

2010

## Punishing Collective Entities

Tom R. Tyler

Avital Mentovich

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>

---

### Recommended Citation

Tom R. Tyler & Avital Mentovich, *Punishing Collective Entities*, 19 J.L. & Pol'y (2010).

Available at: <https://brooklynworks.brooklaw.edu/jlp/vol19/iss1/9>

This Article is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

# PUNISHING COLLECTIVE ENTITIES

*Tom R. Tyler\* and Avital Mentovich\*\**

## INTRODUCTION

This Article argues that, while the legal world treats corporate entities as “people” for legal purposes, this legal framing does not fit well with naïve models of assessing responsibility and blame. These difficulties raise questions about the value of treating entities as “people” for legal purposes just at a time when the United States Supreme Court seems to be moving actively to increase this “entity as a person” legal metaphor.

The Article first reviews the literature on the psychology of responsibility and then presents both survey and experimental data that compares reactions to individual and organizational level wrongdoing. We argue that the data suggests that people have greater trouble holding entities responsible for wrongdoing and punishing them than they do making judgments of responsibility and endorsing punitive actions for individuals. In an era of corporate scandal and wrongdoing, this difficulty points to a problem within the law—the process of punishing corporate misconduct is more problematic than the process of punishing individual misconduct.

## I. THE LEGAL CATEGORIZATION OF ENTITIES AS INDIVIDUALS

It is common for the law to talk about corporate entities as if they were people that have their own will, intentions, and goals.

---

\* Tom Tyler is a University Professor at New York University who teaches in the Psychology Department and the Law School.

\*\* Avital Mentovich is a graduate of Tel Aviv University law school and currently a graduate student in the Psychology Department at New York University.

This legal personification of corporations began in the middle of the nineteenth century. In the initial decisions, the view of the corporation as a separate legal entity was developed mainly to limit the personal liability of stockholders and to enable the signing of contracts. The first ruling that effectively established the legal fiction of corporate personhood is the 1886 United States Supreme Court opinion, *Santa Clara County v. Southern Pacific Railroad Company*.<sup>1</sup> In that decision, there was no discussion of corporations as juristic persons, and yet, because a court reporter chose such language in writing the head note to the case, the decision is now viewed as having granted corporations constitutional protection under the Fourteenth Amendment (the amendment was originally enacted to secure due process and other constitutional rights to newly released slaves).

In the decades following *Santa Clara County*, the Supreme Court continued to develop the notion that corporations enjoy the same protections as natural persons with very few exceptions. Recently, the corporate personhood doctrine captured public attention due to the Supreme Court's opinion in *Citizens United v. Federal Election Commission*.<sup>2</sup> In the landmark decision, the Court held that the First Amendment did not limit the right of corporations to actively participate in political campaigns by funding independent political broadcasts.<sup>3</sup> As in the prior case noted, this decision invokes the idea of the corporation with the rights of a person.

Legal scholars have noted that the equation of personhood and corporate identity that is reflected in treating entities as if they were individuals fits well with the prevailing legal rules, which were organized around person-level categories governing individual activity.<sup>4</sup> It was difficult to insert a collectivity into a set of laws with person-based rules and conceptions.<sup>5</sup>

As we move into an era of corporate scandal and corruption,

---

<sup>1</sup> *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 394–96 (1886).

<sup>2</sup> *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010).

<sup>3</sup> *Id.*

<sup>4</sup> VALERIE P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY & CORPORATE RESPONSIBILITY* 82 (2000).

<sup>5</sup> *Id.*

discussions about the accountability of corporations for a series of actions that would be widely viewed as criminal if conducted by individuals have increasingly revolved around questions of culpability and punishment, questions that have a long history in the legal treatment of individual wrongdoing by people. In the context of dealing with issues of accountability for conduct, treating entities as having people-like features leads to a concern about when people will feel it is appropriate to punish such collective entities and whether their collective nature will change the way that people think about responsibility for conduct. This analysis will address this question by comparing the factors shaping punishment for unethical conduct linked to people and to groups. In particular, we will compare the reactions for unethical conduct by individuals and by organizations.

This Article will address the question of whether or not individuals responsible for assigning the punishment for the wrongdoing react differently to evidence of unethical conduct when it is committed by an individual or by an organization. We suggest, based on findings in the psychology of punishment and on human observations of both social behaviors and wrongdoing, that perceptions and punishments of misconduct committed by organizations are inherently deficient when compared to the perceptions and punishments of similar misconduct perpetrated by an individual. The human framework for understanding wrongdoing is tailored to evaluate the behavior of individuals, within which one can easily attribute intentions, desires, and evaluations of character. Organizations are a more difficult target for moral judgments because they lack these easily ascertainable human aspects. To support this reasoning, we report four studies conducted in a variety of social settings that examine how individuals make judgments about the (mis)conduct of individuals versus organizations.

## II. THE PSYCHOLOGY OF PUNISHMENT

The notion that the violation of a social rule deserves a punishment is fundamental to any established society. While societies differ widely in what rules they enact and how they punish those who transgress those rules, the need to punish rule

breaking is central to the maintenance of social order and is found in all societies.<sup>6</sup> One reason that explains the astonishingly pervasive tradition of punishment across societies is that punishment is evolutionarily adaptive. Indeed, it is argued that punishment can serve as a learning instrument through which societies not only prevent negative behaviors from reoccurring (specific deterrence) but can also promote rule following behavior (general deterrence). It is worth noting, however, that, at least until recently, this mechanism for regulating society has evolved in a social environment comprised of individuals and not organizations. In other words, if in the course of our social evolution we developed the means to deal with deviant behavior by individuals through law and legal punishment, these means were developed to perceive and to punish the misconduct of individuals and not of groups, simply because social organizations have only recently been defined and protected as codified legal entities in our social environment.

