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To Fill or Not to Fill Individual Responsibility Gaps?

by François Tanguay-Renaud*

1. Individual Moral Responsibility Gaps and the Appeal of Group Responsibility

At the end of Chapter 5 of *Law's Empire*, Ronald Dworkin introduces what is now considered to be a major challenge for reductivist theorists who insist that all questions of moral (as opposed to legal) responsibility for bad outcomes, and associated ascriptions of blame, can be distilled to questions of *individual* moral responsibility and blame. Dworkin writes:

Suppose an automobile manufacturer produces defective cars that cause terrible accidents in which hundreds of people are killed. [. . .] We might find someone to blame. Perhaps some employee neglected an inspection, perhaps some officer approved a design he should have known was faulty. Maybe the chief executive officer or some member of the board of directors had reason to doubt the standing procedures for reviewing design and failed to improve them. But we might not find anyone to blame. Perhaps no one acted in a way we can judge wrong by personal standards of conduct.¹

The point of Dworkin's hypothetical scenario seems to be, at least in part, to appeal to our intuitions about blame and the proper scope of its application.

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¹Dworkin (1986: 169).

Many people died, and they did not die from, say, some freak weather event. They died due to deficiencies that human agents brought about through their considered acts and omissions. Even if these individuals did so in ways that do not warrant individual blame—*ex hypothesi*, they did nothing wrong or, let us assume, they had a full justification or excuse for it if they did—many will still feel that blame ought to fall somewhere. At any rate, the thought that no one can properly be held morally responsible, in the central sense of appropriately being thought responsible at a basic level and then singled out for moral criticism for such human-generated bad outcomes, will likely strike many as distressing.²

One suggestion is that, perhaps, blame could appropriately be directed at those who set up the corporation and initially failed to design adequate routines of checking and management. Let us assume, though, that they too did nothing wrong, or otherwise blameworthy, in light of what they knew and the evidence available to them at the time. For many, this further proviso will only accentuate the distress. They will long for an explanation that captures the full extent of organized action that led to the calamity and which, at least in principle, could have been orchestrated otherwise. They will yearn for an account that differentiates the calamity from a freak weather event, and that allows them to judge negatively, call to answer, or channel their heartaches and other relevant moral reactions towards some responsible moral agent. Assuming that invoking acts of God will not provide such a satisfactory explanation, and that at least some basically responsible agency is required for one to be a proper subject of blame in the core sense that interests me here, is their search bound to remain in vain?

In recent years, an increasing number of theorists, motivated at least partly by this intuitive yearning for blame in the context of human-generated bad outcomes when there is a so-called individual responsibility gap (IRG) or shortfall of individual responsibility (referring to situations in which no individual can appropriately be held morally responsible for the outcome), have sought to defend a negative answer.³ In scenarios like the one presented above, they argue that we should envisage the possibility that blame should be ascribed to a responsible agent constituted by the organized group—that is, a corporate agent constituted and energized by individual members, yet whose actions are in some salient sense distinct from theirs, and which may be held responsible for bad outcomes for which none of them could properly be held responsible. Dworkin's own response to the hypothetical scenario is a version of this proposal. We should suppose, he tells us, "that the corporation must itself be treated as a moral agent." We should

²On the difference between *basic responsibility* as an agent's ability to respond appropriately to reasons—including moral reasons in the case of moral agents—and a *holding of responsibility*, understood as the singling out of someone to bear adverse consequences for rational, including moral, lapses and their harmful outcomes, see further Gardner (2008). In this chapter, I roughly follow this usage, except where obvious, and focus primarily on holdings of responsibility understood as ascriptions of moral blame for bad outcomes.

³See e.g. List and Pettit (2011: 165-167), Copp (2006: 216), French (1984).

personify it, and then “proceed by applying facsimiles of our principles about individual fault and responsibility to it.”⁴

In this chapter, I take Dworkin at his word that there can be morally unsettling IRGs in cases of collectively generated bad outcomes. I do so, despite various objections to their existence,⁵ since I believe that Dworkin’s handling of this possibility and other, more robustly realist, corporatist responses—such as that of Christian List and Philip Pettit—are worth exploring in their own right for what they reveal about moral responsibility and blame when groups are involved. To be more precise, the chapter highlights some reasons, related to responsibility and blame, why advocates of such approaches should be especially cautious when developing them.

I organize my discussion around what I take to be two of the more provocative aspects of Dworkin’s discussion of the issue—one explicit and one implicit. On the one hand, I seek to problematize and deflate Dworkin’s key contention that holdings of group responsibility are indispensable for comprehensive moral evaluations of individuals’ predicaments when there is an IRG. First, I challenge this position by arguing that many individual-centric forms of moral evaluation must be exhausted before the existence of a thoroughgoing IRG can be ascertained, and before the indispensability of responding to it with a holding of group responsibility can be soundly defended. Why, I query, should we depart from individual-focused morality to the point of insisting on more controversial non-individual units of evaluation if a sufficiently sophisticated deployment of the former can already provide an adequate moral account of the situation? I further suggest that, in cases involving actual IRGs, group responsibility and blame may still not be necessary for the provision of a morally adequate assessment of the situation. In fact, in some such cases, even individual responsibility and blame may not be necessary at all. I strive to bolster this further suggestion by appraising Dworkin’s approach in light of the broader and more discerning lens of moral liability, as developed in the context of some reductivist theories of self-defense and just war. Thus, I aim to put into perspective and temper the sense of inadequate moral explanation that may arise if responsibility and blame cannot easily be ascribed for human-generated bad outcomes. Though it may be true that blame plays an important moral role if the conditions for it obtain, if they do not and pretending that they do is not consequentially justified, individual morality often still has much light to shed on the situation and may, on different grounds, single out individuals to bear various burdens and become the subjects of appropriate moral reactions.

On the other hand, I address the related contention that, when faced with IRGs, conceiving of groups as entities responsible for harmful moral lapses, for which they can be blamed, allows for the realization of significant expressive value. Though this suggestion is only implicit in Dworkin’s work, it deserves significant

⁴Dworkin (1986: 170).

⁵For example, Braham and van Hess (2010).

attention as having become a dominant rallying cry for contemporary defenders of group responsibility and blame. I argue that even insofar as expressive value can be found in practices of group blame, it cannot always be straightforwardly equated with the expressive value of practices of individual blame. In Dworkin's case, blaming what may amount to no more than a fiction of responsible agency risks being no more expressively valuable than blaming any other make-belief, and risks encouraging pathological responses evidencing a refusal to face the facts. In the case of more robustly realist corporate theories such as that of List and Pettit—or Dworkin's own, if reinterpreted along such lines—the blame of responsible group agents may still not be analogized in all respects to the blame of individual agents. Key differences between the two kinds of agents may impact the expressive value of group blame, which should give pause to anyone tempted to claim that, when apposite, group blame can, without further analysis, expressively fill IRGs. I also stress the wider limits of such line of argument, emphasizing that in many IRG cases, no group will meet the conditions of responsible group agency necessary for it to be a real and appropriate subject of blame.

Overall, I defend the position that, however powerful one may find the intuitive pull of IRGs, there are weighty reasons why moral theorists should take care not to point too quickly to group responsibility and blame as the best and most discerning ways of demystifying them. Furthermore, insofar as group blame is ever an appropriate way of addressing such gaps, theorists defending it must take care to lay out clearly what such blame entails, the specific facts on which it rests, as well the moral foundations and limits of their argument.

2. Group Responsibility for the Moral Evaluation of Individual Responsibility

Here is one thing Dworkin is *not* arguing. Although he defends holdings of corporate (group, collective—I treat these terms as synonyms) responsibility as resting, in an important sense, on a fiction, since he insists groups have “no independent metaphysical existence”⁶ of their own and are only to be treated “as if” they did,⁷ this fiction might be justified on sheer consequentialist grounds. For example, if blaming the group would reduce accidents by incentivizing individual members to organize themselves better, or if it would help survivors and their kin move on, then it may be that, all things considered, one should treat the group as if it were blameworthy. However, Dworkin is explicitly not concerned with the prospects of such sheer consequentialist, or pragmatic, justification.

His main justification for personifying groups and holding them responsible for bad outcomes has a more deontological flavor. He argues that when a group generates a bad outcome yet there is an IRG, holding it responsible *qua* distinct

⁶Dworkin (1986: 171).

