "Collectives do not have moral faults, since they don't make choices, and hence they cannot properly be ascribed moral responsibility . . . . For there to be moral responsibility there must be blameworthiness involving a morally faulty decision, and this can only take place on the individual level." Larry May & Stacey Hoffman, *Introduction*, *in* COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS 1–14 (Larry May & Stacey Hoffman eds. 1991).

[14] *See generally* Jan Narveson, *Collective Responsibility*, 6 J. ETHICS 179 (2002).

One of the most common strategies employed here is simply to point out that we do in fact blame collectives in practice in ways that appear to make sense to us. David Cooper relies on this strategy heavily in his own defense of collective responsibility. According to Cooper, there is an obvious point to be recognized and that "obvious point is that responsibility is ascribed to collectives, as well as to individual persons. Blaming attitudes are held towards collectives as well as towards individuals."[15]

Deborah Tollefsen picks up on the importance of blaming attitudes here in her own defense of collective moral responsibility as a way of grounding the existence of both group actions and group intentions.[16] According to Tollefsen, the sheer fact that we have emotional responses to groups such as anger, resentment, and moral indignation means that collective moral responsibility is both possible and meaningful.[17] Likewise, the sheer fact that we have feelings of pride, guilt, and shame as group members, tells us that the group moral agency required by collective moral responsibility exists.[18]

Cooper and Tollefsen may have accurately described both the blaming attitudes and the emotional reactions that we have to groups that do bad things in practice. But their analyses share two basic limitations. First of all, the sheer fact that we have attitudes and reactions that signal our belief in collective moral agency or that require us to have such a belief does not mean that collective moral agency actually exists. Nor does it mean that we are justified in having the attitudes and reactions to groups that we do. (We could simply be wrong and/or be falling back on very useful myths.) Instead, it means only that we—or at least some of us— have these attitudes and reactions and that we do not as a community find them strange.

Second, while we may think that that we are blaming a group, and refer to ourselves as doing so, we may not in fact be blaming the group as a collective. Instead, we may be doing one of two

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[15] David Cooper, *Collective Responsibility*, 43 PHIL. 258, 258 (1968).

[16] *See generally* Deborah Tollefsen, *The Rationality of Collective Guilt*, 30 MIDWEST STUD. IN PHIL. 222 (2006).

[17] *Id.* at 224–226.

[18] *Id.* at 226–228.

other things: namely, blaming individual members of the group who are from our perspective representative of it or blaming all members of the group by virtue of their group membership. Both possibilities are suggested by Tollefsen's references to shame and pride—practices that appear to require moral consciences—as well as by the fact that when we blame groups we almost always blame individual members of them.

Cooper himself recognizes the possibility that collective blame may turn out to be shared individual responsibility, rather than a kind of responsibility that is attached to collectives themselves, and sets out to dispute such a possibility.[19] He does so by analyzing statements that we make about collective blame.[20] Cooper argues that when we look at statements about collective blame, we see that we cannot deduce anything from them about individuals themselves.[21] He claims "[t]his is so because the existence of collectives is compatible with varying membership. No determinate set of individuals is necessary for the existence of the collective."[22]

Peter French takes a similar approach in his own defense of collective responsibility arguing that there is a class of predicates that can only be true of collectives. There is, of course, a class of predicates that just cannot be true of individuals, that can only be true of collectives. Examples are abundant, and surely include "disbanded" (most uses of), "lost the football game," "elected a president," and "passed an amendment." Methodological individualism would be at a loss in responsibility contexts, if accountability ascriptions were of this sort.[23]

French is undoubtedly correct with regard to the particular kind of predicate that he has in mind. The predicate "being to blame," however, is of a different kind. For, it does not, like "disbanding," "losing a football game," "electing a president," and "passing an amendment," necessarily involve the efforts of a group. Nor does it

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[19] Cooper, *supra* note 15, at 259.

[20] *Id.* at 260.

[21] *Id.* at 261.

[22] *Id.* at 260.

[23] Peter A. French, *Types of Collectives*, *in* INDIVIDUAL AND COLLECTIVE RESPONSIBILITY 37 (Peter A. French, ed. 1998).

require us to refer to a group in order to make sense of what is being done. Indeed, it may not even be the kind of thing that we *can* associate with groups, if groups, as distinct from their members, turn out not to have a moral conscience.[24]

All of this suggests that if we are ever going to justify the possibility of collective moral responsibility and the notion of moral blameworthiness associated with it, we cannot simply point out that we blame groups in practice or show that there are kinds of things (good and bad) that only groups can do, since our blaming practices might be mistaken and *doing* something does not get us to the point of moral responsibility. Instead, we have to show that groups can be moral agents of harm in the sense required by moral responsibility as understood above. In other words, we have to show that groups can have intentions and a moral conscience *qua* groups.

Not surprisingly, both tasks are very difficult. In the case of group intentions, we have to show that groups can have minds, since intentions are by nature mental states. Moreover, we have to do so even if we lower our standards and talk about intentions that are shared among group members, rather than about group intentions *per se*. For, intentions, as mental states, can be shared only by positing a shared mind and a shared mind looks awfully much like a group mind. In Brook Sadler's words, "[if] intentions are mental states, states which play a fundamental role in an agent's practical deliberations and volition, the prospect of a shared intention introduces the specter of shared mental states and hence shared minds."[25]

How, then, can defenders of collective moral responsibility render the notion of group or even shared intentions comprehensible? Interestingly enough, defenders of collective responsibility frequently turn back to the works of Durkheim and Simmel, as well as to that of Sartre, to ground such intentions,

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[24] The requirement of moral conscience coincides with that of free will and moral agency cited above. To wit: In order for individuals to be morally blameworthy, they must have freely willed their bad actions, and in order to freely will these actions *as* bad actions, they must have a moral conscience, i.e., be conscious of the rightness and wrongness of their actions.

