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MORAL INDIVIDUALISM OR MORAL COLLECTIVISM? UNOCAL'S ROLE IN THE BURMA PIPELINE AND THE EXISTENCE OF CORPORATE MORAL AGENCY

(ABSTRACT)

The moral status of artificial entities is much discussed in philosophy of social science, law, public policy and applied ethics. Especially after the polemical article by Peter French ascribing moral agency to corporations, a robust debate ensued about whether corporations can be treated as moral persons and whether they have the rights and duties regularly conferred to human beings. Philosophers (May, Donaldson, Werhane, De George, Ladd) have been mainly interested in establishing the ontological and moral status of corporations and its implications on moral responsibility. Other authors (Phillips, Nesteriuk, Velasquez) have been concerned with the application of this framework to determine legal and criminal responsibilities. In this paper I hope to demonstrate that the activities of MNCs in the global economy offer a useful context for evaluating the merits of the two contrasting theories on corporate moral responsibility. I present the emblematic case of Unocal Corporation in Burma to test the two contrasting theses on collective responsibility, to wit moral individualism (MI) and moral collectivism (MC), and to determine whether these theses matter to our moral judgment.

The paper concludes that it is worthwhile to revisit the lively controversies over moral agency in the wake of French's audacious claim of corporate moral responsibility. While it might seem tempting to abandon these fundamental issues and "get on" with the task of doing business ethics. In fact, as illustrated in the case of Unocal and the Burma Pipeline, the resolution of these fundamental questions has enormous practical implications for moral progress in the global economy.

MORAL INDIVIDUALISM OR MORAL COLLECTIVISM? UNOCAL'S ROLE IN THE BURMA PIPELINE AND THE EXISTENCE OF CORPORATE MORAL AGENCY

1. INTRODUCTION

In recent decades, various elements of civil society--including non-governmental organizations, consumer groups, and shareholder activists—increasingly have called upon multinational corporations (MNCs) to assume responsibilities, both in the realm of negative duties in issues such as labor rights and corruption and in the domain of positive obligations such as global poverty, access to hiv/aids drugs and environmental protection. In this paper I re-examine the venerable debate about corporate moral agency and consider its implications for moral accountability in the global economy.

The moral status of artificial entities is much discussed in philosophy of social science, law, public policy and applied ethics. Especially after the polemical article by Peter French ascribing moral agency to corporations, a robust debate ensued about whether corporations can be treated as moral persons and whether they have the rights and duties regularly conferred to human beings. Philosophers (May, Donaldson, Werhane, De George, Ladd) have been mainly interested in establishing the ontological and moral status of corporations and its implications on moral responsibility. Other authors (Phillips, Nesteriuk, Velasquez) have been concerned with the application of this framework to determine legal and criminal responsibilities. In this paper I hope to

demonstrate that the activities of MNCs in the global economy offer a useful context for evaluating the merits of the two contrasting theories on corporate moral responsibility. I present the emblematic case of Unocal Corporation in Burma to test the two contrasting theses on collective responsibility, to wit moral individualism (MI) and moral collectivism (MC), and to determine whether these theses matter (and if so, when and how) in our moral judgments.

For the sake of clarification, it is important to note that I shall not address here a number of theoretical concerns surrounding the discussion of corporate moral agency, such as the conceptualization of a moral agent,[1] the debate on whether corporations have moral worth or are ends in themselves,[2] and the ontological status of corporations as persons.[3] I shall assume that both accounts of corporate moral agency are prima facie valid, given our purpose of testing these account and establishing if they matter (and if so when and how) in the global arena.[4]

2. MORAL COLLECTIVISM AND CORPORATIONS

The collectivist claim is typically represented by the pioneering work of Peter French.[5] In an influential article published in 1979, French maintains the idea of full-

