Wolfgang Sohst

Collective Moral Responsibility

Xenomoi

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Introduction

This work – unlike the title might seem to suggest – is not a material-ethical reflection on the duties of the human collective. It is also not an appeal to today's societies or other human groups to take more civic responsibility in order to counteract possible undesirable political or economic developments. It is also not intended to be a foundation for a formal concept of collective responsibility such as legal duties and liabilities. In other words, it is neither an ideological program nor a legal philosophical treatise but rather a social analytical reflection. It is meant to be a contribution towards exploring the requirements for assigning explicit moral responsibility to certain forms of human coexistence.

About the concept of morality: Unfortunately, the field of philosophical inquiry has yet to establish a distinct difference between ethics and morality. The most plausible to me seems to be a distinction based on the difference between theory and practice. If we followed this line of reasoning, ethics would be the theoretical considerations for evaluating social behavior, while morality, in contrast, would be the judgmental aspect of human behavior in action. If we understand morality this way, there is really only a small area that can be rationally justified. This is because morality usually arises from negative emotions—in the form of rejections, indignation, accusations, contempt, discrimination etc.—while ethics, in contrast, is an attempt to develop emotionally neutral standards for judging with the axiom of argumentative coherence. Thus, there can't really be a science of morality but rather only moral practice. However, there is a scientific way to look at how morals are practiced; this can have a more sociological-empirical or philosophical-abstract focus. The following essay, as a more philosophical-abstract perspective, is the latter.

Morality, as a social phenomenon of habit-based customs and evolved traditions should be distinguished from the mutually agreed-upon norms which came about through decisions and decrees. Customs and traditions are legitimized through their long-term, practical social success; that is the ideological core of political conservatism. Mutually agreed-upon social relationships, in particular, statutory law, have always taken their legitimacy from the correct procedure of their formal coming into being (today, so-called 'procedure legitimacy'). In many countries, the tip of the statutory-law hierarchy is a constitution which, by itself, is only weakly procedurally legitimate. It is a codification of basic values and their relationship to one another. And these values, in turn, are based on traditions. Morality is a third, and methodologically speaking maybe the 'muddiest' area for controlling human behavior besides customs and traditions, on one hand, and statutory law on the other.

Morality is unclear and inconsistent in its totality, and also under constant threat of heavy emotions. It is also a practical amalgam of other fragments of social order which are carried out by compressing very abridged feelings and arranging the details differently for each one of us so that they can be quickly and efficiently used in everyday life. We all know the immediate effect of the smallest critical gesture and all of the moral undercurrents in apparently trivial comments. However, from an evolutionary point of view, morality is the oldest system of human social control. It is primarily based on biological behavior patterns that force group-conform behavior, i.e., the fear of inner-species aggression among individuals along with a tiny bit of empathy. Some behavioral researchers, such as Frans de Waal, would like to attribute morality to the ability of higher organisms to feel empathy.[1] But many find that illusory.

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1   See de Waal [2001], p. 19ff. For an extreme opposite position see Kondylis [1984], to whom I refer in more detail. – The book is structured so that De Waal, as a behavioral researcher, first presents his thesis of empathy as the

The topic of collective moral responsibility is thus intellectually difficult and socio-psychologically exhausting. However, while it's possible to downgrade moral judgments to a private thing which has no final accessible explanation, we cannot ignore large, collective waves of moral feeling. These can be ethically 'tamed' or at least partially brought into a theoretical framework for evaluating them. By creating such a framework, it becomes possible to distinguish between rationally justifiable, and thus entitled/valid, collective judgments and those that are unjustifiable (for instance, based on ethnic prejudices).

1 Actors and Moral Action

1.1 On the concepts of actors and action

In sociological literature, the participants in a social interaction are usually seen as the objects or targets of the events (which are seen as 'actions') assigned to them and referred to as 'actors'. In the simplest case, it is a two-part relationship of *an* actor and *an* action. Actors and action have a common feature which mutually defines them: their respective *unity* as either an actor or an action. The concept of the unity of an object or an event, in general, has been a recurring topic ever since the early times of Western philosophy. In the pre-Socratic period and later in Neo-Platonism, however, the discussion was not initially about the unity of an individual object, in other words, the unity of an actor and 'his' action, but rather the unity of the entire world in the sense of the consistency and coherency of all objects and events. Even in ancient Chinese Taoism as well as all of the great nature-based religions, the conception of the world first begins with an act that brings together all givens into a great totality into which every individual human needs to find his own

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root of morality and then responds to all of the following philosophical contributions to it. None of these follow de Waal's thesis, even if for very different reasons.

place. This great big whole is originally completely separate, both from the natural cosmos as well as the unity of its own collective. In this state, humans and nature are rooted in the same super-ordinate order. In the myths of such early societies, the unity of nature, which is populated and controlled by the gods, is still a reproduction of the social structure of exactly the collective that these myths cultivate.[2] It is only through a very long development process that humans become aware that it is individuals and their individual actions which separate them from the natural background, and that it is worth considering them in order to specifically understand human existence. Since the European Enlightenment, Western culture finally understands that humans are no longer purely natural but actually stand in opposition to nature. This is for Kant, as he confidently explained in his *Groundwork on The Metaphysics of Morals*, the origin of all practical reason in the sense of freedom from nature.

It will become apparent that the concept of the unity of the actor and his action will be central to our further investigation. It has frequently been attempted to reduce this concept of unity, not only for the person and his action but also for objects and events in general, to the sum total of their components, i.e., to replace the concept of unity with that of totality. What's inadequate here is that the sum of the parts of a totality can appear in very different forms. The totality of a number of loose threads is obviously different than the same threads as soon as they have been woven into a cloth. Many threads create a totality in both cases, but only in the latter case can we speak of a unity. This example applies to the unity of actor and his action as well. If we were to understand these as only the sum of individual physical movements and nerve impulses, etc., both the unity of the actor as well as his action would be lost. From that it follows

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2   Émile Durkheim gives a very instructive summary of the already extensive ethnographic reports on the world view of the Australian hunter and gatherer cultures in his book "The Elementary Forms of Religious Life", even if the details of his conclusions are not very current today, see Durkheim [2007].

that the unit of actor and action is always more than the sum of its parts: By integrating analytical components into a new unity, something is added to these components that was not there before. But what distinguishes the unity of an object compared to just the totality of its parts in general? There have been lively discussions on this point ever since pre-Socratic times – even if these took place mostly on a side stage to more important topics.[3] The concept of objective unity is so fundamental that it's not only a basic concept for all theoretical thinking but is practically needed for concept formation. It is an indispensable precondition for any life forms – not just humans – in order to orient themselves in the world. I'm not going to go into the further metaphysical implications of this assertion here, even though it is truly significant. In terms of the topic of this essay, I can only say that it is not the quality of being able to split actors into partial actors or divide action into partial actions that makes up the unity of an actor or an action. However, for both the following applies: If we separate an actor or an action into its separate parts or segments, the actor as well as the action soon get lost in the course of the analysis.

The question of the unity of the actor and his action does not only apply to individuals, each of whom is more than the sum of his body movements. In the case of the so-called 'collective' actor – in so far as such a thing exists – it is also a question of whether it forms a unit that is more than the sum of the indi-

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3   In ancient times the concept of unity already had an indirect precursor in thinkers like Parmenides (on the unity of human existence and nature) and Heraclitus (for the unity of process in the world). In the European Middle Ages, the Christian philosophers were primarily interested in the soul, following in Aristotle's footsteps. But, interestingly, they focused on this primarily because only such individual responsibility to God can be justified, which also justifies God's concern for individual souls. In modern times, Hermann Schmitz has been concerned with the metaphysical concept of objective unity from a phenomenology perspective in his many books. See his latest work "selbst sein" ('being oneself') (Schmitz [2015], especially the first essay, p. 13ff). A process-ontological derivation of the concept and the development of objective unity can also be found in my works on process ontology (Sohst [2009]).

vidual actors and their actions. Although this idea is hard to avoid when considering many mass psychological phenomena and must always be reconsideration, I prefer to reject it: Speaking about a 'collective actor' is misleading and therefore wrong because it upholds a conceptual indecisiveness between multiplicity and unity among actor(s) and action(s), which then makes it impossible to explain fundamental questions. If this argument and the subsequent conceptual realignment is carried to its end, the answer to the question of what are the conditions where we can even speak of a unit of an actor and thus *uno actu* also of a unit of an action, is all the more clearly lacking (see Section 4 on this).

The question of prerequisites of unity for both an actor and his action can be put thusly: Under which conditions can we plausibly justify, and with that, be entitled to assume a unit of an actor or an action? Laws, duties and obligations are essential features that distinguish human social existence clearly from the physical and purely biologically determined level. What might or might not be a unit at the physical or biological level may be only partially binding for the social reality of life and vice versa. Social subjects (e.g., persons, organizations, institutions) and their outcomes as a unit are practically never accessible for a physical or biological analysis because they inherently contain a substantially higher concept of normative. Humans are distinguished from the nature they emerge from and which they are surrounded by in that they have 'ought to' and permission. It would be silly to designate this as a lack among all non-human nature. Nor do we believe anymore that all this 'ought to' and granting permission originated in some godly intention, even if we still feel religiously committed. This has to do with completely mundane secular differences that need to be looked at first in terms of the biological and then the social reality, both of which then need to be treated from different points of view. We can only decide from the social contexts that a unit of actor or action is present when considering the indi-

vidual psychological aspects, such as the cognitive maturity of the person in question. That's why we should be conscious of the fact that we always already assume the unity of actor and action as soon as we speak of an event in which humans are involved. We assign uniform actions to individual people and sometimes view groups or formally created bodies as uniform actors as well. The question then becomes, when is such an assignment of unity to an actor and action justified, and when not.

For the purpose of reconstructing social reality, the only for analytical purposes separated unit of the actor and his action have to be re-combined in the next step into an integrated unit of 'actor-action' through the definition of the actor and his action. It is only by recognizing this unity of actor and action do we arrive at the socially unmediated, i.e., primal level of consideration. And it is first at this level that the assignment of responsibility to the actor becomes possible, i.e., socially justifiable. And this unit of a second order – where it can be plausibly asserted – is a necessary prerequisite for the individual actor's personal responsibility. This applies regardless of the fact that all unfolding of events and actors are always determined from the outside, i.e., as under continuous influence by the environment. The postulate of personal responsibility is a purely normative one that starts with the original unit of consideration of the actor-action. This responsibility, however, only applies to the actor for his action. Which is why an analysis of the overall event into actor and action is always necessary. When we reverse the direction, based on this clarification of terms, it becomes self-evident from a social perspective: The primary material of our social perspective is the integral actor-action. It is only when we need to assign responsibility that it becomes essential to separate this unity into individual actors and individual actions. This primal unit of examination is also the reason for the continuing uncertainty about how one should deal with spontaneous violent groups and large collective, his-

torical events: The phenomenon of the pronounced unity of an overall event competes with the necessity of analyzing it into individual actors and actions in order to be able to assign any responsibility. If this is not possible, such as in complex, ethnically motivated outbreaks of violence, an urgent, uneasy feeling remains because no single individual can be accused of an obviously serious act of wrongdoing.

There are borderline cases where, because of a lack of maturity, emotional states of emergency, or mental deficiencies, for example, it is not quite clear whether one can speak of an actor's personal responsibility in an individual case, even in a successful analysis.[4] All these border cases and exceptions do not have an impact on the basic idea of the ideal/typical actor as unified and acting with personal responsibility because of his inner autonomy. Such a unit of action can be granted to both an individual as well as to a collective body, as I will show.

As I will also show, we can assert common responsibility of multiple actors even under very close conditions also when the participating group or collective are not uniform actors. With that we avoid one of the most difficult points of dispute in the entire history of sociology from the outset, namely, the ontological reality of groups. Furthermore, by understanding the actor as an accountable acting being, we still have not made a

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4   The attribution of events to actors without responsibility is also possible. We have to forego the regular responsibility of the actor for his action if special reasons are present for this, for example, the mental immaturity of children, mental disturbances or inescapable external forces (*vis absoluta* legally). Furthermore, action is a true subset of the superset of events of the type 'behavior'. Large portions of human behavior, e.g., all of the involuntary metabolic and movement impulses, but also significant areas of cognitive and emotional control (involuntary perception patterns, generally recognized as reflexes, emotional and motor reactions, etc.) are not actions in the normative sense of 'action' and thus those persons are not accountable for them from the outset. Incidentally, not only humans show behavior. Almost all other life forms (including plants in a restricted sense) and autonomous artifacts, in other words self-controlling machines, do as well. Schulz-Schaeffer [2007, S. 433ff.] even go as far as to recognize in the latter a limited form of a capacity to act.

statement about how a partial event separated out from an entire event can become the action of an actor. Such an analysis is necessary in order to be able to assign responsibility to an actor. In other words, an action can only then be present when we can separate a single event from the great flow of the world's events and declare it a unified actor-action, and in turn, show uno actu through analysis who or what the basic object of the assignment is for the action in question. This cognitive execution is so self-evident for us that we normally aren't even aware of doing it. And yet, it is only with its result that can we create the possibility of bringing actor and action together in a relation of accountability.

1.2 The simultaneous emergence of actor and action

In the following I will talk about collective responsibility, but first some concepts need to be made explicit so that my argumentation is understandable. The two most basic concepts for our analysis, as already mentioned, are those of actor and action. Sociological theory of action, independently of its schools and various perspectives, assumes that both of these elements come into being through a process of reciprocal attribution: Only an actor can bring forth an action and, in the reverse, an action first makes the one who brought it forth an actor. While this seems trivial at first, or like a circular definition, it's not. This idea can be found in almost all human cultures before theory even existed (see Fig. 1 on the next page), and it is the social sciences which have construed their view on this basis.

But who is the one who assigns portions of events to an actor and, with that, qualifies him to even be such? This question is not easy to answer because such an assignment turns out to be dependent on two different levels simultaneously. Obviously, it is other actors who undertake such an assignment. But that opens the question of how an actor can even come into being if it is always other actors who must decide in order for such an

Attributing portions of
individual action to

Flow of events

Actor

acts and therefore
extends the
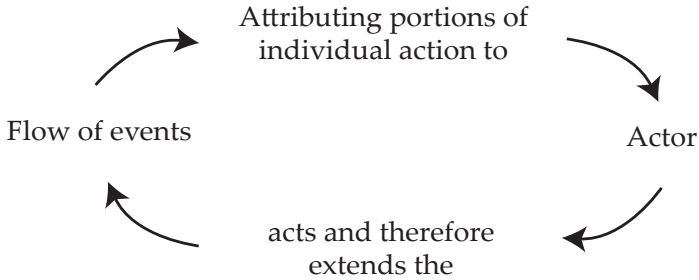
Fig. 1: *The reciprocal creation of actions and actors*

attribution to be made. In other words, some ontologically pri-
or, 'generative' social level must exist that first enables an actor
to appear while at the same time provoking him. This primal
level where all actors are generated at a given time uno actu
becomes self-formed through the milieu of collective living[5];
this type of milieu is in no way only a human collective. Nu-
merous studies especially of primate groups, as well as other
animal species, such as elephants and dolphins and large wild
cats, demonstrate a separation of individual groups or herd
members as causal carriers of certain functions, thus show-
ing that actions do not at all depend on human language or
other specifically human skills. Although the end effect is that
individual actors are constantly generating other actors (and
the human actor also perceives himself as an actor and judges
himself correspondingly so), these individual attributions are
always carried by a cultural and, ultimately, even biologically
conditioned sphere of the social. This is both the basis and the
continuation of the dynamic context of this interaction between
event and action.

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5   See Kondylis on this [1999], II. Section: Sociology and social ontology.
     Kondylis' sharp analysis demonstrates that the most well known repre-
     sentatives of the sociological schools of the 20th century all made the mis-
     take (except Durkheim) of either denying the priority of the social nature
     of humans before their individual constitution for ideological reasons or
     simply 'constructing it away' so as not to endanger the theoretical coher-
     ence of their models.

Thus, it is not just the individual actor and the individual action that emerge in the process of this attribution but rather the prior ones. This means that the original generative context is based on collective, culturally traditional patterns and species-specific abilities. This doesn't need to concern us any further. A corresponding model creates an ongoing context in the temporal flow of social events. It is first this flow of events that makes it possible to view some of what happens around us as a separate social event and not simply as a natural, huge, undifferentiated flow of events from everything else that is happening. The individuation of single events in that flow of 'cosmic events' is the first prerequisite for deriving concrete social consequences from such events.

If this idea was to be projected onto a temporal axis with the present as its center, a continuous spiral of reciprocal events and updating of actors and actions would result which would influence our perception of the ongoing human social life (see Fig. 2 below).
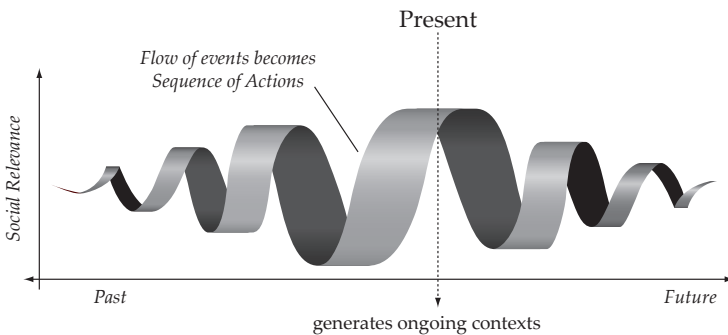

Fig. 2: *The transformation of the ongoing flow of events into a sequence of individual, causally linked actions.*

Well-known schools of sociology are distinguished here by the focus of their analysis, which results from their perspective on the social. The structural schools, for instance, (Talcott Parsons in USA, Ferdinand de Saussure and Claude Lévi-Strauss

in France, Niklas Luhmann in Germany being the most well known) are less interested in the individual psychology of how individual actions arise. It is more the phenomenological schools that are interested in this. What I will be showing is essentially based on the phenomenological model of action as developed most prominently by Alfred Schütz.[6] In this model – and in the sociological theory of action in a very general sense – personal responsibility is an essential property of human action. Even animals act in way that can be seen as intentional, i.e., pursuing a planned purpose.[7] In contrast to human behavior, however, the animal's action lacks an important feature. Animal behavior only becomes an action through the intent or purpose of the behavior.[8] Human behavior, however, adds to this feature an additional and very important one as well: namely, the determination of whether purposeful behavior corresponds to an abstract permission and/or 'ought'. This feature is what I refer to as the normative quality of action.

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6 See Schütz [1974]. The above illustration is a summarizing abbreviation of the phenomenological concept of action from the perspective of the issue under discussion here.

7 It was disputed for a long time but today is recognized by almost all sociological schools.

8 Not every adaptive behavior is also purposeful behavior. If this were the case, we would have to grant purposeful behavior more or less to all forms of life, even to single-cell organisms and plants. This prerequisite of purposeful behavior is still being discussed with great controversy. A well-founded position, especially in terms of collective actors, is that of Philip Pettit, see Mantzavinos [2009], p. 69ff. However, the difference between the German attributes 'purposeful' and 'intentional' needs to be considered here because it is frequently blurred or not even perceived in English. While the German word *Intentionalität* (translated here as intentionality) is a philosophical term referring to the relation of human perception and cognition to individually existing objects and events, *Zweckhaftigkeit* (translated here as purposefulness) means the directionality of the own behavior towards the goal of what is to be realized through an activity, in other words, a future condition. In German, the distinction between those two concepts has a tendency to get lost, as well, in the comparison of the definitions for *Intention* (intention) and *Zweck* (purpose). Intention is commonly used as a synonym for *Absicht* (aim) and regarding one's action only a minimal semantic difference exists between *Absicht* (aim) and *Zweck* (purpose).

Naturally, animals and machines are permitted and ought to do some things and not others. But it is never the animals or the machines who determine this permission or obligation but rather human sociability that transfers it to them. Animals and machines, in other words, are subject to human permission and obligation only heteronymously; they have just as little bearing on this normative determination; they are just as unilaterally subjected as the mandatory requirements of biology, chemistry and finally physics. The expression 'normative quality of action' for humans alone includes not only the unilateral subjectivity to rules which are foreign to the actor, but also much more to the reciprocal continuation of the permission and obligation in question. Humans are the only beings that participate in an essential way[9] in the creation and structure of the social norms to which they are subjected.

Furthermore, social norms are not rigid rules such as so-called natural laws which always apply regardless of the situation. They are dependent on their validity; in other words, on being recognized and continuously enforced. The validity of a norm cannot only be practically hindered by an actor, it can be disputed at any time. A fleeing criminal simply withdraws his enforcement of the norm. But he is not disputing the validity of the prohibition with that action. In contrast, the plaintiff in a possible norm control procedure in Germany is disputing the validity of the norm without being able to prevent its enforcement until the dispute is clarified. This difference will become very important in the further exposition of this analysis.

Disputing a valid norm by an individual actor who has not been formally authorized to do so – such as a constitutional judge or high religious authority – is practically impossible anywhere these days and also only conceivable in completely

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9   To the extent this is allowed by the collective. For example, while only people who have reached legal adulthood are allowed to participate in political elections, within their families they already have a limited and informal right to participate, in so far as it concerns the rules of conduct within the family.

despotically governed societies. However, as individual vot-
ers, the collective has the possibility of influencing the ongo-
ing writing and development of social norms, for example,
through marketing measures or as lobbyists. Thus, they are
all a part of a reciprocal process that generates and upholds
norms. It is the participation of the voters as actors that creates
the normative quality of actions in the sense intended here.
Neither animals nor machines are capable of this. And it is ex-
actly this that leads to the strong argument for not only the
legal but also the moral responsibility of at least all formally
constructed bodies.

Human action, in other words, is qualified moreover by be-
ing accessible to normative evaluation, unlike animal behavior.
While animals can absolutely learn intelligent and purposeful
behavior, one always speaks of human behavior under inclu-
sion of its normative quality. I also use the term action in this
sense here.[10]

1.3 The difference between a unit of event and a unit of action

Now, it's possible that a confusion between the phenomeno-
logical unit of an event and the conceptual unit of an action has
resulted from the above analysis. That should be prevented.
The essential reason for assuming a collective actor (whose ex-
istence I will actually dispute in what follows) can be found in
our perspective: Humans have an inclination to accept the con-
ceptual unity of an event, for example, a political demonstra-
tion, a parliamentary sitting, even a war, as a uniform action
by the participating actors through their ability to conceptually

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10   I would like to disregard the determination of certain machines capable of
     learning as addressees of assignment of action because it does not directly
     contribute to answering the questions posed here. See Schulz-Schaeffer
     [2007], p. 433ff. on this. The expression 'human action' does not include
     only the actions of single people but also those of collective actors in so
     far as they prerequisite individual human participation within the social
     sphere.

summarize an excerpt from a continuous flow of events. Unit of event and unit of action are two completely different things.

Unit of action is solely the result of a cognitive function coupling our direct perception with our linguistic ability. Unit of action can only result through normative justification, i.e., a mutually agreed act of assignment. That's why we must detach ourselves from the – perhaps pronounced but still wrong – intuition that the unit of event 'obviously' corresponds to a unit of action; this is the basis of the works of many authors on the topic of collective responsibility. This perspective is deceptive because it claims more than it can honor. We frequently experience this, without falling victim to that fallacy, when we, e.g., tentatively construe group dynamic actions within a working group or a group of friends as a unit of action even though it is clearly only a unit of event. This tentative redefinition sometimes makes it easier for us to handle such events methodically.

However, when such a cognitive tool for orientation becomes the basis of scientific redefinition with the claim of describing a fact, the fallacy line is crossed. I'm going to dispute the existence of a collective unit of actors in what follows. However, this does not forego the possibility of continuing to speak of uniform events, even if these consist of a majority of actions which cannot be combined into a unit of action.

1.4 The difference between legal and moral responsible action

Every type of responsible action first depends on the existence of a normatively existing obligation. Responsibility in the sense of a sanctioning behavior[11] is only possible if the required and

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11 Of course, the concept of responsibility includes not only the results of behavior that is contrary to norms. Being responsible means exactly that one is accountable for the consequences of one's behavior very abstractly, in other words, independently of whether one can fulfill the obligations these responsibilities are based on or not. The expression 'act responsibly' describes exactly this norm-fulfilling behavior. However, in every respect, this is about the retroactive consequences of behavior contrary to norms,

the actual behavior of an actor deviate from each other in the sense of non-fulfillment of an obligation. Every assignment of such responsibility therefore refers to the results of a previous comparison between the obligatory and the actual behavior. It usually emerges through a *lack* of fulfillment, not through an excess.[12] The moral accusation of poor fulfillment of behavioral expectations requires the generality of this expectation just like every other accusation of wrongdoing. This is why every moral accusation and the responsibility attached to it is also based on the existence of a norm and its violation. This also applies explicitly under the formal norms, such as laws. For example: If I ask the person at a neighboring table during dinner to pass me the carafe of water, and he or she just turns their nose up at me and doesn't do it (let's assume that I didn't give them a reason for doing so earlier), I can later say that this person behaved badly in the sense of a moral accusation. But I can only do this because I can assert with reason: "One just doesn't do that kind of thing." But what does 'that kind of thing' mean? And who is 'one'? Such ideas presuppose a norm in the sense discussed above to the extent a fairly undetermined class of actors is assumed to exist. For all elements of this class - whoever that may be in specific cases - it is valid that they should respond in a helpful way to such requests at the dinner table unless there are higher reasons against doing so. Only when I can invoke such a norm – in this case, the conventionally correct way to behave – do I have the possibility to make a moral accusation towards the specifically involved person as a subject of norms. This is applicable independently of questions like whether the current

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in other words, a considerably narrower area of that which we call responsibility with a certain linguistic brevity.

12 In the event of exceeding the norm, we normally do not speak of responsibility but rather express ourselves in various forms of agreement and reinforcement of such behavior, for instance, through praise, acknowledgment of respect, addition remuneration, awards, titles and such things. That reveals primarily the prominent emotional difference in the social reactions to the under-fulfillment vs. over-fulfillment of a norm.

norm actually exists, or the specific actor even falls into the specific addressee class, or whether the questionable action is the object of a norm, etc. If it turns out that the alleged norm doesn't even exist, the accusation becomes completely invalid because the other prerequisites of the accusation cannot be met anymore anyway. In other words, in this fundamental regard, the moral accusation is not different from the formal legal responsibility: Every responsibility has the prerequisite of a general norm because it is the only thing that can provide a basis for comparison between expected and actually realized behavior.

However, there is also an important difference between moral and formal legal responsibility: Morally reprehensible behavior justifies an emotional response of evaluation. Whoever behaves in a morally reprehensible way must expect the indignation, contempt, anger, disgust etc. that the accusation brings, rightfully so. A legal judge, in contrast, – as the one who enforces formal law – should refrain from such emotions as much as possible because they endanger the technically correct legal application of the formally valid rules. The president of the notorious National Socialist German People's Court, Roland Freisler, got his shocking reputation exactly because of this mixture: "With his bad tempered presence and court leadership that often humiliated the accused, Freisler is considered a personified example of the malicious misappropriation of court law in the service of the NS government."[13] Morality and law should, therefore, be unconditionally separated, as this repulsive example shows, not for reasons relating to norms but because of the necessity of withholding of all emotional values in the enforcement of legal norms.[14]

Fulfilling a norm and violating a norm, however, can be the subject of a formal legal accusation as well as of a moral ac-

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13   Wikipedia entry for "Roland Freisler" at https://en.wikipedia.org/wiki/Roland_Freisler (last modified on 16 August 2016). The same applies to the judges of the fake Stalin court cases.
14   This does not apply to legislative procedures, in other words, events where a legal norm must first be brought into existence.

cusation on both levels, even if not within one and the same action. If the victim of an offense brings the perpetrator before a court, the judge will soberly decide on the case. Those present during the case are to behave quietly so that the judge can soberly administer his office. However, before and after the process, the offended person can present his or her subjective feelings about the act at any time. Their outrage is basically covered by the moral violation of a norm.

2 The Continuum Between Individual and Corporate Actor

2.1 The relationship between a single human actor and a corporate actor

One of the most thorough current analytical examinations on the nature of the collective before assigning any kind of responsibility – something that can only be clarified based on the conditions of forming a uniform body as 'carrier', i.e. the supportive bearer, for the action – was done by James S. Coleman in his *Foundations of Social Theory*.[15] However, he uses the

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15 See Coleman [1994]. One could think that the nature of collective behavior should be a subject for any sociological theory. But, strangely, this is not the case. Neither the phenomenological school, which was founded by Alfred Schütz and then developed into so-called social constructivism by Peter L. Berger and Thomas Luckmann, nor the collective tradition (Émile Durkheim) or structuralist traditions (Talcott Parsons, the French structuralists or, in Germany, above all Niklas Luhmann) put collective behavior as a regular interaction between individuals at the core of their theories. The phenomenological school looks at social phenomena from the perspective of the individual while Structuralism doesn't even initially look at the individual but starts with the assumed agreement of social structures from which individuals are then just inferred. Coleman, in contrast, looks at the analysis of collective behavior from an economic point of view which means very utilitarian and game-theory based. For Coleman, humans are first and foremost *homines oeconomici*. This one-sidedness has often been criticized. However, it has the advantage of being able to deliver significantly better prognostic results for larger social units than the perspective centered on the individual.

term 'collective' for very ephemeral forms of coordinated action while I reserve it for more permanent social structures. A better – because it is a clearer designation of what Coleman calls 'collective'– would be a crowd (in German, a *Menschenmenge)*.[16] Crowds are capable of spontaneous, hugely uniform behavior. For example, situations where panic breaks out or aggressive mobs. Mass psychology, as a part of social psychology, has been interested in the inner laws of such events for at least a century now. Similar examples are primarily seen from the point of view of *laws of process* not the possibility of a unit of a collective actor. I am interested here in determining the features that qualify a human group to be considered a responsible collective before this collective can be treated as a formally construed, uniform actor, not about regularities in the process.

All the many arguments for and against assuming an independent collective actor make at least one thing clear: There is not only a formal relationship between an individual and a so called 'collective' actor, in so far as the latter is comprised of the former, but rather there is a *continuum of form* between them as well. This continuum can be illustrated most simply using a scale: The two extremes of the *unit* 'actor' are individuals at one end and corporately constituted associations at the other, which correspond to a unit of the individual and a unit of the many. Between the two there are innumerable forms of more or less coordinated actions by multiple individuals which are not concise, complete units of actor. The two extreme ends of the scale are typical ideals and only represent theoretical, possible forms of units of action.[17]

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16 French [1984] also uses the term in this sense. Coleman sometimes even speaks of so-called expressive crowds, but this is only as a type of the genus 'collective', see Coleman [1994], p. 220ff.

