

Corporate criminal responsibility as team-member responsibility

By Ian B. Lee*

Abstract

In this paper, I develop a theory of corporate criminal responsibility as the shared responsibility of the members of a team for wrongdoing committed by one of their number in the pursuit of their common goals. I argue, in addition, that this understanding of corporate responsibility for wrongdoing can help to illuminate the nature of and rationale for the practice of imposing criminal liability upon corporate entities for crimes committed by their directors, officers and employees in the pursuit of the corporation's goals.

The theory advanced in the paper is a theory of collective responsibility. However, it is to be distinguished from theories — such as those of Peter French and Phillip Pettit — under which corporate or group responsibility is viewed as the responsibility of the corporation or group as an autonomous moral person. Like French and Pettit, I shall suggest that the corporation is a collective entity and not, for instance, a mere collection of atomistic individuals. There is a difference between a collectivity and a crowd, and corporation is of the former type. However, I argue that it is not necessary (and not desirable) to ground corporate and collective responsibility in an anthropomorphic characterization of the nature of collective entities, or on a conception of the collectivity under which its identity is detached from that of its constituent members.

Instead, I view a collectivity as a kind of relationship among individuals; this makes a collectivity something more than the sum of its members, but not something having an autonomous existence apart from its members. To develop this idea, I employ the concept of a team.

The paper makes two basic claims. First, where individuals participate in a team, doing their part towards a collective goal, they are entitled to share in the credit for the positive achievements resulting from their combined actions, and they also share in discredit for negative achievements of the group. This is so for each member, I shall argue, regardless of whether the member's individual contribution was a but-for cause of the group's achievement.

Second, I suggest that in the specific case of corporate teams, team-member responsibility can help help to explain why there should be liability of the corporate entity for crimes committed by members of the corporation (a group which I shall suggest typically includes its employees, officers, directors and, in some circumstances, its shareholders) in the pursuit of the corporation's goals.

* Associate Professor
University of Toronto Faculty of Law