



Justification Incorporated: a Discursive Approach to Corporate Responsibility

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Abstract

Contrasting two standard models of corporate responsibility—the so-called “collectivist” and “individualist” model—this essay proposes a third option, namely, a discursive conception of responsibility and examines whether and how this conception can be applied to the corporate level. It does so by taking a careful look at one of the preconditions of individual discursive responsibility, i.e. discursive practical reason, and discussing how corporate agents can meet this precondition. Building on this new concept, the essay also offers a novel approach to justifying corporate responsibility by referring to an argument advanced by Rainer Forst stating that a fundamental human right to justification is the normative core of any kind of responsibility and combining it, in a second step, with an argument recently proposed by Philip Pettit and Christian List showing the impossibility of forming consistent group attitudes and beliefs as a function of the attitudes and beliefs of individual group members. Finally, this essay outlines certain preliminary conclusions about the incorporation of responsibility in a corporate context.

Keywords Answerability · Corporate agency · Corporate responsibility · Corporate social responsibility CSR · Discourse ethics · Right to justification

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1 Introduction

Against the background of numerous corporate scandals, environmental misconduct, and the discussion of corporate contributions to economic and social crises, the concept of corporate responsibility has become a central notion in the field of business studies and applied ethics, as well as in political theory (Garriga and Melé 2004; Neuhäuser 2011).

Although the number of contributions to the field over the last few decades is impressive, disagreement remains as to whether there is, in fact, such a thing as corporate responsibility. While some theorists defend the position that collective agents like corporations should be held responsible in a way comparable to individuals (Arnold 2006; French 1995; Pettit 2007), others argue that the idea of corporate responsibility is at best unconvincing and at worst politically dangerous (Velasquez 2003; May and Hoffman 1991 provide a good survey of the earlier discussion).

In our view, one of the reasons that this controversy has not yet been satisfactorily resolved lies in the fact that the disputing parties almost always base their arguments on a conception of responsibility that does not take into full consideration some important aspects of our everyday practice of responsibility. In contrast, we want to outline a refined understanding of responsibility—a discursive conception of responsibility—which, in our view, allows an innovative mediation between the collectivist and individualist approaches. Building on this further developed understanding of responsibility, we also suggest a new approach to the justification of corporate responsibility by deducing the responsibility of corporations from a basic moral right of justification as advanced by Rainer Forst (Forst 2002, 2012).

To develop these ideas, in the next section we will tabulate the main aspects of the controversy between two extreme positions, i.e. individualist and collectivist accounts to corporate responsibility, and will argue that both positions are based on an inadequate understanding of individual responsibility. We will develop, instead, the idea that responsibility must be understood in a discursive manner. In a third step, we will examine to what extent this discursive notion of responsibility can be transferred to corporations and provide a new justification of corporate responsibility by showing whether and to what extent the moral right of justification is also valid concerning corporate actions. Finally, we sketch some preliminary conclusions about the incorporation of responsibility in a corporate context.

2 The Controversy between Individualist and Collectivist Accounts of Responsibility

Proponents of individualist and collectivist accounts of responsibility largely share a common understanding about the conditions a subject must fulfill in order to be legitimately attributed the capacity of responsibility. These conditions are: (a) efficacy, i.e., the capacity to exercise causal influence in the world and (b) intentionality; these two conditions together are widely held as preconditions for agency. With regard to a corporation's ability to meet both conditions, individualists and collectivists take opposing positions and, therefore, arrive at contradictory conclusions about the responsibility of corporations (summarized in Table 1). In general terms, individualists defend that an organization only operates through and by its members, so that corporate responsibility is an inappropriate concept because only individual members are responsible. In contrast, collectivists claim that an organization disposes of a comprehensive arsenal of mechanisms to control the behavior of its members as well as the effects caused by