17 Corporate bodies are frequently composed of other corporate bodies, like nesting boxes, and often mix individual and corporate elements without a problem. For example, in all legal cultures known to me, corporate law allows the completely unproblematic possibility that within one and the same company (in other words, a corporately constitute commercial enterprise) various ownership shares can be held by both natural and legal

*Area of greatest
ambiguity*

I_P

Uncoordinated
and/or spontaneous
groups (crowds)

I_C

Individual
person

Weakly organized
groups

Corporately consti-
tuted associations

Strongly organized,
but formally unrec-
ognized associations

Uniform individual actor   *Uniform collective actor*
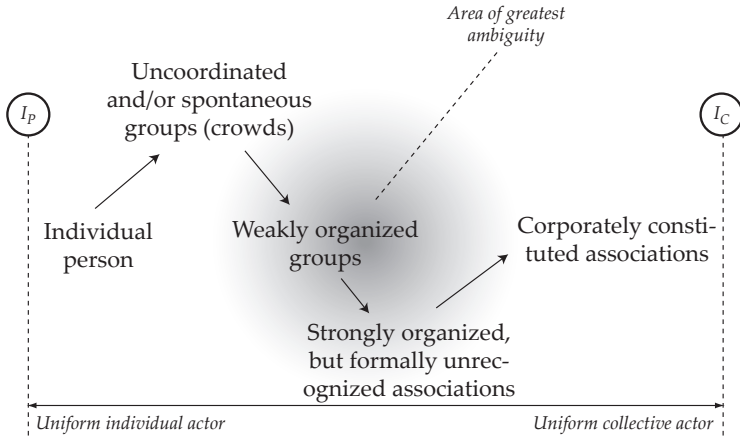
Fig. 3: *The continuum of form between the extremes I_p ('individual person')
and I_C ('collective individual') for the unit of actor*[18]

What we are interested in here is the difficult middle area be-
tween the two extremes of, at one end, a uniformly acting indi-
vidual actor and, at the other end, the so-called collective actor.
The more clearly it can be shown that an event is an action by a
corporately constituted association, the more plausible it is that
such a social formation is also independently responsible. The
more a collective is similar to a spontaneous, uncoordinated
group, however, the more we tend to 'pick out' only individual
participants as responsible.

This means that we grasp at the next, lower, conceptually
clearer, level of actor. Unfortunately, the ambiguous, in-between
area of social reality is very large because almost all of our actions
can also be understood as the result of collective influence in
some regard. Subsequently, the questionable event is classified
as an individually or collectively assigned action based on what-
ever interests are at stake and then that interpretation is public-
ly enforced. Usually the assignment of responsibility has to do

persons at the same time. But this does not disrupt our scale here.

18   The vertical arrangement of the intermediate forms simply serve as a com-
      pact representation and has no significance on its own.

with accusations of incorrect conduct, but sometimes the reverse is also true. For example, we usually like to treat artistic achievement as individual action without much reflection in order to better place our enthusiasm and admiration. However, we could make just as many counter-arguments against such definitude as we could against individually assigning guilt. Take, for example, the unlawfulness of some other action for which the offender tries to excuse himself before the authorities by asserting 'circumstances' (e.g., in the case of bad parking: some unavoidable, unaccountable urgent need to park right exactly in that place; in the case of a criminal offense: the biographical background or the current social circumstances, etc.). All of this could just as well be submitted as an argument against definitively attributing a work of art to its author. This example is intended simply to show that we are on highly interpretable terrain here and in no way should we expect to discover absolutely valid facts when it comes to assigning action.

2.1.1 The primary responsibility of the individual actor and the ontological status of the collective

With all the uncertainty that still needs to be clarified regarding the conditions that need to be met for asserting an act of collective responsibility, for reasons of social coherence it should be kept in mind that collective responsibility ultimately only makes sense if the concept extends all the way to the individual person. Because that is the only way that the individual has an incentive to follow the behavioral expectations of the collectively assigned responsibility. Corporate bodies are ultimately not floating, completely detached in some ontological nowhere land. They depend on their layer of organization, or what I call 'carrier' layer i.e., the social relationships among the individual people.[19] This even ap-

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19 I have extensively explained my position on the concept of the ontological constituting body elsewhere in my work *Prozessontologie*. There, I use the expression 'carrier' frequently in the conventional sense. For example, an

plies to the extreme of a formal, corporately constituted association, such as a registered business or a recognized international legal entity. Sometimes the objection is made, that if collective responsibility is understood at least partially as an irreducible phenomenon, as in methodological collectivism, there would be no one left to whom responsibility could be assigned. That would make individual assignment completely useless. But the opposite conclusion, that collective responsibility can be traced back to individual persons, leaves no reason to speak of collective responsibility. It would become a dependent epiphenomenon that contributed nothing to clarifying the current problem.[20] I dispute this conclusion. If it were applicable, then the phenomenon of responsibility, which is important and individually strongly felt as well as absolutely required socially, would be omitted or be swept from the table. And this frequently has historically far-reaching effects. Collective responsibility is a social fact, both in terms of assigning it to oneself as to another. As a fact, it must thus be explained, i.e., it cannot simply be denied.

However, there is something that is practically completely ignored in the literature. It is imperative that we distinguish between two different meanings of the term 'collective responsibility' in regards to the individual: namely collective responsibility

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object is the carrier of its properties. The process ontological model developed there, however, implies a layering of levels of existence. Each of these layers, e.g., the biological versus the chemical, which in term is in contrast to the physical, has its position in a linear structure of levels of existence or being, each of which overlaps the other. It is exactly in this sense that the existence level of individual, socially linked, humans is the carrier level of the abstract entities to which, for example, corporate bodies belong (see Sohst [2009], p. 744ff).

20 Lewis says: "And that is what is wrong with collective responsibility. Precisely because it will not reduce, it precludes you from getting at anybody […]."(Lewis [1948]., p. 185) Thus, his solution is: We have to assign responsibility at the individual level and, in fact, to the extent of how intensely the person under consideration was involved in the collective misconduct (because that is what it is about, and not the entitlement of collective commendation).

a) as the individual's responsibility for collective action and

b) the collective's responsibility for its own action.

These only have the appearance of leading to the same thing. From the very beginning, the two things differ in their perspective: Do I view the individual or the collective first and subsequently the other? The answer has ontological consequences. Whoever looks at collective action from the perspective of the individual contribution will be more likely to come to the conclusion that the expression 'collective action' is just a generic term for the action of individuals and that the collective cannot even have the property of being an actor. The reverse applies to all approaches in sociology that see the collective as primary, for instance under the keyword 'mass psychology'. Émile Durkheim became known for his defense of the ontological independence of the collective. His arguments are still not convincing today. Although Panajotis Kondylis, most recently and significantly more soberly than Durkheim, has shown that the existence of society before any individual analysis of action is the prerequisite for a consistent understanding of any sociality.[21] Even today's mass psychology sees itself more as a statistical method for predicting the behavior of large groups of people for that reason and makes no ontological claims regarding the object of its research. As far as I know, no single socio-philosophical theory of collective moral responsibility has yet been developed.

Even here, the position is that collectives are not yet uniform actors when seen on their own. This property is reserved only for individual persons, on the one hand, and for formally constituted corporate bodies on the other. From that it follows that the expression 'collective responsibility' refers only to the responsibility of the individual actor – whether this is an individual person or a corporate body – for the common results of the action of a collective and not that of the responsibility of this

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21   See de Waal [1999], p. 91ff.

collective in and of itself. I do *not* compile the collective into a socio-ontological object.

2.1.2 Additional arguments for putting collective responsibility onto the individual actor

Additional and strong arguments for putting possible collective responsibility onto individual members also result from the above perspective under a). Such a sociol-psychological argument is that of *social identity*: Part of the established knowledge base of sociology and not just individual schools is that the individual only develops his individuality through the interaction of his roles and his practical contribution within the interwoven norms and interests of the commonality. The unavoidable communication that arises from that interaction is the source of constant confirmation and development of our social identity.[22] We are thus existentially linked to many social groups and communities, collectives and associations of all kinds even if with different intensities. It follows from this that collective responsibility is recognized as a given to the extent that it always concerns individual members because they *identify* themselves. However, in the reverse, there is a strong argument for why it is very obvious to even speak of collective responsibility: If social identification is an essential part of our entire existence as humans, it can hardly be ignored that the individual in any form also has to stand up for that which it has joined, in whatever form. Social identification, from a normative point of view, is not a one-sided relationship.

A third argument in favor of the individual responsibility (always including here that of the corporate actor) concerns the larger explanatory power of such a reduction. The asymmetry between inseparable and constituted individual actors – in other words, at one extreme individual persons and at the

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22 George Herbert Mead and the school of Symbolic Interactionism should be thanked for this view, see Mead [1975].

other extreme the corporate body – should be mentioned in this regard. The actions of a corporate body can fundamentally be traced back to the contributions of some of its individual members (if they can be traced back to human effects at all and are not, for example, due to 'godly' or other alien influences) – because this is exactly the aim of its inner organization, as explained above. For the individual person, such traceability to some elementary unit of actor is not possible.[23] The end point of the scale (I_C) in the preceding illustration on p. 23 is an absolute in terms of social practice, and we don't go beyond it in public communication. The extreme point $I_{C'}$ in contrast, is not an absolute. We can always imagine a stronger compression and integration of individual people into a collective until we reach totalitarianism. Here there is no distinct end point. This asymmetry also fosters the methodological traceability of collective actions to the contributions of individuals: Whoever wants to understand an action as 'absolute', even if it is assigned to an actor constituted as a corporate body, must at least make an effort to discover the contributions of individual people even if, at the end of the determination, irreducible shares of collective responsibility remain. The idea that collective action is always, i.e. even in its non-unified modes, only a theoretical fiction does not follow in any way, as, for instance, Uwe Schimank has recently again asserted.[24]

The discussion that has continued over broad stretches of the past century between the adherents of methodological in-

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23 Only Sigmund Freud was able to break through this approach with his theory of the unconscious. This resulted in a great irritation all the way to everyday ideas of humans in western culture because it posited a more elementary unit of action than the external, overall individual actor with the relatively stable behavior patterns of the unconscious psychological functions and, exactly with that, also put the principle of responsibility seriously in question. This so-called psychoanalytic level will not, however, be considered any further here. I am much more interested in the axiomatic unified actor, whether in the form of an individual person or in the form of a constituted corporate body.

24 Schimank [2010], p. 327.

dividualism and those of collectivism has led to the insight - at least in broad circles - that both claims can only be understood by considering the other. In this case, it has to do with a classic case of non-complementary convictions and, consequently, with distinguishing concepts among the basic concepts they characterized.[25]

It then follows from this asymmetry that in the event of an irreducible excess of collective responsibility, those members of the collective for whom at least a corresponding contribution cannot be directly demonstrated will have to be responsible *beyond* the individual contributions. Here too, we are looking at a progressive scale. If the member of a collective responsible for some event did not provide *any kind* of contribution to the event for established reasons, in spite of his membership, one would hardly call him responsible. For example, if an originally harmless sports club turned into a criminal association, every original member who no longer did anything with the club and simply forgot to formally leave the association and thus was completely ignorant of its development, could hardly be expected to have the collective responsibility passed through to his person. The pure knowledge of the current members during the period of the criminal activities, however, is usually sufficient to bring such passively accepting members into the sphere of moral responsibility.

2.2 The levels within structural consolidation

While it seems to be factually undisputed that formally constituted and publicly recognized corporate bodies, whether under private law or under public or even international law, are unified and independent actors[26], this certainty fades to the

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25 Anthony Giddens is a pioneer in the field of uniting methodical collectivism or, respectively, structuralism, on the one hand, and methodological individualism, on the other; in this regard, see his main work *The Constitution of Society* (Giddens [1977]).

26 See the very thorough socio-ontological analysis by Colin Wight (Wight

extent that a formal corset of recognized 'corporateness' no longer clearly exists: Is some officially registered citizens initiative still a single actor, or is it considered an aggregate of individual human actors? Is a so-called non-registered club an individual actor?[27] How should this be understood for an informal religious community without a central spiritual authority or organization?[28]

In the above-mentioned continuum of form, we are only considering the middle, diffuse area between the conceptually distinct extremes of the individual, on one side, and the corporately constituted association on the other. In order to create analytical clarity regarding which type of human interaction we deem appropriate, and also to be able to project multiple individual as so called 'collective' responsibility, we should first make a few more or less broad divisions in the continuum of form in this

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[2006]) on the uncertainties behind this alleged certainty. See Erskine [2004] on the individual aspects of the institutional responsibility in the international field, especially of representatives of international subjects.

27 Unregistered associations are much more frequent and more influential than one would think with such an unassuming name. In particular, unions, political parties and religious communities are often corporately organized yet exist through membership but are independent of changes among individual members. They are neither registered as an association in an association register nor with corporate status (in the case of religious communities within the meaning of Art. 140 GG (*Grundgesetz*, the German constitution) in connection with Art. 137 para. 5 of the Constitution of the Weimar Republic. Such associations are not legal persons. In other words, they do not represent an independent legal subject separate from its members and they are generally not able to be the carrier of rights and obligations, as long as there is no special governmental recognition stipulating something else in individual cases. They are referred to in German law under civil law in § 54 BGB (German Civil Code) as 'associations without legal rights'.

28 There are currently countless cases of this, for example, the structurally manifested and very violent attacks by Buddhist extremists on the Islamic population groups of the Rohingyas in Myanmar and many other areas of tension, especially in Central Africa, China, Vietnam and many other countries. They all illustrate the question posed particularly sharply here – as well as in similar cases, see Horowitz [2001] on this in detail – to the extent that there are definitely inciting figureheads who are not granted formal authority and the organized violence, if it ever ends, shows transparent structures.

section. This gives us the possibility to assign features to these sections from which we can then derive criteria for responsibility. I suggest the following five-level scale:

Individual person

↓

Crowd:

Internal chaotic aggregates of natural and legal persons as carriers of action.

Example: All spontaneous, accidental collections of individual social actors[29], e.g. on free markets; informal political or cultural movements; encounters of corporate bodies in international spheres practically free of the law.

↓

Group:

Crowds which behave temporarily in a coordinated way in space and subject matter.

Example: Weddings and other celebrations, political demonstrations, processions, living communities, informal citizen initiatives, etc.

↓

Collective:

Permanent and integrally organized groups

In general, all socially permanently organized structures subject to corporate organization, i.e., either completely without corporate structure or by ignoring this structure, in so far as they exist. Collectives are thus not a unified acting actor.

↓

Corporate bodies

All unified acting actors with collective and formally recognized social interior structure for decision-making responsibility and distribution of tasks.
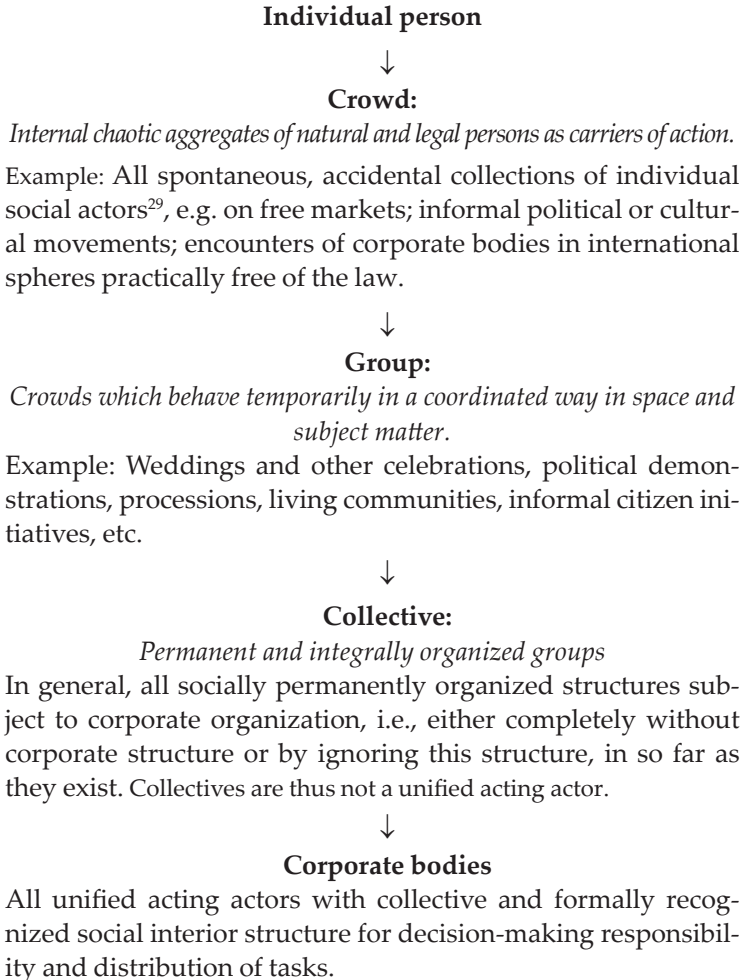
Fig. 4: *Categorical distribution of the social continuum of form*

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29   A social actor can clearly be a corporate body at this level, for example, a company as a participant in informal digital markets.

The spectrum of tangible social phenomenon above the level of spontaneous crowd extends from informal groups with secular or religious beliefs, practical life style communities or circles which are factually involved in any kind of event-context, all the way to recognized inner-government associations, business enterprises and organizations of all kinds, as well as, beyond that, to the international stage with every type of NGO and new internet agitation groups (e.g., AVAAZ or Campact) to larger groups of persons aiming for statehood (such as the Palestinian proto-state, the so-called 'Islamic state' in the area of today's Iraq and Syria as well as the South Sudan up until the time of its independence). The diversity of form, purpose and level at which all of these groups and their organizations can be classified seems almost endless.

The phenomenon of so-called flash mobs appearing around the world – a gathering of many participants spontaneously organized through digital communication platforms for the purpose of carrying out very short public actions or calls for spontaneous political demonstrations – are examples of how spontaneous groups can definitely demonstrate a certain level of prior planning. Furthermore, their members are usually linked to varying degrees by a common world view. All of these are qualification features that already strongly separate them from simply a *crowd*.

The above five-way division ultimately results from a complex criterion of many individual aspects that can still be clearly named: It is the *interior structure* of the form of community which is judged in regards to its temporal durability, its integration of individual participants, its organizational solidity and, with that, ultimately, it social whole in view of the distinctiveness and efficiency of its external effect. Such a division makes it possible to first justify assigning responsibility only subsequent to the interior degree of cohesion referred to as a collective here. I use the term 'collective' thus significantly more distinct than is usual in the literature. A collective is lim-

ited by its structural precursors as well as its successors, the formally constituted and in some way publicly recognized corporate body.

This results in something very important. It is first the collective that can be usefully considered as *norm addressee*. I will briefly address what a social norm is below. However, it is clear that such a social norm needs something more than to be determined by itself in order for it to be followed. There must also be an addressee who is capable of fulfilling it. The assignment of responsibility for an action is not possible without reference to an obligation. In other words, it is based on a comparison of the actual with the socially required behavior. If the result of such a comparison is to be convincing, it must refer to distinct relationships between the norm addressee and the norm being referred to. Such a disambiguation is, in my opinion, only possible starting from the structural level of the collective in the above figure.

2.3 A different schematic view: Community, Society, State

However, we can't leave things at the above structural developmental schematic of People → Crowds → Groups → Collective → Corporate bodies. The on-going discussion about collective action in sociology ever since its founding is too extensive to be able to call things done with such a simple schema. In particular, the schema does not fit into the usual conceptual trinity in sociology of community, society and state.

Every social science tradition that goes back to Max Weber explaining all collective phenomenon as epi-phenomena of dependent behavior aggregates made up of individual people denies any ability for cognition for any form of an acting plurality of persons.[30]

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30   The explanatory strategy of 'methodological individualism' is often traced back to the well-known explanations in Weber's *Economy and Society*: "9. *Handeln im Sinn sinnhaft verständlicher Orientierung des eigenen Verhaltens*

On the other hand, Max Weber himself referred acknowledgingly to Ferdinand Tönnies and his very popular work at the time, *Gemeinschaft und Gesellschaft (Communities and Society)*, which appeared in 1887 under great acclaim.[31] Tönnies sees the expression of human sociality primarily in the form of two so-called social *norm types* which he refers to as 'community' and 'society'. For him, the community is the older and structural predecessor type because the individual human relationships here are based on the most directly personal, i.e., familiar/family types of ties. In contrast, society is a more abstract social structure in so far as the relationships between the people are no longer based primarily on personal solidarity but rather on more or less on anonymous relationships of exchange. For this

gibt es für uns stets nur als Verhalten von einer oder mehreren e i n z e l n e n Personen." [Action in the sense of meaningfully understandable orientation of one's own behavior is always to be understood for us as only the behavior of one or more individuals.]; Weber [1980], p. 6; highlighting in original). Such a methodologically fundamental interpretation of this sentence is, in my opinion, not quite correct because Weber himself never systematically attempted to understand historical-collective phenomena as a dependent sum of separate actions by human individuals. This contradicted the view of sociology as an independent science of the social, which it vehemently supported. Otherwise, the following would apply: There would be no more hold for increasingly narrower reductions along the precipitous path of rigorous reductionism once the first step was taken. Social phenomena would first have to be traced back to the individual psychological level, which in turn would 'have to' go back to the neurobiological, and this, for its part, necessarily to the biochemical, and at the end, to the elementary physical, i.e., quantum mechanics and ultimately even to quantum field theory where finally every possibly useful explanation of the social would have been long forgotten. The reductive strategy of methodological individualism is not yet fundamentally wrong, however. One just needs to know the limits of its applicability. Weber, incidentally, never explicitly exceeded this, in my opinion. It only leads to a literal *reductio ad absurdum* when methodological individualism is used as a weapon to attack the emergent autonomy of the collective sphere. If I were to take such a challenge seriously, this text would be superfluous.

31 Weber [1980] refers to Tönnies right at the beginning on page 1, indicating the 'factual but above all beautiful work by F. Tönnies "Communities and Society". Further mention of it is on ibid. p. 17, for example, in the explanation of the term 'convention' and especially in the important explanation of the term 'socialization' (ibid. p. 22) in which Weber does not want to take on the specifics of Tönnies' terminology

exchange of services to function in large societies, a general organization is required and a corresponding body of applicable rules for its enforcement. Tönnies, however, does not step beyond the dualism of society to state but rather sketches an organismic theory of natural law.[32] State organization is obviously only a dependent epi-phenomenon of a developed society. It was Max Weber who was able to fundamentally transcend this relationship and very critically; his entire work can be read as exactly this antagonism in its diverse cultural forms from the viewpoint of the Enlightenment.

In this regards, a contemporary of Tönnies', Otto von Gierke, is interesting. Reinhold Zippelius, who's philosophy of law has been a standard work in the curricula of German law faculties for decades, also looks at the community as an element of the legal order in reference to Gierke in Chapter VII of his book.[33] While he cites von Gierke, according to whom the community is 'a whole which incorporates an actual entity'[34], in his summary of the term 'community', he ultimately follows an approach that 'is removed [...] from the facts of experience.'[35] In this sense, the so-called relationship sociology, for example, of Georg Simmel and the legal positivism of the influential Hans Kelsen, in particular, has turned away from such an approach. This might be because of the pathetic exaltation of that which is community based on von Gierke's concept of community when he writes:

> Are the human associations of actual entities which, by recognition of their 'personhood' through law, only receive what actually corresponds to their properties?
>
> I and many others respond to that with: Yes! And it appears to me that everyone needs to answer like this who has broken with the individualistic approach to society

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32 See Tönnies [1887], third book Proömien des Naturrechts (p. 195ff.)
33 Zippelius [2007] (p. 145ff)
34 Ibid.
35 Ibid. p. 9f.

and views human co-existence as a life of higher order into which the individual life is incorporated.[36]

Regardless of the actual legal and social benefits von Gierkes work brought – in that it significantly contributed to the cooperatives being acknowledged as legal personalities in Germany – such a heroism is suspicious nowadays and quite unsuitable to be convincing for the perspectives behind it. But the following is not about opposing individualism with collectivism, and I especially do not see it as von Gierke does in that any form of 'communal life' has a 'higher order'. Much more, the still young sociology was fighting for general recognition as an independent academic discipline at about the same time as Tönnies and von Gierke published their most influential works. Their demand has meanwhile been realized. It means, seen soberly, that social communities as an independent area of phenomena can no longer be completely reduced to individual behavior according to general understanding today.

Zippelius, in turn, concludes from this development that the community can be construed just as little from a purely normative stand as law.[37] In other words: It is primarily a social fact phenomenon that is dependent on 'the loyalty, care, respect, tact, style' that abounds in it and therefore cannot be tangible in a purely legal-normative way.[38] It is insofar a form of pre-legal phenomena. Even if Zippelius' approach is understandable in principle, no one disputes that this pre-legal property of communities – I'm speaking here rather more neutrally about collectives in order to escape the somewhat tempting way of expression that Tönnies has – is the germ layer of all juridification of social relationships and, with that, an indispensable prerequisite.

But there are also collectively assigned events that cannot be so easily be pushed into legal informality, as Zippelius pos-

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36   Gierke [1902], p. 11
37   Zippelius [2007], p. 146
38   Ibid., p. 147

tulates here – completely in harmony with the positive law of most jurisdictions in today's world. Consider the international War Reparations Centre as an example here.

War restitution has been common since antique times, for example, in the victory of Rome over Carthage (146 BC). In the 19th century, it was imposed on the defeated opponents of war, especially by the colonial powers in Asia. Restitution became historically prominent for the first time through the Treaty of Frankfurt when France had to pay the Prussians indemnity after the Prussian victory in 1871. And then, after WWI, there was a decisive change. Suddenly world peace was in the interest of the entire human race and not just individual states. The so-called Fourteen Points speech by the American President Woodrow Wilson in Mount Vernon on July 4, 1918 was about the rights of individual citizens to peace and not, as it had been up until then, about states and subjects.[39] That was absolutely

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39 Wilson's speech can be summarized as follows:
"The following are the goals for the allied people of the world which must be fought for and granted before peace can reign:
I. The destruction of any arbitrary power anywhere that can disturb the world's peace for its own purposes, secretly and according to its own choice, or, if it cannot be destroyed, at least reduced to factual powerlessness.
II. The regulation of all issues, whether they are about state territory, sovereignty, economic agreements or political relations, on the basis of free acceptance of this regulation on the part of the directly concerned people and not that another regulation could be wished for on the basis of material interests or benefits for any other nation or any other people for its external influence or its dominance.
III. The consent of all the nations to allow their behavior to be guided by the same principles of honor and respect for the common law of a civilized society which applies to the individual citizens of all modern States in their relations with one another, so that all the promises and agreements are diligently observed, that no special attacks and conspiracies can be plotted, that no selfish damage can be inflicted with impunity and that mutual trust is created on the basis of mutual respect for the law.
IV. The establishment of a peace organization that should guarantee that the total power of free nations is protected from any legal infringement and will serve to make peace and justice even more secure, that it will create a defined tribunal of opinions to which all must adhere and through which any international readjustment for which the parties directly involved cannot come to friendly agreement about, should be sanctioned.

new. How does a state decision now correlate with the *volontée générale* of the concerned citizens, especially when it is about war and peace? This is the central question when we speak of collective responsibility at a national, i.e., political level.

Even the Treaty of Frankfurt after the victory of the Prussians over France provided an occasion for decades of outrage by the French, and, as is well-known, the peace treaty of Versailles after the 1918 war paved the way for Hitler to come to power. In both cases, 'the people' rebelled even though those in power had settled everything for them. Obviously there was a collective carrier of opinion that needed to be taken seriously, no matter how difficult it was to understand, that one has called 'the people' since the French Revolution. This form of political collectivity has increasingly been understood as something sovereign since the Enlightenment and thus as the actual germ of social order from which the state only receives its power as a loan and thus cannot claim on the basis of its own right. But who is actually 'the people' apart from purely formal conceptual definitions if not a somewhat vague expression of community or even social collectivity? It can only be viewed as a unitary actor through its condition of being a state. 'The people', or the society as the entity constituting a government, do not act in any uniform way on their own, i.e. beyond the government organization.

2.4 Direct vs. organized sociality

The state, enterprises and similar forms of social organization – as Weber expresses it: associations and establishments[40] – may

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These great goals can be summed up in one sentence. What we are looking for is the rule of law founded on the consent of the governed and supported by the organized view of humanity." (The original text can be viewed online at: https://wwi.lib.byu.edu/index.php/President_Wilson's_Fourteen_Points)

40 In Weber [1972], p. 28, it says in the preliminary definitions:
"§ 15. Enterprise should be a continuous instrumental activity of a spec-

take on many forms (Weber calls them "bureaucratic"). They are more or less independent, organized detachments of the people who support the association or enterprise. There have long been other forms of more streamlined collective organizations before organized statehood, as we know today: early kingdoms and chiefdoms that clearly held their subjects to a certain social order in similar forms as today's state. Human sociality invents normative patterns of order as soon as the symbolic means of communication and the practical technology are available. Often it is first just an expression of specifically influential people within a community from whom it emerges and is carried. This can be seen particularly clearly among religious founders who imprint their own individual, originally private intuitions onto their founding community. In the course of the development, this pattern of order takes on a life of its own and becomes objectified as an organization with its own laws if it has a social constituency. This organization then appears increasingly opposite the individual members of a society in the sense of a social *antithesis*, i.e. a certain 'general will' and power that takes on a life of its own *contrary to* society's particular interests. Thus, social organization can play both *in favor of* the individual as *against* him, above all seen in very drastic extremes such as imprisonment or the death penalty.

We will be considering this internal differentiation of an association and its collective carrier in more detail further below. It is not at all limited to just the political level. Every corporately constituted economic enterprise and any corporate association also have these features in one way or the other.

If we consider Tönnies' and von Gierkes' basic ideas again without all of the idealization to reach an understanding of the concept of 'collective', then it would be recommendable to not take Tönnies' division of normal types as some kind of fixed

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ified kind, a formal organization is socialization with continuous instrumentally acting administrative staff." (From The Max Weber Dictionary: Key Words and Central Concepts, Second Edition) (italics author's)

condition of sociality but as signs of a much broader and fluid scale of possible sociality. I called this the continuum of form above. Such a scale is then rather a fluid measurement of increasing social differentiation, i.e., *development*, and not a succession of fixed types. The idea of such a developmental scale is in general the prevailing understanding in anthropology and ethnology[41], however, it is only undisputed as long as 'development' is not confused with 'improvement', i.e., progress.

The state in turn has a special status in such a value-neutral development continuum because it is not just any development of society but rather, – particularly in the form of the statehood taking shape in Europe since the Middle Ages[42] – also something that continues to take on more of a life of its own in relation to its[43] society. This independence of the state towards 'its' society[44] can ensure the inner satisfaction of otherwise chaotic

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41 Two of the outstanding contributions to this very extensive research topic are Bellah [2011] for a more anthropological history of ideas approach and Boix [2015] for a strictly material approach to the development of human society. Francis Fukuyama is among the more prominent representatives of this approach, see especially Fukuyama [2011]. Of course, this approach has its opposition as well, in particular, the French Structuralism of the 1040's through to the 1960's. However, it only has a few remaining followers today, mostly among the so-called non-interventionists in the field of international relations.

42 Fukuyama [2011] presents a comparable and highly qualified newer overview here. On the antagonism between the state and society, which also occurs in this process, see Böckenförde [1972], S. 396ff.

43 The expression 'its' here must be understood as relational not possessively. The relationship of ownership is a qualified relationship of dominion, namely, as described in the unsurpassed, clear formulation of the German Civil Code § 854 as the "factual power" over a thing – which in law then is generalized to 'factual material ownership'. Note that ownership itself does not have to be legal in anyway, and that is not just in German law. Even a thief owns the things he stole.

44 Such an expression needs to be used with care in another way as well. Many states, as an organization, have power over many ethnic groups that in no way need to form a unified society. The expression 'a state and its society' here has nothing to do with a relationship of ownership but rather also doesn't say anything about whether a state is even in a position to create or maintain the unity of the society/societies for which it is formally responsible. Its relationship is often precarious historically.

individual interests, as a benefit, but, as a negative, can also lead to the suppression of the society through state bureaucracy and rampant individual interests. This basic idea is not just the tenor of long stretches of Max Weber's *Economy and Society*; Ernst-Wolfgang Böckenförde, too, clearly referred to this in 1972.[45] Societies without organized structures of dominion are not uncommon in anthropology[46], however, states without society are impossible. This indisputable fact alone makes it clear what has the greater weight both from an anthropological and political point of view.

