Master Thesis Applied Ethics
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Subject
Corporations and collective responsibility

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Introduction

0.1 Research question

In this thesis I will answer the following research question:

Does the account of List and Pettit (2011) on collective corporate responsibility justify that we should start holding all members of publicly traded companies morally responsible for acts that are committed in the name of a corporation? Is this the case even when no members can be held individually morally responsible for those acts?

0.2 Introduction

Corporations are regularly the target of public indignation. They abuse their power to promote their own interests at the expense of society at large through lobbying and even breaking the law. Although corporations are regularly sued, found guilty and forced to pay fines, they still (seem) to get away with their harmful and illegal behaviour without receiving proper punishment.

This continues to cause outrage among the general public, whom demand political and legal reform so that justice can be served. In reaction to these allegations, defenders bring two main counter arguments to the fore. The first point is that these allegations are based on epistemic confusion. Corporations do not exist as real agents, they are mere artificial or legal persons. It simply does not make sense to blame fictitious entities, we can only blame their members. Second, they point out that corporations are very valuable for society. They contribute immensely to economic growth, infrastructure and innovation. To punish businesses and corporations more often and more severely, will be detrimental to their activities and ultimately harm society at large. Therefore, we should be very reticent in holding them morally and legally responsible.

This debate is nothing new. It started around the 15th and 16th century with the widespread emergence of the modern form of the corporation as a legal person (Khanna, 1996, pp. 1479-1480). This invention invested legal persons with similar legal rights and capabilities as natural persons and proved to be very successful in developing business activities. It did however also create new problems with regards to regulation. In order to understand why, we need to look at our legal system and what is required to hold an actor legally responsible.

When someone breaks the law or causes harm, both the state and private citizens can sue this person and hold them legally responsible. The court can decide that the perpetrator needs to compensate the victims or, if it concerns a criminal offence, that the perpetrator deserves legal punishment. In most legal cases two things need to be proven in court: First, that the defendant caused the harmful act, called *actus reus*. Second, that the defendant had blameworthy mental states, called *mens rea*, that lead to the act, like intentions, beliefs or negligence (Khanna, 1996, p. 1491; Bonnie, 1997, p. 116).

But because it was believed that corporations were mere fictional persons, they could neither act on their own nor have any (blameworthy) mental states (Khanna, 1996, p. 1480). Therefore, it was argued that the corporate agent could not be sued, but only their individual members. This became problematic when corporations started to cause harm to society and other citizens, for example by building bridges that blocked rivers, polluting the environment and committing fraud (Khanna, 1996, pp. 1485-1486).

Citizens could already sue a corporation quite easily under civil law. If a corporation is convicted under civil law, the legal person will be forced to financially compensate the claimant. The burden of proof for such cases is relatively low. A fine is a mild form of punishment and therefore it is deemed less necessary to prevent false convictions through imposing a high burden of proof (Garner & Black, 2009, pp. 223, 1301).

But citizens were, and are not, always aware of the harm that is inflicted on them by corporations, nor do they have the means to sue them. Therefore, the state intervened by making use of criminal law and its unique information-gathering powers, meaning the police and public prosecutors. This was the first reason why it was necessary to be able to convict corporations under criminal law (Khanna, 1996, pp. 1521-1522). The second reason was that punishment in the form of fines under civil law were deemed insufficient. The additional stigma that a conviction under criminal law can cause, was considered necessary to punish corporations appropriately (Khanna, 1996, p. 1492).

However, under criminal law the general burden of proof, and with regards to blameworthy mental states (mens rea), is higher than in civil law. This is due to its more severe forms of punishment, like jailtime and (in some states of the United States) even the death penalty (Garner & Black, 2009, pp. 1186, 1301; Roberson, 2015, p. 188). Therefore, a higher burden of proof is deemed necessary in order to prevent false convictions. Because corporations consisted of many employees, it was difficult to prove in court which individual employee

fulfilled the actus reus and mens rea conditions. And because it was not possible to hold the corporation itself legally responsible, corporations could easily get away with crimes.

Several legal principles were developed to deal with the issue on corporate criminal liability. All solutions allow a judge to attribute an actus reus and mens rea of an individual employee to the corporation. All though this appears to be a good solution in some cases, the problem is that it still stands or falls with the possibility of finding guilty individuals. And this has become only more difficult in current times, since international corporations have increased immensely in size and complexity. Thousands of employees from all over the world often contribute small parts in corporate acts and the knowledge about their consequences is spread to a great extent. On top of that, it is argued that some corporations intentionally spread information to prevent prosecution (Diamantis, 2019, p. 1).

The view that only natural persons are moral agents is supported by a philosophical theory called methodological individualism. Defenders of this theory argue that collectives or group agents are artificial constructs and therefore cannot bear moral responsibility, only their individual members can (Velasquez, 1983; Friedman, 1970).

Combined, the conditions for corporate criminal liability and the assumptions of methodological individualism appear to make it difficult to hold corporations (sufficiently) responsible for their actions. As a result, we are confronted with what is called a 'collective responsibility gap' in the philosophical academic debate, which is "a pre-theoretic intuition, or (equivalently) a pre-reflective gut reaction, that a particular collective … bears a particular kind of responsibility…, yet we cannot justify or vindicate that pre-theoretic intuition upon engaging in principled reflection" (Collins, 2019, p. 4).

Collective responsibility gaps are problematic. They cause harm to society, leave victims without compensation and perpetrators without proper punishment. And as a result, both current and potential perpetrators are not sufficiently deterred to prevent similar harms from occurring in the future.

Several academic fields try to address this problem. Legal scholars and economists mainly debate legal reforms and their economic effects (Khanna, 1996; Ulen, 1996). A recurring challenge in these fields is that a balance needs to be found between under and over deterrence, so that corporations are sufficiently regulated while minimizing the harm to their business activities. These two fields argue predominantly within a consequentialist ethical framework, wherein they focus on the likelihood of certain predictions and cost-benefit analyses. The

philosophical debate on collective responsibility is focussed on the reality of group agents, what conceptually constitutes collective moral responsibility and how we can justify holding collectives and their members morally responsible for their actions. In this thesis, I will make use of both frameworks to argue for my case.

As said, one of the main points of contention in the philosophical debate on collective moral responsibility, is whether group agents like corporations can actually exist as real separate moral actors (Smiley, 2017, p. 1). If corporations are moral agents that are capable of acting and having mental states, this could justify holding them and their members morally and legally responsible. Current moral theories on the reality of group agents and collective responsibility seem incapable of closing the collective responsibility gaps that are caused by corporations, maintaining the impasse.

However, the new account of List and Pettit (2011) might provide us with a solution. They argue that group agents can form real beliefs and intentions through the aggregation of group attitudes. And this in turn would justify holding all members morally responsible for corporate acts, even when no member can be found individually responsible (List & Pettit, 2011, p. 157).

0.3 Focus in this thesis

In this thesis, I will investigate whether the claims of List and Pettit (2011) with regards to the reality of group agents and collective moral responsibility are tenable. Also, I will address the question of to what extent their account is of use for political, legal and corporate reform. I will focus in this thesis on a specific kind of corporation, namely publicly traded companies.

0.4 Summary

Collective corporate responsibility gaps are the result of the legal personhood of corporations and the conditions of actus reus and mens rea in our legal system. These conditions are supported by underlying intuitions on moral responsibility and the reality of group agents. List and Pettit (2011) have constructed a new account that supposedly shows the reality of group agents. If correct, this account could justify radical reforms in our legal system and thereby solve the corporate collective responsibility gaps in the status quo.

0.5 Structure of this thesis

In chapter 2 I will distinguish different kinds of responsibility and describe the conditions for moral responsibility that I will use to answer my research question. In chapter 3 I will describe the new account of List and Pettit (2011) on group agency and collective responsibility. Chapter 4 will provide information about how publicly traded companies operate and why they are both harmful and valuable for society.

With these things in place, we can look at the major counter-arguments against the claim that the account of List and Pettit (2011) can be applied to publicly traded companies in chapter 5. In chapter 6 I will defend the account of List and Pettit (2011) against these counterarguments. Chapter 7 will consist of my final analysis and conclusions. I will end this thesis with a summary and my recommendations for future research.

Chapter 1 - Moral Responsibility

This chapter focusses on moral concepts and ethical frameworks that I will use to answer my research question. I will start by making some basic distinctions with regards to the concept of responsibility.

1.1 Responsibility: Some basic distinctions

As described by Manuel Velasquez (1983, p. 1), the word 'responsible' can mean three things in everyday language. First, it can be a character trait, in the sense that someone can be a 'responsible' person, meaning they possess a disposition to act in a certain way. Second, it can be used in a legal sense, meaning to hold an agent legally responsible for an act. This will often result in some legal punishment or compensation to a harmed party. Third, responsibility can be used in a moral sense, meaning that we can hold an agent morally responsible for an act.

I need to point out two other distinctions that are common in the academic debate, namely between retrospective and prospective responsibility, whereby retrospective responsibility can be further divided into causal and moral responsibility (Collins, 2019, pp. 944-945; Velasquez, 2003, pp. 532-533; Gilbert, 2014, p. 58).

Retrospective responsibility is backward-looking and asks whether a certain agent was responsible for an act. Prospective responsibility is forward-looking and concerns the question which agent should be performing a certain act. The two can be connected, but do not have to be. It could be the case that an agent was morally responsible for causing a problem but is incapable of solving it. If we believe that the problem still needs to be solved, we can shift our focus to prospective responsibility and decide which agents are most suited or best situated to take action.

Causal responsibility concerns the question whether a certain agent (or natural phenomena) X caused an event Y. For example: If a dog eats your homework, it is causally responsible for destroying it. We would however not claim that the dog is morally responsible for this act. But if a parent deliberately destroys your homework by putting in the shredder, we would probably claim they are morally responsible for this act. The relevant difference seems to be that the parent is a moral agent while the dog is not. This begs the question: what constitutes moral agency?

1.2 Individual moral responsibility: three conditions

In this thesis, I have chosen to adopt the framework on moral responsibility that is used by List and Pettit (2011). I will sketch and defend the most important characteristics of this framework in this chapter but leave the explanation of certain parts to the next chapter.

I will start by addressing three reasons why holding agents morally and legally responsible for their actions is valuable. First, it can compensate victims (Brooke, 2009, p. 1; Strawson, 1962/1993, pp. 63-64). Second, it can deter agents from engaging in similar kinds of harmful behaviour. In this sense, holding agents morally responsible has a social regulatory function, which is the underlying rationale for the so-called *consequentialist view* (Eshleman, 2016, para 2). Third, it can help potential moral agents, like children, to develop into moral agents (Strawson, 1962/1993, pp. 60-61; Pettit, 2001, pp. 95-96). This last point can also be called 'responsibilization' (Garland, 2001, pp. 124-127). Holding moral agents responsible is therefore valuable for victims, society at large and the development of potential moral agents.

In line with the following definition of List and Pettit (2011, p. 155) I argue that an agent can be held retrospectively morally responsible for an act if they fulfil three necessary and sufficient conditions:

1) Normative significance. The agent faces a normatively significant choice, involving the possibility of doing something good or bad, right or wrong.

2) Judgmental capacity. The agent has the understanding and access to evidence required for making normative judgments about the options

3) Relevant control. The agent has the control required for choosing between the options.

Why are these conditions necessary and sufficient? Normative significance is necessary, since, if the agent did not face a moral dilemma it simply wasn't a moral choice to begin with.

Judgmental capacity is required, since without it an agent is incapable of sufficiently understanding the moral dilemma they are confronted with. If someone's judgmental capacity is obstructed, the agent would have a good excuse to be held only partially or not at all morally responsible.

Relevant control is necessary, because if an agent lacked the control to make a choice, it would be unjust to hold them retrospectively morally responsible. Or in Immanuel Kant's famous words: 'ought implies can' (Kant, 1793/2017, p. 26). If the agent was not able to direct their

actions based on their judgments, beliefs and intentions, they lacked the relevant control and have a good excuse to be held partially or not at all responsible.

Condition 1 and 3 seem to be uncontroversial and therefore I will not defend them more extensively. Condition 2 on judgmental capacity is controversial and arguably not even necessary. Why wouldn't we hold agents morally and legally responsible who caused an act and fulfilled condition 1 and 2? This is a legitimate question. Therefore, in the rest of this chapter I defend the condition on judgmental capacity. I will do so by:

a) Arguing that judgmental capacity is a necessary part of condition 3 on relevant control.
b) Explaining the value of judgmental capacity for our reactive attitudes.
c) Connecting judgmental capacity to character and the chance on recidivism.

1.2a Judgmental capacity and relevant control

A moral agent can engage in reasoning about the value of their options. I adopt the definition of reasoning of List and Pettit (2011), which I will describe more extensively in the next chapter. For now, suffice to say that reasoning requires an agent to be able to reflect on their beliefs, preferences, the desirability of the expected consequences and their intentions. Being unable to reason therefore means being unable to take normative reasons into account. What does is it mean to take normative reasons into account? It means to be able to compare the desirability and value of the options you are confronted with. Without judgmental capacity in place, the agent might not have been able to understand that the choice was a moral choice. Or she might have acted based on deficient or faulty information. In such cases we should therefore, in retrospect, no longer frame the choice as if it was a moral choice of this agent. Judgmental and capacity and reasoning are therefore necessary preconditions for relevant control, as without them the agent is incapable of making a moral choice.

