



Can a Corporation be Worthy of Moral Consideration?

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Abstract

Much has been written about what corporations owe society and whether it is appropriate to hold them responsible. In contrast, little has been written about whether anything is owed to corporations apart from what is owed to their members. And when this question has been addressed, the answer has always been that corporations are not worthy of any distinct moral consideration. This is even claimed by proponents of corporate agency. In this paper, I argue that proponents of corporate agency should recognize corporations as worthy of moral consideration. Though particular views of moral status are often taken for granted in the literature, corporations can satisfy many views of moral status given the capacities often ascribed to them. They can even meet the conditions of the views assumed. I conclude by suggesting that recognizing the moral status of corporations may not be as drastic or harmful as we might imagine.

Keywords Corporate agency · Corporate personhood · Corporate responsibility · Corporate rights · Moral status

Much of the literature on corporate agency and responsibility focuses on whether firms can be held responsible for what they do. For instance, are there circumstances where an oil company should be held responsible for a spill distinctly from its managers? In these cases, the corporation seems to have obligations to us that it can fail to meet. There is a separate question, however, that concerns whether we (as individuals or as society) can have certain moral obligations to corporations. We can of course enter into contractual relationships with corporations, but our being compelled to hold up our end of the contract may not be a matter of the corporation *itself* deserving our compliance. Instead, this might have more to do with what we owe to the corporation's members. But can we have obligations to corporations apart from any obligations to their members? We take ourselves to have moral status and to be worthy of moral consideration by corporations, but to what extent (if any) are corporations worthy of moral consideration by us?

Overwhelmingly, the consensus in the literature is that corporations are not worthy of moral consideration. Corporations are not the kinds of things that can have moral rights. So, when we deliberate to determine what we ought to do,

we need not consider their rights or what is in the interest of corporations for their own sake, only what is in the interest of the people within and outside of them. Another way that this could be put from the literature is just to say that corporations have no moral status, or that they are not so-called moral patients.¹

Importantly, this is even the verdict of those who are staunch advocates *for* corporate agency and responsibility. Many authors are ready to ascribe agential capacities to corporations, but they resist seeing corporations as potentially deserving certain rights. And this seems reasonable, since the idea that a corporation like McDonalds has moral rights deserving protection sounds absurd. Nevertheless, I think that if we are convinced that corporations are genuinely capable of many of the agential capacities often ascribed to them, then we should conclude that corporations can be worthy of moral consideration. That is, proponents of corporate moral responsibility and agency should accept that

¹ The literature has focused on whether corporations are *persons*, but Manning (1984) nicely distinguishes the question of whether the corporation is a moral agent (and so something that has obligations and responsibilities) from the question of whether the corporation is a moral person (which she takes to be things with rights, that are owed, and that we have responsibilities towards). What Manning calls a moral person, however, is often referred to as a moral patient in the literature on moral status. For a classic discussion of moral patiency, see Regan (1983). Seelman (2014) characterizes moral agent/moral patient distinction essentially in just the same way that Manning distinguishes between moral agents and moral persons.

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corporations can have moral status. In what follows, I make this case.

In the first section, I begin by acknowledging just how roundly it has been rejected that corporations can have moral status. In the course of the discussion, we will see that the dismissal of corporate moral status tends to stem from holding a particular kind of view of what it takes to be worthy of moral consideration. It's important to recognize, however, that there are many different views on this topic.

In the second section, I consider five such views. I argue that proponents of corporate agency should accept that corporations satisfy the criteria for moral status on each of these accounts. The final two accounts considered are the ones often assumed in the literature. Corporations are denied moral status because they appear to be incapable of having certain experiences. I end this section by arguing that proponents of corporate agency should think that corporations have these experiences. At the very least, we are not in the right epistemic position to know that corporations lack these experiences, and the moral stakes are too high to assume that they do not.

In the final section, I suggest that my conclusion may not be as extreme as can be imagined. Though we might take the result as a *reductio* against the claim that corporations have agential capacities in the first place, in fact I think proponents of corporate agency should accept that corporations are both moral agents and moral patients. Crucial will be to recognize that corporations, as very different kinds of things, may not deserve or demand many of the rights that we hold dear. I will conclude, however, by acknowledging that it is incumbent on those accepting this result to determine exactly what degree of consideration, and what rights, corporations should be afforded.

The State of the Debate

Corporations at a glance seem capable of manufacturing goods, investing in the creation of new products, employing citizens, merging with other corporations, deciding to implement a particular market strategy, and perhaps even embodying a certain philosophy about its business. Many of these activities appear to be agential in nature; they involve beliefs, intentions, decisions, and many actions. So, we are led to a natural question: Are corporations themselves distinct agents capable of acting, or are we merely speaking metaphorically when we speak of corporate attitudes and actions, and it is only the agents that make up corporations that can act?

This question has been the center of much discussion, and a slew of authors have offered intriguing arguments to the effect that corporations (or group agents more generally) are capable of certain thoughts and actions distinct from the

thoughts and actions of anyone associated with them.² This suggests that corporations may be considered to be agents of a kind (though we will leave to the side the question of whether they are 'persons'). Further, the more apt we are to recognize corporations as similar to ourselves, the more we should be compelled to ask ourselves: Are they also deserving of respect? Do they have a moral status beyond their instrumental value to us?

If we are not convinced that corporations are distinct agents, then of course we will not be compelled to think that corporations have any moral status not derived from what is owed to their members. If, as Hessen (1978) maintains, the corporation just is an association of individuals (and not a distinct group agent), then surely that collection will have no rights *over and above* the rights of the members of the collection. Alternatively, if we take corporations to be mere collections of contracts between individuals and not individuals themselves (Jensen and Meckling 1976) or abstract legal entities with no members (Ciepley 2017), then they will not be moral beings deserving of respect. Few of these thinkers have directly denied that corporations have distinct rights simply because it is obvious on their pictures that corporations will not have moral rights independent of their members. However, for the tradition of thinkers mentioned above, this will be a live question. The corporation will not refer to the mere legal designation, but rather to a group agent distinct of any of the individual agents that make up the corporation. Moving forward, I will assume this conception of the corporation, and the question will be whether this kind of thing (if it does exist) is worthy of moral consideration.