The concept of 'collective' represented here, when positively formulated, approaches Hegel's understanding as presented by Robert B. Brandom in *Wiedererinnerter Idealismus* (Recollected Idealism).[47] In regards to Hegel's relationship of 'selves' (literally: individual people) and their community (here: collective), it states that community is the synthetic result of mutual recognition by the individuals constituting it. This recognition, however, is explicitly a normative one, i.e., a recognition that goes beyond the biological existence of others because the latter doesn't require any particular recognition. For Hegel, the mutual 'recognition' of individuals (according to Brandom, completely in harmony with the preceding development of political theory in Europe) means much more the creation of a normative order between them which is no longer easily available to the individuals and thus is granted a certain indepen-

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45 See Böckenförde [1972], p. 411ff. There Böckenförde expressly refers to the constitutionally anchored dependence of all state decision-making power in Germany – or, better said: power of dominion – on 'the people' under Art. 20 para. 2 sentence 1 of the German constitution, i.e., on the primate of social will before the state, which consequently must be sharply distinguished from each other.

46 To read about the mostly very violent life conditions of egalitarian hunger and gatherer societies see Boix [2015], p. 22ff. (Chapter 1). For details about the research on African societies without chiefs or similar leadership figures, so-called acephalous societies, see Middleton's *Tribes without Rulers* (Middleton [1958]).

47 Brandom [2015], p. 282ff. There, however, he doesn't speak of 'collective' but rather 'community'.

dence from the outset. In a positive sense, thus, a collective is distinguished by the recognition of the normative order granted by its members who, to a certain degree, ultimately can even stand in opposite to it as a true bureaucracy. The fact of mutual, norm-based acknowledgment means that the individuals collectively subject themselves to such norms; however, they do not become a uniform actor because of that fact alone. For this they first become as organized association, e.g., rather than state or enterprise.

With that we now return in a completely different way to Tönnies' duality, in the form of a general, two-part structural framework in practically all larger social groupings. On the one side, there is the generally spatially connected and temporally continuous living communities. Parallel to and in addition to these living communities, however, hierarchically modeled structures of command develop which have normative legitimation and more or less independent (rule based) executive power. The difference between these two social forms is the difference between sociality that is directly practical and that which is symbolically organized.

No matter what their specific distinctiveness might be, both structural areas form a unity in the difference, e.g., as external unit of society and state, or of staff and the shareholders in a company. The distance between the different poles stretches from a barely perceptible minimal organization all the way to totalitarianism over the individuals. An example of the latter is the way the Athenians saw their Spartan neighbors at the time.[48] The difference in the unity of a collective and its own

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[48] Both the fascism of Nazi Germany as well as the many types of communist regimes in the world gaze longingly at such extreme forms of social totalitarian organization. As far as I can judge from my own life experience, however, there has never been an individual who approved of having his own individuality overpowered. And it has also not prevented leaders motivated in such a way from repeatedly making mass demonstrations, marches and even war seem as if it is 'their' people or 'their' society that wants to be overpowered.

organizational apparatus is a very general developmental feature. This applies for states and large economic enterprises just as much as for some ideologically based communities. The Catholic Church stands out among the religious communities to the extent that it was the only one that developed a central bureaucracy spanning the world.

Both extremes, from the completely unorganized to the totally organized communities, however, are only theoretical and somewhat asymptotic end values. In reality they don't exist: A collective *without any* symbolic organization is no longer a human-social collective but rather a purely biologically determined herd or swarm formation, and a collective where the individual is only a completely obligated party within a seamless hierarchy of commands and duties is also not a collective in the proper sense of the word. This is based on the fact that a group of people who are completely instrumentalized in such a way can no longer be the beneficiaries of this submission. However, if there are no beneficiaries from such a development, such a structure will hardly last. It is a historic fact that, for instance, a fully instrumentalized collective can drop down to a collection of slaves under its conqueror as a result of a violent defeat. It then also loses its status as a self-organized collective.

As already has been said, social organization needs to always be distinguished from the collective that supports it. It has a material side; for example, in today's states, it is the authorities and offices that stand – at least, ideally – in a hierarchical relation to each other and whose head is the government of the specific corporate body. Such a hierarchy does not apply to the relationship between a state and its society. And social organization also has an intangible, i.e. quite abstract side in the form of a generally applicable base of norms which is usually created through certain procedures in modern large societies that have superordinate applicability, e.g., constitutionally.[49]

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49 This applies indirectly for countries that have no constitution as well, such as Great Britain and Israel. In Israel, there are founding documents which

This norm base has to be manifested almost mandatorily everywhere in the world in written, i.e. objective, publicly accessible form.[50] The individual norms comprised therein unfold their validity through the way it which they came into being as well as their public quality. This validity, in turn, justifies the integral relationship between the social primary collective – because it generates norms – and its organizational apparatus.[51]

2.5 Conflicts of application in assigning collective responsibility

The content of a norm must be distinguished from the reasons for its establishment. Thus a norm is, in itself, value-free. However, people will undoubtedly submit to social norms rather if they correspond to their values. Moreover, the normative judgment of moral responsibility can refer to a future as well as to a past action. It can be thus both a priory or posteriori.[52] In the question here of collective responsibility, it is first concerning the retrospective judgment, i.e., the retroactive assignment of responsibility for events that occurred before. If someone assigns the responsibility for damage to someone, that is unavoidably linked to a condemnation. This negativity in the form of an evaluation that rejects a behavior is problematic in itself. It can only disappear when the function of moral responsibility to control future behavior is emphasized which then gives it a means to separate it from guilt which is exclusively oriented to the past and a great emotional burden. By under-

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are quasi-constitutional while in Great Britain, it is the institutionalized, stable traditions and offices which watch over it and play this role.

50   The astounding stele with the Codex Hamurabi (circa 1800 BC) shows how old this form is to establish social norms.

51   The relationship of abstract norms and their factual validity is the object of the second major work by Jürgen Habermas, Faktizität und Geltung. See especially Chapter VIII: On the role of civil society and political public (Habermas [1998], p. 399ff.).

52   Daniela Kroslak and Toni Erskine refer to this distinction in the context of collective responsibility, see Erskine [2004] p. 8 (Erskine) and p. 162 (Kroslak).

standing a 'forward-looking' understanding of moral responsibility, the opportunity arises to eliminate the otherwise endless demands for retribution which unavoidably follow an accusation of guilt. It means more than just the obligation to avoid future damaging behavior through continuous change of the condition that brought forth the past misconduct. It allows a sober acknowledgment of the misconduct of its predecessors for later generations without having to be answerable for a new imputation of blame. This is very important.

But first the nexus between actual misconduct and the resulting damage is decisive for the question of whether – in our case – a collective moral responsibility has emerged. As a matter of principle, subsequent enforcement of sanctions against the party identified as responsible give rise to the question of fairness and justice. This touches on the socio-psychological level: the most sensitive area of peaceful coexistence, codified in expressions such as 'honor', 'pride', and' self-concept'. In other words, it concerns the social identity of the individual in his collective. In reverse, accusations against more or less informal collectives frequently have a shadow of discriminatory, ethnically or ideologically based terror which can go as far as aggressive barbarism, seeking to vent on victims that are exactly the ones who accuse them of inadequacies. There are many historic examples that confirm this suspicion. Turning away from informal collectives as carriers of responsibility should therefore first be understood as a great achievement of civilization for this reason.

Every affirmation of collective responsibility must therefore be undertaken with the greatest precautions possible against threatening abuse. Of course, those cases where a collective is assigned responsibility by third parties are problematic; and vice versa for the members of the collective who reject the assignment. This case should be the rule. When responsibility is retrospectively applied as an accusation, whatever its form, it usually is based on one-sided assignment, *not* mutuality. And it is the one-sidedness that then makes justification necessary.

The justification should be plausible enough that the consequences of the responsibility to the recipients of the assignment may be expected, maybe even against their explicit will. The clarification of the concept of collective responsibility, in other words, presupposes that the intended collective sees itself as such. However, such assignment against the will of a recipient can and should have future social influence on their behavior pattern. When similar cases arise, the possible recipient of the assignment himself should anticipate being assigned such responsibility as an acknowledgment of history and consequently not enter into conflict again.

In large conflicts, such as revolutions or war-type events, a new consensus arises in the event of retroactive acknowledgment of self-responsibility by the collective concerned: the behavior in question becomes defined as socially intolerable or as justified. With that, the original conflict is downgraded to a question of reparation by mutual agreement. This can lead to further discussions about the extent of the reparations in specific cases. But, once the reasons for the consensus are established, the problem disappears from the horizon of the problematic under consideration here.

3 Individual and Collective Actions

The question of whether a majority of actors can be said to act uniformly and thus also carry uniform responsibility is initially not a practical one but a socio-ontological one: What conditions justify assuming the unity of an action when it clearly has to do with the contributions of many more elemental actors, - i.e., individual people - and thus many individual actions?

Individual and collective actions are not mutually exclusive. There might be collective actions which can be completely attributed to the actions of individuals, or partially attributed, or there may be those which cannot be reduced at all. The first type is always the case when there is a clearly defined group

of participants that agree to a common, planned and coordinated action after having come to agreement individually without acting in the name of a corporate body. Such cases are usually restricted to very small groups, in which the members know themselves personally. The other type, which can't be reduced to individual contributions, tends to occur in extended contexts with heterogeneous participant relationships that are unclear and not centrally coordinated, preferably at events with many participants which are difficult to delineate causally from the total overall situation, especially in socially historical contexts. The discussion between methodical individualists and collectivists regarding the existence of independently acting collectives started at the inception of modern sociology and still continues to this day. It is similar to the more general discussion regarding the meaning and substantiality of the concept of emergence.[53] However, we won't discuss this further.

Of course, all sociological schools have some theory of collective action; it is one of the central objects of inquiry for sociology in general. Usually the action of a corporate body is subsumed under this concept, which is something I explicitly exclude, and with good reason. Even though the uniform moral responsibility of a formally constituted corporate body is controversial, it is increasingly accepted because the growing influence of large international corporations factually demands it. The number of articles regarding the responsibility of informal collectives is significantly lower.[54]

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53 The question of social emergence has also been discussed in detail. Jens Greve and Andrea Schnabel (Greve/Schnabel [2011]), offer a current overview and Andersen/Emmeche/Finnemann/Christiansen [2000] provide a broad look at the central question of downward causation.

54 Some thorough analyses include reference to this possibility, see French [1984], Erskine [2004] and Neuhäuser [2011], but only assert an uncontroversial collective responsibility when the corporate body is formally constituted. A very few articles already see collective responsibility in the informal collective (specifically, for example, the Germans during the Nazi period) such as Van den Beld, [2002] who even affirms an inter-generational responsibility. I agree with him, as it will be shown later.

This is due to the attitude of western (i.e. initially European) culture towards the relationship between individual and social community. Originating in the European cultural region, it has changed greatly over the centuries and has meanwhile expanded to cover large parts of the American and the entire Australian continent and includes New Zealand. Even the concept of collective responsibility makes quite a few sociologists in this cultural provenance pull their hair; the closest they could get would be to recognize a formally constituted corporate body. The rise of the individual as an elemental carrier of responsibility over the last thousand years of European cultural history has been the result of a moral separation between the individual and his direct family and kinship group. The emancipation of the individual from the context of his blood relations is one of the most important factors in the specifically European cultural development. The beginning of this was already evident in the ancient world, especially through the monumental intellectual personage of Socrates. However, it wasn't until the end of the Middle Ages that it found broad acceptance in the dawn of an empirical, objectifying new period.[55] In the beginning, this only meant that morally informal rights and obligations, as well as legally formalized ones, could be essentially applied to and against human individuals. The conceptual expansion of a uniformly acting actor from individual humans to free cities or states, as in the Middle Ages, and on to corporate bodies such as businesses is relatively new. It is a European invention, the origin of which only became urgent due to medieval commerce within Europe, especially with the advent of colonies outside of Europe. However, it remained mostly disputed, even in the industrial world, until the 20th century.[56] Now, uniform actors, whether as individual persons or

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55 Concerning the genesis of the so-called corporate actors, see Coleman [1994], p. 531ff which includes numerous other references to the literature.

56 A very flexible description of the problems with recognizing corporate responsibility in the USA in the late 20th century can be found in Coleman [1994] p. 554ff. Before establishing an abstract corporate responsibility that cannot be traced to individual persons – regardless of independent

corporate bodies, are given priority over assigning more informal forms of social community throughout the world, mostly for practicality. It is simply easier to assign responsibility when it is clear to whom exactly this assignment refers. With informal collectives, it is often difficult and that leads to eternal dispute. Nevertheless, there is still a strong inclination to reduce the entire area more informally, i.e., not explicitly through statutorily stipulated responsibility, for instance, and proximal to the human individual as the bearer.[57]

3.1 A better form of social reductionism

The tendency to reduce collective events to the interaction of individual human contributions is methodologically parallel to physical reductionism in science. Such reductionism, as useful as it is for certain types of questions, is linked to a loss of information because the aggregation of the interaction of individual participants is abandoned leaving only the components of the totality in view. This prevents us from certain statements that can be revealed only from the level of the aggregate. Statements

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political relationships between regional corporate bodies which are already significantly older – the conduct of one person was always considered for or against his entire family or even clan. The direct reverse of this relationship between blood relations and moral responsibility is that of blood relations and trust; see Coleman [1994], S. 185ff. on this.

57   For instance, H. D. Lewis [1948] says at the very beginning: "If I were asked to put forward an ethical principle which I considered to be especially certain, it would be that no one can be responsible, in the properly ethical sense, for the conduct of another. Responsibility belongs essentially to the individual." Jan Narveson similarly says: "The basic bearer of responsibility is individuals, because that is all there is - nothing else can literally be the bearer of full responsibility." (Narveson [2002], Abstract) Lewis recognizes situations in which collective responsibility is assigned and the consequences enforced; however, these are only more or less random in form and not clearly chosen examples which are based on some conceptual analysis. That way he also comes to the conclusion that, on the other side of practical political necessity, the concept of collective responsibility is based on philosophical uncertainty or just plain misunderstanding (ibid. p. 17).

such as, 'club X is playing club Y', 'the annual income of company X is...', 'country X submitted a request to the UN Security Council', etc., would be abbreviations for a gigantic sum of other, supposedly lone, actual issues at the end.

The dispute between social reductionists and collectivists is based on the unquestioned assumption that the reduction in question is exclusively plausible as a reduction of all actions to the action of a single *person*. But what is behind this thought? Obviously, all participants in this discussion only consider the individual person as an indisputable unit of that which we are properly treating as one actor. As I determined at the beginning, in order to even be able to speak of *one* action and *one* actor, it is necessary to have the mutually conditional unit of actor and action. From that it follows that the argumentative core of social reductionism isn't the individual person but the *unit of actor*. If a robot were to meet this requirement[58], the events of a robot colony could also be reduced to the individual actions of the robots present. If a behavioral scientist observes a primate horde, she presents us with a description of the events of the horde based on the individual contributions of the individual horde members. Why should it then be implausible, for instance, to describe political events as action contributions of individual states or certain major economic events as the action contributions of the financial corporate bodies involved?

Some social reductionists, who recognize only the human individual as actor, object to such a reduction by saying that such an analysis has only a *practical* value but is incomplete in and of itself. This objection of incompleteness, however, only applies if solely the action contributions of individual people as actors are allowed. But there is no reason for such a restriction. Not only can robots or animals be considered as individual actors.

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58 List and Pettit for some strange, dubious reason, presuppose this in their derivation of the actor concept, see List/Pettit [2011], p. 19ff. Schulz-Schaeffer treats the question of the mechanical actor in a significantly more differentiated way, see Schulz-Schaeffer [2007], p. 433ff.

All entities which can be treated as individual actors can as well for the same reason as for human individuals. This includes all corporately constituted actors, simply because they were constitute formally as independent and uniform actors and continue to exist as such after their founding. The continued existence is the outcome of any founding act from the beginning of the fusion of egg and sperm cell to the biologically and socially fully developed animal or human life form. Only robot actors are an exception here because the origin of emergence can't be defined so distinctly as with corporate bodies or life forms. This doesn't need to concern us further. What's more important is that social reductionism loses all of its potential to be disputed as soon as we agree that social events, in fact, may only first be understood as such when they are traced back to the individual contributions of individual actors – without, however, identifying the concept of individual actor with that of the individual person. This is the position taken here.

From this it follows that it's logically incorrect to speak of 'collective actors' as a concept. There is no such thing as collective actors; the expression 'collective actor' is a *contradictio in adiecto*.[59] There are only individual actors. Such individual actors, however, can take many forms, such as people, animals, corporate bodies, even robots.[60] Their separateness as *an* actor must be further justified. In the case of corporate bodies, the justification is similar to that for humans and animals: There is one event of creation. If this argument is not allowed, the objection of human

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59 Colin Wight deserves recognition in this context as one of very few who studied ontological questions of political corporate bodies using logical thoroughness. But he also got lost in indecisiveness at the end and was not able to prevail with a unified criterion for acknowledging a uniform actor of a corporate body. He did not see and thus could not decide on a specific event as the one that unequivocally gave rise to the unity of the actor. His indecisiveness is facilitated by the direct communicative embedding of each one of us in the great social contexts that complicates upholding such limits in a practical way.

60 See Schulz- Schaeffer [2007], p. 433ff. on the conditions of the actor quality of machines.

individuals as actors must also be consequentially raised. Which is exactly what Sigmund Freud did: His psychoanalytical theory removed the possibility of construing people as a unit of actor for everyone who followed his assertion of an unconscious mind in each human. According to Feud, the individual is actually a psychosocial and rather unstable collective of the id, ego and superego. A social reductionist who only allows individual people as actors should be careful when discussing with a psychoanalyst. At the end of the discussion, he would no longer be able to maintain his assertion of humans as units of actor.

Luckily, however, Freud's view of humans doesn't apply to the version of social reductionism developed here. Certainly, for some individual actors, whether person, animal, corporate body or robot, there are *internal* events which can be identified as controlling the external unit. These are not only the psychological contributions from the id, ego and superego in individual people but the contributions of bodily organs to the action as well – for corporate bodies, it would be the actions of its employees, board members, shareholders, etc. By considering the internal processes, the unity of action in relation to the external environment is not lost. The unity of the actor is ontologically speaking the boundary between the external events and its interior events. In other words, it is not only the plausibility of this boundary that makes the unity of the actor. As I have shown, such a boundary is plausible in many cases and not only in the individual person. It can be asserted for corporate bodies with the same rights as human individuals.

3.2 Corporate bodies as a bundle of agency relationships

A popular form of disregarding this boundary when considering corporate bodies is to view their acts as the result of bundled agency relationships. This follows a historical line of argumentation beginning with Thomas Hobbes, continuing with John Locke and even taken on by Jean Jacques Rousseau. Such a case may clearly occur in small, non-corporately organized

groups. These groups then act in a collectively homogeneous way through a majority decision. As Pettit shows, however, this idea suffers a fundamental logical error: When the agents in a decision-making chain act, it is always possible, and actually frequently happens, that a situation results at the end of the chain which none of the agents wanted. The so-called agency relationships then cease to exist in an action theory sense.[61] This objection is correct and important, however, it does not affect the core of the conceptual difficulties in determining collective actors.

The whole idea of group action as a bundle of agency relationships suffers from two other and much more basic errors:

a) Modern mass agency relationships are usually not at all based on the idea of direct wish fulfillment by the representatives. Usually people are chosen as representatives through political elections or at annual shareholder meetings of large companies and only very indirectly and vaguely as powers of attorney for individual shareholders or electorate bodies. How should such a representative even fulfill an individual voter wish when he necessarily has been authorized by more than one voter and thus is probably confronted with inconsistent mandates? Agents frequently need to be elected by thousands or even millions of voters in order to become a representatives of the corporate body in question. How should he directly represent one voter's wish without acting contrary to another, theoretically equal wish at the same time?

b) In fact, agency relationships often don't even concern the individuals represented but rather represent the corporate body of which they are a part. There is a categorical difference between some actors *each personally* agreeing to authorize a third party to be their agent and a third party being chosen to represent the corporate body through a *majority vote*. Just the 1:1 relationship of the personal authorization compared to the election of a corporate agent by majority

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61   See Pettit's article "The Reality of Group Agents" in Mantzavinos [2009], p. 67ff., and also List/Pettit [2011], p. 43ff. with the same results.

decision reveals how big the difference is between these two variants. The last variant is the rule today in both political as well as financial practices. It results in the elected representatives not representing the individual voters or shareholders at all but rather the corporate body to which they all belong in different roles. In these cases, the direct agency relationship of which the eliminativists speak doesn't even exist. Thus, we need to clearly distinguish between those cases of agency relationships where individual people are represented by other individual people and those where the agents of a corporate body are legitimized as the representatives of the corporate body through a vote by other participants in the same corporate body. These are two entirely different matters. If this difference is overlooked, one succumbs to an error such as, for example, happened to David Runciman.[62]

Philip Pettit attempted to resolve the relationship between the individual and the collective based on an example of an assembly of political representatives who were facing the risk of creating inconsistent decisions by proposing a succession of test votes (he called them "straw votes").[63]

This could have worked out well except it is then no longer an analysis of existing social relationships but rather an ad hoc proposal for a solution to very specific practical problems. But with this, Pettit fumbles his own topic, namely the determination of *factual* group action.

Christian List and Philip Pettit present a new version of the justification for genuine group action in their most recent and quite well known book. It is neither eliminativist nor does it prerequi-

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62 See his article "The Problem of Representing the State" in Erskine [2004], p. 41 ff. Pettit's article has a unique position in that he basically presents no arguments that permit the tangible multiplicity of jointly acting persons to one uniform collective actor but rather describes a very special case of where a group or collective actor is constructed that fulfills this condition in his opinion. I personally don't see what that has to do with the general "Reality of Group Agents", as announced in his title.

63 Pettit in Mantzavino [2009]., p. 76ff.

site a metaphysically questionable group spirit.[64] Unfortunately, their train of thought and argumentation is so inconsistent that almost nothing practical remains of the author's high expectations. It already starts when they assert the physical integrity of an actor as a necessary condition[65], even though this is no longer the case for all collectives and particularly all corporate bodies. The decisive error in their overall approach, however, is to confuse the assignment of group status as seen by outsiders with that of the group as seen by insiders. This confusion becomes the basis of their claim that groups 'exist'.[66] Such circular or, at best, normative, justification for the existence of collective actors does not contribute to the central issues of this topic.

What I am pursuing here is ultimately a consequence of the fruitless attempts of many other authors to present the action of a majority of individual actors as a uniform collective action. It

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64 See List/Pettit [2011], p. 7ff. Even the title of the book predicts confusion: *group agency* and *corporate agents* are spoken of in one breath even though these are two very different things. This lack of distinction goes through the entire book. I will return to this point below.

65 Ibid., p. 21. At this point another and even more serious flaw appears in the entire approach: List and Pettit create a concept based on unusual examples instead of conceptual analysis. For instance, they attempt to explain the central concept of actor based on a primitive robot without saying even one word about how such a peripheral example is suitable for such an important concept as that of actor. But even this 'logical' deduction of the concept of actor is completely forgotten in the next chapter on the nature of the collective actor. There, it is suddenly the well-known joint intention – in other words, the common intention to action – in the literature that should produce the unit of the collective (ibid. p. 35). Such an assumption, which they see as unproblematical, however, can hardly serve as a basis for a 'third way' which List and Pettit are aiming for in contrast to eliminativism and group spirit.

66 At the end of a long section titled "The Structure of Group Agents" they say simply: "We may even have grounds for giving credence to some of the [hitherto rejected, WS] emergentists' claim, though – and this is crucial – reinterpreting them in our terms. […] The arguments for our claim about the autonomy of group agency are epistemological, bearing on the difficulty of deriving a group agent's attitudes from the attitudes of its members." With this, there is not much left of their derivation of the existence of collective actors in the end other than an admission that collective actors are precisely those that are seen as such by their social environment.

is another approach to the assertion of collective moral responsibility which explicitly does *not* build on the assertion of the existence of collective actors. As I have already shown above, there is *no* unit of actor on the continuum between the two extremes of individual human and corporate actor but rather a large transitional area between the two.

3.3 The horizon of view for collective social phenomena

A third and very important point in dealing with collective responsibility is the horizon from which one views it. Unfortunately, this is only implicit with almost all authors on the topic, in other words, they depict it as the simple sum of their examples to demonstrate or reject collective responsibility. The essays by Larry May and Peter French on the one hand and Colin Wight on the other can be instructive here. May's and French's horizon of view stretches from the completely informal, spontaneous groups (mobs and crowds) to the formally constituted bodies, especially financial enterprises. With that, however, they exclude the presumably most important areas of phenomena - or at least the broadest - from the very beginning: namely all major conflicts based on ethnic backgrounds. By far the most important events of the century which come under the issue of collective responsibility all belong in this group. Such phenomena, whose emergence and expiration are described with great analytical perspicuity and broad empirical horizon by Donald Horowitz[67], must absolutely be included in any examination of the question of collective responsibility. Disregarding them substantially devalues the corresponding contribution. Certain aspects of collective responsibility only become evident in relatively small groups, or, in other words, their significance only becomes apparent in large groups or collectives. This concerns, in particular, the almost always intermediate influence of the individual on the event's result which has existed as a system-

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67   See Horowitz [2001].

atic problem of the relationship between individual and group from the beginning. In small groups, it is much easier to underplay this problem and make it thus appear more insignificant than it actually is. Another similar aspect which is easily overlooked is the persistence of intense group identity over long periods of time so that individual participation in the events gradually fades into the background and, instead, this identity becomes a candidate for assigning responsibility.[68]

The actual problem with the content of the narrowed horizon, however, is that a superficially justified assignment of collective responsibility can easily be misused as a justification for extreme group discrimination and this is overlooked.

Such misuse can only be prevented at the theoretical level when the horizon of observation is made as broad as possible so that such risks suddenly appear as if from thin air and then also can be properly treated. That's why this approach explicitly considers the critical relationship of political institutions, above all of the state, to its collective bearer in depth.

Even including major political events like that of the French Revolution (which plays a central role in the argumentation of Larry May[69], for instance) is not a guarantee that the horizon will have the necessary breadth. As long as the risk of assigning collective responsibility in the form of unjustified discrimination is not treated, any such analysis is essentially incomplete. We should never forget that the rise of the individual, particularly in European culture, is an enormously valuable and hardwon development of civilization, the fruits of which should in no way be put on the line simply because one wants to tie collective responsibility to marauding hoards and persistent-

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68 Speakers of political revolutions base their arguments on these group identities. The French revolution of 1789 is a preeminent example, where at the end, any noble person or member of the clergy within reach were hung. Even revolutionary-minded Communism kept trying to name any exploiting capitalist group in order to assign responsibility for social ills.

69 See May [1989]; a plate of the storming of the Bastille on July 8, 1789 even decorates the cover of his book.

ly asocial commercial enterprises. The practical risk of such an individualism is certainly that the individual will always try to escape his responsibilities by pointing to his neighbors. Avoiding this may be understandable, but it harbors the danger of great injustice and further conflicts.

Colin Wight's contribution[70], in the reverse direction, is initially much more correct in terms of methodology. Wight admits to only being concerned with the ontology of international relationships from the outset. But, ultimately he does not come to a decision that clearly determines whether we are really dealing with a uniform actor or not when it concerns major political actors. That leaves him sitting between two main sociological perspectives, that of the structuralist universal context on the one hand and methodological individualism on the other. In other words, his horizon of view is not too narrow but rather unlimited. For a plausible answer to the question of whether there are collective actors or not, it is just as questionable as the narrow horizon of authors such as May and French.

4 The Corporate Entity as a Moral Subject

Thus far it should be clear that the question of *collective* moral responsibility under consideration here only deals with the area *between* the two extremes of acts by individual persons, at one end, and those by corporate entities at the other. It does not deal with acts by individual people or corporate entities themselves because both of these are individual actors. Even the interactive action of individual people or corporate bodies can be seen as collective action in the sense that it is a sum of elemental actions which, when taken together do not result in an independent unit of actor or action. There is no collective actor, only an actor collective.

Which does not resolve the question of collective responsibility for an actor majority. Independently of whether such a majority of actors can only produce a majority of actions, it is possible that this actor majority can also be assigned moral col-

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70   See Wight [2006]

lective responsibility even without the ontological status of a uniform actor. However, it would only be in the form of the individual's responsibility for his own action and the action of all other members of the collective.[71] This would require that the two extremes on the form continuum between a human individual and a corporate body can unambiguously bear moral responsibility. Because if this wasn't the case, moral responsibility would gradually be lost in the transition from human individual to corporate body. The fact that this doesn't happen is at the core of this work.

It follows that of all the intermediary forms under consideration, only the last area, just before a uniformly acting corporate body – i.e., only the area of the organized collective – is under consideration for assigning collective responsibility. This has one condition, however, which is why corporate bodies and not individual people are the unambiguous addressees of moral responsibility. The collective itself has no socio-ontological object status on its own. Which is why, as I will show, it can only be morally addressed through the corporate organization which exists parallel to it.

4.1 Are corporate actors also morally responsible?

No one can doubt that corporate entities, in other words, financial enterprises, registered associations and entire states can *act*, because that is exactly the purpose of recognizing their independence as a legal person. They are, as I already determined above, uniformly acting individual actors exactly the same as individual people.

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71   This figure of thought also underlies joint ownership in continental European civil law, even though it only governs members' pecuniary interests. It is also directly applied to communities of heirs, conjugal community property and copyright collecting societies in addition to the so called Company of civil law, which in Germany is codified in the German Civil Code §§ 705ff.

Now it becomes possible to question the moral status of a corporate body by reflecting on what distinguishes a natural person from a legal person. Then we will be able to make a statement about whether this distinction also impacts moral responsibility. There have been recurring reflections on this over past decades, especially by American philosophers, recently reviewed by Christian Neuhäuser and weighed against each other.[72] As part of this discussion, difficult metaphysical prerequisites, such as intentionality of the first through third levels[73] and human dignity, were applied. These are things that are not easy to state about corporate bodies, if they can be applied at all. However, I don't see a reason to look at such thinking further because, for me, it really seems quite misplaced when considering a social reality and these types of argumentation have been left behind long ago. Whoever attempts to understand the personhood status of a corporate body (and, at the end even the personhood of an individual human), as Daniel Dennet does[74], in metaphysical terms, seems to be overlooking the fact that these relationships have long been reclassified as socially *normative*. Of course, normatively based facts don't emerge from social nothingness. They themselves are the result of, usually, long historical developments and conflicts. Nevertheless, people arrive at normative definitions based on actual living conditions which are constantly changing and also progressing, which are in turn relevant in a socio-ontological sense: Valid norms generate social reality, both as a structural type and as normatively grounded individual events and objects. A parliamentary democracy can only be understood as a structural element; however, it requires corresponding objects and events such as voters, parties, parliamentary sessions and elections. All of this is normatively justified within the environment of our current life as far as possible.

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72 See Neuhäuser [2011], p. 98ff. 73

73 Ibid., p. 99

74 See Dennett [1976].

Which is why, in the following, I align with the deontological, pragmatic argumentation of, for example, Ingo Schulz-Schaeffer[75], which is primarily based on the actor status and other qualifying conditions, not, in contrast, on the personhood status. With this, it is possible to make a distinction between moral responsibility and formal-legal responsibility that is significantly closer to real life, as I will show.