[1] See Curtler (1986).
[2] See De George (1993) and May (1987).
[3] For an exhaustive discussion of this issue see McMahon (1995). See also Velasquez (1983).
[4] The discussion among legal scholars on the legal personhood of corporations offers three legal theories. The Concession Theory sees the corporation as an artificial being created by law and whose limits are defined by the law; the Aggregate Theory conceives corporations as a mere group of individuals engaged by contracts, which parallel the envision of the company as nexus of contracts in Organizational Theory; and the Real Entity Theory proposes a different picture of a corporation, as a real and existing entity, regardless of the law that creates it. As it will be seen below, this evolution is similar to the progress of the moral consideration of corporations among business ethicists. For a review of the legal debate concerning the legal status of corporations see Phillips (1992).
[5] Kenneth Goodpaster may be considered another exponent of collective moral agency: He holds that corporations have and ought to have a conscience. To support such a claim he formulates his principle of moral projection, drawing an analogy between corporations and individuals regarding their use of the moral

fledged corporate personhood. Corporations should be welcomed to our moral community since they are intentional agents that can be held morally responsible for their acts and omissions. “Corporations as moral persons will have whatever privileges, rights and duties as are, in the normal course of events, accorded to all members of the moral community.” (French, 1984, p. 32). In French’s account, corporations have a Corporate Internal Decision Structure (CIDS), which coordinates the intentions of the individual members and synthesizes them in corporate actions, so they are considered as taken for corporate purposes. A CIDS includes two elements: an organizational chart that delineates stations and levels within the structure and the rules of recognition of corporate decisions. A CIDS enables individual acts to be characterized as organizational acts in a manner that expresses corporate intentions which are distinct and perhaps different from the individual intentions. Two conditions should be verified in order to establish if it was a “corporate decision”: (1) the formal condition is that the final decision has been taken by following the organizational rules and established procedures for this kind of resolution, and (2) the material condition is that the content of the decision and corporate policies are consistent (French, 1979). When a corporate act is consistent with established procedures and corporate policies, it is appropriate to describe it as to being caused by a corporate desire and a corporate belief. It is important to bear in mind, however, that individual responsibility is not diminished: CIDS does not negate the moral liability of the individual acts of executives, directors and other human beings.

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language: according to this account, corporations can develop a moral point of view, which basically comprises two components, rationality and respect. Corporations can develop the same cognitive processes than human beings and can take responsible decisions. Thus, corporations can be held as morally responsible for their acts (Goodpaster, 1984).

3. REPLIES TO FRENCH: MORAL INDIVIDUALISM AND MIDWAY POSITIONS

French's non conventional use of the moral vocabulary produced virulent answers, especially among moral philosophers. The individualist answer rejects the claim that corporations are moral persons and – following the path of methodological individualism – holds that collective accounts of intentions, decisions and actions can always be restated and reduced to human intentions, decisions and actions. The economist Milton Friedman (1970), for example, argues that artificial entities have artificial responsibilities: only human beings have real goals and responsibilities. Further, he advanced his well known argument suggesting that managers are responsible (only) towards shareholders.

A number of moral philosophers have challenged the collectivist argument. Among them, John Ladd affirms that as formal organizations, corporations only have formal goals. There is no moral basis for moral goals in organizations or any plausible moral evaluation of them. Ladd reduces the discussion to the domain of moral language: integrity is not part of the business vocabulary, thus corporations can not have moral obligations or moral responsibilities. They are more similar to machines than to human beings.[6]

[6] The following scheme summarizes Ladd's argument:

i) the company is a member of the class of formal organizations;
ii) formal organizations ought to act, by definition, exclusively to maximize the profit of a set of specified objectives, for example, benefits;
iii) the maximization of the profit is incompatible with the possibility of acting on the basis of moral norms;
iv) the ability to act on such basis is a necessary condition for moral agency;
v) thus, corporations cannot be moral agents, only the individual members can.

