

On the moral responsibility of oil and gas companies for environmental damage

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environmental damage**

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“...the precise determinability of moral responsibility is an illusion; ... Moral responsibility, I dare say, is a subject about which we are all confused.”

- Joel Feinberg, 1970

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Abstract

This thesis investigates whether an oil and gas company (OGC) can be morally responsible for environmental damage. Therefore, a majority of my thesis is focused on determining the capacity of OGC to be morally responsible. I appeal to the debate of collective moral responsibility and corporate moral responsibility to conclude that an alternative notion of collective moral responsibility is warranted. To determine this capacity, a 'causal condition' and a 'moral condition' are needed. The causal condition consists of two elements: the 'ineliminable role' and the 'coordinated control'. For the moral condition I construct what I will call the 'unity'. This unity consists of three elements, namely the 'corporate moral awareness', the 'role-responsibility' and the 'coordinated control'. I argue that it is the interaction of these elements, with the role-responsibility as interplay that constructs the moral condition for corporations to be morally responsible. Finally, in order to argue that an OGC can be morally responsible for environmental damage, a moral argument is needed. I argue, that this moral argument can be found in the principle of nonmaleficence. As by means of the unity, a corporation is obliged to adhere to this principle.

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1 Introduction

This thesis is concerned with the capacity of oil and gas companies (OGC's) to be morally responsible for environmental damage due to their activities. For the purpose of this thesis and for facilitated reading, I will use 'environmental damage' when I mean 'damage that is done to the environment due to the activities of the OGC's and that (in-)directly affects the moral community'¹. A more extensive definition can be found in Box 1². Due to the increasing demand for energy, OGC's are looking for new ways and areas to extract resources that increase the potential for environmental damage. That OGC's are assumed to be morally responsible for this damage is illustrated by law, Corporate Social Responsibility and public opinion. However, to investigate this assumption from a theoretical perspective, my research question is: *Can oil and gas companies be morally responsible for environmental damage?*

BOX 1: Defining "environmental damage"

Environmental damage can be defined in an anthropocentric – a human centred – way, and in a non-anthropocentric way. In addition to that, we can make a distinction between a *descriptive definition* and a *moral definition* of environmental damage. A *descriptive definition* of 'X' (e.g. environmental damage) does not entail any judgement about the rightness or wrongness of 'X' (and if it might be justified). A *moral definition* does entail a normative claim. So, an *anthropocentric* approach with a *moral* claim is for instance that if environmental damage violates a right of a person, it could wrong a person. A *non-anthropocentric* approach with a *moral* claim, mainly found in environmental ethics, advocates that there can be a foundation for determining 'X' as *right* or *wrong*, which is *not* solely based on human concerns (e.g. animal liberationist, biocentric theories, ecocentric theories).

In this thesis I will use a broad, *descriptive definition* of 'environmental damage', namely: 'damage that is done to the environment due to the activities of the OGC's and that (in-)directly affects the moral community'. Environmental damage can negatively affect both the area of the moral community as well as the ecosystems on which (some of) the moral community depends. I will use this *descriptive* definition to prevent prior normative claims.

¹ Though I am aware of the ongoing debate about the members of the moral community, I consider human beings, as well as animals, as part of the moral community. For more information about this debate, see for example "Marry Anne Warren, *Moral Status: Obligations to Persons and Other Living Things* (Oxford: Clarendon Press, 1997)".

² Andrew Eshleman, "Moral Responsibility," *The Stanford Encyclopedia of Philosophy* (Winter 2009 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/win2009/entries/moral-responsibility/> (Consulted on 11 June 2014).

The present impact of the oil and gas industry in western countries is significant. Without always being aware of it, we are constantly using energy and products that are based or dependent on this industry. The activities of OGC's affect society in several ways. For instance, they are the largest suppliers of energy and therefore have a major impact on our economy. In addition, oil and gas prices are often used as means in politics, which increases the power of the OGC's in politics. In this thesis the focus is on whether an OGC can be morally responsible for environmental damage.

Relevance

Currently, the oil and gas industries have an interest in maintaining their position as the largest supplier of raw materials for energy. In order to do so OGC's are looking for (potential) new areas and ways to extract energy resources to meet the increasing demand for energy. Fossil fuel is becoming harder to extract since the presence of new resources is mostly in undeveloped or (yet) undiscovered areas³, for example the Arctic⁴. Operating in these undeveloped areas often demands complex and expensive technologies and has external factors (e.g. difficult to reach) that influence logistics and the safety of employees. All these abovementioned factors increase the risk of environmental damage in future oil and gas developments. I define risk as a composite concept comprising of both probability and consequence. As an example, the outcome 'risk of environmental damage' increases when the probability 'extracting in difficult accessible areas' increases, and / or when the consequence 'amount of damaged area' increases.

At present, it is generally assumed that OGC's have a moral responsibility for environmental damage. Currently there are some legal restrictions for OGC's that reflect their *legal* responsibility for environmental damage. A way to reflect on the

³ Undiscovered areas are defined as areas where they expect the presence of oil and gas, but have not yet searched for it/found it. These predictions are usually based on geological assessments, for example by the 'United States Geological Survey'.

⁴ Around a quarter of the undiscovered resources can be found in the Arctic. Lars Linholt and Solveig Glomsrød, 'The Arctic. No Big Bonanza for the Global Petroleum Industry,' *Energy Economics* 34 (2013), 1466.

relation between law and morality is to consider morality as a source of law⁵. In that way, we can consider the perceived moral responsibility as embedded in the law as a form of solidified moral. Legal restriction can be a way of formalizing the process of *holding* an OGC morally responsible for environmental damage; hence this formalization makes them, to a certain extent, legally accountable for environmental damage. In addition, the 'Corporate Social Responsibility' (CSR) that is integrated in the business model of an OGC – a form of self-regulation – reflects the moral responsibility *taken* for the impact of their activities and encourages a positive impact through their activities. As such, legislation for OGC's and the CSR that they have imposed on themselves, provide us with a substantial basis that OGC's are *assumed* to have a moral responsibility for environmental damage. Indeed, they are observed to *take* responsibility and they can be *held* responsible by legal means. However, what the legislation and the CSR do not offer is an answer to the question whether an OGC can *be* morally responsible for environmental damage from a theoretical perspective. An investigation of this question is therefore warranted. This will provide more insight into the assumed capacity of OGC's to be morally responsible for environmental damage, as well as potential insights for justification of the legalisation. Moreover, it can offer a substantial significance for the presence of a CSR within a corporation. This thesis will provide a theoretical argument on the following research question: *Can oil and gas companies be morally responsible for environmental damage?*

Method and Approach

The objective of my thesis is to discuss whether an OGC as a *collective entity* can *be* morally responsible for environmental damage. A precondition for moral responsibility is that the corporation has the *capacity* to be morally responsible, which I will argue for in the majority of this thesis. In order to do so, I appeal to the literature on *collective* moral responsibility and *corporate* moral responsibility since a part of the debate in these fields is on this particular capacity. The use of

⁵ Raymond Wacks, *Law: A Very Short Introduction*. (Oxford: University Press, 2008), 28.

normative theory becomes necessary when assessing whether an OGC, given its capacity to be morally responsible, can be morally responsible for an actual situation such as environmental damage. One possible way to assess this question could be to investigate it from the perspective of a (traditional) normative theory – such as a deontological or utilitarian approach - or to assess the fruitfulness of several normative theories. This may be an appropriate way to offer a fundamental theoretical answer to what one ought to do, and consequently offer an answer to the question whether a corporation is morally responsible for environmental damage. However, the approach I pursue is to inquire whether a *moral argument* can be provided by a moral principle to determine whether an OGC can be morally responsible for environmental damage. Such a moral principle should fit in several normative theories. Since, if different normative theories can agree on a single moral principle – a principle that determines whether an OGC can be morally responsible for environmental damage – then the differences between these theories at a more fundamental level are not particularly relevant for answering the central question of my thesis⁶. My thesis reflects the conceptual work required for the inquiry into such a moral principle. Not only does this inform the theoretical discourse in a broad manner, I consider this approach especially directive towards the practical level, for example in determining if a specific OGC needs to refrain from causing harm in a certain situation.

Structure of the argument

To determine whether an OGC can be morally responsible for environmental damage, there are several preliminary questions that need to be answered. First, it needs to be understood what moral responsibility is. The next step is to investigate whether an OGC has the *capacity* to be morally responsible. Two conditions for this capacity become clear, namely (1) to be able to cause an act and (2) to be aware of the moral implications that act can have. Subsequently, a moral argument is required to determine when the OGC's *capacity* to be morally responsible results in

⁶ André Krom, "Not to be Sneezed at: On the Possibilities of Justifying Infectious disease control by appealing to a mid-level harm principle" (PhD diss., Utrecht University, 2014), 70.

moral responsibility for an actual situation, such as a case of environmental damage. I reason that if there is a moral principle that prescribes an OGC to refrain from causing harm to others, an OGC can be morally responsible for environmental damage. By showing that the *nonmaleficence* principle applies to OGC's and that environmental damage is considered as (moral) harm according to this principle, I conclude my argument and show that OGC's can be morally responsible for environmental damage.

