



BOOK REVIEWS

***The Fallacy of Corporate Moral Agency*, by David Rönnegard.
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The past ten years or so have seen a resurgence of interest in the question of whether modern business enterprises (typified by the corporation) have moral obligations and, if so, what this would entail about the moral responsibilities of the members. Over the past twenty years there has also been a resurgence of interest in the question of corporate *social* obligations. Though it is rarely acknowledged, this is a different topic and a separate question—whether modern business enterprises have an obligation to move beyond more typical moral action to address broader social problems like inequality, pollution, and poverty. Thus, for example, one could argue that firms have moral obligations but no social obligations. Or, like David Rönnegard in *The Fallacy of Corporate Moral Agency*, one could argue that they have no moral obligations but potentially huge social obligations. It is an intriguing position, and Rönnegard’s *Fallacy* traces an interesting path as he argues for it.

As laid out in more detail below, *Fallacy* is divided into two parts. The first part addresses the moral question, arguing (1) that moral agency requires the capacities for intention, action, and autonomy; (2) that corporations cannot possess these capacities; and thus (3) that corporations cannot qualify as moral agents. Lacking moral agency, they cannot have moral obligations or bear moral responsibility. The second part explores the role of the modern corporation in society, arguing that the corporate form—the bundle of rights, privileges, and obligations awarded by the state—is the tool of the state, and that the state may modify this form as it chooses in an effort to achieve its own social goals. According to Rönnegard, it is entirely appropriate that individual corporations be bound to pursue social ends by these legally enacted constraints, but they need not and should not pursue social ends on their own initiative.

Anyone interested in the questions of corporate moral and social obligations will find a great deal of value in *Fallacy*. Among other things, it provides an excellent survey of the many theories of corporate moral agency (together with some very useful diagrams), a helpful introduction to the historical development of the corporation and its legal attributes, and some intriguing claims, especially the claim in chapter eleven that the market is a zone of “moral exception.” *Fallacy* is an interesting, useful addition to both the corporate *moral* responsibility and the corporate

social responsibility literatures, and raises a number of issues that will need to be addressed as those literatures continue to develop.

Before I begin the summary, a preliminary note about terminology: Most of the debate about “corporate” moral agency and responsibility has focused on business enterprises, but few (if any) of the accounts have placed any weight on the legal status of the enterprise, i.e., whether it was incorporated or not. For that matter, little (if anything) about the basic accounts of agency and responsibility have turned on the fact that the agents were engaged in business; most of the theories would apply equally well to other enterprises and organizations. Thus, the “corporations” of the corporate moral agency and responsibility debate are really just highly structured collectives, with the specific applications drawn from business. This is as true in the first part of *Fallacy* as elsewhere in the debate, but not in the second part; there, Rönnegard’s attention turns to the history and structure of the (legal) corporate form and the “corporations” in question are the legal entities. Thus, the “corporations” of the second part are a different group than the “corporations” of the first part.

The first part of *Fallacy* focuses on questions of corporate moral agency (CMA) and obligation. Chapter one begins with a helpful distinction between “collective” and “corporate” moral agency. The goals and commitments that drive collective agency are derived exclusively from the intentional states of the members of the collective, while the goals and commitments that drive corporate agency have a broader foundation. This is important because CMA requires the possibility of a corporate agent with *its own* goals and commitments—and hence its own actions, obligations, and responsibility—distinct from those of its members. Collectivists deny this possibility while still recognizing *collective* moral obligation and responsibility, distinct from individual moral obligation and responsibility. Rönnegard ultimately advocates the latter position, at least under certain conditions, in chapter eight.

Chapter two lays out the three requirements for moral agency (intention, action, and autonomy) and chapters three, four and five address each requirement in turn, presenting a very helpful survey of most of the major CMA theorists along the way: Peter French, Larry May, Patricia Werhane, Richard DeGeorge, and Philip Pettit. In each case, Rönnegard argues that these theorists have identified a kind of “as if” version of the relevant capacity, justifying only what he calls “instrumental” or “semantic” attributions; at best, for Rönnegard, the CMA literature has shown that corporations act “as if” they have intentional states, actions, or a kind of autonomy. He insists that this is woefully inadequate and that real moral agency requires a more robust metaphysical grounding (cf. Hess, 2014a, 2014b, for arguments that corporate agents meet this requirement). While he has a number of objections to the various accounts, the most significant one, which runs throughout the discussion, is that corporate agents lack phenomenal consciousness, and that *real* intentionality, action, and autonomy requires a conscious agent. He uses other terminology—most often “mental” and “aware”—and the word “conscious” appears only three times (25, 28, and 46). Nevertheless, I think that designation best captures his objection, especially given Chalmers’ offerings (1997) of *non-conscious* versions of awareness and other mental capacities. Unlike many scholars who adopt a similar skeptical position, Rönnegard actually acknowledges the commitment and argues for it,

drawing on the paradigm of the human moral agent, and in general his presentation of the theories he rejects is admirably fair and balanced. My major concern in this area is that Rönnegard consistently interprets the holist corporate agent as some kind of immaterial being, which is a little odd for something made up of (material) human agents. I address this further below.