[25] *See generally* Brook Jenkins Sadler, *Shared Intentions and Shared Responsibility*, 30 MIDWEST STUD. IN PHIL. 115 (2006).

although they do so as analytic philosophers rather than as social theorists.[26] Margaret Gilbert, who grounds her defense of collective responsibility in Durkheim's theory of social facts, develops what she calls a "plural subject" account of shared intentions to justify group intentions.[27] She does so in large part, like Michael Bratman and others do, by zeroing in on joint commitments.[28] According to Gilbert, group intentions exist when two or more persons constitute the plural subject of an intention to carry out a particular action, or, in other words, when "they are jointly committed to intending as a body to do A."[29]

All of this makes sense both linguistically and logically, but we still have to know what it means to say that two or more persons constitute a plural subject. *How*, we have to ask, do they constitute such a subject? What is the nature of the "plural subject" that gets constituted in this context? (How might we describe it?) David Velleman takes us part of the way by arguing that "[a] truly plural subject . . . involve[s] two or more subjects who combine in such a way as to make one subject . . . ."[30] But we still need to know *how* they combine to make one subject here and what that subject is. Do their minds meld? Or do their minds overlap? Do they share minds? Or do they, as Gilbert suggests, simply share

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[26] *See, e.g.*, EMILE DURKHEIM, THE RULES OF SOCIOLOGICAL METHOD (W. D. Halls trans., 1982); GEORG SIMMEL, ON INDIVIDUAL AND SOCIAL FORMS (D.N. Levine trans., 1971); JEAN-PAUL SARTRE, CRITIQUE OF DIALECTICAL REASON (Alan Sheridan-Smith trans., 1976).

[27] Gilbert's work on plural subjects has developed in very interesting ways over the years. *See, e.g.*, Margaret Gilbert, *Group Wrongs and Guilt Feelings*, 1 J. ETHICS 65 (1997); MARGARET GILBERT, ON SOCIAL FACTS (1989); MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY: NEW ESSAYS IN PLURAL SUBJECT THEORY (2000); Margaret Gilbert, *Who's to Blame?*, 30 MIDWEST STUD. IN PHIL. 94 (2006).

[28] Others do not necessarily use the term "joint commitments." *See, e.g.*, MICHAEL E. BRATMAN, FACES OF INTENTION: SELECTED ESSAYS ON INTENTION AND AGENCY 93–160 (1999); Michael E. Bratman, *Shared Cooperative Activity*, 101 PHIL. REV. 327 (1992); Michael E. Bratman, *Shared Intention*, 104 ETHICS 97 (1993). *See also infra* notes 30–36.

[29] GILBERT, SOCIALITY AND RESPONSIBILITY, *supra* note 27, at 22 (using the term "shared intentions" rather than "group intentions").

[30] David Velleman, *How to Share an Intention*, 57 PHIL. & PHENOMENOLOGICAL RES. 29, 30 (1997).

commitments?

What, moreover, are the plural subjects that result from such shared commitments? Neither Gilbert nor Velleman answers this question, other than to repeat that the subjects in question come together to make one subject. But we can be sure that if these plural subjects are going to be considered morally blameworthy by virtue of having done something bad together, they have to be moral agents. Likewise, we can be sure that if they are going to be moral agents they will have to have one mind, rather than remaining a plurality of minds, and that that one mind will have to be capable of being the source of moral actions, i.e., the kind of mind that can formulate intentions.

Gilbert's emphasis on shared commitments does not appear to provide us with the kind of unitary mind that we need to sustain collective moral responsibility. Indeed, as long as the commitments that Gilbert has in mind are *shared*, rather than associated with a single being, her plural subjects remain a plurality of minds rather than one mind. While positing a plurality of minds may be a good way to ground shared individual responsibility, it does not allow us to talk about the moral responsibility of collectives *per se*. How, if at all, might we get around this problem?

Raimo Tuomela comes close to doing so in his own work on collective responsibility by articulating what he calls "we-intentions."[31] Tuomela, like Gilbert, constructs the collective subject on the basis of joint commitments and then applies it to the notion of collective responsibility.[32] However, he does not, like Gilbert, stress plurality in his construction of the collective subject. Instead, Tuomela stresses unity and argues for it by claiming that collective intentional agency *supervenes* on individual moral agency in ways that allow us to do two things that Gilbert and others are not quite able to do: namely, posit genuine collective

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[31] *See, e.g.*, Raimo Tuomela, *Actions By Collectives*, 3 PHIL. PERSP. 471 (1989); Raimo Tuomela, *Joint Intention, We-Mode, and I-Mode*, 30 MIDWEST STUD. IN PHIL. 35 (2006); Raimo Tuomela, *We Will Do It: An Analysis of Group Intentions*, 51 PHIL. & PHENOMENOLOGICAL RES. 249 (1991); Raimo Tuomela, *We-Intentions Revisited*, 125 PHIL. STUD. 327 (2005).