⁷Dworkin (1986: 168).

collective moral agent is an “indispensable” or “necessary first step,” or “plateau,” for “judgments about particular people.”⁸ In other words, such a holding is an essential component of a full moral evaluation of the situation. Why is that? Dworkin gives the example of an individual shareholder of our automobile manufacturer. He writes:

A shareholder is no part of the causal chain leading to the accidents; he added no capital to the corporation’s resources just by buying its stock on the exchange. Some might say: it is a principle of personal morality that if someone shares in the gains of another’s action he must also share the responsibility for wrongs that other person does. This suggestion begs the question, however, for we still lack any reason to suppose that any wrong has been done. That is, our problem is not one of vicarious liability, of finding some reason why a shareholder should share some other person’s or group’s primary responsibility; it is rather that we can find no one else who is primarily responsible and in whose responsibility he might share.⁹

Dworkin argues for a personification of the corporation, and for holding it responsible for the bad outcome, as an entry point for the evaluation of the shareholder’s moral position. He continues:

We might say that anyone who has full control over the manufacture of a defective product has a responsibility to compensate those injured by it. No individual employee or shareholder has had that control, but the corporation has. Then we ask, as a further and subsidiary question, how the various members and agents of the corporation should be seen to share in that fault or responsibility. But we approach that independent question using a different set of principles, among which might be found the principle just mentioned, that any member of the corporation who is entitled to share in its profits must share in its responsibilities as well. That principle would justify paying compensation from the corporate treasury, and thus from the account of shareholders, rather than, for example, deducting it from the wages of employees who actually played a causal part in the unfortunate story.¹⁰

The general arc of Dworkin’s argument is sometimes conveyed as follows. When we consider that an individual is a member or is otherwise relevantly related to a group that, under some reasonable description, is thought and said to have engaged responsibly in some wrongdoing, we can see that there are particular moral standards that apply to that individual that would not otherwise apply. If this interpretation is correct, though, Dworkin’s own principle about individuals having to share burdens insofar as they share in gains resulting from another agent’s wrongdoing seems like an ill-chosen example. It is true that, according to its own terms, Dworkin’s principle only applies if there is another agent in whose

⁸Dworkin (1986: 171).

⁹Dworkin (1986: 169-170).

¹⁰Dworkin (186: 170).

wrongful gains one may share. However, in theory at least, nothing prevents this agent from being yet another individual agent, as opposed to a corporate agent. To wit, Dworkin's principle is plausibly as applicable to shareholding individuals in their capacity as shareholders of a wrongdoing corporation, as it is more generally applicable to them *qua* sharers in the wrongful gains of any other wrongdoer. In principle at least, there seems to be nothing about a corporation that makes this alleged moral tenet more applicable to its members than to others more generally.

It is the fact of the IRG, and the related lack of individual wrongdoers in whose gains others may share, that generates the alleged need for a holding of group responsibility for the bad outcome. That is, if one insists on applying the said principle to shareholders so they can be held accountable and made to bear remedial burdens based on it, and there is no wrongdoer in sight, then one better think and speak as if there were such a wrongdoer and defend this practice as morally legitimate. Otherwise, such a moral explanation for obtaining compensation from shareholders, or saddling them with other burdens, has no argumentative footing.

Yet, should or need one so insist on applying Dworkin's principle? Perhaps there is another way of providing a morally satisfactory account of the normative position of shareholders that is simpler and less dependent on a somewhat enigmatic argumentative invocation of group personification and responsibility. For example, are there no moral principles of unjust enrichment, paralleling the legal ones, that do not rest on wrongdoing and could apply in such cases? Or consider this further suggestion. Even if our shareholder engaged in no wrongdoing that resulted in the accidents and cannot be blamed for them, an argument may still be made that risks of mechanical malfunctions are inherently part of automobile manufacturing. Thus, anyone who buys into the company's ventures may appropriately be thought to assume at least a proportion of such risks. In other words, it is arguable that the shareholder tacitly consented to bear some burdens, including remedial burdens, of the sorts that are inherently tied to the venture he joined (up to some reasonable threshold). If sound, this alternative argument could well do all the moral work needed to satisfy our intuition that shareholders are liable to bear some burdens, as a result of the harms engendered by the company's defective vehicles. Holdings of group responsibility invoked for this purpose may then be superfluous.

Dworkin may reply that, in *Law's Empire*, he is not concerned with providing an exhaustive account of all, or even of the simplest or most elegant, ways in which individuals can justifiably be saddled with obligations and burdens in the face of IRGs. His ambition, he may retort, is only to focus on one important such way—namely, individual obligations and burdens that flow from holding a group agent responsible for some outcome. Still, by asserting that judgments of group personification and responsibility are indispensable to judgments about particular people in the face of IRGs, and insisting on the inherent limitations of more individualistic forms of evaluation, Dworkin can be criticized for giving too short shrift to the possibilities that individual morality may be sufficient, as in the case of shareholders, and that many alleged such gaps may not be as empty as first appears.

On this last point, consider again the case of the automobile manufacturer in which, *ex hypothesi*, no individual can appropriately be held responsible in full for the accidents. It may still be that various individual acts or omissions, taken either on their own or in some loose combination, amounted to some unjustified wrong or the other, even if it falls short of the wrong of killing. Perhaps the attitudes with which individuals participated in work related to the outcome, or the character they exhibited while so doing, were morally defective in relevant ways. Moreover, it may be that these individuals' ignorance of the risks associated with their activities or the pressures inherent in their work only afforded them partial excuses, due to their roles in the company's organization and the expectations associated with them. In other words, perhaps some individuals could appropriately be blamed at least *to some extent*, however minimal, for the bad outcome. Or, if they are not to blame for the outcome itself, perhaps they are for something relevantly connected to it. No doubt, working out the details of such analysis would require one to know a lot more about the scenario in question. Still, the kind of retort envisaged—i.e., that some holdings of individual responsibility are appropriate in the situation—should be clear enough.

If taken as a point of departure and followed too closely, then, Dworkin's approach may have the pernicious effect of encouraging unsuspecting moral inquirers to curtail, too hastily, their investigation into important, even if subtle, individualistic ways of evaluating such intricate scenarios. It may steer them away from what, in the last analysis, could prove to be intuitively satisfactory moral conclusions that challenge claims of thoroughgoing IRG (leading them, instead, to confront distressing moral voids that can only be filled through question-begging argumentative suppositions). Furthermore, Dworkin's approach threatens to muddy inquiries into alleged IRGs by making it seem appropriate to invoke responsible group agency where doing so would stretch the limits of reason.

To sharpen these last two points, consider these further examples. First:

Homophobe Slice and Patch. Slice and Patch are homophobes. B, a homosexual patient, enters their ward needing an immediate operation that will prevent a very serious illness. Because he is a homophobe, Slice (who is the only one able to slice) will not slice even if Patch will patch. Because he is a homophobe, Patch (who is the only one able to patch) will not patch even if Slice slices. Slice could not persuade nor force Patch to act were Slice so inclined and *vice versa*. B is better off having nothing done to him than either being sliced without being patched or being patched without having been sliced.¹¹

Insofar as “ought implies can,” Slice does not wrong B by refraining to slice, given Patch's unmovable inaction. She does not violate B's right to receive

¹¹ This case is a revised version, suggested to me by Victor Tadros, of a similar case developed by David Estlund (to be published). Slice-and-Patch-type cases are a more vivid rendering of a set of examples developed by Donald Regan (Whiff and Poof examples) that are structurally the same, but presented more abstractly. See Regan (1982: 18).

treatment nor her correlative duty, as a doctor, to provide it to him, as she simply cannot (and, let us also assume, knows that she cannot) provide B with treatment. She cannot save him, or even make him better off. She can only make him worse off. The same can be said of Patch. Still, in such a case, it does seem that B is wronged, and wronged in a blameworthy way.

Is this puzzle, suggestive of an IRG, most perspicuously addressed by supposing that the group constituted by Slice and Patch is engaged, *qua* distinct agent, in blameworthy wrongdoing? Insofar as such a claim of responsible group agency is sound, under some reasonable description, this response would at least meet part of our intuition that some blameworthy wrongdoing is involved. Thus, it is tempting to focus on it. Yet, doing so threatens to obscure an important dimension of Slice and Patch's individual moral predicaments. Even if ought implies can, and neither Slice nor Patch wrong B by not treating him, both still wrong him by failing to consider him for treatment on an equal basis. They both wrong him in this way assuming, of course, that they would readily slice and patch heterosexual patients who, let us further assume, are equally or less seriously ill. Together, these individual wrongs lead to B not being treated. It is also arguable that, all else being equal, these wrongs make it permissible to blame and impose at least some other burdens on Slice and Patch—be they preventive, compensatory, or even punitive.