At the individual level, studies exploring the nature of the motivation to punish often link punishment to issues of retribution and deterrence. According to retributive justice theory, punishment addresses the moral outrage that people feel when they encounter a wrongful act. From that perspective, the punishment should be proportionate to the seriousness of the crime. The seriousness of the act is determined by the magnitude of the harm and by the circumstances that led the wrongdoer to cause such harm.<sup>7</sup> According to this model, the key issue is the character of the wrongdoer and his intentions when breaking a rule.<sup>8</sup>

In contrast, deterrence theory is built on a rational choice

---

<sup>6</sup> Neil Vidmar & Dale T. Miller, *Socialpsychological Processes Underlying Attitudes Toward Legal Punishment*, 14 *LAW & SOC'Y REV.* 565, 565–602 (1980).

<sup>7</sup> See Kevin M. Carlsmith, John M. Darley & Paul H. Robinson, *Why Do We Punish?: Deterrence and Just Deserts as Motives for Punishment*, 83 *J. OF PERSONALITY AND SOC. PSYCHOL.* 284, 284–99 (2002); Kevin M. Carlsmith & John M. Darley, *Psychological Aspects of Retributive Justice*, 40 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 193, 193–236 (M. P. Zanna ed., 2008); John M. Darley & Thane S. Pittman, *The Psychology of Compensatory and Retributive Justice*, 7 *PERSONALITY & SOC. PSYCHOL. REV.* 324, 324–36 (2003).

<sup>8</sup> Darley & Pittman, *supra* note 71, at 326.

model and argues that the main purpose of punishment is prospective—to prevent future wrongdoing.<sup>9</sup> From a deterrence perspective, the key goal of punishment is to shape the future behavior of the wrongdoer (specific deterrence), as well as others who might see their action and the subsequent punishment (general deterrence).<sup>10</sup>

Studies on the motivations underlying punishment decisions consistently show the social and the legal importance of both deterrence and retribution as bases for punishment. They also show that individuals cite both as important considerations when punishing. Notwithstanding such evidence, individuals, in fact, make punishment decisions primarily as a function of retributive justice.<sup>11</sup>

The judgment of the moral seriousness of misconduct, one that is of crucial importance to retributive justice concerns, relies heavily upon assessments of the wrongdoer's character and intent. In other words, the same act that caused identical harm will carry different moral labels if the act was done intentionally or unintentionally. Some studies in the psychology of justice point out that intention is so integral to moral judgments that assessments of intent precede the evaluation of other features of the act. In other words, individuals first make judgments about what the actor was trying to do, and only after, continue in their moral appraisal of other aspects of the harm and of the wrongdoer.<sup>12</sup>

Unfortunately, we do not possess access to others' mental states or to the intentions that underlie their actions. Judgments about intent require a theory of mind, and more specifically, they require psychological schemas and processes through which people reason about others' behavior. And, in particular, they require a model for inferring the moral character of another person

---

<sup>9</sup> See generally Daniel S. Nagin, *Criminal Deterrence at the Onset of the Twenty-First Century*, in 23 *CRIME & JUSTICE: A REVIEW OF RESEARCH 1* (Michael Tonry ed., Univ. of Chicago Press 1998).

<sup>10</sup> See generally *id.*

<sup>11</sup> See *supra* note 7.

<sup>12</sup> See KELLY G. SHAVER, *THE ATTRIBUTION OF BLAME: CAUSALITY, RESPONSIBILITY, AND BLAMEWORTHINESS* 166–67 (1985); BERNARD WEINER, *JUDGMENTS OF RESPONSIBILITY: A FOUNDATION FOR A THEORY OF SOCIAL CONDUCT* 7–8 (1995).

based upon information about how they have behaved in a given set of circumstances. In the next section, we will focus on psychological models and studies that explore the conceptual framework through which people understand social behaviors, and in particular, wrongdoings. As we will show, such understanding relies heavily on attribution processes of intent and character that work well when assessing individuals, but not as effectively for organizations.

### III. ASSESSING WRONGDOING BY INDIVIDUALS

The classic account of individuals' perceptions of misconduct is provided by the social psychologist Fritz Heider.<sup>13</sup> Heider claims that humans perceive others through a conceptual framework that connects the behaviors and actions they observe with the underlying mental states they infer the individual is experiencing.<sup>14</sup> These inferences about the wrongdoer's intent, motivations, and desire are central to reactions to wrongdoings, and are achieved through judgments of the perpetrator's actions and character.<sup>15</sup> According to Heider, the understanding of intentional actions is defined in terms of the mental concepts of belief, desire, and intention.<sup>16</sup> In the context of wrongdoing, this account suggests that perceptions of an act as wrongful are psychologically connected to assessments of the moral character of the actor.<sup>17</sup> Heider suggests that individuals approach others with the goal of gathering the information they need to predict the conduct of others not only in that moment but also in the future.<sup>18</sup> Because individuals believe that traits are immutable determinants of behavior, knowing someone's character is a sure way to predict the nature of his or her future actions.<sup>19</sup>

Heider demonstrated the centrality of character assessments to

---

<sup>13</sup> See generally FRITZ HEIDER, *THE PSYCHOLOGY OF INTERPERSONAL RELATIONS* (1958).

<sup>14</sup> See HEIDER, *supra* note 13, at 20–58.

<sup>15</sup> See *id.* at 79–124.

<sup>16</sup> See generally HEIDER, *supra* note 13.

<sup>17</sup> See generally *id.*

<sup>18</sup> See generally *id.*

<sup>19</sup> See generally *id.*

punishment when he formulated a five-level model that shows the connection between causing a crime and being punished for it.<sup>20</sup> At level four of his model, which he calls purposive commission, people are held responsible for events that they intend to cause.<sup>21</sup> Unsurprisingly, this level encapsulates the central dimension of legal reasoning.<sup>22</sup> At level five, the most sophisticated level of the model, however, Heider articulates that a person's punishment depends not only upon what they intend but also upon situational factors.<sup>23</sup> For example, a person would be deemed less responsible for the wrongful act if a person's family were held hostage and he or she is compelled by the hostage taker to rob a bank in order to secure the family's release.