Outline

To answer my research question this thesis is structured as follows: in chapter two I will describe what moral responsibility entails. I appeal to the debates of collective moral responsibility and corporate moral responsibility to conclude that an alternative notion of collective moral responsibility is warranted. Subsequently, in chapter three I demonstrate that a causal condition is needed to argue that a corporation can perform an act. Next, I investigate what gives an OGC the capacity to be *morally* responsible. For the moral condition I construct what I will call the 'unity'. This unity consists of three elements, namely the 'corporate moral awareness', the 'role-responsibility' and the 'coordinated control'. I argue that it is the interaction of these elements, with the role-responsibility as interplay that constructs the moral condition for corporations to be morally responsible. Finally, in order to argue that an OGC can be morally responsible for environmental damage, a moral argument is needed. I argue, that this moral argument can be found in the principle of nonmaleficence. As by means of the unity, a corporation is obliged to adhere to this principle. Hence, an OGC can be morally responsible for environmental damage. Finally, I briefly discuss some further implications of the conclusion of my thesis, as well as the contribution of my thesis within applied ethics. I end my thesis with a concluding chapter on the moral responsibility of oil and gas companies for environmental damage, including the implications.

2 Collective moral responsibility

In order to determine whether an OGC can be morally responsible for environmental damage, a description of what moral responsibility entails is necessary. In this chapter I will discuss the urge for collective moral responsibility and demonstrate, by means of explaining the similarities and dissimilarities of individual moral responsibility and collective moral responsibility that the capacity for a collective to be morally responsible depends on two conditions. I will elaborate on these conditions in chapter three and four.

2.1 Moral responsibility

A clear definition of moral responsibility cannot easily be given. Moreover, the term is not always described or used in the same way. A common feature in many uses of the term is that the object of moral responsibility⁷ is the performing of an act in accordance, or not in accordance, with a certain belief of a code of conduct on what one ought to do⁸. Frequently, the definition of moral responsibility is described in a normative manner as whether a particular response is warranted⁹. This response is often taken to be praise and blame, whereby moral responsibility is defined along the lines of ‘justified liability to blame and punishment’¹⁰, ‘being blameworthy for bringing about harm’¹¹, or ‘for there to be moral responsibility, there must be blameworthiness involving a morally faulty decision’¹². A general definition of moral responsibility as given by Eshleman includes a normative element as well. Namely: “to be morally responsible for something, is to *be worthy* of a particular kind of reaction – praise, blame or something akin to these – for having performed it”¹³. So if

⁷ In determining ‘being responsible (for)’, I will use *subject* to refer to the one who is responsible, and *object* to refer to what he/she is responsible for.

⁸ Whether this code of conduct derives from a particular group with a certain belief, or from a universal code of conduct is still debated. However, this discussion is beyond the scope of my thesis.

⁹ Eshleman, “Moral Responsibility”, 1.

¹⁰ Michael Phillips, “Moral Responsibility: When it Might Matter,” *Business Ethics Quarterly* 5 (1995): 555.

¹¹ Marion Smiley, “Collective Responsibility,” in *The Stanford Encyclopedia of Philosophy* (Fall 2011 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/fall2011/entries/collective-responsibility/> (Consulted on 13 June 2014).

¹² Robin Downie, “Collective Responsibility,” *Philosophy* 44 (1969): 67; Manuel Velasquez, “Why Corporations are Not Morally Responsible for Anything They Do,” *Business & Professional Ethics Journal* 2 (1983): 3.

¹³ Eshleman, “Moral Responsibility,” 1.

you have acted or failed to act in accordance with a certain code of conduct, it means that you are the one who bears the moral responsibility for that (in)-action. This is independent of whether or not this will later result in a positive, negative, or neutral reaction of your moral responsibility (e.g. praise, blame or punishment). For now, I maintain the general definition of Eshleman. The conditions to have the capacity to be morally responsible, which I will define in the next two chapters, will provide a more substantive definition of collective moral responsibility for the purpose of this thesis.

When taking a closer look at the different descriptions of moral responsibility as written above, it becomes clear that moral responsibility is sometimes expressed in terms of its *implications* (e. g. 'justified liability to blame and punishment') rather than what moral responsibility is as such. This difference is also noticeable within the different use of the terms 'being' morally responsible, 'ascribing' moral responsibility and 'holding' an entity morally responsible. Since the use of these terms is not always similar, it is significant to explicate which terms I use, and how. For this thesis I am primarily interested in the question whether an OGC can *be* morally responsible for environmental damage. Hence, I will focus on being morally responsible. For the manner in which I consider the term, *being* morally responsible requires one entity, the subject, and is concerned with its capacity to be morally responsible, *per se*. The term '*ascribing*' moral responsibility is dual: it requires two entities: an 'ascriber' and an 'ascribee'¹⁴. It contains *attributive* responsibility: whether we can ascribe an act to an agent, to ensure that we have a basis to assess an agent¹⁵. Moreover, I only consider it as justified if an entity has the capacity to be morally responsible. *Holding* an entity morally responsible differs from both these two. I consider holding – also a dual concept – an entity morally responsible as a

¹⁴ I am aware of the possible questions this raises, such as whether moral responsibility exists if there isn't an entity 'B' ascribing it or holding entity 'A' morally responsible, or the question whether an entity could be 'A' and 'B' at the same time.

¹⁵ Marcel F. Verweij, "Wanneer ben ik verantwoordelijk?" in *Ethiek in Praktijk*, ed. Ineke Bolt et al. (Assen: Van Gorcum, 2010), 152.

normative perspective of ascribing moral responsibility. Hence, I will not elaborate on this in my thesis¹⁶.

2.2 Conglomerate collectives and their moral relevance

Since my research question addresses collective entities (OGC's), this thesis concerns the capacity of a collective entity to be morally responsible. In order to address this topic, I will first elaborate on the differences between the notions of individual moral responsibility and collective moral responsibility. These differences demonstrate why the notion of individual moral responsibility does not suffice for the purpose of this thesis, so that an alternative approach from the perspective of collective moral responsibility is needed.

The discussion on the capacity to be morally responsible appears to be often based on a traditional notion of moral responsibility¹⁷. However, a difference is to be made between the capacity for an *individual* to be morally responsible, and for the capacity of a *collective* – consisting of two or more individuals¹⁸ - to be morally responsible. Explaining this difference and explicating the similarities and dissimilarities will contribute to determining the capacity of a collective to be morally responsible. First, however, let me distinguish 'conglomerate' and 'aggregate' collectives, and argue why my argument departs from the notion of OGC's as conglomerate collectives.

The idea that collectives – and not just the members they consist of - can be morally responsible is based on the notion that a collective is a different entity from the set of individuals it consists of. This notion of collectives is referred to as *conglomerate*

¹⁶ Holding is concerned with judgements of one entity over the (in-)action of another entity. It usually has consequences for the entity being held morally responsible (positively or negatively). So when an entity holds another morally responsible in a particular context, it usually means that we have particular purposes in mind. For holding an entity *morally* responsible, the purpose is to bring about a certain reaction from the other entity (e.g. shame, regret) with the aim to prevent it from happening again, or giving an entity what it deserves (positively or negatively).

¹⁷ See for example Smiley, "Collective Responsibility," 31-32, Geoff Moore "Corporate Moral Agency: Review and Implications." *Journal of Business Ethics* 21 (1999): 331.

¹⁸ Though I am aware that within the topic of 'moral responsibility' there is an on-going discussion about determinism; hence whether we can ever truly be morally responsible, I will consider this topic from a compatibilist view, namely that even if determinism is true, a person can still be morally responsible.

collectives. A conglomerate collective is a collective that is an organisation of individuals and has a clear structure. "It has a method for deciding how to act"¹⁹. Those who consider collectives as conglomerate collectives emphasize the moral relevance of collective moral responsibility. Namely, the actions of conglomerate collectives are more than just shared actions of individuals²⁰. More specifically, conglomerate collectives have characteristics like an identity and purpose of their own. Hence, collective moral responsibility is warranted, according to the advocates of the notion of conglomerate collectives. Corporations and governments are often given as an example of a conglomerate collective.