Given how thoroughly these authors have characterized corporations as distinct group agents, one might think that the presumption would be that they merit some degree of moral consideration not derived from any of their members. However, few proponents of corporate agency even consider the possibility that corporations might be moral patients long enough to reject it. And what work there is on this topic constitutes a strong and decisive resistance to this idea.

Ozar (1985) provides an early discussion and rejection of the idea that corporations have distinct rights, despite being a proponent of corporate agency. Instead, the corporation is argued to have no rights, although treating the corporation any way we want may violate the rights of those that formed it. More recently, List and Pettit (2011) have taken up this issue. In a book aimed at legitimizing corporate agency, they briefly discuss and quickly reject the idea that

² This program has its origins in the work of Peter French (e.g. French 1979, 1984), and it has led to many proponents and opponents. More recent proponents of this basic idea include Christian List, Philip Pettit, David Copp, Kendy Hess, and Deborah Tollefsen.

corporations could have moral worth equal to individual citizens (179–182), and they leave it for an endnote to explicitly assume that corporations are not worthy of moral consideration. They say, ‘We take it as a working assumption that group persons do not have whatever functional characteristic it is that makes individual human beings distinctively valuable, such as sentience of the right kind or other distinctively human quality’ (227, endnote 128). What is crucial here is the blanket assumption that what is required for moral consideration is a particular characteristic like sentience (the ability to feel pleasure and pain), and that corporations lack it. However, no argument is given as to exactly which functional characteristic is necessary, nor as to why corporations do not possess it.

Hess (2013), which also takes corporations to be agents, offers a more sustained examination and rejection of the claim that corporations are worthy of moral consideration distinctly from their members. She says,

Whatever else it may be, the “person” at the core of our system of rights and protections is profoundly vulnerable to certain kinds of experiences, both painful and pleasurable, and it is precisely this vulnerability that accounts for the rights and protections that are typically awarded to it...Without the possibility of hunger, humiliation, and hatred, it wouldn’t really matter whether a person’s property rights were acknowledged, her voice heard, her decisions and bodily integrity respected. All of the rights we now claim for ourselves...are best understood as further efforts to protect ourselves and other persons from those who would exploit our vulnerabilities. (333).

Although she does not mention sentience, it does seem like this is what Hess also takes to be missing in the case of corporations. She is arguing that corporations do not experience pleasure or pain, and so they are not vulnerable in a way that would compel us to recognize them as bearers of distinct rights. Again, we are presented with the idea that corporations do not have some particular characteristic, and it is inferred that corporations are not moral patients on this basis.³

The problem with these discussions is twofold: First, these authors are assuming certain views of what is required for moral consideration. In particular, they have in mind views that require what might be considered a high bar for moral consideration: conscious, phenomenal experiences

of pleasure and pain. If this is the right view of moral status, then the question will only be whether corporations can possibly satisfy it. However, there are a number of distinct views prominent in the literature. Not only should we not dismiss these other views out of hand, but it may be that there are unique costs to assuming the views that might rule out corporations.

Second, not enough of an attempt has been made concerning whether corporations really could satisfy the conditions necessary for moral consideration. This is especially seen once we grant them the capacities often ascribed to them in the literature. Corporations are taken to be group agents distinctly responsible for their decisions and actions. Although they may not seem to be deserving of rights at first blush, the stakes here are too high to assume that they lack whatever capacity is required for moral status.

To address these two problems, in what follows I will closely consider whether corporations are worthy of moral consideration on particular plausible views of what it takes to be worthy. Upon close examination, we will see that a good case can be made for saying that they are worthy of moral consideration on each of these views.

Views of What It Takes to be Worthy of Moral Consideration

Philosophers have long been concerned with the question of what has moral worth and why. Cognitively able humans seem to, but what about the cognitively impaired? What about animals, or plants, or ecosystems, or artificial intelligences, or fetuses? What is had in common by everything that has moral worth, and is everything that has moral worth equally worthy? Answering these questions lies far beyond the scope of this paper; however, we can recognize that the literature on this discussion can be directly applied to try to answer our question of whether corporations have moral worth and can be wronged. When we look, what this literature teaches us is that there are many different kinds of views. Crucially, if we grant corporations the capacities often ascribed to them by proponents of corporate agency in the literature, it will be clear that many kinds of views will count corporations as worthy of moral consideration.

In this section, I will examine five such views. Although there may be as many distinct views as authors writing on the subject, these views capture different approaches to what matters for having moral status. They require either the having of ends, intellectual abilities, the capacity to care, sentience, or phenomenology. In some instances, proponents offering these views are motivated to capture or exclude a particular kind of case, and I will highlight this. In each instance, however, the proponent of corporate agency should recognize that corporations satisfy the required criterion.

³ As a final example, Pasternak (2017) has recently argued directly that corporations are moral agents, but they nevertheless are not worthy of moral consideration and should not be granted independent rights. I omit a longer discussion of this work because it argues largely by taking on board directly what is said by List and Pettit and Hess.

Ends of Their Own, an Environmentalist Approach

We can begin this investigation by looking to the literature on environmental ethics. In that literature, several people have been keen to argue that we ought to protect the environment not merely because preserving the environment is instrumentally good ('it's good because it's good for us'); instead, we ought to protect the environment because it has intrinsic worth that deserves protecting. Insofar as this vastly expands the purview of our apparent moral demands, any view with this result is going to feel more inclusive than we might have thought plausible. Nevertheless, these views are worth exploring. First, they are motivated and often taken seriously by those working in environmental ethics. So, they cannot just be dismissed out of hand. And second, environmentalists are high on the list of those likely to deny that corporations have rights. Given this, it will be surprising if it follows from the views advocated by the staunchest environmentalists that corporations are things that have rights that deserve respecting. In fact, this is exactly what the proponent of corporate agency should conclude.

Consider a view found in Paul Taylor's *Respect for Nature*. Taylor is concerned with making the case for thinking that many elements of nature are worthy of respect and moral consideration, and his principle for what deserves respect is quite simple: according to Taylor, something's merely *having a good* is sufficient for that thing to deserve some kind of moral respect. Put another way, if something has an end or a goal—if there is something that is a good for it—then that thing's efforts to achieve that end are to be respected, all else equal, as much as the ends of anything else. By casting the net so broadly, Taylor is able to include animals, plants, and even microscopic organisms. For each of these, some sense can be made of certain states that are better or worse for their lives, and so they should be respected on his view to some degree.