In stages one through three of the model, Heider argues that individuals often infer responsibility on lesser grounds, i.e., in spite of a lack of intent.<sup>24</sup> The most legally relevant example of this deduction is careless commission, or when people are held responsible for outcomes that they should have anticipated would occur due to their actions. So, if a person were to leave the keys in his or her car and a teenager steals the car and crashes into another, the person might be held responsible because he or she should have anticipated that such a consequence might occur. Drinking and driving is another example of careless commission because a drunken driver does not necessarily intend to cause harm, but is often viewed as responsible for his or her diminished capacity to act competently. While Heider's model is complex, its meaning and relevance for this discussion are simple—individuals view inferences about both character and intent as central to holding someone responsible for his or her actions and for punishing the wrongdoing.<sup>25</sup>

In other words, when trying to understand others' behavior, individuals rely heavily on personality-based attributions and the perception process through which people try to distinguish the

---

<sup>20</sup> *See generally id.*

<sup>21</sup> *See generally id.*

<sup>22</sup> *See generally id.*

<sup>23</sup> *See generally id.*

<sup>24</sup> *See generally id.*

<sup>25</sup> *See generally id.*



personality component of behavior from those aspects of behavior caused by the situation. Heider also suggests that people do not do this with complete accuracy. Instead they under weigh the forces of the situation. This phenomenon is called the “fundamental attribution error”—the tendency when judging the actions of a person to put too little weight upon the role of the situation relative to the weight that the situation actually has in causing the behavior. The fundamental attribution error is shown to exist across a variety of societies in numerous situations.

With regard to misconduct and according to the fundamental attribution error, individuals are more likely to believe that bad acts are committed by bad people rather than bad actions are the result of bad situations. Such inferences indicate that when it comes to forming judgments of others, individuals are easily convinced that behavior is a reflection of the target’s character and, as a consequence, that the target is then worthy of either praise or blame.

#### IV. ASSESSING WRONGDOING BY ENTITIES

The Heiderian model of social perception works well for individuals, but may not be sufficient to account for perceptions of groups or organizations. In the case of collective entities, individuals cannot use the traditional model of person perception that entails: first, inferring character and through that inference, then, forming assessments of blame, and finally, punishing wrongful actions. Without the ability to evaluate individual dispositions, in other words, people may have difficulty reacting to wrongdoing.

Hans addresses the issue of responsibility directly in an analysis of corporate wrongdoing.<sup>26</sup> The focus of her work is on judgments of wrongdoing made by observers, particularly jurors, and she questions whether jurors differentially assess the accountability of business corporations and individual plaintiffs.<sup>27</sup> Her analysis of juries suggests that juror views of corporations

---

<sup>26</sup> See generally HANS, *supra* note 4.

<sup>27</sup> *Id.* at 82.

were “less concrete” than their views of individual plaintiffs.<sup>28</sup> Specifically, corporations (as non-people) cannot testify in court, and in her study were instead represented by managers of varying levels of seniority.<sup>29</sup> Hence, jurors “had little basis on which to generate detailed evaluations and inferences about their behavior and character, which were so obvious in jurors’ assessments of the plaintiffs.”<sup>30</sup> Hans also cites psychological research that indicates that individuals view people in fundamentally different ways than groups.<sup>31</sup> In discussing the psychological tendency to form global judgments when considering individuals but not when considering collective entities, she notes:

We expect that an individual will have a stable personality, and as we listen to him or her speak we work to form an integrated, global judgment about what that person is like. In contrast, most of us do not expect that individuals who are part of a group (such as a business corporation) are going to behave in consistent ways, and therefore we are less motivated to form a global impression of a group.<sup>32</sup>

Finally, Hans suggests that jurors try to find appropriate human analogies when addressing questions of corporate responsibility for wrongdoing.<sup>33</sup> Jurors, she argues, find it helpful to think of corporations as people.<sup>34</sup> After her careful review of the relevant evidence, Hans suggests that jurors often hold corporations to a higher standard than individual plaintiffs by judging the corporations to be more negligent than individual persons when presented with the same set of facts.<sup>35</sup> In summarizing her conclusion, Hans states: “[A]lthough the actions of a person and a corporation are evaluated using much the same criteria, more is expected of a reasonable corporation than a reasonable person.”<sup>36</sup>

---

<sup>28</sup> *Id.* at 84.

<sup>29</sup> *Id.* at 82.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 84–85.

<sup>32</sup> *Id.* at 82.

<sup>33</sup> *Id.* at 85.

<sup>34</sup> *Id.* at 82.

<sup>35</sup> *See id.* at 114.

<sup>36</sup> NEIL VIDMAR & VALERIE P. HANS, AMERICAN JURIES: THE VERDICT 278

Ultimately, these elevated expectations, she argues, translate into greater liability for corporations.<sup>37</sup>

Hans' conclusions would appear to contradict the proposed thesis of this Article, whose claim is that a lack of personified elements in organizations makes them more difficult targets for moral judgments. It is worth noting, however, that even Hans' account describes the difficulty faced by jurors attempting to draw inferences about the intentions and motivations underlying organizational behavior.

This Article suggests that when the focus is upon crimes in which moral turpitude is more central, such as lying and stealing, and for which issues of character and intention are especially central, people may look at individual versus corporate culpability differently than they did with the cases studied by Hans.

#### V. PERSONALIZING RESPONSIBILITY

Within an alternative framework more relevant to crimes of serious moral wrongdoing, Darley discusses the motivations underlying assessments of wrongdoing by entities.<sup>38</sup> He does so in an analysis of social organization "and the production of evil."<sup>39</sup> Darley suggests that everyday thinking about evil requires a link between it and elements of intent such that those who commit evil acts are perceived as necessarily and intrinsically possessing the quality of evilness in their character.<sup>40</sup>

The Darley argument suggests that people have trouble accepting that situational factors can promote actions that might be classified as evil.<sup>41</sup> For example, in the famous Milgram study, participants delivered lethal levels of electric shock to another person.<sup>42</sup> According to Darley, it is more difficult for people to

---

(2007).

<sup>37</sup> See HANS, *supra* note 4, at 112–37.