When scrutinized from this more individualistic lens, one begins to see better why it may not matter at all, either intuitively or argumentatively, whether the group of Slice and Patch can also be said to have acted in a distinctly wrongful and blameworthy way. We may already have satisfactory moral answers through individualized analysis—thus avoiding reference to group responsibility and any controversies that may be associated with such an additional layer of argument. Still, Dworkin may say, if holding the group responsible allows us to ask *further* questions, say, about Slice and Patch's complicit omissions or contributions to the group's distinct wrong, should these not also be asked for the sake of completeness?

An important problem for this last rejoinder may not be as obvious in the context of a surgical team, such as Slice and Patch's. It may not be, since corporatist theorists may be able to build a plausible case that such a team is a real (as opposed to a mere fictional or personified) morally responsible group agent, given its integrated organization and the collectivized mental states that may be attributed to it as a result.¹² Insofar as such theorists are correct, individual complicity with group wrongdoing is then a live issue. However, consider this other scenario involving a far less organized group for which an account of responsible group agency is much less plausible:

Stranded Ambulance. A random group of adults happens to be standing outside smoking, something that is not allowed inside the bar they happen to have been hanging out in. An ambulance with lights flashing rolls

¹² For more on this possibility, see Section 3.

by, slips, and careens into the ditch. It would not be difficult to free the ambulance to continue on its way if all the smokers worked together. As it happens, though, each of them is a slackard—none would be moved (or, indeed, could be forced) to help even if some or all of the others were willing to work together. Furthermore, if any person were to try alone, the risk of serious injury would be high, and so would the risk of tipping the ambulance over the edge of the cliff. Thus, the ambulance sits stranded, as the coronary patient inside expires soon after the accident, for lack of emergency room care. Suppose that the smokers are each aware of all the facts I am describing.¹³

Assuming again that ought implies can, it seems that none of the individual smokers wronged the patient. There is nothing that any of them could have done to free the ambulance. The only way it could have been freed was for all smokers to act together. However, there was no reasonable prospect of this happening. Again, an intuitive reaction may be to think that *the group* of smokers ought to have helped, and that its failure to do so is blameworthy—thus filling what may be perceived as an IRG. However, the collection of individual smokers is not of the kind whose acts or omissions we tend to think of, or refer to, as those of a group agent. The group in question is far too disparate for this. Indeed, any claim that it is *not* too disjointed would face the following strong objection: There is nothing that unifies, or could be said to unify, the individuals present into an agent meaningfully distinct from its parts that could be held responsible as such, like an individual wrongdoer could be. At most, one might be able to speak of individuals involved in a similar scenario—in which a coordinated collective response was a reasonable prospect—as blameworthy for failing to take part in the response, opting instead to privilege themselves in a way that accords with their lazy dispositions. Still, such a judgment would be about individuals and their own moral failings. It would not be about any responsible group agent, the possibility of which is only contemplated prospectively in the argument (insofar as it is contemplated at all and coordinated collective action is thought to be a mark of real responsible collective agency).¹⁴ Thus, embarking on the moral assessment of an alleged IRG case, like *Stranded Ambulance*, by holding the group responsible for the bad outcome would, in addition to steering us away from more refined judgments about individuals, test the limits of intelligibility.

Note that Dworkin's approach has this implication most starkly if we remain faithful to his contention that the personification that must be engaged in is "deep," and consists in taking the group "seriously as a moral agent"¹⁵ that has what it takes to be held responsible, and even "condemned," as "a single distinct

¹³ Once again, I borrow this example from Estlund (unpublished draft).

¹⁴ This realization is important for answering claims, such as that of Virginia Held (1970: 479), that a random collection of individuals may be held "morally responsible for failing to transform itself into an organized group capable of taking action rather than inaction."

¹⁵ Dworkin (1986: 171).

moral agent.”¹⁶ As I suggested, in respect of cases like *Stranded Ambulance*, such a judgment would likely amount to fiction gone wild. To make matters worse, such language even seems to stand in the way of less controversial proposals that, arguably, could supplement the strict individualist paradigm that Dworkin criticizes, in a way that at least advances his argument in spirit. That is, such language seems to rule out holdings, which are less dependent on the actual presence of robust group responsibility, that a collection of individuals could (prospectively) engage in some form of group agency, or that what they did (or did not do) in some more loosely defined joint fashion (short of responsible group agency) was wrong.

My critique of Dworkin may be too rigid. Could his position not be softened in ways that remain compatible with his overall argument? For one thing, in *Law’s Empire* itself, Dworkin writes that his idea of personified group agency is “a creature of the practices of thought and language in which it figures.”¹⁷ Insofar as there is no practice of thought and language representing the collection of individuals in *Stranded Ambulance* as a responsible group agent, Dworkin may argue that it should not be treated as such in argument. Still, such a concession would leave him vulnerable in cases in which collections of individuals are commonly referred to as morally responsible agents, yet remain fundamentally disparate—think here of various cases of spontaneous destructive mobs.¹⁸

Then again, perhaps, despite indications to the contrary, Dworkin does have a more realist account of group agency in mind. In later work, he builds on his idea of groups constituted by social practices and attitudes, and argues that they can form “collective units of agency” that are real enough.¹⁹ Their reality arises, he claims, when the acts of individuals constituting them are performed self-consciously, as contributing to collective acts, rather than as isolated acts that happen to coincide in some way. Since such cooperative intentions are clearly absent from individuals’ minds in *Stranded Ambulance*, as well as from many cases of destructive mobs, Dworkin could then deny in a principled way that either should be treated as group agents. At the same time, such intentions are often present amongst the individual members of states *qua* political communities and companies, the two kinds of groups that Dworkin is most concerned with in *Law’s Empire*.

Still, notice that the reality of collective units of agency so described is limited, and seems to come down to what many have more recently described as joint, or

¹⁶ Dworkin (1986: 187).

¹⁷ Dworkin, (1986: 171).

¹⁸ Cf. Tuomela (1989), who argues that mobs can be held collectively responsible for harm if at least some of their members contribute directly to it and others either facilitate these contributions or fail to prevent them. The reason for this, he claims, is that all mob members are implicated in mob action, even if not all of them produced specific harms or organized together to do so. Notice, though, that if responsibility and blameworthiness can be reduced to that of individuals, as this argument implies, it seems fair to wonder what, if anything, an invocation of group responsibility adds beyond serving as shorthand. Arguably, this approach adds nothing, while threatening, not unlike Dworkin’s approach, to ride roughshod over important differences of kind and degree in individual participants’ responsibility, blameworthiness, etc.

¹⁹ Dworkin (1989: 495).

shared, agency. Consider, for example, how it may be accurate to say that soldiers jointly carry out an attack. Various theorists argue that if soldiers each intend or desire that they together carry out an attack by following a strategy individually acceptable to each, if each intend to do their bit in its execution while playing their part in the strategy, each believe that others intend to play their part and do their bit, each intend to do their bit because of believing this, and each believe in common that the other clauses hold, then these individuals can perform genuinely joint attacks.²⁰ The possibility of such joint agency can have important moral ramifications. For example, if, by acting jointly rather than independently, soldiers can realize their just objectives in less harmful ways, then it is arguable that they should so act. In other words, the principle of necessity that otherwise applies to individual soldiers' resort to harmful force must be calibrated to account for the possibility of less harmful joint action.²¹ It is interesting that this point falls in line with Dworkin's repeated claim that thinking of groups as agents can impact how various moral principles apply to their individual members. Any evaluator omitting to acknowledge the possibility of joint action in a situation involving multiple individual actors would do so at the risk of missing out on an important moral dimension of their predicaments—and, possibly, of exposing IRGs where there are none, by failing to notice joint wrongdoing.

Unfortunately, this interpretation of Dworkin's argument fits awkwardly with its presentation in *Law's Empire*. To see why, note that many defenders of joint agency insist that joint actions are generally explainable, and most transparently evaluated, as individual group members' actions carried out for shared individual intentions and with shared individual beliefs. For many such theorists, then, group *qua* joint agency does not entail a distinct form of group responsibility. Holdings of responsibility in such cases remain most clearly elaborated in individualized terms, allowing for an accounting of different degrees and kinds of individual participation.²² Now, recall that Dworkin first invokes responsible group agency and holdings of group responsibility in response to an alleged IRG—in which, *ex hypothesi*, no holdings of individual responsibility can appropriately be made. So, for the group *qua* joint agency interpretation to explain his group responsibility approach in *Law's Empire*, Dworkin would, at the very least, need to argue for why such agency leads to some form of *group* responsibility, thus filling the IRG. No such argument is provided. According to Dworkin, irrespective of whether there is actual group responsibility, it is necessary to suppose it, insofar as social practices of thought and language so warrant, to get a full assessment of relevant individuals' moral predicaments. Moreover, whereas a credible defense of genuinely shared intentions giving rise to joint agency would require some discussion of their metaphysical foundations, however modest they may

²⁰ Pettit and Schweikard (2006). Similar versions are developed in Bratman (1992: 338) and Tuomela (1991: 263).

