Group Agency

The Possibility, Design, and Status of Corporate Agents

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Preface

Can groups be unified rational agents over and above their individual members? In this book, we argue that they can, and identify conditions under which it is methodologically and normatively justified to view a collective as a single agent. We argue further that recognizing the existence of group agents leads us to reconceptualize some of the contours of the social world, from both positive and normative perspectives.

From a positive perspective, one can often achieve greater descriptive and explanatory parsimony by viewing a collective as a single agent, acting in pursuit of a single set of desires, in accordance with a single set of beliefs. Candidates for group agents include governments, commercial corporations, collegial courts, political parties, and expert panels, to give just a few examples. To defend the view that there are group agents, we must explain how the required agential unification can emerge at the collective level, despite the fact that individual group members have their own divergent sets of beliefs and desires as well as conflicts of interest. We suggest such an explanation and give an account of how a group must be organized in order to function as a single agent.

From a normative perspective, once we recognize the existence of group agents, we are able to assign responsibility to entities that were previously unacknowledged; we are able to extend the universe of persons in a way that allows us to track obligations, entitlements, and power relations in places where we did not previously see them; and we are able to clarify the nature of the conflicting demands on people’s identities that may otherwise seem opaque.

In short, this book is intended to lay the foundations for a revised picture of the role of agency in our complex social world. Crucially, our approach seeks to explain the possibility of group agency in a non-mysterious way. We reject the emergentist approaches that can be found in some of the older, heavily metaphysical accounts of group agency which had their origins in nineteenth-century and early twentieth-century continental traditions and which tended to elevate group agents above individuals, hailing them like transcendent realities that radiate into the minds of individuals. Instead, our approach is inspired and informed by recent developments in rational and social choice theory and other contemporary fields of philosophy and the social sciences, and so is compatible with the broadly individualistic foundations of those modern fields.

After a more detailed introduction, the book is divided into three parts. In the first part, we defend the logical possibility of group agents. In the second, we discuss several challenges that arise in the organizational design of group agents and suggest some general strategies for meeting those challenges. In the third and final part, we discuss the
looser, more indirect manner, through securing the non-arbitrariness, transparency,
and democratic accountability of the group’s decision making – underlines the import-
ance of a thoroughly democratic organizational structure. With both components in
place – a suitable organizational culture and a transparent, democratic organizational
structure – a group agent is well placed to protect its members’ control.

PART III
The Normative Status
of Group Agents
While in the first part of the book we have looked at the case for thinking that
group agents exist and in the second at how their organizational structure affects their
performance on several fronts, we turn in this final part to issues concerning the normative
status of group agents. In this chapter we discuss how far group agents can be held
responsible in the way in which we hold individual human beings responsible; in the
next, how far they count as persons, displaying the capacities associated with personhood;
and in the final chapter, the extent to which they offer members a novel object of
identification, leading individuals to think in a we-frame in addition to an I-frame.

This chapter is divided into three sections. In the first section, we look at what
responsibility means and at the conditions that make an agent fit to be held responsible.
In the second, we argue that group agents can satisfy these conditions and deserve to be
held responsible for what they do. And in the third section, we review several issues
involving the relation between individual responsibility and the responsibility of the
group agents they constitute: their 'corporate responsibility'.

The issue of corporate responsibility goes back a long way and is at the heart of many
discussions of group agents. That discussion often focuses on whether group agents
count as persons, a topic to which we turn in the next chapter. The classical connection
between corporate responsibility and personhood was made in a debate about the
exposure of a group agent or universitas to excommunication. In 1246 Pope Innocent
IV argued against the excommunication of any such corporate entity on the grounds
that although it might be a person – this important concession was made in passing – it
was a persona fissa, a fictional or artificial person, and did not have a soul (Eschmann
1946, pp. 29–36; Kantorowicz 1997, pp. 305–6). In arguing that group agents are fit to
be held responsible, contrary to the gist of Innocent's message, we lay the ground for
the claim, discussed in more detail in the next chapter, that they can count as
institutional or juristic persons: artificial to be sure, but not fictional.

7.1 Fitness to be held responsible

Holding responsible and related attitudes

There are many ambiguities in the notion of holding someone responsible and it
is useful to guard against these from the outset. First, holding an agent responsible for

something in the intended sense does not mean just assigning causal responsibility for what was done. We might hold the dog causally responsible for soiling the carpet but we would not hold it responsible in the sense we have in mind; not at least by our understanding of canine capacities. Holding responsible in our sense implies that, if what was done is something bad, then the agent is a candidate for blame; if it is something good, then the agent is a candidate for approval and praise. We may be angry at the dog, or frustrated at the failure of the training regime, but by most lights it makes little more sense to treat the dog as blameworthy than it does to treat the weather in that way.