<sup>38</sup> See John M. Darley, *Social Organization for the Production of Evil*, 3 PSYCHOL. INQUIRY 199, 204–06, 211 (1992) [hereinafter Darley, *Social Organization*].

<sup>39</sup> See *id.* at 204.

<sup>40</sup> See *id.* at 200–01.

<sup>41</sup> See *id.* at 207, 217.

<sup>42</sup> See generally STANLEY MILGRAM, OBEDIENCE TO AUTHORITY (1975)

conceive of situational forces as being “evil” than to believe that a person possesses an inherently evil character.<sup>43</sup> Hence, they made character inferences about the person delivering harm and underemphasized the role of the situation in creating the behavior.

Similarly, Arendt pinpoints the difficulty of labeling organizational forces as the true root cause of evil when articulating her great disappointment at the recognition that Adolf Eichman was not a “monster,” but instead, an ordinary person caught up in evil bureaucratic forces.<sup>44</sup> Eichman, in Arendt’s amended view, was so focused on efficiency in performing his job that he could execute it without much consideration of the consequences resulting from its fulfillment—there was limited reflection upon whether his job involved shipping people to their deaths or shipping some other commodity to a market.<sup>45</sup>

Arendt’s framing of someone widely viewed as a mass murderer as instead a mindless bureaucrat makes it more difficult to understand how to punish Eichmann’s wrongdoing because our notion of serious immorality requires us to have a seriously immoral (i.e., evil) actor to hold responsible and punish for their actions.<sup>46</sup> Relatedly, Kelman and Hamilton discuss the *need* for an evil actor in order to identify evil when analyzing the My Lai massacre of civilians by US troops in Vietnam.<sup>47</sup> Condemning this evil action required identifying an evil actor.<sup>48</sup> And so, Lieutenant Calley, the on-site commander was held responsible for the massacre,<sup>49</sup> even though the evil actions at My Lai arguably could be viewed as resulting from situational forces such as the more remote and less clearly specified high authorities for whom he

---

(explaining the findings of Milgram’s experiment that individuals are willing to obey authority despite their own personal discomfort performing the assigned task).

<sup>43</sup> See Darley, *Social Organization*, *supra* note 38, at 203–04.

<sup>44</sup> HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 18 (1963).

<sup>45</sup> *Id.* at 22.

<sup>46</sup> *Id.* at 120–22.

<sup>47</sup> See generally HERBERT C. KELMAN & V. LEE HAMILTON, *CRIMES OF OBEDIENCE* (1989).

<sup>48</sup> See generally *id.*

<sup>49</sup> See generally *id.*

worked. From these examples, we come to see that evil actions require a bad actor to be easily identified and punished for his/her evilness.

#### VI. PERSONALIZING RESPONSIBILITY

Why might responsibility be allocated differently between individuals and organizations? Psychology research argues that individuals are motivated to personalize responsibility by finding an individual to hold singularly accountable for complex events. After events like Pearl Harbor or the September 11 attack on the United States, commissions formed and investigations ensued that were motivated by the need to assign responsibility for the harm. Research suggests that people are especially motivated to assign responsibility to either an irresponsible, negligent, or evil person. This is likely because blaming a person is more psychologically fulfilling than blaming an impersonal set of organizational or situational forces. Identifying a person whose actions (or inaction) led to the disaster brings psychological satisfaction. We do not need to experience a major societal disaster for such motivations to be activated, however. Heider argues that lower impact events like a crime wave in a community motivate people to cast a broad net in their efforts to identify someone to hold accountable for the crimes.<sup>50</sup> This can be reflected in community actions such as punishing suspected wrongdoers via mob action, with only the most tenuous link between the suspect and the crimes. When there is a serious crime people “require” a culprit in the sense that they are uneasy unless they can feel that the person responsible has been found and punished.

Feigenson advances the idea of personalization when he discusses motivations for holding people responsible in the context of accidents.<sup>51</sup> He suggests that: “When people use their common sense to think about responsibility for accidents, they tend to think

---

<sup>50</sup> See FRITZ HEIDER, *THE PSYCHOL. OF INTERPERSONAL RELATIONS* 81–82 (1958).

<sup>51</sup> NEAL FEIGENSON, *LEGAL BLAME: HOW JURORS THINK & TALK ABOUT ACCIDENTS* 89 (2000).

in simplified, personalized, moralized, and dichotomized terms.”<sup>52</sup> According to Feigenson, individuals are motivated to focus on the characteristics of the person responsible for the accident and to “understand accidents in terms of personality-driven melodramas.”<sup>53</sup> He further suggests that blaming people simplifies the assignment of responsibility and diverts attention from more complex social and systemic causes of accidents.<sup>54</sup> Ultimately, he concludes: “Melodramatic blaming supports a culture of individualism.”<sup>55</sup> It offers us a world in which human agency is responsible for bad outcomes, and in which responsibility for those outcomes is assigned to the people (the bad guys) who deviate from accepted behavioral norms.”<sup>56</sup>

Several psychological studies, some of which were presented in the symposium leading to this volume, show that the flexibility of human perception allows us, under certain conditions, to view groups and organizations in unified terms, and to attribute intentions, drives, goals, and even traits to them. Thus, we are capable of personifying groups, especially when we assess cohesive and homogenous groups. This Article in particular argues that this capacity to personalize is inherently more limited when it comes to groups versus individuals—we simply are better at assessing character and intentions when evaluating people than organizations. We focus on the psychological reasons that people blame people and organizations differently when reacting to similar types and levels of conduct.

## VII. SUMMARY OF EXISTING LITERATURE

The prior literature suggests that assigning responsibility to a person comes more naturally than assessing the accountability of collective entities. Consequently, individuals are inclined to personalize complex problems to facilitate the formation of moral judgments. This phenomenon is further supported by the tendency

---

<sup>52</sup> *Id.*

<sup>53</sup> *See* FEIGENSON, *supra* note 51, at 88, 212–13.

<sup>54</sup> *Id.* at 213.

<sup>55</sup> *Id.* at 213–14.