Table 1 Comparison of Individualist and Collectivist Positions on Responsibility

	Individualist Position	Collectivist Position
Efficacy	<ul style="list-style-type: none"> •An organization only operates through and by its members. For if “the members of the organization do nothing, then the corporate organization does nothing. Every organizational act, therefore, including those that cannot be predicated of its individual members is, nevertheless, causally produced by the organization’s members” (Velasquez 2003, p.543). 	<ul style="list-style-type: none"> •An organization disposes of a comprehensive arsenal of mechanisms and instruments to influence and control the behavior of its members and, thus, the effects caused by them. It therefore “relates as [a] programming factor to the implementing factor represented by the active individual” (Petit 2007, p.191). •An organization undermines the individual member’s autonomy and adopts (co-) authorship in causing effects on the world by influencing individual values and belief systems (Phillips 1995). •Corporate members’ actions influence each other in a way that means that aggregate effects are different from individually predictable and intended effects and are imputable only to the corporation as an aggregate (Phillips 1995). •The corporation’s internal decision structure transforms individual intentions into corporate intentions and, thus, turns a group of people into a unified subject (Arnold 2006; French 1979a, 1984, 1995; Hindriks 2008; Toumela 2007). •Members acting in the corporation’s name carry out intentions that they attribute to the corporation itself (Neuhäuser 2011). •The discursive dilemma shows that any group usually has to form judgments that are not a function of the corresponding judgments of its members, so that its intentional attitudes are only ascribable to the group as a whole (Petit 2007). •Corporate responsibility is an appropriate concept because a corporation can be legitimately attributed both, efficacy and intentionality and therefore is “as fit as any individual human being to be held responsible for what it does” (Petit 2007, p.192). •However, this does not exclude the members’ individual responsibilities “as designers of a group agent, as members of the group or as those who enacts its wishes” (Petit 2007, p.193).
Intentionality	<ul style="list-style-type: none"> •Intentionality is a mental state that corporations do not have at their disposal. •The ascription of intentions to corporations is a metaphorical manner of speaking, a kind of “as-if intentionality” (Velasquez 2003, p.547). 	
Corporate responsibility	<ul style="list-style-type: none"> •Corporate responsibility is an inappropriate concept because only individual members are responsible even for those actions that design overarching strategies, rules, and procedures. •Therefore, it could be that no one is responsible for the unintended results of actions undertaken by several corporate members (Velasquez 1983). •Although bearing no responsibility, corporations may have a “compensatory liability,” that is, “the obligation to pay compensation for the costs of an injury” (Velasquez 2003, p. 550). 	

them, so that corporations must be recognized as the original authors of such actions and should be held responsible in the same way as individuals.

Although contradictory in assessing the corporation's capacity for responsibility, individualists and collectivists not only agree on the conditions for such capacity, but also share a more or less common, at least implicit, understanding of what responsibility means. According to this understanding, responsibility is largely understood as imputation of the authorship of an action as well as the ascription of appraisal, blame, or praise and, sometimes in addition, as liability for the consequences the action entails.

In the following, we will contrast this widely held understanding of responsibility with a discursive approach, which we not only consider more adequate, but that also brings a promising extension and novel twist to the long-standing debate between individualist and collectivist accounts of responsibility.

3 A Discursive Approach to Responsibility

In our view, the debate on corporate responsibility has mainly overlooked one aspect of responsibility we consider particularly important; namely, that bearing responsibility does not only mean someone can be ascribed authorship, can be blamed, punished, or subject to appraisal and held liable for the consequences of his or her action, but that someone can (and under specific conditions is obliged to) answer to queries and account for his or her actions by providing good reasons.¹

To establish our discursive conception of responsibility, we build upon Rainer Forst's idea of a basic moral right to justification (Forst 2002, 2012). According to this right, any action or omission affecting other subjects must be justifiable (and, on demand, actually justified) to those affected.² Correspondingly, responding to other people's demands for reasons is what we call responsibility. Actions can be questioned by those affected (or their legitimate representatives), and the agent must respond to such demands by giving an account of his or her acting or non-acting and justifying it with good reasons. Hence, responsibility is not only a matter of imputing the realization of an action we can blame or praise the subject for, but also a matter of prompting the agent to justify his or her actions by giving reasons that are acceptable to those affected.³

Responsibility, understood in that way, describes a relation with at least three elements: *Someone* (first element) is obliged to account *for something* (second element) by giving good

¹ The discursive understanding of responsibility we develop in the following connects well with the etymological roots of the word. The word „responsible“ derives from the French „responsable“ and this, again, from Latin „responsabilis“, which meant (at least from the early seventeenth century onwards) an obligation to respond, to be “answerable or liable to be called to account to another person for something” (cf. the article for “responsible” in the Oxford English Dictionary). In other languages (e. g. French, German), the translations of responsibility (i.e. responsabilité, Verantwortung) bear a similar semantic content. Recently, this original meaning has also been discussed under the heading of “answerability”. In this paper we argue, however, that considering this discursive aspect of responsibility may also help to advance the current debate on corporate responsibility. Cf. for a more detailed history of the concept of responsibility McKeon (1957).