But while our sense of holding someone responsible is a moral rather than just a causal one, it should also be distinguished from two other moral senses. It is distinct from merely holding an agent accountable, identifying that agent as the one who carries the can, the one who occupies the desk where the buck stops. We might hold agents accountable in that sense, and asport blame or approval, without thinking that they were responsible in the sense intended here. The parent might be accountable for how the twelve-year-old child behaves in certain domains, for example accountable before the law. But we would not hold the parent responsible in the sense in which we might hold the child responsible — or in which we might hold the parent responsible, had he or she been the agent. The grounds on which someone can be held accountable are much less demanding than those on which they can be held responsible. Holding someone responsible is also distinct from just thinking the agent responsible. Holding an agent responsible requires thinking that the agent is responsible but it also involves something else. We think someone responsible when we think they satisfy conditions sufficient for being a candidate for blame or approval; we hold them responsible when we go one further step and actually blame or approve. The agent who forgives an offender will have to think that the offender was responsible for what was done, and a candidate for blame, else forgiveness would not be in place. But what the forgiveness presumably involves is an eschewal of the blame itself. Similarly, the therapist may believe that a patient was responsible for some deed, yet put blame aside. The therapist might say: ‘We both know, of course, that you were fully responsible for that action but we are not concerned with blame; our task is to understand why you did it.’

How can we understand the blame that is put aside in such cases, or the complementary approval? We need not go into that question in detail, but, to focus on the negative case, we assume that blaming involves adopting or identifying with the stance of a creditor: someone to whom at least an apology is owed. Adopting such a stance typically means indulging in resentment, identifying with the stance means indulging in indignation (Strawson 2003). Adopting the stance towards oneself, as in blaming oneself, means indulging in a sense of guilt.

Three conditions for fitness to be held responsible

Almost everyone is likely to agree that it is often appropriate to hold a group agent causally responsible for certain actions and their effects. Almost everyone will also agree that it is often appropriate to hold a group agent accountable for various deeds and effects; for example, those brought about by their employees in corporate business. Certainly no one who goes along with our account of group agency will demur at either of these ways of treating a group agent. But the question is whether it can also be appropriate to hold a group agent responsible in the richer sense intended here: to think the group is responsible and, in the case of blame, to adopt or identify with the stance of a creditor — someone to whom a debt is owed. Is a group agent a suitable candidate for blame or approval by the criteria of ordinary practices?

We think that three conditions must be satisfied, under ordinary practices, for someone to be fit to be held responsible in a choice. These conditions correspond to the requirements outlined in some Christian catechisms as necessary and sufficient for a deed to constitute a serious sin. There must have been ‘grave matter’, it is said; there must have been ‘full knowledge of the guilt’; and there must have been ‘full consent of the will’. The first condition stipulates that the agent faced a morally significant choice; the second that the agent was in a position to see what was at stake; and the third that the choice was truly up to the agent: it was within the domain of the agent’s will or control. Regulating these ideas a little, we lay down the following three conditions for an agent to be fit to be held responsible in a choice.

Normative significance. The agent faces a normatively significant choice, involving the possibility of doing something good or bad, right or wrong.

Judgmental capacity. The agent has the understanding and access to evidence required for making normative judgments about the options.

Relevant control. The agent has the control required for choosing between the options.

Why accept these conditions? We think it is clear that they are individually necessary for responsibility, since no agent who violated any of them could be reasonably held responsible for what is done. Let the agent not face a normatively significant choice, and no question of responsibility arises. Let the agent not be in a position to make normative judgments about the options, say because of being denied understanding or evidence on these matters, and again there is no basis for holding the agent fully responsible. Genuine incomprehension or unavoidable ignorance is a perfectly good excuse when something bad is done. Finally, let the agent not have full control over what is done, and there is no basis for expecting the agent’s normative judgment to have a strong enough effect on the action in question, for example, and so no basis for regular fault-finding; the agent will have a fall or partial excuse for having behaved in that way.

These considerations suggest that the three conditions are individually necessary for fitness to be held responsible. But are they also jointly sufficient? We think they are,
since it is hard to see why someone should not be held responsible for a deed if they satisfied all the conditions at once. We assume in what follows that the conditions are both necessary and sufficient.

Holding responsible and regulation

Before turning to the responsibility of group agents, it is worth making two further observations. Both bear on the connection between holding agents responsible and acting so as to regulate their performance. The one concerns ‘instrumental regulation’, the other ‘developmental regulation’.

Instrumental regulation consists in the imposition of sanctions, whether rewards or penalties, with a view to shaping the choices agents make. The most salient form is the penal regulation of the law, which seeks to shape the behavior of citizens by the threat of legal penalty. Holding someone responsible in law, say in the criminal law, for having committed a certain offense is distinct from punishing them, say by imposing a fine or prison term or whatever. This is important to recognize because discussions about criminal justice often run the two together, setting up a false contrast between backward-looking ‘retributivism’ and forward-looking ‘consequentialism’.

The retributivist theory rules that offenders should be held responsible and punished in accordance with their desert, where this is a function of their fitness to be held responsible, by the criteria of ordinary practice, and the gravity of the offense. The consequentialist alternative argues that they should be held responsible and punished in whatever manner promises to yield the best results overall. But this dichotomy is false, as it runs together the issue of how far to hold someone responsible and how far, in light of that responsibility, to impose penalties that may regulate their future behavior or the behavior of others. If this distinction is easily missed, that may be because the fact of holding someone responsible for doing good is in itself a reward, and the fact of holding them responsible for doing evil a penalty; a long tradition holds that we bask in the good opinion of others, and smart under their implied censure (Brennan and Pettit 2004).