<sup>56</sup> *See generally* FEIGENSON, *supra* note 51.

of jurors to use personified analogies for corporations when reasoning about the moral accountability of such collective entities.

In addition, people may hold different standards for judging the conduct of corporations. Hans provides the most direct evidence of this by arguing that individuals hold corporations to higher standards because they believe corporations to be more competent and knowledgeable “people” that should be more responsible in their conduct.<sup>57</sup>

Our goal is to examine the question of *how* people think about responsibility when considering people and groups. In particular, we will examine whether inferences about motive and character are more central to evaluations of people than entities. And, we will investigate whether this tendency leads to a weakening of the attributed link between conduct and responsibility.

In addition, our focus is on the evaluations made by individuals who are internal to the organization. Hans, as discussed above, considered juror evaluations of companies. But, this set of judgments necessarily reflects the assessments of outsiders. The views of insiders are *also* important. Insiders are those who might potentially call attention to wrongful conduct by whistleblowing or by working internally to stop unethical practices. Furthermore, they are important to corporate culture and can send a message to the company by resisting, undermining, or ignoring practices they view as unethical. For these reasons, we will focus on the judgments made by those within an entity, in this case, a business corporation.

#### VIII. ACCEPTING DECISIONS MADE BY PEOPLE OR INSTITUTIONS

The core of our argument is that people react differently to similar conduct by individuals versus groups and organizations. We will first consider this issue using a sample of employees drawn from a corporation. The issue we will consider is: Why do employees accept directives given to them within a work setting? Those directives can come either from a person or from an entity. This study is concerned with employee judgments of conduct

---

<sup>57</sup> HANS, *supra* note 4, at 112–38.

within their own company, and not with outsider evaluations of the company. We focus on this issue because many elements of wrongful conduct involve the acceptance of directives that could potentially be questioned by employees. If employees raise questions about or even disregard policies because they view them as inappropriate or immoral this can be an important check on questionable conduct by their work organizations.

The first study we conducted is based upon interviews with employees at a large multinational financial services company. Employees within the private banking division of this company received a questionnaire via interoffice mail that assessed various aspects of their organizational attitudes and behaviors.<sup>58</sup> The study focused on two possible employee reactions to managerial practices: an unwillingness to defer to an individual and an unwillingness to defer to a group. Individuals make decisions, while entities make policies. When people have concerns about either, however, they can express an unwillingness to accept them, and this Article is concerned with their reasons for doing so. In particular, our concern is with an employee's lack of feelings of obligation and responsibility to defer that may be the result of employee concerns about practices occurring in their workplace. The underlying assumption in both cases is that people typically feel some responsibility to accept decisions from superiors and to follow organizational policies. But they may express an unwillingness to defer under conditions in which those policies seem wrong.

We are interested in the different reasons people have for refusing to defer to a person or to an entity.<sup>59</sup> In particular, we

---

<sup>58</sup> Surveys were sent to 1,350 bankers. They were returned directly to the authors of this Article in enclosed business reply envelopes. Employees were permitted to complete the survey while at work and were assured confidentiality by both the investigators and the organization's management. A total of 540 surveys were returned, representing a 40% response rate.

<sup>59</sup> To measure deference in the case of supervisors, employees were asked to agree or disagree with the following statement: "[a]n employee should accept the decisions made by their supervisor, even if they think they are wrong;" "[d]isobeying one's supervisor is seldom justified;" "[s]omeone who disregards their supervisor's decisions hurts their work group;" and "[w]ork organizations are most effective when people follow the directives of their supervisors." For the company, the questions were: "[r]espect for an organization's rules is an



argue that inferences about motivations should matter more with a person than with an entity. In line with the arguments already made, making motive inferences and judgments of character is a person-level issue, and we think that it is easier to engage in this assessment with a person than with an organization.

We will contrast three sets of judgments about the properties of a person and of an organization. The attributes that might be important for either are: neutrality,<sup>60</sup> quality of treatment,<sup>61</sup> and inferences about motivations/character.<sup>62</sup> To examine the link

---

important value for employees to have;" "[i]n the long run, the organization is better off if workers willing[ly] follow the rules;" "[i]t is difficult to break the rules often and keep one's self respect;" and "[p]eople should support the policies of their work organizations."

<sup>60</sup> The items measuring supervisor quality of decision making were: "[m]y supervisor's decisions are consistent across people and situations;" "[m]y supervisor's decisions are made based upon facts, not their personal biases and opinions;" and "[m]y supervisor's decisions are equally fair to everyone." The items measuring company decision making were: "The rules call for equal treatment of all employees;" "[t]he rules dictate that decisions should be fair and unbiased;" "[t]he rules and procedures are applied consistently across people and situations;" "[t]he rules ensure that decisions are made based upon facts, not personal biases and opinions;" and "[t]he rules and procedures are equally fair to everyone."

<sup>61</sup> The items measuring supervisor quality of treatment were: "[m]y supervisor respects my rights as an employee;" "[m]y supervisor respects my rights as a person;" "[m]y supervisor treats me with dignity;" and "[m]y supervisor treats me with respect." The items measuring company quality of treatment were: "[t]he rules respect my rights as an employee;" "[t]he rules respect my rights as a person;" "I am treated with dignity by my company;" and "I am treated politely by my company."

<sup>62</sup> The items measuring supervisor character were: "[m]y supervisor follows through on the promises he/she makes;" "[m]y supervisor usually gives me an honest explanation for the decisions he/she makes;" and "[m]y supervisor takes my needs into account when making decisions;" "I trust my supervisor to do what is best for me;" and "[m]y supervisor listens to me when I express my views." The items measuring companies "character" were: "[t]he rules require that I get an honest explanation for how decisions are made;" "[t]he company follows through on the promises it makes;" "[m]y views are considered when the rules are being applied;" "[t]he rules ensure that my needs will be taken into account;" and "I trust the company to do what is best for me." *See* Tom R. Tyler & Avital Mentovich, *Multinational Financial Services Employee Survey* (July 2010, study on file with authors).

between reasons for action and the legitimacy of supervisors/organizations we looked at the role of decision making, quality of treatment, and character inferences upon legitimacy.<sup>63</sup>

An examination of the reasons that corporate employees have for granting or withholding legitimacy to their supervisor and their company supports our suggestion that people focus most strongly upon character inferences when they are dealing with particular people. As Table 1 shows, employees consider inferences about the motivations of their supervisor, but not about the motivations of management, when they are making legitimacy judgments. In the case of the individual supervisor, inferences about the supervisor's motivations were the key factor shaping judgments about legitimacy, while for the organization it was the neutrality of the decision-making rules.