² Cf. chapter 5 of this paper for a further justification of this right.

³ Derivatively, responsibility cannot only be attributed for already-completed acts but also for a realm of actions and tasks in the care of the agent. In this case, the object of responsibility does not simply denote a set of actions but rather an (unspecified) number of tasks that need to be performed. Someone has to take care that something or some actions happen so that he or she can avoid a situation in the future in which he or she would not be able to give good reasons for what he or she will have done or omitted.

reasons to *someone* (third element). As the answer to a question implicitly presupposes someone to whom the answer is given, there always needs to be someone to whom the bearer of responsibility must respond or give an account of his or her actions—by giving reasons and explaining personal motivations—so that ideally he or she can show that his or her way of acting was reasonable and, therefore, justified. In our view, this *inter-subjective* process of vindicating oneself, of justifying oneself to someone in a position to demand justification and evaluate the reasons given, is essential to any relation of responsibility.

However, not everybody is equally entitled to request the agent to justify his or her action; such entitlement rather presupposes a relation of direct or indirect affection between the agent's action and the claimant. Generally, we can distinguish two types of claimants. First, all persons who are directly affected by the action and its consequences are legitimately entitled to ask for justification. Second, persons who are not directly affected by the action can ask for justification if they legitimately represent others who are directly affected by it.

Thus, responsibility is understood as a social and communicative practice to provide and receive reasons. Such understanding not only corresponds well with our everyday understanding and practical use of this term, but it also lives up to the procedural character of responsibility. In particular, it avoids reducing responsibility to a more or less sketchy set of perfect or imperfect duties.⁴

This discursive approach to responsibility, in addition, offers a solution to the problem of scope and demarcation of responsibility; that is, the question of for what we are accountable. Instead of formulating either very broad and general responsibilities or responsibilities so concrete that their origins and general usefulness are unclear, the discursive conception of responsibility offers a procedure to solve this problem of, so to speak, objective criteria for the appropriateness or “rightness” of an action, by replacing it with the procedural criteria that it must be done for good reasons; i.e., reasons acceptable to all persons it affects. Similar to the distinction between procedural and substantial understandings of justice, such understanding permits us to describe and normatively stipulate a social practice in the context of which substantial aspects can meaningfully be discussed and determined. This makes the concept of responsibility and its application also more flexible allowing the discursive practice to reflect on the actual context of the action, a capacity of high importance in a modern and increasingly complex world in which we have to deal with increasingly less foreseeable and more unstable conditions.⁵

However, a discursive conception of responsibility not only entails some significant advantages compared to the conventional understanding but also has some important implications for the conditions of the capacity of responsibility. Besides agency, characterized mainly by efficacy and intentionality (cf. chapter 2), assuming or ascribing a discursively understood responsibility requires of the agent the capacity to justify one's own actions by giving good reasons. This implies on the part of the bearer of responsibility the capacity to explain, evaluate and justify its decisions of actions by communicative means. Put differently, responsibility not only requires a basic capacity to act but also takes for granted that the author of an action has reasons for it and can state them.

⁴ This is often the case when responsibility is understood, for example, almost as a synonym for duty, as in the philosophical debate of global justice. Cf. Kuper (2005).

⁵ As a further advantage of this discursive conception of responsibility, we see the fact that the metaphysical question of to what extent a responsible subject is supposed to be a free and autonomous author of its actions does not need to be answered a priori. However, this important question falls outside of the scope of our argument here.