Others argue that conglomerate collectives do not exist and that there are only aggregative collectives. An aggregative collective is also a collective of individuals, though it is considered as no more than the sum of the identities of each member of that collective. The actions of aggregative collectives are considered as solely shared actions of the individuals²¹. The members of an aggregative collective can meet and have some form of regular activity, though this is not necessary. Mobs or races are often used as an example of aggregative collectives. Not surprisingly, the academics who do not believe in conglomerate collectives are usually also sceptics of collective moral responsibility; they claim that collective moral responsibility can always be reduced or explained to individual moral responsibility by reference to the interest or actions of the individual members²² – a methodological individualist perspective.

I will now provide two arguments in favour of the notion of conglomerate collectives and illustrate its relevance for the question of collective moral responsibility. Firstly, a conglomerate collective (e.g. a corporation/OGC) has an internal structure, a hierarchy, a long-term purpose, an identity, a code of conduct,

¹⁹ Smiley, "Collective Responsibility," 16-17.

²⁰ E.g. Peter French, "The corporation as a Moral Person," *American Philosophical Quarterly* 16 (1979): 212, Werhane, Patricia H., *Persons, Rights, and Corporations*, (New Jersey: Prentice-Hall, 1985) esp. chapter 1-2.

²¹ Velasquez, Manuel. "Why Corporations are Not Morally Responsible for Anything They Do." *Business & Professional Ethics Journal* 2 (1983): 1-5., Moore, "Corporate Moral Agency," 330.

²² See for example, Moore, "Corporate Moral Agency," 335-336.

an ethos and so on²³. Its purpose and identity for instance, do not necessarily have to be the same as the purpose and identity of its members. For example, an employee in a corporation has its own identity, its own purpose (e.g. earning enough money to have a nice life), while the purpose of the corporation is to make profit. Of course, individuals do constitute the collective in question at some point and so they do constitute the purpose of the collectives. However, the purpose of the collective is (especially after a while) not necessarily reducible to the purpose of the individual members (anymore)²⁴. The collective then has a structure and purpose to reach its *collective* purpose, not the individual purposes of its members.

In addition to that, the individuals within the collective can be replaced without the collective losing any of its identity or purpose. Sometimes it is impossible to deduce from an action caused by a collective, statements about particular individuals because “the membership of which a collective consists can be varying, no determinate set of individuals is necessary for the existence of the collective”²⁵. The argument that a collective as such can cause an act is also supported by the fact that in a complex highly organised collective, those who perform the act, are not the same as those who decide to perform the act. In addition, those who decide to perform the act are not the ones who decided that a particular group within the collective has the authority to decide for the act, and so on. Hence, it is particularly difficult, if not impossible, to say which individual then is (morally) responsible for the collective act.

With the addition of these two arguments I regard it sufficiently demonstrated that it is relevant to investigate the capacity of collectives to be morally responsible. Furthermore, I maintain that corporations such as OGC’s contain all the characteristics listed for conglomerate collectives. Hence, I consider corporations (including OGC’s) as conglomerate collectives. From now on, when I use ‘collectives’

²³ Werhane, *Person, Rights and Corporations*, 31-48, Peter French, *Corporate Ethics*, (San Diego: Harcourt Brace & Company, 1995): 10-11.

²⁴ I mention ‘necessarily’ here, because it *can* be that the only aim of the individual is fulfilling the purpose of the collective but this is not a precondition.

²⁵ David Cooper, “Collective Responsibility,” *Philosophy* 43 (1968): 260.

I mean 'conglomerate collectives' and when I use 'corporations', I will consider them as a particular form of conglomerate collective.

2.3 Moral responsibility of (conglomerate) collectives

This section deals with the question whether a (conglomerate) collective has the capacity to be morally responsible. The traditional notion in which the capacity to be morally responsible is discussed requires two conditions: *causation* – a causal connection between the entity and that over which it is morally responsible - and *moral blameworthiness*: 'that they caused something bad and are morally blameworthy'²⁶. Moral blameworthiness then, is conventionally understood in a *Kantian* notion, as an aspect of *individual* moral agency that has its source in the free will of an agent, or 'in the act of freely willing either one's own bad action or harm in the world'²⁷. This capacity of an individual to have a 'free will' is the ground for this Kantian notion of moral blameworthiness as understood in the traditional notion of moral responsibility²⁸. Most contemporary philosophers try to avoid determining free will by focussing on an (key) aspect of free will instead – *intentions*²⁹.

Within the debate of collective moral responsibility, a major part is focused on the two conditions outlined above. A central question is whether the collective entity has a causal connection to an act and whether they can form intentions, in order to be morally blame- or praiseworthy and thus to be morally responsible. In other words, they are referring to the conditions that need to be fulfilled for an *individual* to have the capacity to be morally responsible. However, the answer to whether or not a collective can fulfil these conditions (to have the capacity to be morally responsible) is not universally shared. Sceptics of collective moral responsibility hold a methodological individualist perspective, meaning that they claim that

²⁶ Marion Smiley, "From Moral Agency to Collective Wrongs: Re-thinking Collective Moral Responsibility," *Journal of Law and Policy* 1 (2010): 173.

²⁷ Smiley, "Re-thinking Collective Moral Responsibility," 174.

²⁸ Note that 'moral blameworthiness' is described in a negative way in most literature. In this thesis, I hold the position, stemming from Eshleman's definition introduced above, that moral responsibility means being worthy of a particular kind of reaction, whether positive ('praise'), negative ('blame'), or neutral.

²⁹ Smiley, "Re-thinking Collective Moral Responsibility," 176.

collective entities are above all not capable of forming intentions, *other than the intentions of the members of the collective*³⁰. Hence, the collectives' capacity to be morally responsible is always reducible to the capacity to be morally responsible of its members. Advocates of collective moral responsibility often try to show that collectives can fulfil the conditions of intention and causal connection³¹.

At this stage it is worth mentioning that within the academic debate on *corporate* moral responsibility (as opposed to *collective* moral responsibility), similar arguments are provided. Proponents of corporate moral responsibility argue that a corporate act is not just the act of employees on behalf of the corporation, because a corporation is a single unit that acts with its own purposes³². Hence, this can be regarded as an argument in favour of the moral relevance of conglomerate collectives and thus an argument in favour of collective moral responsibility. Opponents of corporate moral responsibility often refer to methodological individualist claims to argue that corporate moral responsibility is not possible³³, i.e. that the moral responsibility of the corporation is always reducible to individual moral responsibility. In a similar comparison, this argument can be regarded as an argument against *collective* moral responsibility.

Nonetheless, by focussing on these conditions for the capacity to be morally responsible - causal responsibility and intentions (the latter as a condition to be morally praise- or blameworthy) – they both accept a notion of moral responsibility that is partly based on a *Kantian* notion of moral blameworthiness. This Kantian notion of moral blameworthiness, that is a notion of *individual* moral blameworthiness par excellence, does not seem to be applicable when discussing the capacity of *collectives* to be morally responsible³⁴. Hence, an alternative way to look at the capacity of collectives to be morally responsible is needed; one that is not solely described in terms of the capacity of *individuals* to be morally responsible.

³⁰ Smiley, "Re-thinking Collective Moral Responsibility," 172.

³¹ *Ibid.*, 176.

³² Peter French, "The corporation as a Moral Person," 212.

³³ See for example Moore, "Corporate Moral Agency," 335-336.

³⁴ Smiley, "Collective Responsibility," 33.

2.4 In sum

In this chapter I have discussed the definition of moral responsibility. Subsequently, I elaborated on the differences between the notions of individual moral responsibility and collective moral responsibility. Next, I discussed the moral responsibility of collectives. As became clear, within the debate on collective moral responsibility and corporate moral responsibility a major part focuses on the conditions of the traditional notion of moral responsibility: *causation* – a causal connection between the entity and that over which it is morally responsible - and moral blameworthiness (or intention). Nevertheless, this notion does not seem to be applicable when discussing the capacity of *collectives* to be morally responsible. Hence, an alternative notion to consider the capacity of collectives to be morally responsible is warranted.

Such an alternative approach is explicated in the next two chapters, with chapter three dealing with the ‘causal condition’ and chapter four dealing with an alternative to the condition of ‘intentions’, what I refer to as the ‘moral condition’. After these two chapters it will become clear that a collective (like an OGC) fulfils the conditions to have the capacity to be morally responsible. Whether an OGC actually *is* morally responsible for environmental damage is discussed in chapter five.

3 The causal condition

As became clear in the previous chapter, two conditions are deemed important for an entity to have the capacity to be morally responsible. I will refer to these as the 'causal condition' and the 'moral condition'. In this chapter I will focus on the causal condition for collectives to have moral responsibility. This causal condition contains that it is the *collective* that has a causal relation to the act, and not just (a selection of) its individual members. I will start off to explicate the two elements of this condition in line with the debate on collective moral responsibility. Subsequently, I show that similar elements have been introduced in the debate of corporate moral responsibility. Finally, I explain how a corporation directs the acts of its employees as company-acts that are irreducible to individual acts.