²¹ See further Lazar (2012: 29-38).

²² Bratman (2014: ch. 6), Sylvan (2012), Lepora and Goodin (2014: chs. 3-4).

be, Dworkin is adamant that his analysis is immune from such controversies and elaborates no further. If this is the reasoning of a theorist of real group agency and responsibility, then it is markedly underdeveloped—to the point that one can seriously doubt that Dworkin actually contemplates this position in *Law's Empire*, irrespective of how well it may bolster the spirit of his overall argument.

To recap, so far, I have challenged Dworkin's insistence on holdings of group responsibility as indispensable for adequate moral evaluations in the face of IRGs, by suggesting that one should be careful not to jump too quickly to the conclusion that there is, in fact, such a gap. However, a more radical challenge could also be mounted—namely, that Dworkin's insistence on holdings of group responsibility if there is an actual IRG is a symptom of an overly responsibility-centric view of morality. By *responsibility-centric*, I mean a view of morality according to which basic moral responsibility and responsibility-based criteria, such as wrongdoing and blameworthiness, are central to moral judgments and permissible impositions of burdens. If one holds such a view, then one will feel most acutely the bite of IRGs and the pressure to address them, however creatively. In passages reproduced above, Dworkin seems influenced by this view, given the anxiety with which he presents his search for individual wrongdoing and blame with respect to the deadly automobile accidents and, in their absence, the way he insists on suppositions of corporate responsibility and wrongdoing.

Of course, such a responsibility-driven approach is not the only contender. Theorists of self-defense and revisionist just-war theorists have recently begun to shed light on a broader way of identifying morally salient factors, which Dworkin sidelines without argument. I am referring here to the idea of moral liability. Although *moral liability* is a term of art, it refers to the familiar moral idea that harming or burdening a person, even against her will, need not wrong that person, even *pro tanto*. Consider, for example, the liability to pay taxes, or the liability to be conscripted. Liability claims typically take the following form: X (a person) is liable to have *b* (something burdensome) imposed on her by Y (some agent who has standing), in the pursuit of some goal, if Y does not wrong X by imposing *b* on her for this goal without X's consent.

A general theory of liability aims to provide a general explanation of the fact that we lack certain rights against interference with our valuable independence and interests. Some confine their understanding of liability to cases in which X forfeits her rights through responsible action, including blameworthy action.²³ However, there is nothing in the concept of liability that necessarily grounds it in responsibility or blameworthiness.

No doubt, some specific forms of liability—such as liability to blame, insofar as blame is understood as a kind of burden—may be necessarily grounded in these specific moral facts. But liability to harms and other burdens, more generally understood, may also have other grounds. For example, Victor Tadros argues that a nonresponsible threat, such as a person blown down a well by the

²³ Jeff McMahan (2009: 7-15), who introduces the concept, espouses such a view.

wind, may be liable to be harmed to avert the threats that her body poses to those stuck at the bottom of the well, who may be harmed or killed by her fall. This nonresponsible threat has done nothing to forfeit any of her rights, but this does not entail that harming her wrongs her. She may have lost her rights not to be harmed in virtue of, say, the fact that her body poses a threat and, just as she is entitled to be the prime beneficiary of her body, so she must bear greater costs that emanate from it.²⁴ So, causally contributing to a threat that one is not morally responsible for, and considerations of benefit, may render one liable to bear burdens. To be sure, Tadros argues that causation and benefit, taken on their own, may sometimes ground liability to bear some burdens. So may considerations of beneficence—think of one’s liability to suffer some reasonable costs for the sake of rescuing a drowning child that one happens to be passing by.²⁵ These are only examples and the list of grounds of liability that are not responsibility-based could plausibly also go on.

Some of these grounds will be controversial. However, my point is simply to underscore the wide variety of nonresponsibility-dependent questions that the lens of individual liability allows us to ask, and possibly address, about the appropriate moral distribution of burdens if there is an actual IRG. For example, can the fact that our shareholder benefited, or was entitled to benefit, from the sale of cars built with defects ground his liability to provide at least some compensation for the accidents that resulted from it? As I already suggested, this question need not rest in any way on the existence, real or fictional, of a responsible group agent. Or can the mere fact that employees caused the accidents ground their (strict) liability to incur some burdens? Again, no group agent is required to evaluate our scenario intelligibly in such terms. With such distinctions in hand, it is unclear why, per Dworkin, it would be indispensable for a moral appraiser to go any further, and make any argumentative suppositions of responsibility and blame, for the analysis to be complete. In this case at least, less may be more.

Insofar as Dworkin conceives of liability, he rejects it as a useful concept. Recall his claim that “our problem is not one of vicarious liability, of finding some reason why a shareholder should share some other person’s or group’s primary responsibility.”²⁶ Dworkin is right that the problem as viewed from the lens of liability is not vicarious in nature. What he fails to acknowledge, though, is that liability may not only be vicarious, but also deeply personal, in the sense expounded earlier.²⁷ I mention this here to underscore that, were he still with us today, and were this theoretical advance to be brought to his attention, he would have to contend with an important other set of arguments against hasty group personification. A set of arguments that holds the promise of a more discerning

²⁴Tadros (2011: ch. 11 and 336-338).

²⁵Tadros (2012: 271-277).

²⁶Dworkin (1986: 170).

²⁷As Tadros (2014: esp. 47-54) explains, vicarious liability is itself a more marginal case of liability.

individual morality, able to identify salient distinctions, and suitably demarcate rights and burdens, whether or not moral responsibility and blameworthiness are present. A set of arguments that may allow us, without any supposition of distinctly responsible group agency (especially if there is really none), to address, in a morally satisfactory way, a large part of our intuitive yearning for specific moral targets and the ascription of compensatory, punitive, and preventive duties, as well as other moral intuitions related to IRGs.

I will come back, in conclusion, to how illuminating the lens of individual liability can be for my inquiry when treated as a counterpoint. As I said, I invoke it here merely as yet another reason why one should exercise great circumspection before affirming the argumentative necessity of holdings of group responsibility for addressing IRGs. No doubt, much more could be said about why such methodological caution is imperative, including more detailed scrutiny of other examples suggested by Dworkin. For instance, one could seek to challenge his claim that state officials' duties of political justice can only properly be understood by treating group responsibility as logically prior to, and constitutive of, these individuals' moral predicaments.²⁸ Indeed, accounts of state officials' duties of justice as ordinary individual duties—which states are often, though merely contingently and instrumentally, best placed to discharge—have already been famously defended by others.²⁹ Still, doing justice to this question would lead me too far adrift from my focus on IRGs, so I simply choose to invite a similarly healthy dose of suspicion.³⁰

Instead, I consider it important to use the rest of this chapter to highlight yet another significant way, implicitly related to Dworkin's line of argument, in which those considering whether to address IRGs with holdings of group responsibility should proceed with special care. I am referring here to the tendency of many theorists to think that holdings of group responsibility can expressively fill IRGs.

3. Group Blame in the Face of Individual Responsibility Gaps

At one point, Dworkin claims that, insofar as group responsibility matters, it does not matter for its own sake.³¹ If, by that, he means that holdings of group responsibility are only valuable to the extent that they are valuable for individuals—given the ways in which they may impact and shape their moral lives then the claim is rather uncontroversial. It accords with the widely held principle of value individualism, which most contemporary theorists of group responsibility now endorse.³² In *Law's Empire*, the claim is mostly developed in terms of how holding

²⁸ Dworkin (1986: 173-175).

²⁹ See e.g. Tadros (2011: 299-307), grounding his argument in Raz (1986: Part I). See also Caney (2008).

³⁰ The same could be said of Dworkin's rather brash dismissal, not unlike in the case of the manufacturer's shareholder, that benefits enjoyed by many Americans as a result of past discrimination against blacks account for special duties towards them (1986: 172).

³¹ Dworkin (1986: 171).

³² E.g. Raz (1986: 194), Newman (2011: ch. 5), List and Pettit (2011: 181-182).

groups responsible for outcomes can shed light on their individual members' moral obligations and burdens. However, Dworkin's remarkable anxiousness to ascribe responsibility and blame when assessing collectively generated bad outcomes points to another important reason why one may want to champion holdings of group responsibility—namely, their expressive value (for relevant individuals) in the face of IRGs and, possibly, more generally.