How far someone is fit to be held responsible for having committed an offense is certainly to be determined, as retributivism holds, by looking backwards to the measure in which the agent satisfies conditions like those mentioned here; those conditions are deemed relevant within our familiar practice of finding fault and assigning credit. It would be grotesque to think that whether someone deserves to be held responsible should be determined by whether holding them responsible has desirable consequences. That would be like thinking that whether a proposition deserves to be believed depends on whether believing it would have desirable consequences.

But where retributivism wins on that first issue, it loses out on the second. It is implausible to think that the same criterion would tell us how various offenses should be punished. Retributivism, or at least a more general theory of fairness, might dictate some constraints on the practice of punishment but the shape taken by the penal regime should surely be affected by the consequences it promises to deliver: consequences in deterrence and protection, for example, but also more general consequences for the quality of the society as a whole. To think otherwise would be to give credence to a doctrine in the vicinity of the lex talionis: an eye for an eye, a tooth for a tooth.

Our concern in this chapter is with how far group agents can be held responsible, not with how they can be best regulated, penal or instrumentally. We argue that corporate bodies are fit to be held responsible in the same way as individual agents and this entails that it may be appropriate to make them criminally liable for some things done in their name; they may display a guilty mind, a mens rea, as in intentional malice, malice with foresight, negligence, or recklessness. But we say nothing on the practical considerations relevant to determining the best sanctions to impose in criminal law, tort law, the law of contract, or any other branch of jurisprudence. There is a voluminous literature on this subject and, while our argument makes criminal liability a sensible option with group agents, it does not provide a clear line through the thicket of related practical problems (Lauré 1994; Colvin 1995; Grantham 1998).

So much for holding agents responsible and regulating them instrumentally. The other form of regulation is developmental rather than instrumental in character. To introduce this idea, think of the way parents often deal with their growing children in domains of behavior where the children may not be fully fit to be held responsible. While recognizing this lack of fitness, parents may yet announce that they will hold the children responsible for the good or the bad they do; and they may reinforce this attitude with appropriate sanctions. They may allow the teenage son to host a party but insist that they will hold him responsible for any damage done by his friends. Or they may allow the teenage daughter to stay out late but hold her responsible for not missing the last bus. And they may do these things, while being conscious that the children do not yet have the capacities required for reliably achieving the desired results.

Why do this? The most plausible answer is that by treating the children as if they were fit to be held responsible, the parents may help to induce in them the self-awareness and self-regulation such fitness requires. The practice has a developmental rationale. It makes sense as a way of encouraging in the children those very habits that may one day underpin their fitness to be held responsible. This has been described as a practice of ‘responsibilization’; the word is cumbersome but the idea clear (Garland 2001; Pettit 2001c).

As holding someone responsible for an action is distinct from punishing or rewarding them, thereby seeking an instrumental regulation, so it is distinct from the responsibilizing initiatives in which we seek to regulate agents developmentally. This is important, as we can imagine initiatives designed to achieve a developmental effect in group agents, not to reflect a prior conviction that the groups are truly fit to be held responsible. Just as children can be educated to mature and grow in the abilities that make them fit to be held responsible, so we might think that the same is true of some groups. We return to this thought at the end of the chapter.
7.2 The fitness of group agents to be held responsible

Applying our three conditions for responsibility to the corporate case, a group agent is fit to be held responsible for doing something to the extent it satisfies these requirements:

**First requirement.** The group agent faces a normatively significant choice, involving the possibility of doing something good or bad, right or wrong.

**Second requirement.** The group agent has the understanding and access to evidence required for making normative judgments about the options.

**Third requirement.** The group agent has the control required for choosing between the options.

The first condition

The argument of the opening part of this book shows that the first of these conditions is easily met by group agents. As we have argued, a group can be organized for agency and act so as to pursue a collectively endorsed body of desires according to a collectively endorsed body of beliefs. There can be little doubt that such a group is liable from time to time to face normatively significant choices, in which the options differ on the good–bad or right–wrong axis. And so we have every reason to think that the first condition for fitness to be held responsible can be satisfied by a group agent.

Things are not so straightforward, however, with the second condition; and they are decidedly less straightforward with the third. But there are still good grounds for maintaining that those conditions can also be fulfilled by group agents—at least by group agents formed on the basis of the joint intentions of their members.

The second condition

To satisfy the second condition for fitness to be held responsible, a group agent must be able to form judgments on propositions bearing on the relative value of the options it faces—otherwise it will lack normative understanding—and it must be able to access the evidence on related matters. While it is a difficult issue what exactly is required for access to evidence—what makes ignorance of evidence invincible and blameless—and what does not—this issue is not distinctive of the group case and raises no special problem for us (Rosen 2004). Thus we can focus on the question of whether group agents are able to form judgments on normative propositions.

The notion of agency itself certainly does not imply the ability to form judgments on normative propositions, as the second condition requires. A simple agent like the robot considered in Chapter 1 gets along perfectly well with beliefs about the location and orientation of the cylinders in its environment, given its desire to keep them upright. It does not form any judgments about the value of the options it faces. Propositions about their value are sophisticated in character, as we put it in Chapter 1. Their expression requires the use of operators like ‘it is desirable that’ or ‘it is right that’ or the use of a metalanguage in which the propositions that are the contents of different options have desirability or rightness predicated of them. Simple intentional systems need not have intentional attitudes over such sophisticated propositions.

