



Glimpses on Nature of Corporation Within Corporate Criminal Liabilities

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Abstract: The speculations separated from outlining and forming the law help to assess the law changes. There is no standard personality because the corporations' agents carry out their responsibilities. Some people hold the belief that corporations, like humans, are endowed with powers and possess moral character. The values and concepts derived from studies of corporate life and behavior are reflected in the theories of corporate criminal liability. They've proposed a variety of theories regarding the corporations' nature. Implementation of corporate criminal liability has to be in an order to promote moral behavior among corporations.

1.1 Introduction

The perspectives on the world are upheld by the corporate hypotheses and how it squeezes into the world

¹. The primary object of the corporate system is to offer an instrument that interprets and investigates the crucial guidelines of organization regulation². The speculations separated from outlining and forming the law help to assess the law changes. There is no standard personality because the corporations' agents carry out their responsibilities. Some people hold the belief that corporations, like humans, are endowed with powers and possess moral character³. The French assert that corporations are moral individuals with human rights, responsibilities, and privileges⁴. A moral persona is also established by the corporations' rights and responsibilities. Richard E. Erwin asserts that corporations cannot be morally responsible because they lack emotional understanding and conscience, so they have limited capabilities and few human rights⁵.

The values and concepts derived from studies of corporate life and behavior are reflected in the theories of corporate criminal liability. They've proposed a variety of theories regarding the corporations' nature. Implementation of corporate criminal liability has to be in an order to promote moral behavior among corporations.

1.2 Nature of Corporations

Prior to discussing corporate criminal liability theories, comprehension of the nature of the corporations is very important.

1.2.1 Theories of Legal Personality

Legal personality theories like reality theory and frictional theory were developed in an effort to address property and rights issues in civil law⁶. Legal personality theories are regarded as irrelevant to contemporary legal issues. Corporate criminal liability does not adhere to any specific legal personality theory. According to W. H. Jarvis, finding the area of legal observation that gives rise to analytical jurisprudence as corporate personality is extremely challenging. There are many different theories of corporate personality. Over time, both theories have gained prominence.

1.2.1.1 Fictional Theory

German introduced the fictional theory in the 19th century⁷. The fictitious theory views legal entities as artificial, invisible, and intangible abstractions. They project enterprises to be formed by regulation having their attributes⁸. The law has subjects but does not recognize people who already exist.

According to this theory, corporations are immune from criminal liability. Additionally, because doing so would make it difficult to assign blame, it asserts that corporations are not actual people. As a result of the regulations, the enterprise can't be expected criminally to take responsibility. Because the corporations are fictitious and inhuman, they lack mental faculties and are unable to act. A person can only act on corporations' behalf because the corporation lacks the power to think and act. As a result, fictional theory and corporations' lack of liability can be linked because it limits corporations' liability.

1.2.1.2 Reality Theory

Gierke was the founder of reality theory. He said that the body of the company is a living being. He possesses members of his body that are capable of acting in accordance with their own will. It is a member of a group and has a good heart. The existence of the corporate body is taken into account in this theory⁹. In contrast to the fictional theory, which considers that legal entities are corporate bodies, this one makes the assumption that the corporate bodies are actual people. According to this theory, a juristic person is the result of their social actions, not the act of a legislator. According to this theory, juristic people are real, active, and separate from their members. Therefore, the mental state of the corporation is that of its members, or individuals who make up the group.

1.3 Common Law Theories of Corporate Criminal Liability

In the 20th century, common law principles influenced the doctrine of corporate criminal liability¹⁰. The report of the Unified Countries Exceptional Delegate of the Secretary-General on Basic liberties and Business shows

that corporate criminal risk stresses on the co-connection between the partnership and its representatives and specialists¹¹. The psychological condition of the company's representatives and workers is its psychological state. There are two main variations of this strategy:

- The identification model is used in Canada and the United Kingdom, where corporations are held directly liable for wrongful acts committed by senior officers and employees because senior officers' mental state reflects the corporation's mental state.
- The vicarious responsibility model is applied in the USA where a partnership is by implication held at risk as the perspective of the person at times is credited to the enterprise.

