

IESE



University of Navarra

**CORPORATIONS AND THE «SOCIAL CONTRACT»:
A REPLY TO PROFESSOR THOMAS DONALDSON**

Domènec Melé*
Alejo Sison*

RESEARCH PAPER N° 249
June, 1993

* Professors of Business Ethics, IESE

Research Division
IESE
University of Navarra
Av. Pearson, 21
08034 Barcelona - Spain

Copyright © 1993, IESE
Do not quote or reproduce without permission

CORPORATIONS AND THE «SOCIAL CONTRACT»: A REPLY TO PROF. T. DONALDSON

During the past decade, Prof. Thomas Donaldson has dedicated a substantial part of his academic effort to the elaboration of a «social contract» theory applicable to corporations (1). His declared purpose is to provide a theoretical framework by which the morality of corporations can be duly established and judged. Aside from a critique of Donaldson's position in light, mainly, of the philosophical tradition of the «social contract» theory, we would like to propose an alternative explanation of the constitution of modern corporations along the lines of «intermediate institutions», entwined –together with persons and families– in the fabric of civil society.

I. What constitutes the «modern corporation»?

Donaldson takes three clear-cut steps to clarify his understanding of the modern corporation. Firstly, he reviews the historical development of the corporation; secondly, he examines the legal definition of the corporation; and thirdly, he deals with the corporation's moral status in terms of its specific responsibilities. This preliminary scheme subsequently allows him to construct a peculiar «social contract» for modern business firms, with its own concrete verbal expression, content, and roster of advantages and disadvantages.

Donaldson identifies four different stages of corporate evolution (2): the medieval period, the early sixteenth century, the advent of the East India Trading Company, and lastly, the gradual liberalization of corporate chartering procedures until the present day.

The first stage is represented by boroughs, guilds and Church associations, in which people organize themselves according to criteria such as vicinity, sameness of profession or trade, religion, and shared «political» (in its widest sense, as «social») interests; but definitely not for the profit motive. The profit-making motive comes into view only in the second stage. In an era of geographic discoveries, new sources of raw materials and finished products are found, as well as potential markets for these materials and products. Europeans realize that by embarking on such voyages collectively, they can obtain a higher return on their investment, since they minimize –insofar as they distribute– their risks and losses. The foremost innovation that the East India Trading Company represented was the constitution of the

managerial class –in the persons of a governor and his committee–; and it was the pooling of the stockholders’ capital that paved the way for this. Within the context of such a corporate formula, not only is there a separation of capital and labor (and correspondingly, of profits and wages), but also a dissociation of ownership (stockholders or the providers of capital) from company control (managers). From a certain perspective, large modern corporations and multi-national firms are no more than metamorphoses of institutions such as the East India Trading Company; facilitated, on the one hand, by the shedding of government restrictions on incorporation and, on the other, by cumulative technological advances. The «public» character and identity of corporations is now firmly established, independently of whether they are regarded as having their origin in the intrinsic freedom of association of human beings for legitimate ends or in the granting of a legal identity and charter by a government or state (3). Other concurring factors are the bureaucratization of corporations –as a function of their size and economic volume– and the remarkable increase in their influence and power, which at times even rivals that of governments or states, in practically all spheres of human life.

As a result of all these changes, corporations nowadays can be classified into either profit-making or non-profit; productive or non-productive; privately-owned or owned by government (in varying degrees); privately-held, with a select group owning an outstanding share of stocks, or publicly-held, with stocks traded among the general public, etc. Once these distinctions have been made, it seems that what Donaldson understands by «modern corporation» is *a productive and profit-making business concern*; quite regardless of its concrete formula of ownership.