In *Law's Empire*, Dworkin's own discussion of expressive value is only indirectly tied to the prospect of holding groups responsible for bad outcomes.³³ Dworkin frames the issue more broadly in terms of the expressive value that can flow from supposing seriously that certain groups are: entities to which moral principles (e.g., integrity, fairness) can apply directly; entities that can be blamed, or condemned, for their contraventions of such principles; and, thus, entities whose contraventions individuals who constitute them ought to make a special effort to forestall or rectify. This reasoning may suggest that the expressive value that Dworkin associates with treating groups as responsible agents attaches exclusively to the ability of such a practice to capture the special moral predicament of group members. After all, this feature of the practice constitutes Dworkin's explicit focus in *Law's Empire*, culminating in his famous discussion of group members' associative obligations. However, given his insistence that holdings of group responsibility are necessary to unravel IRGs satisfactorily, coupled with his consideration of various emotions—such as shame and outrage—that may be appropriately directed at groups and experienced by their individual members in such situations,³⁴ it seems only a short leap to the inference that he also thinks that such holdings are expressively valuable. That is, they are valuable in enabling and channeling the expression of key moral reactions, generally subsumed under the rubric of blame (including self-blame). Though Dworkin's emphasis on the internal moral dynamics of groups—as opposed to groups' external duties and non-members' reactions to their violations—may conceal this suggestion, it remains implicit in the argument.

Admittedly, insofar as Dworkin conceives of group agents in merely fictional terms, one may wonder how much expressive value there can really be in blaming them. Recall that, for him, a group that is held responsible, as if it were a morally responsible agent in its own right, does not have any metaphysical existence of its own. Nor does it have any “distinct interest or point of view or even welfare of its own,” let alone any capacity to understand how to act morally or any freedom to act as such.³⁵ Thus, according to one interpretation of Dworkin's argument, a group agent's only reality resides in the self-understandings and the social and intellectual practices of group members.³⁶

³³ Dworkin (1986: 189-190).

³⁴ Dworkin (1986: 172, 175).

³⁵ Dworkin (1986: 168).

³⁶ Such reality is consistent with my use of the term *fiction*, following its definition in the *Oxford English Dictionary* as “A supposition known to be at variance with fact, but conventionally accepted for some reason of practical convenience, conformity with traditional usage, decorum, or the like.”

It may be true that blaming a fictional moral agent for a bad outcome resulting from the synergy of its blameless individual parts is expressively valuable, just as it was valuable to blame hurricanes David and Katrina for the destruction resulting from the synergy of their constitutive air and water particles. In both cases, the cause or, as it were, the explanation for the calamity may be usefully captured by speaking at such a holistic level of generality. However, the kind of holding of responsibility, *qua* blame, that Dworkin has in mind is explicitly not such causal blame. It is *moral* blame, which assumes an *interpersonal* evaluation of the actions, attitudes, and the like, of a given moral agent. This focus may partly explain why Dworkin insists on personifying groups, and treating such personification as if it were real and not just shorthand. Yet, insofar as we know it to be false that the group is a real person with morally responsible agency of its own, is not the expressive value of blaming *it* for something *it did* at best rooted in self- or social deception? The point holds true irrespective of whether one understands moral blame in cognitive terms as a negative normative judgment, as a specific kind of emotional or conative response, as a functional form of protest or communication, or as a mixture of any or all of these elements. Morally blaming what we know not to be an appropriate target of moral blame, just because we yearn to ascribe such blame, verges on blame fetishism. If expressively valuable, it is only pathologically so: a symptom of a refusal or inability to face the facts.

Notice, however, that this objection would not have the same force if, despite the doubts I conveyed, Dworkin's position were best understood along narrower realist lines. One would then have to contend with the following possibility: If some groups are, in fact, moral agents that can appropriately be held responsible in their own right, then blaming them in the face of IRGs may be as expressively valuable as blaming individual agents in other contexts. Citing the intuitive pressure to fill individual responsibility gaps as a key motivation, a variety of contemporary theorists have recently undertaken to defend this line of argument in more detail. Recognizing explicitly the limits and drawbacks of fictions,³⁷ they argue that some adequately constituted groups really are responsible corporate moral agents that may, as such, be blamed for their harmful moral lapses. Given various undeveloped traces of this position in Dworkin's own work, as well as the centrality it has recently come to occupy in debates about group responsibility and IRGs, it seems important to explore it further here, if only, once again, to question its suitability to address such gaps.

Let me sketch what I take to be the most plausible and sophisticated such view currently available.³⁸ Christian List and Philip Pettit argue that some groups can be conversable agents in their own right, in the manner of individual human beings. That is, they can be constituted in ways that make it possible to reason and do business with them over time *qua* groups—for example, by entering into agreements (contracts, treaties, etc.) with them, reasonably expecting that these

³⁷ See especially Pettit (2014).

³⁸ List and Pettit (2011).

will be honored. For such conversability to be possible, the group needs to be responsive to the attitudes and inputs of its individual members. However, it must also be responsive in a way that secures group sensitivity to reason over time, with a reasonable level of consistency and coherence. According to List and Pettit, these features can obtain if the group functions in keeping with an adequate normative framework, or constitution.

A constitution is adequate in this sense when it sets out a decision procedure that ensures that the organized group's judgments, as well as action-directing attitudes and plans are, on the whole, functionally independent, as opposed to a mere reflection, of the corresponding judgments, attitudes, and plans of group members. For the sake of simplicity, consider the following three-person example, in which A, B, and C are deciding whether $X \& (Y \& Z)$. If A believes $X \& (Y \& \neg Z)$, B believes $X \& (\neg Y \& Z)$, and C believes $\neg X \& (Y \& Z)$, then if the group votes on each of X, Y, and Z in turn, the group will hold that $X \& (Y \& Z)$ although no member actually believes this. In a very real sense, the voting procedure makes it so that the final decision is the group's decision and not the decision of any of the individual members.

An additional issue arises at this point. Broadly stated, individual responsiveness—in my example, to the beliefs of A, B, and C—may, over time, compromise the minimal rational consistency that we expect from agents proper. So, for conversable group agency to be possible, a process must also be in place to ensure that the group keeps track of where its accumulating decisions are taking it, and can respond appropriately to that information. In other words, balances and checks must be in place to make sure that, over time, the group can revise its corporate judgments so as to restore reasonable consistency.

One of the strengths of this kind of account is that it genuinely seeks to address Dworkin's metaphysical discomfort with recognizing groups as real responsible moral agents. For List and Pettit, such discomfort is misplaced, since their argument rests on the non-mysterious premise that group agents derive all their matter and energy from their individual members. Although group agents may have a distinct point of view and be able to understand how to act morally, they have, to use Dworkin's own words, no "mind that is more real than flesh-and-blood."³⁹ It is through their individual members that organized groups can access evidence and gain the understanding required to make evaluative judgments about the reasons for action and normative options they face. The overall contention, though, is that, by jointly committing and adhering to an adequate constitution, group members can generate a single, relatively autonomous, and enduring corporate agent. They can generate an agent that, when faced with normatively significant choices, is capable of reasoning, deliberating, and making irreducible and reasonably consistent judgments about how it should respond—about what is good and bad, right and wrong. This corporate agent, which in an important

³⁹Dworkin (1986: 168).

yet less metaphysically suspect sense has a mind of its own, may then formulate objectives, make decisions, and develop strategies and plans to implement these over time, all in saliently irreducible ways. It may then relevantly control for the execution of such plans by arranging things so that some individuals are directed, or empowered, to perform relevant tasks, while others are identified as possible back-ups. As List and Pettit argue, a corporate agent that arranges for action in this way is fit to be held responsible, in the sense of being blamed, as the responsible “source of the deed” or the “planner” at its origin.⁴⁰ Furthermore, they contend, such corporate agents may even appropriately be described as persons, insofar as a *person* is understood, in the limited sense of an agent capable of appropriately responding to reasons and performing in the space of obligations.⁴¹

Of course, the individuals who give life to such a moral agent still have to answer for what they do in making corporate agency possible. They remain moral agents in their own right. However, the entity they maintain also has to answer as a whole for what it does at the corporate level. Thus, if individual members are not blameworthy for some bad outcome that originates at that level (and, in fact, even when they are), the group itself may also be an appropriate target for blame.

Insofar as it is successful, this line of argument constitutes a significant advance on Dworkin’s equivocal realist tendencies. In cases in which a group meets the conditions of responsible agency, it may develop morally defective dispositions and intentional attitudes of its own, and engage in wrongdoing with, at times, quite harmful results. If it does so in an unjustified and unexcused way, the group may then be a real and appropriate subject of moral blame.