1.2b Judgmental capacity and reactive attitudes

In accordance with List and Pettit, I define holding someone morally responsible to mean not merely thinking someone responsible, but to 'take upon the stance of a creditor' towards the perpetrators. In practice this will mean expressing blame or praise towards them (List & Pettit, 2011, p. 155). This practice can be embedded in the theory on reactive attitudes by Peter Strawson (1962/1993). Strawson (1962/1993, p. 66) claims that our reactive attitudes function

as an inter-relational feedback mechanism through which societies regulate behaviour. Because people care about their reputation and the opinions of others, blaming or praising can both decrease socially undesirable behaviour and promote socially desirable behaviour (Brennan & Pettit, 2004, pp. 43-44). When we are harmed by another agent, Strawson (1962/1993, pp. 50-52) distinguishes three possible reactions: First, we can hold the agent morally responsible through blame or praise. Second, we can excuse the actor, for example because it was an accident. Third, we can take the objective stance, meaning on second thought we choose not to view the actor as a moral agent. For example, because the actor suffered from severe mental illness.

Next, I want to add my own analysis on the mechanism of blaming. It seems to me that blaming regulates behaviour both through internal and external incentives. Internal if it causes feelings of guilt in the mind of a previously oblivious or ignorant perpetrator, which might reprogram the perpetrator such that they will be inclined to refrain from similar acts in the future. External, through damaging someone's reputation and social relations. People in general do not like to associate themselves with the morally condemned, since this damages their reputation as well. Being blamed can therefore severely harm your social relations, meaning with friends, relatives and business connections.

A final point I want to add is that the power of moral condemnation derives its effectiveness because of the asymmetrical harm it inflicts on some but not on others. The less we resort to it, the more powerful its effects. To use moral condemnation against large groups and especially innocent people would, therefore severely erode its power and credibility and with it, the desirable consequences for society. Therefore, I argue that we should be very reticent in using moral condemnation. This does not exclude the possibility of holding agents legally responsible (or compensatory liable) for their actions. But this should be separated from moral responsibility. To use moral condemnation against the innocent would be to impose additional suffering on the innocent, while simultaneously eroding the effectiveness and credibility of the regulatory function of our reactive attitudes in general. I argue that we therefore have a moral obligation to investigate thoroughly which of the three reactions as described by Strawson (1962/1993, pp. 50-52), holding morally responsible, excusing or the objective stance, is fair.

Next, I am going to strengthen this last point by arguing that it is unnecessary to impose additional punishment on actors whose judgmental capacity was impaired, as it was not a reflection of their character.

1.2c Judgmental capacity and character

I will argue here that the judgmental capacity and mental states of an actor provide us with indispensable information about their character. This informs us on the question whether, or to what extent additional deterrence through moral condemnation or legal punishment is required.

Why? Because if an agent was able to use their judgmental capacity to make a choice, the act was based on their beliefs, desires and intentions. Many contemporary philosophers therefore claim that these kinds of acts reflect the moral character of an agent (Doris, 2002, pp. 15-18, 174). What do they mean by moral character? They mean a certain disposition to act and think that is stable over a longer period of time. Or in the words of Doris (2002), who wrote a book about the subject:

> As I understand it, to attribute a character or personality trait is to say, among other things, that someone is disposed to behave a certain way in certain eliciting conditions. In philosophy, this seems a standard interpretation: Character traits, and virtues in particular, are widely held to involve dispositions to behavior. (pp. 15-16)

To know someone's moral character, therefore allows one to make predictions about how this person will act in the future in similar situations.

But if a harmful act was a mere accident, it was not a reflection of the agents' moral character (or lack thereof). This means that if this agent would have been able to use their judgmental capacity, the mere knowledge of the consequences would probably have been a sufficient deterrent not to perform the act. Based on this difference, I argue that it is justified and desirable to impose additional punishment, either in the form of blaming or legal punishment for those who engage knowingly and deliberately in harmful acts. These and potential future perpetrators apparently require this additional deterrence in order to compensate for their defective moral character, while others do not.

An opposing view on the idea of character, also called situationism, claims that character is not as relevant in predicting or causing human behaviour, and that it is mainly the context which is relevant (Upton, 2009, p. 104) It isn't possible to discuss this point extensively here. However, I do want to point out that one could simply concede that the situation might have a substantial impact on behaviour, while simultaneously maintaining that the character of the agent also plays a role. Situationism therefore does not refute my main claim.

1.2d Conclusion: Why judgmental capacity is necessary for moral responsibility

How do these three reasons show that judgmental capacity is a necessary condition for moral responsibility? First, because without it, the choice cannot be considered a truly free choice over which the actor had sufficient control. To claim that an agent was retrospectively morally responsible would lead us to the bizarre outcome that innocent people can be held retrospectively morally responsible. Second, Strawson's (1962/1993) account on reactive attitudes describes three possible responses to a harmful act. I claim that in order to judge which of these responses is appropriate, we need to take the judgmental capacity of the agent into account. If we fail to do so, we end up blaming large groups of innocent people, which would undermine the functionality and integrity of our reactive attitudes in general. Third, additional deterrence, either in the form of blaming or through legal punishment, is only fair and required if the act of the agent reflected their moral character.

1.3 Evaluating moral responsibility

I want to make two more points before moving on to collective responsibility. The first point aims to prevent some potential confusion with regards to the difference between retrospective and prospective moral responsibility in my account. The second is to the applicability of the condition on judgmental capacity in the real world.

1.3a Retrospective versus prospective moral responsibility

As previously mentioned, being held retrospectively morally responsible for an act should be distinguished from choosing to hold someone prospectively responsible. Whereas the first is backward-looking, the second is based on consequentialist or developmental reasons.

But why do I choose to hold on to this distinction, if I define holding responsible as to take up the stance of creditor to whom something is owed? Doesn't this run prospective and retrospective moral responsibility together? I do not think this is the case. Prospective moral responsibility is focussed on the question which agent is (best) able to solve a problem or compensate a harmed party. Retrospective moral responsibility is not attributed based on the beneficial consequences it might have. It is a truth statement about the question of whether a certain actor was in fact morally responsible for performing an act. To take the stance of a creditor afterwards might well mean that we expect the perpetrator to provide the victims with

an acknowledgement of the perpetrator's fault, an apology or an explanation. Another reason for holding on to the distinction between moral responsibility and legal liability, is that it informs what Velasquez calls our pre-legal understandings on moral responsibility and how the world works (Velasquez, 2003, p. 537). In other words: These moral considerations might form the basis for legal reforms in the future.

1.3b Evaluating judgmental capacity in the real world

Second, this theoretical framework on moral responsibility cannot be applied directly as a method to judge the moral responsibility of agents in the real world. Why? Because we might have prospective or developmental reasons to hold someone responsible regardless of their actual judgmental capacity and because agents might lie about their judgmental capacity in order to escape punishment.

And just because we are unable to read minds, does not mean we are forced to take someone's word at face value. It is for this reason that judges can construct and impose so called objective mental states on the defendant, or in other words: what they believed the mental states of the defendant were or should have been, regardless of the statements of the defendant (Herring, 2012, p. 174). And I argue that we have good reason to do the same with regards to the practice of holding agents morally responsible for their actions based on prospective reasons.

Of course, if we choose to impose such objective standards, they need to be justified. First, we could justify the standard on the empirical fact that other reasonable agents with similar judgmental capacities would have been able to act differently. Second, we could justify the standard because implementing it would produce desirable consequences. This last point connects to the idea of responsibilization, which makes use of a developmental rationale. A last thing to add is that clear intent is not required for attributing moral responsibility. Blameworthy mental states, such as what the agent believed or desired, the risks they were willing to take, the disregard they had for others, recklessness or negligence can all be sufficient for attributing moral responsibility.

Therefore, I want to conclude that we should hold on to the condition of judgmental capacity but concede that the practicalities of implementing it in a court of law or other real-world situation will always remain a challenge and might require additional solutions.

Chapter 2 - Collective responsibility

With these distinctions and the framework on moral responsibility in place, I can sketch the academic debate on collective moral responsibility. First, I want to make some general remarks about collectives.

2.1 Three kinds of collectives

I define a collective as a group of interacting individuals who try to realize shared goals through cooperation. Examples are communities, states, churches, corporations or industries. Stephanie Collins (2019, p. 954) distinguishes three kinds of collectives.

Table 1 *Three kinds of collectives*

	Diffuse collectives	**Teleological collectives**	**Agential collectives**
Definition	Consist of several, independent interacting agents, that lack a central decision-making procedure.	Consist of several interacting agents who "are disposed to reinforce, predict, and rely upon each other's pursuit of the goal that they share" (Collins (2019, p. 954). They lack a central decision-making procedure.	Integrated agents with a central decision-making procedure.
Example	The fashion industry, 19th century industrialists, consumers of fossil fuels, the proletariat.	The tobacco lobby, the fossils fuels lobby.	States, NGO's, corporations, publicly traded companies.

It is claimed by Smiley (2017, p. 2) that there is consensus within the academic debate that we can attribute causal responsibility to all three kinds of collectives, but attributing moral responsibility to collectives is controversial, because they seemingly lack the required judgmental capacity and control.

Diffuse and teleological collectives clearly are not unified agents in the first place. Their members lack the required capacity to construct a coherent and overarching body of consistent beliefs and desires. And even if they would have the capacity to do so, they would lack the

control to enact them. These two collectives therefore clearly do not fulfil the conditions for moral responsibility.

2.1a Moral reasoning about collective responsibility

If we lack the justification to hold diffuse, teleological and arguably even agential collectives morally responsible, why is it such a widespread belief that they are, in fact, responsible? In order to explain this phenomenon, I will first outline some psychological research about moral reasoning. Based on this research, I will try to explain the epistemic confusion on collective responsibility.

Stephanie Collins (2019, p. 948) points out that people "have an urge to posit intentions behind harms". I want to continue her line of thought by adding other psychological research and drawing additional conclusions that might explain our moral intuitions.

Psychological research (Knobe, 2003; Nadelhoffer, 2004) shows that human beings behave asymmetrically in the sense that they are more likely to believe an outcome is generated intentionally if that outcome is bad, than if it is good or neutral. And as a result "people are considerably more willing to blame the agent for bad side-effects than to praise the agent for good side-effects" (Knobe, 2003, p. 193). Additionally, other research has shown that if a perpetrator was not properly punished, this affected the reasoning of research subjects in unconnected future cases (Goldberg, Lerner & Tetlock, 1999). This means they lost the desire to investigate the intentions of the perpetrator and were inclined to punish more severely. Even to the extent that: "intention no longer predicts punishment when anger is entered into the equation" (Goldberg et al., 1999, p. 782).

In other words: When justice is (seemingly) not served after an offence, this turns "'intuitive scientists', who seek to understand why events occur into 'intuitive prosecutors', who have low thresholds for affixing blame and imposing penalties" (Goldberg et al., 1999, p. 782). Goldberg et al (1999) hypothesize that this psychological mechanism has evolved to preserve social order, they argue:

> The particular motive that seems to be active here is the need to re-establish a sense of justice after it has failed. This finding provides some initial support for a relatively unexplored social motive: the need to enforce the norms and values underpinning the social order. […] Individuals whose goal is specifically to uphold the social order could

> be labelled ‘intuitive prosecutors’ who are upset by and want to punish the wrongdoers. (p. 790)

Why does this hypothesis explain the willingness to punish without investigating intentions? Goldberg et al (1999) argue that:

> since intuitive prosecutors believe that people are getting away with violating the social order, they should also see little need to engage in an effortful attributional search to determine whether others are responsible for wrongdoing. Their prosecutorial mindset lowers their threshold for concluding that injustice has occurred […]. Therefore, their focus shifts from appraising the situation to being in a state of punishment-readiness, whose aim is to halt further erosion of the social order. (p. 790)

Why is this research relevant for those who are engaged in debates on collective responsibility in general and especially with regards to corporations? The reason is simple: They run the risk of transforming from an intuitive investigator into an intuitive prosecutor, which means they lose the incentive to investigate intentions (or other blameworthy mental states), which in turn I argued in the previous chapter is a necessary requirement for ascribing moral responsibility.

But how could people turn from intuitive investigators to intuitive prosecutors with regards to corporations? I argue that our current public debate on corporate responsibility and the way it is framed by the media, contains all the elements that could activate the psychological mechanisms I just discussed. Let me explain why I think this is the case.

Our news cycle, which is the main source of information for the general public, consists mainly of negative news, since this is what attracts our attention (“If it bleeds, it leads”). News organizations are business firms that need to make profit to survive. This means that there is a strong incentive to report on scandals, disasters or other subjects that cause outrage. There is of course also an important societal reason for this focus, since it can bring pressing problems to our attention. But the downside is that it leaves out positive events and fails to address praiseworthy actions or aspects of systems and specific actors. It paints a one-sided picture of our complex world. Whereas a certain system can create harm on side, it might also create immense benefits on the other, meaning that the good can outweigh the harm. But this nuance is often lost in the media and, as a result, our public debates.