4 A Discursive Approach to Corporate Responsibility

Approaching the question of corporate responsibility from a discursive understanding of responsibility requires an extended discussion of the conditions of the corporation's capacity for responsibility.⁶ Proving that the corporation meets the first two conditions specified above and thus constitutes an actor in its own right is not sufficient for qualifying it as proper subject of a discursively understood concept of responsibility. Rather we have to argue that the corporation also possesses a kind of discursive practical reason. While a corporation's agency has been extensively discussed so far (see section 2), this latter condition has largely been ignored.

Corporations are social systems enabling a certain kind of collective decision-making and action. As such, they produce outcomes not entirely reducible to individual input, contribution, and participation. According to Peter French (1979b),

[corporations'] decision structures accomplish a subordination and synthesis of the intentions and acts of various biological persons into a conglomerate decision. Hence, these decision structures license the descriptive transformation of events, seen under another aspect as the acts of biological persons [...] into conglomerate acts done for conglomerate reasons. (p. 27)

Such decisions are at least intended to be rational decisions, i.e. decisions justified by good reasons. To maintain sufficient standards of rationality, corporations set up internal processes and structures to ensure, for instance, that ideally all information relevant to the decision is systematically collected and processed, the decision criteria are carefully reflected, relevant alternatives are adequately evaluated, the interests of the parties involved are considered, and the final decision, including its underlying reasoning, is documented and made transparent.

As a result of these measures, corporations usually have little difficulty in justifying the decisions made and actions taken, and they frequently do so, explaining their reasons in internal documents and minutes, annual reports, at general assemblies with their shareholders, and elsewhere. They also delegate spokespeople to participate in a wide variety of discourses explaining and advancing the intentions and reasons underlying their decisions and actions. Corporations, therefore, possessed of communicative skills in internal decision-making as well as external justification, have the capacity to give, take, and balance reasons justifying (or delegitimizing) their actions.

This is certainly not to say that all corporate actions are justified by good reasons, nor that internal communication and decision structures are in all cases set up properly and function adequately to provide sufficient reasoning for corporate action. In fact, the design of a corporation's internal communication and decision structures has an important impact on its capacity to adequately reflect on and justify its actions and, therefore, its ability to assume responsibility (see also the last section). However, this contingency does not undermine the corporation's general capacity to deliberate reasons, to justify its actions, and, thus, its disposal of discursive practical reason.

In this sense, corporations can be held responsible as they must be considered to possess discursive practical reason; that is, they have reasons for their actions that they can

⁶ In a companion paper we take a careful look at the first two preconditions of individual discursive responsibility, i.e. efficacy and intentionality, and argue that the newly proposed concept of discursive corporate responsibility can be understood as an intermediate position between the collectivist and the strict individualist position. However, that is not the focus of this contribution.

communicate and justify to others. Furthermore, since corporations act in social contexts and their actions affect human beings, they also have a duty to account for their actions, as we will argue further in the next section. Fulfilling this duty and responding to the demands for justification by providing good reasons characterize responsible corporate action. Corporate responsibility can thus be defined as the twofold obligation of corporations to account for their actions to those affected and to refrain from actions for which they cannot account with good reasons.

5 The Right to Justified Actions: A Moral Justification of Corporate Responsibility

We now turn to the underlying normative question of why corporations *should* bear discursive responsibility. We argue for a moral duty of corporations to assume responsibility in two steps. First, we follow theorists like Karl-Otto Apel or Rainer Forst in stating that a fundamental human right to justification is the normative core of any kind of responsibility. Second, we refer to an argument originally proposed by Kenneth Arrow and more recently elucidated by Pettit and List; i.e., that it is impossible to form consistent group attitudes and beliefs as a function of the attitudes and beliefs of individual group members. We think that this impossibility is also true for the justification of corporate actions on the basis of the attitudes, beliefs, and reasons of the individuals involved.