Table 1. The antecedents of employee willingness to defer.

	Legitimacy of policies	Legitimacy of supervisor
Neutrality of decision making	0.26***	-.16
Quality of interpersonal treatment of employees	-.08	-.06
Inferences about motivations behind decisions	0.03	0.32**
Adjusted R.-sq.	8%	5%

Of course, legitimacy is not directly on point for this Article because it is not about punishment. It is about accountability, however, since legitimacy is measured in terms of an obligation to defer. So, if people feel responsible for following directives, they

---

<sup>63</sup> Legitimacy refers to the belief among employees that they ought to accept and defer to the decisions of organizational authorities because it is appropriate for those leaders to make decisions concerning what employees and the company should do.

will not object to or otherwise undermine the authority, irrespective of whether that authority is a person or an institution.

*A. Research on Employee Reactions to Wrongdoing in a Sample of Employees*

As noted above, the first study does not directly examine punishment. The second study focuses on employees, which allows for a more direct measure of punishment. The second study examines the behavior of employees reacting to the actions of their supervisors and corporate entities.<sup>64</sup> Our particular concern is with differences in reactions to the same ethically related judgments about people (supervisors) versus corporate entities. Two employee reactions are considered: a willingness to defer and behavior to undermine/punish authorities.

*B. Questionnaire*

Employees were asked to evaluate two entities: “your supervisor” and “your company and its formal rules and procedures.” Identical questions were used to evaluate the ethical character of the conduct of each employee’s supervisor and their work organization. Ethical character included motive inferences, but also asked about the ethicality of behavior and the provision of opportunities for correction. Three questions were used to assess

---

<sup>64</sup> Participants in the second study are a random sample drawn from a national panel of respondents designed to be representative of the entire United States population. Members of this national panel, which is maintained by a for-profit private organization, are initially contacted for their participation via random digit dialing. An incentive of free Internet access via WebTV is provided to all those that join the panel, and all surveys administered to the panel are conducted over WebTV (for more details on the panel, please contact the authors).

All potential respondents for the current study were screened to ensure that they worked at least 20 hours a week, had a primary supervisor, and had worked at their current employer for at least 3 months. Respondents meeting these criteria completed the survey in two parts, one week apart. In total, there were 4,430 employee respondents in the sample.

This is data that was collected by and is on file with the authors.

three aspects of ethical conduct: ethicality, trustworthiness, and correctability. To assess ethicality, employees were asked whether the conduct is “consistent with your views regarding appropriate ethical standards.” To evaluate trustworthiness employees were asked whether the conduct “reflect[s] a desire to do what is best for employees like yourself.” And, to assess correctability, employees are asked whether the authority “[p]rovide[s] you opportunities to appeal decisions that you disagree with.” Employees responded to each question on a five point scale, with “1” indicating strongly disagree and “5” indicating strongly agree. Distinct scales were created for supervisor (alpha = 0.87) and company (alpha = 0.89).

### *C. Findings*

An examination of the average level of ethical conduct for supervisors and companies suggests that employees see supervisors as being more ethical than the company. The average for employees’ supervisors was 3.25 (standard deviation = 1.05) while the average for companies was 3.21 (1.09), which is a significant difference ( $t(4430) = 2.96, p < .01$ ). Both averages are somewhat positive on a 1–5 scale with 2.5 as the midpoint.

### *D. Do these differences matter?*

The key issue is whether it matters if the ethicality involves a person or an entity. To address this question, we examined the influence of ethicality upon behavior. Two behaviors were of concern. The first involved actions taken against the company and/or one’s supervisor, actions that we will refer to as “punishing behavior.”<sup>65</sup> Conversely, we were concerned with an employee’s

---

<sup>65</sup> Employees were asked to assess the overall level of punishing behavior they directed at their supervisor and company as a group, using questions with a response scale ranging from 1 “never” to 7 “always.” The question was: “[h]ow often do you . . . not do your best work because you are angry at your supervisor or the organization you work for.” The mean was 1.80 (1.29) on a scale ranging from 1 “never” to 7 “always,” which means employees rarely engaged in punishing behavior.

Punishing one’s supervisor was measured by the frequency of engaging in two types of behavior. Respondents were asked how often they: “[f]ind ways to

willingness to follow directives, i.e., acceptance.<sup>66</sup>

A further examination considered the influence of ethics upon compliance with company rules and the decisions of supervisors. The question is whether ethical conduct helps. This analysis is shown in Table 2. Again, ethical evaluations were more influential in shaping the reactions of employees to their supervisor than to their company. In this case the beta weight for the company is 0.12 and for supervisors is 0.22. In other words, employees put almost twice as much weight upon character when deciding whether to defer to individual decisions.

What about impact upon conduct, i.e., does unethical conduct hurt either a person or an entity? First, what about behavior designed to punish either one's supervisor or the company? We examined the influence of judgments about ethical conduct on punishing behavior. The results of an analysis focused upon punishment are shown in Table 3.

In the case of general punishment reactions, both evaluations of the supervisor and the company have an influence of

---

undermine your supervisor?" and "[n]eglect to follow work rules or the instructions of your supervisor?" These items were used to create a scale (mean = 1.65; 0.93; alpha = 0.58).

Punishing one's company was measured by frequency of engaging in three types of behavior. Respondents were asked how often they: "[t]ake supplies from work without permission?;" "[c]ome in late to work without permission?;" and "[s]lack off towards the end of the day?" The items were used to create a scale (mean = 1.97; 0.99; alpha = 0.60).