This is also the case with politics, capitalism and corporations. As a result, there seems to be a widespread opinion among participants in the public debate that ‘capitalism’ is to blame for all

sorts of problems in our society and that it does society more harm than good. With regards to corporations, the media focus in their reports on business scandals, fraud, the termination of jobs due to automation, and so on. We generally don't hear about what corporations contribute to society, when they hire new employees or invest in technological innovation. And this unbalanced, negative focus influences public opinion.

Based on the psychological research and analysis of our news cycle, I want to claim two things: First, that when the general public is confronted with a harmful or bad outcome that seems in some way related to a corporation, people will be inclined to assume a real separate, culpable moral agent with bad intentions is behind them. Second, because the media predominantly reports on scandals, and especially corporations who (seem to) get away with their actions without being sufficiently punished, news consumers will be prone to turn into intuitive prosecutors. And in this mindset, to refrain from blaming or punishing the corporation would be to approve the injustice. As a result, they will develop the desire to blame and severely punish some random agent to preserve the social order. In this process they will lose the desire to investigate the facts regarding the intentions of those they accuse. And I argue that this is problematic if they aim to ascribe moral responsibility to the corporation or members of the corporation. As a result, intuitive prosecutors will be more likely to fail in making a neutral and correct analysis of the problem at hand.

What lessons can't and can we take away from this psychological research and analysis? We cannot conclude that collectives or corporations cannot be or never are morally responsible for certain acts. What we can take away is that participants in this debate should be wary of the fact that they might have turned into intuitive prosecutors, which influences their moral intuitions.

2.1b Collective moral responsibility: agential collectives

But it is argued by several philosophers, Peter French (1979) being the most influential, that agential collectives like corporations can fulfil the conditions for moral responsibility. His central argument is that because they operate with a central and collective decision-making procedure, they become moral agents. French (1979) writes:

> These 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 (those who occupy various stations on the organizational chart), into conglomerate acts done for conglomerate reasons. (p. 27)

But as one of his critics Manuel Velasquez (1983, 2003), points out, it does not follow that because (some) members of a group follow a decision-making procedure, they thereby magically turn themselves into a separate moral agent with a mind of their own. To the contrary: "The corporation as such does not have such a unified consciousness. At best the corporation consists of a multitude of disconnected consciousnesses"(Velasquez, 2003, p. 550). And because of this fact, corporations are not separate moral agents that can be held morally responsible. But List and Pettit (2011) claim that their account can prove exactly this: That groups can form a unified consciousness through applying a certain decision-making procedure.[1]

I have already discussed the arguments of opponents of collective responsibility based on methodological individualism. But before moving on to the account of List and Pettit (2011), I will make some final remarks on why other current accounts on collective moral responsibility fail in proving the existence of group agents and their moral responsibility. This will provide the required context to both understand and value the new account of List of Pettit (2011) appropriately.

2.2 Proponents of the existence of collective moral responsibility

There are two routes to argue for collective moral responsibility. First, one could argue for the existence of collectives as separately existing moral agents, which is called group realism. Second, one could concede that groups do not exist as separate agents but instead argue that we can hold the members collectively responsible based on joint intention. I will start by describing the second option.

2.3 Joint intention

Defenders of joint intention argue that a collective does not need a group mind in order to fulfil the conditions of moral responsibility, because collectives can have intentions that can be completely reduced to the shared intentions of their members (Gilbert, 2014, pp. 6, 138-139,

[1] Although List and Pettit would prefer to call it a unified group mind instead of a unified consciousness. I will address the relevance of this difference in chapter 3.

348; Bratman, 1993, pp. 107-108; Tuomela & Mäkäla, 2016, pp. 299-300). They define intention as a psychological internal attitude in individual human agents. Group members can produce these shared intentions by interacting in a certain way. These group intentions or attitudes exist only in the minds of the members and do not require the existence of a group mind (Bratman, 1993, p. 107).

So, what is joint intention? The basic idea is that individuals can cooperate by fulfilling a smaller role in a larger scheme, thereby relying on the joint intention of all the group members to perform certain tasks. And through this process groups can construct group beliefs, intentions and actions (Bratman, 1993, pp. 107-110).

But members within modern collectives, like corporations, cannot and do not intend for all the acts that are performed in the name of the corporation. Corporations perform thousands of acts a day, which makes it practically impossible to be aware of and to intend them all. We would need to show that a certain harmful act was performed based on the joint intention or at least in the knowledge of all the group members. However, most harmful acts that are committed in the name of groups are illegal and hidden, and therefore not based on a jointly accepted or accessible body of collective beliefs and intentions. This means that we cannot use joint intention to justify holding all members of a collective morally responsible.

2.4 Group realism

Those who defend this view claim that group members produce and constitute a new agent, that is distinct from and irreducible to its members. We can divide supporters of group realism into two camps.

The emergentist camp claims that groups are separate entities existing above their members. But if groups are not reducible to their physical parts, it seems as if they are not part of the physical world. They become something supernatural, which is irreconcilable with physicalism. The emergentist position is therefore untenable.

2.4a Group realism through authorization

The authorization camp, which finds her origin with Hobbes and Rousseau, seems more promising. It tries to ground group realism in the attitudes of members through authorization or

majority voting (Hobbes, 1651/1994, Chapter 16; Rousseau, 1762/1997, pp. 122-125). I will explain authorization first.

Group members usually authorize leaders. It is argued that the preferences, attitudes and actions of these leaders represent the preferences of all the group members and thereby constitute the reality of the group agent. But this view is problematic. We would not consider the personal preferences of one leader (or dictator) to be representative of the entire group. The existence of an authorized leader therefore does not prove that the group has a mind of its own. The group mind in this case is merely the mind of the leader. Therefore, this account should be considered as a 'thin' or even 'redundant' group realism according to List and Pettit (2011, p. 7). Additionally, it seems unfair to hold the members morally responsible for the attitudes and decisions of their leader or dictator.

2.4b Group realism through majority voting

A solution might be to organize majoritarian voting on the beliefs, intentions and actions of the group. The resulting group attitudes and actions could therefore be considered representative members. Although this might seem like a good solution, List and Pettit (2011, pp. 43-58) have shown that majoritarian voting on interconnected logical propositions can lead to inconsistent results. And this is problematic since inconsistency will eventually obstruct the group from making important decisions. In short, it would paralyze the group.

List and Pettit (2011, pp. 43-58) call this problem the Discursive Dilemma and I will address it in the next chapter. For now, we can conclude that also majoritarian voting is not a good solution for the creation of group intentions and a group mind.

2.5 Summary

To assume the existence of groups as separate emergent agents with minds of their own seems metaphysically untenable. Accounts on joint intention fail to justify holding members morally responsible when applied to larger and more complex organizations like corporations. Group realism through authorization alone appears to be a mere façade, and group realism through majority voting fails as it will produce inconsistent results. Could the account of List and Pettit provide us with a way out of this impasse?

Chapter 3 - Account of List and Pettit

List and Pettit (2011, pp. 153-169) claim that we are justified in holding all members of a group agent responsible for group acts. They argue for this claim in three steps:

1) Groups can exist as separate entities from their members and fulfil the two conditions for moral responsibility:

   a) groups can have minds of their own and form intentions and,
   b) groups can have the control to act based on these intentions.

2) All members have sufficient control of the mind and actions of the group.

3) In light of 1 and 2 we are justified in holding all (or almost all) members of a group responsible for the harmful acts that are enacted in their name.

I will lay out their account in accordance with these three steps. But first, I will need to take one step back to describe their account on agency.

3.1 What is agency?

List and Pettit (2011, pp. 170-171) argue from a functionalist account of agency. Under such an account, the necessary and sufficient condition for agency is that system X is an agent if X functions as an agent. The 'hardware' from which the agent is made is therefore irrelevant, which is called 'multiple realizability'. Further, the inner life of the agent - or lack thereof-is irrelevant.

Agents have three defining features in their account:

1) It has representational states that depict how things are in the environment.
2) It has motivational states that specify how it requires things to be in the environment.
3) It has the capacity to process its representational and motivational states, leading it to intervene suitably in the environment whenever that environment fails to match a motivating specification.

"An 'agent', on our account, is a system with these features: it has representational states, motivational states, and a capacity to process them and to act on their basis" (List & Pettit, 2011, p. 20).

When a system fulfils these requirements we can adopt what Daniel Dennett (1987, p. 15) calls an intentional stance, meaning we can interact with this system as if it is an agent with intentions, beliefs and goals.

In the account of List and Pettit (2011, p. 21), intentions, beliefs and attitudes consist of two kinds of propositions. Propositions that describe how the world is, and propositions that describe how the world should be. The first kind are truth statements, the second preferences. Simple truth statements are 'X is the case' or 'Y is not true'. More complicated truth statements are logically interconnected (List & Pettit, 2011, pp. 22-24). For example: 'if X happens, Y will follow'. A preference-proposition can be 'I want X to happen'. More complicated propositions are a combination of the two and logically connected, for example: 'Y should only happen, if X is the case'. Virtually all animals act based on such a processing system and are therefore agents under this account. To be an agent, therefore requires what List and Pettit (2011, pp. 24-22) call 'rationality'. They define rationality instrumentally, in the sense that it allows an agent to form goals and to choose an effective course of action to achieve them (List & Pettit, 2011, pp. 30-31).

3.1a Moral agency

But List and Pettit (2011, pp. 29-31) argue that agency is not sufficient in itself to account for moral agency. They claim that moral agents are capable of *reasoning*. Reasoning can be distinguished from mere rationality, because it involves the ability to form more complex meta-beliefs and meta-preferences. It allows an agent to reflect on three things: their preferences and beliefs, their interconnected logical relations and the potential inconsistencies among them. This increases their chances of forming correct beliefs about the world and it allows human beings to take moral reasons into account. Why? Because the formation of meta-beliefs about preferences allows human beings to deliberate about the relative value of the choices she is confronted with. Together the three conditions for agency and the capacity to reason are the necessary and sufficient conditions for moral agency.

3.2 Moral group agency

List and Pettit (2011) claim that groups can also be moral agents. In order to prove this, they explain how groups can fulfil the functionalist conditions for moral agency (List & Pettit, 2011,

pp. 158-163). They do so by formulating three corresponding *desiderata* and argue why groups can fulfil them (List & Pettit, 2011, pp. 81-144).

a) Epistemic: Group agents can form group attitudes, beliefs and preferences. In other words: groups can have minds of their own (List & Pettit, 2011, part 2, pp. 81-103).
b) Incentive compatibility: The group has the control to act based on these group attitudes (List & Pettit, 2011, pp. 104-128).
c) Member control: The members are in control of the group, meaning the group attitudes and actions (List & Pettit, 2011, pp. 22-24).

In the remainder of this chapter I will explain why List and Pettit argue that groups can fulfil these conditions. I will start with the question if group agents can fulfil the epistemic desiderata.

3.2a Attitude aggregation

List and Pettit (2011, pp. 42-64) argue that groups can form group attitudes and have the capacity to reason. But how can a group reason and form attitudes, if the members of a group hold a variety of different and possibly conflicting attitudes? We would need to aggregate these individual attitudes in such a way that group attitudes are formed.

List and Pettit (2011, pp. 42-58) use social choice theory to simulate how groups can aggregate the attitudes and preferences of their members. Pettit (2007, pp. 98-103) already shortly described this in his earlier article. In most systems of attitude aggregation members can provide input through voting on propositions. Members express their personal attitudes through voting and these votes are processed in such a way that an aggregated function or constitution is created which expresses the groups attitudes and preferences. In the words of List (2008): “A (judgment) aggregation procedure is a function which takes as its input a profile of individual sets of judgments across the members of a group, and which produces as its output a collective set of judgments” ("an impossibility theorem." (para. 4).

A commonly used aggregative function is majority voting. But as described in the previous chapter, this can produce inconsistent results. I will explain this problem, called the Discursive Dilemma, next.

3.2b The Discursive Dilemma

The Discursive Dilemma shows that majority voting can lead to inconsistent or self-contradictory group judgements and attitudes (List & Pettit, 2011, pp. 43-46). This is problematic for group agents when it involves decision making on pressing issues that require action. Let me illustrate the problem with an example of List and Pettit (2011, p. 44).

Suppose three judges must decide whether a defendant should be held liable for breaching a contract with her employer. Let us suppose the judges must agree on four propositions by majority voting. The four propositions are:

a) The defendant had the contractual obligation not to perform the act.
b) The defendant performed the act.
c) If proposition A and B are true, the defendant should be held liable (d)
d) The defendant is liable.

Table 2 *The Discursive Dilemma*

Judge	**a) Contractual obligation**	**b) Committed the act**	**c)if A and B->liable (d)**	**d) Liable?**
1	Yes	Yes	Yes	Yes
2	No	Yes	Yes	No
3	Yes	No	Yes	No
Majority	Yes	Yes	Yes	No

As we can see, is a majority of judges voted yes on proposition A, B and C, but a minority for D. This means that a majority agrees with all the preferences, which logically should result in the acceptance of the conclusion ‘D’, but this is not the case. Therefore, the majoritarian function of these attitudes led to inconsistent group attitudes. And this obstructed the group in reaching a consistent verdict.