3.1 The elements of the causal condition

The causal condition needs to provide an argument that demonstrates that it is the collective that can perform an act. I argue in line with Kenneth Shockley as well as Marion Smiley that this argument is found in the 'ineliminable role' and the 'coordinated control' of a collective³⁵. The ineliminable role of the collective means that the collective is incapable of being removed from the explanation of the occurrence of that (in)action. In other words, the causing of the (in)action would not have been possible without the existence of the collective, i.e. the members of the collective could not have brought about the action on their own³⁶. This ineliminable role that a collective must have is consistent with the perspectives of collectives as a conglomerate collective. Indeed, if there were no ineliminable role on the part of the collective, the act of the collective would be reducible to the act of the individuals.

³⁵ These terms for the elements are borrowed from Kenneth Shockley in Kenneth Shockley, "Programming Collective Control," *Journal of Social Philosophy* 38 (2007): 444-45. The content of the terms do not differ, though the ways they are used do. The difference between Smiley and Shockley at this point is the discourse they use to argue for their point. Shockley claims that collectives can be morally responsible, without constituting a form of agency, thereby emphasizing the importance of the so-called 'ineliminable role' and the 'coordinated control'. Smiley describes the same characteristics as a 'notion of moral agency' in Smiley, "Re- thinking Collective Moral Responsibility," 196-97.

³⁶ Shockley, "Programming Collective Control," 444-45.

The element of the 'coordinated control' entails the capacity of a collective to *produce* and *create*³⁷. Moreover, it entails that a collective must have some form of control, something that enables it to *coordinate* the production or outcomes of the collective (in)action by means of controlling its members. Since the performance of a collective (in)action is always done through its members, it requires a contributory action of its members and some form of control over those contributory actions on the part of the collective³⁸. This control of the collective over its members is significant, since without this, one could argue that for instance some collection of machines could be morally responsible because they can produce and create. The ineliminable role and the coordinated control are two crucial elements of the causal condition.

In the debate of *corporate* moral responsibility, Peter French, one of the first authors writing about *corporate* moral responsibility, defines the 'corporate internal decision structure' (or 'CID') in a similar manner to what Shockley refers to as the 'coordinating control' of collectives. The argument of French is constructed as follows: every corporation has a CID Structure, which can be explained by the two elements of which it consists. The first is the element that shows the hierarchical, rule-based structure of the corporation, showing its organizational chart and the corresponding amount of responsibility at every level and position³⁹. Thus far, this structure seems to be corresponding with the *producing and creating* the coordinated control provides. French continues with the second component, namely the 'recognition rules'. He defines them as what forms the policies that let you *recognise* the decisions being made as a decision of that corporation; it is the 'basic belief of a corporation'⁴⁰. It implies that corporations make decisions for *corporate reasons*, not for reasons that are necessarily favoured by the employees of the corporation. In addition to that, it is the corporation that operates as *one single unit*. It has its own characteristics. A corporate act is not just the act of individuals on

³⁷ Smiley, "Re- thinking Collective Moral Responsibility," 196-97.

³⁸ Shockley, "Programming Collective Control," 447.

³⁹ French, "The Corporation as Moral Person" p. 212.

⁴⁰ Ibid. p. 213.

behalf of the corporation, because a corporation is a single unit that acts with its own purposes⁴¹. Here both elements become apparent and noticeable, they are interdependent.

Nevertheless, the two elements of the causal condition still contain a challenge that requires some investigation in order to assess whether these conditions are adequate conditions for collectives to have the capacity to be morally responsible. The challenge is rooted in the fact that the performance of a collective action is always done through the members of the collective, i.e. members that are agents with (a sense of) morality. However, in order to maintain the notion that there is a certain aspect of the ineliminable role that makes it possible for the collective to coordinate its individual members and their contributory action (coordinated control), these elements must be significant. We need to assess whether these distinctive characteristics of the collective transcends the individual members of the collective.

How then, is it possible for a collective or corporation to have coordinated control? By means of the above listed characteristics of a conglomerate collective, it must be clear that a conglomerate collective has an internal structure that presupposes coordination and control. By being part of the collective, the individual who is as such working for the collective purpose, within the structure and hierarchy of the collective, accepts certain purposes as part of his or her function that are based on the purposes and aims of the collective⁴². This becomes particularly apparent when considering corporations. Within a corporation, there is a form of *role-responsibility* when employed in the corporation⁴³. The employees function with certain purposes

⁴¹ However, what should be noted here is that French is demonstrating this CID structure, as a way to prove that corporations can form intentions and for him forming intention is a precondition for moral agency, which is necessary for moral responsibility. Contrary to French, then, Shockley, when defining this ineliminable role and the coordinating control of the corporation, meant to demonstrate that we do not have to investigate whether a collective can fulfil conditions for moral agency like intention, but solely whether it has an ineliminable role, to demonstrate the causal relevance of the collective. I will come back to this point of Shockley in § 4.1.

⁴² Hereby it should be noted that I consider it possible for collective moral responsibility and individual moral responsibility to exist at the same time. However, we are questioning whether collectives have the capacity *to be* morally responsible. Without saying anything about whether the individual has a moral responsibility as well.

⁴³ I elaborate on this in § 4.2.

in mind, namely corporate purposes and they have to act in accordance with these corporate purposes. How they should function, has become clear by the corporate structure, the decision-making procedure, the corporate code of conduct and so on. Hence, this gives the corporation a way to control its employees⁴⁴.

What these two elements of the causal condition offer, is an explanation of how a conglomerate collective can be considered as something different than its members. Hence, it makes it possible to speak of collective (in)action for which the *collective* is responsible, without necessarily reducing this responsibility to its members. However, this causal relation a collective can have towards an (in)action, does not answer the question whether the collective can have the capacity to be *morally* responsible. It does not demonstrate that a collective can have moral 'awareness'. In the next chapter I will argue that by means of the moral awareness of the employees, a collective can take its own means and ends into account (including consequences and alternatives) and the means and ends of others⁴⁵. In order to determine whether a corporation can have the capacity to be morally responsible, I will elaborate on what this 'moral condition' contains in my next chapter.

3.2 In sum

In chapter two I have discussed what moral responsibility is and what the relevant notions for my thesis are. I have investigated the conditions of collective moral responsibility. The dominant traditional notion of moral responsibility has two main conditions - causal responsibility and moral blameworthiness. This did not seem to be applicable for *collective* moral responsibility. Subsequently, I examined by reference to Shockley and Smiley what the relevant elements are for the causal condition, as a necessary condition to fulfil as a corporation, in order to have the capacity to be morally responsible. These elements are the 'ineliminable role' and 'coordinated control'. Therefore, a collective *per se* fulfils the causal condition.

⁴⁴ This is of course a simplified description on how employees function within a corporation.

⁴⁵ Goodpaster, "The Concept of Corporate Responsibility" 1-22. I will elaborate on this 'moral condition' in chapter four.

Nevertheless, what remains unclear and unsolved is the issue whether a corporation can *be* morally responsible for environmental damage. I conclude that the next step towards answering this question is to demonstrate that a corporation can fulfil a 'moral condition' on which I will elaborate in chapter four.

4 The moral condition

As argued in chapter three, a moral condition is needed in addition to the causal condition to argue that corporations have the capacity to be morally responsible. In this chapter I will argue why I do not elaborate on the conditions Smiley and Shockley offer as an alternative to the condition of moral blameworthiness. Alternatively, I argue that a moral condition can be found in the *unity* of the three elements a corporation contains, hereafter 'unity'⁴⁶. In order to demonstrate this I will start off my chapter by arguing that one element which is needed is *moral awareness* within the corporation. Subsequently, I will reason that the next element within the unity is the role-responsibility. This element gives the corporation the possibility to affect the content of the moral awareness of the employees. Consequently, I will reason that, because a corporation has coordinated control as demonstrated in chapter two⁴⁷, a corporation can constitute and organize this role-responsibility of its employees. This coordinated control is the third element in the unity and is identical to the element introduced earlier in the 'causal condition'. Ultimately, I will argue that the *interaction* between these three elements forms a unity that is a precondition for a corporation in order to have the capacity to be morally responsible. I will conclude my chapter by arguing that there are two conditions, the causal condition as demonstrated in chapter three and the moral condition as argued for in this chapter that give a corporation the general capacity to be morally responsible. This general capacity entails that a corporation can have the capacity to be morally responsible for environmental damage. Whether an OGC can be morally responsible for a factual case of *environmental damage* will depend on a moral argument on which I will elaborate in chapter five.