Central to Taylor's view is that moral patients have a certain *telos*, or something that they are trying to do that can be aided or frustrated. This will rule in animals while ruling out rocks and puddles. The view is also intuitive because it does seem like we ought to respect the ends of anything that has ends, at least if it is no cost to us to do so. This is not to say that the ends of a rhododendron are to be respected to the same degree as the ends of a beloved family member. We are not saying that all plants and animals have the same moral status, or are to be considered to the same degree. It is significant if we can be brought to accept the idea that anything with ends of any kind deserves *some* degree of respect. If corporations can be shown to be deserving of *any distinct moral consideration whatsoever*, this will be a tremendous departure from orthodoxy.

So, do corporations have goods or ends that should be respected, all else equal? There are those in the literature that

would deny that corporations can have goals or ends to be satisfied. Keeley (1981), for example, distinguishes between goals *of* the corporation and goals *had for* the corporation. He argues that while people can have various goals or intentions for the corporation, the corporation itself has no goals. While this is a compelling suggestion, the proponents of corporate agency (such as those mentioned in fn.2) are committed to corporations having certain goals, ends, aims, and plans. They will readily admit things can be good or bad for a corporation, and for good reason.

The case for corporate goods is relatively straightforward. It is good for a corporation to be in the black—to earn revenue in excess of costs. It's also good for a corporation to be transparent, reliable, growing market share, minimizing cost of capital, and maximizing return on investment. Apart from how this would be beneficial to others, these are often ways of measuring how well the business is doing itself. On the other hand, when you see that a company is losing market share, misallocating funds, taking on a high proportion of debt, making desperate acquisitions, or having their margins competed away; these are things that are clearly bad for business. Even on a smaller scale, a celebrity could endorse the product made by a business run out of someone's basement, or a fight could break out in a bar. These also would be good and bad for these businesses, and we say such things on a regular basis.

Further, the proponent of corporate agency may be particularly committed to corporate ends, because there is an a priori argument for this conclusion from the concept of action itself. On some theories of action, every action is done for some reason (even if the reason is simply because the agent felt like doing it). Permitting some capriciousness, it is nevertheless hard to imagine an agent who acts but never acts for any reason. I do not think we would label the behavior of such an individual as 'action.' Finally, an agent can only have a reason for acting if the agent has some end, and that action is possibly a means of achieving it. Proponents of corporate agency will say that the corporation can act, and so the corporation will only count as acting if it has reasons to act, and it will only have reasons to act if it has ends that are promoted by those actions.

A proponent of corporate agency may respond that accepting that there are corporate goods does not secure the corporation moral status on Taylor's view, because what is good for a corporation is only *instrumentally* good, or good insofar as it promotes the good of its members. However, this route is problematic for a few reasons. First, even if corporate goods were merely instrumental, Taylor himself does not disqualify entities with only instrumental goods, nor should he. Although he does not discuss this issue, we might imagine that the goods of plants should be respected even if it is difficult to make the case that the ends of plants are *intrinsic* goods or goods-in-themselves. The point is that

plants are in some sense trying to do something—survive⁴—and we ought to respect that, if we can. Whether what they are trying to do is instrumental for the aims of something else is beside the point. Similarly, corporations have ends of their own, and so those ends should be respected when possible.

Second, it should not be hard for the proponent of corporate agency to become convinced that corporations have non-instrumental goods anyway. Something can clearly be in the long-term interest of the company even if it would not be good for any of its current members or even any stakeholders. Perhaps all of the shareholders sell before the long-term benefit is realized, and all of the employees turn over, and the corporation exchanges all old customers for new ones. Proponents of corporate agency tend to happily endorse this kind of arguments in order to establish the distinct existence of the corporation (that the corporation could remain the same even while changing members), so they are particularly vulnerable to an argument of this kind.

Accepting this, we might instead object that Taylor's view is too inclusive. (After all, it includes microorganisms!) We may even think that the fact that it follows from his view that corporations have moral worth *shows* that his view is too inclusive. This is fair enough. However, it is worth noting that among the views of moral status endorsed by environmentalists, Taylor's view is actually one of the hardest for corporations to satisfy. For other views in that literature, it will be even *more* obvious that corporations qualify as worthy of moral consideration.

As one example, Callicott (1980) advocates for the holistic position that what is actually of value is the 'biotic' system encompassing the environment as a whole. Items within the system deserve moral consideration to the degree that it benefits the thriving and diversity of the system. This holistic position, however, even licenses concern for inanimate things like mountains and streams insofar as they are important to the system. Given only the assumption that corporations are things within the environment, it will be clear that corporations are worthy of moral consideration. Not only do corporations contribute to the diversity of entities in the environment, but, when regulated properly, they facilitate the overall success of humans and perhaps the whole biotic system. Given this, on this account they may deserve as much consideration as humans, if not more.

The broader point is that proponents of corporate agency should accept that the kinds of views likely to be endorsed by environmentalists extend to guarantee moral consideration

for corporations. Of course, our task here is not to satisfy environmentalists. If their views are ultimately implausible, then so much the worse for them. Still, these views are independently motivated, and they are accepted by the very people with most to gain from arguing against corporate moral status. This puts environmentalists in an interesting position. Although environmental activists and corporate lobbyists are often at odds, they may find themselves advocating for one and the same view of what it takes to be worthy of moral consideration.

Intellectual Abilities

A natural reaction to extremely inclusive views of moral status is to push for a much higher bar for moral worth. Traditionally, views that do this tend to stress certain intellectual capacities, not merely the having of ends. Here, the classic view is Kant's. In his *Groundwork for the Metaphysics of Morals*, Kant argues that what makes us valuable is our autonomy, where this is understood to be our ability to use practical reason to deliberate and set our own ends. This condition alone is what is necessary and sufficient for moral consideration. For Kant, moral consideration is a matter of respecting individuals as ends in themselves, and never merely as a means. Anything that cannot practically deliberate, however, can be treated merely as a means. So, rationality and practical reasoning are intellectual abilities shared by all creatures of moral worth.