The status of corporate bodies as legal persons, and thus as direct legal subjects under private and civil law as well as international law, exists indisputably and independently of the actual assets of its shareholders, employees, association members, citizens, etc., which is exactly the essence of its independence as an actor. In extreme cases, it's not even necessary that individual actor members belong to this corporate body, whether these members, shareholders, etc. are people or other corporate entities. A foundation is an example of this. Once a foundation is started, it is no longer dependent on its donors or other actors that support it but rather is represented by its foundation board. The individual board members do not even need to be human actors but can also be corporate bodies themselves.[76] Furthermore, it is not necessary in any legal system known to me that natural persons - i.e,. individual humans - need to appear as founding members for the founding of a legal person. Legal and natural persons, as such, are handled completely the same everywhere. Not even a share exchange or various forms of multiple share holding is excluded: All jurisdictions known to me allow, for example, companies A and B to reciprocally hold each other shares (share exchange) or partners A, B ... *n* to

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75 See Schulz-Schaeffer [2007].

76 Seen this way, a foundation is the most abstract legal form of a legal person. In German law, it is an independent amount of assets that becomes a legal person through the act of creating a foundation followed by its recognition as such by government officials. Then it is no longer subject to any outside intention. However, see § 85 BGB of the German *Bürgerliches Gesetzbuch* (The German Civil Code) under reservation of § 87 BGB, which provides for a change in the foundation purpose if the original purpose is no longer achievable or the foundation endangers the common good.

mutually hold 100% of all of their shares multiply under certain conditions. In all of these cases, any type of 'more fundamental' i.e., individual human participation, disappears. This also fully demonstrates the independence of a legal person in theory of action.

The members or shareholders are not an essential part of its corporate body. This is easy to illustrate: If I say that I am a member of a sports club, then I mean something different as when I say that I am a human. I can dispense with my membership in a club but not my 'humanness' without also losing my entire status as an actor and ultimately as a person at the same time. Speaking in terms of substance ontology, my membership in a club is simply a coincidental property of myself as an actor. My being human, however, is essential.[77] The same thing applies to all corporate bodies. A corporate entity keeps its status as a legal person and, with that, as an actor even though it can only act intermediately through its agents such as officers, executive boards and governments. In the case of an act against a third party, even one of its own employees, but not against the entirety, such as the shareholders, such executives or officers are the representatives of the corporate body.

4.2 Corporate bodies as norm subjects

For all of these reasons, what affects the corporate body does not usually affect its members, shareholders, etc. For example, they are not liable for its debts but rather lose claim to reimbursement of their investment because the money has already been claimed in bankruptcy.[78] This principle is not broken even

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77   In somewhat more modern, but not necessarily simpler conceptual terms, one can separate all attributes of a concept, e.g., the concept 'person', into those that must be present so that a tangible case of something falls under a certain conceptual genus, and on the other, such that are irrelevant for this purpose. The first are called categorematic attributes. My being a human is a categorematic attribute, my membership in a club not.

78   In fact, recognizing the complete independence of a legal person is the

by piercing of the corporate veil in order to target individual members of a corporate body in the case of wrongdoing.[79] Such a claim, however, usually requires a corresponding primary claim against the corporate entity, even though it is independent of the former, i.e., only occurs in addition to the first.

All of this, however, still could not eliminate all doubt regarding corporate bodies as recipients of attributions, i.e., subjects of *moral* responsibility, in socio-philosophical circles. After what has just been said, there can only be doubts about handling corporate bodies as morally not responsible, in so far as a reason can be given, even though they are treated the same as individual human actors in practically all affairs, and increasingly even in such specific things as constitutional law or human rights.[80]

Here one could take recourse to biological, physiological and ultimately metaphysical criteria – such as the ability to

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result of a long historical development. A clear distinction only started evolving with the rise of the great British and Dutch colonial trading companies and the correspondingly necessary capital group structures in 17th and 18th century Europe because, up until that point, i.e., since the Middle Ages, only free city states and other regional corporate bodies could mandate as autonomous political actors independently of their membership. Even the legitimate reign of royal houses was not at all independent of its dependence on specific members of the royal families.

79 This is simply about the legal specifics of the criminal and civil liability of the executives or officers of a corporate body. Regarding the key term executive, or officer, liability: There is a broad range of international literature; in Germany, this can be found primarily in the important commentary on incorporated and limited liability corporate law. Basically, the conceivable, imputed liability to individual agents of a corporate body, if at all, exists only in addition to the claim against the corporation itself, even it if is independent of the existence of the latter.

80 The legal dogmatic question of whether corporate bodies are legal is very current and far from being decided in the EU and USA. The German constitution already states in Art. 19 para. 3: "The basic rights shall also apply to domestic artificial persons to the extent that the nature of such rights permits." ("*Die Grundrechte gelten auch für inländische juristische Personen, soweit sie ihrem Wesen nach auf diese anwendbar sind.*") What's decisive under the existing case law of the Federal Constitutional Court, in addition to the basic compatibility required between the respective constitutional right and the entity of a legal person, is a sufficient degree of organization of a group of people, i.e. their ability for creating a uniform will. This also applies to partially legally liable partnerships (general partnerships, lim-

perceive – that the average person has but the corporate entity does not. But it is exactly this class of justifications – i.e., based on the particularities of a biological entity of a human – that don't hold because then the corporate body as a unit of actor would have to be disputed, which is normatively and factually impossible. There would no longer be any reason to distinguish between the moral responsibility of a corporate body and that of a human individual in regards to the entity of actor. The moral responsibility of corporate bodies could then be disputed in terms of an external entity, e.g., with the argument that humans can only assign moral responsibility to other humans but not to corporate bodies. Such an argument is no longer based on the entity of the recipient of the assignment but on the social practice of who gets assigned responsibility and who doesn't. I do not see the slightest empirical basis for such an assertion, however. Wherever we look, whether it is war crimes, responsibility for environmental damage or ongoing corruption in a large financial enterprise, the corporate body is treated as the subject of moral responsibility. The portion of the internal agents of a corporate body is only investigated in a second step. Just the fact that the decision-making agents very frequently are hiding behind the organization of their company, with success and without redressing the moral accusation, shows that the moral accusation is primarily against the corporate body in question, not against the authorized agent. Even structural or other arguments which are not backed up by the entity of the corporate actor are not suited to contest the moral responsibility of corporate bodies.

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ited commercial partnership) as well as to the company constituted under civil law and private foundations. Whether this condition is also met by citizen initiatives is still disputed. The protection of constitutional rights, on the other hand, may not be linked to properties, organization forms or relationships which can only be realized by natural persons, see, for example, the rulings of the German Federal Constitutional Court in BVerfGE 95, 220 [242], 42, 212 [219], 21, 362 [369] and 31, 314 [322] with further verification.

If we turn these arguments around, however, there are compelling reasons to assign full moral responsibility to corporate entities. Everywhere in the world, corporate entities are seen as independent actors not only as normative addressees but also potentially as co-creators of all of the norms in their sphere of action. This is a crucial point. It means that they are subjected to the legal norms as well as have causal affect in their creation, continuation and change. That makes them not only norm addressees but also norm *subjects*. The addressees of norms and the subjects of norms are ontologically distinct: The addressees of norms are elements of abstract classes of actors, for example, 'taxable entities', 'truck drivers', 'consumers', etc. The norm subjects are, in contrast, the specific action-theory individuals – people or corporate entities – that are usually involved in a norm as both passive *and active* addressees. The norm subject creates norms and subjects individuals and their entire existence to norms while the addressee of norms is only a passive recipient because it is an abstract element of a class relationship. To be the addressee of a norm doesn't say anything directly about who set the norm. To be the subject of norms means being a part of that sphere or level of social existence that *produces* norms.

The subjects of norms are, for this reason, *eo ipso* also moral instances of judgment. This necessarily has to logically apply equally to human and corporate actors. Today's social reality corresponds to this: We complain about large financial enterprises that flagrantly act in illegal and even criminal ways simply because the corresponding norms have been violated without evident justification. One such an assessment is clearly beyond just the unemotional, sober determination of unlawful behavior. And with that, it *is* already an assignment of moral responsibility.

There never were any doubts about this in regards to individual natural persons in full possession of their mental powers. I hope that I have shown in the above explanation that this

also applies to corporate bodies because, as actors, they are norm *subjects* and cannot object to their accountability based on biological limitations.[81] Such an objection in terms of animals, would be wrong anyway: I can complain about a pet when it behaves against my expectations. But the animal will only re-act to such recriminations or training practices in the sense of being submissive to authority and hopefully learn to obey this authority in future anticipation. Which is why animals are only norm addressees and never norm subjects. They simply don't understand what a norm is and thus cannot argue its validity. They can only refuse to obey. In this sense, they are not fully qualified actors even if they are capable of acting intentionally. We can make them norm *addressees* when we are angry with them or want to try to teach them something. But that is a long ways from making them norm *subjects*. Corporate entities, in contrast, are both indirectly norm addressees as well as norm subjects and thus emotional subjects of evaluation: Compared to an accusation against an animal, a moral accusation against a corporate body is justified because the corporate entity resides structurally 'above' the individual human actors. The corpo-rate entity 'inherits' ontological status as a formal evaluating subject of norms and morality from individual persons who precede them socio-ontologically.

Moral accusations against corporate bodies are so specific and socially-relevant that it would be contrary to our everyday lives if they weren't allowed and, instead, were reduced to an accusation against its agents, employees or other involved per-sons.[82] Such a reduction would contradict not only the distinct

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81 Of course, a corporate entity could argue its temporary capacity to act and thus also its capacity for moral responsibility through an inability to act organizationally. This objection, however, is only plausible under special conditions, for instance, after a government collapse during a war or a civil war.

82 For instance, Daniela Kroslak attempts this in Erskine [2004], p. 159. It concerns the possibility of the French government bearing moral respon-sibility for the genocide in Rwanda in 1994. Kroslak's approach that the French government is only the executive body of the French state which

wording and purpose of the laws in question, in many cases, but would frequently lead to no sentencing at all because every other sanctioned responsibility would get lost in the inside nexus of the organization and, in fact, be continually re-lost in many cases, e.g., the latest criminal doings of major international banks. It doesn't have the slightest impact on the factual moral accusation being made against the entity.

However, it applies in reverse: If, as a result of the moral responsibility of a corporate body, it is possible to make a moral imputation to their acting agents, it follows that the behavior of a corporate entity resulting from the behavior of its agents would not only result in responsibility for the entity itself under certain conditions but also, in a form of imputation, to all those people that somehow participated in the corporate entity's action. This doesn't only apply to the executive board and supervisory board in the case of financial companies, but also to other persons who are organically linked to the corporate entity through some kind of formalized interests, in other words, specially paid employees, shareholders or employee organizations as well as subsidiaries, in so far as the parent company had a decisive influence on their behavior. They are all directly organic parts of the corporate body, at least if they participate actively in the organization of the corporation, however small. That means that they are not only functionally linked with it, such as an auditor under contract or a commissioned law firm, but also a direct part of that which constitutes the process-logical entity itself and thus the essence of the corporate body.[83]

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is in turn the organizational expression of the French people, is implausible from the beginning. It seems to me that, among all the responsibility relationships that could be considered in such a case, those of a democratically elected government which was not guilty of any abuse of power in the event in question, was that which had the least prospect of a positive answer to their own moral responsibility. David Runciman (ibid., p. 41ff.) seems to suffer a similar confusion to me in so far as he attempts to clarify the fundamental responsibility of the agents of a corporate entity. I will return to his argumentation in more detail below.

83   The idea of the corporate body as a living organism analog to animals

It is exactly the possibility of imputation that allows it to be systematically expanded to moral responsibility on the part of the participants in the collective action. This is the topic of the following segment.

5 Possible Criteria for the Moral Qualification of Acting Collectively

Now that we have positioned the term 'collective' as a continuum between two single actors – human individuals at one end and formally constituted corporate bodies at the other – we can better investigate the question of what could generally qualify participation in collective acts. Because responsibility for an action is always assigned to the actively acting party, I will only investigate those properties which could come into question for an actively acting actor majority. A whole range of possible criteria come to mind, the most important of which I'll discuss now.

   An important note should be made: The criteria investigated below are normally looked at under the specific aspect of whether they are sufficient to qualify an actor majority as a uniform collective actor. Not so here. As I've already said, according to the argument set out here, there is no such thing as a collective actor; the term is contradictory. But that doesn't mean that the question of the conditions under which one actor has to stand up for the actions of others (which is frequently confused with the question of the assumed emergence of a collective actor) needs to be forgotten. Some of the criteria frequently cited will be investigated from this perspective only.

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or plants emerged in the 19th century, subsequent to the already older historical development of ideas. It is found in Germany, e.g., in Schelling's early philosophy of nature, as well as in France with a movement that created the expression 'organicisme' (organism). See the very profound articles in the "Historischen Wörterbuch der Philosophie" under the German term "*Organ*", "*Organismus*" and "*Organizismus*" (Ritter/Gründer/ Gabriel et al. [1971ff.]).

5.1 Membership in a group

Obviously membership in a temporally stable social formation can be viewed as one such criterion. A natural idea, mentioned in the literature everywhere, is that a person becomes responsible for the actions of a collective by being responsible for membership in this collective. In joining a collective, this person must have known that the collective would be capable of any acts which later actually took place.

Jan Narveson investigated this criterion more thoroughly. First, he distinguishes the type of such membership:[84]

1. Completely voluntary membership – in terms of joining as well as the option of leaving at any time.
2. Involuntary membership – e.g., by being born into a group (family, nation, etc.) but with the option of leaving at any time (e.g., formally impossible to leave a family).
3. The reverse of the previous option: Voluntary membership – from which point on, membership is forced without the option of leaving.
4. Involuntary membership – both in terms of joining as well as leaving.

In addition, it should be mentioned here that all four of these variations cannot be implemented alone by the respective member. A change of group status, whether joining or leaving, always needs some kind of confirmation by the organization of the corporate entity. It is only through such a mutual recognition of joining or leaving a collective that one can speak of an objective, social fact. What's interesting here is that the objectivity of such a fact is not dependent on any other condition besides the affirmation on both sides, in other words, from the (future or former) member and the collective itself. Other external circumstances have no qualifying effect. This applies equally when the concerned group is not normatively recognized by its social environment, e.g., in

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84   Narveson [2002], p. 181.

the case of a legal ban on the group. A group is always a group in terms of social fact, even a normatively unrecognized group.

Such group membership seems like a quick and handy criterion for assigning collective responsibility at first glance. However, upon closer look, it can only be applied with great restrictions and uncertainties, as Narveson himself admits. People have very different ideas about their group membership, especially when someone is born into a group. Not only does he not have the option to leave it, but his membership can even become an accusation. For instance, citizenship is a basic form of this type of membership. And while it theoretically can be waived in many countries, it is quite difficult. Waiving citizenship all together, i.e., a voluntary change to having no citizenship, is extremely rare because of the lack of protection that goes with it. The theoretically possible waiver of citizenship is therefore rarely seen as a form of freedom from membership.

Apart from this, even in the area of collective action examined here, i.e. that of non-corporate collectives, the criterion of membership is sufficient only to a very limited degree. For them, even the term 'member' is questionable. Perhaps 'participant' would be a better term. Thus, the more distant a collective is from the form of a corporate entity, the less Narveson's criteria would fit. But let's consider the area of such collectives where the term 'membership' seems appropriate in spite of not being constituted as a corporate entity. This would apply for instance to informal cultural associations, youth gangs and informal political associations.

The criterion of voluntary membership and/or possible exit from such a group is only of interest for the existentially least significant memberships, i.e., joining a permanent bridge group, an informal amateur orchestra or similar entity. All situations of fundamental import, including collective responsibility for such huge events as a military attacks, genocide or similarly serious macro-social crimes, cannot be decided with this criterion. Narveson subsequently follows the argument by

Lewis[85] and discards the membership criteria. Instead, he postulates that a human individual carries responsibility for his actions only when it can be assigned to him and to the extent that the specific participation in a collective event can be verified.[86]

Difficulties from the perspective of membership result thus not only in regards to determining the membership of individuals in such a collective but also in regards to the important question of the temporal duration of the collective itself; in other words, its existence over time. While legal persons under public or private law emerge and disappear through formal founding and dissolution acts almost everywhere in the world[87], this is not the case for informal collectives. Their

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85   See note 19 above.
86   See Narveson [2002], p. 196 above. He even makes his judgment on a belief in collective responsibility more radical in the subsequent section "Two kinds of politics" where he calls it a myth that is inevitably evil when taken seriously (ibid.).   And the historical vista, that leads almost inevitably to assigning collective action, doesn't change that: "Depending heavily on collective historical actions will accordingly be almost certain to lead to nothing but further dissension." (ibid., p. 198). That might frequently well be the case. But then one would have to forego essential effects of correcting collective behavior if Narveson were to be strictly followed. One of the successful examples in recent times for such corrective behavior is German society after Hitler. Would reminding Germany of its collective responsibility over decades have succeeded even beyond the perpetuating generation? I am firmly convinced that it wouldn't have. This is a very strong argument against Narveson's, I think.
87   The formal act of dissolution does not necessarily have to be legal annulment but can factually take place after formal recognition. This is particularly the case under international law when a country is created or is destroyed through war or other events. The downfall of Prussia is an example from the recent past. The Federal Republic of Germany did not take on the identity of its predecessor even though it was the successor under international law. It entered into the rights and obligations of its predecessor as a new and different international legal entity through universal succession (borrowed from inheritance law). – There are multiple examples which illustrate how uncertain the relationship between factual statehood and formal recognition by the world community is, such as the GDR, which no longer exists, and more recent examples such as East Timor, Southern Sudan, the Palestinian (proto-)state and the particularly precarious "Islamic State" in parts of today's Syria and Iraq. The founding of Israel through a formal decree of the Jewish National Council on May 14, 1948 (i.e., on the day the British mandate for Palestine expired) is rather an exception.

limited existence in terms of both time and membership is a very normatively characterized question that can rarely be answered alone through reference to non-normative factualness.

But there are much more basic objections to group membership as a criterion for assigning moral responsibility in group acts. In order to be made responsible for the actions of a group, even if one is not directly participating in the act, the person concerned would have to know at the moment of joining what the group would do later. However, this is not at all obvious, even if one falls under the relatively most qualified first group of Narveson's membership. Such an obligation to know, when taken precisely, can only be reasonable if the group in question knew from the beginning that it would later commit morally despicable acts, i.e., based on its program, or it could be seen through the actions it focused on with sufficient clarity over time that it would commit morally despicable acts. This first condition, the a priori, defined program of the group, tends to occur particularly with criminal organizations as well as politically extreme parties or groups such as the Hells Angels or Scientology. But, how should the second case be judged if I am a member of a high performance sport club that uses systematic doping to ruin people without its members knowing? What about the faithful Muslim who routinely transfers money to an Islamic social institution without noticing that this money is used to finance terrorism? In such cases, there is no official program that the member adheres to with his membership. And even if the morally despicable act could have been predicted without dispute, there is still the big question of whether it was predicable in the crass form that it actually took on.

An exemplary case of such a constellation is early membership in the German NSDAP. Certainly, the early members of this party were outspoken racists. That was evident from the first party platform as well as the widely read book *Mein Kampf* by the, at the time, charismatic founder of the party, Adolf Hitler. There an early member is morally responsible for the gen-

erally racist actions of this party without a doubt, up until the later pogroms and Nuremburg Laws. But was it already foreseeable at the end of the 1920's that Hitler would put the whole world to war ten years later and his racism would lead to the mass murder of Jews, Slavs, Romas and Sintis?

And even if that wasn't foreseeable, one could still accuse early party members of not having left the party as soon as the extreme political programs became evident. That is certainly correct. But then, it is no longer just the conditions of membership that are decisive for judging moral responsibility. Instead, we move on to the uncertain territory where every member has a constant obligation to review the content of the group. Only when he fails to do so is there a corresponding responsibility. And even more difficult: Let's assume that, at the outbreak of the World War 2, an early party member realizes that the NSDAP is a monstrous, murderous association. At the same time, this member also sees that leaving the party in the current situation cannot change anything in the least, and that it would definitely carry great disadvantages for him. For instance, he would lose his job which could have personal and even family consequences. So he remains a member, even though his thinking is completely different from the party. What effect does this have on his moral responsibility?

These considerations show that the situation of participation or membership in a collective is not sufficient to justify a possible part in its collective responsibility. However, a factual participation or membership is an important indication in answering the question. This illustrates once again how the assumption of collective responsibility even comes about: Starting with the individual, it comes into existence when a general, moral collective responsibility is found through inductive thinking. Even if many participants or members were personally not involved in the despicable act, the overall results are viewed as a morally uniform action for evaluation.

From what has been said above, it is clear that all of the possibilities for justifying collective moral responsibility that will

be discussed below require the membership of individuals in a collective. Which means that we cannot forego this criterion. Jan Narveson's characteristics are definitely usable as positive criteria of membership. But they are not sufficient alone to justify collective moral responsibility.

5.2 Success of an action

Another obvious criterion for the assignment of collective responsibility is the factual success of an action. Here too, however, upon closer inspection, it seems like it might be more pointless than useful.

Requiring that the action is successful is not a trivial thing when deducing actor responsibility for the actors. In distinction to the accusation of immoral intentionality, however, the success of an action only depends on what actually happened, independently of what one was intending to have happen. The success of an action, thus, is not the same as the result of the action. This difference is recognized in the civil law area of so-called absolute liability, known in Germany and elsewhere: The person whose car causes damage when the brakes fail is liable for the damage even if he could not have predicted the damage and consequently could not avoid it. The thinking behind this is that someone who keeps a source of danger or risk must also be liable for the damages that result, independently of the notion of fault. This example illustrates the difference between legal and moral responsibility. Even when a car owner must pay for the damages caused by his car under civil law, no one would make an accusation of moral responsibility if there was evidence that he had no knowledge of the circumstances which triggered the damage.

I think that this applies in general to moral allegations. Moral responsibility is based on the felt worthlessness of an attitude, peremptorily an executed action. Such an individual feeling of judging, in turn, is based on a corresponding sub-

jective consensus within a collective, whereby a certain – even if only informal – normative validity is achieved. If someone who has made moral allegations about another observes, after the fact, that no one in the surroundings shares the same judgment of the matter, usually they will no longer be able to uphold their accusation, at least publicly. The public consensus necessary for a moral accusation, no matter how informal and unclear it may be, is never only based on the success of the action. The focus is much more on the supposed *attitude* behind the action, not on the concrete act. While the public may frequently be overly quick about tracing certain acts expressed by particular, successful acts to a certain reprehensible attitude, if this presumption cannot be plausibly ruled out, usually the entire moral accusation is thrown out. For instance, if a teacher has been accused of intentionally blackballing a child from an immigrant family, he can devalue the moral accusation of discrimination by showing that he evaluated the child's performance completely without bias and that, in fact, by being held back, the child even has certain social advantages because his true friends are really in the new class and his group-dynamic situation will thus be significantly improved.

However, if there is only a necessary but not sufficient condition for assigning responsibility at the moral level of the success of an action, this criterion can only play a secondary role in determining the circumstances that must exist for claiming collective responsibility. There is no other standard applicable here other than what is already available for individual responsibility.

5.3 Shared intentionality or purpose, common interests and common consciousness

Another frequently represented perspective used to determine collectivity is that of *shared intentionality*.[88] As I already

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88 One of the most thorough researchers in the field of shared intentionality is Michael Tomasello; see his Tomasello [2000] and [2014]. His research fo-

mentioned above, German academic language distinguishes between intentionality and purposefulness but this distinction doesn't exist in English unless an author explicitly refers to the corresponding German philosophical traditions: *intention*, in English, usually covers both 'intention' and 'purpose'. The philosophical concept of intentionality was adopted by Franz Brentano in the year 1874. Edmund Husserl contributed to its philosophical continuation and appeal to all European schools of philosophy and sociology oriented towards phenomenology, the latter known mainly through the works of Alfred Schütz as well as George H. Mead.[89] As a result of this specialist appropriation of the term 'intention', the intentional had to be clearly distinguished from just the purposeful. Both can occur in an individual person but don't need to. The term 'intention' is much broader than that of 'purpose' and is necessarily based on purposefulness. If, for example, I see a tool as a tool, I am not only making a distinction in terms but also a practical one: I see this object in terms of its *future use* as a certain tool. With that I am already in an intentional relationship according to phenomenological analysis, but not in a purposeful one. The purpose does not necessarily follow; it is the concrete and continued intention that does. That makes purpose more abstract and potentially more independent of its intentional origin. When

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cus is on the development of shared intentionality in toddlers. Moreover, recently appeared the Schmid/Schweikard [2009] collected volume with contributions from various other research approaches. A more natural science approach of collective intentionality in connection with swarming phenomena can be found in Horn/Gisi [2009]. When the natural science focus of self-organizing systems is applied, the scope of the literature immediately increases exponentially. This issue has been treated for centuries with different public interest and in the meantime is an independent academic research discipline. The Chilean biologist Humberto Maturana was one of the founders who had already been discussing the important notion of autopoiesis in systems theory in the 1979's as well as his contemporary research colleague Francisco Varela.

89   The so-called Symbolic Interactionism founded by George H. Mead derives not only from the European phenomenology but from the ethnological studies of Mead. These schools are close to the sociological phenomenology because of their focus on individual behavior.

founding a partnership, for example, the purpose is defined in the articles of association. This has to do with the intentional relationship, as phenomenologists see it, between individual people and the objects of the world, just very removed or in a derived sense.[90]

Even when a phenomenologically intentional relation to the world does not need to mean a purposeful one, it is, in a certain sense, a prospective one, i.e., related to future action and the 'pre'-forming relationship of this action in the sense of Brentano. It is therefore reasonable to generally ask people, and thus also a majority of people with common intentions, to reflect on the spectrum of possible actions or directions of an action which follow a specific intention and their possible practical outcomes. This is why moral responsibility, independently of whether it is localized with the individual or the collective, surely also depends on whether the accused behavior was predictable or even desired in consideration of the intentionality which preceded it. It is exactly this question that has forced a clarification of terms for legal responsibility in all of the legal cultures known to me: Legally incriminating behavior requires intention, or at minimum negligence, with regard to bringing about the success of an action, which in turn requires some form of intentionality. This basic principle is rooted in the informal conditions of moral – in other words, pre-legal – responsibility. For example, whoever unintentionally does not respond to a greeting because they simply did not notice the person doing the greeting, will not be held morally responsible. The same should apply to a collective: If an announced political demonstration leads to spontaneous and unintended violence with people of other political ideas, the group of demonstrators does not need to be held collectively morally responsible, and

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90 I conceptually assign intentionality as a middle point between the more general, totally subjective attitude of a single person towards the world, on the one hand, and the manifest, objective purpose that tends to exist on its own, on the other.

a legal collective responsibility doesn't come into consideration at all.

This argument, however, even though it is correct at its core, is enormously difficult in all of the cases of a large collective. They are usually organized so very complexly that hardly any relationship can be traced between the individual intension and the actually realized collective action, especially over longer periods of development. Hardly any work about collective moral responsibility on the basis of common intentionality looks at this problem. Even Peter French, whose book, *Collective and Corporate Responsibility*, is one of the most cited works on the topic, not only falls prey to this error in thinking, he stylizes it into a conceptual thinking formula.[91] Unfortunately, that does nothing to alter the fact that common intentionality is ultimately very difficult to apply as a criterion for assigning collective moral responsibility, not only for large collectives, but also basically for even the smallest collective.

The concerns of Schulz-Schaeffers are basic here. He shows that the assignment of acts on the basis of suspected intentionality can practically never be proven with certainty as long as the addressee of the assignment does not voluntarily or involuntarily admit she or he acted intentionally.[92] This argument

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91   See French [1984], p. 134ff. He calls this the formula of the *Extended Principle of Accountability*, or EPA for short. With that, he means: "A person […] may be held morally responsible for his intentional actions and for those actions that he was willing to perform under different descriptions of his intentional actions. Also he may be held accountable for those non-original or second effects that involve the actions of other persons that he obliquely or collaterally intended or was willing to have occur as the result or under different descriptions of his actions. Let us call this the 'Extended Principle of Accountability' (EPA)." This alleged principle contains such confusion, especially in regards to the responsibility for one's own actions, that it is practically useless: What should we understand, for instance, under "obliquely or collaterally intended" or "was willing to have occur ... under different descriptions of his actions"? Corresponding attributions run the risk of becoming completely arbitrary.

92   Schulz-Schaeffer delves into the attribution of intention to action, not only from a phenomenological point of view, but also from a legal and common sense psychological perspective. In so far as his argumentation is es-

points to a fundamental flaw of any assignment of action based on intentionality, and even more so if we look at the difficult terrain of collective action. Collective action is characterized precisely through the individual participants being in very different roles and subsequently also differing levels of engagement. If one were to demand direct intentionality by the individual actor for every single event that can causally be assigned to a collective, it would virtually lead to a denial of the existence of collective action at all. The acts of the German SS during Hitler's reign were blamed on every single member of this organization through the force of his formal membership. This membership justifies a factual type of general intentionality for every act even imaginable for such an organization. However, at least in the eyes of the public, this can be seen differently – for example, membership in the American CIA, which was responsible for the broadly undisputed deaths of many political opposition members through systematic torture and other heinous legal crimes around the entire world. The intentional difference between the two organizations is the racist and inhuman programs of the SS compared to the basically neutral governmental protection task of the CIA. In both cases, the boundaries of what is usually considered direct intentional action was clearly overstepped in regards to these crimes. I therefore agree with Schulz Schaeffer that the assertion of common intentionality as a prerequisite for assigning responsibility is mainly normative and not factual. In contrast to the internal organizational norms of a collective, which are an essential criterion for determining collective moral responsibility from the perspective represented here, externally imposed norms are basically not sufficient as a primary justification. Imposed norms require justification to be attributed and, as such, cannot be made responsible for making a majority of persons *in toto* collectively responsible for something. We need a much more intrinsic justification as a

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pecially plausible, see Schulz Schaeffer [2007], Chapter 1.3, 2 and 3.

necessary condition for collective responsibility. If an intrinsic justification is not possible, the purely extrinsic, normatively justified assignment is not yet sufficient.

Steven Sverdlik also tried to solve the question of collective responsibility a few years ago by applying the success of the the intended action result (not the actual success of the action; see previous section), i.e. not only the necessary individual action itself. The latter excludes collective responsibility from the outset.[93] On the other hand, he thinks that responsibility may definitely be claimed provided that the intention of the directly executing individuals and other supporters is counted and not just the executing, direct act.[94] Such an approach suffers from the deficiency that Schulz Schaeffer has already been shown to have, but also makes the problem into an extreme cases of actual ideological terror based on the supposed attitude and thinking of people. If one allowed his argument to apply independently of the political motivation of those using it, it would ultimately offer despots of all colors cheap justification for cutting off any peer group political antagonists as well as the antagonists themselves.

The so-called 'common interests', partly made valid in the literature, assert a criterion of collective responsibility and also fall completely under the same arguments as those for and against shared intentionality. The terms 'intention' and 'interest' are difficult to separate. Actually they originate from different scientific disciplines and should not be mixed. 'Intention' is a gen-

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93 Sverdlik [1987], p. 65ff.