1.3.1 Agency Theory

Agency theory was developed in Tort Law and applied to the criminal justice system¹². The office hypothesis of company exhibits partnership as fiction, web of agreements or nexus¹³. As per Michael C Jensen and William H Meckling, an organization relationship is an agreement wherein at least one individuals affect someone else known as a specialist to do the obligations of designating dynamic experts for their sake¹⁴. As per this theory, a company is accountable for its employees' intentions and actions. Two components that co-relate the connection between corporate criminal responsibility and organization hypothesis are actus reas and mens rea on the grounds that the partnership is obligated for the activity of its representatives¹⁵.

According to this theory, the corporate offender bears responsibility. In the event that the partnership isn't having any aim then somebody inside the organization will have it and this expectation of the individual mirrors the goal of the enterprise too. Additionally, this theory asserts that corporations are fictional entities created to serve individuals. The members of a corporation bear the responsibility for their actions, whereas a corporation is not considered an agent.

1.3.2 Identification Theory

According to the identification theory, most nations hold corporations liable based on common law principles¹⁶. A person's actions are a reflection of the corporation's action. According to John Andrews, the idea of identification is treating people as individuals rather than as employees of a company, and any wrongdoing or guilt is the company's fault. Along these lines, it is called individual obligation¹⁷. In order to attribute a corporation's liability, this theory relies on individuals. It introduced the corporate body's personification. This hypothesis expresses that the answer for the issue of crediting a shortcoming to a company for any offense needs to combine the aim of the person with the actual organization. The rule of this hypothesis is based on tolerating inside the local area the ethical obligation of the companies.

It is justifiable to judge the actions of the corporation morally if an individual commits a wrongdoing. Therefore, if the organization's action is also a function of the individual member's actions, then the organization's responsibility is also a function of the individuals' responsibility¹⁸. Susan Wolf asserts that if the organization being criticized has done something wrong, then some of its members must have done something

wrong for which they should be held accountable. In a similar vein, if the organization has done something that merits praise, then some of its members must have performed well enough to merit it. This theory asserts that an individual's actions have an impact on a company's behavior. Consequently, the individual's moral standing is that of the corporation. Corporations can still be held criminally liable, despite the fact that the individual or group is to blame.

1.3.3 Aggregation Theory

Multiple power centers share the functions, control, and assistance with policy making of modern corporations. In specific cases, power and impact are diffused inside a corporate body so it is difficult to confine mindful people whose expectation can be credited to the company. As a result, the aggregation theory was made.

The aggregation theory was introduced in Tort Law. For the purpose of determining liability, according to this theory, the corporation compiles diverse officers' diverse knowledge. The company combines all relevant employees' actions and thoughts to determine whether they constitute a crime or were carried out by a single individual. This hypothesis empowers criminal risk to be forced on an organization through a solitary representative who needn't bother with to be perpetrated of any wrongdoing¹⁹.

The group, not the corporation, is to blame for the corporate error. Even though an individual or group of individuals are identified as being at fault, corporations are held liable for criminal acts.

1.4 Corporate Morality

A corporation without a conscience is, in the words of Henry David Thoreau, "a corporation of conscientious men."²⁰ Due to the nature of a corporation and the activities and decisions made by its members, the corporation must be morally accountable for its actions.

1.5 Corporations as Moral Agents

Employees and corporate management are responsible for their actions in a corporation. Both the capacity theory and the character theory viewed businesses as moral agents capable of exercising their rights.

1.5.1 Capacity Theory

The capacity theory is based on Hart's work. He defines responsible agents as those who are able to control others and decide whether or not to follow the law²¹. Therefore, in order to prevent wrongdoing, the agent must be given a fair chance when making a moral decision. Because it is based on inaction, this theory provides an explanation for negligence liability. The agent can be held responsible for the failure to exercise proper care if the action they took was done without considering the risks.