[32] *See* Tuomela, *We-Intentions Revisited*, *supra* note 31, at 332–40 (discussing joint commitments).

selves and associate them with minds.[33]

Not surprisingly, Tuomela's success here depends on his ability to describe the process of supervention in a way that leads us to accept the possibility of a genuine collective moral agent. What does he mean by *supervention* in this context? How does supervention work here? According to Tuomela, actions by collectives supervene on the actions of the operative members of the collective in such a way that the properties of particular collectives, such as their intentions, beliefs, and desires, are "embodied in" and "determined by" the perspectives of individual members.[34]

Tuomela is of course obliged to tell us what it means for a collective's intentions, beliefs, and desires to be "embodied in" and "determined by" the perspectives of individual members here. In doing so, he must make three things in particular clear. The first is how collectives can have intentions, beliefs, and desires at the outset, i.e., before the collective supervenes on the operative members of the collective. The second is the identity of the collective subject behind these intentions, beliefs, and desires. The third is the ability of this subject to be a moral agent that is capable of being morally blameworthy as a collective entity.

In sum, Tuomela has to be able to conceive of a mind that is not only attached to a collective but that exists before it supervenes onto individual minds, since otherwise the mind that he calls collective is no more than a plurality of individual minds and hence not sufficient to sustain his claims about "we-intentions."[35] Likewise, he has to make sure that this kind of mind can will actions on the basis of something like moral choice making, since otherwise, the "we-intentions" in question will not be the kinds of "we-intentions" that render an agent morally blameworthy. Can he do these things?

Suffice it to say that Tuomela's claim that collective intentions are partly "determined" by the perspectives of the operative

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[33] *See, e.g.*, Tuomela, *Actions By Collectives*, *supra* note 31, at 491–94.

[34] *Id.* at 494.

[35] *See, e.g.*, Tuomela, *We Will Do It: An Analysis of Group Intentions*, *supra* note 31; Tuomela, *We-Intentions Revisited*, *supra* note 31 (using the term "we-intentions" to talk about the moral agency of a unified subject).

members of these collectives does not, as he assumes, allow him to talk about collective moral agency.[36] For, the fact that individual group members determine a group's beliefs, intentions, and desires does not mean that the collective takes on their moral agency in the process. Nor is moral agency transferable in any case. For, it is not a thing—the product of willing—or something that we can detach from moral agents. Instead, it is the act of willing itself and hence tied exclusively to moral agents and their own mental states.

Moreover, if a collective's beliefs, intentions, and desires have to be "determined" by group members, how can the collective "supervene" on these same group members as a moral agent? Tuomela is faced with a dilemma here. On the one hand, he needs the moral agency of group members to make sense of a collective moral subject. On the other hand, he cannot acknowledge the collective's dependence on group members—and "determination" is surely a kind of dependence—without sacrificing that which appeared originally to constitute evidence of the collective's moral agency, namely, the collective's ability to "supervene" on others.

Since the problem here is that collectives do not appear to have minds and hence do not appear to be capable of formulating intentions, we might want to shift our attention from the act of *intending* in this context to something that sounds like intending but that does not require us to talk about the ability of groups to freely will actions. I refer here to the *intent* that we sometimes locate in a group's policies or laws. Why bring up *intent* in this context? What does it do for us? How, if at all, might we sustain judgments of collective moral responsibility in cases where to talk about intent makes sense?

Two things speak to the value of taking *intent* seriously here. First of all, the intent of a law or a policy can both have its source in the minds, as well as beliefs, intentions, and desires, of individuals *and* be associated with a group project. Moreover, it can do so consistently, since that which is collective here is not a moral act. Instead, it is a *thing* that it can be abstracted from the moral agents who created it. Hence, we do not have to associate it with a collective mind. Nor do we have to be concerned when we make reference to the individuals who originally articulated it.

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[36] Tuomela, *Actions By Collectives*, *supra* note 31, at 494.

Indeed, we can make reference to these individuals openly and consistently.

Is such a shift of focus appropriate here? As Lawrence Solan's work on statutory interpretation demonstrates very nicely, a focus on *intent,* rather than *intentionality,* is totally appropriate in contexts such as those associated with statutory interpretation.[37] For, in these contexts, we are not concerned about the *process* by which, say, a group of legislators, formulated a law or policy. Instead, we are concerned with *what they had in mind* when they put the law or policy forward, or, in other words, with the *product* of many minds, which is a *thing*, albeit an intellectual thing, rather than an act of will. Hence, we do not have to locate a single mind or a single moral conscience.

But things change when we move on to questions of moral responsibility. For, in the context of moral responsibility, unlike that of statutory interpretation, we cannot be satisfied with knowing what a group *meant* when they passed a particular law or formulated a particular policy. Instead, we have to know whether they willed a particular action and are morally blameworthy. Likewise, in the context of moral responsibility, unlike that of statutory interpretation, we cannot be satisfied with locating *intent*. Instead, we have to locate *intentionality*, which, I have suggested above, is a very hard, if not impossible, thing to do.

How, then, are we to proceed? Since we may never be able make sense of group intentions or locate them in practice, we might want simply to give up talking about collective moral responsibility altogether. However, as I elaborate more fully in the next section, to do so is not necessary and would in any case be premature. For, the standards of moral agency that we now associate with moral responsibility, including free will and intentionality, may not be the standards of moral responsibility *per se*. Instead, they may be the standards of one particular notion of moral responsibility that we do not necessarily have to accept.

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[37] *See generally* Lawrence M. Solan, *Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation*, 93 GEO. L.J. 427 (2005).

II. ARE GROUP INTENTIONS REALLY NECESSARY?

Why do we need to talk about group intentions in the first place? Why do these intentions have to serve the function of free will in discussions of moral responsibility and why do we have to talk about free will in the context of moral responsibility anyway? The answer to these questions lies not, as we often assume, with the nature of moral responsibility *per se*. Instead, it lies with the nature of the particular, Kantian, notion of moral responsibility that has come to prevail in philosophical circles in recent decades.