Is there any reason, then, why we should expect group agents to be able to form judgments over normative propositions? The answer is short: it depends very much on the group agent in question. A group forms a judgment or other attitude over a certain proposition when the proposition is presented for consideration—it is included in the agenda—and the group takes whatever steps are prescribed in its organizational structure for endorsing it. As we have discussed, these steps may involve a vote in the committee-of-the-whole, a vote in an authorized subgroup, or the determination of an appointed official. Since the members of any group are able to form judgments on normative propositions in their individual lives, there is no principled reason why they should not be able to propose such propositions for group consideration and resolution—that is, for inclusion in the group’s agenda.

The ability of members to make such proposals in principle, however, does not imply that they will do so in practice. The procedures of a group may even restrict its agenda to propositions of a purely descriptive kind, in which case the members can put normative propositions onto the agenda only if they are able to change the established procedures. Although it may be possible for members to change those procedures, this may still be difficult, so that the group’s ability to make normative judgments remains only a remote one.

These considerations need not be disturbing from our point of view, for two reasons. First, few group agents are likely to impose procedural restrictions against forming normative judgments about the options they face, even if they are not in the habit of making such appraisals. Second, it would seem to be a serious design fault, at least from the perspective of society as a whole, to allow any group agents to avoid making judgments of this kind. Why should any group of individuals be allowed to incorporate agents under an organizational structure that deprives the group of the ability to assess its options normatively, thereby making it unfit to be held responsible for its choices? We might propose that society should regulate group agents so as to ensure fulfillment of the second condition: groups seeking to be incorporated would thus be legally required to have procedures in place whereby they give due consideration to evaluative matters and form collectively endorsed judgments on them.

A problem with the third condition

The question raised by the third condition is whether a group agent is in control over the actions it takes so that we might expect it normative judgments, for example, to be capable of impacting on its behavior. The notion of control needs analysis in any full theory of agency, but since the issue arises with individual agency as much as with group agency, we need not provide that analysis here (Petit and Smith 1996; Petit 2001c, 2005). The challenge for us is not to explain what an agent’s control is but rather to show that there is no special reason why such control, whatever it involves, shouldn’t be instantiated in a group agent as much as in an individual. By all means a
accounts, an agent's control comes in degrees. It may be reduced or eliminated by factors like obsession or compulsion, low impulse-control, inconstancy over time, or any of the less fluid failures associated with underperformance. These problems are likely to affect group agents too but, being common to individuals and groups, they need not concern us here. What we focus on is a group-specific consideration that seems to suggest that corporate agents lack control.

This difficulty has long been registered in philosophy and theology. Arguably, it lies behind Innocent IV's insistence that a 
universitas cannot be excommunicated, being a purely artificial or fictional person. As one commentator points out, the argument rests on 'the old and solid truth that only individuals can act and, more especially, that only individuals can commit a delict and become guilty' (Eschmann 1946, p. 35). Building on this view, St Thomas Aquinas defended Innocent's line, arguing that something done by a group agent is usually done only by some members, in which case the fault lies with them. Sometimes an action is performed by all members together and we can speak of the responsibility of the group agent as a whole but the Thomist view is that even then the fault is divided up among members as individual agents; it does not belong independently to the body corporate (Eschmann 1946, p. 11).

Put abstractly, the problem is the following:

(1) Whatever a group agent does is done by individual agents.
(2) Individuals are in control of anything they do, and so in control of anything they do in acting for a group.
(3) One and the same action cannot be subject both to the control of the group agent and to the control of one or more individuals.

Therefore:

(4) The group agent cannot be in control of what it does; such control always rests exclusively with the individuals who act for the group.

This argument is clearly valid; so, if we are to reject its conclusion, we must find fault with one or more of its premises. But the first two premises are compelling, as we have assumed or argued throughout this book. Thus the question is whether we have to accept the third premise, which denies the possibility that control over an action might be exercised at once by the group and by the members acting on its behalf.

At first sight that premise might not seem plausible at all. Those who act for group agents typically act on the instructions of the group, or by the commission of the group. But in that case both the group and the members can each have control over the action; the group as the agent that gives the relevant instructions, and the agents as the agents who carry out those instructions. This line doesn't work, however. Just as anything the group does is done by its members, so any instructions the group gives are given by one or more members. And so the problem recurs on one stage earlier. How can the group be in control of the instructions given, if those instructions are already under the control of the members issuing them?

The problem parallels a classic problem in the philosophy of mind, or more generally, in the theory of 'multi-level causality' (e.g. Kim 1998; for a recent general discussion, see List and Menzies 2009). The general issue is how causal control can be exercised simultaneously at different levels; say, by the neurons and the intentional attitudes of an individual human being. The actions of an individual are mediated by the neuronal activities in his or her brain, just as the actions of a group agent are mediated by the activities of its members. And so the mediating neurons in the individual human being threaten to rob that individual of causal control, in the same way in which the mediating members in a group agent threaten to rob that agent of causal control.