94 He writes: '[W]e can further assert that it is only when more than one person intends the result that responsibility for it is collective." (ibid., p. 67) Sverdlik even goes as far as raising the intention of the act to the essential moral criterion of judgment in his subsequent example. Such approaches lag far behind the current state of the German criminal theory of action; see again the very instructive overview in Schulz Schaeffer [2007], Chapter 3, p. 333ff. I am not well informed about the American criminal theory of action, but I have no reason to believe that it is less developed than the German on this point. Therefore I won't pursue Sverdlik's position any further.

uinely philosophical technical term, if used in a philosophical context. 'Interests', in contrast, is a core concept of sociology. If both are projected to the thematic level of collective responsibility, they mean virtually the same thing. Separately considering so-called 'common interests' is therefore superfluous.

A slightly different and more difficult variant of shared intentionality, namely 'common consciousness', is discussed by Larry May with reference to other American authors.[95] But even just the expression 'common consciousness' should give rise to increased mistrust when it comes to assigning collective responsibility. Larry May and the other authors he cites clearly realize that, strictly speaking, there can be no common consciousness in the sense of an ontologically uniform object because consciousness is now irrevocably a characteristic of an individual human person. The authors push the question of the nature of the alleged common consciousness onto a suitable substitute that can act 'for all', explicitly when perceiving their collective consciousness. The members of the executive personnel in corporate bodies are naturally under consideration here. However, May rightly maintains that one can never know whether the substitute is really a representatives of the collective consciousness in the cases of such powers of representation or is acting much more, or mainly, out of self-interest. The same objection applies as those against shared intentionality here: It is empirically impossible to examine whether a natural person is representing the collective consciousness, and even more so, to determine what such consciousness even comprises. So here too, there is a wide gap for arbitrariness. However, considering the management of a corporate entity as a representative of the independent corporate interests is fully unproblematic. The term of collective consciousness becomes superfluous from this perspective. If a representative of a corporate entity acts in compliance with the statutory purposes of

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95 See May [1989], p. 203ff with further evidence to authors, this aspect of collective responsibility is accepted.

this body, it cannot be understood in any other way than as an act of the corporate entity itself. This is indisputable from a legal perspective as well as, in my opinion, also from the more informal moral perspective.

It also becomes clear how risky such arguments of shared intention, common interest or even common consciousness can be for collective responsibility when abused by ideological or despotic perpetrators of violence. Generally, an intentionally justified moral accusation and a corresponding accusation of attitudes are proximate. They are different in that an accusation of intention is based on a material condemnation of the respective intention, while the accusation of attitude ultimately rests on the accusation of having deviated from prevailing collective opinions or a consensus. In many cases, both of these are difficult to keep apart. Which is why it is all the more important that anyone who makes a moral judgment carefully separate them. A meta-rule of moral responsibility in social history should be that individual deviation from the collective attitude can *not* justify a moral accusation. Only the material, substantive nature of the attitude in question can suffice here for additional and necessary intentionality. This, in turn, weakens the criterion of intentionality as the basis of assigning collective responsibility. This is because, as mentioned above, the crude self-interests of human or corporative individual actors frequently hide behind collective moral accusations in political power struggles.

5.4 Social relationships between actors as a condition of collective action

Larry May proposes that we can only speak of collective responsibility when the parties in an event have a suitably qualified relational structure to one another.[96] Not all kinds of imag-

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96 See May [1989], p. 17: "The capacities of individuals change when they are mixed together with other individuals. This change is best captured […] by reference to the structure of the group so formed […].

inable relationships between people suffice for making them collectively morally responsible for any event. I am already in a relationship to the random person who is also waiting for the bus next to me at the bus stop. But May owes us an explanation for when such relationships create a structure, or, in other words, what exactly he means by "structure of a group". His explanations on this point oscillate between examples of completely informal relations and very stable, formally based social relations. This gives the impression that for him, the 'structure of a group' means basically the same thing as a 'social relationship'. May's reference to the structure of a group, which is very necessary for him at the end, remains vague. All the more so because he also explicitly rejects the idea of making the concrete organization of human action a condition for collective responsibility. His fear is that, by doing so, he would only be able to assign responsibility to formally constituted bodies.[97] But, because he ultimately needs to decide on certain criteria in order to be able to draw a line between non-responsible and responsible collective forms, he retreats to the "common interest" discussed above and the idea of a "fusion" or merging of individual actions in an event complex which is a phenomena strongly reminiscent of Durkheim subsequent to Sartre's representation of the events of July 8, 1789 which peaked in the storming of the Bastille in Paris.[98] Such a fusion leads to the formation of collective solidarity which in turn is the key to assigning actions to such groups.[99]

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97   Ibid, p. 23. There he says: "[…] Teams and Mobs can to be shown to have sufficient structure to require a non-individualistic analysis of their behaviors, even though they have no formal organizational structure." In other parts of his book May treats the term '[social] structure' as a feature of groups that is independent from the organization of this group. Structure is clearly the superordinate term of organizational structure. See also his explicit rejection of restricting collective responsibility to organized groups, ibid, p.32.

98   Ibid, p. 34f. The expression 'fusion' is also used by Kondylis to describe the relationship of an individual to the world view of his biography, see Kondylis [1984], Chp. 1.

99   Ibid, p. 37. It says there: „Solidarity is the key to the explanation of how

The criterion of the so-called fusion of individuals to a single actor is, however, unsuitable for conceptual reasons. The term 'fusion' suggests something that can barely be discerned beyond metaphorically perceived phenomena. Processes of fusion are usually material matters. But May of course does not mean a material fusion of humans. We also speak in a figurative sense of a merger when two businesses unite, for example. Here the expression describes an ontological change: Two objects become one. But the phenomena described by May, in continuation of Sartre's thinking, can only be plausibly claimed if we detach certain psychic features of the individual actors – e.g., their wills – from those of the individual actors and associate them in a special union, even though their carrier, namely individual humans, continue to be separate and unfused. I can't imagine how something like that is supposed to happen. Although we could claim a sort of psychologically mutual adjustment similar to the corresponding physical phenomena where different elements in a physical system independently coordinate into a common oscillation (a 'joint oscillation' in the sense of a resonance). This 'joint' oscillation, however, is nothing other than the coordination of many different elements so that the combination of their individual contributions are greater in effect than would be otherwise possible with uncoordinated oscillations. In such cases there is not as *single*, but rather many coordinated oscillations. The same appears to be necessarily true for me for the alleged fusion of intentions to act or the force of will among a multitude of people.

Here we can see a frequent problem that goes way beyond Larry May in dealing with group behavior. May's two-sided reasoning error is that he does not make a categorical distinction between a human individual actor, a majority of individual ac-

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a collection of individuals, such as the Paris mob [in the storming of the Bastille, (WS)] can be ascribed action predicates […]." And he continues, ibid., p. 38: "Nonetheless, in both cases (the jazz quartet and the mob), the activities of each of the members are brought together so that it appears that the members have fused together into a single individual."

tors and a corporate entity as a unified actor. In doing this, he is following the well-known schema by Peter French[100] and that of List and Pettit[101] discussed above. The same applies to List and Pettit who speak of '*joint intention*' rather than '*common interest*', which ultimately ends up being the same thing.[102] Furthermore, French and May (being prototypical for many other authors on the topic) do not make a clear distinction between direct social relationships and a symbolically coded one, i.e., a social order that is independent of the specific individual. In some obscure way, they use the expression 'social structure' to refer to both. And with that, an important ontological criterion is lost not only for distinguishing a corporate entity from other social forms, but also for distinguishing the criterion for drawing the line between these other social forms to distinguish the point from which collective responsibility can be assigned.

Only a generally symbolically coded, and thus independent and lasting, relationship between actors is what I refer to as a specifically human *social organization* below. This is also the one that ultimately makes the corporate entity possible as a unit of actor. May does not take this into account with due analytical clarity. He says: "Social relationships have reality in that they structure or unify a group of individual human persons so that these persons can act and have interests in different ways than they could on their own."[103] His undifferentiated expression: "… structure or unify…" shows that he doesn't see the fundamental, ontological difference that separates just any structure from one that endows a unity to the actor. This is how he ends up wanting to assign collective responsibility to *mobs* and *crowds* simply based on the spontaneous, joint intentions they form, such as in a revolution, or their actions which are coordinated without much thought. This approach blurs the

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100   See French [1984], p. 48ff.
101   See List/Pettit [2011]
102   Ibid., p. 42 ff.
103   See May [1989], p.23

ontological boundary of formally constituted corporate entities because it asserts that they are only different from mobs and crowds through their organized decision making processes.[104] But May overlooks a very important categorical difference here. The only clear criterion is the ontological separation of individual actors–whether persons or entities–from a majority of such actors, not some kind of spontaneous coordination among a majority of actors. The corporate entity is an individual actor without a doubt. It cannot result simply from an organized decision-making process. It arises from a formal act of founding, and even more importantly, its continued existence as a legal entity is assured through its organization.

Social relationships and social structures thus can never be sufficient for determining when a collective (in the sense of a majority of individual actors) can also be morally responsible without further determination.

5.5 Subjective and factual feelings of collective responsibility

Ton Van den Beld takes a completely different position in his essay titled *Can Collective Responsibility for Perpetrated Evil Persist over Generations?* The essay is a reference to the internationally popular novel *The Reader* by Bernhard Schlink. Van den Beld cites the novel's protagonist, Michael, who recognizes that his generation has directly experienced the reality of Germany's collective guilt for the crimes of World War 2 and the holocaust when he sees a woman named Hanna, who is being accused of war crimes as a former KZ guard in a trial. She was the one who had befriended him as a youth (although he was unaware of who she was at the time).[105] I completely agree with this. However, Van den Beld's conclusion is ambiguous. He is of the opinion that accusations by victims or third parties against the generation following the original perpetrators

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104   So-called 'decision procedures', ibid. p. 65ff.
105   See Van den Beld [2002], p. 181.

cannot be possible as such. However, the generation following the perpetrators would have good reason to admit to their own corresponding responsibility. His so called 'good' reasons are only of a psychological nature because, for Van den Beld, there is no formal, more precise criteria available.

Such psychological effects are certainly very desirable from a societal-political viewpoint in order to prevent extreme collective developments of misconduct. However, they are clearly insufficient in view of the actual problems that are exposed by extensive collective misconduct. They ultimately are a subjective convenience, they cannot be made objective. It would be very useful to be able to clarify the pre-normative requirements under which collective responsibility can be *generally* asserted. The voluntary admission of wrongdoing by perpetrator collectives which are frequently large is not reliable, especially if no normative pressure is being put on such a collective simply because it hasn't been developed. Even the guilt feelings of the following generations of Germans would have been probably significantly less if Germany had not unconditionally capitulated at the end of Hitler; not only militarily, but also and particularly morally, which was done through the exemplary importance of the Nuremberg Processes before the eyes of the entire world and international criminal law.

In contrast: A psychologically diffuse collective feeling of guilt can turn into extremely uncomfortable defensive reactions by the collective. A collective insult to honor, as is frequently the interpretation of the assignment of collective responsibility by the receivers, has particular potential to turn into angry and very irrational aggression. A recent example is Turkey's response to accusations of Armenian genocide. Here, the irrational defense in response to what was perceived as a national insult went so far as to simply deny the historically indisputable facts. Turkey even threatens to retaliate foreign governments and parliaments who formally paraphrase the aforementioned historical events as genocide. Psychology cannot

help against such exaggeration; only a factual clarification of collective morally-normative evaluation can. In Germany, this position has even been legalized so that it is a criminal offense to deny the holocaust. While this is not a determination of collective responsibility, it is nevertheless a formalized obligation to at least accept the factual foundation of the moral judgment which, under circumstances, can no longer be disputed.

5.6 The community of shared values

An older criterion for possible collective responsibility in terms of historical ideas is viewing collectives as communities unified by values. This would be, for example, the basis for Gustav Radbruch's philosophy of law who refers to the teachings of Windelband, Rickert and Lask.[106] The objectification of values in philosophy, as reflected by Max Scheler, for example, peaked in Germany during the years between the two world wars. Since then, however, almost no one follows this approach in either sociology or philosophy because concerns about an 'ontological-ization' of values were too great. This development contrasts in a strange way with the constant reoccurring political discussion of whether our modern societies, no matter how heterogeneous and diverse, gather internal cohesion through existence as a community of values. And this discussion is not only in Germany. Such a discourse has very strong relevance for constitutional law in Germany in that its constitution, the '*Grundgesetz*', repeatedly refers to core terms of so-called basic values – for example, human respect (Art. 1), basic freedom of action (Art. 2) and fundamental equality among individuals in the eyes of the law (Art. 3) – in its catalog of rights as defined in Art. 1 through 19.

As meaningful as such a discussion of values might be, it contributes little to the analysis of the question of collective responsibility. Values may contribute significantly to the inner

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106   See Radbruch [1956], footnote 1 on p. 91.

cohesion of a community, whether in the form of mutual assurance for acceptable or unacceptable daily behaviors or in the form of a general legal judgment. But even the concept of value is problematic when it is objectified too strongly because that then ignores the practical side of our social life from which all values ultimately are derived. In other words, the enormous binding effect of simple, constantly repeated social life practices. Values usually emerge simply through the inertia of constantly repeated acts that, with time, become a collective habit and then, ultimately a tradition and reflect no kind of philosophical thinking at all. That isn't a bad thing because only those practical habits which have been socially proven also have permanence. So from this perspective, values are nothing more than generalized and conceptually abstracted, collectively recognized behavioral habits which have been ultimately raised to normative maxims. But to make such habits the basis for a moral accusation could end up in fruitless discussions of justification in very many cases.

Furthermore, the expression 'value' in a moral context connotes a sort of emotional, slightly celebratory devotion that is not a particularly central moment of experience in not only in the German-speaking regions but the English and Spanish as well. The pervasive, formal and practical necessities of everyday life are too strong for such celebratory value considerations to play a dominant role. A value discussion may perhaps have a certain meaning in connection to social identity research, but even there I find it somewhat aloof and old-fashioned. Practically all sociological schools offer models of identity that function without the concept of value. Instead they appeal to roles (Erving Goffman), structural functions (Talcott Parsons, Niklas Luhmann) and socio-economic benefits (James Coleman), to name just a few. Ultimately, the value-theory discourse seems to me to only become substantive after it becomes normative. Otherwise it threatens to go off track into a covert discourse on attitudes. And then there is no more reason to make the assign-

ment of collective responsibility dependent on the criterion of shared values.

5.7 Social identity

In addition to all the material criteria of value, intention, etc., there is another socio-psychological fact that plays an important role in asserting collective responsibility. This is the condition that membership in a collective is often not just a rational decision to pursue some objective but also a psycho-social form of definition for the individual. A person is more than a biological individual; he has a social identity, and, to some extent, he can control its form. His identity since birth has developed in a certain cultural environment and social class. As a child, he accepts many circumstances in his situation without questioning, which is how his social identity is formed. With intellectual maturity, however, he becomes aware of this social development process to varying degrees and then has the possibility of correcting existing elements of his social identity and adding new aspects. The result of this is never a consistent body of convictions and practice. In fact, we can assume that most people are usually not in the position to realize a truly consistent picture of themselves since most people play many different roles, both in parallel and in sequence, in their lives. The basis of situationally dependent judgment of one's self fluctuates too much, statements by others about one's self are too subjectively colored, and the totality of one's own existence is simply too complex and confusing for anyone to be able to say that he has a clear picture of a complete and consistent social identity.

If such a reflection is not even possible to the extent needed here, then it is also difficult to derive moral responsibility for the actions of a collective based on social identification which is part of the reward of membership in a collective. It has a similar position as all the other candidates presented for such a conclusion: They all certainly play an important role, but their own

factuality is hard to determine indisputably and, in addition, their part in the entire decision about moral responsibility cannot be exactly determined. But that doesn't mean that we need to let go of the criteria of social identity as a justification for collective responsibility because it certainly plays some part. It's just that on its own it is not very useful for furthering our analysis.

Another, and very incisive approach which needs to be mentioned here is from Panajotis Kondylis. He already emphasized in his book *Macht und Entscheidung*[107] the unavoidable link between personal-social identity and ideological organization in the world. Later, in the first volume of his book about social ontology, published posthumously, he explains that distinguishing peers into friends or enemies is one of the most fundamental functions of orientation even though it is always under the condition that society precedes the individual in a social ontological sense.[108] He defuses the obvious suspicion that he is edging close to the political theory of Carl Schmitt by explicitly setting himself apart from the latter's definition of the political and accuses him of conceptual confusion.[109]

For Kondylis, social identity is a consequence of an orientation decision (not always explicit or even conscious), the result of which is to arrange oneself with a partially subjective, particular world within which the individual 'melts' with his world.[110] This allows the person to experience a more or less uniform orientation at all moments of life whereby the primary interest is always on maximizing the orientation he is constantly working on.

Such a scheme is intuitively plausible, but nevertheless contradictory to my previous determination that a person's identi-

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107 See Kondylis [1984], summarized: p. 117ff.
108 See Kondylis [1999], p. 208ff. and 276ff. on the fundamental difference between friends and enemies.
109 Ibid., footnote 242.
110 Kondylis [1984], Chapter 1: *Entscheidung als Machtanspruch* [Decision as power claim] (p. 14ff), his entire position summarized again ibid. p. 117ff.

fication with a collective is usually not a comprehensive feature of his entire personality but rather only a strand that doesn't even need to fit in with his other life situations in a consistent way. My experience is that people are easier than Kondylis suggests. In fact, they can often tolerate blatant contradictions in their attitudes if it happens to fit at the moment. They actually spend very little time on their identities that are practically independent of certain world views in their banality when, for example, there is a material advantage involved. Then they bring up issues of morality and social identity, frequently without raising an eyebrow, as superior and irrelevant since no one pays attention to it anyway and 'in reality' everyone is 'anyway' egotistical: Who hasn't heard this miserable pseudo argument?

I only want to say with this that Kondylis's genetic analysis of social identification can be well observed with a corresponding world view but is not exhaustive. Social reality is more complex. Kondylis's basic position is very sober, i.e., anti-normatively arranged, but it seems to me that social reality is actually quite different. Tightening the link to collective responsibility based on the feature of identification with a collective is also not expedient from the perspective of his arguments.

5.8 Origin and ethnic belonging

In conjunction with national events, being related by blood is factually a very frequent criterion for assigning collective responsibility. Historically seen, it is the oldest criterion for assigning rights and obligations. The consanguine obligation of solidarity is superordinate even today, coming before any other possibly competing relationships such as non-family based friendships or those based on common social interests, in all of the societies of the world known to me. This priority has been substantially reduced in today's large societies, however. Consanguine obligations (e.g., support obligations) need to be legally formulated in order to be able to compete with other

legal obligations, such as those under contractual law. I don't know of any modern legal system in which the informal obligations of consanguine solidarity can outweigh legal obligations. There is also no criminal guilt by association anymore in the world (North Korea being a disreputable exception here).

Nevertheless, one's own identification as well as the outside identification of one due to consanguinity is still a very strong argument for classifying and judging social events. Consanguinity is historically a valid justification for political power, although this is still true in many countries today. Monarchic systems of ruling assume that consanguinity is a legitimate base for power, completely as a matter of course. Such traditions cannot be simply written out of the world. Such purported implicitness, however, hides how such dynasties originally seized power for the benefit of their families. Carl Boix presents a very comprehensive ethnological and historical study showing that such political acquisition of power is based on violence almost everywhere in the world, and thus is clearly against the will of those subjected to it from the beginning and that it is established by nothing other than pure violence.[111] For this reason, the legitimization of power through consanguinity is no longer recognized in many parts of the world.

Even the most informal political power has the shadow of moral responsibility for its exercise. This also applies to the somewhat more harmless level of justification and obligation alone through consanguinity. To the extent that a social system establishes rights and obligations among the relatives solely based on consanguinity, there is a moral responsibility. This can be clearly seen, for example, in accusations such as when the father of an illegitimate child legally doesn't support his child. In this case, the indignation, e.g., about refusing to pay support, is generally justified by referring to the legal obligations of a biological father. But this only intensifies and objecti-

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111 See Boix [2015], Chapter I: Tabula rasa (p. 22ff.). Boix identifies monarchic dynasties summarily also as "looters turned monarchs".

fies the moral accusation to a certain extent. Such laws are based on their completely uncontested validity primarily because the application of consanguine loyalties is equally uncontested.

Although consanguinity plays an important role in all of the world's cultures even today, it is no longer used as a justification to assign criminal guilt to relatives based on the criminal act of one of its members. This follows a fundamental and well justified doctrine of understanding action, as I already described above. Following this approach requires a uniform actor in order to assign an action. Such uniform actors exist on the continuum of possible actors only at its two extremes, namely, the individual person and the corporate entity actor. The only exceptions to this are in civil law, i.e., non-criminal proceedings. Forms of action can be interpreted as community actions on the continuum between the two extremes from which collective liability can follow, but only if there is a corresponding, explicit agreement of solidarity present, such as in the form of a partnership or contractual business partnership. The exclusion of criminal collective liability goes so far as to even treat corporate bodies as uniform actors only in very special cases.

The strongest objection to collective liability is based on ethnic affiliation. This has multiple reasons. For one thing, such liability requires a type of genetic disposition, in other words, a biological determination for committing the alleged acts. Following this logic, stealing would be the consequence of a person's biological predisposition to steal. If this were the case, the environment would have to protect itself even from the relatives of the thief, as if there was a genetic disease affecting an entire family. An even broader version of this view – in the case of 'infection' among ethnic members – would not distinguish between biological disposition and cultural tradition or collective habits of behaving. This would mean that in the end, the collective would be made responsible for biological reasons, cultural reasons, or both, whether or not the behavior of the individual was responsible. In ethnic conflicts, this is even

the primary point of departure.[112] The core of such accusations is always ancestry, i.e., an assertion of a biologically justified co-accountability. Such an accusation is fundamentally and substantially unfounded, especially if it is based on a single act by a single person in the collective being accused. For example, in 2012 a terribly violent ethnic cleansing began against the Rohingya in Myanmar after some male Rohingya were accused of raping women in the non-Muslim surroundings.[113] In such cases, the specific incident that triggered the ethnically motivated violence was obviously only a trigger for releasing pent-up social tensions which had existed for much longer. Otherwise, the persecutors would have had to provide evidence that all other members of the accused collective were causally participating in the specific action of the accusation or that they tend to the same act of violence for genetic reasons. That is practically never claimed by discriminating persecutors. Instead, they always use the concrete act as just an example of an alleged 'general tendency' of the collective that is being discriminated against, without giving any plausible reason.

This also shows that such cases cannot be dealt with under the keyword 'collective responsibility' because the heart of it is no longer about specific individual acts, even in the sense of a sum of such acts. The accusation of collective accountability based on joint ancestry – in other words, consanguinity – is nothing more than an accusation of essence, not an accusation based on action. But for decades now nowhere has the simple and biological nature of humans been a publicly recognized reason for the moral persecution of these people. The

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112   A very accurate look at real uprisings and ethnically motivated excess of murder and their process can be found in Donald Horowitz in Horowitz [2001].

113   On the situation of the Rohingya, see the corresponding Wikipedia entry under: https://de.wikipedia.org/wiki/Rohingya. A current overview of the background and the continuous ethnically grounded violence can be read in "The Economist", No. 24, from June 13-19 2015, p. 46ff. (online at: http://www.economist.com/ news/asia/21654124-myanmars-muslim-minority-have-been-attacked- impunity-stripped-vote-and-driven).

most important component in talking about responsibility for something is missing simply due to the essence of humans, i.e., without specific actions. Such an accusation is therefore just as groundless as the pure accusation of attitude without an act: Where no act is present, there can also be no responsibility assigned.[114]

All of this is completely recognized almost everywhere in the world. The result is that collective moral responsibility can no longer be assigned solely on the basis of consanguinity or other ethnic group characteristics. This is, without a doubt, great cultural progress because for earlier societies around the world it was the general rule (whereby responsibility was not distinguished as moral or legal).

But what have we actually overcome in the social dynamic? From the lowest family level, the situation looks relatively good. No one thinks anymore about making a whole family responsible - either criminally or civilly - for the acts of one of its members. Although we do think about making a secondary moral accusation at the family level. Families are small enough to be able to deal with every act contributed by each member. That's why the tendency to make a broad collective accusation is less. At the national level and that of ethnic affiliation things look quite different. Ethnically motivated violence flares up everywhere in the world and looms as a constant tension, even if no current violence is being exercised.[115] However, that doesn't change anything about the world-wide consensus of non-rec-

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114 Of course, it can be asked, what qualifies action. The *laissez fair* cases of neglect and negligence are notoriously difficult here. See details in Schulz-Schaeffer [20027]. He plausibly shows the assignment of an act to an actor can be shown as purely normatively-based for a great part, i.e., not independently of norms. However, by itself, it in no way discredits the specific assignment of action. The necessity of an explanation, rather, becomes the justification of the norm. Generally, the justification of a norm has to be dealt with completely independent of the assignment of an action to an actor.

115 See the article by Andreas Wimmer and Conrad Schetter in Heitmeyer/ Hagan [2002], p. 312ff, and on the emergence of specific, very aggressive uprisings with ethnic backgrounds in Horowitz [2001]

ognition of collective responsibility based only on ethnic affiliation.

5.9 No equality in injustice

In addition to the preceding arguments that are meant to justify collective responsibility but insufficiently so, a reverse argument deserves mention for the sake of completeness. This concerns the frequent attempt by the attacked to invalidate moral accusations with evidence that other participants (whether individuals, groups, ethnic groups, nations or states) would also have acted in morally reprehensible ways. The accusation levied against them is 'unfair' or 'hypocritical' for this reason and therefore not justified. I mention this objection only for systematic reasons, not in relation to certain customs or moral content. It is not about specific moral values or norms, but only about the type and means, and whether these are applicable in the form of a general accusation of a majority of people because of their (apparent or real) defiance or violation. It is also important to know whether any moral accusation can be invalidated by other parties who have not been attacked but have been guilty of the object of the accusation against the other party, or even the accuser itself has been guilty of it.

Such an invalidation of an accusation is basically not possible. However, this only applies to the method of defense itself. Of course, a practical weakening of the actor in the respective dispute is also possible with logically unsuitable means.[116] Even though in these cases the objection is not valid in principle – as I will show shortly – it is still not only possible but in fact frequently happens that the accusing party completely disregards the accusation, or at least considerably retracts its intensity,

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116   One could call all the participants in the discourse unfair if they purposely argue in absurd, illogical, misleading etc. ways to weaken their opponents. Such considerations at a discursive ethical level, however, are not treated here.

when it appears inopportune and could possibly also be used against them. But then it is only a consequence of the practical dynamics of social dispute and not based on the discursive core of the argument.

The reason for such principle invalidity of efforts at deflection which violate the well-known principle of 'no equality in injustice' (or unfairness), is the general construction of the accusation of violating rules. It is also independent of whether the accusation is a formal legal one, a moral individual one or a collective one. If the rule of conduct in question applies at all between accuser and opponent, a logical relationship arises that generally excludes a comparison with other behaviors within the statement of value. The accusation that a norm has been violated is exclusively in regards to the behaviors subsumed under the norm and not in regards to the comparison of certain behaviors with other behaviors. If the subsumption of the behavior challenged results in a violation of a norm, this is a social fact that only results from the concept of the norm. One cannot simply eliminate this fact by referring to another norm violation.

This applies in an even greater degree when the validity of the violated norm is contested and its validity for the accuser is still upheld. The case may sound absurd but it's not all that seldom.[117] Nevertheless, the same thing applies here as above: The validity of a norm is always determined at the cost of the concrete, specific contents. If the contents justifies a moral accusation, that principally does not change the behavior of other parties.

These considerations conclude the overview of the usual justifications for collective moral responsibility as well as a useless attempt to deflect it.

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117 In such cases, the party under attack may invoke conditions which apply to them but not to the attacker for apparent wrongdoings, such as self-defense or similar.

6 Norm-based and Purpose-oriented Organization

I've already briefly discussed the difference between intention and purpose above.[118] Sociology views the purpose of a behavior as the decisive characteristic for qualifying behavior as an act. But the expression of purpose has another and very important consequence beyond that. Organizations emerge to the extent that purposes become collectively agreed upon and concrete beyond the individual intentions of individual people. But, in turn, a strict separation must be made between an organization as the continuous pursuit of an objective independently of the many individuals executing it and the individual people themselves who 'carry' the organization, i.e., who continuously realize its purpose. Corporate bodies are the formal objectification of an organization as a uniformly acting actor because they necessarily must have a purpose, even if this is only unspecific and general. The means for setting up and maintaining organizations are commitments to certain purpose-guided behaviors. This applies for all actors to the extent that they are active in an organized framework. A commitment to certain behaviors is a type of norm. But, distinct from informal/practical or moral norms outside of organized activities, they are *explicitly* for *fulfilling the purpose* of an organized group: The member of the organization is obligated to contribute to the achievement of the organization's purpose through appropriate, supportive behavior. 'Explicitly' here means that they are defined in an authorized and verbal form, whether through a directing authority or the power of an agreement. One of the most common types of commitment to this kind of behavior is the typical employment contract. Even membership in groups or associations where the commercial aspect is subordinate, almost always entails such commitments to behavior, although at different levels of intensity. Membership in a religious community is a partic-

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118 See p. 15f. above.

ular type of commitment. Usually members aren't committed to performing an activity as much as committing to a way of thinking (if the financial contribution part is disregarded). This, of course, is difficult to control. Since the members of such communities usually share common religious beliefs, the behavioral commitment (in this case, an inner one) is actually prior to the external commitment which occurs through joining. Things are similar for membership in a political party or trade union, even if it is in a form mixed with more practical expectations for action.

It is these collectively communicated and constantly updated world views and the informal behavioral commitments that emerge from them that give rise to, and subsequently support, the explicit norms that are the core layer of objective social structure and ultimately all types of organizations. They are formed at the lowest, practical level of daily living and are constantly under revision, often imperceptibly, for individuals. An organization of actors, however, does not immediately imply a corporate entity. An organized association of actors only becomes a corporate entity in its most autonomous form. Simple organizations starts already, for example, at the inter-familial level, far below that of the corporate body.

6.1 No collective responsibility without inner organization

The group qualifies as a collective through its inner organization (see Fig. 4 above (p. 31). Every preceding social form here provides a general wealth of practically applicable, informal norms upon which any organization can build. Even informal moral norms are only effective to the extent that their validity is collectively recognized and informal, socially coercive means of enforcement exist.[119] For example, one could imagine

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119 For example, in certain social circles it is still seen as awkward when an unmarried woman becomes pregnant. During Theodor Fontane's time, in his famous novel *Effi Briest*, it meant complete isolation for such a 'fallen'

a group of people with a well- defined identity acting quasi as membership but without any inner organization, such as a religious community with fixed beliefs, rituals, etc. with no central leadership and administrative structure. In a certain way, both the Islamic and Buddhist religions (in contrast to the Catholic Church) are such collectives. Their members usually maintain a clear and often strong identity, i.e., their concept of belonging to the community in question. But no one would consider collectively accusing Buddhists worldwide of something such as the racist propaganda that certain Buddhist monks in Myanmar made against the Islamic Rohingya living there. A similar plea is currently being made for the world's Islamic community in that they should not be made liable for the atrocities committed by Islamic terrorists. In both cases, the justified argument is this: Of course, the religious community has a strong (religious) identity, but: the central organization which it created, which is a prerequisite for the wrongdoings to be labeled as actions by members of this collective, is lacking. Identity and the organization of a collective are two different prerequisites, both of which must exist in order to assign responsibility to a collective.