Regarding the first step, the underlying duty to justify one's actions (and the corresponding right of justification) is, according to Forst, implied by the self-conception as autonomous, reasonable, and social beings.⁷

[P]ersons as actors are in a practical sense 'autonomous' self-determining beings when they act consciously and with justification. As such they are responsible for their actions: they can be questioned with regard to the reasons on the basis of which they acted. As responsible persons they are responding persons, and we expect of them that they have considered their reasons for action and can justify them. In this sense, autonomous persons are reasonable in terms of practical reasons: they have reasons for their actions that they can justify to themselves and can communicate and justify to others, so that these reasons (...) can be shared. (Forst 2002: 256)

While the self-conception as autonomous actor implies the capacity to justify one's action, it is the self-understanding as social and moral person that imposes the obligation for giving account to others concerned. More precisely, it is the insight into the fundamental duty of justifying one's action in the face of fellow human beings that constitutes one as social and moral persons in the first place. The linchpin of the argument is, in fact, a de-transcendentalized and inter-subjectively turned version of the well-known Kantian argument. While Kant derived the unconditioned duty to acknowledge others as ends in themselves from a transcendental reflection of the intelligible subject on its own nature as an autonomous, reason-guided person, for Forst it is the irreducible relationship to others, which at the same time constitutes our nature as social beings and entails the duty to morally acknowledge the other as a moral person with a right to justification (Forst 2012: 31 ff.). Considering and respecting others as ends in themselves, therefore, means recognizing

⁷ Similarly, for Apel responsibility is one of the three foundational norms, human beings have to presuppose in every speech act. Cf. Apel 1988.

their right to (and vice versa, one's own duty of) justification. Neglecting this fundamental right (and, thus, refusing to acknowledge others as moral persons and ends in themselves) then means to misconceive one's own nature. "The insights into the rational, social, and finite nature of human beings are thus combined to the insight that in moral respects humans owe one another a fundamental form of recognition: recognition as moral persons with a right to justification" (Forst 2012: 40, translation amended).

While Forst develops his argument in exclusive reference to human beings as moral persons, our discursive conception of corporate responsibility allows to transfer important parts of his argument to corporations. First, as we understand corporations to some degree and in some aspects as autonomous and self-determining actors, they can be assumed to act with reasons and, therefore, held responsible for their actions; that is, they can be questioned with regard to the reasons on the basis of which they act. In this sense, corporations can be held responsible as they share what Forst outlines as conditions for the individual to be an autonomous responsible actor, namely that they "have reasons for their actions that they can justify to themselves and can communicate and justify to others, so that these reasons [...] can be shared." (Forst 2002: 256).

Second, as far as corporations act in social contexts and their actions affect human beings, they also have a duty to give accounts of their actions. This obligation derives from the human right to justification previously established.⁸ Respecting this right and responding to demands for justification by giving good reasons we characterized as responsible corporate action. It therefore was the twofold obligation of corporations to give account of their action to those affected and to refrain from actions that they cannot account for with good reasons what we defined as corporate responsibility.

A second line of thought following the so-called Arrow Theorem and its offshoots—in particular, the discursive dilemma advanced by Pettit and List—substantially bolsters this argument. This line of thought leads to the insight that there are corporate actions that only the corporation (but none of its members) is capable to justify and that therefore corporate responsibility is irreducible to the individual responsibility of the corporation's members.

Providing a sufficient justification for an action requires the agent to set forth a connected set of propositions that are accepted (i.e., considered true) and that together constitute good reasons for the contested action. Reducing corporate responsibility to the responsibility of its members, then, would rest on the condition that any corporate action could be justified by a connected set of propositions that could be reconstructed as a function of the propositions held by its individual members. However, the core results of the discursive dilemma prove that this condition is not fulfilled. As Pettit puts it,

these results show that any group that is robustly disposed to form consistent and complete judgments over certain connected propositions, [...] will have to be disposed to form judgments that are not a function, majoritarian or otherwise, of the corresponding judgments of its members: this, at any rate, so long as its judgments depend on the judgments of more than one individual. (Pettit 2007: 183)

The implication of this conclusion in our context is that any consistent program of corporate action includes actions that cannot be justified by reference to the attitudes and beliefs of the

⁸ Although this obligation cannot be derived from the moral status of corporations itself – as corporation do not represent moral actors (i.e. persons) in the full sense – it is the consequence of their status as autonomous reason-guided actors constituted by moral persons (i.e. its members).

corporation's members (or to any combinations of these), but only by recourse to attitudes and beliefs attributable to the corporation itself. Therefore, the moral duty of justification can only be met by the corporation itself as the genuine bearer of responsibility.