Accounts of this kind are controversial, as some will remain suspicious of the claims of supervenience and irreducibility, however thin, that accompany them. Still, even if we assume their soundness *arguendo*, an important challenge, tied to the suggestion that blaming group agents is expressively valuable, remains for their proponents. Namely, can blaming a corporate agent ever be as expressively valuable as blaming an individual human agent? Or, to put it in terms of our initial puzzle, can addressing a so-called IRG by blaming the group *qua* moral agent ever be an adequate substitute to individual blame? Since, according to List and Pettit, the moral agency of individual members and those of their corporate group are saliently distinct, blaming one does not replace blaming the other. However, does the possibility of blaming the group if no individual member is blameworthy ever a satisfactory answer to our intuitive search for an appropriate subject of blame in such situations?

Arguably, it all depends on what blame involves and what it takes to be an appropriate subject of blame. Moral theorists generally assume that to blame people is to respond in a particular way to something of negative moral significance about them or their behavior. However, the precise nature of this response is contentious. For one prominent school of thought, a blaming response consists,

⁴⁰ List and Pettit (2011: ch. 7).

⁴¹ List and Pettit (2011: ch. 8).

primarily, in adopting a negative emotional stance towards the person or the behavior—typically resentment, anger, or contempt.⁴² If group agents are real responsible moral agents, then it seems that, like other such agents, they may, through their behavior, attitudes, and the like, trigger such emotions in individuals. Furthermore, individuals may deliberately and reasonably channel these emotions toward them in what these theorists deem to be a blaming response. Insofar as the capacity of individual blamers to experience and direct relevant emotions at other agents is not in doubt, there seems to be no special problem with subjecting group agents to blame so conceived.

Still, some such theorists go further and insist that the emotional stance constitutive of blame must also be capable of being experienced as such by its subjects, be it in the form of feelings of guilt, remorse, or plain suffering. For these theorists, it is part and parcel of a blaming response that it be geared at inducing such feelings in those subjected to it. One interesting feature of this more robust account is that it offers an explanation for why we may experience a distressing yearning for blame in the face of IRGs. In such situations, there is simply no one who could appropriately be made to experience the said feelings. *Ex hypothesi*, no individual can properly be blamed, and group agents, whose irreducible existence is allegedly solely cognitive, are not the kind of agents that have conscious, including affective, experiences of their own.

This suggestion is a function of what conscious states are—namely, states that are constitutive of the personal experience of their subject.⁴³ True, according to List and Pettit, group agents may be able to process individuals' emotions cognitively as morally relevant facts. However, they provide no reason for thinking that any individual in a group can have conscious access to the experience of other group members from a first-person perspective, or that any subjective experience inaccessible to individual members can emerge at the level of the group. List and Pettit even explicitly distance themselves from such possibilities.⁴⁴ Once again, their position has the advantage of avoiding the kind of mysterious metaphysical implications of which Dworkin is suspicious. Indeed, the position that references to feelings of group guilt, remorse, or suffering are no more than summative and reductive accords with contemporary common wisdom. If a group of people is suffering, we have many suffering individuals and nothing more.⁴⁵ Peter Strawson, the original defender of the emotive understanding of blame described here, himself seemed to endorse this position, arguing that the practice derives its value from what it reveals about relations *between individual human beings*.⁴⁶

⁴²To cite only two well-known examples of this understanding of blame: Wallace (1994) and Wolf (2011).

⁴³The *locus classicus* for this position is Nagel (1974).

⁴⁴List and Pettit (2011: ch. 8).

⁴⁵On this point, see further Tanguay-Renaud (2013: 128-132).

⁴⁶Strawson (1962).

So, if the yearning to find an appropriate subject for the infliction of feelings of guilt, remorse, or suffering is what guides the intuition that blame ought to be ascribed to the group in IRG cases, then blame of group agents is unlikely to assuage it. It is unlikely to do so assuming, of course, that the practice is not abused as a way of indirectly eliciting these feelings in individual group members who, by hypothesis, are not blameworthy. Should one then infer that tendencies to blame groups, *qua* distinct agents, in such situations are categorically inappropriate? Insofar as there are group agents, such an inference seems like an overkill, and the fact that it does suggests either that there is more to blame than the inducement of harsh feelings, or that this subject-centered emotive account rests on a mistake.

There are grounds for thinking that at least one of these possibilities is correct. For example, could a case not be made that such an account conflates blame, understood more basically as an ascription of responsibility for something of negative moral significance, with further retributive responses that build upon it and involve a disposition towards inducing experiences like suffering? Although it is unclear that punishment requires its subjects' suffering, as opposed to the mere imposition of an inconvenient deprivation or burden on them, many retributivists insist that the intent to inflict suffering is a key distinguishing mark of the practice. However, if blame and punishment are to be retained as distinct ideas playing different, though perhaps complementary, moral roles, such theorists should likely resist the conflation. For all others who may be tempted to tether blame to an imposition of suffering, consider the following. On the one hand, if, according to a given conception, blame is only deemed valuable insofar as, or because, it is geared at inducing its subjects' suffering, then one may wonder how valuable its expression really is. On the other hand, if, as I think likely, blame can still play an important moral role when knowingly directed at individual agents who, due to their hardened affective make-ups, will not experience suffering, guilt, or remorse, then equating blame and an inducement of such experiences seems misguided.

Note that a version of the penultimate point could also be leveled at thinner emotive accounts of blame focusing solely on the blamer's, as opposed to the blamee's, affective stance. Insofar as a blamer's stance is understood in terms of retributive emotions like resentment or anger, which, arguably, can be more destructive than facilitative of human relationships, then one may wonder how valuable expressions of blame really are.⁴⁷ Here, though, one should be careful not to throw out the baby with the bath water. Recall that the intuition we are working with is that group blame may address a morally meaningful yearning that is experienced when confronting IRGs. Therefore, one may think, short of concluding that the intuition is itself misplaced or insignificant, one needs to hold fast to the idea that a blaming response has what it takes, in terms of its phenomenal content,

⁴⁷ Gary Watson (2004: 255-259) notably argues that what blame, so understood, "expresses is itself destructive of human community," in the sense that it poisons human relationships with animosity.

to offset this yearning. This commitment leaves open various possibilities, including that some retributive emotions may be intrinsically valuable in ways not considered by those who decry them. It also leaves open the possibility that blame, so conceived, may be valuable in a special way when directed at group agents that cannot experience negative feelings that would otherwise count against it. To be sure, in the face of individual responsibility gaps, blame of a group agent may constitute a welcome pressure valve for victims and their kin, without them having to worry about the affective implications of their response for the blamee. The strength of their blaming, *qua* emotional response, may also provide a powerful reason for the group to ensure that it reorganizes itself in a way that prevents similar bad outcomes in the future. Though such reasoning departs from Dworkin's move away from consequentialist justifications of holdings of group responsibility, they can hardly be ignored at this stage of the analysis. Or perhaps blame is better understood as a threshold, responsibility-ascribing response, which serves as a gateway for the appropriate channeling of a variety of reactive emotional stances. Thus, appropriate stances may not be limited to retributive ones, but also include stances such as compassion, forgiveness, or the sheer relief of finding an imputable interlocutor in an otherwise tragic and senseless situation.

Still, the close association of blame and suffering in much of the literature, coupled with deep suspicions about the expressive value of retributive stances such as those described, have led many theorists to propose radically different understandings of blame. The most recent example is Tim Scanlon, who thinks of blame as fully applicable to group agents. For Scanlon, blame derives its core moral meaning from the relationships in the context of which it is invoked. More specifically, to blame someone is (1) to judge him or her to have acted in a way that "shows something about his or her attitudes towards others that impairs the relations that others can have with him or her", and (2) "to take [one's] relationship with him or her to be modified in a way that this judgment of impaired relations holds to be appropriate."⁴⁸ No doubt, insofar as there are any group agents, relationships may be developed with them, and modified in light of their relationship-impairing cognitive attitudes.⁴⁹ Assuming that Dworkin's automobile manufacturer is such an agent, it is perfectly conceivable to think of the working relationships it has with its employees, or its commercial relationships with consumers. Relationships of trust and loyalty may even be developed with it. Thus, it is conceivable that, over time, these relationships may be modified by those engaged in them in light of the corporation's attitudes.

Still, if, according to this view, group agents may appropriately be blamed in the context of relationships they actually have, is it not an issue that they are not entities with which we can have the same range of relationships as with other individual agents? For example, it is much harder to conceive of deep and affective relationships, such as friendship and romance, with a manufacturing

⁴⁸ Scanlon (2008: 129-129).

⁴⁹ Scanlon (2008: 162-165).

corporation. Once again, this intuitive distinction seems to flow at least partly from the implausibility of holding that corporate agents have affective experiences of their own.⁵⁰ If that is the case, and a relational view of blame like Scanlon's is sound, then it seems that group blame will inevitably be inappropriate in a variety of cases in which individual blame would be appropriate. Even following such a wider understanding, then, group blame remains more narrowly, or differently, applicable than individual blame. Its ability to fill IRGs, even if there is a group agent involved, is correspondingly limited.