The latter case of the Islamic faith community brings out the lack of clarity and sensitivity in which we are operating. Because, in fact, many accusations have been made against this community of faith which do not contain an assignment of guilt for specific acts of terror but do have an accusation of ignorance towards their generic *normative* culture. This could be the primal ground for the obvious growth of such offender profiles and groups produced among them. Since the Islamic community in our example is lacking a central organization, it

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woman. Today, such cases may still not be viewed with particular enthusiasm, but there are no longer the moral repercussions which appear to be generally accepted in the late 19th Century. This means that the moral norm has become 'toothless'. It then gives way to more sober arguments, such those about economic/financial disadvantages for the single mothers, etc.

can only follow that the responsibility assigned through such an accusation is not more – nor less – than an urgent call to each individual member of the faith community to review its own convictions and life practices, now and in future, for the possibility of legitimizing the emergence of such wrongdoings (acts of terror, in this case) and thus, at least indirectly, supporting them. However, such an accusation is clearly beyond the range of the issue in question here. It is not based on any plausible, justifiable collective responsibility of all Muslims for the terrorist behavior of some Muslims.

6.2 Collective shame as an indication of collective responsibility

Incidentally, it also follows from this that just because individual members subjectively feel shame for collective wrongdoing or, in reverse, hate from members of the opposite side without reviewing the conditions for collectively uniform action, there is still no certain indication that, in fact, collective responsibility exists. However, the existence of such a feeling of shame or hate is a certain indication that the collective of actors involved – even if they did not act uniformly – are already close to the limit where, if it is exceeded, simply rejecting any collective responsibility could no longer be credible or conceptually tenable.

For shame is felt only when one thinks that one should have behaved differently than one actually did. However shame, for example, as a German felt for the crimes of the German military in World War II or as an American felt for the torture of prisoners by the American government and the CIA after the events of September 11, 2001, was not directly based on an individual's own behavior but rather primarily on the behavior of the collective with which the individual identifies. This may imply that there is indeed an organizational structure that induces the feeling of shame in the individual. The converse here could also be a reason why, for example, the Islamic community has not felt collective shame for the limitless terror repeated-

ly committed by its members. The organizational 'transmission belt' that could enable such a transfer of organized, and thus collectively uniform, action to the shameful identification of individual members of the faith community is simply lacking. So, while shame is not evidence for the existence of the condition mentioned, it is an important indication.

The norm-based and collectively purposeful organization of a majority of actors is only suitable as a criterion for assigning moral responsibility if the organization has already taken on a corporate life of its own. In this case, however, the 'carrier' collective – i.e., all of those human actors that carry a corporate entity in any way – are qualified as morally responsible for the actions of its corporate superstructure.

6.3 Individual responsibility for collective norms

We are now faced with the question of how a behavioral norm can even take on general validity on a level or to an extent that is crucial for the maintenance of an organization. The widespread distribution and change of a behavioral norm, for instance, across the entire society, is a complex and frequently very slow process. The origin of such processes, however, can be found in certain basic functions at a microsocial level that is directly understandable by each one of us. James S. Coleman offers one of the strongest explanations in his theory of the emergence of norms as part of the unidirectional transfer of a person's behavioral controls to one or more other people, such as other corporate actors.[120] Coleman describes typical groups[121] – from his point of view – as informal, i.e., *not* uniform actors whose coordinated behavior is simply the result of behavior patterns that can be analyzed using elementary game theory. As part of the negotiation or informal consensus regarding authorization

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120 Coleman [1994], especially p. 65 ff. ("Authority relations") and 145ff. ("Fom Authority Relations to Authority Systems")

121 Coleman's terminology and mine do not completely match here. He does not clearly distinguish between groups and collectives. The distinctions I use for this can be seen in Fig. 4 (p. 31).

for the control of the behavior of one person by another person, stable behavioral norms ultimately emerge.[122]

However, it's important to distinguish between two types of groups in regards to the effectiveness of the norm: that which complies with the norm and that which does not. *Complying* with norms normally does not result in either a legal or a moral responsibility for the norm addressee. Everything else would be absurd because norms demand compliance by the addressees. Responsibility regularly occurs only when there is noncompliance with a norm. But here too, social reality is more complicated. Responsibility arising from (primarily) norm compliance rarely occurs where the norms themselves are morally unacceptable. In such cases, those who have set the norms and prevailed over their addressees by way of an organizational path are regularly made responsible.[123] Starting with the Nuremberg Trials up until the many later war crime tribunals, including the well-known case against Adolf Eichmann in Jerusalem in 1961, the accused always try to justify their actions in such situations by referring to the orders they were given and the applicable norms under which their actions were simply compliance. This was also exactly the question in the so-called *Mauerschützenprozesse* (Berlin wall trials) which dealt with the fatal shootings of persons fleeing the GDR for West Germany by GDR soldiers posted at the east-west border.

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122 Coleman says: "[A] norm concerning a specific action exists when the socially defined right to control the action is held not by the actor but by others. By the definition of authority, this means that others have authority over the action, authority that is not voluntarily vested in them, either unilaterally or as a part of an exchange, but is created by the social consensus that placed the right in their hand." (Ibid, p. 243)

123 The legal issue of this trial was about the applicability of the so-called *Radbruch Formula* whereby even formally valid legal standards are no longer a right in the end and consequently may also not be followed if they are "unbearably unfair" or do not even pursue the aim of establishing justice (Radbruch [1946]). The Radbruch Formula, however, led to a reproach against the primary, norm-compliant actor in the end because he ought to have known – just as those who set up the disputed norms ought to have known – that they should not have been complied with.

This is a short legal philosophical digression on a still ongoing discussion as to whether it should be possible to ultimately surpass positive law by natural law arguments. Natural law argumentations suffer from the aftertaste of a pseudo-metaphysical arbitrariness that ends up calling upon world view axioms. It's not that I am opposed to such axioms, especially not because they are the prerequisite for any orientation in the social world; otherwise even such a fundamental term as 'human rights' would no longer have any core. However, we should realize that such axioms are ultimately dependent on culture and therefore should be historically and sociologically justified.

Moral ideas developed and established over centuries can, in fact, not be repealed with just a signature by legislators. Even today's democratic collective legislator is not in the position to change a moral consensus that has been built up over a long period of time simply by making a legislative decision. In addition, as a consequence of Kant's concept of reason, legislators are also required to eliminate possible inconsistencies in the entire body of norms contained in a legal system. This is a purely formal categorical imperative, not at all an appeal to natural law.

Taken together, these meta-arguments, i.e.,

a) the respect for long-term fundamental moral ideas continuing through many generations of a cultural group and

b) the imperative of consistency between individual norms,

were sufficient to solve the criminal problems in the Nuremberg trials, such as the Nazi crimes and similar so-called state system crimes, in spite of the lack of concrete international legal prohibitions; in other words, as a foundation for the specific point of prosecution.[124] The Swiss legal philosopher Hans Reichel had already formulated this better in 1915 than Gustav Radbruch in regards to social loyalty: "The judge is obligat-

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124 The specific point of prosecution against the 24 main defendants was: (1) Conspiracy, (2) Crimes against peace, (3) War crimes, (4) Crimes against humanity, see: https://en.wikipedia.org/wiki/Nuremberg_trials#Overview_of_the_trial

ed, by virtue of his office, to deliberately deviate from a legal provision, if that provision conflicts with the moral feeling of the community in such a way that by its compliance the authority of justice and law would be considerably more endangered than by its abolition." ["*Der Richter ist kraft seines Amtes verpflichtet, von einer gesetzlichen Vorschrift bewusst abzuweichen dann, wenn jene Vorschrift mit dem sittlichen Empfinden der Allgemeinheit dergestalt in Widerspruch steht, dass durch die Einhaltung derselben die Autorität von Recht und Gesetz erheblich ärger gefährdet sein würde als durch deren Außerkraftsetzung.*"][125]

Equally valid: if one wants to assign moral responsibility to an actor for establishing or complying with a norm, it is necessary to show that another, unavoidably higher ranking norm was violated. Such higher ranking norms can, however, exceed the limits of norm levels, especially if one invokes a practically unsurpassable social consensus such as human respect. That means that even positive legal norms can be surpassed by informal, moral norms and not only in extreme cases of basic social significance. Such cases are more frequent in everyday life than might seem apparent at first glance. This includes so-called vexatious behavior which is behavior that is formally correct but, under the existing circumstances, perceived as arbitrary or privately aggressive. In such cases, hierarchies of moral norms are applied which go beyond formal levels of validity. While the bullied citizen may not always formally persevere in the face of positive law, nothing changes in regards to the reasonable perception of injustice. And usually, this is only accepted if it is relatively insignificant. If one is the target, one sighs and then somehow tries to get beyond the humiliation.

The most fundamental norm-setting group that elicits moral responsibility for the community through compliance should be the people existing within the same social sphere of friends and enemies, not some group that commands or prohibits individual or group behavior.[126]

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125 Reichel [1915], p. 142.
126 Practically all governmental criminal provisions are ultimately based on

I've already discussed this above in reference to the so-cio-ontological findings of Panajotis Kondylis.[127] So we are now facing a significant dilemma: Namely, if classifying people on the 'friend-enemy' scale is a fundamental function of all human social orientation (whereby this scale is naturally to be seen as a continuum with 'absolute friend' at one end and 'absolute enemy' at the other), then we cannot turn the fact that humans undertake such classifications and then place binding norms on others into an accusation. At the same time it is exactly this normative decision – at least when it turns into a negative extreme such as "you're my (absolute) enemy!" – that is a central moral pivot point for the accusation against any collective that promotes, or even realizes, such normative patterns of judgment.

Such a distinction between people and their objectification as social norm is at the bottom of the idea (which has been wide-spread in modern times ever since Thomas Hobbes and Nicco-lò Machiavelli) that this is the primary orientation pattern for

this division. Naturally, a paragraph in the penal code that makes a penal-ty for stealing, for example, does not refer to a friend or enemy but simply to the thief. But the justification for the legal disapproval is ultimately that the person who committed the wrongdoing is – at least at the time when the act was committed – a violator of legal order and thus was in oppo-sition to the legally bound community and deserving of a penalty. This applies very explicitly to those offenders that are defined as an enemy of the state and prosecuted.

127 See section 5.7 above, footnotes 107 and 108. Kondylis's very provocative position could be called 'radical stoicism' or even outright moral nihil-ism. He himself calls it 'descriptive decisionism'. Of course, one has to separate the question of whether or not people are primarily oriented to a friend-enemy scale from the further question of the ethical and moral con-sequences. This latter question won't be discussed here. I would simply like to argue with Kondylis that his approach, as presented in *Macht und Entscheidung*, completely misappropriates the human capacity for empa-thy. This doesn't disprove his thesis that humans are fundamentally ori-entated to the friend-enemy scale, but it does at least relativize his very ap-odictically presented statement that all assertions of value and all 'ought's (his so-called 'normativistic thinking') are ultimately only derived from the scale and a drive for self-preservation and power (which is practically the same for him). That seems to me to really shortchange the *conditio hu-mana*.

all humans among their equals. It may sound crude or arbitrary to suggest elevating such a 'friend-enemy' scale to the level of a fundamental tool of social orientation. But one should not take exception to the words 'friend' and 'enemy' too quickly. It harbors not only the widespread, ultimately materialistic view that humans are first and foremost always trying to reach their anticipated benefits. Even more, it includes those areas where humans act in a value oriented way and tend to shove those people who go against their (supposed) values to the negative side of the 'friend-enemy' spectrum. In other words, we are dealing with a socio-ontological axiom that is in no way simply some specific ideological pre-attitude but rather something that can be applied to almost all imaginable socio-ontological perspectives we can think of. It is, however, suitable *ad hoc* as a signpost for justifying a collective accusation (and subsequent moral responsibility), such as the propagandized division of people to the extreme end of the scale. In other words, certain people become stamped as objects of hatred or serious devaluation. That fact that enemies are practically exclusively the 'others' (whoever they might be) in such cases is trivial. No one can designate himself as his own absolute enemy in everyday life unless he wants to be thought of as crazy.

So here we have added a single, and not particularly clear, ethical *material* criterion for establishing a collective norm as incriminating: The intuitive plausibility of such a judgment increases to the extent that the normative classification of other people tends towards the extreme end of enemy on the scale. Of course, such a justification of imputability for collective norms naturally has objections. We must exclude all cases where the people who are marginalized as extreme or even absolute enemies provide the irrefutable grounds themselves. The standard case here is, again, a state that makes an offensive attack, in particular, when this happens as an explicit sign of a 'total' war, such as, for example, the Nazi propaganda. A state (and the partner[s] behind it) that could do something like this would

find it difficult to deflect the accusation of collective guilt for the wrongdoing simply because they feel like they have been 'immorally' labeled as extreme enemies: They were the ones who provoked the reaction. But: Here, too, the lines are very unclear and fluid. During the decades of conflict between the Israelis and the Palestinians, each has continued to accuse the other of collective responsibility for the continued existence of the conflict with cries of great indignation. How can it be unambiguously decided whether one of the sides alone, or simply primarily, actually provoked the conflict?

Because: In spite of all ambiguity and empirical indecisiveness, the criterion of normative accountability is usable. Therefore, we can refine this idea by encumbering the collective that nurtures such an extreme enemy image with the burden of proof for justifying such a bogeyman. If a group cannot convincingly present a justification for its judgment of a necessarily large forum, it creates a significant indication of incriminating and accountable collective patterns of judgment in terms of each one of its members.

6.4 The collective organization as an independent unit of purpose for the collective

When social patterns of judgment become normatively objectified (no matter how extreme they are from the beginning or how they develop over time), they are regularly furnished with suitable organization for implementation by the collective. What interests us here is only those organizational consequences that can lead to collective responsibility. It is important that a normatively based justification for collective responsibility, according to Coleman, requires a standing organization. I basically agree with this approach. But it must be emphasized that moral patterns of judgment, on the one hand, and the organizational provisions for their enforcement on the other, always emerge interactively, i.e., jointly, or *uno actu*. That is

the only way that the usual objection of what came first can be sidestepped. According to the classification upon which this is based[128], such an organization first emerges at the level of the human collective. Non-symbolically based social structures can already be found among many types of animals, even if just as a purely biological type. Human sociability, on the other hand, continues the structure and practice of all of its symbolic behavioral norms by adapting the norms to real life, explicitly eliminating superfluous ones or simply forgetting them and inventing new norms when needed. Thus it follows that the social structure of humans is not identical with its abstract, i.e., norm-based, social organization.

Coleman's definition of a norm[129], mentioned above, is generic: It describes the existential conditions for norms. However, because of their stable existence, we tend to interpret norms as autonomous entities which can be called upon as needed. Norms, in the sense used here, are primarily written or at least conventional, unambiguous rules of conduct which we are generally required to comply with beginning as children and their validity is rarely contested. Thus they include not merely statutory law. A normative pool of collective responsibility is, incidentally, always limited to a homogeneous cultural circle. Social norms have existed as cultural indexes from the very beginning.[130] The old issue of natural law regarding the existence of universal codes of conduct, which was revived after World War 2 under the special term 'human rights', is also not an obstacle in this regard. (As a digression,

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128 See Fig. 4 on p. 31
129 See footnote 121.
130 This brings up the question of the application of western concepts of human rights to other cultures, for example, as part of the judgment of Japanese war crimes against the Asian neighbors they invaded. Such questions frequently can be explained by referring to the inconsistencies in the norm structure within the perpetrating collective. A society that sees itself as fundamentally obliged to equality among all people cannot invoke a corresponding law that is contrary to such a traditionally evolved and thus legally inaccessible social consensus in the event of specific atrocities.

it also completely dismisses the possibility of universal human obligations or, at most, indirectly permits via *argumentum ex contarario.*) I am not claiming any kind of culturally dependent universal validity for my theses in what follows. Apart from the fact that the question of collective responsibility is always concentrated on obligations rather than entitlements, I first make the arguments developed here applicable only to those cultural circles whose social traditions obligate them to these arguments.

Groups are qualified as organized, purpose-oriented collectives by setting additional norms. In real life, this happens in a fluid development process. The following illustration shows roughly how the general pool of social norms ultimately creates differentiated specific appropriations of an organized association (the 'collective') and, at the end, by adding to it (see Fig. 5).
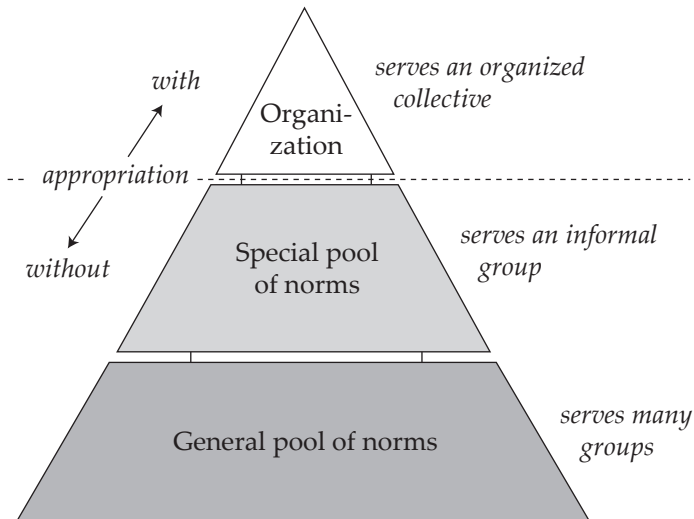
Fig. 5: *The Norm Pyramid: Specialization and transformation into an organization.*

It is well noted that not every form of organization possible in a collective is part of its uniform corporate organization. We will see that it is first the added creation of the unity of the corporate carrier for a collective that makes it possible to analyze it from the perspective of the individual's participation in that collective organization. The prototypical unified corporate carrier of action for a whole society is the modern state.

To the extent that active participation in such an organization already can plausibly justify the moral responsibility for the actions of this organization, it replaces the rarely met condition of *direct* participation by the individual for collectively effected actions with responsibility for its *indirect* participation. All of the criteria mentioned for such indirect participation (membership, shared intentionality, common values, etc.) until now should basically provide exactly this according to the will of those who carry them out: An assignment of responsibility to the collective in general and, with that, to all individuals who identify with this collective or formally belong, regardless of whether they personally participated in the acts for which it is being accused. But, these criteria provide, at best, only additional conditions, not the decisive ones needed. This is because the necessary and – under additional conditions – sufficient argument depends on the validity of the moral assignment, as I showed in section 5 above. All of the aforementioned criteria contribute references, indications or even evidence for building the bridge between individual and collective responsibility. But they do not provide the decisive argument that can be used to ultimately decide separately or together whether collective moral responsibility *even* exists.

The fundamental idea of this essay is that the corporate organization of a collective is basically the acting entity of a collective but that the individual members of this collective have to stand for such corporate actors because they are its supportive bearers. The expression 'collective responsibility' would, accordingly, be to clarify that it does *not* refer to the respon-

sibility of the collective as an autonomous actor because such actors do not even exist, as discussed earlier. The expression 'collective responsibility' means much more than the shared responsibility of all of the individual members of a collective, analogously to what is called 'joint tenancy' or ownership (as already mentioned above in footnote 71) in the European civil law terminology. Such a possibility, however, only becomes available under the proper conditions, conditions that are in fact frequently met.

The first trivial condition would be simply speaking of a social organization and that it actually exists in some form. As I mentioned above when discussing James P. Coleman's representation of the generic connection of organization in the creation and maintenance of social norms, we can speak of a social organization as a growing structure that emerges in the course of its development from being a carrier collective composed of individuals as supportive bearers to being a purposeful entity on its own whereby its carrier collective becomes subjected to it as vicarious agents. Both the state as a political corporate entity as well as the corporately organized economic enterprise are standard examples of such autonomization. In terms of state law, one does not speak of the purpose of a state but rather of the objectives of a state. The terminological difference between these two terms, however, is inconsequential to our context. The maximum possible autonomy for such an organization is achieved when it becomes recognized as a unified acting entity and thus as separate from the specific groups of people who enable the achievement of its goals or purposes. These are the citizens, politicians and officials or public employees, in the case of political corporate bodies, and the owners, management and employees in the case of commercial corporate entities.

The carrier relationship between the collective of individuals and its corporate superstructure must continue to exist throughout its existence. Even foundations, as autonomous collections of assets, require at the least a foundation board to

be the persons who enable the continuous fulfillment of the foundation purpose. The carrier relationship between an organization and concrete implementation becomes only more abstract when it is no longer bound to a biological individual but rather to an office that, in extreme cases, only exists in the corporate entity for the normatively structured entitlement and obligation relationship.

This has a structural consequence that we may intuitively know but which is – as far as I know – never taken into consideration when we speak of the moral responsibility of collectives. It results on its own through the continuation of the organized collective when the collective has already spawned a corporately created, autonomous actor. This is exactly the phenomena that brings us to the idea, for example, that people can be made responsible for the damages or war crimes of their state even beyond the state's existence in the form that produced the damages. Officially, this idea may be presented as monetary war debt in the form of war reparations. The moral responsibility of a collective actor, however, goes far beyond the obligation of economic damages, as many historical events of collective violence show. The moral responsibility of Germany, which continues until today, is the ultimate example, and is clearly still understood as the responsibility of the Germans for the war atrocities and the Holocaust under Nazi rule. Another current and very contentious example of this is the moral responsibility of Turkish society represented by the current Turkish government being held responsible for the Armenian genocide.

With this I want to say that the decisive common feature of all of these situations is the corporate autonomization of a collective's organization and the continued existence of this collective. Collective moral responsibility would therefore be borne not only by the corporate entity as a directly responsible actor but beyond that to the collective that carries the organization (in formally extreme cases, a corporate entity) to an extent

to be more exactly determined. This qualifies formal situations such as those shown in Fig. 6:
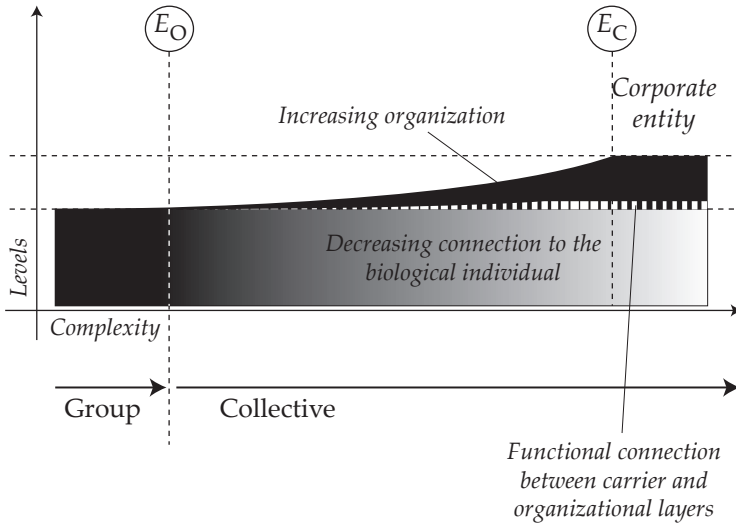
Fig. 6: *Continuation of the collective and autonomization of the organization (EO = emergence of norm-based organization, EK = emergence of corporate entity as autonomized organization purpose)*

This illustration should clarify that the collective already emerges with the expression of an inner organization of a group. However, collective moral responsibility can only emerge when there is also a corporate actor and actions for which the collective must vouch because it is the carrier of that corporate actor.

This assumes that a collective whose organization has become corporately autonomous cannot cease to exist. This assumption, however, should always be true because corporate entities without some kind of collective social carrier simply cannot be imagined. As the organization becomes ever more autonomous in the direction of corporate entity, a functional layer of connection is created that, in spite of a decrease in the

physiological connection between the corporate entity and its supportive individuals, ensures that the purpose of the organization will continue to be implemented. While the level of symbolic organization is a purely normative one, where the interaction of the functions are independently regulated by the physiological functional carrier – i.e., below the corporate organization – the joint collective life continues. Both levels are mediated by classifying persons to functions; this is the so-called connection layer. The completely blackened areas in the illustration at the left for the group and at the right for the corporate entity show the extremes of the sphere of uniformly acting individual actors whereby it is first a majority in the group or a solitary entity as a corporate entity. However, multiple corporate bodies or natural persons and corporate entities often group together in social practice. Seen this way, the upper stratification in the model can be continued by multiple corporate entities (and, if applicable, other natural persons) to form a sort of super-unit of actor. This actually occurs very often, for example, in employer and business associations, internationally recognized state federations and similar. But since such super-units of actors are also only corporate entities, such structural extensions do not mean increased complexity because typologically no new units are being added.

What is important in the previous representation is the continued parallel existence of the original collective beyond the formation of a unit of corporate entity. If such a situation exists, the central prerequisite for the assignment of indirect moral responsibility to the carrier collective has been met. The importance of this relationship, which is clearly palpable for those involved, can first be seen when it leads to conflict. This occurs, for example, when the employees of a company or the shareholders of a large company suddenly join together in protest over a development of 'their' company. This occurs even more frequently with political parties and trade unions which are historically *sui generis* recognized as corporate bodies very late

in their development – and not accidentally. Here, corporate autonomy is still so weak that the carrier layer of the individual members can 'boil over' at any time and protests can easily dominate the otherwise autonomous purpose of the party or corporate entity.

6.4.1 The actualistic perspective

As illustrated in Fig. 6 above, we now have the analytic tools to justify why members who have only indirectly been involved in a collective can bear moral responsibility and not just the individual person or a corporate entity.

   Collective responsibility is based on the corporate organization of the collective, on the one hand, and the responsibility of the individuals for its creation and the enforcement of such organizational norms, on the other. As I already said in connection with James P. Coleman's analysis of the concept of norms, every symbolic organization is dependent on norms. It is the only way to maintain the steady and stable fulfillment of the organization's purpose. And those actors who create and enforce the norms of the organization have an interest in this, otherwise they would not do it. In political reality, however, norms in the form of laws are no longer jointly created with the individual citizens but rather by their elected representatives. The situation is similar with large, international, publicly traded companies whose largest shareholders are usually huge fund companies and whose investors have no direct influence on the actual company. A large portion of the 'real' shareholders are represented with the proxy voting rights given to large banks. At the time of casting their vote, the voting citizens and the shareholders represented by a bank do not know exactly which law will actually be enacted by the coming government or which corporate policy will actually be followed by the company in the future. In politics, the voter votes based on his trust in the proclaimed government program and his confidence in a party and that it

will also actually follow through on its program. In contrast, at the company level, it is primarily based on the highest probability that assets will increase. This very indirect relationship between individual persons and a corporate entity naturally also significantly weakens a possible moral responsibility.

However, it doesn't completely disappear. It seems to be more of a gradually increasing or decreasing relationship, i.e., a long-term development of collectives that make it morally accountable at the end in its manifest results. When a development occurs in a country that ultimately puts a government in power, which, in turn, follows a program that is in clear contradiction to the fundamental, long-term social traditions of a country, this is a development that triggers a different type of responsibility than that for specific laws that are enacted by such a government. In a certain way, it's as if *everything* would be wrong that made up such a government because its value system, its intentions, its thinking and finally, whatever ultimately becomes concrete would be negatively colored. Each one of these points – the values, the intentions, the thinking – in interaction with the other material, qualifies the negative value of the actions that result therefrom. But they do not qualify the responsibility of the members of the collective for this action individually or jointly. Nor does the membership which is based on a rational decision or an evolved social identity (as I showed above) form a suitable criteria to formally justify such responsibility, even if some type of membership and identification is certainly necessary in order to delimit the collective from the outside. But even if we have a distinct member, such as the employee of a company or the citizen of a state with voting rights who also identifies with his company or government, it in no way follows that the value of that company's or state's action would be morally attributable the totality of its members. A formal bracket is missing here, or - better stated - the symbolic, causal connection between individual and collective that is necessary to fuse all of the material criteria mentioned to such a conclusion.

This symbolic-causal connection, even if only in a substantially weaker form than in the case of a direct actor, represents the formal participation of the individual in the *whole* of the norm apparatus. Every organization requires this for its existence to be maintained and continued. In particular, the active endorsement of this organization is required through continuous membership or even active participation. No one can demand that a participant in a large organization knows all of the separate norms and the effect they will have. But every participant can be required to have an integral picture of its totality and, based on examples, reflect on whether the manifestation of the totality of 'his' collective is in congruence with his membership, identification and participation. In other words, an obligation on the part of such participating persons to constantly address the Hobbesian problem: Would I still join this collective today, would I still freely identify with it, if I had the option? In order to answer this question, each individual must ideally go through the criteria mentioned above to review the state of his collective and determine whether at least the minimum has been met. If he arrives at a positive conclusion, for whatever reasons, he justifies the moral responsibility of his person for the organized actions of the entire collective.[131]

This is an actualistic view of our original question. It does not imply that a human individual can individually influence the pool of norms adhered to by his collective. It only requires that he is capable of having a perspective on the norm-based, purpose-oriented organization of his collective and to integrate this into an overall picture which he can then mostly reject or accept. However, this general rejection or acceptance is what morally gives rise to a yes-no decision: The degree to which a person decides to accept his specific collective leads to his co-responsibility for what his collective jointly does as a result of its

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131 For an ontological justification of this perspective see section 2.1 above on the explanation of the two different meanings of the expression 'collective responsibility'.

being organized. This requires a cognitively capable human. Children and mentally disabled people are therefore excluded. It is a technical and ultimately itself normative question on how to draw more precisely the boundaries between the 'cognitively capable' human and those who are deemed not be so.

The concept of collective responsibility presented here forces us therefore to a disambiguation in the sense of a yes-no decision. That is usually self-evident and thus much more discreet when judging individual action. This decision is, in contrast, a clearly constructed – i.e., normative – one because it cannot rely on empirical details, otherwise it would become immediately mired in a notoriously undecidable thicket of detail. Here a constant problem appears, for example, in criminal justice when judging group offenses. As far as I know, all the criminal-law cultural circles of today's world sanction, in one way or another, the criminal offense committed by a plurality of actors, even though the difficult question of the exact participation of the individual may not be entirely resolvable. Direct participation in the act by individual members is certainly sought for in particularly outstanding features of the crime; but not when it comes to how the overall act came about. Basically, a judgment of collective wrongdoing requires that it must also apply when one cannot rely on the minutia and unambiguous findings required from individual participants when only one individual perpetrator is involved from the beginning. The overall context in which the individual is a participant, especially at the moment of the decision to commit the act, is much more sufficient.[132]

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132 Terminologically, there is no collective punishment for crimes under today's German criminal law. Cases of majorities of perpetrators are handled under the concept of complicity. According to the basic idea anchored in § 25 para. 2 (German) Criminal Code, a perpetrator is to be punished based on his contribution as part of the other's activity and that of the others as a supplement to his part in the act in a community decision to act; this follows from the consistent judicature such as that by the Federal Court of Justice in its ruling in the *Neue Juristische Wochenschrift* (NJW) 1998, 2149 f. with further references, or also the FCJ ruling from 25/3/2010.