1.5.2 Character Theory

The person hypothesis expresses that individuals are answerable for their activities and this communicates their personality. Bad character is reflected in intentionally causing harm or negligently displaying the undesirable trait toward others. They have been compelled to behave in this manner if they provide valid justifications or excuses that do not reflect their usual character. Lawful obligation is credited to an individual known as a specialist because of his way of behaving. To assign blame is to blame someone else for bad or harmful behavior. For instance, if an identified individual occupies a favorable position or role and is unable to offer an acceptable defense justification for his actions, he is accountable for them.

Moral and casual responsibility can be assigned. When a party acts casually and is held accountable for the event's cause, this is called the casual case²². The moral responsibility of analyzing both criminal liability and social responsibility is attributed if the association isn't accidental between the agent and the event.

1.5.3 Casual Responsibility

While it is necessary for a corporate body to have causal responsibility, it is not entirely necessary for criminal liability to be attributed. The causality is adequate for legitimizing corporate obligation regarding common wrongs and legal offences yet not adequate for supporting criminal risk for mens rea offences which is most of criminal regulation offences in common and customary regulation frameworks. External agents primarily evaluate the causal agent, but they do not permit moral evaluation of wrongdoers.

1.5.4 Moral Responsibility

It is very difficult to assign moral responsibility. If someone is a morally responsible agent, they should possess the quality that allows them to join the moral community. The ethical networks can vary in their qualities, convictions yet they have a typical reliance. Tom Regan used a circle as an illustration to explain moral community. The moral community is made up of those who are inside the circle and those who are outside the circle. A level of consideration that is denied to those outside the circle is owed to members of the moral community who are members of the circle. As a result, members of the group are morally significant²³.

The moral community's boundaries are viewed as adaptable and occasionally contentious. In the examination of moral obligation two principal approaches are connected:

- Responsibility is based on merit: In this, the specialist is ethically considered capable provided that he merits it. This way of looking at responsibility says that the agent is morally responsible for some behavior if it causes certain reactions from other people, called reactive attitudes. David Cooper asserts that when we talk about moral responsibility, we are referring to attitudes of reward, blame, and punishment.
- Responsibility that is consequentiality: This method maintains that moral responsibility is only assigned when it is necessary to cause the agent to change.

As they are to be blamed and held accountable for their wrongdoings, corporations are regarded as moral agents. From the perspective of the general public, businesses can come under moral scrutiny, as was the case with Cabora Bassa, which was the target of a significant amount of public criticism and protest activities. Although the public generally does not express disapproval of corporations, the public in this case saw the Cabora Bassa Dam as an instrument of imperialism, so efforts were made to suppress locals. The company receives a lot of praise if its actions are positive. Christopher Meyers asserts that society recognizes a corporation's place in the moral community in part. The majority of moral responsibility theories concentrate on specific individuals.

1.6 Criteria for Moral Agency

An agent must satisfy certain control conditions and possess a certain epistemic in order to be a member of a moral community²⁴. The agent dependable is acting in the limits given moral rules and is receptive to motivations to change or amend his way of behaving, showing reasonable way to demonstrate the rationality of epistemic circumstances. If an agent is held accountable, he must be able to reason and distinguish between right and wrong. The agent is guaranteed to be able to act freely and to have authority over his actions by the conditions of control. Edmund Wall was of the opinion that in order to apply moral judgments to subjects who are capable of forming beliefs, having desires, and adjusting their behavior in light of those beliefs and desires in order to have the assurance that moral judgments are legitimate²⁵. Therefore, corporations have been denied moral status.

1.7 Perspectives on Corporate Morality

1.7.1 Corporation are not moral agents

With the presumption that only rational and independent humans are capable of moral evaluation and can engage in morally wrong behavior, there is the belief that corporations cannot be considered moral agents²⁶. This idea is based on two speculations:

- Corporations are not moral agents and will never be.
- The actions of corporations mirror the moral status of individuals.

According to legal personality theories, corporations are real entities that are subject to friction and depend on each member, as well as lacking an autonomous or distinct existence. The corporation will never be able to meet the essential requirements of a moral agent, such as autonomy, rationality, and the capacity to participate in moral relationships. The partnerships are benefit driven substances and they can't choose their activities.