Joel Feinberg captures this notion very nicely when he writes:

[A] stubborn feeling persists even after legal responsibility has been decided that there is still a problem – albeit not a legal problem – left over: namely, is the defendant *really* responsible (as opposed to "responsible in law") for the harm? This conception of a "real" theoretical responsibility as distinct from a practical responsibility relative to the purposes and values of a particular legal system is expressed very commonly in the terminology of "morality" – *moral* obligation, *moral* guilt, *moral* responsibility . . .[38]

Unlike either social blameworthiness or legal accountability, moral responsibility is, according to Feinberg, a purely factual matter and as such not susceptible to discretionary judgment. "Like all matters of 'record', moral responsibility must be read off the facts or deduced from them; there can be no irreducible element of discretion for the judge."[39] Likewise, moral responsibility must be construed as independent not only of any purposes, policies, or goals that we may embrace, but of our own opinions about whether or not a particular individual is blameworthy. For, unlike its worldly counterparts, moral responsibility is:

liability to charges and credits on some ideal record, liability to credit or blame (in the sense of "blame" that implies no action). Just as it is, as we say, "forever to the credit" of a hero or a saint that he performed some noble

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[38] JOEL FEINBERG, DOING AND DESERVING: ESSAYS IN THE THEORY OF RESPONSIBILITY 30 (1970).

[39] *Id.* at 31.

act, so a man can be "forever to blame" for his faults.[40]

Feinberg and others do not explore the nature of "ideal liability" in any depth. But they do make clear that it has its source in individual moral agents themselves. According to Feinberg, individuals are morally blameworthy, not in virtue of our social and legal practices of blame, but in virtue of their having themselves caused (freely willed) either their own actions or an external state of affairs. Likewise, moral blameworthiness is an aspect of moral agency itself: "an absolute responsibility within the power of the agent."[41]

Michael Zimmerman, in his own efforts to show how moral blameworthiness—and hence moral responsibility—can be independent of worldly practices of blame, focuses on what he takes to be the inwardness and ideal nature of both. According to Zimmerman:

> Moral responsibility has to do with the type of *inward* moral praising and blaming that constitutes making a private judgment about a person. . . . It is "credit" on his "ledger of life", a "positive mark" on his "report card", or a "blemish" or "stain" on his "record"; that his record has been "tarnished"; that his "moral standing" has been diminished . . . . Someone who is blameworthy is deserving of such blame; that is, if it is correct, or true to the facts, to judge that there is a "debit" on his "ledger."[42]

Not surprisingly, it is difficult for secular philosophers to make sense of moral blameworthiness here, since they cannot invoke either an external blamer (God or the community) or particular practices of blame. Hence, they do not generally try to make sense of the "ledger of life," "moral stains," and moral "report cards" that they invoke. Instead, they either place quotation marks around these terms—signaling the possibility that they are mere metaphors for something deeper and more easily justified—or else they refer off-handedly to an omniscient "World Moral Authority" that presumably   has   access   to   ideal   standards   of   moral

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[40] *Id.* at 30.

[41] *Id.*

[42] Michael Zimmerman, An Essay on Moral Responsibility 38 (1988).

blameworthiness.[43]

I argue elsewhere that the notion of moral responsibility that emerges here is essentially the internalization of what was once expressed openly as the Christian notion of moral blameworthiness and that it falls apart once we realize two things. The first is that terms such as "moral stains" on one "ledger of life," moral "report cards," and a "World Moral Authority" cannot be sustained in a secular context. The second is that without them moral blameworthiness cannot be viewed as an aspect of moral agency itself or independent of worldly practices of blame.[44]

Suffice it here to make three points about this notion of moral responsibility that relate to our ability to re-think moral responsibility in a collective context. First of all, this notion of moral responsibility is not moral responsibility *per se*. Instead, it is a distinctly Kantian notion of moral responsibility that, unlike, say, its Aristotelian, Christian, and utilitarian, counterparts, locates moral blameworthiness in the wills of moral agents rather than in social and legal practice, insists that moral blameworthiness be independent of any goals or purposes that we may have as a community, and construes moral blameworthiness as a matter of moral guilt or moral taint.

Second, it is only because we accept this distinctly Kantian notion of moral responsibility that we insist, not only that an agent's actions have been causally responsible for harm, but that the agent has freely willed or at least intended these actions and that there be something about the act of freely willing or intending itself that renders agents morally blameworthy. In other words, it is only because we accept this notion of moral responsibility that we find it necessary to impose the conditions of moral responsibility that we now do on both individuals and collectives.

Third, there are other ways of thinking about moral responsibility. Aristotelians construe the notion of

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[43] John Harris, for example, falls back on the language of a "World Moral Authority" in his efforts to render moral blameworthiness both ideal and independent of what he considers to be our unacceptably low moral standards in the community. According to Harris, "[s]urely the World Moral Authority's causal explanation [of harm] is not upset by the discovery that this society neglects its . . . members." Harris, *supra* note 2, at 206.