John Danley posits that corporations do not have human features and argues that French diminishes individual responsibility, disturbs the logic of our moral discourse, and reduces biological persons to the status of second-class citizens.[7]

Larry May claims that corporations act vicariously through their executives and emphasizes the need to hold those executives as responsible agents, not only because they have the real authority to make decisions, but also because punishing the corporation as such penalizes innocent and guilty subjects without distinctions. Further, he proposes conceiving social groups as "individuals *in* relationships."[8]

Basically, what is at stake here is the consideration of the nature of corporations as distinct from individuals: there are inherent physical and ontological differences, which have been emphasized by the individualist claim and moderated – or openly ignored – by the collectivist position. Such differences determine different concepts of agency and correlative different catalogues of rights and obligations attributed to the "corporate" agent.

In the middle of MI and MC, other scholars have taken what might be termed a "halfway" position, proposing an integrative synthesis. Here, in the interest of brevity, I shall only review proposals by Thomas Donaldson, Patricia Werhane and Richard De George that are broadly representative of such attempts at integrative synthesis.

Donaldson posits that the correct question is not whether or not the company is a moral agent but when it is and when it is not. He tries to specify conditions of moral

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[7] Danley (1990) observes that French's CIDS structure has two problems: The first is that CIDS is not always fulfilled when decisions are taken. The second problem is that the corporate statutes and formal documents under which the corporation is authorized to exist have to be consistent with the law (otherwise, the government will not give authorization to it). So, if the body of directors voted to involve the corporation in some illegal activity, that act could never be described as a corporate act, since corporations – by definition – will never act intentionally against the law.

[8] Larry May, The Morality of Groups, University of Notre Dame Press, 1987.

agency and conclude that there are different types of corporate moral agency depending on the context.[9]

Werhane admits that collective actions in corporations cannot be reduced to individual actions, so she confers to the corporations certain moral status: they can be seen as intentional systems, exhibiting an intentional behavior from which they can be maintained as responsible agents. However, they do not have intentions.[10]

De George affirms that corporations are collective subjects, moral actors but not moral persons, because their decision making process differs from the human one: they do not have consciousness, they are not ends in themselves, and they do not have the kind of moral right that human beings have. Therefore, their moral obligations are different from human obligations.

In brief, four basic problems have been identified in the collectivist thesis:

i) There are physical and ontological differences between biological and artificial persons which impede an equal moral treatment of them.[11] They cannot empathize, feel pain, shame or blame.[12]

[9] "(…) although large corporations can be moral agents, they are agents of a different kind than are individual persons. One way to understand this difference is to ask how the responsible corporation differs from the responsible individual. The picture of the responsible corporation, in contrast to that of the individual, must make reference to structural design, to information flow and retention, to internal and external accountability, and to mechanisms of interpersonal control. Such a corporation also, considered as a unit, must "know" more both practically and theoretically than the responsible individual, yet its capacity to control its own behavior will be less." (Donaldson, 1982, 126–127).

[10] "A corporation is a distinct functional entity. It is an intentional system to which one may ascribe secondary moral agency.... Because a corporation is capable of secondary action, it is a secondary moral agent but is not morally autonomous. And corporations, like persons, are and should be held morally responsible for actions within their control when, all things considered, they could have acted otherwise" (Werhane, 1985, p. 59).

[11] The roughest difference has to do with punishment: As Danley expresses, corporations do not have any back to kick or soul to condemn. Only the members of the corporation can be punished. The moral movements that accompany a moral penalty are completely blocked in the collectivist account, since one cannot find any method to punish, and the movements are off the track of the genuine culprit (the fictitious moral agent) and directed towards somebody within the corporation (non fictitious moral agent).

ii) The concept of moral agent cannot be merely reduced to intentionality as French does.[13] Furthermore, the usage of concepts such as "responsibility" and "intention" in the realm of corporations is very different from their use in a biological person. MC abuses the moral language.

iii) Corporations are not ends in themselves; they are mere instruments to serve their members or the larger population. If they are not useful, they can be destroyed in a sense that human life cannot.