1.7.1.1 Corporations as Creatures

Joel Baken describes corporations as "psychopathic creatures," implying that since they are not acting morally, they are not accountable for their actions. Their primary concern is the corporation's interest. The community is

shielded from the corporations by the laws, which limit the amount of non-accountability. The company isn't having any ethical commitments.

1.7.1.2 Theories and Morality

The circumstances which permit corporate participation in an ethical local area are the singular individuals. Therefore, if the act was carried out by an individual, it is permissible to render moral judgment. An organization's actions are influenced by the actions of its members, and an organization's responsibility is also influenced by the responsibility of its members. Through artifice, the identification theory creates that a corporation's moral status is derived from its moral status. It maintains restricted patterns of moral responsibility and reflects the membership of moral agents. According to this theory, people's actions mirror those of businesses. According to Andrews, identification refers to individuals whose culpability is regarded as the culpability of the company rather than as acting as agents for the company.

1.8 Corporate Personhood

"The responsive adjustment model," developed in France, emphasizes the concept of a complete corporate person. A "full corporate person" treats a business like an individual. They are full-fledged moral agents who act like their members while acting independently of them. He asserted that a moral person is a metaphysical person. Organizations are claimed to be levelheaded and independent specialists with a heart. Respect and rationality, Goodpasture emphasized, are the fundamental components of morality. The four primary components of moral obligation are thinking, insight, coordination and execution. He explained how these elements are incorporated and how they help people make decisions that are morally responsible.

French also said that corporations carried out their responsibilities through agents. Enterprises are acknowledged as individuals from the ethical local area. Thus, companies are limited by rules and rules which applies to some other individual individuals. It is easier for businesses to be recognized by the moral community when they have full moral personhood.

1.9 Objectivist Account of Moral Responsibility

The agent bears moral accountability. J. L. Mackie asserts that the law tends to adhere more closely to the straight rule or intentionality principle. Contrary to the list, there is also a tendency to act, and strict liability means that a person can be held responsible for things that he didn't intend. Based on the opposing tendency, some academics have developed approaches to the problem of moral responsibility attribution.

1.9.1 Objective Standards of Moral Responsibility

Every action possesses a real and objective moral quality, according to the objective account of moral agency²⁷. The agent's attack on the intention is not the basis for responsibility judgments. The performance of particular acts is always linked to moral behavior. The problem of fact, according to Objectivists, is determining an

action's moral quality. Orthodox subjectivism is the most common way to think about moral and criminal responsibility. However, strict liability for using criminal offences is used in conjunction with the objective standard of responsibility. The agent is held criminally liable for the negligent behavior that is sufficient to establish criminal liability. Utilizing objective standards serves a practical purpose. Many academics, including Fisse and Braithwaite, support the use of objective responsibility in relation to corporate misconduct²⁸.

1.9.2 The Benefits of Taking an Objective Approach

In their holistic model, Fisse and Braithwaite demonstrated that corporations can be held liable for any breach of duty in a criminal case. As a result, it is not necessary to investigate the intent to avoid liability. The company can be thought of as ethically dependable in the event that its way of life is permitting careless way of behaving which is causing unsafe hearts. The advantage of taking an objective approach is that corporations can be held liable by providing evidence of illegal behavior that is sufficient to establish liability. Without needing to demonstrate intent, several conditions of responsibility must be met. However it is critical to demonstrate causality, it is pointless to lay out different circumstances for moral obligation like independence receptive mentalities and objectivity.

1.10 Distinctiveness of Corporate Moral Agency

Either the corporations have no moral status or their moral agency is thought to be comparable to that of an individual. These points of view only scratch the surface of the reality of corporations and the conditions under which moral organizations and businesses operate. The works of Paine, Tollefson, and Wilmot demonstrate that the corporation has the same moral standing as individuals²⁹. The modern approach excludes the objective approach because it holds that moral agency is necessary for assigning blame. An exception to the principle that only humans are moral agents regarding artificial entities is the view that corporations are in a category that is not unique to them³⁰.