[44] SMILEY, MORAL RESPONSIBILITY, *supra* note 3, at 72–104.

blameworthiness associated with moral responsibility as part of our communal practices of blame rather than as an aspect of moral agency *per se.*[45] Thus, while they, too, insist that an individual must have been causally responsible for harm in order to be morally responsible for it, they do not require that the individual must have freely willed the harm. Instead, they require only that the agent be able to meet communal standards of blame, e.g., that the agent not have been coerced or compelled into acting badly.[46]

The Christian notion of moral responsibility, like its Kantian counterpart, takes blameworthiness out of the community and does something that the Aristotelian notion of moral responsibility does not: namely, distinguish between moral and social blameworthiness. But, unlike its Kantian counterpart, it does not abstract moral blameworthiness from all practices of blame. Nor does it view an agent as morally blameworthy outside of a relationship between the agent and an external blamer. Instead, it views individuals as morally blameworthy within a relationship between agents and such a blamer—God—who presumably has access to ideal standards of blameworthiness.[47]

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[45] Aristotle developed his theory of moral responsibility in ARISTOTLE, NICOMACHEAN ETHICS bk. III, ch. 1 (Martin Ostwald trans., Bobbs-Merrill 1962) (c. 384 B.C.E.). For excellent commentaries on the Aristotelian notion of moral responsibility, see generally A. W. H. ADKINS, MERIT AND RESPONSIBILITY: A STUDY IN GREEK VALUES (Clarendon Press 1960); MARTHA C. NUSSBAUM, THE FRAGILITY OF GOODNESS: LUCK AND ETHICS IN GREEK TRAGEDY AND PHILOSOPHY 282–89 (1986); Jean Roberts, *Aristotle on Responsibility for Action and Character*, 9 ANCIENT PHIL. 23 (1989). I analyze the Aristotelian concept of moral responsibility in SMILEY, MORAL RESPONSIBILITY, *supra* note 3, at 733–57.

[46] *See generally* ARISTOTLE, *supra* note 45, at 52–57.

[47] The Christian concept of moral responsibility was originally put forward by St. Augustine and St. Aquinas. *See* AUGUSTINE, ON FREE CHOICE OF THE WILL (Anna S. Benjamin & L. H. Hackstaff trans., Prentice Hall 1964); Augustine, *On Two Souls Against the Manichees*, *in* THE WORKS OF ST. AUGUSTINE (John E. Rotelle, trans., New City Press 1990); Thomas Aquinas, *Summa Theologica*, Pt. 1, Q. B., *in* 1 BASIC WRITINGS OF SAINT THOMAS AQUINAS (A. G. Pegis ed., Random House 1945). For excellent commentaries on the Christian concept of moral responsibility, see generally William S. Babcock, *Augustine on Sin and Moral Agency*, 16 J. RELIGIOUS ETHICS 28 (1988); F. R. TENNANT, THE CONCEPT OF SIN (Cambridge Univ. Press 1912). I analyze the Christian concept of moral responsibility in SMILEY, MORAL

Utilitarians are in general reluctant to put forward their own, purely utilitarian, notion of moral responsibility, since thinking about blame in terms of utility always brings with it the possibility of draining blame of its power to influence behavior, i.e., its utility. But they do, in criticizing the Kantian notion of moral responsibility, make clear that blameworthiness cannot be justified in a secular context on anything other than utilitarian grounds. Likewise, they do, in sketching the contours of a utilitarian notion of moral responsibility, couple causal responsibility with social blameworthiness and justify such blameworthiness with reference to its instrumental value.[48]

All of these notions of moral responsibility have conditions of their own that collective entities might not be able to meet. Indeed, since they were all designed to grasp the moral agency of individuals, rather than that of collective entities, they might not be any more appropriate to discussions of collective moral responsibility than their Kantian counterpart. But they do suggest, at the very least, that we do not have to accept the prevailing Kantian notion of moral responsibility or its particular conditions in discussions of moral responsibility and that, if necessary, we can think about developing an alternative notion moral responsibility that is appropriate to collective, rather than individual, moral agents, and that has its own conditions.

III. RE-THINKING COLLECTIVE MORAL RESPONSIBILITY

What might such an alternative notion of collective moral responsibility look like? I suggest one possibility below. However,

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RESPONSIBILITY, *supra* note 3, at 58–71.

[48] The two most frequently cited utilitarian treatments of moral responsibility are: Richard B. Brandt, *A Utilitarian Theory of Excuses*, 78 PHIL. REV. 337 (1969) and J. J. C. Smart, *Free-Will, Praise and Blame*, 70 MIND 291 (1961). Brandt argues that guilt feelings and a sense of blameworthiness:

increase motivation in a desired direction—that is, improve the corresponding kind of character, and suggests that once a sense of moral blameworthiness comes to be associated with the more general idea of a particular action, the unpleasant associations provide a "boost" in the "right direction" for similar situations in the future.

Brandt, *supra*, at 357.

since re-thinking moral responsibility in general takes a great deal of effort, we might want to ask first: Is it worth the effort? Do we really want to talk about collective moral responsibility anyway? Do we really need to do so? Two concerns arise here. The first is the possibility that collective moral responsibility threatens normative values that we take seriously and hence is not worth pursuing. The second is that even if collective moral responsibility is not such a threat, it is unnecessary, since we can accomplish the same goals in this context by expanding individual moral responsibility.

The normative value that critics worry about most here is individual moral responsibility, although concerns about fair blaming also surface. How, critics ask, can we place collective moral responsibility at the center of our attention without undermining the value of individual moral responsibility? How, moreover, can we ascribe moral responsibility to groups without rendering individual moral responsibility—and blameworthiness—insignificant if not meaningless? How, in any case, can we hold groups collectively responsibility without unfairly blaming some of its members?