4.1 Alternative moral responsibility

As already mentioned, in the notion of individual moral responsibility the moral

⁴⁶ For convenient reading, I will use 'unity' when I mean 'the unity of the three elements that a corporation contains'.

⁴⁷ I do use Shockley's element of coordinated control in my unity.

condition derives from the ability of an individual to form intention. This intention is the basis for individual moral blameworthiness. In arguing that a corporation or collective can *be* morally responsible, Shockley and Smiley both offer different arguments that I do not find convincing. Before providing an alternative, I will discuss their arguments and demonstrate why I do not consider them sufficient.

Shockley replaces the Kantian notion of moral blameworthiness that is dependent on forming intentions with a different kind of *moral blameworthiness*, namely “being at fault”⁴⁸. He claims that if a collective ‘is at fault’, then there are always individuals who are at fault as well. However, insofar as there is an ineliminable causal reference (by means of the coordinated control) between the action and the collective, the collective should be the bearer of the moral responsibility over that ineliminable part. In other words, the individuals within the collective should not have been able to produce the act without the existence of the collective and if this is the case, the *collective* must be morally responsible for it. Hence, according to Shockley both the ineliminable role and the coordinated control contain the moral condition that can make collectives morally responsible as well. No form of collective agency is required⁴⁹. However, it still remains unclear what the *moral* condition is that gives a collective the capacity to be morally responsible. I do not consider the coordinated control and ineliminable role sufficient for a moral condition, as they just express causal relations. There is no element given that demonstrates how a collective could have a ‘corporate moral awareness’⁵⁰.

Marion Smiley suggests that we do not have to demonstrate that collectives can have intentions for them to be morally blameworthy. However, she also suggests that we should consider collective moral responsibility as judgments a community makes about a group based on our own standards. If the community considers the collective act as morally wrong, then the community can judge the group worthy of a

⁴⁸ Shockley in Smiley, “Re-thinking Collective Responsibility,” 200.

⁴⁹ *Ibid.*, 198.

⁵⁰ In §4.2 I define what I mean with this concept applied to collectives.

particular kind of blame⁵¹. This, instead of intention, is then offered as a *moral argument* for collective moral responsibility. She thereby stresses that this moral judgment does not have to be independent of social or political practice⁵². By claiming this, Smiley offers a *moral argument* that could be a social or political notion of collective moral responsibility, namely that moral responsibility is something a community can *ascribe* to an entity, such as a corporation. Irrespective of the justification of this argument, Smiley first of all does not offer, just like Shockley, what it is about the *collective* that gives it the capacity to be morally responsible, i.e. she does not offer a moral condition. By omitting this condition, both Smiley and Shockley offer no answer to whether a collective can have the capacity to be morally responsible. Moreover, when considering an ascription of moral responsibility as justified only if a corporation can have the capacity to be morally responsible, they incorrectly ascribe moral responsibility to a corporation⁵³. Therefore, a further investigation is needed into the capacity of a corporation to be morally responsible.

4.2 Individual and corporate moral awareness

As demonstrated, the alternative notions of moral responsibility from Shockley and Smiley have not offered us a moral condition yet. In order to argue that a corporation can have the capacity to be morally responsible, a moral condition is needed as a precondition. I submit that this moral condition is found in the unity of three elements that a corporation consists of. In this paragraph I will argue that the first element within this unity, namely 'corporate moral awareness', offers a corporation the capacity to enact moral awareness. I will refer to this as *corporate moral awareness*. Corporate moral awareness is achieved through a corporation's employees par excellence. Nevertheless, a corporation can affect moral awareness by means of the second element in the unity – the role-responsibility – that I will discuss later in this chapter. First, it is important to demonstrate why moral

⁵¹ Smiley, "Re- thinking Collective Moral Responsibility," 201.

⁵² Ibid., 198.

⁵³ In §.2.1 I describe my definition of ascribing moral responsibility.

awareness of employees is an important element in the unity for the capacity of corporations to be morally responsible. I will demonstrate this by explaining what the relevant elements of moral awareness are for individuals. This will allow me to demonstrate why it is also important for a corporation to have access to these elements. Subsequently, I will argue that the contribution of the employees to the corporation together with their moral awareness constitutes 'corporate moral awareness'. This element is needed within the unity, which is the first element in the unity that enables corporate moral responsibility.

With the concept of moral awareness, I refer to pursuing one's act with attention to one's own means and ends – a self-directed component – as well as the means and ends of others – other-directed component. In order to clarify this concept, I will give a brief, general description of the two elements that I maintain moral awareness contains, namely 'moral perception' and 'moral reasoning'⁵⁴. For an individual, the capacity for moral perception entails the capacity to gather information of his or her environment and extract the moral aspects of it. This includes understanding who - and maybe what – can be morally considerable⁵⁵. The moral perception of an individual reveals itself in the way an individual structures and categorizes this information⁵⁶. The relevant moral aspects that an individual extracts are based on what he or she considers to be morally relevant and worth taking into account. These moral aspects depend on the individual. Moreover, it should be clear that an individual does not always extract *all* the moral aspects of its environment. The extraction of the perceived relevant information is partly based on certain purposes the agent has in mind as well. Moral aspects concern the *content* of the moral perception. In general: the *capacity* of an individual for moral

⁵⁴ This is inspired on two elements Kenneth Goodpaster points out. Kenneth Goodpaster, "The Concept of Corporate Responsibility", *Journal of Business Ethics* 2 (1983): 1-22. In this article Goodpaster defines four elements in the movement from thought to action within individuals that are of importance for moral responsibility. His aim is to make an analogy with these elements to corporations. Noticeably, Goodpaster uses these elements to assess how moral responsible a person / corporation makes a decision. Nevertheless, I have inspired my two elements on his introduction of these elements from thought to action, since I consider the capacity to have these two elements as prior to the question how well they are performed. Both then are connected to moral responsibility. In my way as to assess whether an agent has the capacity to be morally responsible, and in the case of Goodpaster to assess how morally responsible an agent was in its decision-making.

⁵⁵ I am explicitly using considerable, instead of 'who can have a moral *right*' to avoid an extended discussion of what can be regarded as having a right (for instance, whether an animal can have a right). For a more extensive explanation of this see for instance Kenneth Goodpaster, "On Being Morally Considerable," *The Journal of Philosophy* 78 (1978) :308-325.

⁵⁶ Goodpaster, "The Concept of Corporate Responsibility," 8.

perception is the capacity to (at least) establish the perceived relevant information, to extract the moral aspects from it, and to structure and categorize this information. The *content* of moral perception depends on several aspects, such as the individual, as well as possible purposes the individual has in mind when perceiving morally, his or her moral preferences that could derive from a normative framework, his or her inclinations, etc.

However, the capacity of an individual for moral perception does not yet involve a process on how to use this information. This partly depends on the capacity for moral reasoning, and partly on the moral content that directs a person towards how to use this information (e.g. a normative framework). In order for an individual to reason morally, his or her capacity for moral perception is of importance since this is input in the process of moral reasoning. *How* this moral reasoning is performed, depends on the normative framework that is (unknowingly) used and the means and ends of both oneself and others that are taken into account. The means and ends of both oneself and others are important content for the corporate moral awareness.

Moral reasoning and moral perception are of course not completely independent of one another. Moral perception already captures a form of (unconscious) selection because an individual can influence the content of his or her moral perception, as indicated above. The particular moral aspects an individual then does or does not extract might be explained as a form of unconscious moral reasoning. The fact that these could (partly) overlap is not inferior to the presence of both within the moral awareness of individuals.

This brief description of these two elements – moral perception and moral reasoning – should provide a sufficient understanding of what I consider to be moral awareness. Moral awareness contains both the capacity for these elements, as well as the use of these capacities. In other words, I would describe the moral awareness of an individual as the capacity to establish the perceived relevant information and extract and *use* relevant moral aspects, i.e. moral perception. As a result, the

individual must categorize and structure this information in order to consider one's act good or wrong for his or her means and ends – self-directed component – as well as the means and ends of others – other-directed component, i.e. moral reasoning. This can be done by means of both an individuals' own (unknowingly used) normative framework, as well as an external normative framework (e.g. the normative framework a corporation uses). Ultimately, this content for the process of further moral reasoning will enable an individual to determine what he or she ought to do.

For a corporation, moral awareness is something that is achieved through its employees par excellence. The next important step is how this can be represented within the corporation and how a corporation can affect this process. As briefly mentioned earlier, the moral awareness of an employee has certain elements that provide an opportunity for a corporation to affect the moral awareness of the employee. I argue that when employed in a corporation, the content of moral awareness of an individual, an employee in this case, differs from his or her individual moral awareness⁵⁷. It differs from one's *own* moral perception. The perceived relevant information that is extracted from the environment changes and the moral aspects as well as the process of moral reasoning will change. Hence, the *content* of the moral awareness can be different when an individual is employed in a corporation.