iv) Finally, corporations do not have the same rights and obligations as human beings. Corporations may share with human beings some negative rights (e.g. not to damage others). However, human beings have positive obligations that are not applicable to the corporations (e.g. because corporate goals are restricted to the fulfillment of their goals and appropriate activities).[14]

This philosophical debate about the moral status of corporations has important implications for moral theory. The debate accounts for a continuum of conceptions of moral responsibility ranging from one extreme position attributing full moral agency to corporations to the other extreme position denying any collective responsibility and

[12] If corporations are not moral persons it is doubtful that they will act according to moral reasons. It is expected that they do not do what is morally wrong, but we can not go further than praising or blaming them when they respect or violate moral rules respectively. (De George, 1999, 196)

[13] For instance, cats behave with a kind of "intention" while trying to catch a mouse, Donaldson affirms (1982).

[14] Although it is conventionally accepted that corporations have legal rights, there is no agreement about the extent of their moral rights (and also about their moral obligations). Some scholars believe that even if we assign corporate responsibility in the realm of negative rights, we should not do so for positive obligations (See, e.g. De George, 1999).

reducing any “corporate act” to the actions of its biological members. It is easy to see that the main philosophical consequence of seeing the corporation as a moral agent is a different allocation of moral responsibilities. But, do these philosophical and theoretical distinctions have any practical implications? To answer this question I will consider a well known case of corporate responsibility in the international arena.

4. THE BURMA PIPELINE

In 1996, the American corporation Union Oil Company of California (Unocal Corp.) joined forces with the French Total Company to construct an ambitious natural gas pipeline from the Andaman Sea across the southern tip of Burma and into Thailand. The pipeline was planned to bring needed energy supplies into Thailand as well as Burma, and to serve as a key factor for the strategy of Unocal's expansion is Asia. In spite of the warnings of a consultant hired by Unocal regarding human rights abuses in Burma, the company decided to build the pipeline. Soon after construction began on the pipeline, activist groups targeted Unocal. Because of its involvement with the ruling military junta, the State Law and Order Restoration Council (SLORC), Unocal was accused of complicity in a whole series of human rights abuses – including slavery and genocide – money laundering and harmful environmental impact.

A lawsuit against Unocal based on the Burma pipeline has become landmark legal case in the United States. It holds forth the possibility of using the Alien Tort Claims Act, originally enacted to prosecute piracy, to sue MNCs in American courts for violations of human rights committed on foreign soil. (The use of the U.S. courts to bring accountability for human rights violations in Burma is especially poignant in the case of

Unocal which no longer consider itself as "a U.S. company with foreign operations, but a global energy company with strong U.S. operations."[15]) Unocal, unwilling to see the case through to evidentiary discovery and a verdict, decided to settle the case for $30 million, leaving for the moment the novel application of the Alien Torts Claims Act in legal limbo until another case works its way through to the Supreme Court.[16]

Although Unocal's legal liability for SLORC's human rights violations remains unresolved, there are plenty of factors that point to moral responsibility for complicity in those actions. Company officials knew about brutal violations of human rights by the military before the pipeline was built. Evidence uncovered in course of the lawsuit in the United States suggests that company officials were aware, despite earlier denials, that SLORC committed significant human rights violations, including murder and forced labor, to build and provide security for the pipeline. The company and its shareholders knowingly profited from the human rights abuses of an authoritarian regime.[17] With so much moral blame to go around, Unocal's involvement with the Burma Pipeline provides a fruitful example for assessing the practical implications of various theories of moral agency.