Whether practical reasoning must actually be used to determine our ends is a question for metaethics. Still, there is something to this idea that these intellectual abilities are connected to moral consideration. Kant's view is of course of a piece with his larger ethical theory, but we might independently think that there is something valuable (and so morally worthy) about reasoning and creatures capable of reasoning. We need not take on Kant's stronger claim that something is not worthy of any consideration *unless* it is capable of practical reasoning, but it will be a striking result if such reasoning qualifies one for moral consideration and corporations so qualify.

To be sure, it is a difficult and extensive challenge to sufficiently demonstrate that corporations do count as coming to judgments, making decisions, and forming intentions that are distinct from the judgments/decisions/intentions of the managers running them. Rönnegard and Velasquez (2017) maintain that this challenge has yet to be met. However, this is what proponents of corporate agency are most assuredly committed to. French (1979) argues that it is the corporation's internal decision structure that licenses the appropriate description of employee actions *as* the intentional actions of corporations. Similarly, Pettit (2003, 2007, 2017) maintains that group agents including corporations manifest a kind of rational unity (and can be answerable for such). Consistently

⁴ Taylor is clearly concerned with things that are alive. I will not comment on whether we ought to consider corporations as 'alive,' aside to say first that it would be a stretch of our language to say so. What is important is that corporations seem to share many features with living entities relevant to moral worthiness.

in this literature, there has been a full-throated, if controversial, explication of the idea that corporations can have states like beliefs, desires, and intentions, and that corporations can reason as to how they should act as a corporation given their corporate interests. Hess (2010) even goes as far as claiming not only that corporations are capable of practical reasoning, but that corporate entities are capable of having a first-person perspective, as they conceive of themselves and their interests as they reason to act.

This is not the place to adjudicate whether corporations really do instantiate these mental states, or are reasonable organisms. But proponents of corporate agency seem committed to this, and this is sufficient for satisfying the Kantian criteria for moral status. The only way for these authors to avoid this conclusion would be to claim that although corporations act in light of their reasons, they are nevertheless incapable of practical reasoning. It is hard to see how this argument would go though. Perhaps these authors would say that although corporations do have reasons and instantiate certain mental states, they do not fully instantiate those states that are constitutive of *deliberating* among their reasons. Perhaps corporations act for reasons but do not actively *weigh* their reasons. But would these authors really argue this? Unless we take it to be a miracle that corporate actions happen to match what corporations have reasons to do, these authors must appeal to the corporate decision procedure as constitutive of the corporation's engaging in practical reasoning.

Although we may independently want to push back against the rational nature of corporations, an opponent does not need to do this in order to deny that corporations are worthy of moral consideration. Given how controversial the Kantian view is, an opponent is better off just denying that rationality is sufficient for moral consideration. Wringer (2014) suggests exactly this upon recognizing that corporations likely qualify on the Kantian view of humanity. We could raise the bar yet higher and suggest that some further abilities are necessary for something's being worthy of moral consideration. For example, Margalit (1996) claims that free will is required for moral consideration.⁵ However, we are more likely to think that the bar set at rationality is too high already. Instead, we may think that the basis of moral worthiness is non-intellectual.

There is good reason for thinking this, and we will explore these other views presently. However, it is worth pausing again to acknowledge that the view on offer is independently motivated and somewhat plausible. Even if not a necessary

condition, it does seem as if things capable of having ends and reasoning practically toward those ends ought to be able to act in pursuit of those ends without being frustrated (at least insofar as they do not act to frustrate the actions of others). Such complex behavior does suggest some kind of worthiness of respect. It may turn out that the Kantian view is insufficient to guarantee rights and protections, but it is another plausible view on which the proponent of corporate agency seems committed to corporations as worthy of moral consideration.

As with the environmentalist views, we are free to reject the Kantian view, but there may be significant costs to doing so. For example, without this view it may be harder to justify how humans at least seem to have a privileged moral status in the animal kingdom. Perhaps they actually do not, or perhaps their higher status can be explained by other kinds of views (such as those in the next section), but needing to reject views that focus on intellectual ability is a high cost of denying any moral status to corporations.

Caring and Emotional Capacities

Moving away from a view that requires these particular intellectual abilities, we might instead endorse a view that requires some affective element that corporations may seem to lack even by the lights of the proponent of corporate agency. Jaworska (2007) argues that what is necessary for full moral status is an agent's ability *to care about something*. The move to talking about caring is well-motivated, as we will see, and, crucially, Jaworska characterizes caring as involving a slew of emotions arguably not had by corporations. This view is a prime example (and one of the few) that requires certain emotional capacities. The question will be whether the proponent of corporate agency should think that corporations have these emotions, and whether those emotions really are necessary for the caring that is itself necessary for full moral status.

Jaworska is concerned in part with showing how children who have not fully developed the abilities of practical reasoning necessary on Kant's account still seem to have full moral status. She argues that they regularly exhibit a feature that we might find lacking in others (such as those with severe dementia) who still have moral worth, but do not seem to command full moral status. The feature had in common between those with full moral status, Jaworska claims, is a sense of self or psychological unity. She says,

It makes sense that a creature who possesses a sense of self – enough of a self that the distinction between motivations that merely occur within him and those that are truly his own applies to him – would have the underpinnings of a higher moral standing than a creature who lacks such self-delineation. (493)

⁵ The notion of free will in play is the radical freedom from determination given one's past, environment, and character make-up. That is a high bar indeed. Even here, however, consider Hess (2014), where Kendy Hess argues that corporations are capable of satisfying at least certain suggested compatibilist conditions for free will.

Creatures that exhibit this unity of self have full moral status, and it is for securing this sense of self that caring is essential. In line with the work of Harry Frankfurt, Jaworska claims that we identify with our cares—that they are internal to us and we cannot be alienated from them. When we care about something, it is important to us, and this importance structures our future thought and actions. It is because we have things to care about that we feel the need to marshal our abilities toward promoting the interests of whatever it is that we care about. And if we did not feel the compulsion to organize ourselves—if our cares did not provide reasons to do this—we would not have the kind of centered psychology deserving of the concept of ‘self.’ This is why Jaworska claims that caring is necessary for full moral status.