Once employed, an employee is supposed to enact the moral awareness with *corporate means* and *corporate ends* in mind. Moreover, it is inevitable that the employee obtains input *from* the corporation that influences his or her content of moral awareness. Thus the self-directed component when working in a corporation – pursuing the means and ends of oneself - is not identical to the self-directed component in a non-working environment⁵⁸. This however does not in any way

⁵⁷ It could of course be the case that the individual, or personal, moral awareness of an agent completely overlaps with that of the corporation. However, I will not take this extraordinary case into account.

⁵⁸ The definition of the other-directed component remains, though who and what those others are could be different, but this is in no way different than the way the other-directed component between individuals can differ as well.

exclude or maybe even excuse the employee from pursuing moral awareness with his or her own purposes at the same time. Nevertheless, it is important to realise that I argue that an employee can take corporate means and ends into account *as well* as his or her own moral awareness. This corresponds to the argument already mentioned in chapter two that collective moral responsibility does not exclude individual moral responsibility⁵⁹⁶⁰. As hereby argued, corporate moral awareness depends on (1) the capacity of its employees to have moral awareness and (2) the (differing) content of this moral awareness. Thus if employees have the capacity for moral awareness, a form of corporate moral awareness can be achieved.

Hitherto, one could argue that if corporate moral awareness depends on the capacity of employees to have moral awareness, the capacity of corporations to be morally responsible is reducible. However, I hold the position that it is the *unity* of the three elements that gives a corporation the capacity to be morally responsible. To explain this position, the next step will be to demonstrate how a corporation can affect the content of moral awareness of its employees. This is done by means of the second element in the unity, namely the role-responsibility of the employees.

4.3 Role-responsibility

The role-responsibility of the employees is the second element within the unity that a corporation contains. This crucial element is the interplay between the two other elements. Role-responsibility is a substantial responsibility⁶¹. Moreover, it presupposes that an individual accepts this role⁶². For example, when becoming a parent, one has a certain role in relation to his or her child and this role entails certain substantive judgements (e.g. taking care of the child). Role-responsibility thus entails that a certain attitude or virtue can be expected of an employee within his or her function in the corporation. Within the same setting, it is not only legally documented that an employee in a corporation has a role. There are also the

⁵⁹ See also note 43 in chapter three.

⁶⁰ Indeed, it could even give direction to the corporation-employee relation.

⁶¹ For the definition of substantial responsibility, see §2.1.

⁶² Robin Downie, "Social Roles and Moral Responsibility," *Philosophy* 39 (1964): 35-36.

requirements *of* this role-responsibility that are legally documented, such as the job description.

Within the unity, role-responsibility is important, as it is the interplay that enables actions of the elements in two directions. The first direction has the employee as a starting point and reveals that, by means of the role-responsibility, the employee can and should contribute to the corporate goals. This direction is thus particularly focused on revealing the substantive judgements of role-responsibility⁶³. The other direction has as a starting point the coordinated control and can be regarded in two different ways. Firstly, the coordinated control creates and shapes the role-responsibility and the substantive judgement. It is what gives direction to the role of the employee. It can do so by a hierarchical, rule-based structure that develops the organisational chart and the substantive judgement, i.e. the first element of the 'CID-Structure'⁶⁴. Secondly, the coordinated control of the corporation has, by means of the role-responsibility, a *mechanism* to affect the content of the moral awareness of the employees, i.e. it can, by means of role-responsibility, achieve corporate moral awareness. By accepting the role-responsibility (e.g. function) within a corporation, certain positive and / or negative moral duties – as well as legal duties – for an employee can follow. One can expect certain moral attitudes as well. This is because role-responsibility entails a substantial responsibility. An example of a legal duty deriving from role-responsibility could be to work 24 hours a week. An example of a (negative) moral duty could be to not cause harm to others⁶⁵.

Hence, an employee can have a role-responsibility and this role-responsibility contains substantial responsibility, i.e. that a particular attitude can be expected. Moreover, it is hereby demonstrated that the contribution of the element of role-responsibility is the interplay between the other elements in the unity. The relevance of the third element – coordinated control - within the unity is not yet explicated. I will now focus on this third element, concluding why the interaction

⁶³ In addition to that, a normative framework can supplement this substantive judgments.

⁶⁴ French, "The Corporation as Moral Person," 212.

⁶⁵ I will elaborate on moral duties in chapter five.

between these three elements constitutes the moral condition for a company to have the capacity to be morally responsible.

4.4 Coordinated control

Within the coordinated control of a corporation as discussed in chapter three, there are some relevant characteristics that explicate how the coordinated control functions⁶⁶. The coordinated control enables that the corporation can provide *content* to the function of its employees. This then provides a substantial judgment of the role-responsibility of the employee. Hence, because of this third element – coordinated control – and by use of the second element – the role-responsibility- a corporation can affect the content of moral awareness if, and only if, the first element – corporate moral awareness – is present as well.

As became clear, the corporation contains three elements that together form the unity. Understandably, the relation between the elements is not as static as I have described in order to explain these elements. The elements are interdependent of one another. There is a crucial *interaction* between these three elements within the corporation. Because of this interaction, the moral condition that is a necessary condition for a corporation to be morally responsible cannot be divided. This means, that the corporate moral awareness cannot be reducible to the moral awareness of individuals. Thus the interaction within the unity offers the moral condition, which gives a corporation the capacity to be *morally* responsible. This unity is thus a precondition for a corporation to have the capacity to be morally responsible.

4.5 In sum

In this chapter I have argued that the moral condition, as a precondition for corporations to have the capacity to be morally responsible, can be found in the unity of the corporation. This unity consists of three interacting elements, namely

⁶⁶ See § 3.3 for these characteristics.

the corporate moral awareness, the role-responsibility of the employees and the coordinated control. The continuous interaction between these elements form 'the unity', which entails that the moral condition for corporations to have the capacity to be morally responsible cannot be divided, nor can it be reduced to sole characteristics of its employees. The unity, together with the causal condition as argued in chapter two, fulfils the necessary conditions for a corporation to have the capacity to be morally responsible. The capacity of a corporation to be morally responsible is thereby demonstrated. In general, this implies that a corporation has the capacity to be morally responsible for environmental damage. Nevertheless, whether and how this capacity can become an actuality – making a corporation *actually* morally responsible for environmental damage - is not yet demonstrated. To answer this question, we need a moral argument. I will elaborate on this moral argument in my next chapter.

5 The moral argument

In my previous chapter I argued that corporations have the capacity to be morally responsible, and, as a consequence, that they have the capacity to be morally responsible for environmental damage. This however does not provide an answer to whether an OGC can be morally responsible for a factual situation. Therefore, a moral argument is needed that demonstrates whether an OGC can be morally responsible for environmental damage. As humans we have the capacity to be morally responsible. However, whether a person is morally responsible for an act or not depends – in addition to the capacity to be morally responsible – on (a set of) general moral norms in a society, that a person is required to adhere to. Thus in order to investigate whether an OGC can be morally responsible for environmental damage, I will start off this chapter by demonstrating that harm is done if environmental damage occurs. Subsequently, I argue that if there is a moral principle that prescribes to refrain from causing harm to others, causing environmental damage can be a violation of this principle. Next, I will put forward the notion that environmental damage as harm, can indeed fall under a moral principle that obliges to refrain from causing harm to others, namely the nonmaleficence principle. In the last step I will argue that an OGC can be obliged to adhere to this principle. Hence I conclude that an OGC can be morally responsible for environmental damage.

5.1 Environmental damage as harm

In this paragraph I aim to demonstrate that harm is done when environmental damage occurs. This preliminary step is needed before I can assess whether there is a moral principle that refrains an OGC from causing harm to others. However, to demonstrate that harm is done if environmental damage occurs, this argument depends on how one defines the concept of harm. When reconsidering my previous definition of environmental damage as *damage that is done to the environment and*

that (in-) directly affects the moral community⁶⁷, further explanation is necessary to assess whether an OGC can be morally responsible for environmental damage. Evidently, all activities of OGC's affect the moral community in some way. Nevertheless, it should be clear that this thesis focuses on environmental damage that affects a moral community in a *negative* way. It is important to realise that not everything that affects a moral community negatively qualifies as harm. Therefore it is crucial to investigate whether environmental damage *harms* the moral community.