5. MORAL AGENCY IN ACTION

I begin my analysis by analyzing the separate reactions of managers and owners to the accusations against the company. Unocal's Chairman John Imle decided at first to

)[15] The Burma Pipeline, LaMure, Lane T. and Debra Spar, Harvard Business School Case No. 9-798-078, 1998.
[16] See "A Milestone for Human Rights," *Business Week*, 01/24/2005. See also "Profits at gunpoint: Unocal's pipeline is Burma becomes a test case in corporate accountability", *The Nation*, 06/30/2003.
[17] Kurlantzick, J. (2004). Taking Multinationals to Court. How the Alien Tort Promotes Human Rights, *World Policy Journal*, Spring 2004, p. 60.

respond to the criticisms by ignoring the charges and aggressively lobbying in Washington and Burma. By contrast, Texaco, which also had large investments in a Burma gas field, decided to pull out of the country in 1997. Imle argued: "How can we ever justify leaving?" Indeed, company officials asserted that if Unocal left Burma its place wouldl be taken by European or Asian oil companies which do not face similar pressures. [18]

Shareholder reactions to the accusations were somewhat more complex. When the accusations of money laundering were proven by an NGO, a small group of Unocal shareholders submitted a shareholder resolution demanding an independent investigation to the Unocal's Burmese partner regarding its drug-related activities. However, the resolution was overwhelmingly defeated by a shareholder vote of 19 to 1.[19]

In applying individualist and collectivist theories of moral agency I would expect, if these approaches matter, to answer *both* of the following questions quite differently: Who are the responsible agents? For what actions are they responsible?

5.1. The Individualist Answer

The individualist perspective on corporate moral agency targets only biological persons as morally responsible agents for the final decision of investing in non-democratic countries, designing the pipeline, avoiding information regarding the abuses on human rights in Burma, assuming or neglecting legal charges, lobbying governments and settling legal agreements. Whoever they are, only the owners of the corporation and

[18] The Burma Pipeline, p. 11.
[19] The Burma Pipeline, p. 9.

their agents are morally responsible for these decisions. But who are really the responsible agents in Unocal's affair in Asia?

Milton Friedman would ultimately point to the owners: the management is an agent of its principal, the shareholders. Shareholders are entitled to change corporate managers when they wish to do so to improve the corporate performance. Unocal consolidated balance sheets seem to prove that the managers were effectively maximizing shareholder value. Indeed the Burma pipeline represented a significant and profitable expansion for the company into a lucrative emerging market.[20] By the individualist account, the owners should be held morally responsible: they hired Unocal's managers and remain responsible for the actions carried out by Imle and others as agents for the corporation's shareholders.

Some business ethicists – by no means Friedman's advocates – would also target managers as morally responsible agents. Bowie and Arnold, in the case of sweatshops, and Hsieh, in the case of the distribution of free drugs to AIDS victims, have pointed the finger at corporate managers as responsible moral agents.[21] Similarly here one might point to Imle and other Unocal managers who were knowingly complicit in the human rights violations by SLORC.

In any event, in the individualist view there is no room to hold Unocal, the corporate entity, as morally responsible because Unocal does not exist in our moral community. The company has legal existence, as an artificial entity. But in a moral

[20] The Burma Pipeline, p. 15.
[21] See Arnold, D. & Bowie, N. (2003). Sweatshops and Respect for Persons. Business Ethics Quartely, 13(2): 221-242. See also Nien-He Hsieh, Property Rights in Crisis: Managers and Rescue, in Santoro, Michael and Gorrie, Thomas (Eds.), Ethics and the Pharmaceutical Industry, 2005 (forthcoming).

context, only its shareholders, its managers and its workers exist. It is they who are responsible for repairing the damage Unocal caused to Burmese citizens.

5.2. The Collectivist Solution

Moral collectivism largely depends on the particular description of the facts in order to allocate moral responsibilities. As I have analyzed the facts of the Burma pipeline, there is room to hold Unocal, its agents, and its shareholders as morally responsible agents.

If the decision of installing the pipeline in spite of the information of human rights violations in Burma was made following the corporate rules and if it is consistent with the official policies and antecedents in the history of the company, it is possible to re-characterize the decision of the board of directors (if in fact the Board ratified the decision) or the company's executives as a Unocal action, attributable to the company's corporate intention. There are strong reasons to think that this is the case. The shareholders, except possibly for a very small contingent, continued to support management even after objections were made to the company's role in SLORC's human rights violations. Unocal, moreover, does not seem to be committed by any corporate policy to spread democratic values or to avoid deals with regimes that violate human rights. Accordingly, following French's analysis, not only owners, directors, managers and other human beings would be morally responsible for the damages, but also Unocal Corporation itself.