6.4.2 Structural persistence

The actualistic perspective, however, is not sufficient if we consider cases of national war crimes such as Germany under the Nazis or state organized genocide. In fact, the result which I call the actualistic responsibility follows from the inner analysis of the conditions of a collective. From the perspective of a third party, however, such collective conditions pull in further groups which then leads to the collective's responsibility being placed even less on the directly participating individual actors, or, in the case of cross-generational responsibility, not at all. I call this feature *structural persistence*: If a collective creates an organization and maintains it, the totality of such an organized collective, from the perspective of a third party, takes on the form of a uniformly acting actor without, for example, distinguishing between state and society, between a company and its employees, its shareholders, etc. This blending of the corporate entity with the carrier collective is wrong, as I showed in section 2.1. However, the reason for why companies such as Siemens or Deutsche Bank allow their responsibility to be investigated decades after the end of the National Socialistic government (and, like Siemens, even paid high reparations to former forced laborers of the company in the German concentration camps) is not just the formal identity of the involved company at the time of the act and today. From a formal point of view, all claims by the victims against the company are long past the statute of limitations. But it is the moral responsibility – not only of the continuing corporate entity but also of the participants that carry the current collective – that allows a subjective feeling of guilt and, in parallel, an objective social accusation to continue having an effect.[133]

That makes every contribution to the act by an accomplice included in the common plan to act accountable for the rest as its own (see the FCJ ruling from 2/2/1972; FSC 24, 286, 288 or FCJ ruling 8/11/1989).

133 From the autumn of 1944 on, my mother was a prisoner of conscience in the Ravensbrück concentration camp in Northern Brandenburg. There she had to help under constant mortal danger as a forced laborer in the adjoin-

The same applies to Germany in general as it is still providing monetary reparations to Nazi war crime victims. Since there is no formal legal foundation for such claims to reparations, and Germany of today is also socially a completely different one, the only motivation for reparations is the recognition of moral responsibility by the entire society as well as the German state as quasi its organ of fulfillment. What else? After all, most of the current citizens of today's Germany at the time of the crime were not even born and, from an actualistic perspective, cannot even be made morally responsible. The actualistic argument, however, overlooks the structural persistence that is only perceived when looking at the continued development of a collective from a certain distance. A 'nation' is surely not an ethnically based collective, even if the Latin origin of the word indicates that.[134] But the formal citizenship of its members is so sharply outlined that the scope of structural persistence with regard to individual persons is very clear.

The example of national socialist Germany is remarkable in that its unconditional capitulation made a completely new beginning possible which, according to general opinion, has been substantially successful even if it only happened over the succeeding decades. This capitulation was not just a military-economic one. It was also an ideological one with equal intensity. Unfortunately, historically, this represents a big exception. The

ing Siemens factory in the production of war weapons. At the beginning of this century, with more than fifty years' delay, the Siemens board of directors commissioned a group of historians to review the role of the company among the Nazis. As a result of this investigation, the company published in all major German (and perhaps also international) newspapers the invitation to all former forced laborers to report to the Executive Board. At first, my mother did not believe that after such a long time she would still be granted recognition of Siemens' wrongdoing. To our surprise, however, she received, after a few weeks, not only a written apology, personally signed by the board, but also a check over 10,000 euros. Since she was almost 90 years old, she said that the money was not of much value for her. The apology, however, was very important to her and moved her to tears.

134 See the fundamental contribution of Benedict Anderson regarding the modern concept of 'nation' in Anderson [1986].

mid-20th century was one of the darkest in the history of mankind judged by today's standards. Never before have so many people been cruelly murdered across such a large geographical and cultural distance in such a short period of time. Almost the entire Eurasian continent was in the worst kind of turmoil. In Asia, especially China and its southern neighbors, it lasted even through the late 1970's. If the victims of the German, Soviet Union and Chinese terror – from the Russian revolution to the violence of the Nazi, Stalinist and Maoist periods – and victims of the Vietnam war (first led by the USA, then between China and Vietnam) are counted together, the number is much more than 100 million politically motivated deaths. Unfortunately, neither Russia nor China or even Japan have developed insight into their collective crimes. This would have been urgently necessary considering the monstrosity of their contributions to the events. Instead, persistent repression and recurring national pride has dominated to the extent that sometimes deaf furor now exists. Even Germany would certainly not have admitted its guilt in the events on its own. After all the suffering, it was a rare case of historical luck that it was able to legislate a moral example and publicly recognize the collective actor without opposition.

If the moral responsibility had been exhausted in the actualistic perspective, it would have limited not only the obligation for reparation but also the moral responsibility to the life span (or formal existence) of the individual responsible during the times of the incriminating acts. According to the above analysis, this includes both the specific people who implemented the state organization of genocide as well as the corporate entity of the state itself under international law as uniform carriers of action. There is an asymmetry here. Individual human perpetrators eventually die, but a state rarely falls or collapses. In the case of National Socialist Germany, Prussia as a state and the core of the *Deutsches Reich* perished at the end of the war, but not Germany. Thus (and rightly so) the German people was

seen as the collective initiator and culprit of the war, organized as the German state.[135]

The individuals forming the original perpetrator collective has meanwhile almost completely died out. But not the German state. It continues to exist with explicit international continuity.[136] The same applies for Turkey in the case of the Armenian genocide and many other cases[137], although only to the extent that state organizations were involved. The asymmetry is significant. If the entire state of the perpetrators group goes under, an objective link for assigning collective moral responsibility is gone. For example, the so-called German Democratic Republic (GDR, colloquial 'East Germany'), was created as a new state after World War 2, so no claims for reparation were ever made against it, even though its citizens belonged to the perpetrating collective just as much as their western counterparts. There was a lot of political demagoguery and propaganda in play here. Because the GDR was under control of the Soviet Union, it was accorded 'victim' status in regards to German aggression (although this was only after its industry had been largely dismantled by the Soviet occupation).

While material restitution to human victims is limited to their life time, the moral responsibility is not bound by such limits. Incidentally, in historically significant cases there is also a collective moral responsibility with respect to collective moral victim status. *The* Jews, *the* Armenians, *the* Tutsi and *the* Rohingya are examples of collective victims who also see themselves as such

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135 Daniel Goldhagen emphasized this in his book *Hitler's Willing Executioners* (Vintage, New York) in 1996. The core thesis of the book on the collective responsibility of Germans for World War 2 and especially for the Holocaust was controversial but only because more than 50 years had passed between the end of World War 2 and the appearance of the book.

136 The GDR, in contrast, saw itself as a new state ("first German worker and farming nation") and for this reason rejected any responsibility for the actions of the Nazi time.

137 An incomplete list of the genocides of the last 150 years can be found at https://en.wikipedia.org/wiki/Genocide. This list does not include cases of non-state organized genocide which do not fall under the arguments developed here for collective moral responsibility.

and are granted this status by the world community without much ado. This essay is primarily concerned with moral collective perpetrators because these bring up questions which are more controversial. Basically, all of the formal questions raised here apply equally to collective victims with the exception that one doesn't only speak of responsibility but also of the suffering caused them and consequently their claim to restitution.

A direct result of this parallel between collectives of perpetrators and those of victims is that it is frequently just as difficult to assign material damage claims to specific human victims as it is difficult to assign the act. And so instead, reparations are collectively granted, at least in part. Clearly such collectively paid assignments of both material damages and moral responsibility cannot continue endlessly. Otherwise the entire world's history would have to be reconsidered under the aspect of damage compensation and the entire present world would drown in mutual accusations. But no conflicts would be solved. Just new ones created. No one can permanently ignore this pragmatic insight.

However, the actualistic perspective is factually too limited. How can moral responsibility[138] be justified based on structural persistence? This doesn't have to do with just the factual assertion of assigning such responsibility but also, indirectly, with its limits and thus ultimately the moral redemption that is so important. This is crucially important because an accusation doesn't just stop from one day to the next, as it does with legal statutes of limitation, but rather tends to just slowly fade away.[139]

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138 The difficult issues of international legal material damage claims will not be discussed here. What is interesting, however, is that material damage claims in the event of company liability may be subject to regular legal statutes of limitation, but, in the case of the German multinational Siemens, was not explicitly claimed. It was more about material restitution for moral responsibility which apparently is subject to completely different rules than the civil right to compensation for damages.

139 The sense of moral responsibility can even resurge as it did in the case of Spain: A law was recently passed in Madrid in which the descendants of

6.4.3 Possible counter-examples of
structural persistence

There are also counter-examples of structural persistence. If we think of a family with a criminal history that collectively commits serious crimes, no one would think of holding the descendants of such a family who took no part in the acts responsible for the crimes in most parts of the world today. This can also be concluded from the diagram developed above. Such family organization does not generate any moral responsibility for descendants exactly because it doesn't create its own, norm-based organization which is independent from the individual family members who implement its plan of action. However, for example, the Italian Mafia bosses are very close to being at the limit of collective responsibility.

A further example, mentioned above, is the GDR citizens who were not collectively responsible for the Nazi crimes even though, as a society, it had its own state organization (both parts of Germany first joined the UN on September 18, 1973, however). But this state was newly founded and thus did not offer an absolutely certain possible point of departure for the (partial) collective perpetrators of the GDR population. The example of the GDR, thus, does not disproved the hypothesis of structural persistence presented here. A shocking number of counter-examples, however, can be found in the recent past and present: France is still overwhelmingly proud of Napoleon even though his war cost the lives of millions and ended in complete national military defeat for France. After the First World War, Germany did not have the slightest insight into its guilt. The USA struggled with great moral self-doubt during and after the Vietnam War, but recovered so quickly and completely that in

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Sephardic Jews were given the right to acquire Spanish citizenship with explicit reference to the historical responsibility of Spain for the expulsion of the Jews after 1492; see the report in the Spanish newspaper "El País" from 3/24/2015: http://politica.elpais.com/politica/2015/03/24/ actualidad/1427228176_525163.html

2003 it had already started another war. The war against Iraq, which can only be seen as a crime in terms of human rights, killed uncountable victims during its military conquest of Iraq not to mention also as a result of the political chaos that resulted in the aftermath. The USA still rejects any responsibility for the poisoning of huge areas of Vietnam, Cambodia and Laos with defoliation toxins and land mines. The Japanese deny any aggression against Korea and China before or during World War 2. Even today, the highest ranking Japanese government offices repudiate it in the face of the angry and completely justified indignation of the victims. France and England were primarily responsible for destroying the state of Libya just a few years ago, allegedly for humanitarian reasons. The result is cruel: Libya is now a *failed state* involved in permanent conflict between sects and clans. However, neither the French nor the British feel moved to reflect on their moral responsibility in the case. Russia not only took over the factual political power in the formal Georgian territories of Abkhazia and South Ossetia during the so-called Caucasus war in 2008 but also annexed the Crimea with gross contempt for applicable international law. It then immediately instigated a civil war in the Ukraine under cover of huge lies. The list can go on and on. Where is the moral responsibility here? It cannot be swept away by the collective perpetrators and executors simply through lying about their responsibility. The accusation weighs on the offending states as long as people don't forget what happened. However, the onslaught of subsequent events makes it unavoidably fade with time.

6.5 The other side of collective responsibility

From the perspective of generally unatoned and often rudely denied collective aggression, national moral responsibility appears as a rare and necessary good, eagerly desired and yet so seldom. We see again and again how the recognition of moral

responsibility is the most important symbolic condition for any change in direction towards improvement in regions in conflict. While, on the one hand, even the expression 'collective responsibility' can cause angst because we immediately think of ethnic cleansing and mass political persecution and ideological terrorism, the uncommon positive example of Germany's development after World War 2 and the many negative examples where moral responsibility is not acknowledged show us that collective moral responsibility can be a very important step in the social development of a society. Seen in this light, this essay is an attempt to increase the chances that a collective perpetrator can more easily acknowledge responsibility. With an objective clarification of the conditions and possible justifications for collective moral responsibility, it no longer entails a loss of the entire social identity but rather the possibility of finding ways to live with this responsibility and even overcoming it at some point in the future. Socio-psychologically, the most difficult step of all at the beginning of such a developmental process is the acknowledgment by the entire perpetrator collective of the moral responsibility. Without this admission, the collective memory will not have release or forget.

6.6 Interim result

The ethical question of collective responsibility can be summed up by the following characteristics:

a) It is concentrated on the middle area, i.e., the overlap or interface between human individual and corporate formally recognized actors, in other words, on the *informal* area where joint human carriers of action lie.

b) Assigning responsibility necessarily depends on the accusation of having violated applicable behavioral norms. To the extent that the assignment of responsibility is based on the accusation of fulfilling certain norms, e.g., state laws of injustice or company directives in formal compliance with irre-

sponsible consequences, the moral accusation must be based on a higher ranking norm that makes the contested, lower ranking one invalid.

b) Collective responsibility can be supported by other characteristics of the involved collective such as those I explained at the beginning of this section. Their existence, however, is not sufficient alone or jointly to plausibly justify assignment of collective moral responsibility. These characteristics include membership in a collective which participates with an intension to implement the alleged acts, the causal participation in the success of the act, the value community and the social identification with the collective being assigned the responsibility.

c) The collective itself is not a socio-ontologically independent entity. Correctly used, the expression 'collective responsibility' means the responsibility of all individual members of a collective for the indirect acts of their own and all other acts by members of the collective, in other words, an overall general responsibility for the acts of its corporate actor. This separates the collective as a morally neutral structure of self-realization from such structural and system theory perspectives and objectifies wrongdoing that is relevant to responsibility clearly enough so that there is no more room for a moral-normative judgment of the individual actor.[140]

d) The assignment of collective moral responsibility emphasizes the obligation side of social commitment from a normative perspective. In contrast, the claim by the others as victims of possible wrongdoing are the focus of view of human *rights*. This is not what is being examined here.

e) The final argument for justifying collective moral responsibility arises from the continued existence of a collective

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140 This is not just my personal viewpoint. It's also the main accusation against the French structural anthropologist Claude Levi-Strauss as well as against Niklas Luhmann in Germany, for example, by Jürgen Habermas in the well-known dispute about positivism at the beginning of the 1970's.

through to the level of a formally constituted entity, whether that be a state, a businesses or whatever. The individual member does not have to answer for the acts of its collective organization through direct participation or even through direct participation in establishing the norms that ultimately led to the behavior justifying responsibility. Much more important is that the individual member carries moral responsibility for his collective as a result of his generally assumed capability to reflect on the compatibility of the overall collective development and behavior with the applicable and inaccessible moral traditions in his society and culture.

f) Moral responsibility first emerges actualistically, i.e., for the collective acts that were directly committed by the collective to which the responsible member belongs. But this alone is not enough to start and maintain a process of self-reflection with the long-term goal of sincerity in regards to the moral value of a collectives' own behavior. Many historical examples have taught us that. This is why assigning collective responsibility is necessary in terms of a collective's structural persistence.

7   Moral Responsibility of the Individual from an International Perspective

A very important area of application of the scheme developed here for judging moral responsibility concerns violent clashes between very large collectives, particularly between peoples and nations, or as is often simplified, between countries. The law of nations, as its subjects, does not recognize individual people but rather only their corporate actors, i.e., individual states as claimants or defendants. Today, there are also some international organizations that are recognized as international subjects, such as the International Red Cross and the Holy See. There are also derived subjects under international law ('elected' not 'born'). This group includes, for example, the United

Nations and the European Union and other organizations founded by genuinely international subjects as their own corporate entity.

The arguments I've been developing here, which have already made a connecting bridge between a people, nation or society to its state now become salient from an international point of view. There is an interior line separating the two that can be seen positively or negatively: Positively, the state has qualified since Hobbes as that instance which combines the wild egotism of individuals into a whole that benefits all. Negatively seen, it can become opposed to or even an enemy of its people, as Wolfgang Böckenförde[141] warned, and with very good justification. All states controlled by despots are historically extreme examples of this. Such cancerous social developments around the world are also things like an out-of-control secret police that basically sees its people as an enemy of its own state, in spite of those who think there is only seeing danger for inner security and do not recognize the risk of totalitarianism in comprehensively monitoring by the state.

It is exactly this inner boundary that is not considered by the law of nations – either as a reason to legitimize the unity of the state actor or as an obstacle to legitimization when the necessary features for legitimation are lacking. There are historical reasons for not considering this which ultimately go back to the self-evident creation of states through state dominion in ancient history. If we ignore the few historical exceptions of small republic governments, such as classical Greece, state dominion[142] has usually been based simply on factual domina-

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141 See Böckenförde [1972]

142 State dominion is a relatively late phenomenon in the development of human sociality. The assumption today is that the first states emerged around 3,400 years BC, favored by surpluses of food and other environmental conditions, especially in the areas of south-eastern Europe, Asia Minor and the Levant. The chiefdoms, tribes and hunter-and-gatherer groups which existed as prior social forms were becoming less and less familiar with central authority. The smaller the number of individuals bound in a social group, the weaker the expression of dominating political

tion by ruling elites. This power of dominion does not require the agreement of the subjected but also does not automatically mean that the subjected feel oppressed. As far as I can see, sedentary people based on the division of labor – i.e., unlike hunter -gatherer societies – all over the world generally agreed that community life requires central leadership and an ordering authority to keep it from choking on individual egotism and chaotic behavior. The question of legitimizing such power of dominion is often secondary.

All 'foreign policy' or 'international' acts as we call them today, especially acts of war, are historically based on a compulsory, organized inner relationship of command between the ruling elites and their subordinates. The rulers commanded from their often absolute power and the people were to obey. These elite arrogated speaking as the representative of an individual actor for their subordinates in external relationships. So, in the end, there were– from this perspective – no longer individuals but rather peoples, nations and states that encountered each other as uniform actors. This corporate-uniform actor, however, is only the state itself. People and nations, just as 'society', are only accountable as carriers of collective acts because they do not form a unified corporate agent on their own apart from 'their' state.

The question being considered here has curiously managed to escape scrutiny – like a kind of blind spot running also through Kant's famous 1795 essay "On Perpetual Peace" (*Zum Ewigen Frieden*[143]) – even though it had been around for a long time before. It concerns the legitimation of a collective's organization by enforcing its purpose among the supportive collective. This does not only apply to states. It is especially important to the extent that these purposes do not directly benefit those who bear the costs and burdens of their fulfillment, i.e., during times of European absolutism and especially the onus of war undertakings

power was, and still is. For more details see Bellah [2011].
143 See Kant [1923]

and the luxurious life of the nobility. Even today, it may not be directly clear to the individual, non-managerial employee of any large corporation what the constant mergers and restructurings of a company actually do for him personally. Explaining the legitimation for providing such tasks, objectives and purposes is also important from the point of view of assigning collective responsibility so that members of a collective cannot simply allege that, for example, they were steamrolled or physically forced by their government or corporate organization and for this reason they are relieve from any responsibility.

At the political level, this is urgently required in the relation of a state to its people, i.e., those assigned to it. Kant naturally discusses the legitimacy of political authority in many places in his philosophy. But he is primarily of the opinion that political authority is constitutive for the commonwealth and therefore should not justify itself in the exercise of this authority towards the commonwealth because it is this that even brings it into existence.[144] With that, he is directly following the tradition of Hobbes' po-

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144 At the beginning of Appendix I in his *On Perpetual Peace* he says: "Now it is admitted that the voluntary determination of all individual men to live under a legal constitution according to principles of liberty, when viewed as a distributive unity made up of the wills of all, is not sufficient to attain to this end, but all must will the realization of this condition through the collective unity of their united wills, in order that the solution of so difficult a problem may be attained; for such a collective unity is required in order that civil society may take form as a whole. Further, a uniting cause must supervene upon this diversity in the particular wills of all, in order to educe such a common will from them, as they could not individually attain. Hence, in the realization of that idea in practice, no other beginning of a social state of right can be reckoned upon, than one that is brought about by force; and upon such compulsion, Public Right is afterwards founded. This condition certainly leads us from the outset to expect great divergences in actual experience from the idea of right as apprehended in theory. For the moral sentiment of the lawgiver cannot be relied upon in this connection to the extent of assuming that, after the chaotic mass has been united into a people, he will then leave it to themselves to bring about a legal constitution by their common will." Incidentally, Francis Fukuyama claims that state authority in the form of aggression has to precede the emergence of order. He also provides, fittingly, the example of Prussia compared to failed examples of other societies, such as Greece or southern Italy, backed up with historical data; see, Fukuyama [2014].

litical philosophy and tendentiously contrary to Locke who sees legitimation of political authority ultimately as only based on an agreement of those who are subject to this authority.[145]

Although Kant elegantly interprets the relationship of the state in an enlightened way as a type of contract, and duly comments on the individual provisos, he forgets that one of the most important achievements of the Enlightenment is not only the initial, but the continued legitimation of a state based on the Hobbesian tradition of thought. It internally represents its people as their own power and externally represents its citizens towards other states. More generally expressed: It is not at all self-evident that an organizational apparatus (a bureaucracy in Weber's terminology) always represents the will of the collective that has brought it forth and continues to maintain it. However, from the outside, a human collective and its organizational apparatus are both perceived as a unit. And Kant takes exactly this outside view implicitly in the article mentioned. However, this unit is not self-evident. I believe that the degree of that unity is an important index for determining the extent of responsibility that can be assigned to a collective.

Kant's attention to that which is called the law of nations today already had a long tradition in his time. The above mentioned inner relationship of people and state organization or authority, however, is not a topic of international concern because the political unity, as seen from outside, is assumed to be so self-evident that the way it came about or its legitimation is a completely different topic. The history of this 'other' topic begins in the new period of Hobbes' social contract theory and with the scandal of Niccolò Machiavelli's "Il Principe".[146] Although the legitimation of a power of dominion (exclusive-

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145 See Fabienne Peter und Edward N. Zalta's instructive article titled "Political Legitimacy" in <u>The Stanford Encyclopedia of Philosophy</u> (Winter 2014 Edition) at: http://plato.stanford.edu/entries/legitimacy/

146 The extent that political theory has been a slave to Machiavelli over the centuries is well described by Friedrich Meineke in his still very instructive book *Die Idee der Staatsräson* (Meineke [1929]).

ly thought of a monarchical power in its earlier form) is very questionable and, at least theoretically, never absolute, it is also a fact, legitimate or not. It was valid from the outside as being for or against the constitutive people far beyond the time of the European Enlightenment. This was also useful to a certain extent because the virtually ubiquitous state of war in Europe over the past thousand years and beyond didn't allow anything different in so far as the political entity (one could only rarely speak of 'people' in today's sense of nation as a somewhat extremely small political order in the early new period of Europe) did not want to risk its own failure.

The concept of collective responsibility is more subtle in comparison. It does away with an internal pressure of continuous expression of power or at least a threat from 'above', i.e., by the collective's own organization. That means it no longer allows this normative and practical pressure a priori as a justification for the exercise of power in the name of organized purposes. The concept of collective responsibility does this by reviving the entire chain of reference back to its integral context: from separate individuals to their initially loose aggregation, which gives rise to their internal practical division of labor and the associated creation of generally applicable rules of behavior (norms), which subsequently leads to the development of an autonomous organizational apparatus and finally to a political synthesis of both sides, effective both internally and externally, resulting ultimately in a new unit of action. I am of the opinion that it is the strength or fragility of this context that justifies the collective responsibility in its concrete form or not.

What was previously considered by early experts in international law, such as Jean Bodin (1529-1596), Hugo Grotius (1583-1645) and Samuel Pufendorf (1632-1694), as the unquestioned external relationship between rulers and their respective subordinates, was, by the end of the 18th Century no longer *common*

sense.[147] While Friedrich II was already describing his role as "the first servant of the state",[148] this was still different from being 'the first servant of the people', as we understand the role of elected representatives in a democratic society today. There is a considerable semantic distance between the two expressions. A crucial change in the legitimation of political dominion was gathering force here and with it, the revival of the referential context that can also ultimately be a context for responsibility under some circumstances.

The inner responsibility of the collective for the acts done by its own – quite sizable – autonomous administrative apparatus is more difficult because the existing difference is a) not even perceived from the outside but rather seen as the unity of its collective 'base' and its administrative structure, and b) because internally, the accusation of wrongdoing is usually asymmetrical: As an outsider, it is relatively easy to make accusations towards an office holder regarding his execution of the office and to make the entire organization co-responsible, as has been done over the past thousand years with the Catholic church in Europe (and rightly so, in many cases). In contrast, the collective murder of clergy and nobility during the French Revolution does not fit this pattern because it was a society that was against its own, elitist subculture, not against its overall state organization. However, cases where inner-governmental political formations were persecuted as part of clarifying state injustice, such as the NSDAP, the Gestapo and similar organizations under the Nazi regime, fall under this pattern: here simple membership already justifies co-responsibility.

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147 On the historical development of the related terms, see also Meineke [1929].

148 See his Antimachiavel (Œuvres. vol. 8, S. 66), as well as his Mémoires pour servir à l'histoire de la maison de Brandenbourg (Œuvres, vol. 1, p. 123). The title of the first of the two works already speaks for itself in showing how the relationship of master to subject has changed. Fredrich's complete works are available online in German and French under: http://www.friedrich.uni-trier.de/de/static/suche_werk/

The inner division is also asymmetrical in a second way: a reversal of the assignment of responsibility by any organization to its carrier collective is rarely possible. During the Nuremberg Trials, the argument raised by prominent prosecutors that the NSDAP came to power legitimately through free elections in 1933 and that consequently the charges should be against the German people and not against its executive organ was completely overruled. Such an argument virtually says that the legitimizing collective decided in favor of the alleged development of its organization and is like an accusation of political convictions. Such a charge is not at all absurd. I myself agree with the inner logic under the conditions described here. This question was also raised most recently and paradigmatically in Daniel Goldhagen's 1996 book *Hitler's Willing Executioners*. I think the title of the book is misleading, however. Goldhagen's argument is only consistent if the relationship of responsibility is reversed. Then the title would be: 'Hitler, the willing executioner of the German people's will'. The very broad and international controversial discussion about the nature and justification of such an accusation towards a collective – in this case, 'the Germans' – shows the uncertainty and discomfort that exists when dealing with such a charge. It also supports an impression that can't simply be ignored: namely, that there 'must be something' to the idea of moral responsibility of the collective for the actions of its organization because otherwise, how could the organizational apparatus that is being accused of the wrongdoing have been formed and maintained?

And we should not forget: Every organization always only acts through the behavior of its officers, while the organization itself, without such access, is beyond reach once dissolved.[149]

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149 The public repeatedly feels this when, for example, a wrongdoing is committed by a large financial institution that remains unpunished because the original perpetrating organization dissolved without a uniform legal successor and no one can be made accountable any longer. In such cases, holding all members of a former company responsible during the period

Consequently, those who are actually responsible must be those who originally helped the accused organization to power.

Kant did not even touch on this precarious issue. For him, it is self-evident that states may act for 'their' people through their authorized representing officers (i.e., kings during his time, and prime ministers, presidents, party chairmen, etc. today) and that 'their people' are to accept this action as their own with all of the consequences. I have no intention to deny this. On the contrary: I want to prevent a society from mitigating its own responsibility by invoking the misconduct of its political leaders and bureaucracy. This was the huge and very tedious cognitive process that Germany had to go through, not as a state, but as a society of individual citizens almost 150 years after Kant's death and after the gigantic crimes of the Nazi period in order to re-think its own international rehabilitation *as a society*.

8 Social Norms and Our Responsibility for their Fulfillment

Let us return again to the core of our topic. It is based on three fundamental concepts: that of the actor, the action and that which I have termed 'norms' based on James Coleman's generic definition (without closer analysis). Let's look more closely at what norms are within the context of our analysis, and what conditions are needed to theoretically fulfill them in individual cases as a basis for justifying collective responsibility together with the organization that applies them for a purpose.

Actions can generally be judged as to whether they fall under a social norm and, if so, whether they meet this norm or not. This concerns the relationship of action and social norm. In order to understand the conceptual elements behind this, we need to return to the concept of a social norm, because we gave it significantly less attention than the concept of action. I under-

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of the act has never been demanded, even in part. This idea might seem absurd, but under other circumstances, this is not at all so, as we see at a state historical level.

stand the concept of a social norm in the sense of Talcott Parsons[150] and Niklas Luhmann to be an element of a generalized structure of behavioral expectations.[151] This is complemented by James S. Coleman's definition of norms as being the power (authority) of one actor over the action of another actor.[152] Such a definition does not contradict Weber's general, rather objectified, definition of 'law' as "typical opportunities, given certain matters of fact and hardened by observation, regarding the expectation of a certain social behavior [...]".[153] However, a definition of the concept of a separate right (i.e., not the legal system as a whole) follows from Weber's definition of a social law which does not directly follow from Parson's and Luhmann's concept of social norm but which does fit Coleman's concept of a norm. For Weber, rights are "appropriated chances [opportunities]"[154], which may sound too unilaterally related to individual interests from a system theory point of view. How-

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150 For example, Parsons says [1982], p. 175: "[…] [t]he component of norms is the set of universalistic rules or norms which define expectations for the performance of classes of differentiated units within the system – collectivities or roles, as the case may be […]." The concept of norms as a generalized, universal or simply basic expectation of behavior is, however, older and has often been attributed to Max Weber and George Herbert Mead. For example, in Wikipedia under "Norm (social)", there is the following definition: "From a sociological perspective, social norms are informal understandings that govern the behavior of members of a society." https://en.wikipedia.org/wiki/Norm_(social) (See also: https://en.wikipedia.org/wiki/Sociology)

151 See Luhmann [1996], p. 396: Luhmann bases the concept of norm on [behavioral] expectations whereby he explains the concept of expectations (ibid. p. 139) and only incidentally mentions the generalization of expectation as a (more stable) feature in a footnote 73. In Luhmann [2008], p. 28, he then goes on to talk about norms as "stabilized behavioral expectations", whereby the stabilization has more requirements than the generalization. While I don't want to contradict this, I want to stay with the expression 'generalized behavioral expectation' as the essential if not exhaustive feature of a 'norm' because of the topic here, namely the relationship between the individual and the collective.

152 Coleman [1994], p. 243.

153 Weber [1972], p. 9. The original German definition reads: "[Gesetze sind] durch Beobachtung erhärtete typische Chancen eines bei Vorliegen gewisser Tatbestände zu gewärtigenden Ablaufes sozialen Verhaltens [...]"

154 Ibid., p. 23, in German: "appropriierte Chancen".

ever, the imputation of a person under external imperative fits the idea of 'appropriated chance'.

8.1 Norm dimensions

Even if we can discover both actions and thus also the actor as carrier of this action in a concrete event (which usually comprises many sub-events), it does not follow that norms have already been met or violated. Such an expectation can be described in words; this is the content of the norm. It also falls under a general *norm type*. A norm can also vary significantly both in terms of its *definitude* in regards to its *binding force* as well as its *formal ranking* within the overall norm structure in which the individual norm is embedded. These categorical distinctions are what I call *norm dimensions*. Every norm dimension is a multiplicity that can be envisioned as a scale on which specific norms can be positioned. The definition of the terms are:

Norm content: The symbolic, frequently written or orally transferred linguistic codification of a behavior that is owed and sometimes also includes the conditions under which it is owed to whom.

Norm type: Symbolically coded behavioral expectations originate from different sources. Moreover, they are enforced through different means. These differences combine together under the concept of norm type because the corresponding division (moral/traditional, conventional, legal, ethic/moral) is widespread in the sociological literature.

Distinctness: This dimension refers to the clarity and consistency of a norm. The breadth of this dimension can be seen primarily in the difference between informal-conventional norms and legal norms.

Binding force: Norms can vary in terms of social importance. This can be seen by the legal, political or informal sanctions for violating them, as well as the stringency with which their fulfillment is observed.

Formal rank: Norms of the same type are at the same level in the hierarchy. This hierarchy is particularly visible at the legal level. In Germany, the official provisions for implementation are at the lowest level, then comes the regulations, then the acts and above them the so-called body of laws with the constitution at the top. It is similar for more informal hierarchies at other levels. Conventions of courtesy in Germany, for example, say that it is more important to shake hands when greeting and less important to have a not-too limp or not-too strong handshake.