Perhaps because of the acknowledged «public» relevance (i.e., social function) of modern corporations, everyone agrees on the need for a suitable legal figure. In Donaldson’s analysis, we find a couple of interesting accounts; one from American jurisprudence and another from the widespread opinion of corporate lawyers. Chief Justice Marshall’s authoritative and oft-quoted sentence reads as follows: «A corporation is an artificial being, invisible, intangible, and existing only in the contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of creation confers upon it, either expressly, or as incidental to its very existence (4).» The emphasis undoubtedly lies on the corporation’s being a legal fiction, as opposed to physical entities «naturally» endowed with agency, rights and duties. Lawyers, for their part, tend to define the corporation as «that which can endure beyond the natural lives of its members, and which has incorporators who may sue and be sued as a unit and who are able to consign part of their property to the corporation for ventures of limited liability (5).» The emphasis here is placed –aside from «longevity»– on the limited liability of the incorporators, a characteristic by which members are financially answerable only to the extent of their investment, while the remainder of their personal property remains untouched. Although we may readily accept that fiction is the basis of law, the point of contention is whether such fictions correspond to some objective reality known as «nature», or are simply the product of an arbitrary act of an imposing and «abstract» human will.

Having reached a more or less functional agreement as to the legal identity of business firms (i.e., the stipulations of a given state’s corporate law), the next issue to be dealt with is their moral identity. In the first place, there are certain authors of an unmistakably nominalist, individualist and liberal filiation who explicitly deny that corporations could or should have any moral dimension whatsoever: Friedman (6), Levitt (7), Ladd (8) and Keeley (9), to name a few. Besides Donaldson, there are others whose writings outrightly acknowledge, or at least presuppose or are open to the idea of, an appropriate moral character for corporations: De George (10), Galbraith (11), Goodpaster (12), French (13), etc. Of

greater importance, however, than finding out on which side of the fence each thinker belongs is understanding exactly the reasons why he adopts such a stand; in other words, how he articulates or explains the moral status of business firms. And this is the concern we shall now address.

To begin with, Donaldson (14) equates the moral status attributable to corporations with their possession of a certain «moral responsibility». This, in turn, demands some form of «moral agency», i.e., the capacity for «intentional behavior», much like that of physical persons, who are given a sphere –however limited– of freedom within which decisions can and should be taken by them. Neither physical persons nor –by extension– corporations as moral agents act «automatically» or «unidirectionally»; rather, sufficient room is provided for choices among different ends or objectives, and deliberation as to the alternative means that may lead to these ends. In the same way that in physical persons these decisional acts are carried out through the individual's psychological make-up, in the case of corporations we may posit the existence of an organizational –and on that very same account– responsibility flow chart. Corporations, like physical persons, recognize and do actually use moral reasons in their agency; and at the same time, they exercise control over their own acts and the operating policies or principles which these acts obey.

De George elucidates his notion of the moral status of corporations by first distinguishing between (economic or financial) liability, (legal) accountability and moral responsibility (15). For the moral responsibility of individuals he requires (self) agency, advertence (knowledge of the act either committed or relevantly omitted), and consent (willingness to realize the act). We then inquire, how do these apply to corporations? The truth is that although he clearly states his differences with theorists such as Friedman and Simon (who, while acknowledging the economic liability and legal accountability of the firm, nonetheless deny its moral responsibility), De George does not offer any consistent or substantive account of corporate moral responsibility. He simply confines himself to affirming that although corporations do have a moral status, they do not possess any empirical or psychological consciousness, feeling or ethical conscience of their own (16). Moral responsibility is thereby transferred to the individuals who make up the corporation, although, in an extremely precarious «balancing act», he insists that it is the corporation itself –and not the individuals– that has the moral obligation to repair whatever harm may have been done as a result of its actions. In summary, corporations have a moral status, but not a moral conscience (this is exclusively an attribute of individuals); and the moral status of corporations manifests itself in the assumption of certain responsibilities for «collective» acts which, in the final analysis, are to be shouldered by individuals.

The most daring proposal that we have encountered so far regarding the moral status of corporations is the theory elaborated by French (17). In a fashion similar to De George, he begins by separating the three entangled threads in the conceptual fabric of «personhood»: the metaphysical (which consists of «intelligent agency»), the moral («accountability») and the legal (the «appropriation» of actions and their corresponding merits or demerits). He then proceeds to discredit and disallow any further application of legal personhood to corporations because although they may correctly be considered as subjects of rights in accordance with the law, nonetheless, they could never effectively administer those rights as would be required –they are not valid legal agents. Instead, by virtue of their «Corporate Internal Decision» (CID) structure, they qualify as agents of a different kind, which retain only their metaphysical and moral ascriptions; that is, as «Davidsonian agents» (18). Two features of Davidsonian agents are of special relevance to our purpose: a) the existence of an organizational or responsibility flow chart that delineates stations and levels within the corporate power structure; and b) the existence of corporate decision recognition rules or