Then again, perhaps such a relational theory of blame is also misguided. Not necessarily misguided because of Scanlon's untethering of emotional stances from blame, since the modifications of impaired relationships he has in mind could well have characteristic affective aspects he does not explore. But misguided because it is not so uncommon to think that unrelated strangers may, at least sometimes, appropriately blame each other. It should be no surprise, then, that other theorists, often equally wary of tethering blame to an emotionally loaded ideal of retribution, argue for even wider conceptions of the practice that are less reliant on relationships and, consequently, less vulnerable to charges of disanalogy between group and individual blame. Noteworthy are those who think of a blaming response as solely cognitive, along the lines of a negative judgment that an agent has failed to live up to some relevant moral standard or has shown ill will.⁵¹ Or consider those who contend that the gist of a blaming response is conative, in the sense that it arises from a desire that the agent not have so behaved.⁵² Or again, consider those who think of blame primarily in terms of its function, be it to protest an agent's actions or character, or communicate condemnation, disapproval, or a call to answer for alleged moral lapses.⁵³

All these conceptions of blame seem quite directly applicable to group agents as List and Pettit understand them. These agents may exhibit attitudes, make judgments and decisions, and program for actions in ways that are morally problematic. As a result, they may be judged negatively. One may desire that they would not have so acted, and respond accordingly. One may also conceivably protest their actions, and seek to communicate various things to them *qua* conversable agents. So, as per these understandings, blaming a corporate agent may be just like blaming an individual human agent, and just as valuable in terms of what it expresses. It is true that some of these conceptions deny, or fail to make clear, that a blaming response must have a phenomenal component. If what I suggested earlier about the importance of affect for assuaging the yearning experienced in the face of IRGs is sound, then group blame so conceived is bound to fall short. Notice, however, that it is also bound to fall short in addressing

⁵⁰ As Dworkin (1989: 498) provocatively reminds us, there should be no denying here that group agents could in principle engage in the more dispassionate parts of otherwise affective relationships, perhaps even including some of their sexual aspects.

⁵¹ Watson (1996) and Hieronymi (2004).

⁵² Sher (2006: ch. 6).

⁵³ Smith (2013), McGeer (2013), and Duff (1986).

any yearning for moral accountability that we may experience, including outside IRGs when blameworthy individuals are involved. So, insofar as we persist in thinking that blame must at least partly express something affective that tracks this yearning, conceptions that do not allow for it may well have to be rejected. One possible retort is that, despite what I have assumed so far, the yearning triggered by IRGs can be satisfactorily answered by a purely cognitive response. Thus, it would be a mistake to think that only an affective response can assuage it. Perhaps all that matters, or what matters most, is a sense that a negative judgment can be appropriately directed at a responsible agent, or that there is an appropriately responsive target for critical communication or protest.

Still, even assuming that moral psychology would validate either of these rejoinders, it remains unclear whether they have what it takes to extinguish all reasonable concerns about the expressive value of group blame. An additional worry may be that constitutive dissimilarities between group and individual agents, over and above consciousness-related ones, can significantly impact the expressive value of blaming the former. Consider that most accounts of blame surveyed assume that, to be blameworthy, an agent needs to have been responsible at some basic level for a moral contravention. Such basic responsibility tends to be fleshed out in terms of the contravening agent's capacity to understand what is at stake and to reason practically about how to respond. Many also contend that agents can only be worthy of moral blame for aspects of their lives—that is, actions, attitudes, or character—they meaningfully control.⁵⁴ Maintaining otherwise, the argument typically goes, would imply that moral blame merely tracks causal relations, as opposed to moral responsibility, such as blaming uncontrolled hurricanes for the devastation they cause. Now, if List, Pettit, and others who defend the possibility of morally responsible corporate agency are correct, are these not all capacities that corporate agents share with individual agents?

This is where the rot may be thought to set in. As List and Pettit themselves concede, corporate action-directing attitudes, decisions, and plans are only ever *relatively* autonomous from those of their individual members, upon which they supervene. This concession should come as no surprise if individuals provide group agents with all their matter and energy. Similarly, the realization of group decisions and plans always has to go through the intercession of individual human agents, even if it is the group that programs for them by ensuring that someone is on hand to implement them. Does not this deep dependence of group agency on individual members' agency impact the value that blaming groups for bad outcomes may have? It is tempting to think that it does since, even if, in some significant sense, group agents' moral understanding, practical reasoning, and control is theirs; it is never *just* theirs. When blaming a group agent, one is always, at a deeper level, also commenting on the behavior of other agents—namely, individual members—whether or not they are themselves blameworthy

⁵⁴For Dworkin (1986: 172) himself, “people must not be blamed for acts over which they had no control.”

and actually blamed. Thus, unlike the blame of individuals, corporate blame always has an intermediate quality to it, in the sense that it always points to a multi-faceted agency story and comes with the risk of eliding more fundamental moral facts.

Does this constitutional difference really impact the expressive value of group blame? Though I am unsure that it does, some may want to point to this feature as a reason why, when a group like a commercial corporation is blamed for a bad outcome, yet no specific individual is found to be blameworthy for it, popular clamor for blame often fails to subside. After all, List and Pettit's group agents are no more than social arrangements that individuals maintain, through coordinated efforts, to serve social ends. So, blaming them without blaming any of these individuals may fail to address in full the sense of tragedy that can come with collectively-generated bad outcomes if there is an IRG.

A more sustained look at conditions of individual blameworthiness may help take some heat out of this controversy. One may reply that, insofar as autonomous practical reasoning and control are conditions of blameworthiness, only *some degree* of autonomy is sufficient on both counts for individuals to be appropriately blamed. For example, although third-party coercion and manipulation can reduce individuals' responsiveness to reason or diminish their control over relevant aspects of their lives, such exogenous determinants may well not completely eliminate their blameworthiness for harmful deeds. This tends to be a central lesson of accounts of partial excuses and partial denials of responsibility.⁵⁵ Moreover, whatever plausible position one adopts in respect of the problem of free will, it is rather uncontroversial that individual agents are never in full control of all mental and physical processes that lead them to deliberate, decide, and act in given ways. Thus, if group agents may meaningfully be said to reason and be in control of their behavior to *some* irreducible degree—it is, after all, corporate attitudes, decisions, and plans that differ from those of their individual members, and which these very individuals may all oppose, that are paradigmatically at issue—could such reasoning and control, however minimal and specific in kind, not be sufficient for blame? And could such blame not be just as expressively valuable as individual blame? My sense is that, according to most conceptions of blame surveyed, it may be so. Unsubsidizing popular clamor for corporate blame, in some cases, might then be more accurately attributed to harsher, perhaps misguided, conceptions of blame that require their subject's suffering, or to failures to ascribe individual blame when it would be apposite to do so.

I cannot get to the bottom of this question here. By now, though, I hope to have said enough to build a *prima facie* case that, based on most conceptions of the practice, blaming a group agent can serve an expressively valuable role, akin to that of individual blame, in the face of IRGs. Whether such blame can satisfactorily fill the yearning that arises in such cases is a separate question, the answer

⁵⁵Horder (2004: chs. 2 and 4).

to which depends in large part on what blame is taken to involve, and the extent to which group agents can appropriately be subjected to it. Once again, such a realization should likely give pause to theorists who may be tempted to contend that their accounts of responsible group agency hold the promise of closing, without more in-depth and concept-specific analysis, at least some IRGs. At the same time, it points to the richness and relative infancy of this field of research.

4. Concluding Caveats

I want to conclude with a few caveats aiming to contextualize and round up my discussion in the previous two sections.

The first caveat is that my consideration of responsible group agents in the last section remains a footnote to a larger and obvious point. If and when there are IRGs, there will often be no group that meets the conditions of distinct agency and responsibility that make it an appropriate candidate for blame. If no such group exists, what I have characterized as a yearning for blame will likely remain intact. One might have to resort to blaming a fiction. As I stated, I tend to regard this kind of response with suspicion. At the same time, I am reluctant to hold that this so-called yearning for blame, which we often experience even if there is no one to blame for human-made bad outcomes, is itself completely improper. Could it not simply be that what we yearn for in such cases is not blame per se, or not just blame, but a morally satisfactory explanation, however best developed? That is, may there not be a better way of delineating individuals' moral predicaments in such cases than through the lens of responsibility and blame?