There are many examples that can easily demonstrate how large the area of flexibility is that results from these four norm dimensions. For the sake of simplicity, I've set a measuring scale of quantitative intensity from 1 - 10 for all of the dimensions I've named (and regarding the sample norms without any claim to being empirically valid). '1' is the lowest intensity while a '10' is the highest. For example, a ranking of 1 means that the norm is very unimportant within its norm structure and a ranking of 10 means that it's very important. The last three dimensions relate only to the respective norm type concerned. The ranking of a moral norm, for example, can only be judged in terms of other moral norms. This theoretical basis can be used to set up the following table for empirical studies, here based on fictional examples (see table 1 next page).

From this perspective, it is possible to map all norm types at the moral level: Even a formal violation of law, such as a company manufacturing products that contaminate the environment, can have strong moral assignments of responsibility as a consequence. As the sample table above shows, not all of these norm dimensions are equally important for the question of whether specific *moral* responsibility can be assigned, no matter who and what is involved. A high-level of distinctness for a norm is desirable, for example. But even a very distinct norm will only result in minor moral indignation in the event of a violation if it has a low ranking in the norm hierarchy. The same applies for the binding force: Even a norm with high binding intensity –

Norm content	Norm type	Distinctness	Binding force	Rank
Aggression ought to be responded to with kindness	Moral / traditional	3	8	7
Promises ought to be kept	Conventional and legal	6	9	10
Real estate contracts require a notary's certification to be effective	Legal	10	10	5
Refugees from Africa who risk drowning while coming to Europe must be helped	Ethical / moral	9	5	10

Table 1: The four dimensions of norms with sample entries

i.e., the probability of enforcement – doesn't necessarily entail a strong assignment of moral responsibility as a consequence.[155]

8.2 The overarching importance of norm ranking in assigning collective moral responsibility

Above all it is the *rank* of a valid norm that plays a special role in assigning moral responsibility. It has a strong significance for the

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155 Think of a fine for wrong parking compared to theft of small value in middle-class circles.

formula developed above for when an organized collective, as a carrier, can be made morally responsible *in toto* for the actions of its organization, even if the organization is not taken into account. Because it is exactly the highest ranking moral norms that are not only applied when making a judgment (for example, of large political acts of violence) but also the ones that the individual members of a collective are most likely to be aware of. The ranking of a moral norm is also not simply arbitrary. A moral norm achieves its ranking usually through a long historical development process over multiple and even many generations.

The result is that the conditions described above regarding the assignment of collective responsibility must be supplemented with another condition: *Collective moral responsibility can only be assigned if very high ranking norms have been violated.* The objective reason for this is that the high-ranking norm influences many other norms, which is why it is particularly important. All members of a collective can be expected to be aware of and uphold such high-ranking norms because without that awareness and appropriate respect, social life would be at risk and the community under threat. This is a strong criterion which then allows us to put aside repeated recourse to joint intentionality or evidence of direct causality between individual and the results of collective actions. As I showed above, these criteria are virtually never verified with the necessary certainty. The violation of high-ranking norms, in contrast, has no such uncertainty. Assuming awareness of high-ranking norms – legal and moral – for specifically assigning responsibility is not at all arbitrary. It is a necessary condition for every social community. Such an awareness is also rarely disputed by individual participants. Consequently, as long as it is not an individual case, members of a collective cannot dispute the violation of such high-ranking norms with a lack of awareness as long as at least the naked fact of the alleged event was known or must have been known based on a general, public meeting that announced it.

But when can one speak of a violation of a high-ranking norm as not being a unique case? What's interesting here is that it is not dependent on the number of cases. It is the *organizational purpose* of the organization for which the collective is the carrier and the consequent *systematicness* of the violation of norm that is decisive for justifying the assignment of moral responsibility. If the intention to violate high-ranking moral norms is already apparent in the purpose of the collective's organization (such as state authorities for a society and its citizens), the collective and each one of its members is responsible simply because they have to accountably answer for an organizational structure that systematically brings such violations about.

Now the benefit of such a systematic analysis, as I showed above in section 5, becomes apparent. The initial result of this analysis was that we can only speak of collective moral responsibility where a group has developed into an organized collective with its own corporate actors. Such a corporate entity regularly acts in the name of such a collective. However, it does this only through the support that the collective allows it, particularly the provision of material and human resources, regular labor and, also, ideological gestures of solidarity, etc. This support, along with the fundamental norms that hold such a community together, is what I have consistently referred to as the collective carrier for its corporately independent organization. However, the individual member of the collective body is not directly responsible for this norm-based collective carrier, because she or he has too little influence on the emergence and enforcement of it. It is, however, presumed that she or he is well aware of the highest ranking, and thus value determining, norms that tower over the entire body of norms. If the purpose of the corporately acting actors, in the sense of a subordinate norm, contradict these generally known, high-ranking norms and this becomes obvious through corresponding behavior, all members of the relevant collective carrier are liable, especially if they do not intervene with all available means at first knowl-

edge of this obvious violation of a high ranking norm.[156] This applies to 'rogue' states just as much as it does to globally acting corporations that preach charity for all and are factually responsible for very serious crimes. Their employees, shareholders and, in particular, their management as mandated agents are all (i.e., collectively) very personally morally responsible for such systematic wrongdoing if the concrete organization of such a company produces such behavior with systemically high probability.

8.3 Private and public norms

It is also possible to look for the origin of specific separate norms independently from the general types in section 8.1:

a) Norms as generalized or stabilized behavioral expectations can *privately* emerge, for example, when an individual person such as the mother or father of a child, a teacher in a classroom, etc. invents an 'ought' and justifies its fulfillment solely with his or her own will. Naturally, such individual norms may not be too contrary to the public norm structure; most of us, however, know of cases where such a description of individual generalization applies, whether to an arbitrary teacher, parent or other authority.

b) Norms emerge *publicly* and, as such, through collective and not individual acts of will. They are the result of a complex

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156 Article 20 para. 4 was inserted into the German constitution (*Grundgesetz*) in 1968 according to which the core of this idea was reversed and raised to an equal, basic right, namely the right to resistance against such developments. It says: "All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available." ("*Gegen jeden, der es unternimmt, diese Ordnung zu beseitigen, haben alle Deutschen das Recht zum Widerstand, wenn andere Abhilfe nicht möglich ist.*"). Morally this right becomes a duty as soon as the corresponding circumstances arise. – Certainly the question arises here as to the extent to which such a resistance is morally reasonable. Can a citizen, for example, be required to sacrifice his own life in the struggle against a murderous regime? I do not believe that. The view represented here is, however, completely independent of the exact limit of what is reasonable in such cases.

and frequently long-term developmental process that is simultaneously based on pre-normative, practical habits among the totality of the norm addressees as well as on an authoritative imperative by the usually, also collectively formed, power elite.

Thus, this concerns two different forms of generalization which need to be clearly distinguished.[157] The individual generalization only refers to the factual authority, or at least an attempt by the creator of the norms, to define the scope of the norms in general terms. For example, a parental figure could say to a child: "From now on, you may no longer go to your friend's house if you have not finished your homework." For the child, this is a clearly palpable case of an individually generalized norm to the extent that it applies to all corresponding cases which concern exactly this child and his parents. But sociologists usually mean something different with 'generalization' in the area of public norms; namely, the anonymous application of a behavioral expectation that is not related to specific persons, or, in other words, a generalization both in view of the circle of norm addressees as well as – usually – in view of the authority enforcing the norm. Historically many collectives have had norms that only received their validity through the authority of a single person, such as a king, sultan, etc., but starting around the time of the French Revolution in Europe, this stopped being seen as sufficient justification for accepting the validity of a norm. In most of today's societies in the world, every public norm must also be justified through at least the assertion of a general will, otherwise it is rejected as tyrannical.

Such public generalization usually refers to larger collectives, but it doesn't need to. For example, among the Tibetan Buddhists, the reincarnation of the Dalai Lama is chosen through a normatively anchored procedure addressed to a very small group of norm addressees.[158] The norms underlying

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157 The following applies analogously to the Luhmann stability requirement.
158 As an introduction, see the English language Wikipedia entry at http://

this, however, are public because they do not depend on the existence of a specific norm addressee but rather on officials (who can change at any time) and, because the validity of the norms must be accepted by the entire collective (i.e., the Tibetan Buddhists), so that the subsequent symbolic facts have meaning.

Private norms can also bring responsibility for their fulfillment solely in a private sphere. A mother can scold her child when, once again, homework is left undone. Third parties are not authorized to do this. The following only deals with public norms. By definition, these are always brought forth and continued by collectives that determine their value in regards to the above mentioned features (and perhaps others) and ensure their steady enforcement. Using this public body of norms, they justify their corporate organization. In the case of societies, this is the corporate organization of the state with all of its bodies and authorities.

The production and enforcement of a generalized and sanctioned behavioral expectation, including a norm, prototypically falls exactly into that group of behaviors that we intuitively and formally perceive as cases of accountable actions. The same applies for the person-related, private and public norms. Following Coleman's definition of norms[159], those persons who are directly involved carry joint responsibility for the establishment and enforcement of norms. That also applies when it is 'only' done to fulfill a duty, i.e., in fulfillment of other norms. As far as I know, the principle of a person's personal responsibility for their actions is valid across all cultures. This means that the fulfillment of an unacceptable norm[160] can never be justified with the duty to fulfill a different norm. Otherwise, the principle of personal responsibility would be virtually repealed: all people naturally act to meet external norms. If, for example, a mother

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en.wikipedia.org/wiki/Dalai_Lama, which is considerably more detailed than the German one.

159 See Footnote 121.

160 I have already mentioned the Radbruch Formula which considers exactly this issue. See footnote 122 above.

in a small family with a tyrannical spouse watches her husband beat her child because of some crude educational norm, even though she herself deeply disagrees, she is also fully morally responsible for the action of her husband and, under circumstances, even criminally liable as a complicit. She cannot shrug off her moral responsibility with the argument that the disciplinary measure was privately thought out by her husband and he alone is responsible for it. She is also morally responsible for it because she allowed a private, internal family norm to have a higher ranking than the physical integrity of her child.

This example only applies to individual people. Other examples concerning collectives, however, are not hard to find. We have all heard stories of companies with tyrannical, grossly unfair, inconsiderate or in some other way behaviorally conspicuous managers and owners. In such situations, it is not uncommon for quasi-private sub-cultures to form where the group dynamics of the managing power establish rules that are incompatible with higher ranking moral and, perhaps even statutory norms. Here, the same applies as for the unhappy family. All participants in such teams carry full moral responsibility for the behavior of their boss if they do not undertake anything to change the existing unacceptable situation and even if they fear that their opposition will be a disadvantage. – This leads us to the essence of 'ought' and its social appropriateness.

8.4 Subjective 'ought' and personal responsibility

Norms define objectively abstract behavioral expectations and put pressure on the norm addressees to fulfill the norms. The system theory for understanding norms overlooks this. Norms not only objectively change the statistical probability of a person's behavior, they also equally produce a directly palpable imperative for the person whose behavior is supposed to be controlled by the norm.

Such an 'ought', at the level of a private norm, is face to face with a direct desire by the norm-enforcing authority. Public norms have an asymmetrical effect here: We feel that we ought to do something but we do not see who wants this from us. The 'will of the law' is, in practice, completely anonymous. This is even more so the case with traditional, custom-based and moral norms where there isn't even a concrete legislator but rather just an anonymous historical development. People tend to normally not like subordinating themselves to such completely anonymous norms. But they know what to do, even if mostly subconsciously: The suitable remedy to make one's self feel better in such situations is called 'social identity'. This concept describes a basically simple cognitive function: People yield to an external determination by appropriating the foreign collective norm as their own and, at this price, 'purchasing' affiliation to a collective. This is the fundamental social 'business' that we all more or less master and with which we judge in a very nuanced way whether performance and services in return correspond. The individual's performance consists of subjecting himself to the norm, which, in practice, is routinely connected to acknowledging the collective authority and habitually normalizing behavior. The service in return from the collective is solidarity against outside attacks on a member, arbitration of disputes within the collective, constant mutual advice and, to a certain extent, also active help in the event of emergencies through no fault of one's own. Performance and service in return are mostly in a dynamic, fluctuating balance, otherwise the members would tend to leave the collective. As long as the dynamic balance generally exists, being embedded in a collective web of norms can be rather comfortable because it offers orientation and thus a matter-of-factness to daily life that significantly reduces general stress. But there is also a risk in this comfort. If the collective develops in a crucial way (we are practically always members in many different, nested collectives at the same time), the comfort of 'going with the flow'

becomes difficult to break through because of the threat of massive anger by the other members of the collective. We all know of examples – from the homeowners association to the sports club to the political party. It is even more critical when a whole society threatens to slip into the intolerance of violent totalitarianism or despotism. How can a member in such a situation be expected to publicly contradict the increasingly unacceptable *common sense* behavior? One can leave a sports club. But what to do when suddenly something like ethnic violence spreads through the entire social environment and one just happens to belong to the perpetrators collective, even though one was not involved in the violence?

From the principle of personal responsibility, it follows that, under such circumstances, one cannot simply excuse oneself by asserting that the situation grew 'out of hand' or took one by surprise. No one would make a collectively based accusation against another for truly surprising events. However, when seen in a larger developmental context, a specific, surprising event – such as a racially motivated attack on a friendly neighbor – is frequently not at all surprising but rather, statistically seen, mostly probable considering the given and generally known conditions.[161] This clearly increased probability is therefore already a justification for responsibility.

The principle of personal responsibility is normatively unsurpassable. In other words, it is a normative prerequisite for any peaceful coexistence in all human-social relationships.[162] It sets a certain, very general, top-level 'ought', the fulfillment of

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161 See Horowitz [2001], who has carefully investigated the development of such uprisings.

162 There have been uncountable numbers of attempts to justify moral personal responsibility in some kind of natural science or logical way, usually under the name of 'freedom of will'. But none of the approaches that I know of have yet convinced me. Which is not to say that I see a defect in a purely normative justification of the principle of personal freedom. See Pothast [1987] regarding the inadequacy of the historically most well-known human evidence of the so-called freedom proof. My own approach to this problem I have described in Sohst [2016], chap. 10.

which is required even if there are disadvantages and considerable inconveniences connected with it. But then, what does personal responsibility obligate us to in specific? It is a meta-norm to the extent that it does not prescribe a specific behavior but rather a *consistent* behavior. Immanuel Kant explained the idea that underlies the principle of personal responsibility most clearly in his *Groundwork of the Metaphysic of Morals*. Kant called for a renunciation of the 'benefit principle' as well as an emancipation from 'nature', i.e., from blind behavior as a consequence of biological drives or unconscious social control.

8.5 The obligation to morally acceptable and coherent behavior

In the following I would like to discuss Kant's concept of morals, to the extent that it needs mentioning for my context, following Christine Korsgaard's interpretation. In her book, *Self-Constitution: Agency, Identity and Integrity*, she explains why the constitution of the individual person, i.e., ongoing preservation and perpetuation, is, in itself, an evaluative instrument of action.[163] In the process, both the desirability of the behavior as well as the material-ethical issues are in the foreground. She interprets Kant's categorical imperative such that reason is primarily an imperative to coherency and consistency. This means that every individual can only speak of himself as a uniform person beyond biological existence when she or he continuously undertakes everything possible to create consistency and coherency among her or his many conceptual acts with all of their diverse horizons of application and purpose. Only then can the 'self' of a person emerge.

   This is also the core of Korsegaard's personal responsibility because no one can do this for a person other than him- or herself. Such a concept of personhood is not arbitrary, i.e., we cannot simply reject it. Whoever agrees to such consistency and

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163 See Korsgaard [2013]

coherency in his concept of behavior does so freely. However, one then loses the possibility of validly justifying the different standards of judgment for such behavior (now manifestly inconsistent and/or incoherent). But that is not all: According to the inferential theory of meaning from Robert B. Brandom[164], linguistic communication loses direct content significance when the relationships of social obligation and permission, perpetuated with every speech act, become unreliable and ultimately non-binding. In such cases, we say that a person is unreliable or that we don't understand them anymore. These kinds of reactions from the environment indicate the seriousness of the social consequences when the zone of tolerance for acceptable incoherency and inconsistency in one's behavior is exceeded.

Such a person can naturally insist that she or he didn't mean it, or is not in a position to create consistency and coherency in his behavior. But that statement ultimately confirms the irrationality of the respective behavior which in turn becomes the probability of correctly predicting the coming behavior. Since norms are objective behavioral probability and subjective behavioral 'oughts', however, irrational behavior tends to be seen as *hostile to norms*, even when such a person has fully agreed to all of the single norms expected of him. Norms should also help maintain coherency and consistency in behavior, and this goes beyond just a confirmation that one is aware of some norm.

Of course, every human admits to a certain amount of latitude for irrationality in his personality, which can even be pleasant to a certain degree. We aren't robots who have nothing better to do than think about the consistency and coherency of our behavior all day. However, this latitude quickly shrinks as we climb the ladder of norm hierarchy. And as the latitude narrows, the horizon of responsibility under which we must answer for our actions broadens in reverse proportion in terms

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164 See Brandom [1994]

of the interpretation here. This specifically means that as the ranking of a moral norm which can be violated rises, personal responsibility – and not just for one's own behavior – towards the social environment for that norm also increases.

This is an important observation. I believe that it is not a primarily normative nature but one of social reality. While we demand (in a purely prescriptive sense) that our fellow humans make an effort beyond their own personal horizon in affairs with increasing moral significance, this expectation would be hollow if a community could not also have confidence that it would actually happen. As the ranking of a meta-norm increases, it also extends beyond purely personal interests in a very real sense because the very general 'ought' corresponds to a very general acceptance. While this approach should be empirically verifiable, I could not find any scientific research on it so I have to rely on my own life experience. And my approach is supported by a very broad term from one of Horace's poems: *Tua res agitur*.[165] Of course, there is always one's own interests involved when things don't go well; but that doesn't stop personal responsibility from being expanded to the social environment. In contrary, just because we recognize our own interests in a socially intact environment, we simultaneously want the horizon of responsibility to be expanded. My analysis shows that this horizon expands, at least at the moral level, as the ranking of the moral norm in question rises.

The Kant's moral imperative to reason as interpreted by Christine Korsgaard connects humans to the acts of its social environment through direct responsibility. This is the same as the socio-psychological core of collective responsibility, as presented here. Namely that: I, as a person, avouch that the entire collective with which I am in a relationship is at least organizationally constituted such that no systematic violation of

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165 This term comes from Book 1, epistle 18, line 84. The original Latin quote is: "*Nam tua res agitur, paries cum proximus ardet.*" (It is your concern when your neighbor's wall is on fire.)

high-ranking moral norms is quite improbable. I do so by sub-ordinating myself to these norms in the form of performance for solidarity (as service in return). If I fail in this regard, I am responsible even if I was not directly involved in the norm-vi-olating act.

This assertion completes my justification for the existence of collective moral responsibility in the explicit sense presented here. Now we can at least touch on additional questions which lead to a deeper understanding of the approach developed here.

9   The Difference between Culpability and Responsibility

We have spoken only of responsibility up until now, not about culpability. Both terms are very close in meaning but they dif-fer in a significant way. And it is this difference that leads me to speak of collective moral responsibility rather than collective moral culpability.

The decisive difference between the two terms lies in the so-cial consequence of assigning culpability and/or responsibility. If an event occurs for which culpability or responsibility should be assigned, the assignment is first aligned with the context of justification, in other words, the question of *why* this assign-ment is taking place and is justified. Such a question is directed to the past because empirical evidence for answering it is only in the past. Let's assume that the justification for such an as-signment is found. This temporally shifts the orientation of the context for judgment. Now the question is, what kind of conse-quences can follow from such a legitimate assignment. This is more than just a practical question involving all kinds of specif-ic interests on the side of the concerned parties. It also involves the future execution of the decision. This shift in temporal ori-entation and 'reclassification' of a reaction to past actions into a future behavior by the participants has a consequence which prompts a distinction between culpability and responsibility.

The basic difference between the two terms is that culpability only indicates a past relationship or context while responsibility applies to the scope of the future avowal of that portion of the past. This would hardly be worth discussing (because culpability and responsibility are still directly linked) if it weren't for another psychological difference involved: The emotional link between culpability and responsibility. Here there is strong asymmetry. Culpability for past action has a direct, moral emotional affect, independently of whether punishment, compensation or similar follows later from the culpability. When punishment or restitution follows as a consequence of a justified assignment of guilt, the valuing emotions can, and should, settle down. This is called atonement. When such measures fail, however, the emotionally loaded accusation of guilt is not relieved. And if no measures at all follow, the imputation of blame has a high probability of being continued (depending on the gravity of the culpability) until either it is simply forgotten – which sometimes takes generations to happen in major conflicts – or it undergoes revision, for example, by changing the historical evaluation of the situation. Either way, when the grounds for blame – assuming that this is accepted – disappear, so does the emotional content of the accusation.

As a result of what I call responsibility here, the still owed and future reaction to the culpable behavior is completely dependent on the existence and scope of the past-oriented imputation of blame. We say, "You are responsible for your past behavior." However, in fact, we mean that a connection has been determined between an event and the justification. The consequences will follow only later. However, the possibly emotional loaded demand for consequences receives its evaluative excitement entirely through the past connection of blame. If one removes this emotional reference to the past from the term responsibility, a neutral emotional content remains that is nothing more than a sober demand for insight to the perpetrator plus a possible execution of punishment and restitution. The concept of respon-

sibility is thus more a social-technical one while the concept of culpability is more of a social-psychological one.

Something important follows from this for our theory of collective moral responsibility. As my explanations have shown thus far, assigning collective responsibility is not an easy thing. There are good reasons for being extremely careful with this instrument for social regulation. And even more so if significant parts of such a link for responsibility rest on a purely normative basis and are thus not accessible to empirical, ultimate justification.[166] At the same time, moral judgment is always emotionally loaded and frequently systematically very messy, as I have already shown at the beginning of this essay in the introduction. In addition, the most important and third circumstance is that the assertion of collective responsibility usually cannot be supported by evidence that shows that every single member directly participated in the event. That means that the normally indispensable empirical causal connection of direct agency is lacking. While I have indicated the important reasons as well as a means to overcome this obvious difficulty above, at the moral-emotional level of an imputation of blame there is still an unsurmountable reason for exculpation if the member of the collective credibly disputes his direct participation in the act.

The entire construction of collective assignment of responsibility developed here is thus only convincing if we can forego individual imputation of blame! And, in fact, we *must* forego this if we want to uphold any kind of collective responsibility. I have shown how collective responsibility is derived from a fail-

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166 I follow the view here that 'are' and 'ought' belong to different ontological categories and cannot be derived from one another. This approach, in its more concise form, is in G.E. Moore's *Principa Ethica*: he declares every reduction of 'are' to 'ought' as a "naturalistic fallacy" (Moore [1993], § 10). Kondylis represents this idea even more drastically in his book *Macht und Entscheidung* (Kondylis [1984]), but he goes too far in deriving the conclusion that all morals are just a veil hiding the blank desire for self-preservation and power. Such a standpoint also obviously does not replace a more detailed analysis of 'ought' – no matter what one thinks about it. To go into this here, however, would go far beyond the framework of this essay.

ure of the corporately constituted organization of the collective. To this extent there is also culpability here in a broad sense of the term. However, emotionally, it is significantly weaker than direct personal blame. We are constantly being confronted with asymmetry as soon as individual members of a perpetrator collective, e.g., for an ethnically motivated act of violence or ideologically justified collective act of violence (mostly from terror groups around the world today), are pointed at for acts of its collective. Such participants then always say that they were not personally involved and therefore should not be made responsible for the consequences. From the analysis developed here, it now follows that these people actually have no culpability for the accused events but still carry responsibility. Being relieved of blame has two aspects: For one, we can forego proof of direct, causal complicity because it doesn't play a role. For the other – and this is no less important – we forego the emotional accusation *ad personam*. We simply soberly determine that the person in question must also accept the consequences even if we cannot prove direct complicity and therefore cannot harbor any valuing emotions towards him or her.

The result of distinguishing between culpability and responsibility is also very desirable for another reason. Namely, if already very reprehensible events have occurred and cannot be reversed, the subsequent emotions of outrage usually can't be prevented and, to a certain degree, are even important in order to affirm the moral correctness of the actual behavior expected. However, to the same degree, they are socially dangerous. If the emotionally charged accusations do not settle down, violence could spiral. Social peace is a very great good; it is virtually the last measure of all domestic political action. And collective emotions also play a very important role in international relationships. Preparations for many wars in the recent past have included massive emotional incitement of the populace before the attack so that it would be ready to carry the enormous strains of the war. This is why it is so important to deal with assignments

of blame in retrospect as well so that emotions can be quickly settled. It is reason enough to direct the assignment of collective responsibility at the perpetuating collective's future responsibility when assigning collective responsibility, especially in major political issues, and not look backwards at culpability.

Perhaps this seems a little like an oxymoron for the reader, in view of what has been written thus far. Isn't this supposed to be about questions and possible answers regarding the culpability of the actors? To repeat: No. That would be a great misunderstanding. An collective imputation of blame is virtually impossible in its core, even with a very small collective, and especially when lacking the possibility to prove direct causal participation of individuals in collective events. The only thing that can be upheld, according to my analysis, is a very indirect accusation of passivity in spite of obviously wrong developments on the part of the corporate actor for a collective. Such residual accusation strips the imputation of blame of its moral-emotional basis, whereby the focus of the consideration – completely in the sense of a sober reaction to wrong behavior – shifts to the future, i.e., to consideration of the consequences of the collective wrongdoing. And here, the individual must carry responsibility for the proven wrongdoing of his collective even without his own assignment of culpability. Thus it follows, that there is no collective blame, but there is a collective responsibility for the misconduct of the corporate actor for a collective.

10 The Temporal Horizon of Collective Moral Responsibility

The solution to the fundamental puzzle of how a member of a collective can still be responsible for something that the member, as an individual, did not do lies in the act of disconnecting corporate actors from a collective carrier. Herein also lies the possibility of finding an answer to an even more difficult question: Can collective responsibility be justified for the generations that follow the perpetrating generation, and if yes, for how long?

I have already discussed this in section 5.4 with reference to Ton van den Beld's work.[167] He reduces the justification for such responsibility to a practical feeling of guilt on the part of the involved, which is definitely not a sufficient reason to objectively speak of collective moral responsibility.

Even if the direct causal participation of the individual in the collective wrongdoing is not necessary according to the above interpretations, in order to assign moral responsibility it is still indirectly connected to the culpable events: It is part of the continued social structure that brought forth the event or, as Bertolt Brecht said in one of his famous plays: "*Der Schoß ist fruchtbar noch, aus dem dies kroch.*"("The lap from which this crawled forth is still warm.")[168] In other words, it is not about the backwards looking question but rather the forward looking one as to whether something that should not have taken place will continue. The question is how long the 'fecundity' of a certain social structure remains responsible for a future one. Collective memory reaches back very far. Today even more so because of the technical assistance we have with digital reproductions of sound and image and the unimaginable reach offered through the internet where things can theoretically stay in the collective memory forever. We cannot make simply the remembrance of a collectively incriminating action the basis for responsibility, otherwise it would have no end. But, this must be possible and not only for theoretical reasons.

Large collectives, such as entire societies, nations, peoples, etc., have a lot of inertia in their world view and social identity. This has advantages and disadvantages. The inertia protects the collective from spontaneous experiments with unknown forms and rules which end disastrously. Large collectives accumulate and change their customs and traditions very gradually according to the *ultima ratio* of social success. This evolutionary argument is

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167 See Van den Beld [2002]
168 Bertold Brecht: *The Resistible Rise of Arturo Ui* (epilogue), written in 1941 as an epic parable of the National Socialist regime in Germany.

ultimately at the core of the belief in progress to which we are more dedicated than all other previous generations for better or for worse. But inertia has its price. It does not allow us to easily get rid of systematic defects even though they have already been proven to be bad. And herein is the justification for change as a collective, so that the alleged events are not likely to repeat again and become the responsibility of those who come later.

The necessary changes that result from this are very tedious because they undermine the self-image of the people concerned in their social context, i.e., their social identity. In particular, they require an admission of failure in regards to the alleged events. This is enormously difficult, particularly for large collectives, because its members are constantly, mutually reaffirming that it was actually 'the other person' who was to blame. And sometimes they will even go as far as to dispute the entire alleged event, such as those who deny the holocaust.

The obstreperousness against recognizing personal responsibility is rooted, paradoxically, in an eminently positive motivation in all our social orientation. The clear majority of all people want to be good in their social behavior, whatever they understand that to mean. In return for trying to be good (which is always an effort on behalf of the social environment), people demand a corresponding service in return in the form of collective valuation of their personhood. We need to be constantly rewarded socially for our psycho-social effort of insight into our own wrongdoing and simultaneously the corresponding collective wrongdoing, because otherwise the insight is simply humiliating to our collective pride. We need this reward, in fact, to even be willing to make the effort of this insight. The name of this reward is redemption or *deliverance from culpability*.[169]

Such deliverance is only possible in return for taking on responsibility for the structural changes that are necessary to

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169   How extremely important this redemption is can be seen by the fact that it and universal brotherly love comprise one of the leitmotifs for all types of Christianity.

avoid a repetition of the allegations of wrongdoing. Disregarding religious relationships of responsibility to higher powers, the source of the deliverance from an accusation can only come from those who have made the accusation, particularly those who were injured or victimized by the wrongdoing (for earthly social occurrences). These people will only be willing to excuse a wrongdoing if

a) their loss is at least partially compensated to the extent possible, and

b) the accused not only publicly expresses understanding regarding the wrongdoing but also take specific steps to change his attitude in such a way that the risk of the wrongdoing being repeated is greatly minimized.

In the case of collective moral responsibility, this goes beyond the double obligation to compensate the victims as fully as possible and to assure with high probability that similar events are not undertaken again by the carrier collective through long-term, institutionalized guards. The burden of proof for these structural changes in the perpetrator collective is always with the carrier collective itself.[170]

The temporal duration of the resulting responsibility is therefore determined only qualitatively not quantitatively. It lasts until the members of the collective institutionally, as well as in the mind of each average member, are assured with sufficient probability that the repetition will virtually never happen again. Such an assurance cannot be reached through a few glossy orga-

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170 This is exactly what the Americans planned and executed after World War 2 with the complete rebuilding of the German state institutions. Only the western part of the former Germany, the so-called Federal Republic of Germany, made extensive reparation payments to many victim groups, especially the Jewish people, in the subsequent years. All of these measures were in no way complete or perfect. Many former Nazis found new positions in the new government, and many victims were not compensated. Nevertheless, the project of rebuilding the German perpetrator society as a whole is seen as successful, especially because Germany, as a nation or as a society, did not shrink from taking unconditional responsibility for what happened.

nizational changes; even a new constitution, a new government, etc. are not nearly sufficient to meet this condition. That would be just too easily done. It has to concern the public consciousness and power structures - that all-encompassing political atmosphere that ultimately rests in the average individual consciousness. Or, phrased another way, the detailed restructuring of the institutions based on the will for continued improvement by expressly remembering that which occurred. Something like this takes generations, and the specific amount of time cannot be theoretically fixed. But those involved in a collective must participate and persevere if they want to be freed of the accusation of co-responsibility for something that might already have been long forgotten but that is still present in the collective memory and can therefore still have enormous social impact.

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This book explores a universal question of human social order: Under what circumstances and to what extent is the individual to be held morally responsible for collective events? This question reaches far beyond the intentions and actions of a particular business enterprise, state or a similar large-scale collective.

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