«corporation policies». Thanks to the two elements of the CID structure, whatever «power» the firm already has or may be able to generate is harnessed towards the accomplishment of its aims; the intentions and acts of various biological persons can be subordinated and synthesized –«incorporated»– into the firm’s very own. But this is merely the «material» condition that allows us to grant a moral status to the firm; the «formal» principle comes courtesy of the «corporate intentionality», as may be drawn from Anscombe (19). The latter implies the existence of a certain authority exercised by social norms over people, by reason of which they may be regarded as accountable or liable to others for their actions.

And to round up our brief survey, we find that Goodpaster’s strategy in conceding moral status to corporations consists simply in projecting the responsibility of individuals onto organizations (20). Previously, he had defined individual responsibility within the parameters of causality («agency»), rule-following and decision-making (plus the capacity to stand by those decisions, called «trustworthiness» or «reliability»). The first criterion may be met through incentive systems designed by management for the firm as a whole or for any of its functional units; the second, through the prudent observation of organizational structures and competencies; and the third, through reflection on the human impact of its operations and policies, for example. In addition, Goodpaster even seems to favor applying the biological notion of a «life-cycle», from birth and infancy all the way through to adulthood and maturity, to business firms.

What all the viewpoints we have collated so far have in common is the consideration of the physical person –either in the abstract, as for Donaldson; as an individual, as for De George and Goodpaster; or as a biological organism, as for French– as the reference for the definitive attribution of moral status to the corporation, some authors coming close and others straying away from it. Obviously, there is a great deal of confusion regarding the concept of «person», so it is only understandable that there should be some confusion in applying the term to the corporation, which is, besides, a «collective» of physical persons. Nevertheless, we believe that a couple of valid conclusions can be drawn. Firstly, that not only physical persons but all other collectives formed by persons may be endowed with a moral status (almost by virtue of the law of transitivity), although in a qualitatively different manner. And secondly, although responsibility is essential to the ascription of moral status to an institution, this element does not exhaust the moral realm, since it should also include a capacity for commitment to a few basic principles and the possibility of growth and flourishing, for example.

Corporations are not physical persons with an intrinsic moral status and an inherent right to exist. Rather, they are artifacts which we human beings, making legitimate use of our reason and freedom, choose to create. This being so, it becomes reasonable to look for justifications for their existence, in the concrete form in which they exist. Drawing a parallel with the state, Donaldson meets this demand through the «social contract» theory (21). By means of the «social contract», he seeks to vindicate the corporation and provide an account of its moral status in relation to those who conduct business directly with it (stockholders, employees, suppliers, customers, etc., towards whom it has «direct obligations») and to society or the public at large (competitors, local communities, etc., towards whom it has «indirect obligations»). The rationale to which he appeals is none other than that of productivity, as Adam Smith before him first pointed out. In the absence of such productive organizations, societies remain in a precarious «state of nature», given that individual production is not sufficient to satisfy their economic interests.

The parties to the contract are, on the one hand, the business firm itself, wherein people cooperate to produce at least one specific product or service; and on the other, society

in its individual members and not through any supra-individual entity. The contract may be expressed as follows: «We (the members of society) agree to do x and you (the corporation) agree to do y.» «X» stands for the obligations of society towards corporations; that is, recognition as a single legal agent and authorization to own and use land and other natural resources, as well as to hire employees. «Y» stands for the minimum benefits that corporations should deliver to society; that is, the «state of affairs» below which it might be said that society would be better off without the corporation (i.e. the corporation does more harm than good).

Donaldson sees the corporation's consumers and employees as special recipients of its «direct obligations». The corporation enhances the satisfaction of consumers' economic interests through more efficient production (resulting from specialization, the streamlining of the decision-making process, etc.), and the stabilization of output levels and of the channels of distribution and increased liability resources in general. The employees are benefited by the corporation in that it increases their income potential, diffuses the personal liabilities arising from the performance of their work, and adjusts their personal income allocation to cover social security needs. In exchange for all this, however, certain drawbacks have to be taken into account: pollution and the depletion of natural resources, the destruction of personal accountability, and the possible misuse of political power with respect to the consumers; also, «alienation», the lack of control over working conditions, and the monotony or dehumanization of work in general for the employees.