Crucially, Jaworska further claims that certain emotions are a necessary part of caring. She characterizes caring ‘... as a structured compound of various less complex emotions, emotional predispositions, and also desires, unfolding over time in response to relevance circumstances’ (483). She further says that caring typically involves:

...joy and satisfaction when the object of one’s caring is doing well and advancing and frustration over its misfortunes or setbacks, anger at agents who heedlessly cause such misfortunes or setbacks, pride for the success for the object and disappointment over its defeats and failures...fear when the object is in jeopardy and relief when it escapes untouched, and grief at the loss of the object and the subsequent nostalgia. (483-4)

On this view, at least some of these emotions will be necessary for full moral status, and it is hard to imagine that corporations genuinely exhibit *any* of these emotions. Corporations do not seem to be joyous when their share price rises or disappointed when they get a credit downgrade. Short of Coca-Cola putting out commercials about bringing back the glass bottle, it’s not clear how corporations could possibly manifest nostalgia. So it seems that corporations will not count as caring about anything on Jaworska’s account. If we agree that caring is necessary for full moral standing, then we will have an argument against corporations counting as worthy of such standing.

This argument is compelling, but it is an argument about having *full* moral status, and we may want to claim that corporations still have moral status without having a status equal to persons, for instance. However, the importance of emotions has been recognized before, and several authors have taken the idea that corporations lack them to show that corporations are neither moral patients nor moral agents. De George (1986) argues directly that corporations lack certain emotional capacities, and these capacities are necessary for moral personhood. Tollefsen (2008) argues that certain emotions are necessary for caring, and she worries

that if corporations cannot be shown to have them in some way, they will not even count as responsible agents. Haney (2004) explicitly claims that corporations are not capable of caring, and that they are not moral agents because of this. More recently, Sepinwall (2017) argues that even if it may be appropriate to hold corporations responsible for what they do, corporations are not blameworthy because they lack these emotional capacities. So, a proponent of corporate agency must be able to answer this charge. Luckily, there are several answers available.

First, several proponents of corporate agency have argued that corporations are capable of feeling emotions in some way. Although Tollefsen agrees that corporations cannot feel emotions on their own, she thinks that there is a way to say that there are corporate emotions—or emotions appropriate for the corporation—that employees can feel vicariously for their corporations. She says,

Corporations do have emotions. They are realized by corporate employees. Corporate employees are *conduits* for corporate emotion...When corporate employees express, for instance, regret over the action of the corporation, they are expressing not their *personal* emotions...but the regret of the corporation. (12)

In response to Tollefsen’s paper, Peter French goes one step further. He suggests that employees can directly express corporate regret. Just as the actions of employees can be described as actions of the corporation itself when in the context of the CID structure, French claims that certain expressions of the employees can also be described as expressions of the attitudes of the corporation. He justifies these corporate emotions by appealing to the idea that groups can count as having emotions if the individuals in them commit to feeling the emotion as a group.

Sepinwall (*op. cit.*) considers and rejects Tollefsen and French’s attempts at insuring corporate emotions; however, Hess and Björnsson (2017) compellingly argues that corporations are capable of having and expressing certain reactive attitudes⁶ even without any of the employees sharing or expressing those attitudes. Instead, corporations can engage in activities that are constitutive of their feeling regret or remorse (e.g., firing negligent employees or issuing new protocol to prevent further problems) even if none of the employees individually express remorse. What is crucial for them is that these attitudes require certain motivational and epistemic capacities, and corporations have those capacities, even if they lack the qualitative experiences that are typically

⁶ Some authors have argued that reactive attitudes involve having emotions or even that they *are* emotions. Their relation to emotions is still unsettled, but see Wallace (2011) for a defense of the former claim and Hurley and Macnamara (2010) for a defense of the latter claim.

associated with these attitudes.⁷ What is crucial for us, however, is that proponents of corporate agency do seem ready to defend corporate attitudes, and corporations will satisfy the account of moral status currently under consideration because of this.

We should acknowledge that although the reactive attitudes are doubtlessly significant for inclusion in the moral community, none of these authors are arguing that corporations have the emotions specifically mentioned by Jaworska. She mentions joy, pride, nostalgia, and others presumably because these emotions are crucial for organizing the agent to be the kind of unified self worthy of full moral status. Perhaps the arguments given by the philosophers above could be extended to cover these emotions, but even if we thought that corporations were not capable of *any* emotions, there is a way that we should nevertheless maintain that corporations are capable of the kind of caring necessary for full moral status on this account.

Our emotions seem to play a very particular role in our psychology that enables us to have unified psychologies. When our emotions track the successes or failures of a certain thing, they imbue that thing with importance, helping us to structure our psychology and future conduct. However, it is unclear that emotions are the only kinds of states that can play this role. Evaluative judgments, for example, might be thought to be capable of playing the same role. If you judge that something is good or ought to be promoted, then you may focus on it and identify with promoting it, and so care about it. This may further motivate you to structure your thoughts and actions around promoting it, establishing a more unified self.

Jaworska argues against the idea that evaluative judgments are necessary for caring, but she does not show that these judgments could not provide an alternative sufficient basis for an agent's caring. It may be unlikely in the case of humans that evaluative states alone are sufficient to do this without certain emotions, but she neither argues for this nor for the more important claim that evaluative attitudes could *never* undergird the capacity to care.

Once we have loosened our understanding of what is involved in caring in this way, I think we can step back and recognize that we regularly take corporations to be capable of caring about things. Proponents of corporate agency should be happy to admit that corporations are often formed with a set of values baked into them. Candidates are interviewed for alignment with these values, investment decisions are made based upon these values, and marketing is issued

to signal an allegiance to these values. Even a corporation that is openly run for the benefit of shareholders above all else counts as having clear values, and those values guide all of the practical deliberation of the corporation. So it would sound odd (especially for a proponent of corporate agency) to say that corporations are *incapable of caring*. Instead, corporations do seem to care about the projects and promote their values, and so they ought to qualify as worthy of full moral status given this conception of what is necessary.