Chapter six summarizes the previous chapters and argues that CMA is not only mistaken but dangerous: it encourages reification (and later, personification) of the corporate entity and generally fails to identify any moral obligations that are binding on *either* the (non-existent) corporate entity *or* the members thereof. Chapters seven, eight, and nine address this latter possibility, attempting to identify the true referent of claims about the responsibilities of “the corporation.” Rönnegard concludes that it is “the set of corporate members that are delineated by virtue of the corporate structure, although such an attribution need only aim to *distribute* responsibility to a subset of its members” (66). With this, he surveys Michael Bratman’s and Raimo Tuomela’s more collectivist accounts, then proceeds to argue that the attribution and distribution of moral responsibility to a corporation will be appropriate only in the case of a “unanimously intending collective”—a shockingly rare beast, in the corporate world (95-96).

The second part of *Fallacy* addresses a startlingly diverse array of topics somewhat clustered around questions of corporate social responsibility (CSR). Chapter ten gives a highly informative survey of the development of the modern corporation (in this case, literal “corporations”) and the evolution of “the corporate form,” which is

a contract that confers upon an association of people the status of a legal person with primarily the following attributes: limited liability, a separation of shareholders and corporate entity, a shareholder primacy norm, shares as an autonomous form of property, and perpetual life. These attributes serve macro and micro economic ends.... (139)

It also introduces three legal theories of “the corporation”—again, distinct from the theories of highly structured collectives discussed in the first part—and concludes that only one of these, the so-called “Legal Fiction Theory,” matches the specific attributes bestowed upon the corporation by the state. In chapter eleven Rönnegard provides a stout rejection of libertarian claims of absolute property rights (150-54), which might limit the ability of the state to regulate the corporate form, and a sharp rejection of the claims of stakeholder theory (158-64), which encourage voluntary corporate action in pursuit of social ends. Rönnegard nonetheless concludes that Legal Fiction Theory licenses state manipulation of the corporate form, and even extensive state regulation of corporate activity, in the pursuit of social ends, such as the reduction of pollution, the eradication of poverty, and the like. He captures his conclusions with the assertion that we can make “a useful distinction between the *goal* and the *role* of the corporation: its goal is to be an instrument to further the interests of the shareholders, while its social role is to further the interests of the state” (xiii).

There is one important concern to raise here regarding Rönnegard’s interpretation of the pro-CMA position. As noted above, Rönnegard presents a rather distinctive

interpretation of the holist accounts, reading all of them as if they proposed some kind of immaterial corporate agent and then concluding—accurately and unsurprisingly—that an immaterial entity makes for a very odd and ineffective agent. He gets to this interpretation by noting that the corporate agent’s intentionality and actions must be “distinct from” the intentionality and actions of the members, then taking this as license to completely remove the members from the account. He essentially “dis-members” the corporate agent and then treats “the corporate agent” as whatever is left over after you get rid of the members. I share Rönnegard’s frustration that the holists have done so little to articulate the metaphysical and ontological aspects of their corporate agents, and they have done less than they could have to prevent such an interpretation; Werhane, at least, seems to affirmatively adopt it. Nonetheless, such an interpretation does a disservice to the position.

Most holists are trying to account for the intentionality and agency of a *collective*, i.e., a group of human agents organized in a certain way. Like any other material object, both the parts and the organization of the parts are crucial to its identity and capacities. As Aristotle reminds us, a random collection of human body parts is not a human agent; and, just so, a random collection of human agents is not a corporate agent. To get a human agent you need all the right parts properly assembled and working together to enable the intentionality, action, and autonomy that mark the kind; to get a corporate agent, you need the same. Corporate intentionality, action, and autonomy are *distinct from* the intentionality, action, and autonomy of its members, not totally independent of them, just as the human capacities are distinct from their physical underpinnings but not independent of them. A human agent with all the body parts removed would not be an agent, and a corporate agent with all the members removed is the same. Most of the holist accounts would fare better than Rönnegard acknowledges if they were read this way.

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