If the problem raised is parallel to this classic problem, however, then in what sense is it a group-specific difficulty? The specificity comes from the connection with responsibility. Even if his or her neurons rob an individual of control – and philosophers are divided over whether it is correct to say they do – these neurons will not count as morally responsible for the individual's actions, since they will not satisfy the first two conditions for fitness to be held responsible. But if its members rob a group agent of control, they can count as morally responsible for the group's actions; typically, they will satisfy the required conditions. Hence the problem in the group case is sharper. It is not merely a metaphysical difficulty for the assignment of responsibility to agents but a specific difficulty about why we should count group agents responsible, and not just their members.

We develop an approach to the problem of control in a group agent that draws on the more general issue of multi-level causality. We hold that, even in the case of an individual, it is wrong to think that the neurons rob the agent of control and we argue that, equally in the case of a group agent, it is wrong to think that the members rob the group of control. Hence we see no problem with the group's meeting the third condition for fitness to be held responsible.

A general perspective on the problem

The issue of multi-level causality arises in non-mental contexts as well as in mental ones. It is that of how there can be higher-level and lower-level factors that are causally relevant to one and the same event – and this, despite the fact that neither factor causes the other, and that neither combines with the other as part of a larger cause. We look at that more general problem, and at a plausible way of dealing with it, before returning to the group case.

Consider a natural process in which water in a closed flask is brought to the boil and, as a consequence, the flask breaks. Let us assume, to take a simplified story, that what happens in the process is that as the water boils – as the mean motion of the constituent molecules reaches a certain level – it becomes nearly inevitable that some molecule will have a position and momentum sufficient to break a molecular bond in the surface of the flask; and that this actually happens, leading to the collapse of the flask. What causes the flask to break in such a case?
At one level the molecule that actually triggers the break in the surface causes the collapse. Yet, the fact that the water is boiling is also causally relevant to the event. The boiling temperature of the water consists in the mean molecular motion being at such a high level and so constitutes the motion of the triggering molecule together with the motion of the other molecules. While the boiling of the water cannot be described as ‘causing’ the motion of the triggering molecule — the motion is a constitutive part of the boiling — or as combining with that molecule under the umbrella of a larger cause, its causal relevance consists in the fact that the boiling makes it more or less inevitable that there will be some constituent molecule, maybe this, maybe that, whose position and momentum are sufficient to induce a crack in the surface of the flask.

The relationship between the causally relevant temperature and the causally relevant molecule might be described in terms of a metaphor from computing (Jackson, Pettit, and Smith 2004, Part 1; see also Macdonald and Macdonald 2007, and Pettit 2007a). The higher-level event — the water being at boiling point — ‘programs’ for the collapse of the flask, and the lower-level event ‘implements’ that program by actually producing the break. The facts involved, described more prosaically, are these. First, the higher-level event may be realized in many different ways, with the number, positions, and momenta of the constituent molecules varying within the constraint of maintaining such and such a mean level of motion. Second, no matter how the higher-level event is realized — no matter how the relevant molecules and motion are distributed — it is almost certain to involve a molecule that has a position and momentum sufficient to break the flask. And, third, the way it is actually realized does have a molecule active in that role.

Given the fulfillment of these conditions, we can say that the water’s being at boiling temperature ‘programs’ for the breaking of the flask, whereas the molecule’s behaving as it does ‘implements’ that program, playing the immediate productive role. Both programming and implementing are ways, intuitively, of being causally relevant and so, it makes sense, depending on context, to invoke one or the other in causal explanation of the effect. Information about either antecedent, higher-level or lower-level, is significant for the causal history of the event (Lewis 1986a). (For an alternative argument for the possibility of higher-level causation in a multi-level system, see List and Menzies 2009.)

Resolving the problem with the third condition

The analogy with the water gives us a helpful angle on our problem with a group agent’s control over its actions. Suppose that an individual member of a group does something in the group’s name, exercising control in the usual manner. Is there any sense in which the group also exercises control over what is done? The answer is that it can share in that control so far as it relates as a ‘programming cause’ to the ‘implementing cause’ represented by the enacting individual (Pettit 1993).

The temperature of the water controls for the breaking of the flask so far as it ensures, more or less, that there will be some molecule, maybe this, maybe that, which

controls for the breaking so far as it ensures that this particular crack materializes in the surface of the flask. Things may be perfectly analogous in the case of the group agent. The group may control for the performance of a certain action by some members, maybe these, maybe those. It does this by maintaining procedures for the formation and enactment of its attitudes, arranging things so that some individuals are identified as the agents to perform a required task and others are identified as possible back-ups. Consistently with this group-level control, those who enact the required performance also control for what is done: after all, it is they and not others who actually carry it out.

Under this story, the group agent is fit to be held responsible for ensuring that one or more of its members perform in the relevant manner. At the same time, the enacting member of the group is not absolved of their own responsibility. Other things being equal, they are still fit to be held responsible for the fact that it is they who actually help to get the action performed. The members have responsibility as enactors of the corporate deed so far as they could have refused to play that part and didn’t. The group agent as a whole has responsibility as the source of that deed, the ‘planner’ at its origin.