This example shows that aggregated functions based on majority voting can lead to inconsistent results, even when the voting members themselves vote consistently (which in reality might not always be the case). It is an illustration of a broader impossibility theorem, which states that it

is impossible to form a consistent aggregated function based on majoritarian voting with more than two members on logically interconnected propositions. At least, not if we want to hold on to the following three seemingly desirable conditions for such a function (List & Pettit, 2011, p. 49):

1. Universal domain: every logically possible set of attitudes of individual members should be admissible.

2. Anonymity: the vote of every member should have equal weight. Meaning it cannot be the case that one leader (or 'dictator') has all the decision-making power.

3. Systematicity is described by List and Pettit (2002) as the following:

> [All] propositions or issues should be treated in an even-handed way by the aggregation function; the collective judgment on each proposition should depend exclusively on the pattern of individual judgments on that proposition. In particular, the collective judgment on no proposition should be given special weight in determining the collective judgments on others. (p. 99)

Does this impossibility result show that majority voting cannot be used as a method for attitude aggregation? List and Pettit do not think so. Instead, they embed the problem into the crux of their argument for corporate responsibility. Or using the words of Bill Wringe (2013), they "turn the apparent modus ponens […] [of] this line of thought into a modus tollens" (p. 140). Let me explain how they do so next.

3.2c How can we overcome the Discursive Dilemma?

How do we overcome this impossibility theorem? We have the choice to either relax the three conditions or to give up on consistency.

But we cannot give up on consistency. Being inconsistent undermines the reliability of an agent and will lead to paralysis and ineffectiveness (List & Pettit, 2011, pp. 24-25, 53). Therefore, group agents such as corporations already clearly, actively strive for consistency, which is exactly what makes them such effective actors and reliable business partners in the first place (List & Pettit, 2011, p. 40).

It seems, therefore, that we will need to relax one or some of the other three conditions: universal domain, anonymity, or systematicity. Relaxing universal domain is undesirable, as

this would mean the function would only be successful for a limited combination of attitudes (List & Pettit, 2011, pp. 51-52). Relaxing anonymity is undesirable as well, as this would mean that we would end up with a so-called dictatorial function, in which one leader will always decide the group attitude (List & Pettit, 2011, pp. 53-54). And even though a dictatorship would prevent the Discursive Dilemma from occurring, we would be back with an authorization account which constitutes nothing more than a thin or redundant group realism (List and Pettit, 2011, p. 10).

Relaxing systematicity however, does seem to be a viable option. To be more specific, we can change the constitution from a majoritarian function on *all* the group attitudes, to a majoritarian function on either only the premises (premise-based) or only conclusions (conclusion-based) (List and Pettit, 2011, pp. 54-58).This would entail that the members either only vote on the premises and accept whatever conclusion derives from the premises, or only vote on the conclusions and not on the premises. This way they can avoid inconsistencies between the two. Choosing for a conclusion-based procedure would, however, entail that the group would only form attitudes on a small part of the propositions. This would make the aggregated function incomplete, not transparent and thereby less effective. The proposition-based procedure does produce a group attitude on all propositions. Because of this, List and Pettit (2011, pp. 97, 169) claim that corporate agents already do or should follow a majoritarian premise-based procedure.

3.3 Supervenience

A consequence of choosing for a premise-based procedure is that the group attitudes on some propositions will be different from the attitudes of the majority. It can mean that only a minority of the attitudes of the members correspond with the group attitude or even that the attitudes of no member corresponds with them (List & Pettit, 2011, p. 70). The attitudes of the members on these conclusions are therefore theoretically unnecessary to produce the group attitude.

For example: It might be the case that a majority is in favour of all the premises, but not a single member supports the logical conclusion that follows from these premises. This could be because members voted inconsistently. They might have been aware that the premises were true and that they should accept the conclusion but chose not to as this would cause them a disadvantage (List & Pettit, 2011, p. 70).

Groups that use the premise-based procedure will therefore produce group attitudes on some conclusions that are epistemically autonomous from the members of the group. These

conclusions cannot be reduced (or traced back) to the individual attitudes of the members, as would be possible for the premises. This autonomy is not mysterious or spooky. The group attitude is still physically caused by the attitudes of the members, but epistemically irreducible and distinct from them.

In other words: The group attitudes on the conclusions are supervenient on the attitudes of the members (List & Pettit, 2011, pp. 64-78). What is supervenience? A set of facts or properties A is supervenient on a set B, if a change in A is only possible if something is changed in B. For example: The subject of a painting, say a landscape, is supervenient on the composition of particles of paint on the canvas. The subject of a painting exists in some way separately from the composition of the particles, but it is not caused by it nor is it a new entity that is physically separate from the particles.

The same holds for these autonomous group attitudes. In this sense, the group truly has a mind of its own on certain group attitudes, which are both supervenient on, but autonomous from the members. The concept of supervenience allows List and Pettit (2011, pp. 75-78) to both claim that group agents can exist as a separate entity from the members with a mind of their own, while remaining consistent with physicalism and methodological individualism.

3.4 Epistemic desiderata: Expertise based majoritarian functions

But most real group agents do not let their members vote on propositions in this way. Whereas in a committee everyone has an equal vote on each proposition, in most group agents, like corporations this is not the case. But according to List and Pettit this is not a problem for their account. In order to explain why, they first make a distinction between formal and informal premise-based procedures and argue that most real group agents follow an informal-premise based function (List & Pettit, 2011, pp. 60-62). Groups who use informal premise-based procedures, adjust their group attitudes when they encounter a situation wherein the group is confronted with a dilemma. In other words: it needs to decide whether it wants to stick to its pre-existing beliefs and not perform the action or vice versa. The group members can do so through deliberation and discussion.

Second, they argue that an aggregated function can also be produced by experts who only vote on those propositions that are within their field of expertise. List and Pettit (2011, pp. 34-36, 162-169) call these expert-voting systems heterogenic functions and contrast them with homogenic functions, wherein every member has an equal vote on every proposition.

Why would a group agent implement such an expert-based function? Because under certain conditions, groups are better able to form correct beliefs about the world than individuals, and this can give them an advantage. List and Pettit (2011, p. 82) call this ability to form correct beliefs the *truth-tracking capability* of an agent.

This concept is based on Bayes Theorem (Bayes, 1764), which is a formula that allows us to calculate what the probability is that a certain event will or did occur. The basic idea is that if we want to predict the probability of a certain event x given that another event y has occurred, we must multiply the chances of event y occurring, by the chance of x occurring giving that y occurred.

If voting members have an individual truth-tracking capability of above 0,5, the group's truth-tracking capabilities improve with the increase of the group size, which is called Condorcet's Theorem (Condorcet, 1785). But in real group agents, especially larger ones like international corporations, not all members will have a truth-tracking capability of above 0,5 on every proposition in the aggregated function. Employees are specialized in certain subfields and propositions that are related to their expertise. Therefore, corporations have created certain spheres of propositions on which only expert members can vote according to List and Pettit (2011, pp. 34-36, 162-169). And these experts decide what the group attitudes on these propositions will be. By doing this, corporations further increase the truth-tracking capabilities of the group, because they bundle the truth-tracking of the experts and exclude the rest. Each member therefore has a significant influence on some group attitudes and thereby on the aggregated function.

So far, I have argued how the account of List and Pettit (2011) shows that group agents can exist as separate entities from their members, how they can have minds of their own and how they can form correct beliefs about the world. Therefore, groups can fulfil the epistemic desiderata. The next question is if groups have the control to act based on these beliefs and intentions.

3.5 Incentive compatibility

The group agent has several ways of maintaining control on its members. Control here means the power to make sure that members conform to the group attitudes and execute desired group actions. Control on members becomes especially relevant when a group uses a premise-based procedure, as it allows group attitudes to be formed that might only be supported by a minority

(or none) of the members. In these cases, there will be a strong incentive for the members not to conform to the group attitude.

List and Pettit (2011, pp. 129-150) discuss several ways a group can reorganize itself to make sure that group members remain loyal to the group attitude. I will name two. First by reorganizing the members in such a way that they are externally incentivized by punishment and rewards. Second by changing the mindset of members. Group agents could for example convince their members why it is important to put the interests of the group above their personal interests, thereby changing their incentives internally.

3.6 Member control

Next, I want to explain why members are or can be sufficiently in control of the mind and actions of a group agent.

List and Pettit (2011, p. 159) start by pointing out that members of a group agent are themselves moral agents. Members could therefore refuse to perform the acts they are expected to perform for the group agent or leave the group agent. This means that the existence of a group agent depends in some sense on the continued joint intention of its members.

List and Pettit (2011, p. 164) make a distinction between three categories of group members: Designers, enactors and members. Designers are the founders of the group agent, and enactors are authorized to act in its name. Both designers and enactors are active members of a group. Passive members choose to remain a part of a group but have no active role in it. They often choose to stick with the group because they profit from it in some way. Passive members still contribute to the group agent in two important ways (List & Pettit, 2011, pp. 34-36, 144, 164, 168; Pettit, 2007, p. 111). First by either explicitly (voting) or implicitly authorizing the active members to act in their name. Passive members could choose to stop authorizing the enactors by withdrawing their support or by calling for new leadership or other enactors. Any member could also try to reform the group by filing a complaint about an active member or whistleblowing to a third party in the case of illegal activities. Second, passive members contribute to the existence of the group. They could choose to leave, bringing an end to the group.

Therefore, we can conclude that all members of a group agent, both the active and the passive, have at least some control or influence on the mind and actions of the corporation. First through

their formal or informal contribution to the aggregated function. Second, through their explicit or implicit authorization of certain enactors. Because of these reasons, members are in control of the group.

But List and Pettit (2011, pp. 162-163) also claim that the group itself is in control of her mind and actions. But is it possible that both the group and the members are in control simultaneously? List and Pettit claim it is. How? Based on the collectively formed group attitudes, the group will form certain intentions that will result in group actions. And to execute these actions, the group will appoint employees (the enactors). Therefore, the group is in control of 'programming' the aggregated function and appointing members to execute specific 'programs'. But of course, the enactors themselves are still in control of whether they choose to perform these tasks or not.

With these remarks on control in place, I have shown how group agents can fulfil all three desiderate for moral group agency. Next, I want to look at what this means for the moral responsibility of group members and group agents.

3.7 Holding all members responsible

We can now move to central normative claim of List and Pettit regarding collective (corporate) responsibility. The claim is that we are justified in holding all members of group agents - like corporations - responsible for the harmful acts that are performed in their name, even when we are unable to hold individual members responsible (List & Pettit, 2011, pp. 159, 165-167).

List and Pettit (2011, pp. 158-163) have supported this claim by showing that group agents like corporations can fulfil the two conditions for moral responsibility. First because group agents can have autonomous minds that can form intentions or group attitudes. Second, because group agents can have the control to act based on these intentions through the members.

Their next step is to argue that we are justified in distributing this responsibility among all the individual members. They supported this point, by first showing that group acts are the collective product of the attitudes and preferences of all the members through the aggregated function (List & Pettit, 2011, pp. 60-78, 92-103). The members collectively programmed the corporation, meaning the aggregated function, in such a way that certain enactors were ordered to execute the actions of the corporation and can hold all the members collectively responsible for that as well (List & Pettit, 2011, pp. 162-163).

Second, by arguing that because members of corporations choose to remain members and thereby jointly enable the continued existence of the corporation (List & Pettit, 2011, pp. 34-35). If it would be impossible for members to leave, for example in dictatorially run nation states, this might lead us to acquit them of their responsibility. But members of corporations can, in principle, leave the corporation by simply quitting their job. And this makes both active and passive members complicit and partly responsible for all corporate acts. Both arguments justify the claim that members of a group agent can be held morally responsible for corporate acts by virtue of them being members.

It is important to add that collective responsibility does not exclude individual responsibility of enactors. But it could be the that there is no member of the corporation that both intended the act and had sufficient control. Whereas in the status quo, this means that we would be left with a collective responsibility gap, with the new account of List and Pettit we will be justified in holding the entire group morally responsible for the programming of the act. And this closes the moral collective responsibility gap.

List and Pettit (2011, p. 157) additionally point out that their account might also justify holding members criminally responsible. A main cause of responsibility gaps for corporations in criminal law in the status quo, is the fact that corporate agents are considered artificial agents, that cannot act on their own nor can they have a (guilty) mind (Diamantis, 2019, pp. 12-16). But List and Pettit (2011) have shown that members can collectively construct a new agent with a mind of their own, which in turn could justify holding corporations more easily criminally responsible.

3.8 Summary

List and Pettit (2011) have defended a new position within the camp of group realism, that seems to be consistent with methodological individualism. Groups have minds of their own. They can form mental states, like intentions and beliefs, and have the control to act based on them. Therefore, they can fulfil the conditions for moral agency. Because of this, we can hold all members of a group morally responsible for the acts of the corporation in virtue of them being members, even when no individual employee can be found guilty of the act.

Chapter 4 - Publicly traded companies

The account of List and Pettit (2011) is focussed on the reality and responsibility of group agents. For this thesis, I have decided to limit my focus to a specific kind of group agent, namely publicly traded companies.