Sentience

Even if we could be convinced that emotions may not be necessary for moral consideration, we still might be convinced that what is required is sentience—or the ability to feel pleasure/pain. For example, Utilitarians seek to maximize pleasure (or at least have it be above some minimum threshold), so what will matter to the utilitarian calculation will *only* be those creatures that can experience pleasure/pain. Singer (1993) is a prominent defender of this view of moral worth. Alternatively, we may think that we have particular rights not to be subjected to certain harms, where those harms give us pain in particular ways. In both of these cases, the normative moral views will be indifferent as to how to treat things that do not experience pleasure/pain. Non-sentient entities will not be worthy of *any* moral consideration on these views, let alone the question of full moral status.

Although this focus on sentience is not typically discussed in the context of business ethics, we saw in the first section how it is in the background of the denial of corporate moral status in the literature (especially by Pettit, List, and Hess). Kendy Hess even acknowledges that corporations may be rational agents with first-person perspectives; nevertheless, she claims that they do not have rights and will not need moral protections because they do not have the kinds of experiences that agents need to be protected from having. So, this puts into clear focus the question we need to answer: Do corporations experience pleasure or pain or some analogue of these sensations that would warrant them moral rights/protections? And, what would we need in order to show that they have or lack these experiences?

Given only what proponents of corporate agency already agree to, we can quickly make the *prima facie* case that corporations in fact do exhibit states that are functionally equivalent to pleasure and pain. It can sound absurd to say that J.C. Penney felt pain or anything at all at their falling profits and market share, or that Tesla took pleasure in its rapid growth. Nevertheless, it can be in a corporation's interest for it to acquire certain resources, and it can react in various negative ways should it fail to acquire them. Layoffs can ensue, or poorly thought-through alternative projects can be pursued. Similarly, a corporation can do things to try to

⁷ This apparent lack of qualitative experience is exactly why Haney claims that corporations are not capable of caring. We will see that on this view and other views of moral status, what really does the work in ruling out corporations is an assumption of their lacking necessary qualitative experiences.

win an award like ‘Top 10 Places to Work,’ and, if it wins, it can pay out of the corporate budget for employees to have champagne. The award placard might go up in the lobby just as a medal would go around a neck. Again, proponents of corporate agency should admit that these are corporate interests that are satisfied or frustrated, and these are corporate acts that occur in response to whether the desire is frustrated. These mere positive or negative reactions to positive or negative stimuli seem sufficient for a *prima facie* case for a corporation’s having states that play similar functional roles to pleasure and pain. Corporations do avoid things that are against their ends and pursue things that promote their ends.

It might be objected that the fact that corporations have states that appear to play these functional roles is all the evidence that we need to deny functionalism about the mind—that is, to deny that satisfying these functional roles of a person’s being in certain mental state is sufficient for (or all there is to) a thing’s having these mental states. Velasquez (2003: fn.40), for example, argues against corporate intentionality by explicitly rejecting functionalism in the philosophy of mind (albeit only in an endnote). Even within the philosophy of mind, Block (1978) argues against functionalism precisely by using the case of a group agent—the Chinese nation—arranged so as to be capable of states that are functionally equivalent to our mental states. This group agent, he claims, is certainly not consciously experiencing various states, although it has states that play the same functional roles.

Though this line of thought will be compelling to some, it is again not available to proponents of corporate agency. Many of them openly accept functionalism in the philosophy of mind on the way toward arguing for corporate rationality, intentionality, and mental states (Copp 2006, Hess and Björnsson *op. cit.*). These authors should say that the structure of the corporation is not just employees arranged like neurons in the brain, and demonstrating that a corporation satisfies the functional characterization for a certain mental state is sufficient to show that it manifests that state.

If we could thoroughly demonstrate that corporations are capable of states genuinely functionally equivalent to pleasure and pain, then, these authors should accept that corporations can be sentient. Of course, showing this sufficiently is a tall order. To fully functionally characterize mental states and then demonstrate that corporations or other group agents have states that play these roles is not an easy task for any mental state, and it is likely to be even more difficult in the case of pleasure and pain.⁸ Still, if we are ready to ascribe mental states such as desires to corporations, and

we recognize that these desires are pursued to be satisfied (and not merely eliminated), there seems to be no principled reason why corporations could not have states that play the same functional role as pleasure and pain.

Phenomenology

In order to avoid this result, I believe that the proponent of corporate agency must make a special kind of appeal. They will need to argue that corporations do not satisfy the true functional characterization for pleasure or pain because there is some experience to pleasure and pain beyond achieving our goods or failing to meet our interests. This is best captured in an example. The pain that ensues with my hand on a hot stove is not merely a matter of my interests not being met. Yes, I will avoid the stimuli in the future, but I will also wince, grimace, and complain to no end. This may appear to somehow evince real pain. Managers may hem and haw about losses in quarterly reports, and they may avoid markets where they have failed before, but what do corporations themselves do to evince anything like discomfort, let alone agony? Surely corporations cannot really *feel* pain.

Even if there were certain corporate actions that are the behavioral equivalent to recoiling in pain (e.g., desperately shedding divisions perhaps), the objection is compelling because it gestures toward something often assumed to accompany feelings like pleasure and pain phenomenology, or what it is like to be in that state. Consider again Hess, who says,

There is no phenomenal point of view to accompany their rational point of view. Thus, while the corporate entity can desire resources, it cannot feel hunger when it fails to acquire them. It can desire rewards and work to get them, but it cannot exult when it succeeds or feel humiliated when it fails. (*op. cit.*: 334)

What is thought to be lacking here is the phenomenal experience of pain, of what it is like to be in pain.⁹ If corporations are not conscious, or if there is nothing that it is like to be a corporation (or for a corporation to be in some state), then we may seek to deny them moral status on this basis. After all, if corporations lack the true experience of pain, then we may not feel compelled to help them avoid these negative experiences.

So, the suggestion is that perhaps only conscious creatures capable of phenomenal experiences can have moral status.¹⁰ We may think that consciousness is necessary because

⁸ See Rupert (2011: 633–634) for a discussion of the state of these arguments from functional similarity more broadly in the literature.

⁹ Haney (*op. cit.*:403–4) argues explicitly that this element is precisely what functionalist accounts of the mind cannot capture.