This question brings me back, for my second caveat, to moral liability. Previously, in Section 2, I briefly suggested that acknowledging individual liability as an important perspective from which to assess IRGs holds the promise of taking at least some of the intuitive moral sting out of such scenarios. That is, it holds the promise of providing a more discerning moral picture featuring a broader spectrum of permissible responses, aside from blame, toward individuals involved in bringing about a bad outcome or relevantly related to it. To be sure, liability holds this promise even if it is a moral idea distinct from blame and, thus, no substitute for it. Not only is it a broader concept, it is also essentially instrumental, in that its role is to provide moral organization for various grounds (including, but not limited to blameworthiness) of burdensome actions (possibly including, but not limited to blame), and the parameters of their permissibility for various ends.

As I suggested, a rich and multifaceted notion of individual liability, which may or may not include a notion of joint liability suitably individualized, can put pressure on Dworkin's insistence that holdings of distinctively corporate responsibility are essential to provide a complete moral account of collectively generated bad outcomes. At a more expressive level, the lens of individual liability may also deflate the yearning for group blame that may arise if no individual is

blameworthy, by justifying the imposition of other moral labels and burdens on relevant individuals.⁵⁶

Though liability is not my focus in this chapter, I emphasize it again in conclusion as a useful piece of context for my analysis. Its wider lens helps give credence to the contention, underlying the chapter, that irrespective of the intuitive appeal of IRGs, one should take care not to point too quickly to group responsibility and blame as the best and most discerning way of unraveling them. This is not to say that there is no valuable and distinctive moral space for group blame or holdings of group responsibility more broadly understood, be it in terms of their role in moral argumentation, their expressive role, or otherwise. It only means that, in any given situation, one needs to proceed with circumspection before affirming their indispensability.

Overall, then, my discussion has sought to caution against the swiftness with which Ronald Dworkin and others tend to gloss over IRGs and assert ways of handling them morally by focusing on group agency and responsibility. I did not undertake to address any specific claims made by Dworkin about the specific obligations and rights that the members of some groups may have, or the specific kinds of groups that may generate such obligations and rights. Neither did I question the intuitionist approach to moral philosophy that characterizes many discussions of IRGs, nor the deep soundness of more recent accounts of real responsible group agency that currently dominate the debate, like that of List and Pettit. Still, I hope to have highlighted enough fault lines and intricacies in what I take to be an exciting area ripe for further philosophical research to convince others, including Dworkin scholars, that it is so. No doubt, Dworkin may not have foreseen in 1986 that such a fertile and contemporarily relevant discussion could be provoked by the few passages of *Law's Empire* that inspired this chapter. That such a discussion could be generated in reaction to them is a testament to Dworkin's larger-than-life philosophical acumen and timeless legacy—a legacy replete with challenging ideas that it will likely take many other lifetimes and efforts, both individual and collective, to unravel.

References

- Braham, M., and van Hess, M. (2010). "Responsibility Voids," *The Philosophical Quarterly* 61(242):6–15.
- Bratman, M. (1992). "Shared Cooperative Activity," *The Philosophical Review* 101:327–341.
- Bratman, M. (2014). *Shared Agency: A Planning Theory of Acting Together*. Oxford: Oxford University Press.

⁵⁶I am not claiming that there are no other ways of channeling our yearning for moral targets in cases of bad human-made outcomes in IRG cases. For one thing, we may call on the law to posit this or that person as legally accountable—that is, as the one who, according to the law, carries the can, or sits at the desk where the buck stops. However, my premise here is that, unless the law reflects morality quite closely, and the understanding of morality it tracks is discerning enough, such legal maneuvering may still leave behind some sense of moral shortfall that we yearn to fill.

- Caney, S. (2008). "Global Distributive Justice and the State," *Political Studies* 56: 447–518.
- Copp, D. (2006). "On the Agency of Certain Collective Entities." In *Midwest Studies in Philosophy: Shared Intentions and Collective Responsibility*, vol. 30., P.A. French and H.K. Wettstein (eds.). Oxford: Blackwell Publishing, 194–221.
- Duff, R.A. (1986). *Trials and Punishments*. Cambridge: Cambridge University Press.
- Dworkin, R. (1986). *Law's Empire*. Cambridge, MA: Harvard University Press.
- Dworkin, R. (1989). "Liberal Communities," *California Law Review* 77(3):479–504.
- Estlund, D. (unpublished draft). "The Puzzle of Plural Obligation" (April 2013, cited by permission of the author)
- Estlund, D. (to be published). "Prime Justice." In *Political Utopias*, K. Vallier and M. Weber (eds.). Oxford: Oxford University Press.
- French, P.A. (1984). *Collective and Corporate Responsibility*. New York: Columbia University Press.
- Gardner, J. (2008). "Hart and Feinberg on Responsibility." In *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy*, M.H. Kramer, C. Grant, B. Colburn, and A. Hatzistavrou (eds.). Oxford: Oxford University Press, 121–140.
- Held, V. (1970). "Can a Random Collection of Individuals be Responsible?" *Journal of Philosophy* 67:471–481.
- Hieronymi, P. (2004). "The Force and Fairness of Blame," *Philosophical Perspectives* 18(1): 115–148.
- Horder, J. (2004). *Excusing Crime*. Oxford: Oxford University Press.
- Lazar, S. (2012). "Necessity in Self-Defense and War," *Philosophy and Public Affairs* 40(1):3–41.
- Lepora, C. and Goodin. R.E. (2013). *On Complicity and Compromise*. Oxford: Oxford University Press.
- List, C. and Pettit P. (2011). *Group Agency: The Possibility, Design, and Status of Corporate Agents*. Oxford: Oxford University.
- McGeer, V. (2013). "Civilizing Blame." In *Blame: Its Nature and Norms*, D.J. Coates and N.A. Tognazzini (eds.). Oxford: Oxford University Press, 162–188.
- McMahan, J. (2009). *Killing in War*. Oxford: Oxford University Press.
- Nagel, T. (1974). "What Is It Like to Be a Bat?," *The Philosophical Review* 83(4):435–450.
- Newman, D. (2011). *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups*. Oxford: Hart Publishing.
- Pettit, P. and Schweikard D. (2006). "Joint Actions and Group Agents," *Philosophy of the Social Sciences* 36:18–39.
- Pettit, P. (2014). "Group Agents are Not Expressive, Pragmatic or Theoretical Fictions," *Erkenntnis* 79(9):1641–1662.
- Raz, J. (1986). *The Morality of Freedom*. Oxford: Oxford University Press.
- Regan, D. (1982). *Utilitarianism and Cooperation*. Oxford: Oxford University Press.
- Scanlon, T.M. (2008). *Moral Dimensions: Permissibility, Meaning, Blame*. Cambridge, MA: Harvard University Press.
- Sher, G. (2006). *In Praise of Blame*. Oxford: Oxford University Press.
- Smith, A.M. (2013). "Moral Blame and Moral Protest." In *Blame: Its Nature and Norms*, D.J. Coates and N.A. Tognazzini (eds.). Oxford: Oxford University Press, 27–48.
- Strawson, P.F. (1962). "Freedom and Resentment," *Proceedings of the British Academy*. 48:1–25.

- Sylvan, K.L. (2012). "How to Be a Redundant Realist," *Episteme* 9(3): 271–282.
- Tadros, V. (2011). *The Ends of Harm: The Moral Foundations of Criminal Law*. Oxford: Oxford University Press.
- Tadros, V. (2012). "Duty and Liability," *Utilitas* 24(2): 259–277.
- Tadros, V. (2014). "Orwell's Battle with Brittain: Vicarious Liability for Unjust Aggression," *Philosophy and Public Affairs* 42(1):42–77.
- Tanguay-Renaud, F. (2013). "Puzzling about State Excuses as an Instance of Group Excuses." In *The Constitution of the Criminal Law*, R.A. Duff, L. Farmer, S.E. Marshall, M. Renzo, and V. Tadros (eds.). Oxford: Oxford University Press, 118–150.
- Tuomela, R. (1989). "Actions By Collectives," *Philosophical Perspectives* 3:471–496.
- Tuomela, R. (1991). "We Will Do It: An Analysis of Group Intention," *Philosophy and Phenomenological Research* 51:249–277.
- Wallace, R.J. (1994). *Responsibility and the Moral Sentiments*. Cambridge, Mass.: Harvard University Press.
- Watson, G. (2004). "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme." In *Agency and Answerability: Selected Essays*. Oxford: Oxford University Press, 219–259.
- Watson, G. (1996). "Two Faces of Responsibility," *Philosophical Topics* 24(2):227–248.
- Wolf, S. (2011). "Blame, Italian Style." In *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, R.J. Wallace, R. Kumar, and S. Freeman (eds.). New York: Oxford University Press, 332–347.