List and Pettit (2011, pp. 157, 168) claim that their account justifies holding all members of publicly traded companies (and other corporations) morally responsible when harmful acts are committed in their name. Pettit (2009, pp. 167-169, 171) made similar claims in his own earlier article. The central critique put forward by their opponents, and the one that I will choose to investigate in this thesis, is that publicly traded companies are not, and should not be organized in the manner that List and Pettit presume in their account. Therefore, in this third chapter, I will describe what business firms and publicly traded companies are and how they operate.

4.1 What are firms?

Firms are business organizations that sell goods or services to make profit. Different kinds of firms exist, each with their own advantages and disadvantages. It is common to make a distinction between unincorporated and incorporated firms (The Harvard Business Review, 2018, pp. 99, 382).

4.2 Unincorporated: Sole proprietorship & Partnership

Unincorporated firms do not exist as separate legal entities from their owners. When the owner acts in the name of the firm, he or she therefore legally acts in their own name. If the firm goes bankrupt or owes debts, creditors can sue the owner personally for compensation. In other words: As the (co-)owner of an unincorporated firm your private capital is at risk. If all the owners of the firm would pass away or would go bankrupt, the firm would in principle cease to exist as well. Examples of unincorporated firms are sole proprietorships or partnerships (The Harvard Business Review, 2018, p. 76).

4.3 Incorporated: Corporations

Incorporated firms, also called corporations, do exist as separate legal entities from their owners (Folsom, 2004, pp. 99-100). Like a newborn child, a corporation is recognized and incorporated

by a state as if it were a person. It is therefore useful to make a distinction between 'natural' persons, meaning human beings and, 'legal' persons, meaning incorporated firms and organizations. When a firm becomes a corporation, this has two important implications. First, corporations enjoy similar legal rights and duties as natural persons. Second, their members and owners are protected by limited liability (The Harvard Business Review, 2018, pp. 99-100; Folsom, 2004, pp. 99-100, 279-280).

4.3 a) Rights and duties

Just like any natural person, a corporation has legal rights and duties (The Harvard Business Review, 2018, p. 134). Corporations have the right to: own property, enter into contracts, hire employees, free speech, sue other persons and to be sued. Corporations obviously need (at least certain) rights, such as the right to hire employees and own capital, in order to be able to function as a legal person (The Harvard Business Review, 2018, p. 70).

4.3 b) Limited Liability

The private property of owners of a corporation is protected due to limited liability. This means that in the case a corporation goes bankrupt and leaves certain debts, creditors have no legal grounds for demanding a compensation from the private funds of the owners (The Harvard Business Review, 2018, pp. 99-100; Folsom, 2004, pp. 99-100, 279-280). The owners can therefore maximally lose the total sum they invested to acquire the shares, plus their potentially added value (The Harvard Business Review, 2018, pp. 99-100).

It is important to add that stockholders and other members of a corporation are not protected by limited liability in all situations. When an act is performed that is punishable under law, the corporation can be sued by citizens or the state and found guilty. The state can sue corporations under both civil and criminal law (Nanda, 2010, pp. 605-608). But whereas under criminal law, the general burden of proof and that with regards to mens rea is higher, this is considerably lower under civil law (Khanna, 1996, p. 1512). It is therefore easier to hold a corporation legally responsible under civil law.

If a corporation is convicted under civil law, the legal person will be forced to financially compensate the claimant (Van Den Brink, 2009, p. 130). In the case a corporation is convicted for a criminal act such as fraud, both the guilty individual members as the legal person can be

punished and persecuted (Nanda, 2010, pp. 605-608). To hold members individually criminally responsible, judges have the power to 'pierce the corporate veil' and nullify limited liability temporarily (Gelb, 1982, pp. 1-2).

4.4 Publicly traded company

Publicly traded companies (also called C-corporations in the United States) are corporations where the stocks or shares of the company can be publicly acquired and traded on international stock markets (Harvard Business Review, 2018, pp. 70-72). This setup allows corporations to attract investors from the general public. Investors acquire a percentage of the shares of the company and become co-owners. The collected capital is reinvested by the corporation to increase its profits through expanding and improving their business activities. Shareholders receive a percentage of the profit, which is called a dividend and their shares can increase in value. Shareholders of a publicly traded company are also personally protected by limited liability.

4.5 Modern publicly traded companies and why they are valuable for society

Because current publicly traded companies combine limited liability with access to a large group of potential investors through international stock markets, they have become some of the most powerful organizations in the world. Examples are BP, Shell, Volkswagen, and Monsanto.

Publicly traded companies are not only valuable for their owners and employees but also for society at large. They contribute immensely to economic growth, welfare, standard of living, the job market, investments and technological innovations. In the US, two-thirds of the total revenue that businesses generate is generated by corporations, while only five percent of all firms are corporations (Lundeen, 2014). This makes them "the central engines of economic and material gain" (Diamantis, 2019, p. 32). It is likely that the economic ascendance of the United States in the 20th century is largely due to the corporate form (Micklethwait & Wooldridge, 2003, pp. 59, 65-78). According to the Centraal Bureau voor de Statistiek (CBS, 2018, pp. 11-28), in the Netherlands, multinational corporations, which are just 1,4 percent of all business firms, contribute around 30 percent of the GDP. And 41 percent of the total investments in the Netherlands on research and development (R&D) is contributed by multinational corporations, which means they spend an equal amount on R&D and innovation as the Dutch government (CBS, 2018, pp. 28-32).

All these economic gains can easily be framed as unimportant or as only in the interest of a small group of greedy capitalists. But there is a clear consensus among economists that economic growth has benefited and still benefits society at large on multiple fronts. Economic growth increases happiness and quality of life and decreases poverty (Wilkinson, 2007, pp. 28-33).

4.6 How do public companies operate?

Publicly traded companies consist of four cooperating groups:

a) **Shareholders**: The owners of the company. Shareholders can vote at least once or twice a year on big policy decisions and elect a Board of Directors (Folsom, 2004, pp. 420-421).

b) **Board of Directors (B of D)**: Represent the interests of the shareholders by setting out broad policy and strategy. They also supervise management (Harvard Business Review, 2018, p. 70; Folsom, 2004, p. 33).

c) **Management**: The CEO, CFO and higher management of the company. Responsible for the daily business operations and supervise employees (Folsom, 2004, pp. 62-63, 287).

d) **Employees**: Perform the daily business operations under the supervision and directives of Management (Folsom, 2004, pp. 287). Within some textbooks, employees are not counted as a separate group within the corporation but included under Management. This is because both Management and Employees are hired by the shareholders to govern the corporation on their behalf. But management has substantially more influence on corporate policy in comparison with the rest of the employees. Because this fact will be important for my analysis later, I choose to consider employees as a separate group.

4.7 What is the organizational structure of a public company?

Corporations are organized according to the principle of division of labour, which was described by Adam Smith in his ‘An Inquiry into the Nature and Causes of the Wealth of Nations’ (Smith & Cannan, 1776/2003, Book 1). The idea is to separate tasks in order that employees can specialize and become more efficient and effective in executing their task.

Division of labour is impossible without some structure and division of responsibility. Therefore, public companies organize their employees hierarchically, which means that they

are positioned in a vertical relation with superiors and subordinates. Superiors delegate tasks and part of the responsibility for their execution to their subordinates. Subordinates are monitored by their superiors, but superiors often remain at least partly accountable for their performance.

Flat organizational structures are an alternative to hierarchical organisations, wherein employees cooperate as equals (Folsom, 2004, p. 307). But no large public companies are organized completely flat. At most, some departments within the corporation are, but these will always be embedded in an overarching hierarchical structure (Folsom, 2004, pp. 33, 62-63, 287, 307, 420-421).

4.8 Why do I focus on public companies in this thesis?

I have two reasons for my choice to focus on public companies. First, public companies are the most powerful kind of business firms. Because of this, they are responsible for great benefits and immense harms to society.

What kind of harms do they cause? Corporations in general in the United States commit fraud on such an immense scale that some estimates put the annual costs of 'white-collar crime', like "false claims, mail and wire fraud, securities fraud, money laundering, and tax fraud" (Diamantis, 2019, p. 3), at half a trillion dollars (Huff, Desilets & Kane, 2010, pp. 10-12). This is equal to the GDP of Sweden (Central Intelligence Agency, 2019) and twenty times the total economic costs of every other sort of crime, for example murder (Diamantis, 2019, p. 4; McCollister, French, & Fang, 2010, p. 21).

Publicly traded companies, like BP, Shell, Volkswagen and Monsanto, were all charged or accused of committing criminal offences (Unites States Environmental Protection Agency, 2013; Chapman, 2019; Gardner, 2019; Reuters, 2018). BP and Shell are said to accelerate climate change and cause environmental pollution (Taylor & Watts, 2019). BP even caused a natural disaster thereby causing the largest marine oil spill in history (Pallardy, 2019). Several corporations hire lobbyists to obstruct policy changes aimed at decreasing the consumption of fossil fuels (Center for Responsive Politics, 2019; Laville, 2019). Shell has been sued for criminal behaviour in countries where they harvest their oil (Business & Human Rights Resource Centre, 2019). In some lawsuits they are even connected to bribery or collusion with warlords (Amunwa, 2012). Finally, some corporate acts due to negligence can even cause deaths, like in the horrible shipwreck of the Herald of Free Enterprise, for which no individual

employee could be held criminally responsible, although the judge did point out that there was a "disease of sloppiness" and negligence at every level of the corporation's hierarchy (The Great Britain Department of Transport, 1987, p. 14)

The problem I want to address in this thesis is that publicly traded corporations are seemingly not properly punished and held responsible for these harmful acts. Their legal personhood, limited liability, financial wealth, and complex organisational structure makes it difficult to hold specific employees responsible. Public companies therefore leave us with some of the most pressing gaps in responsibility. In the remainder of this thesis, I will discuss whether the new account of List and Pettit (2011) can and should be used to hold all members of publicly traded companies morally and criminally responsible for their actions.

Chapter 5 - Criticism of List and Pettit

In 2007 Pettit published an article called *Responsibility Incorporated*, wherein he defended his basic argument for corporate responsibility that would later become the foundation for his account on group agency with List. Several philosophers criticized this article in the Netherlands Journal of Legal Philosophy in 2009 (Van Den Brink, 2009; Den Hartogh, 2009; Roermund & Vranken, 2009). In this chapter, I will address their major points of criticism and in addition my own analysis on select parts.

There were three main points of criticism:

1) Their use of social choice theory as a way of simulating corporate decision-making.

2) If it is fair to hold all employees morally responsible for corporate acts.

3) The applicability of the account with regards to reforms in corporate criminal liability.

5.1 Social choice theory and corporate decision making

Bert van den Brink (2009, pp. 132-133) argues that the account of List and Pettit (2011) maps on to very egalitarian organizations, wherein every member can vote on the aggregated function, but not on to hierarchical organizations. This is problematic, since publicly traded companies and corporations are hierarchically organized.

To be more specific: In publicly traded companies, only certain groups have substantial influence on corporate policy or, in the words of List and Pettit (2011) on the aggregated function, through voting. These are stockholders, the board, and management. The employees primarily act by order of these groups under a clear hierarchical structure consisting of superiors and superordinates. This sets up a chain of responsibility (or chain of command principle) in which superiors are made responsible for the execution of certain tasks, which they in turn distribute among their superordinates (Folsom, 2004. p. 60; Baier, 1972, pp. 55-61). And by distributing tasks, they also delegate the responsibility for their fulfilment.

In other words: Employees exchange their services for money and are expected to turn themselves into an instrument for the corporation. And the vast majority are not hired to change, vote on or form broad corporate policy, but to act it out. So, but whereas List and Pettit claim that every employee provides input into the aggregated function of the corporation, Hess (2012, p. 166) points out that the vast majority does so merely through acting, not through voting.

But are acting and voting both valid inputs into the aggregated function? And what are the consequences of this observation with regards to the claims of List and Pettit (2011) with regards to group realism and corporate moral responsibility?

Unfortunately, List and Pettit (2011) do not address this problem explicitly. Therefore, I will try to defend them on this point by adding my own analysis. We could defend List and Pettit by claiming that members express their attitudes sufficiently through acting and therefore do not need to be able to vote. All members provide equal input on the aggregated function, some through acting and others through voting. Therefore, their claims on group realism and corporate moral responsibility are still valid.

But I want to rebut this claim. Voting and acting are clearly not equal forms of providing input. I argue that the rationale of voting is that it allows people to express their honest and informed preferences on some matter. And I define honest and informed in that they are at least able to perform research and deliberate on the matter beforehand, without being externally pressured by some authority to vote in a specific way. I argue that only if these conditions are in place, are we justified in claiming that the vote is truly reflective of the attitudes of the voter. Shareholders, the Board of Directors and management are able to vote and act under such conditions. But this is not the case for the majority of the employees. If we would have to argue that actions are equally valid input as votes are, we would have to show that the actions of employees can be performed under the same conditions that we would demand for voting. But this seems very difficult for two reasons.