Once the responsibility of the corporation has been established, the second stage of moral collectivism is to distribute responsibilities among the members of the

corporation as in the individualist's account. Holding Unocal morally responsible does not mean that the management, owners and officers are innocent. If they followed immoral corporate rules, if they freely consented to corrupt moral norms, if they indirectly profited from illegal activities, they still remain morally responsible, whatever the responsibility of Unocal. They had the chance to leave Unocal but they decided to stay. They had a chance to sell their shares or object to the corporate action but they did not.[22]

6. CONCLUSION: MORE RESPONSIBILITY MAY BE LESS

As the emblematic case of Unocal and the Burma pipeline well illustrates, our theories and language of moral agency do matter a great deal.

The collectivist account places moral responsibility at the locus of economic power and hence seems a supremely practical way of assuring moral accountability. At the end of the day, managers have power but they lack the property rights to do the right thing. Conversely, the owners of a company have the property rights but lack the effective collective voice to carry out right action. The real powerful moral actor in the international arena is the corporation. When John Imle leaves his position as president of Unocal, nobody will answer his phone calls in the White House and nobody will care about where he invests his money or how much he supports Third World dictators. Someone else will take his place. And if Unocal commits itself to promote democratic values – or if at least it refuses to lend support to violent military juntas – it does not

[22] It is worth remembering that both theories may agree in their final description of the facts (if the two conditions established by French are not fulfilled). However, there is one singular account provided by moral individualism (only human beings), whereas the collectivist account supplies more options (corporations and human beings).

make any difference if the CEO is a fervent Nazi or a moderate liberal. It is Unocal, not John Imle, that can make a difference in the global economy. Therefore, it might be argued, only a moral discourse that encompasses the role and accountability of this supremely powerful entity could adequately provide a basis for achieving justice in the global economy.

The individualist perspective would seem to be lacking in the immediacy of the collectivist view. To be sure, the attribution of the entire moral responsibility for complicity in violations of human rights to the executives and/or owners preserves the purity of our moral language. If this were all that moral individualism had to offer then the advantage would tilt to the collectivist view which would hold both individuals and organizations morally responsible for human rights violations such as occurred in the construction of the Burma pipeline.

On a practical level, is it not better to ascribe to a moral theory that would spread moral responsibility around in conformity to where the power lay to control action? Perhaps, but more can also be less. The strength of moral individualism lay in its unwillingness to allow the corporation to serve as a veil behind which owners can profit from breaking moral rules. Corporate intentions will never be invoked to excuse individual behaviors. The shareholders of Unocal voted 19 to 1 to keep the facts about the company's role in money laundering for drug lords from becoming public. They continued to vote in the management team at Unocal even after SLORC's abuses came to light and the company's complicity was exposed. If there is shame and blame to be assigned, the bulk of it should be assigned to the individuals who continue to profit from outrageous abuses committed against Burmese citizens. Through the use of the Alien

Claims Torts Act, some are attempting to use the legal system to hold those shareholders financially responsible. Yet curiously, the collectivist impulse to criticize the "all powerful" corporate actor allows those very same shareholders to escape moral reproach behind a corporate veil. In seeking to locate moral blame with perceived practical power, might we not be perhaps misplacing and thereby blunting the power of moral persuasion?

This paper has demonstrated that it is worthwhile to revisit the lively controversies over moral agency in the wake of French's audacious claim of corporate moral responsibility. While it might seem tempting to abandon these fundamental issues and "get on" with the task of doing business ethics. In fact, as has been illustrated in the case of Unocal and the Burma Pipeline, the resolution of these fundamental questions has enormous practical implications for moral progress in the global economy.

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