¹⁰ We may think that something could fail to be consciously aware and yet still have sub-conscious phenomenal experiences that qualify it for moral status. It may more plausible to hold that corporations have subconscious experiences and feelings but not full-blown consciousness. Interestingly, however, List (2016: 5–7) suggests that cor-

it is necessary for sentience, which is what is necessary for moral consideration, or we might think that consciousness alone is sufficient for moral consideration (McMahan 2002). Regardless, this is the element that we stand a better chance of arguing that corporations lack. It is simply hard to imagine that corporations themselves genuinely *experience* anything.

There is a sense in which corporations seem genuinely soulless (and not just in the sense of not caring about non-shareholders). Corporations seem more like tools of wealth generation or engines of capitalism than loci of experiences. But if corporations are more machine-like, then this motivates us to think that they deserve no greater moral consideration than my car engine. Spoken of in this light, it seems manifestly ludicrous to imagine corporations as conscious creatures.

Despite these intuitions, there are good reasons for proponents of corporate agency to think that corporations are conscious. At the very least, it is extremely difficult for them to know that corporations are not conscious. There has been independent work on the plausibility of groups as having consciousness distinct from their members,¹¹ but there are a few reasons that the proponent of corporate agency in particular may have a harder time avoiding this result.

First, proponents of corporate agency accept that corporations act, but several views of action have it that acting itself requires certain phenomenal experiences. For instance, on the volitionist account of action given in Ginet (1990), voluntary actions are always accompanied and partially constituted by an ‘actish’ phenomenal quality. The agent has the experience as of acting or exerting herself voluntarily. We could just deny accounts that incorporate this phenomenological element; however, they are independently motivated.

Second, it is odd to consider the corporation as non-conscious once we remember just how many features proponents

of corporate agency have been compelled to argue corporations exhibit. Corporations are taken to have distinct ends and are capable of using practical reason from a first-person perspective¹² to achieve those ends. Further, I have made the case that these theorists should agree that corporations can have values and care, and that corporations can at least instantiate states that are functionally equivalent to certain emotions and reactive attitudes. Given all this and granting that corporations do not *seem* conscious to us, it is hard to imagine something that has all of these features and yet is *not* conscious.

Engines of capitalism or not, corporations seem to behave in many ways just like conscious beings. It’s not as if a corporation acts blindly toward its ends, correcting course in the face of frustrations like a Roomba. It plans ahead and cares if its attempts are frustrated. Given this, what could be missing? Corporate qualia? I will admit that we do not seem to have direct evidence for a phenomenology of the corporate. However, this can hardly be surprising. After all, I cannot have direct evidence that anything or anyone else has phenomenal experiences.¹³ This is just the problem of other minds.

The question is: Why does it seem to us that other people are conscious, and what is lacking such that it seems to us that corporations are not conscious? Given that proponents of corporate agency take corporations to exhibit all of the marks of agency that are typically found by conscious creatures, the true reason corporations do not *seem* to us to be conscious must be that they are just so differently constituted. We only take it for granted that other people have experiences because we know that *we* have experiences, and other people seem *just like us*. This line of thought constitutes what Hyslop (2016) refers to as the ‘analogical argument’ for other minds, because it works by extending our own experience to the supposed experience of others by analogy. The problem is that corporations are not like us; they are not biological creatures with brains. They are made up in such a dramatically different way that it may be that we

Footnote 10 (continued)

porations have conscious awareness but lack phenomenal consciousness. He holds this position because he thinks that awareness can be characterized functionally (and corporations can play those functional roles) whereas conscious experience requires more.

¹¹ See Schwitzgebel (2015), which argues for that claim that the United States of America is probably conscious (at least, if materialism is true). He recognizes that it would follow from this that corporations might be conscious. Alternatively, see List (*op. cit.*), which acknowledges that corporations might count as conscious on some views of consciousness, but endorses a particular recent view of consciousness on which he claims corporations will not count as conscious to a high degree. There may be ways around his conclusion even granting that view of consciousness, or we may to reject that view of consciousness, but it’s worth noting that on that view corporations will *still* count as conscious to some degree. In fact, the view entails that everything is conscious to *some* degree, and we may think that a proponent of this kind of panpsychism is unlikely to think that consciousness is the sufficient condition for moral consideration.

¹² Although it is hard to imagine having a first-person perspective without being conscious, Hess does claim that these are separable and that corporations can act from a first-person perspective without having conscious experiences. Rovane (1998) also argues at length that group agents can have a first-person perspective without having phenomenological states.

¹³ If phenomenal experiences were necessary for the agential features of corporations, then we could directly infer their consciousness. However, we may think that phenomenal experiences do not play any causal role in bringing about our behavior, and that there could be creatures just like us in our behavior but which are not conscious. That is, we may think that philosophical zombies are possible. However, it would be an incredible result to show that philosophical zombies are not only possible but actual, and that corporations are among them.

would not suspect it even if they were conscious. Or worse, it may be that we are biased against thinking that they are conscious because they are so different from us.¹⁴

I will grant that it is hard to imagine a corporation's feeling any kind of way, such as being in pain. But why would I be able to imagine this, given how different corporations are to me? It's not surprising that I cannot empathize with an enterprise interested in maximizing profits for shareholders. It may seem absurd to think that a material entity constituted (at least in part) by conscious beings as members could be the seat of distinct experiences, but is it really easier to imagine that mere electrical firings within tissue membranes could be the seat of our own conscious experiences? In this sense, strolling around an office and concluding that there is no corporate phenomenology may be as misguided as a neurosurgeon that pokes around the brain and can't find consciousness. Schwitzgebel puts it well when he says, 'Large things are hard to see properly when you're in their midst. The homunculi in your head, the tourist in Leibniz's mill, they don't see consciousness either' (*op. cit.*: 1717).

This is not decisive proof that corporations are conscious. But it does suggest that we are in a particularly bad place epistemically to judge whether corporations are conscious given the kinds of creatures we are. It is even questionable whether we have the ability to ever come to learn that they are not conscious. The way that we might think to do this would be to come up with a sophisticated model of consciousness that includes everything that we think is conscious and excludes corporations. But if we do not know that corporations are not conscious antecedently, then doing this will only put us in the position of not knowing whether or not our model of consciousness is correct.¹⁵

If we are wrong in thinking that corporations are not conscious, and we do whatever we want with them, then we could be grievously wronging a whole class of entities on a regular basis. The same will go for any other of the myriad kinds of group entities proponents of group agency argue are capable of action. This makes the moral stakes quite high. And given how high the stakes are, we certainly lack sufficient evidence to *know* that they are not conscious. This issue is simply too important to assume this. On the contrary,

¹⁴ Schwitzgebel suggests that we in fact are biased against accepting even the existence of things like group agents that are discontinuous. He calls this bias 'contiguism' (*op. cit.*:1699). However, I think the bias goes much deeper for corporate consciousness. It is the fact that corporations are entities that *we* created, rather than biological entities, that I think is the source of our incredulity about their prospects for consciousness.