First, the hierarchical relation obstructs their acts from being a true and honest representation of their personal attitudes. Employees operate under clear directions of their superiors and will most likely face repercussions if they deviate from their instructions. Superiors decide who will be promoted and who will be fired. Employees will therefore experience pressure to conform to the requests of their superiors. Because of this, acts of employees will often not be the result of thorough deliberation and research and therefore not a reflection of their informed opinion.

Second, I want to add another point with regards to efficiency and division of labour. Employees working for multinational corporations are expected to perform to the highest standards and workload is high. They do not have sufficient time, nor are they expected to spend their time on questioning all the tasks they are required to perform. For efficiency's sake they should trust the judgment of their superiors, because if they don't, the organization could not function.

Because of these two reasons, the acts of employees are not a valid representation of their attitudes. And this is problematic, since the input into the aggregated function is supposed to be representative of the attitudes of all the members, not just some influential groups.

Therefore, we can conclude that attitude aggregation according to social choice theory cannot be used in the way List and Pettit (2011, pp. 42-58) suggest to simulate the decision-making procedures of real corporations. The aggregated function is therefore arguably not 'supervenient' on all the members as List and Pettit (2011, pp. 64-78) claimed, only on some influential groups within the corporation. If true, this would severely weaken the claim of List and Pettit (2011, p. 4) on group realism. The group mind would only reflect a small influential group of leaders within the corporation, meaning we seem to have ended up closer to a 'thin' or 'redundant' group realism in the words of List and Pettit (2011, p. 10).

5.2 Collective corporate responsibility: unfair or redundant

Govert den Hartogh (2009) argues that the account of collective corporate responsibility of List and Pettit (2011) is either *unfair* or *redundant*.

Unfair, because contrary to what List and Pettit argue, not all employees contribute equally to the aggregated function. Only some members can vote but most merely act and acting cannot be equated with voting. Therefore, it would be unfair according to Den Hartogh (2009, p. 119) to hold all employees responsible for corporate acts.

This point can be illustrated by referring to the shipwreck of the Herald of Free Enterprise, an example that Pettit used to argue for his case. As pointed out by Van Den Brink (2009, p. 132), the deckhands of the Herald of Free Enterprise are a clear example of a group of employees that had little to no influence on the disaster that occurred on their ship. They lacked the authority and control to change the specific policy they had to execute that lead to the disaster.

I want to strengthen this point with some additional analysis of my own. I argue that we should assume that these employees most likely lacked access to the relevant information, did not receive the required educational training, nor had the required cognitive capacities to form a well-reasoned and informed opinion on the complex policy decisions that led to the disaster. This simply was not and should not have been their responsibility. In other words: The deckhands lacked both judgmental capacity and relevant control and their contribution to the disaster should therefore be seen as an accident, not as a reflection of their moral character.

Therefore, to punish or blame them would be unfair, unnecessary for deterrence and harmful for our reactive attitudes, as I explained in chapter 1.

Now I want to apply this reasoning to the situation of employees in publicly traded companies. When one or a few employees of a corporation perform a harmful act somewhere in the world, the majority of their colleagues will be just as unaware and unrelated to it as the deckhands of the Herald of Free Enterprise were with regards to the shipwreck. It therefore seems that the majority of members of a corporation can at the most be held causally responsible for corporate acts, since they might have contributed to it in some small way. But causal responsibility is insufficient for moral responsibility. In other words: If we want to hold employees morally responsible for corporate acts, we would still need to prove that they had blameworthy mental states, like intent, negligence or recklessness, while contributing to it. And this seems very unlikely to be the case, considering the way corporations are organized. Therefore, to claim that these deckhands, and similarly situated employees in other corporations, can be held individually morally responsible for all corporation acts, is clearly unfair.

Den Hartogh (2009, pp. 119-120) also argues that in cases wherein it is justifiable to hold all members responsible, the account of List and Pettit on corporate responsibility would be redundant. Why? Because it seems that List and Pettit are only be able to justify their claim on corporate responsibility by showing that all members had in some way an equal vote or influence on the corporate act. If this would be the case however, we would be justified in holding all members morally responsible based merely on their joint intention. In these cases, accounts on joint intention would be sufficient to hold all the members morally responsible. Therefore, we can conclude that the account of List and Pettit is either unfair or redundant.

5.3 Criminal law

As explained in the introduction, it is difficult to convict corporations under criminal law, because they seemingly cannot fulfil the conditions of actus rea and mens rea. But List and Pettit (2011, p. 157) claim that their account does prove that corporations can have minds of their own and indicates therefore that we can hold all the members collectively criminally responsible for corporate acts. Pettit (2007, p. 95) has made similar claims in his earlier article.

Unfortunately, List and Pettit (2011, p. 157) chose not to provide an analysis on how their account exactly could justify any actual changes in our legal system. And this has made their account vulnerable for criticism. The criticism that was brought to the fore in the Netherlands

Journal of Legal Philosophy in 2009 focuses on two points. First, the practical and ethical considerations related to the distribution of punishment under criminal law. Second, on the fact that it is already possible to sue a corporation under civil law and that this is sufficient (Van Den Brink, 2009, p. 130).

I will start with the point on criminal law, but first need to mention a more general point on legal responsibility by Van Roermund and Vranken (2009). They argue that the issue of legal responsibility cannot be separated from practical considerations on accountability and punishment. In other words: If we are practically unable to legally punish an agent or if it would do society more harm than good, we should not hold this agent responsible under law to begin with (Van Roermund & Vranken, 2009, p. 139).

It is argued under the name of the *preventative* view, that the main function of criminal law is to protect citizens and society from criminal behaviour (Edwards, 2018, §3.). It does so through punishing perpetrators, compensating victims, and deterrence (Edwards, 2018, §2-3). The main forms of punishment are fines and imprisonment. Now let us suppose a real situation in which a corporation performs a criminal act, but we are unable to hold individual members criminally responsible for it. What would it mean to hold all the group members criminally responsible based on the account of List and Pettit? It is impossible to put the corporation, as a legal person, in jail. It seems therefore that we are left with three options: First, we could put all the members in jail. Second, we could fine all the members individually (piercing the corporate veil). Third, we could punish the legal person, for example, with a fine. Before discussing these three options in more detail, I want to make a remark on the moral responsibility of the members and on the rationale behind legal punishment.

We have already argued that not all group members are morally responsible for all corporate acts. By punishing all the members, we will surely punish the guilty members (assuming there really were members who performed illegal or unethical behaviour but got away with it). But simultaneously we would be punishing innocent members as well. And to punish the innocent is not only undesirable with regards to the suffering it inflicts on them, but also arguably undermines the effectiveness of the criminal law system. To understand why, I will have to explain the rationale behind punishment.

Punishing causes suffering as a retaliation for unwanted and harmful behaviour. This creates an incentive for people to refrain from these kinds of behaviour in the future. If we would however punish the guilty and the innocent equally as would be required under corporate criminal

liability, acting in the right (or neutral) manner does not provide any benefit and acting wrongly does not cause any relative harm. As a result, the incentive for potential wrongdoers in the future to refrain from harmful acts is decreased, because the guilty party will know that their punishment will be distributed among a large group (of innocent colleagues). We thereby inadvertently create incentives for members to actually perform harmful acts, because they will be able to hide behind the group or 'punished anyway'. A similar argument is brought to the fore by Van Roermund and Vranken (2009, p. 143) with regards to corporate responsibility. They argue that trading individual responsibility for corporate responsibility will allow and incentivize members to hide behind the corporation. All in all, we might therefore set up a system that produces more harmful, not less harmful behaviour.

With these two remarks in place, I want to return to three options with regards to corporate criminal punishment. The first two options, putting all members in jail or fining them, seems clearly undesirable assuming that we would also punish arguable large groups of innocent people. On top of this, it would also undermine the effectiveness of legal punishment in general due to reasons just discussed. The third option, punishing the legal person, therefore seems to be the only appropriate one. But this brings us to two problems.

First of all, Den Hartogh (2009, p. 120) points out that a criminal fine for the legal person will most likely be viewed by members of the corporation as a simple 'note in the books' instead of true punishment. It therefore does not seem to be a very effective means for criminal punishment and retribution. Second, it is already possible to fine the legal person under civil law and, more importantly, it is easier to do so (Khanna, 1996; Van Den Brink, 2009, p. 130). And as Den Hartogh (2009, p. 119) and Velaszquez (1983, p. 12) point out, fining can already in some sense be considered a 'punishment' of all the members of a corporation, because it indirectly negatively affects all of them by lowering total revenue, wages, bonuses and stock value. Of course, the same could be said of fining corporations under criminal law. But since it is easier to convict a corporation under civil law, which can be done both by citizens and governments, suing corporations under civil law seems to be superior to criminal law and therefore sufficient (Van Den Brink, 2009, p. 130; Khanna, 1996). Finally, if we do want to sue a corporation under criminal law, we should target those groups within the corporation that actually have substantial influence on corporate policy, namely the Shareholders, Board of Directors and Management. Even though they might also have been unaware of the illegal or harmful activity, they at least were and are in control to reform the corporation in such a way that similar harmful activities will not occur in the future.

5.4 Summary

Social choice theory cannot be used to simulate corporate decision-making, as only some influential groups within the corporation have substantial influence and control on the aggregated function. Therefore, it is unfair to hold all employees morally responsible for corporate acts, and in cases where we can do so, the account of List and Pettit (2011) is redundant. Punishing all members, and thereby also innocent members under criminal law is unfair, undermines the effectiveness of our legal system and might incentivize harmful behaviour rather than deter it. Finally, there are better alternatives to punish corporate actors, such as suing influential guilty members under criminal law individually or by suing the legal person under civil law.

Chapter 6 - In defence of List and Pettit

In this chapter, I address the answers of List and Pettit (2011) for the counterarguments I discussed in the previous chapter. They defend their central claim on collective corporate responsibility by making three main points:

1) Corporations can and should be held morally responsible based on the argument of 'responsibilization'.

2) All members in hierarchical organization can be sufficiently in control of the group mind and group actions because of:

   a) Expertise-based aggregated functions.

   b) Authorization and joint intention.

3) Their account is therefore applicable for reforming criminal law.

6.1 Responsibilization

All points of criticism I discussed in the previous chapter seem to be based on the fact that the decision-making procedure and organizational structure of real corporations do not conform to the model that List and Pettit (2011) use. And therefore, their conclusions on corporate responsibility are invalid.

List and Pettit counter this point with the claim that we can and should punish all members of a corporation, even when the corporation does not, or more specifically, does not yet conform to their model. They argue that we can turn potential moral agents into actual moral agents, and that this can and should be done by holding them responsible (List & Pettit, 2011, pp. 157-164). Pettit (2007, p. 96) has made similar claims in his own earlier article. This argument, which they borrow from Garland (2001), is called *responsibilization*; Garland (2001, pp. 124-127) describes responsibilization as a practice through which governments can regulate criminal behaviour of organizations.

Pettit (2007, p. 96) however connects it to the practice through which parents and other adults transform their children into moral agents. Children often lack the required cognitive and judgmental capacities to be held morally responsible. They become moral agents through education, upbringing and supervision. How do we responsibilize children according to Pettit? By giving them freedom and holding them responsible for their actions (Pettit, 2007, p. 96). By

doing so, we allow children to experience and learn what it means to be morally responsible 'on the job'.

Why would responsibilization of children be desirable? Moral agents are more capable of self-correcting and compensating their harmful behaviour. It is also in the interests of children themselves, as being a moral agent means that you can be trusted with responsibilities and this seems to be a necessary condition in order to flourish and function in our society.

List and Pettit (2011, pp. 157-164) embed this argument into their account. They take it one step further by claiming that we should responsibilize *all* potential moral actors (List & Pettit, 2011, p. 169). Pettit (2007, pp. 5-6, 116-117) has made similar claims in his earlier article. And because it is, at least theoretically, possible for corporations to be moral actors if they adopt a certain organizational structure, corporations should be considered potential moral agents (List & Pettit, 2011, pp. 59-78, 81-150). By holding all members of corporations morally responsible for their acts we will incentivize them to reorganize the corporation from the inside in order that they become moral agents (List & Pettit, 2011, p. 159). In practice, this will mean that members would start to demand more influence and control on corporate policies and actions, because they will be held responsible or punished when things go wrong (List & Pettit, 2011, pp. 168-169). Because of this, they will transform themselves into a moral agent that can be held collectively morally responsible, since they all have influence on corporate policy. And because it would be better for society to create more moral agents for the reasons for the same reasons I just mentioned, the responsibilization of corporations would be both desirable and justified.

Why is this argument a fundamental rebuttal of the criticism that I discussed so far? Because, arguably, this would make the actual organizational structure of corporations maintaining the status quo irrelevant with regards to the validity of their claims on corporate responsibility. We would not only be justified but also obligated to hold all the members of all existing corporations morally responsible for corporate acts, regardless of their actual corporate structure.

6.2 Member control in hierarchical organisations

List and Pettit (2011, pp. 34-36, 162-169) argue that their account on corporate responsibility is compatible with hierarchical organisations. Pettit (2009, pp. 155-169) also argued for this in a defence of the criticism he received on his first article in 2007.