This line of thought resolves the problem that seemed to prevent a group agent from satisfying the third condition for fitness to be held responsible. A group agent, so it now transpires, is as fit as any individual human being to be held responsible for what it does. The members of such an agent combine to form a single agent faced with normatively significant choices, capable of making a judgment on what is good and bad, right and wrong, and capable of ensuring that one or another option is chosen. The individuals who give life to such an agent have to answer, of course, for what they do in making corporate agency possible. But the entity they maintain also has to answer as a whole for what it does at the corporate level, drawing on the resources provided by its members. It has all the agential capacities to make this possible.

Conceptually, then, we have every reason to hold group agents responsible, given that they satisfy the conditions reviewed. Critics might wonder, still, whether there is a point to this exercise. Someone might maintain, after all, that so long as we hold members responsible for their individual contributions to the doings of a group agent, there is no practical gain, and there may even be a disadvantage, in holding the group as a whole responsible as well. This challenge gives us a question to address in the third section of this chapter.

7.3 Individual and corporate responsibility

Types of individual responsibility

The question we face is how far the responsibility of individuals for what is done in a group’s name makes it unnecessary or redundant, perhaps even counter-productive, to hold the group corporately responsible. Individuals may bear three sorts of responsibility in relation to a group agent’s behavior, and it is useful to ask which of these
might compete with corporate responsibility. Individuals may be held responsible for what a group does as designers of the group's organizational structure, as members of the group, or as enactors of the group's deeds: that is, as the agents who carry out its wishes. Or they may bear responsibility under more than one of these headings. We argue that the question we are concerned with — how far individual responsibility makes corporate responsibility redundant — involves the responsibility of individuals as enactors, not in any other guise.

Individuals are responsible as designers of a group, so far as they determine the group's procedures for forming its beliefs and desires and taking its actions. The founders of any corporate entity, be it a church body, a political party, or a commercial organization, naturally bear some responsibility for how that group functions as a result of its design. Such responsibility is not very relevant to our question, however, since it leaves in place the responsibility of the group for doing what the designers made it possible to do. The designers' responsibility in relation to the group's later performance is like the parents' responsibility in relation to their grown-up children. As parents may have laid down formative habits in their children, so the designers will have laid down formative routines in a group they shape. But as the parents' impact normally does little to reduce their children's responsibility for their actions, so the same is true of the impact of designers on the group's behavior.

The responsibility that individuals have as members of a group is equally irrelevant for the question of how far individual responsibility competes with corporate responsibility. On our understanding, individuals have responsibility qua members only if the group is responsible for something. Member responsibility, as we define it, is the responsibility that individuals have as the members of a group agent that does good or bad. It is derivative from the group agent's responsibility, not something that competes with it. Individuals may have member responsibility for what a group does insofar as it is their group agent, their church, association, or company, which produces that result, although, importantly, their levels of member responsibility may vary with their roles in the group. Even if there is little those individuals could have done to stop the group behaving as it did, they may inherit a share in the group's responsibility to the extent that they continue to be members and explicitly or implicitly endorse the group's actions (see also Kutz 2001).

The third way in which individuals can be held responsible for a group's actions is as enactors of the group's actions. Other things being equal, enactors, as we have seen, are responsible for what they do in the group's name, to the extent that they could have refused to play that part. This responsibility is consistent with the group's responsibility overall for ensuring that someone plays that part. But the question is whether there is any point in ascribing responsibility to the group as a whole, given that this enactor responsibility may accrue to individual members. When we have identified the individuals who bear this responsibility, won't it be redundant to ascribe responsibility to the group as well? And mightn't it even be counter-productive, relieving the individual enactors of some of the responsibility that, intuitively, they should carry?

On the face of it, enactor responsibility may thus seem to compete with corporate responsibility, making the latter redundant if not counter-productive. Moreover, enactor responsibility comes in two forms, positive and negative. Those who act to carry out a group's wishes are enactors in a positive sense, those who fail to take some available steps to stop those wishes being carried out are enactors in a negative sense. It may well seem that when all enactor responsibility, negative and positive, is put in the scale, then there is no point in adding the responsibility of the group as a corporate agent.

Why group agents as well as individual enactors should be held responsible

We argue that even when all the relevant enactors in a group action have been identified and held responsible, it may still be important to hold the group agent responsible too. First of all, when the group agent satisfies the three conditions introduced in this chapter, which we have taken to be necessary and sufficient for responsibility, not holding it responsible would simply be to disregard that fact. And further, there can be situations in which there is ground for holding the group agent responsible, given that it satisfies these conditions, but not the same ground for holding individual enactors responsible. In such cases, not holding the group agent responsible would not only go against our conditions; it would also lead to a deficit of responsibility.