The assumption here is that collective moral responsibility either undermines individual moral responsibility or shoves it aside. Garret Hardin argued early on that collective responsibility undermines individual initiative and creates havoc for those practices that require individuals to take responsibility for their own actions, e.g., the maintenance of their own families and property.[49] Contemporary liberals tend to be less vehement than Hardin was in this context. But, they, too, worry that once collective responsibility is legitimated, individuals will lose their sense of individual moral agency, as well as manage to avoid blame in cases where they should be blamed.[50]

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[49] *See generally* Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968).

[50] Joel Feinberg goes as far as to argue that the threat to individual agency posed by collective responsibility renders collective responsibility outdated and obsolete. Joel Feinberg, *Collective Responsibility*, 65 J. PHIL. 674, 679–81 (1968). Jan Narveson couples his concern for individual agency with a concern for fair blaming in Jan Narveson, *Collective Responsibility*, 6 J. ETHICS 179, 186–87 (2002).

Moreover, the potential loss of individual moral responsibility here is not a purely personal matter. According to Richard McKeon, if collective responsibility were to replace personal responsibility in society, we would no longer be able to sustain liberal and democratic government, since both liberalism and democracy require self-government and self-government is only possible when individuals take responsibility for their actions. Indeed, McKeon argues, if we were to "revert" to collective responsibility—McKeon's argument here is historical—we would once again find ourselves confronted with the need for a great deal of state power.[51]

What about moral responsibility and blameworthiness themselves? Mark Reiff argues that while collective moral responsibility can be very helpful in both preventing bad behavior by groups in the future and bringing about social control more generally, it can also lead to violence—cycles of retaliation—and the undermining of morality itself by severing the ties between responsibility and blame. How is the latter possible? According to Reiff: "The problem here is not that people are less likely to feel responsible for their own misconduct if they feel that others will be held collectively responsible [for harm, but that collective responsibility] encourages people to feel responsible and subject to punishment even when they have personally behaved correctly . . ." and hence, punishment is no longer an incentive.[52] In the end, collective responsibility "undermines the very concept of responsibility itself," as well as "morality in general," by severing the ties between responsibility and a meaningful notion of blameworthiness and deserved punishment.[53]

While all of these concerns are important, they appear to challenge collective moral responsibility only if we are unable to sustain individual moral responsibility once we legitimate collective moral responsibility. In other words, they assume that we cannot have both individual and collective responsibility in the

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[51] *See generally* Richard McKeon, *The Development and Significance of the Concept of Responsibility*, 2 REVUE INTERNATIONALE DE PHILOSOPHIE 3 (1957) (Belg.).

[52] Mark R. Reiff, *Terrorism, Retribution, and Collective Responsibility*, 34 SOC. THEORY & PRAC. 209, 242 (2008).

[53] *Id.*

same community or balance them in a morally acceptable fashion. But such an assumption may not be warranted and in any case is in need of empirical verification. Hence, while we may never be able to balance individual and collective moral responsibility in the way that we think that they should be balanced, we cannot simply take it for granted that the two are mutually exclusive.

Why, though, is collective moral responsibility necessary? Admittedly, there are now cases in which shared individual moral responsibility would work just fine, e.g., cases in which we can both locate the particular individuals in a group who caused harm and conclude honestly that they did so regardless of the group's identity or structure. But there are other cases in which we simply cannot locate the source of harm solely in particular individuals' actions, shared or otherwise. In these cases, the collective itself appears to have produced the harm as well—albeit through its shaping and organization of individual intentions and actions. Here a purely individualistic model of moral responsibility would not seem to be the answer.

The classical example here is that of a mob that forms among individuals whose own intentions may simply be to escape a natural or man-made disaster but who inadvertently cause harm together as a mob. In the case of such a mob, there is neither an organizational structure in place nor a group purpose that we can locate. Nor are there individuals who can be understood to have planned the harm or, for that matter, to have acted in a blameworthy fashion. Hence, we cannot invoke individual moral responsibility. Instead, we have to acknowledge that it was the mob itself—which exists above and beyond those participating in it—that caused the harm.

Mobs provide us with a very straightforward case of collectives that produce harm by virtue of their nature as particular kinds of collectives. But mobs are not the only kinds of collectives that appear to cause harm over and above their individual members. Indeed, even in cases where we can locate a great deal of bad behavior on the part of individual moral agents and ascribe moral responsibility to them for harm, we can still sometimes say that the collective in question has done something wrong that individuals themselves could not do and that renders the collective itself responsible *qua* collective.

Three such cases come to mind. The first is that of companies such as Enron whose ethos and structure were causally responsible for harm in a way that goes beyond the causal responsibility of particular members by virtue of the collective nature of these causal factors. Kenneth Shockley, among others, argues that Enron as a collective entity played an "eliminable" role in the harm that its executives brought about by virtue of its company norms, incentive structures, and practices of discipline. "The norms operative within the membership of Enron controlled for the climate of secrecy and doubt."[54]

The second case is that of nation states whose military systems appear to be at least partly responsible for the killing of innocents. In this case, we may be able locate the particular individuals who do the killing and, since militaries are organized, we will probably always be able to go up the chain of command to locate those who have made various kinds of decisions. (How far up we go is always a question). But we will also have to confront the fact that there is something about the structure of the collective that will make the killing of innocents likely, even if those participating in the war find the killing of innocents atrocious.

The third case is that of all-male or all-white business clubs whose very nature promotes the disempowerment of women and blacks, as well as discrimination against them more generally in the business world. In this case, we may be able to say that many of the clubs' members are morally responsible for the harms in question. But we have to admit that there is something about the clubs themselves, including the very bonds that they create among members and the ideology associated with them, as well as their admissions policies, which enables club members to do the harm that they do.