How do they support their claim? First, because hierarchical organisations can adopt an expertise-based aggregated function which allows all members to have sufficient control on the group attitudes and acts (List & Pettit, 2011, pp. 71, 95-97). Second, because both active and passive members have sufficient control on the group through the authorization of enactors and through their joint intention to constitute the group agent (List & Pettit, 2011, pp. 34-36, 144, 164, 168; Pettit, 2007, p. 111). I will explain these two points next.

6.2a Expertise based aggregated functions

As described in chapter 3, expertise-based aggregated functions allow every member to be a 'specialist' on at least one or some group attitudes. This means that we can maintain that every member has a substantial amount of control on one or some group attitudes and acts. Additionally, List and Pettit (2011, pp. 34-36, 162-169) argue that members authorize others to be specialists on the remaining group attitudes. Therefore, we can hold all members responsible for all group acts. I will first focus on expertise based aggregated functions and address the argument on authorization next.

List and Pettit (2011, p. 130) shift their focus when discussing expertise-based functions from corporations to nation states. They start with the seemingly self-evident assumption that citizens in nation states need to have protected private spheres, like a home, where they are in full control without being intruded upon by others (List & Pettit, 2011, pp. 148-149). We therefore task the state with the protection of these private spheres. However, the state can still decide to interfere in someone's private sphere, for example to make an arrest due to a criminal conviction. In this sense, a private sphere is never completely private. But List and Pettit (2011, pp. 148-149) argue that this is not a problem, if citizens have the means to propose policy changes and have the right to vote on them. If these mechanisms are in place, we can claim that the members are not oppressed by their government, but indirectly govern themselves.

List and Pettit (2011, p. 136) compare this form of privacy in nation states with the idea of an expert-based aggregated function, since having the right to privacy in your home can be equated with being granted the authority to decide certain group attitudes.

They seem to use this argument to justify two claims with regards to members of corporations: First they should also be granted authority in a private sphere within the corporation. Second, they should also have the right to propose policy changes and have the right to vote on them

(List & Pettit, 2001, pp. 129-130, 159). I will focus on the connection of this argument to corporations next.

Unfortunately, List and Pettit (2011, pp. 137-138) themselves point out that we encounter problems when we hold on to the condition that every member should have the right over their own sphere of autonomy in a strict sense. Why? Because in practice there exists no aggregated function that can logically allow each member their own sphere of propositions over which they have complete authority. In order for that to be possible, we would need to construct and distribute completely, logically independent propositions to group members. Problems in the real world however do not consist of isolated propositions but of complicated and subtly interwoven webs of interconnected aspects. This means that in practice, the propositions that are distributed to one member will almost always be logically connected to propositions of other members. And this means that members cannot have complete authority on those propositions.

For example: If an employee is granted authority to execute a certain task completely in accordance with their own preferences, this will always have some effect on their team members (List & Pettit, 2011, pp. 137-138). And because people have different preferences, it is very likely that some preferences will conflict with the preferences of others. Therefore, it is impossible to allow every member complete control on certain group attitudes. But if this would be true, it would contradict the claim that all members can have the necessary control and authority on at least some parts of the aggregated function. And without control, we lose the justification to hold them morally responsible.

List and Pettit (2011, pp. 134, 137-138) acknowledge that this poses as a serious problem for their account but come up with a potential solution: Members need to respect the authority of other members on certain group attitudes. They can do so by refraining from voting or exerting influence on those propositions that are logically related to the private propositions of others (List & Pettit, 2011, pp. 142-143). Since this solution does not resolve the logical problem of interconnectedness of propositions, it is impossible to capture it in a clear rule. Therefore, List and Pettit (2011, pp. 142-143) frame it is an informal solution to the problem, that can be grounded in respect and reticence.

6.2b Authorization and joint intention

A counterargument against the claim of List and Pettit (2011) on collective corporate responsibility was that for most corporate offences, the majority of employees were not

involved and therefore innocent. This group of supposedly innocent employees are also called passive collaborators or onlookers by List and Pettit (2011, p. 168). Pettit (2009, pp. 167-169) also used this distinctions in his earlier article to support his claims. List and Pettit (2011, p. 168) however maintain that these passive members are (partly) guilty and should also be held morally responsible for corporate acts.

First, because they either explicitly or implicitly authorize active members (List & Pettit, 2011, pp. 34-36, 144, 164, 168; Pettit, 2007, p. 111). Therefore, they are morally responsible for the acts that these active members commit in their name. Second, passive members still maintain the existence of the corporation by jointly intending to remain members (List & Pettit, pp. 34-35, 168; Pettit, 2009, pp. 167-169). They have the possibility to leave by resigning, but choose to remain members, knowing that the corporation carried out harmful acts in the past. Therefore, they can be held responsible for these acts and similar acts in the future.

To conclude these two points: List and Pettit claim that they have proven that group agents can be organized hierarchically according to an expert-based function. Additionally, they argued that every member should be granted a private sphere within the corporation, meaning having the authority on certain group attitudes. Therefore, List and Pettit have proven that members of corporations already are, or should be given, sufficient control on at least some parts of the aggregated function. And because members have substantial influence on the aggregated function, they thereby contribute substantially to the collective mental states that lead to corporate acts. And it is for this contribution they can be held collectively morally responsible. Finally, passive members are also responsible for corporate acts, because they choose to remain members, and thereby facilitate and authorize other members to act in their name.

6.3 Criminal law

Now I will address the points of criticism regarding the applicability of the account of List and Pettit (2011) on our legal system. The first point was that it would be unfair to punish all members individually under criminal law, because the majority of members are innocent. Second, it was argued that it would be better to sue corporations under civil law.

I will defend List and Pettit, by first pointing to a distinction between two kinds of responsibility. Next, I will address why List and Pettit do think it is fair to punish all the members under criminal law. I will end with the issue regarding civil law.

6.3a Holding morally responsible

List and Pettit (2011, p. 157) defend their account by first pointing to the distinction between moral responsibility and legal accountability. Pettit (2009, p. 171) defended his account in a similar way in his earlier article.

They claim that their focus is on moral responsibility, which concerns the question of whether an agent was in fact retrospectively morally responsible for performing an act and therefore deserves to be held morally responsible. Therefore, the counterarguments regarding the practicalities of actually legally punishing corporations, are irrelevant for the validity of their account. In other words: List and Pettit's main claim is they have justified that we can hold all members of corporations morally responsible and therefore are allowed to morally condemn them through blaming and naming and shaming.

6.3b Why criminal punishment is fair

Further, if we accept the points of rebuttal of List and Pettit (2011) that I addressed in this chapter, their account still supports the claim that all members are either in fact retrospectively morally responsible for all corporate acts or should be held prospectively morally responsible based on the argument of responsibilization. As said, this means we are at least justified in expressing moral condemnation towards all members and arguable also, if the practicalities allow it, to punish them under criminal law. And in reaction to the point made by Den Hartogh (2009, p. 120) that fining a corporation might be seen as a mere debit entry and therefore is not a suitable form of criminal punishment, Pettit (2009, pp. 173-174) responds by pointing out that natural persons can also regard the fine as a simple debit entry. So, it is not clear why this would be a reason not to fine a corporation.

6.3c Criminal law versus civil law

List and Pettit (2011, p. 157) do not address the criticism that convicting corporations under criminal law is unnecessary, because civil law would be a better alternative. This is very unfortunate. Without a justification for their preference for criminal law, it becomes questionable if their account is contributing to the best possible solution for the problem they want to address, which were collective responsibility gaps.

Therefore, I choose to defend them on this issue by making two points. First, it is argued that a conviction under criminal law inflicts a stronger stigma on the perpetrator because the convicted is deemed a criminal by the state (Khanna, 1996, p. 1492). This will harm the reputation of the corporation and its members in addition to the fine, which in turn might provide an additional incentive for members of the corporation to prevent similar acts from occurring in the future. Second, it is argued that the information-gathering powers that are at the states' disposal under criminal law are more elaborate and more enhanced (Khanna, 1996, pp. 1521-1522). Therefore, it is desirable to be better able to sue corporations under criminal law for complicated cases that require a more thorough investigation.

6.4 Summary

List and Pettit (2011) argue that their account on collective corporate responsibility is still valid. Their organizational model on aggregated functions is compatible with hierarchical organisations. And if corporations do not yet conform to their model, we can use their argument based on responsibilization to hold them responsible anyhow. Holding members morally (and legally, depending on the circumstances) responsible for corporate acts would therefore either be justified because the members were in fact morally responsible for the act or because they need to be responsibilized.

Chapter 7 - Final analysis

In this final chapter I will provide my final analysis on the most important issues that I have discussed so far. I will structure this chapter by giving answers to four questions that I deem to be the main points of contention in this debate:

1) Do corporations exist as separate moral agents?

2) Can we use the account of List and Pettit, while leaving aside their argument on responsibilization, to justify holding all members of corporations morally responsible in the status quo?

3) Should we responsibilize corporations?

4) Should we sue corporations predominantly under criminal or civil law?

7.1 The reality of group agents

What can we conclude on the metaphysical question regarding the reality of corporations as moral agents? I want to argue that the account of List and Pettit (2011) has shown that corporations can exist as real separate moral agents under a functionalist account of agency. Why? Because members of corporations can and in practice already do apply an informal aggregated function, which produces group attitudes and actions.

List and Pettit (2011) do need to concede that aggregated functions of corporations are not a reflection of the attitudes of all the members in a substantial way, but only causally or weakly, for three reasons:

First, because I have shown in chapter 4 that the input of most members of a corporation predominantly consists of actions instead of votes. And these actions are substantially less or not at all a reflection of their attitudes. Only a few groups within the corporation have substantial influence or voting power on the aggregated function: the shareholders, the board of directors and management. And therefore, the aggregated function is predominantly a reflection of their attitudes.

Second, because I believe that it is both impracticable and undesirable to grant every member of a corporation sufficient control on the aggregated function through attribution of a private sphere, which was an idea of List and Pettit (2011) that I addressed in chapter 6. I want to argue that the fact that propositions relating to real world problems are interrelated and will therefore

conflict, is exactly the reason why corporations need to be structured hierarchically. If we would implement the idea on responsibilization of List and Pettit (2011, pp. 157, 168-169, 193), members of corporations would most likely constantly end up in conflicts, perhaps without any, and certainly not a quick way to resolve them. Therefore, I want to conclude by saying that in order to prevent the corporation from becoming ungovernable, only a minority of influential groups should be given authority over the vast majority of group attitudes. And this exactly is the case in corporations the status quo. The fact that privacy for citizens is a necessary right in nation states, which is a group agent that cannot be easily or not at all left by their members, can therefore not be used to argue that corporations should organize themselves in a similar manner.

Third, although passive members might contribute to all corporate acts through joint intent or authorization in some remote and unconscious way, this does not by itself make the aggregated function a reflection of their attitudes. But I will rebut the argument of List and Pettit on the responsibility of passive members extensively in chapter 7 part 2 of this thesis.

Because of these three reasons, I conclude that the group mind and group acts are not a reflection of the attitudes of all the members in a substantial way. The group mind and actions are predominantly a product of three influential groups in the corporation. But this does not mean that the aggregated function is *only* a representation of the attitudes of these groups. As said, through acting, all the members at least cause, but sometimes also contribute content-wise to the aggregated function through their choices, by providing feedback to their superiors or by small-scale policy reforms. Therefore, the aggregated function can still be considered a collective product of all the members in a causal sense. I therefore conclude that we can maintain a strong group realism, in the sense that the group mind and all corporate acts are supervenient on *all* the members.

7.2 Moral responsibility for all members of corporations in the status quo

I will conclude that the account of List and Pettit (2011) on corporate responsibility cannot be used to justify holding all members of corporations responsible for corporate acts in the status quo. I will address their additional argument for this claim on responsibilization in chapter 7 part 3.

I am going to defend the claim that the majority of employees should not be held morally responsible for corporate acts. List and Pettit (2011, pp. 71, 95-97, 130, 148-149) substantiated

their claim on moral responsibility for all members, by making two points: First, by arguing that all members do have substantial influence on the aggregated function, which I already disproved in 7.1 in this thesis. Second, that even passive members have sufficient influence on the corporation through authorization and joint intention (List & Pettit, pp. 34-35, 168; Pettit, 2009, pp. 167-169).

I will rebut this second claim now, by making two interrelated points: First, that the difference between active versus passive members is not applicable to corporations. Second, that the majority of illegal or harmful corporate acts are performed in secret.

First, why is the distinction of List and Pettit (2011, p. 168) between active and passive members untenable with regards to corporations? Because it only seems to be applicable to members of other kinds of group agents, like church communities, where the majority of members are merely 'passive' visitors, while a minority consists of 'enacting' clergymen. But in corporations, every employee is getting paid in exchange for their services and every shareholder has the right to vote on corporate policy. Therefore, it seems that within the account of List and Pettit (2011), every member of a corporation seems to be an active member. This means we are unable to use this distinction in any way to subdivide members of corporations, which makes the concept useless.