To argue for this view, it may be useful to consider first the more familiar case of individuals who do not incorporate as a group agent but happen to act for a common effect. Many people have argued that such unincorporated collections may act in ways that predictably bring about bad results, without the members being individually or distributively culpable, or at least not fully culpable (see Parfit 1984). It may be that the individuals are blamelessly ignorant of the harm they bring about together. Alternatively, it may be that even though they are aware of the harm, they each take themselves not to make a pivotal difference to it, as in the awful case of a firing squad in which members each treat the behavior of the others as fixed. (Of course, lack of pivotality may not be enough to qualify as an excuse.) Or it may be that they take themselves to make a difference, but not in the right sort of difference, in particular not the sort that increases the harm; for example, each driver in a group of dangerously speeding cars may see that he or she dare not slow down, for fear of making a bad outcome worse (Jackson 1987). Finally, it may be that while each is aware of the harm done, and aware of making a difference, they each act under such felt pressure that they cannot be held fully responsible for their contribution to a bad outcome; they can each argue that the circumstances mitigate their personal control and responsibility (Werhan and Freeman 2003, pp. 523–4).

Individually, the members of an unincorporated collection are agents but in such cases they may not be fully culpable, insofar as each has at least a partial excuse for his or her behavior. But the members of the unincorporated group cannot be held corporately responsible either: that is, as responsible as a group. The collection they form is not a group agent. Holding the collection responsible is a way of assigning responsibility to an entity that is not as such accountable for the harm it results in. As we have argued, the group agent should be held responsible for all that it can be held responsible for.
constitute, being unincorporated, is not an agent and thus fails the most basic precondition for responsibility (Held 1970). The circumstances that would make the members of an unincorporated collection less than fully responsible for a collective effect can also arise in the case of a group agent. The members of a group agent, like those of an unincorporated collection, may be less than fully responsible if they are blamelessly ignorant of any harm collectively done, if they reasonably believe that they won’t make the right difference to that harm, or if they act under duress or pressure from others.

Shortfalls of individual responsibility have a distressing aspect in the case of the unincorporated collection, since they mean that although the individuals do something bad together, no one is fully fit to be held responsible. But the failures of individual responsibility in the case of a group agent do leave us with someone to hold responsible: the group agent itself. The fact that the group agent can meet the three conditions for responsibility, as we have argued, is a clear reason to hold it responsible, in addition to holding the enactors responsible. To be sure, we should hold the enactors responsible, if circumstances allow, for any harm their voluntary acts or omissions produce. But we should also hold the corporate entity responsible for the harm that it arranges to have done, given the decisions it licenses and the procedures by which it channels those decisions.

Neglecting such corporate responsibility would mean allowing some responsible actions, as covered by our three conditions, to go undetected. Woes still, it would make it possible for individuals to incorporate, consciously or unconsciously, so as to benefit from this deficit of responsibility. They might seek to achieve a certain effect, say a certain bad and self-serving effect, while arranging things so that none of them can be held fully responsible for what is done; they are protected by excusing or exonerating considerations of the kind rehearsed earlier. We conclude that as it is possible to hold group agents responsible, so it is also desirable.

How likely is it that members might escape individual responsibility for a group action? The discussion in the first part of the book shows that this is a permanent possibility. We know that in forming its preferences and judgments, a group agent may break with the majority views of its members, perhaps under reflective consideration of how to ensure coherence, perhaps under the routinized application of some procedure like the sequential priority rule that may overrule unanimous views. But this means that a group’s attitudes, including its intentions to take certain courses of action, may be formed without individual members actually voting for them or even being aware of their formation. Thus the group agent may end up doing something bad, or doing something good, where the members involved can reasonably claim not to have foreseen the effects of their actions. They may be able to invoke more or less blameless ignorance of the significance attaching to their individual contributions.

Take the case where a decision to be made rests, by group agreement, on the judgments made about certain premises. Let the premises be ‘p’, ‘q’, ‘r’ and let the decision be equivalent to endorsing ‘p and q and r’. Suppose that the group votes on those premises and that the chair announces the decision resulting from those votes. The decision may be made along such lines that all individuals think it is mistaken – each rejects one of ‘p’ or ‘q’ or ‘r’ – though no one is aware of this. If the group acts on that decision, then those who contest it may find that each member can plead that his or her own view was against the action taken: ‘Don’t blame me, I didn’t want this result’. If responsibility is to be assigned in this case, then, intuitively, the group as a whole had better be capable of being found responsible.

Not only is there a systematic basis for holding group agents responsible. There are real-world examples where the failure to do so generates a failure, intuitively, in justice. The ‘Herald of Free Enterprise’, a ferry operating in the English Channel, sank in the 1980s, drowning nearly two hundred people. An official inquiry found that the company running the ferry was extremely sloppy, with poor routines of checking and management. ‘From top to bottom the body corporate was infected with the disease of sloppiness’ (Colvin 1995, p. 17). But the Courts did not hold anyone responsible in what might seem to be appropriate measure, failing to identify individuals who were seriously enough at fault. As one commentator puts it, ‘the primary requirement of finding an individual who was liable . . . stood in the way of attaching any significance to the organizational sloppiness that had been found by the official inquiry’ (Colvin 1995, p. 18). Without going into the details of this case, it seems plausible to say that the company as a whole ought to be held responsible for what happened, both in law and in ordinary moral discourse. Holding the company responsible would be quite compatible with holding the individual members responsible for any clear shortcomings in their performance. And it would ensure that there is as much blame delivered as, on the face of it, there is blame deserved.