The fact that businesses are unable to reason and think for themselves is an argument against the moral agency of corporations. Corporations do not lack the capacity to reason or make moral decisions, but they do not lack the capacity to think. They have mental limit and delicate and mindful nature to complex explanations behind and against activities. They have entities that create and propagate cultures, allowing them to achieve varying degrees of sophistication in the justification and rationalization of any organizational action. Members of a corporation determine what is right and wrong and are integrated into the organization because corporations develop values and reasons to explain the behavior of their members. Autonomy, or the capacity of an agent to exercise moral control over their actions, is an essential condition for the attribution of moral responsibility. This standard can not be underestimated. Although individuals are held accountable for their actions, the assertion that individuals have the freedom to choose their actions is highly contentious. Therefore, there is no need to impose a condition on businesses that individuals do not fully meet.

Corporations are also subject to both internal and external influences, so they do not have the freedom to choose how they behave. They adhere to specific, predetermined objectives, and they are free to select the means by which they will accomplish these objectives and the moral judgments that will be used in making these choices. Donaldson and Wilmont expressed that companies don't have similar independence as people have yet they have second-request independence accessible which implies that enterprises have abilities of thinking³¹. This allows for some accountability.

1.11 Duty of Care to Employees

A company officer has a responsibility to care for the company's employees. In response to the Home Office's proposal on corporate manslaughter, the issue was brought up at the United Kingdom Center for Corporate Accountability. It was mentioned that just because a business owes a duty of care does not mean that the director of the business also owes a duty of care³². Even though there is no formal employment relationship between directors and employees, civil law holds that each director or company officer has a duty of care toward the employees of the company. The court can determine whether there is a duty of care by identifying this. There have been cases revealing the reason for death of laborers because of the way of behaving of organization officials. According to Ron Craig, it could be a company officer facing manslaughter charges³³. In *Trott v. W. E. Smith [Erectors] Ltd.*³⁴, he looked at the details of a civil claim that led to the death of a worker to address the possibility of manslaughter. In this instance, a worker had to walk three meters along a steel girder without a safety harness on a construction site. The worker went down and died. In order to avoid facing charges of manslaughter, the employer in question did not use the safest means of transportation to get to the workplace. The sole executive director and manager of the business, Mr. Smith, had decided not to purchase the safety equipment to save money.

Company officers have been accused of manslaughter in a number of reported instances. In cases where the court found that officers are obligated to care for the deceased workers. Each corporate laborer practices moral decisions in regards to whether to continue relationship with a venture or company. When businesses behave immorally, the company itself must be held accountable³⁵. Each corporate specialist is at risk for their misdeeds and wrongdoings. French responds that the corporation performs its duties through agents. Human entertainers in the partnership must be ethically responsible for their activities and choices of the companies as they owe moral obligation towards the representatives and public too.

1.12 Conclusion

There have been discussions among corporations about moral responsibility over the years. The possibility that companies are free people who are responsible for their activities is maintained by thinking back to the idea of enterprises, reality hypothesis, and customary regulation speculations of corporate criminal obligation. Although a corporation is distinct from its members, its members are in charge of the corporation's actions and decisions. The corporation bears responsibility for the actions and decisions made by its members, as well as

members' moral responsibility. This falls under the theory of corporate personhood, which holds that businesses belong in the moral community. Even though corporations do not have typical moral personalities, they are still subject to the same rules and regulations as any other person.

Numerous hypothesis in the corporate world manage enterprises. The speculations feature the idea of organizations which adds to the depiction of the partnership which have some control over from individualistic to all encompassing picture of the enterprise. The conscience of human actors within the corporate structure is corporate morality. There isn't yet a perfect theory about corporate morality. This chapter asserts that corporations should be held morally accountable for their actions given their authority and responsibilities. The individuals are not responsible for the activities of the companies as they are at risk for their misdeeds and wrongdoings.

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