In the above scenarios, a model of collective moral responsibility would be very helpful. How might we develop such a model? How might we think about collective moral responsibility in a way that addresses these cases without violating individual moral agency or draining blameworthiness of its meaning? I assume that there are a variety of ways in which we

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[54] Kenneth Shockley, *Programming Collective Control*, 38 J. SOC. PHIL. 442, 449 (2007).

might proceed here. Let me simply gesture to one possible way of doing so as a way of opening up discussion about how collective moral responsibility might be re-conceptualized in the future.

Since we need to associate moral blameworthiness with agency—otherwise blaming would cease to be either fair or effective—we will need to retain some kind of causation in our discussions of collective moral responsibility. Likewise, since we are talking about collective, rather than individual, moral responsibility, we will have to make sure that this kind of causation makes sense in the lives of collectives. In other words, we will, like Aristotelians, Christian philosophers, and Kantians, have to work with the particular kinds of moral agents that we have in mind—in our case collectives, as distinct from citizens of the polis, Christian souls, or moral idealists—and make sure that we articulate a notion of causation that is appropriate to them.

What kind of causation might this be? How might we associate it with blameworthiness in the lives of groups such as corporations, clubs, and nations states? Here we might want to replace the Kantian notion of moral agency—as well as the association of moral responsibility with the act of freely willing a bad action—with a looser notion of *producing* or *creating* harm. In other words, we might want to associate agency with *producing* and *creating* in our efforts to develop a notion of moral responsibility that makes sense in the context of groups.

Not surprisingly, not just any kind of *producing* or *creating* will do here. Instead, it has to be *producing* or *creating* that presupposes control by the collective over the harm's having come about—even in cases where individual members performed the bad actions that resulted in harm—by virtue of group structure, identity, or ideology. In other words, the *producing* or *creating* in question has to be both necessary to the harm's having come about—individuals could not have produced or created it on their own—and a condition under which these individuals were able to act badly.

Since collectives will in most cases produce harm by *enabling* or *leading* group members to perform harmful actions, collective moral responsibility will probably always involve the actions of group members. (How could it not in the context of corporations, clubs, and nation states, as well as that of mobs?) But this

likelihood does not require us to equate collective moral responsibility with individual moral responsibility. For, collectives can—and should—be understood as doing something that these individuals could not do without the collective's support.

Two things change by shifting our attention to *producing* and *creating* in the context of collective moral responsibility. First of all, we no longer ask: "Did the corporation, club, or nation state in question willingly cause harm?" ("Were its intentions bad? Did it act on these intentions?") Instead, we ask: "Is there something about the collective entity itself—such as its structure, identity, ethos, laws, ideology, or code of conduct—that is to be blame for the harm?" ("Were group members led to act in the way they did because of one or more of these aspects of the collective?")

Second, the agent in this context does not have to have freely willed harm or intended it in the sense required by individual moral responsibility. Instead, two other things have to be true. First of all, the group in question must have what Kenneth Shockley calls "coordinating control" over group members and be capable of ensuring that its members work together in a particular way to bring about harm.[55] Second, the group must have been necessary to the harm's having come about. In other words, group members could not have brought the harm about on their own.

What kind of collective entities meet these conditions? As Shockley himself argues very nicely, in Enron, the climate of dishonesty and the perverted incentive system enabled, if not led, group members to defraud their shareholders and the public.[56] Hence, we can conclude in this case that while particular individuals carried out the fraudulent actions and may well have cheated on their own, the harm in question would not have been possible without the collective's accounting practices and secretive administrative structures. In other words, we can conclude that the corporation was necessary to the harm's occurrence.

Nation states have many sub-groups and hence many candidates for collective moral responsibility. In the case of a military operation gone wrong, we can say that the nation state—or at least its particular military system—was causally responsible for

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[55] *Id.* at 442.
[56] *Id.* at 449.

harm if, say, the particular command structure in place or the nature of its weaponry led soldiers to kill non-combatants out of necessity. Likewise, when looking at the nation state's economic system, we can say that it—or at least parts of it, e.g., a lax regulatory agency—was responsible for various market abuses if the harm could not have occurred without these agencies' lax behavior.

In such a circumstance, what kind of moral blameworthiness can, and should, we associate with the production or creation of harm? Two things need to be understood at the outset. First of all, the kind of moral blameworthiness that we come up with does not have to be an aspect of collective moral agency itself. Nor does it have to be independent of social and political practice. Instead, it can be a judgment that we ourselves make as a community *after* the group in question has acted and hence be relative to our own criteria of blame, as well as to the purposes behind these criteria and the practices of blame of which they are a part.

Second, just as Aristotelians, Christian philosophers, and Kantians, if not utilitarians, developed their notion of moral blameworthiness with reference to particular notions of moral agency, so can we. In other words, we do not have to conform to a view of moral blameworthiness that was intended to capture, say, a Christian or secularized Christian, sense of moral agents. Nor, for that matter, do we have to conform to a view that was developed to capture the moral agency of *individuals*. Instead, we can—and should—begin by asking: What kind of moral blameworthiness might be appropriate to groups such as corporations, nation states, and clubs?

Since groups do not have minds or moral consciences of their own *qua* groups, we cannot consider them to be morally guilty in the internalized sense that we encountered above. Nor, presumably, would we want to do so—given that they are organizations rather then persons. (Mobs may fall out of the picture here since they are not organized.)[57] But we *can* understand

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[57] The argument here would have to be, not that mobs cannot produce harm—which they can—but that it only makes sense to blame collectives that can be understood to be affected by blame, e.g., organizations, and mobs are not this kind of collective.

collectives as doing bad things in the world by virtue of their particular identity or structure and hence deserving of the kinds of blame and punishment that we now or should in the future associate with groups such as corporations, clubs, and nation states.