Harm can be explained as both a prudential concept and a moralised concept. The former explains the concept as whether certain acts are bad in terms of *welfare* (e.g. a loss of positive welfare or a gain of negative welfare)⁶⁸. The latter concept explains harm as *wrongdoing*⁶⁹. As a *specific* 'setbacks to our interests'⁷⁰ namely that if a person's right is harmed, the person is *wronged*⁷¹. Environmental damage is conceivable in both these concepts of harm. Let me demonstrate this with an example. Environmental damage such as an oil spill could affect the marine life on which the moral community depends for food. Hence, this could affect their availability of local food. In this way it could reduce their welfare in terms of health. Additionally, if the food industry is the main local economy, it could reduce their welfare in economic terms as well. Known examples of this environmental damage are the oil spill of Exxon Valdez in 1989 and the BP oil spill in 2010. Both reduced the welfare of the local communities in different ways⁷². Similarly, one can also conceive of environmental damage as a specific setback to a person's interests, i.e. as wronging a person, even though the right that is harmed could differ. For instance, an oil spill that damages the environment could wrong, among others, a person's

⁶⁷ See box 1 for this definition.

⁶⁸ Nils Holtug, "The Harm Principle," *Ethical Theory and Moral Practice* 5 (2002): 364-377.

⁶⁹ Nils Holtug describes how a moralised concept of harm, that explains harm as *wrongdoing*, needs to explain in virtue of *what* acts wrong others, where the common suggestion is in terms of rights. Hence "... in order to specify these rights more fully, we need a moral theory" Nils Holtug, "The Harm Principle," 380.

⁷⁰ Joel Feinberg, *Harm to Others. The moral limits of the law* (New York: Oxford, 1984): 50. Noticeable, according to Feinberg, not all harms constitute wrongs.

⁷¹ Joel Feinberg, *Harm to Others*, 51.

⁷² The Exxon Valdez was an oil tanker that caused an environmental disaster when it ran aground in Alaska, spilling oil that reduced the welfare of the affected community. The BP oil spill in the Gulf of Mexico in 2010 is another example.

right to healthy food, or the right to a healthy environment, if we consider these as rights that a person has. By demonstrating that environmental damage can be captured by both a prudential concept of harm as well as a moralised concept, I consider it as sufficiently demonstrated that environmental damage could be regarded as harm⁷³. If environmental damage can be harm that is caused by the acts of an entity with the capacity to be morally responsible i.e. an OGC, and if there is a principle that prescribes to refrain from causing harm to others, then violating this principle could make the OGC in question morally responsible for environmental damage. I will use the rest of this chapter to explicate this argument.

5.2 A moral principle

To determine whether an OGC can be morally responsible for environmental damage, we need a moral argument. Almost all descriptions of morality, whether normative or descriptive, contain a moral norm that prescribes to refrain from causing harm to others⁷⁴. As argued, a corporation contains a unity, in which the employee has a crucial role in enabling corporate moral awareness. Understandably, employees of an OGC are obliged to adhere to moral norms in society. Thus for an investigation into the moral duties an OGC might have, it seems plausible to refer back to the employees in the OGC and inquire whether their moral duties can oblige their company to adhere to the same moral duties as well, given the fact that the employees form an inseparable part of the unity. Indeed, it would be absurd to imagine that it would be possible to form a corporation that would not have to adhere (partly) to the same moral principles of the individuals in society. For instance, imagine a corporation as a unity would be allowed to kill, while at the same time, its employees would not⁷⁵. Since this thesis is concerned with

⁷³ Of course, a lot more can be said about the scope of the harm, the baseline and the justification, (e.g. Holtug and Feinberg).

⁷⁴ Bernard Gert, "The Definition of Morality", *The Stanford Encyclopedia of Philosophy* (Fall 2012 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2012/entries/morality-definition/> (Consulted on 18 September 2014): 10-11.

⁷⁵ Wim Dubbink, for instance, provides by means of political ethics reasons why a company too can be confronted with certain moral norms, such as not causing harm, preventing harm, or removing harm. Note that the last two concern positive duties. Wim Dubbink et al., "European Business Ethics. Cases in Context" *Issues in Business Ethics* 28 (2001): 223.

environmental damage as harm, a moral principle that entails a duty to refrain from causing harm is therefore warranted.

There are several principles that prescribe to refrain from causing harm to others. One such principle is 'the harm principle'. This principle roughly entails that the state is justified to restrict the liberty of some to prevent harm or risk to others⁷⁶. Therefore it is concerned with the *justification* of coercive action of the state, rather than with moral duties. Hence, it does not suit my perspective. Another principle that is concerned with not causing harm to others is 'the precautionary principle'. Broadly, the precautionary principle can be defined as follows: "In its simplest formulation, the precautionary principle has a dual trigger: If there is a potential for harm from an activity and if there is uncertainty about the magnitude of impacts or causality, then anticipatory action should be taken to avoid harm"⁷⁷. The fact that anticipatory action should be taken, *presupposes* a moral responsibility to take action. Therefore this principle neither suits my perspective⁷⁸.

However, there is one principle that prescribes to refrain to cause harm that seems to suit my perspective, namely the 'principle of nonmaleficence'. Simply put, this principle entails the *duty* to refrain from causing harm to others⁷⁹. It obliges intentional avoidance of actions that cause harm or that impose the risk of harm. The nonmaleficence principle is normally used within a broader framework of principles for analysing moral problems⁸⁰. It can be regarded as a 'mid-level principle' because diverging normative theories can justify to refrain from causing harm to others⁸¹. The justification of this principle is that it achieves the objectives

⁷⁶ André Krom, "Not to be Sneezed at: On the Possibilities of Justifying Infectious disease control by appealing to a mid-level harm principle" (PhD diss., Utrecht University, 2014), 3.

⁷⁷ Carolyn Raffensberger and Joel Tickner in Gardiner. S, 'A core precautionary principle' *The Journal of Political Philosophy* 14 (2005): 3.

⁷⁸ See chapter 5: concluding remarks to the way these principles could contribute in a different manner.

⁷⁹ This principle as well as a manner to use it is extensively discussed by Tom L. Beauchamp, James Childress, *Principles of Biomedical Ethics, seventh edition*. (New York: Oxford University Press, 2013): .150-201. Their four-principle approach of which the principle of nonmaleficence is one is influential within bio(medical)ethics.

⁸⁰ E.g. Tom L. Beauchamp, James Childress, *Principles of Biomedical Ethics, seventh edition*. (New York: Oxford University Press, 2013).

⁸¹ This is also the weakness of a mid-level principle, namely that it does not derive from a normative theory. For example. as argued by Marcus Düwell, "One Moral Principle or Many?" in *Bioethics in Cultural Contexts. Reflections on Methods and Finitude*, ed. Christoph Rehmann-Sutter et al. (Dordrecht: Springer, 2006), 93-108.

of morality and articulates the most general values within society. The principle of nonmaleficence can be regarded as being based on general and basic norms in society⁸². Regardless of whether we consider the principle as part of a 'common morality'⁸³, I do believe that we can generally accept a norm that prescribes to refrain from causing harm to others. In order to argue that this principle can be the moral argument that can make an OGC morally responsible for environmental damage, it is essential to demonstrate how this principle includes environmental damage as harm.

5.3 The principle of nonmaleficence and environmental damage

In paragraph 4.1 I have already demonstrated that environmental damage can be considered as harm. Thus if this environmental damage affects the moral community in a negative way, i.e. in a way that it harms the moral community, then the perpetrator of environmental damage violates the moral norm that prescribes to refrain from causing harm to others. In order to argue that environmental damage violates the nonmaleficence principle, it needs to be demonstrated that this principle is concerned with environmental damage as harm. A far-reaching description of the nonmaleficence principle from an environmental ethics perspective leaves little doubt about the inclusion of environmental damage within the principle of nonmaleficence; "...it includes the duty not to kill an organism and not to destroy a species-population or biotic community, as well as the duty to refrain from any action that would be seriously detrimental to the good of an organism, species-population, or life community"⁸⁴. Environmental damage would be a seriously detrimental to the good of organisms, species-populations and life community. However, this definition of the nonmaleficence principle is rather broad. Nevertheless, an even more specific interpretation as mentioned previously,

⁸² See also note 71.

⁸³ Beauchamp and Childress justify this principle in their later work as what they refer to as the 'common morality': the most general and basic norms in morality, which is applicable to all persons in all places. Tom Beauchamp, "The 'Four Principles' Approach to Health Care Ethics," in *Principles of Health Care Ethics, second edition* ed. Richard E. Ashcroft (New Jersey: John Wiley & Sons, 2007):7.