¹⁵ Block (2002) argues that, given a theory of consciousness and a being that is functionally equivalent to conscious beings but not counted as conscious by the theory, we have no way of knowing whether our theory is right or if encountering this being shows us that our theory as it is must be mistaken.

we have seen that the proponents of corporate agency have good reasons to argue against our intuition that corporations are not conscious. If we are really convinced that consciousness is necessary for moral consideration, the proponent of corporate agency should remain open to the possibility that corporations are worthy of moral consideration after all.

Implications

In the last section, we reviewed five distinct views of what it takes to be worthy of moral consideration. Each had some motivation to speak for it, and each had proponents. Further, for each view, we could make the case that the proponent of corporate agency should conclude that corporations are worthy of moral consideration. Even focusing on that view which had likely the highest bar for corporations to clear—the view that required consciousness—we saw that there were good reasons for thinking that corporations satisfy this criterion as well given the properties often ascribed to them. So, proponents of corporate agency should accept that corporations have distinct moral status. What follows? In this final section, I want to give several reasons why recognizing corporations as moral patients may not be as abhorrent as we might think. Then, I will conclude by pressing on our new duties regarding them.

Let's indulge our fears for a moment and consider how dramatic the implications might be if corporations are worthy of moral consideration. Doing so seems to immediately open up many questions that we might have taken to be settled: If I use a restaurant as a means to eat food, would I have to respect the restaurant as an end in itself (or the corporation that owns it)? Would I have to consider the impact on my company before quitting my job? Would I have to buy a company's inferior products to stop it from going out of business? Would it be permissible to short a company? Or, considering more realistic fears: Should we allow corporations to vote¹⁶ or run for office?

For all that I have said, it may be that the answer to all of these questions is still 'no,' but recognizing corporations as moral patients opens up these questions to answers with radical implications of how we may be called to act differently. We lack the space here to consider the full scope of rights that corporations might have if they indeed can be wronged, or what this would mean for what we should do differently. That being said, I want to note two things that should ease our worries in this regard.

¹⁶ See Hasnas (2016), which argues that if corporations have the capacities ascribed to them by proponents of corporate agency, then they should have the right to vote. It is worth noting that Hasnas maintains that these rights follow even if (*contra* Hess) we take corporations to be neither sentient nor conscious.

First, in general our rights and protections depend on the kind of things we are and what we care about. Corporations are very different kinds of things from us, and they have different priorities. So corporations may not demand the same kinds of rights that we would expect to be demanded from other people. We surely value autonomy, privacy, self-expression, and living itself. Corporations don't seem to value these things (at least, non-derivatively). This may come down to their not sharing some of our vulnerabilities (as Hess 2013 brings out), but I think it is also because corporations do not necessarily share our values.

Corporations don't wake up every day happy to be alive or fear death; they may act quickly to be acquired and broken up at the right price.¹⁷ Instead, they perhaps value things like the security of their assets/intellectual property, or their ability to return profits to shareholders. These are values that our legal system already recognizes, regulates, and respects. In some sense, these rights are already guaranteed. If corporations are worthy of some degree of moral consideration, then we may have some extra reason to ensure that these rights are respected and that individuals abide by these laws, but the rights they demand may require no more governmental protection or personal consideration than is already afforded to them.

Further, granting that corporations may have certain distinct rights also does not lead us inexorably to conclude that corporations have the particular rights protected by the Constitution (such as free speech). Sepinwall (2012) argues that the Constitution applies to citizens, and citizenship has certain criteria that corporations do not satisfy even as moral agents. Even if we thought that corporations were worthy of moral consideration, they may still not count as citizens, since they do not engage in certain civic duties owed to fellow citizens. So, for example, they may not be entitled to the protection of free speech on these grounds.

Second, it bears remembering that *we* still have rights. (The environment might too, for that matter.) Recognizing corporate rights does not mean forgetting our own, and a lot of the fear surrounding granting corporations more freedoms comes from their ability to use this freedom to infringe on ours. Just as it would be incumbent upon us to respect the rights of corporations, however, it would be just as incumbent upon them to respect our rights. And, again, to some extent this idea is already enshrined in the law. Corporations are free to grow as quickly and as much as they want up until the point where they could monopolize markets to extort

¹⁷ This is an important point to emphasize, because it might in part explain our moral intuition that there's nothing wrong with dissolving a corporation. This just does not seem regrettable in the same way as the death of an animal, and it may not be even if corporations are worthy of some moral consideration, as long as they themselves do not care about persisting.

unreasonable rents from consumers. And banks are heavily regulated precisely because of the precarious economic position that their failure would place us in. In the typical case, allowing for corporate rights seems unproblematic. It becomes abominable, however, just when so doing would give them the power to rob us of our own rights. But this would not be allowed in a just society.

This is not to say that there is nothing revisionary in the idea that corporations are worthy of moral consideration. Though I am skeptical that accepting corporate rights will involve a radical reimagining of our legal and social landscape, the proceeding shows that this is something that the proponent of corporate agency must in principle be open to. For all that I have said, corporations may have an interest in voting for representation in the government, and they may meet the qualifications for citizenship after all. At the very least, taking corporations to be both moral agents and patients might lead us to reconceive of the relationship between them and their shareholders.

What is important to see is that understanding the extend of corporate interests and rights is something that the proponent of corporate agency has a positive duty to determine. If we should afford corporations some degree of moral consideration, then we must determine exactly how and to what extent they ought to enter into our deliberations as we decide what we ought to do. At the very least, it will involve an acknowledgement or recognition of corporations as members of the moral community.

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Compliance with Ethical Standards

Conflict of interest Author Kenneth Silver declares that he has no conflicts of interest.

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