What would it mean for such a group to be deserving of punishment? What might punishment mean in the context of collectives? In cases where the harm in question is very great and the group cannot be reformed without denying its core identity or reason to be, it might mean that the group deserves to be eliminated altogether as a group (which is in no way to say that its members should be eliminated as individuals). The Nazi regime provides us with such a case. So, too, might some contemporary race-based hate groups in the United States and elsewhere.

In other cases, the kind of blame and punishment that constitutes the backdrop to blameworthiness might be associated with reparations for wrongdoing. In these cases, we would have to say of a group, e.g., a corporation that knowingly wreaked havoc on the environment and destroyed the livelihood of citizens, that it deserves to be punished financially and forced to pay reparations to those who have been harmed. Moreover, if our concern is with *moral* blameworthiness, we would have to say that the group is blameworthy, not simply according to law, but according to the community's sense of acceptable and unacceptable moral behavior.

In the case of corporations, we can also think about punishing a particular company that has done moral harm as a matter of restricting their autonomy. In some cases, the restriction of autonomy might be a matter of forcing the corporation to restructure itself or partly disband in the interests of making sure that it does not continue to do harm in the future. In other cases, it might be a matter of political authorities temporarily taking over parts of the company's operations while such restructuring is carried out or while personnel is being shuffled.

Not surprisingly, the particular form that blame takes here is restricted by what we take to be the legitimate reach of the state. In cases where the state has no legitimate role, we will not be able to say that a collective deserves legal punishment. But we still might be able to say, in cases where to do so is warranted by the facts, that the collective deserves—in a moral sense—to be condemned

by the community and perhaps even boycotted. Moreover, we can and probably should do so even in cases where the state *can* intervene, e.g., in cases where clubs violate existing anti-discriminatory law.

Since those writing about collective moral responsibility have generally assumed that they have to work within the parameters of the prevailing, Kantian, notion of moral responsibility, they have not as a group explored many of these possibilities. But there are important exceptions. Kenneth Shockley, in his work on collective moral responsibility, replaces the Kantian notion of moral blameworthiness with a looser notion of "being at fault" that allows us to talk about a particular collective as "deserving of some kind of punishment apart from that meted out to its members for their role in harm."[58]

Neta Crawford also distances herself from the Kantian notion of moral blameworthiness in her work on collective moral responsibility and talks about groups as doing morally bad things—in some cases through the actions of their members—because of the particular kind of group that they are and how they operate.[59] Crawford's particular concern here is with military groups whose soldiers end up killing innocent civilians as a result of either their particular rules of military engagement or the kinds of weapons that they employ. How, if it all, Crawford asks, can we talk about both the military and the nation state of which it is a part as morally blameworthy in these cases?

Crawford responds that while it makes no sense to consider a military group morally guilty in the sense of having a tainted soul, it does make sense to consider it a morally bad organization that deserves punishment.[60] Crawford, unlike many others, recognizes in this context that we have to be careful that the punishment that groups deserve—and the notion of moral blameworthiness associated with them—are appropriate to the particular kind of group they are.[61] Hence, she chooses to view punishment, as well

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[58] Shockley, *supra* note 54, at 452.

[59] *See generally* Neta Crawford, *Individual and Collective Moral Responsibility for Systematic Military Atrocity*, 15 J. POL. PHIL. 187 (2007).

[60] Crawford chooses to analyze morally bad organizations in term of the "systematic atrocities" that they commit. *Id.* at 188–92.

[61] Crawford distinguishes between different kinds of group responsibility.

as moral blameworthiness, in the cases about which she is concerned, as a matter of forcing a collective to apologize, make amends, and change.[62]

According to Crawford, the "change" here frequently amounts to either eradicating parts of the group in question or changing those aspects of the group that lead it to produce harm. In the case of, say, a terrorist operation that was developed precisely to bring about harm, eradication may be appropriate. In the case of a military group that is otherwise acceptable, it might mean "reduc[ing] the likelihood of systematic atrocities and avoidable accidents by reviewing and revising the choice of weapons and rules of engagement. And . . . apologiz[ing] and mak[ing] repair when systematic atrocity occurs."[63]

How might we incorporate the kinds of blameworthiness that Shockley and Crawford articulate here into an alternative notion of collective moral responsibility? I have suggested in this essay that, before all else, we will have to stop thinking about collective moral responsibility as a moral fact about agents—that they freely willed harm and are morally blameworthy by virtue of doing so—and begin thinking about collective moral responsibility as a matter of two judgments that we as a moral community make about a group on the basis of our own standards: namely, that the group did something morally wrong by producing harm and that the group is worthy of a particular kind of (worldly) blame.

Not surprisingly, the view of collective moral responsibility that I have put forward here is bound to appear unsatisfactory to Kantians, since the two judgments on which it rests are both relative to our own norms, expectations, and projects. But, I have suggested above, the fact that we have the power to shape our judgments of casual responsibility and moral blameworthiness as a community should not be taken as a threat to either individual or collective moral responsibility. Instead, it should be taken as the basis for developing notions of both that are coherent and appropriate to the particular kinds of moral agents with which they are associated, as well as useful to us in grounding more worldly

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Id. at 196–206.

[62] *Id.* at 212.

[63] *Id.*

practices of social blame and legal punishment.