⁸⁴ Paul W. Taylor, *Respect for Nature* (Princeton: Princeton University Press: 2011): 172. More specifically, Taylor concludes that the principle of nonmaleficence is of great importance within environmental ethics, it is the supreme rule. 'Our most fundamental duty toward nature is to do no harm' (esp. page 197).

leaves room to include environmental damage as a harm we should not cause. There are, however, some elements that influence the principle of nonmaleficence. Often, it is hard to determine what the OGC could have reasonably known in a particular situation. For example, whether or not there was negligence, the amount of risk taken, whether the harmful event was reasonably foreseeable, etc. These, however, are substantial concerns about the *scope* of the principle of nonmaleficence⁸⁵ that go beyond the purpose of my thesis. In conclusion, I have demonstrated that the principle of nonmaleficence includes environmental damage as harm. The next step is to assess whether an OGC can be obliged to adhere to this principle in the same manner an individual can.

5.4 The principle of nonmaleficence applied to OGC's

In order to conclude that an OGC can be morally responsible for environmental damage, it needs to be demonstrated that it has, at least, the duty to adhere to the principle of nonmaleficence in addition to having the capacity to be morally responsible. I propose that an OGC can have this moral duty because of the *unity* of the three elements a corporation contains, namely: corporate moral awareness, role-responsibility and coordinated control.

In chapter three I have demonstrated that an OGC can cause acts in society that can only be regarded as corporate acts, i.e. the causal condition⁸⁶. In chapter four I have argued that one element within the *unity* is the corporate moral awareness. More precisely, those employees in a corporation even have a role-responsibility to adjust the content of their moral awareness for corporate purposes. The employees have a crucial role in enacting corporate moral awareness. However, this corporate moral awareness is not solely based on the employee's individual moral awareness, but on the interaction with the other elements in the unity as well⁸⁷. Since an OGC has this corporate moral awareness, it has the duty to use its corporate moral awareness

⁸⁵ A further explanation of the scope of the principle of nonmaleficence can be found in Tom L. Beauchamp, James Childress, *Principles of Biomedical Ethics*, esp. 153-156.

⁸⁶ See § 3.1 for the elements of the causal condition.

⁸⁷ I describe this process in §4.2.

when *acting* by means of a causal condition, which I have demonstrated it can. Analogously, a person can be obliged to refrain from causing harm to others. This person has a moral duty to not cause harm to others when acting. The nonmaleficence principle obliges the person from *causing* harm to others. It does not oblige him or her to prevent harm or remove harm. Hence, the person is only violating this duty, if he or she indeed causes harm to others. An OGC has a corporate moral awareness. Thus, it can be aware when its act can cause harm to others, therefore it has the duty to refrain from causing harm to others. A corporation then is only violating this duty if it *causes* harm to others. Hence, if the corporate act, which cannot be reduced to the acts of individuals, causes environmental damage, it violates this principle. In that case, it is morally responsible for the environmental damage.

Nevertheless, one could argue that this implies that the moral argument, which makes a corporation morally responsible for environmental damage, is actually reducible to its employees because *they* have a moral awareness. However, I argue that it is *not* reducible⁸⁸. This is because the moral awareness of an employee within the corporation cannot, and should not, be regarded as independent of the corporation. This is because of the *unity* of a corporation, i.e. because an employee has a role-responsibility to contribute to corporate goals laid upon him and determined through the companies' coordinated control. Since he or she accepts this role-responsibility, he or she accepts (and ought) to, at least partly, adjust the content of his or her moral awareness. This should be done in such a way that he or she, at least, procures the moral norms that could be violated by means of the corporate acts. In addition, as previously argued, this unity cannot be divided into separate parts because these are always interacting. Hence, the unity is what can make a corporation morally responsible for environmental damage. As by means of the unity, a corporation is obliged to adhere to moral principles.

⁸⁸ This, however does *not* mean that an individual cannot be morally responsible for the environmental damage *as well*. See also note 39.

5.5 In sum

In this chapter I have demonstrated that the moral argument that can make an OGC morally responsible for environmental damage depends on a moral principle. I demonstrated that harm is done if environmental damage occurs. Subsequently, I argued that if there is a principle that prescribes an OGC to refrain from causing harm to others, it could be the nonmaleficence principle. Thereafter I put forward the notion that environmental damage as harm, indeed falls under the denominator of the nonmaleficence principle. I argued that an OGC can be obliged to adhere to the principle of nonmaleficence by means of the unity and that this cannot be reduced to the duty of the employees to adhere to the principle of nonmaleficence. Hence, I conclude that an OGC can be morally responsible for environmental damage.

6 Concluding remarks

The aim of this research was to investigate whether an OGC can *be* morally responsible for environmental damage. The conclusion to this investigation is positive. However, my research is inevitably limited. Several choices had to be made to limit my research scope. For example, I appealed to the literature on *collective* moral responsibility and *corporate* moral responsibility since a part of the debate in these fields is on the capacity of collective / corporations to be morally responsible. Nevertheless, there are more fields concerned with this topic, as well as literature within this field that I inevitably did not read. However, I hope my thesis contributes to clarify some similarities and dissimilarities within these debates.

Further research into the scope of the moral responsibility of OGC's for environmental damage would be a relevant supplement. This thesis could solely be a start. A further specification of the nonmaleficence principle could offer more insight into the scope of the moral responsibility of OGC's for environmental damage. For instance, it is important to specify the use of the nonmaleficence principle to substantiate the principle. This can be achieved by asking questions such as "where, when, why, how, by what means, to whom or by whom the action is to be done or avoided"⁸⁹. This could narrow down the scope of the nonmaleficence principle and hence the scope of moral responsibility of the OGC for environmental damage. Moreover, other principles, such as the precautionary principle could complement this thesis, both as limiting the scope of the nonmaleficence principle, as well as assessed as a separate principle. Nevertheless, how other (more specific) principles could limit or broaden the scope of the moral responsibility of OGC's for environmental damage, demands further research.

My approach in constructing the moral argument can be considered as a potential weakness, since I did not adhere to a normative theory. I acknowledge this potential

⁸⁹ Tom L. Beauchamp, James Childress, *Principles of Biomedical Ethics*, 17.

weakness to offer a fundamental ethical argument. However, an advantage of this approach is that the conclusion is not bound to one normative perspective, but hopefully is a conclusion that is broader shared and stands closer to corporate practise. Furthermore, as mentioned in my introduction, OGC's are assumed to have a moral responsibility for environmental damage. Though this thesis did not depart from a policy-ethics perspective, it would be interesting to assess to what extent, especially after a specification of the scope of the moral responsibility of OGC's (maybe by means of the precautionary principle) to what this assumed moral responsibility corresponds theoretically.

Conclusion

The research question of this thesis is: *Can oil and gas companies be morally responsible for environmental damage?* To answer this question I started off with a description of what moral responsibility is. A precondition for an OGC to be morally responsible for environmental damage is to have the capacity to be morally responsible. Therefore, a majority of my thesis is focused on determining the capacity of OGC's to be morally responsible. Since an OGC is a collective entity I appealed to the academic debates on collective moral responsibility and corporate moral responsibility. As became clear, within the debate on collective moral responsibility and corporate moral responsibility a major part focuses on the conditions of the traditional notion of moral responsibility: *causation* – a causal connection between the entity and that for which it is morally responsible - and moral blameworthiness or *intention*. Nevertheless, this notion does not seem to be applicable when discussing the capacity of *collectives* to be morally responsible. Hence, an alternative notion is addressed. I investigated the causal condition as a necessary condition to fulfil as a corporation, in order to have the capacity to be morally responsible. The elements of this condition are the 'ineliminable role' and 'coordinated control'. When present in a corporation, a corporation can fulfil this causal condition. In addition, I demonstrated that a moral condition is needed. I argued that this could be found in what I have called 'the unity'. This unity consists of three interacting elements, namely the corporate moral awareness, the role-responsibility of the employees, and the coordinated control. The continuous interaction between these elements forms 'the unity', which entails the moral condition for corporations to have the capacity to be morally responsible. This unity cannot be divided or reduced to sole characteristics of its employees. These two conditions together – the causal condition and the moral condition – give a corporation the capacity to be morally responsible.

In order to demonstrate that a corporation can have the capacity to be morally responsible *for environmental damage*, a moral argument is provided. As argued, environmental damage can be harm. Subsequently, I argued that if there is a principle that prescribes an OGC to refrain from causing harm to others, it could be the nonmaleficence principle. I proposed that the nonmaleficence principle applies to an OGC just as it does to individuals because of the OGC's corporate moral awareness, which is enabled through the employees as an inseparable part of the unity. Hereby I have shown that OGC's have both the capacity to be morally responsible, as well as that they have the moral duty to refrain from causing environmental damage. In conclusion, this answers my research question: Yes, oil and gas companies can be morally responsible for environmental damage.

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