From corporate to collective responsibility

We should consider one final question before moving on to the topic of group personification. This concerns the much wider issue of collective as distinct from corporate responsibility. Does our discussion of corporate responsibility throw any light on that wider topic? Does the account given of how group agents can and should be held responsible tell us anything about whether looser groupings can and should be held responsible?

There are many cases of harms done by people in aggregate, where we have no inclination to think there is a group agent to be held responsible: an entity in respect of which we might feel resentment or indignation, as we contemplate the ill done. It may be, for example, that our species wiped out Neanderthal competitors about thirty thousand years ago. While we may regret that no members of that other species remain in existence today, it would be intuitively implausible to blame humankind, as if it were a group agent.

But there are cases where something close to holding a group responsible seems more appropriate, even when the group is not an agent in the ordinary mould. These are cases where – perhaps due to the special role played by the group’s identity in the
questionable actions—we are inclined to speak of a collective guilt, distinct from the guilt of the individuals in the collection. There is something about the group that seems to make it appropriate to adopt the stance that we normally reserve for agents that clearly satisfy the conditions for fitness to be held responsible.

The cases where this is so typically involve national peoples as distinct from governments, or religious congregations as distinct from their episcopacies, elders, or priests. Where the states and episcopacies would normally count as group agents, this is not clearly so with peoples or with congregations, yet we often attribute collective responsibility to these groupings as well. We sometimes speak of the collective responsibility of Christians for the treatment of Jews in western history or for the treatment of native populations in the colonial countries where they sought to proselytize. And similarly, we sometimes attribute collective responsibility to new world colonizers and peoples, for example in America or Australia, for the shameful treatment of indigenous populations, or to the German people for its acceptance of Nazi atrocities.

Is the ascription of group-level responsibility in such cases sensible? We think it may be, at least to the extent that some of the groupings involved can be seen as rudimentary group agents, distinct from the group agents—the governments or episcopacies—that do the immediate harm. Those group agents pose as spokesbodies for the larger groupings, and to the extent that their claim to authority is unchallenged, they have the tacit authorization of the members of the larger groupings. In such a case the larger grouping may be seen as a group agent under an organizational structure that gives the spokesbody more or less dictatorial status in determining the attitudes and actions of the whole.

Still, it may seem that there is no point in holding the larger grouping responsible. When a group agent operates under dictatorial procedures, everything decided and done by the group is decided and done by the dictator. Having ascribed enactor responsibility to a dictatorial spokesbody and perhaps to its active or passive collaborators among the people or congregation, then, why is there any point in ascribing corporate responsibility to the group as a whole? The case is unlike those earlier examples in which there is a shortage of enactor responsibility among members and thus good reason to focus on the corporate responsibility of the group as a whole. Here the enactor responsibility of members, particularly of the dictatorial spokesbody, leaves no shortfall in responsibility.

What reason can there be for persisting in the ascription of corporate responsibility to a people or nation, or to a body of believers? We think that doing so can have a developmental rationale, to return to a thought from the beginning of this chapter. To refuse to ascribe responsibility to the group as a whole, on the grounds that the evil done was done entirely by the spokesbody, would be to miss the opportunity to put in place an incentive for members of the group to challenge what the spokesbody does, transforming the organizational structure under which they operate: making it into a structure under which similar misdeeds are less likely. By finding the group responsible, we make clear to members that unless they develop routines for keeping their government or episcopacy in check, they will share in member responsibility for what is done by the group and may also have a negative form of enactor responsibility for allowing it to be done. We may also make clear to the members of other similar groupings that they too are liable to be found guilty in parallel cases, should their collective body bring about one or another ill.

This developmental rationale for ascribing group responsibility is all the more powerful if the ascription of guilt is attended by a penal sanction of some kind. By way of parallel, think of the rationale for finding a commercial corporation responsible for some misdeed, rather than just finding the board or management responsible. Doing so is likely to provide an incentive for shareholders in that corporation, or in similar corporations, to establish checks on the board and on management. It is likely, then, to elicit the sorts of capacities that will truly equip the group as a whole to be fit to be held responsible. What is true in this respect of the large commercial corporation is true equally of the citizenry of a country and the faithful in a church.

Once we recognize the developmental rationale that may make sense in these cases of the ascription of collective responsibility, we can envisage its extension to other cases where the collection that is held responsible falls well short of being a group agent of any kind. Think of the school group who are told that they will all be held responsible if there is any sign of bullying in their midst; or the loose professional association that is held responsible for the misbehavior of any member; or the neighborhood that is held responsible in the public press when those who live there indulge in certain socially exclusionary acts, say of a racist character; or indeed the generation that is held responsible for the overseer and potential loss of antibiotics. It may not be strictly appropriate to hold such a loose grouping responsible, since some of the conditions necessary for fitness to be held responsible are missing. But holding it responsible may actually prompt the grouping to incorporate and organize against the condemned behavior.

We are naturally disposed to ascribe responsibility, it appears, not just to fully responsible agents but also to 'responsibleizable' entities; not just to agents that are already fit to be held responsible but also to entities that are capable of being made fit to be held responsible. Perhaps grounded in the role it plays in scaffolding the development of children, this disposition may serve us equally well in prompting social groupings to assume a corporate or quasi-corporate form.