<sup>66</sup> Accepting company rules was measured using five items, each of which measured how often employees complied with rules. The items were: "how often do you" "[c]omply with organizational rules and regulations?;" "[u]se company rules to guide what you do on the job?;" "[s]eek information about appropriate company policies before acting?;" "[c]ome to work on time?;" and "[f]ollow organizational rules about how you should spend your time?" The scale had a mean of 5.85 (0.94).

Accepting the instructions of one's supervisor was measured using four items, each of which measured how often the employee did as instructed. The items were: "how often do you" "[f]ollow the directives of your supervisor?;" "[f]ollow the policies established by your supervisor?;" "[c]arefully carry out the instructions of your supervisor?;" and "[a]dhere to the directives of your supervisor?" The items ranged from 1 "never" to 7 "always." The scale had a mean of 6.19 (0.84). *Id.*

approximately equal magnitude. However, when we look at targeted behavior, differences emerge. Employees are found to connect ethical judgments to punishing behavior more strongly when they are focused upon a person, i.e., their supervisor, than upon an entity, i.e., their company. In the case of the supervisor, the beta weight reflecting the strength of the connection to punishing behavior was  $-.22$ , while for the company it was  $-.09$ . The numbers can be compared to each other, or to the strength of the influence of incentives/sanctions and/or the degree of monitoring. Either comparison suggests that ethics matter more in the case of a supervisor.

Table 2. Judgments of ethicality and willingness to defer.

	Follow company rules and policies	Follow supervisor's decisions
Ethics of company conduct	.12***	—
Ethics of supervisor's conduct	—	.22***
Incentives/sanctions	.01	.02
Monitoring	.34***	.30***
Adjusted R.-sq	13%***	14%***

Table 3. Judgments of ethicality and undermining actions by employees.

	Hurt both	Hurt company	Hurt supervisor
Ethics of company conduct	-.13***	-.09***	—
Ethics of supervisor's conduct	-.14***	—	-.22***
Degree of incentives/sanctions	-.02	0.00	-.01
Probability of gain/loss (monitoring)	-.14*	-.14***	-.07***
Adjusted R.-sq	6%***	3%***	5%

So, although the impact of ethical conduct upon legitimacy judgments is similar for both supervisors and one's company, ethical judgments shape people's behavior toward the wrongdoer differently depending upon whether it is a person or an entity. Entities do not suffer as much from inferences of unethical conduct and, conversely, do not benefit as much from inferences of ethical conduct.

*E. Extension to Another Realm of Authority: Policing and the Police*

Both of the employee studies show that people more strongly link evaluations of conduct to motive inferences when they are dealing with a person. We suggest this occurs because people's judgments about entities are less strongly based upon motive inferences. A direct examination of the factors shaping ethical judgments supports this perspective by showing that inferences about motivations are more central to evaluations of people.

This latter point is key because it suggests that people link their evaluations of people to the motive inferences we have already discussed. As a consequence, it is easy to use such inferences to shape blame and punishment. In the case of entities, people have a model of ethics that does not fit well with issues of culpability and punishment because it is less centrally focused upon people's motivation and character. Instead, in the case of employees, a key antecedent of corporate lack of ethics lies in ignoring people's rights. While ignoring rights and failing to treat people with dignity are harms, they fit less clearly into a traditional model of culpability, blame, and punishment.

What about in the legal arena? Do we see the same pattern? To test for this possibility we examined the results of a study of the residents of New York City. The sample was asked to make evaluations of the New York City Police Department ("NYPD"). A random sample of the residents of the city evaluated the police in general. Within that sample, a smaller group with recent personal experiences evaluated the police officer(s) with whom they had dealt. The key question is what factors people consider when evaluating the NYPD as an entity as opposed to evaluating particular individuals in the NYPD. Put another way, how do

institutional evaluations differ from personal evaluations?

The results, shown in Tables 4 and 5, provide strong support for the distinction found in the study of employees. When residents are reacting to the entity or institution of the NYPD they consider neutrality and respect for people/rights as the primary factors shaping their overall evaluations of those entities. In contrast, when they are reacting to a police officer with whom they have personally dealt, residents consider inferences about the motives of that person more than any other factor. In other words, as we found with employees, inferences about the police officer's character and motivations are central to the resident's reaction when the person is involved personally with a police officer.

Table 4. Factors shaping institution level willingness to defer to the police.

Institutional trust	Legitimacy of the police force	Institutional trust in the police
Neutrality of the police	.28***	.32***
Respect for people/rights	.16**	.27***
Motive inferences	-.04	.06
Control over decisions	.06	.09*
Adj. R.-sq.	18%	45%

Table 5. Factors shaping personal level willingness to defer to the police.

	Willing to accept decision	Complain to get decisions changed
Neutrality of police officer	.18***	-.24*
Respect for person/rights	.06	-.03
Motive inferences	.58***	-.26*
Control over decision	.10*	.05
Adj. R.-sq.	70%	21%



*F. Direct Examination of the Question: How will a Corporation and Individuals within a Corporation be Judged for Identical Wrongoings?*

The studies described above provide strong evidence regarding how people perceive and interpret ethical behavior in real life settings. They do not, however, provide causal evidence to the question at hand. It is possible, for example, that supervisor level and company level judgments of the lack of ethicality or of unfairness influence differently the personal outcomes of employees. A supervisor's unfairness can more directly impact an employee's working life, and therefore such unfairness is likely to negatively impact an employee's cooperation. Also the studies we described here do not provide direct evidence to whether the identity of the wrongdoer itself, i.e., identification as a person or a corporation, affects the ethical interpretation of an identical action.