We could still use the distinction with regards to the performance of specific harmful corporate acts, in the sense that some active members actually committed it, while the rest of the employees were not involved and therefore passive. But it does not follow that these passive members either actively or passively authorized the actions of active members. First, publicly traded companies are active all around the globe and consists of thousands of employees. Together they perform an immeasurable number of acts a day. The vast majority of passive members did not know these active members personally, neither had they any influence in them being hired or in them maintaining their position. Nor could they have had any knowledge of the acts that these members were about to perform or had any control on them. In other words: They could in no way have authorized these members to perform these harmful acts.

Especially, and this is my second point, when we consider the fact that most harmful acts are criminally prosecutable and therefore most likely performed in secret. This means that these acts are certainly not the result of some kind of policy or plan that was widely accessible to the passive members. In other words: If certain employees in another country break the law in secrecy, without an employee having known beforehand or being able to control their

behaviour, we cannot call this authorization in a meaningful sense. And this rebuts the argument of authorization.

Now, List and Pettit (2011) might respond by first pointing out that it is a known fact that corporations regularly break the law and commit immoral acts. Next, they could argue that because employees still choose to join or remain members of the corporation, they implicitly authorize or condone these harmful corporate actions, simply by virtue of being a member.

But I want to claim that this is unreasonable. If one chooses to join a harmful group agent like a criminal organization, knowing that their core business model involves breaking the law, one could claim that merely being a passive but still supportive member of such an organization is morally blameworthy, since you are knowingly contributing to its existence. But corporations cannot be equated with criminal organizations. Their core business models involve valuable and legal services to citizens, other corporations and governments all around the world. To choose to join a corporation by becoming an employee, therefore cannot be equated with the validation or authorization of some secretly performed harmful acts by others.

Of course, if an act that was committed in the name of the corporation that was the result of some formerly known corporate policy to which all members had access, this would change the situation. In these cases, members could be held morally responsible for either explicitly or implicitly authorizing these policies. But most corporate acts and especially not illegal acts, are not the result of an open and collectively accessible body of beliefs and intentions. Therefore, because these passive members lack the knowledge of and control on corporate acts and beliefs and intentions, I want to conclude they should not be held morally responsible for them. With this conclusion in mind, I want to bring four reasons that I described in chapter 1 to the fore why holding them morally responsible regardless would be harmful:

First, holding these members morally responsible would mean holding innocent people morally responsible and this is clearly unfair and undesirable. Second, because of this fact we would undermine the effectiveness and credibility of our reactive attitudes in general. Third, because passive members did not have any blameworthy mental states that led to the corporate act, like intent or negligence, these acts are not a reflection of their moral character. This means that adding additional punishment through blaming them and harming their reputation is unnecessary with regards to deterrence. Fourth, the stigma on members of corporations that will be the result of our moral condemnation, might scare away exactly those current and potential

employees who care a lot about ethics and morality and could transform corporate policy in desirable ways.

Because of these four reasons, I want to conclude that the account of List and Pettit (2011) on corporate responsibility cannot and should not be used to hold all members of publicly traded companies morally responsible.

7.3 Responsibilization

I will argue next that the argument of List and Pettit (2011, pp. 157, 168-169, 193) concerning the 'responsibilization' of corporate agents is unconvincing.

List and Pettit (2011, p. 157) base their argument on the responsibilization of corporations on a comparison with the responsibilization of children, without explicitly taking the differences into account. This, by definition, makes this argument myopic.

In response I want to formulate an embedded counterargument. I will start arguing for my claim by making three interrelated points: First, that responsibilization would require radical changes in corporate structures. Second, that these changes will make corporations completely ungovernable and ineffectual. Third, even if we accept that responsibilization would be possible, it would still not make all members morally responsible for corporate acts, which is seems to be its ultimate goal. Finally, I will conclude that, because I have already shown in chapter 4 that publicly traded companies contribute immensely to society and cause more harm than good in the status quo, responsibilization of corporations is undesirable. Before I explain these arguments, I want to make a general point on the implementation of responsibilization.

It seems obvious that for responsibilization to work, we need to incentivize members to change their behaviour. If we want employees to actually reform a corporation, we will therefore need to punish them in some way. But List and Pettit (2011, pp. 153-155) argue that they are not arguing for the justification of legal punishment per se but for reactive attitudes like blame. The problem with this is, is that it already happens in the status quo and that it does not work. So, if List and Pettit want to use the argument of responsibilization in a meaningful way, they need to incorporate some form of legal punishment, like fines, in it. List and Pettit (2011, p. 169) seem to be aware of this problem. And this adoption of some kind of legal punishment is what I will assume in developing my counter argument.

Now I will argue for the first point, that responsibilization would require radical changes in corporate structures. List and Pettit (2011, pp. 34-36, 130, 162-169) tried to defend that all members of hierarchically structured corporations can and already have sufficient control on corporate acts, meaning they can be held morally responsible. However, I have shown that this is not the status quo, especially for the majority of the passive members. Therefore, corporations would need to be radically reformed in order to justify the claim that every member can be held morally responsible for corporate acts. All members would need to be allowed substantial voting power or influence on more or less all the corporate attitudes and acts. In other words: they would need to radically shift from hierarchical to more or less complete flat organizations.

With this point in place, I can address the second point, which is that these changes will make corporations completely ungovernable and ineffectual. Implementing responsibilization would mean that the owners of the corporation, who pay employees to manage the corporation for them, would suddenly lose their authority because they would have to share it equally with all the members. But the owners hired the employees to perform specific services for them and it is their invested capital that is at stake when things go wrong. To grant employees an equal say would therefore not only be absurd and unfair towards the owners, but also make investing in corporations more risk full and less attractive. Additionally, as explained in 7.1, an organization without a hierarchical structure would become completely ungovernable, which would make it a less successful business organisation. And this seriously undermines the corporation's capability to attract investments, which as I described in chapter 4, was exactly what made them so successful and valuable in the first place.

Third, I want to claim that even if we would accept, *arguendo*, that responsibilization of corporations is possible, it would still not allow all members to be sufficiently in control of the corporation for them to be morally responsible. Why? Because as I explained in chapter 5, reforming corporate policy is extremely complicated and requires special skills, cognitive capabilities and information. List and Pettit (2011) underestimate the complexity of corporate decision making and simultaneously overestimate the capacities of employees. In other words: There is a reason that certain employees become the CEO and others become clerks. Clerks will, most likely, not have the cognitive capabilities nor the educational training to be able to form truly informed attitudes on complex corporate policy. But responsibilization will incentivize all the employees, meaning also those with a lower educational level and cognitive capacities, to demand influence on policy decisions.

Therefore, responsibilization, even if it would allow all members to gain control, will burden a large group of employees with responsibilities for which they lack the necessary competence and judgmental capacity. And therefore, it would be very questionable to frame this as if these members are in fact in control of the corporation. This in turn would make it unfair to hold them morally responsible for corporate acts.

To conclude: Because implementing responsibilization would mean the death of most corporations and because corporations in the status quo do society more good than harm, we should not responsibilize corporations. And even if responsibilization would be possible, it would not achieve what it aims to achieve, because members would not really be in control and therefore not really morally responsible for all corporate acts.

7.4 Civil or criminal law

Finally, I want to address the question with regards to the necessity and desirability of suing corporations under criminal law. As said in chapter 6, List and Pettit (2011, p. 157) do not defend their preference for criminal law. Therefore, I brought two arguments to the fore that did: First, that criminal law stigmatizes corporations, whereas civil law does not. Second, that the information-gathering powers under criminal law are more enhanced.

I want to argue that suing corporations under civil law is, in general, preferable. I will do so by first disproving the two benefits I just mentioned and will end with some additional reasons that support my claim.

The second point on information-gathering powers is easy to disprove: As argued by Khanna (1996) and other legal scholars (Diamantis, 2019), it is already possible for states to sue corporations under civil law. We should simply put similarly powerful information-gathering powers at the disposal of public prosecutors in civil law cases, as is already being done in the United States, and this problem would be solved (Khanna, 1996, p. 1532).

The first point, with regards to stigma, can also be disproved. First, because as already explained in 7.2 the majority of members are in fact innocent of corporate acts and that to morally condemn them, which is exactly what stigmatizing is, would be undesirable for a variety of reasons. Second, Khanna (1996) points out that fines are preferable to stigma as a form of punishment, for the two practical reasons that:

> no one receives a corporation's lost reputation, whereas someone - the government or a private party - receives the cash fine. Second, in order to impose the optimal sanction on the defendant, the government would not only have to determine the size of that optimal sanction, but also would have to determine how much, in monetary terms, the criminal stigma would cost the corporation. Inquiring into the impact of a reputational penalty on corporate sales and the impact of corporate mitigation efforts could prove very costly because reputational penalties may be subject to considerable uncertainty. (p. 1503)

And to point out two last reasons: It is easier to do sue a corporation under civil law because of the lower burden of proof. And since I already concluded in chapter 4 that a fine seems to be the only applicable punishment under criminal law and considering the fact that this also possible under civil law, but without the undesirable stigma, suing a corporation under civil law seems preferable.

In addition to these practical reasons, I want to argue one last point why suing and convicting a corporation under civil law also seems more in line with moral considerations. The combination of the fact that the majority of members are innocent of most corporate acts with the claim that they are collectively at least causally responsible for the aggregated function, meaning the corporate mind, seems to be a good reason to merely fine the legal person without adding stigma and moral condemnation to all individual members. And to sue corporations under civil law, meaning to hold them liable, does not need to be supported by the claim that all members had sufficient control on all corporate acts.

I want to conclude this chapter by making a final point. The fact that I have both been sceptical of the solutions of List and Pettit (2011) and reluctant in holding members of corporations morally responsible, does not mean that I believe that collective responsibility gaps are not a pressing problem. I think the challenge we are faced with, is to admit on the one hand that these gaps are alarming, while on the other we should prevent that we transform from intuitive investigators into intuitive prosecutors. Because if we allow that to happen, we will either end up with punishing innocent people or by resorting to radical solutions that might do society more harm than good.

And all though I think we should remain reluctant to morally condemn members of corporations, mainly for the sake of the effectiveness of moral condemnation itself, I do think we can and should hold corporations liable under civil law. This would still allow the victims

to be compensated fairly while it also minimizes the harm that is done on innocent people. Therefore, this seems to me to be the better alternative.

7.5 Summary

I have conceded that the account of List and Pettit (2011) proves the reality of group agents. But their claim on collective corporate responsibility does not justify that we should start holding all members of publicly traded companies equally responsible for acts that are committed in the name of the corporation, even in cases were no members can be hold individually responsible for the act. And responsibilizing will do society more harm than good. Finally, there exists a superior solution to suing corporations under criminal law, namely civil law, which does not require the proof of a mens rea. But this also raises the question to what extent the account of List and Pettit (2011) is actually relevant and applicable with regards to solving the collective responsibility gaps in the status quo.

Summary

In this thesis I answered the following question:

Does the account of List and Pettit (2011) on collective corporate responsibility justify that we should start holding all members of publicly traded companies morally responsible for acts that are committed in the name of a corporation? Is this the case even when no members can be held individually morally responsible for those acts?

In short, I answered this with a clear 'no'. Even though List and Pettit have provided a strong argument for the reality of group agents, it does not seem to follow that we should therefore hold all members equally morally responsible for corporate acts. I argued that, based on their account, it would be unfair to hold all members of corporations morally responsible for corporate acts. And it would also be undesirable to do so based on responsibilization. Their account therefore does not seem to be very helpful with regards to the normative questions on corporate moral responsibility.

Additionally, I argued that, considering the validity of the account of List and Pettit, suing corporations under civil law seems preferable over suing them under criminal law. But to admit that civil law might be a better solution for dealing with gaps in corporate responsibility seems to severely undermine the relevance of the account of List and Pettit (2011) on corporate moral and criminal responsibility, since this was mainly focussed on justifying the existence of a group mind and corporate mens rea. The absence of a clear analysis on how their account might be applied to reforming criminal law, is therefore a fundamental weakness in their account.

Future research

I want to conclude that the debate of one group realism seems to be of limited use for finding solutions for collective moral responsibility gaps. I therefore think future research should focus on four points:

First, to apply the conditions for individual moral responsibility to evaluate collective responsibility, seems a dead end. It might be valuable to investigate if a different ethical framework with different necessary and sufficient conditions can be developed to evaluate the moral responsibility of group agents.

Second, it seems clearly unfair and undesirable to hold innocent, passive members responsible for corporate acts. Future research should therefore focus on those groups within the corporation who have a vote on the aggregated function, and to create better ways to discern and target these influential members so that we can hold them responsible. The advantage of this approach is that it is, in contrast with collective responsibility, compatible with the hierarchical structure of publicly traded companies. Why? Because whereas holding all members responsible will burden a large group of members with problems they are unable to solve, holding only the leaders responsible will burden only those who are actually capable and well situated to reform the corporation. Therefore, targeting these groups seems both fairer and more effective.

Third, future research could be done on the question whether, and in which cases exactly, it would be desirable to prosecute corporations under criminal law. If it turns out for reasons that I have not addressed in this thesis, that it is desirable, similar accounts like that of List and Pettit, which aim to proving the existence of corporate mens rea, would become more relevant.

Fourth, I believe List and Pettit (2011) themselves would do us a great service in explaining how exactly their account can be applied to reform our legal and political system. Without such an explanation, their account seems to be ineffectual with regards to the problem they intent to address.

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