However, even if we cannot go into detail here, it is important to emphasize that this corporate duty of justification is not a moral duty in the same way it is for individual human beings, for corporations definitely are not moral agents in the same way as human beings. They do not have the genuine moral insight described above. Nevertheless, by acting, corporations engage in and can share the reasoning that moral beings require, so that those also have the right to claim reasons for actions by which they are affected. Thereby, it is not its own status but the one of the human beings affected by the corporation's actions as well as the moral status of the persons constituting the corporation (i.e. its members) that establish the corporation's moral duty to give reasons to all those affected by its actions.

This duty is derivative in two aspects. First, it is derivative because corporations do not have this duty as a result of their own status as moral agent, but rather due to the moral status of those they affect with their actions. As those persons have a moral right to justification, corporations have, by their capacity to act in the space of reason, the derivative moral duty to justify their actions. Second, the duty is derivative in the sense that the corporation relies mainly on its members to attend its duty. For corporations clearly do not themselves have moral insight: it is only through the insight of their members that corporations can carry out this duty.⁹

6 Justification Incorporated: How Corporations can Live up to their Responsibility

Establishing a discursive concept of corporate responsibility triggers, finally, the question of how such responsibility can or should be incorporated; in other words, by what measures and precautions corporations can ensure that they live up to their responsibility. It is not possible in this contribution to achieve more than a rough outline of some general aspects and conditions that must be further specified, according to each corporation's specific context and circumstances. Some of these aspects and conditions are as follows:

1. According to the conception developed previously, corporate decisions and actions are responsible if they can be accounted for with reasons acceptable by those affected. This condition holds *a fortiori* for a corporation's basic goals and principles that orient its members' conduct and govern the processes leading to corporate decisions. Incorporating responsibility therefore starts with the consideration of justified stakeholder claims when developing a corporation's basic orientation as recorded in its foundational documents (such as its charter, mission statement, long-term strategy, etc.).
2. For corporate decisions and actions to meet justificatory requirements, corporations must establish an internal justification structure that allows them to identify, consider and address in advance the interests and concerns of all parties who may be affected by their decisions, allowing the corporation, if necessary, later to justify their actions with good reasons.

⁹ Accordingly, as the moral status of corporations is derived from the moral status of its members, corporations have a moral right to justification only if that can be derived from the respective individual rights of its members. When and in what form that is the case would need further examination.

3. Although we have argued that corporations bear a responsibility that is irreducible to the individual responsibility of its members, our arguments imply at the same time that there is no corporate responsibility without individual co-responsibility of the members. As corporations can only act through their members, justify their actions through their members and are obliged to do so through the moral insight of their members, the individual responsibility of those members constitute an irreducible correlate of a corporation's responsibility. On the one hand, this implies that evaluating corporate responsibility should always be complemented by an assessment of the individual co-responsibility of the corporate members involved. Hence, the corporation's members must be held internally responsible; if they cannot justify their actions with good reasons, then they must be expected to refuse to take over the execution of these actions. At the same time, they are also externally co-responsible and must respond to demands for justification by giving good reasons for their individual contribution to the actions and decisions of the corporation.
4. On the other hand, this kinship between corporate and individual responsibility entails the extended requirement that responsible corporations must not only be able to justify their actions to those affected (and refrain from actions which they cannot account for with good reasons), but also allow and foster their members to live up to their individual co-responsibility (i.e., to choose only such actions in the corporation's name that they individually can justify to those affected). This includes that the corporation's decision structure should allow its members to express their individual objections and doubts, actively taking them into account even if the action is executed in the name of the corporation. In cases in which their own ideas, interests, reasons, and evaluations are in irresolvable conflict with those of the corporations, members must have (and should be encouraged to choose) the option of leaving the corporation. Ultimately, corporate responsibility lies in the fact that all members acting in the name of the corporation are still held individually co-responsible and that the corporation in response to this obligation creates appropriate structures, procedures, and practices that allow its members to give account, internally as well as externally, of their actions executed in the corporation's name.

In conclusion, to live up to their responsibility, corporations have to become part of the social communicative practice of providing and receiving reasons and, at the same time, must become a community of discourse themselves. To this aim, it seems instrumental to commit the corporation—just as society at large—to a culture and practice of discursive responsibility, binding all its members to contribute to the adoption of such a culture and practice by acknowledging others and exercising their own rights of justification.

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