To address these concerns we conducted an experiment in which we looked into people's reaction to an identical description of an act of wrongdoing that was conducted either by a person or a company. Of course, we also acknowledge that in this experiment, unlike in the surveys, the people doing the judging are outsiders. This approach is more like the juror judgment approach used by Hans.<sup>67</sup>

We claim that organizations are not a convenient target for moral judgments. People are better at seeing individuals as moral agents and therefore they are less sensitive to misconduct committed by a corporation than misconduct committed by a person. However the fact that moral principles apply less to organizations than to people does not only mean punishing them less. It can also mean that groups and organization will not be given the same ethical treatment or the same rights, or more generally not be as easily given the things associated with being a person, irrespective of whether those things are good (rights) or bad (responsibilities).

To test these hypotheses we looked at how people react to a study that presents misconduct—a discriminatory behavior in workforce—committed by either a supervisor or a corporation. We

---

<sup>67</sup> See *supra* Part IV.

also looked at how people react to the denial of protected rights—in this case a deprivation of the right to speech—directed towards either company employees or toward the company itself. We measured how people perceive and react to such scenarios.

In the first study, the participants<sup>68</sup> read a newspaper article describing a company, or a supervisor that consistently refused to hire women. The descriptions of the alleged discrimination as well as other descriptions of the case were kept identical and we only varied the identity of the wrongdoer as being either a corporation or a supervisor. After reading the article, participants were asked whether they agree or disagree with the claim that the company's or supervisor's behavior was discriminatory, or that this behavior was permissible (reversely coded) on a scale ranging from 1 "strongly agree" to 7 "strongly disagree." Our results show that participants viewed the same behavior as more discriminatory when it was conducted by a supervisor ( $M=2.44$ ,  $SD=0.94$ ), rather than by a company ( $M=3.40$ ,  $SD=1.34$ ),  $t(33)=2.47$   $p<0.05$ ). We also asked participants how severe the punishment should be for this misconduct on a scale ranging from 1 "not at all severe" to 7 "very severe." The results showed that participants thought that the punishment should be harsher for the same behavior when it was conducted by a supervisor ( $M=3.44$ ,  $SD=2.10$ ) rather than by a company ( $M=2.40$ ,  $SD=1.06$ ).<sup>69</sup>

In the second study, we gave participants a newspaper article to read which contained an article about the city council preventing the corporation or the corporation's employees from protesting against a new tax that was enacted on the corporation. We asked participants how much they "agree or disagree" that the city should be allowed to prevent the corporation/employees from protesting, and that the right to protest should have been expanded to the company/employees in this case. The questions were administered on a scale ranging from 1 "strongly agree" to 7 "strongly

---

<sup>68</sup> The participants were people recruited on the NYU campus. They included both students and other members of the University community. Each was approached and asked to complete a brief scenario based study. See Tom R. Tyler & Avital Mentovich, Survey on Misconduct by Either Supervisor or Corporation (Summer 2010, study on file with authors).

<sup>69</sup> This difference is marginally statistically significant at  $t(33)=1.82$ ,  $p=0.08$ .

disagree.” The results showed that participants viewed the denial of protest rights to the employees as a more negative outcome ( $M=1.78$ ,  $SD=1.00$ ) than a similar denial to the company ( $M=2.63$ ,  $SD=1.58$ ),  $t(32)=2.06$ ,  $p<0.05$ ).

The results of these studies demonstrate that people did not hold companies as morally responsible for unethical conduct as individuals, and conversely, they did not see them as equally deserving of similar legal protection for their rights, in this case the right to speak. The fact that people failed both to punish organizations and to give them rights supports our initial thesis that organizations are not perceived as full moral agents in the same way that people extend this model to individuals.

These findings also show that people’s perception of moral deservingness contradicts the pervasive legal doctrine, which deems corporations as equally worthy of the protection of many constitutional rights. Our findings suggest that people view individuals as much more deserving of both credit and blame for moral acts.

#### CONCLUSION

The topic of this symposium is quite broad. It is about the law and morality of punishing collective entities. Our concern is with one aspect of this broad question: how people conceptualize responsibility and blame on the personal and organizational level. And, our focus is on the people within an organization who deal both with the organization and its policies and practices, and with the authorities within that organization who make decisions and implement policies.

Our results suggest that people think about responsibility differently at the individual level and at the organizational level. In particular, they focus predominantly upon issues of character when evaluating and reacting to individuals. But, they react to more abstract procedural issues when dealing with entities. This suggests that people have trouble putting organizational conduct into the person-focused models through which culpability and punishment are typically evaluated.

Hans argues that people view corporations as more

professional.<sup>70</sup> These findings support that characterization in that they suggest people focus more on abstract issues, such as the neutrality of decision making, when evaluating entities. When evaluating people, they focus more directly upon motive inferences and character judgments.

What are the implications of these findings? Our results suggest that people are more capable of judging the conduct of individuals than organizations. Similarly, an identical organizational policy (in our case, gender discrimination in hiring) raised greater moral condemnation when it was executed by a person (the supervisor) rather than by the company. Therefore, if organizations personalized the policies and revealed the individuals behind their decisions, people would be more inclined and better able to morally evaluate such conduct. Since people are better in judging the responsibility of individuals, organizations interested in promoting accountability for conduct need to be more transparent with respect to the people behind the decision making and the policies in the organizations instead of presenting people, insiders or outsiders, with abstract entities they cannot morally evaluate.

While these findings suggest that it is easier to evaluate responsibility for individuals, they also suggest that people are willing to be more flexible and discretionary in their understanding of the actions of individuals. Judging the motives of a person allows them flexibility to depart from rules, and shape actions to particular circumstances, as long as people believe that their motivations for doing so are benevolent. In other words, individuals have more flexibility to enact particularized solutions to problems, since they are judged based upon their intentions. Organizations are judged based upon the neutrality of their rules and their recognition of rights. This suggests less flexibility for them to change what they do in particular situations.

Hence, overall our findings suggest a tradeoff. On the one hand, an individual's actions can be more easily understood in moral terms, so individuals are more likely to be judged morally responsible for something that they do. On the other hand, because individuals are judged in terms of character and intention they have

---

<sup>70</sup> HANS, *supra* note 4, at 122.

greater freedom to depart from formal rules and policies, as long as their intentions in so doing are viewed as benevolent.