II. A Critique of Donaldson's Theory in light of the Social Contract Tradition

Donaldson rightly conceives the social contract theory in essence as the necessary transition of individuals from a «state of nature» to a «political state» (organized society), brought about by the consent of the parties involved (22); i.e., among individuals, initially, for the constitution of society, and later on between individuals and government or the state. In its application to business firms, the social contract theory explains the need for their existence *in general* –the need to leave the «state of nature»– through the issue of productivity; at the same time, it justifies the existence of *particular* corporations by virtue of the consent of their founding members and the legal approval received from government. What we would like to stress, nevertheless, is that these valid insights are not exclusive to the social contract theory (23); and by the end of this paper we hope to have drawn –albeit in broad outline– an alternative explanation more in keeping with the true nature of man, of corporations and of society as a whole.

To start with, the recourse to a social contract theory in order to explain the origin of society is a device proper only to modern political philosophy, concerned above all with the question of the legitimacy of the sovereign's power. Traditional political philosophy has always taken society for «granted», as something «natural» or spontaneous to man himself, without the mediation of any conscious choice or decision on his part. Consequently, its theoretical inquiries were directed mainly towards the best political regime or form of government that would facilitate a flourishing life for man and for society. Secondly, the social contract theory is not free from theological underpinnings. Donaldson himself attests to the usage of such a theory by French Huguenots and English Whigs, in their attempt to «create» a society based on tolerance rather than on authentic Christian respect, which implies love of the other for himself, regardless of differences in beliefs, opinions, practices, customs etc. The social contract theory is firmly rooted, beyond doubt, in Protestant and not in Catholic soil (24).

In principle, we may differentiate between two rival branches from the common trunk of the social contract tradition: a liberal-individualist one, to which Hobbes (25), Locke (26), Dworkin (27) and even Nozick (28) would belong; and a «republican»-collectivist one, from which Rousseau (29) and Rawls (30) would proceed. Perhaps the most influential author in Donaldson would be Locke, although of course, just like any other contemporary philosopher, he simply cannot avoid polemics with Rawls, Dworkin and Nozick. Locke's version of the social contract theory, as found in his second *Treatise*, follows the general mold, his specific contribution being the emphasis on the rights to life, liberty and property as previous to the individual's entrance in society and therefore inalienable by any political regime. As long as these fundamental conditions are met and guaranteed, almost any form of government is quite acceptable (although a preference for democracy is unequivocally expressed).

Hence, our strongest objection to Donaldson's social contract theory goes beyond his usage and understanding of the theory, in its application to modern corporations, to the individualist concept –inherited from Locke and Hobbes– of the human person that stubbornly informs his doctrine. In contrast, following mainline Aristotelian-Thomistic tradition, we believe that the human person is essentially, and on equal counts, both an individual and a relational being; he cannot be fully constituted –indeed, he cannot be constituted at all– as a human person except in a more or less «institutionalized» (in the sense of an «established» or «recognized» social form) relationship with others like himself (31). The primary sphere of socialization –and, as we here understand it, «personalization»– is, of course, the family. It is in the bosom of families that nature has decreed that human beings come into existence; and with their immediate families, human beings confront the basic daily human needs. And the ultimate sphere of socialization is civil society –whatever its historical form–, so much so that no one could ever consider himself alien to what occurs around him: not only his «humanity» but also his fulfillment as a person (or happiness) in varying degrees is at stake and dependent on what the others with whom he lives in community do. As we shall see later on, the business firm is situated somewhere between the family and civil society as a *locus* for «personalization» and socialization, aside from its primary goal of furthering legitimate economic interests, of course.

Another implicit of the social contract theory –from which not even Donaldson's own formulation escapes– is the prejudice that the initial and spontaneous attitude of man is the pursuit of his own self-interest even at the cost of others. Several versions of this form of «ill will» have been offered by different thinkers; but all the while it has been taken as a threat either to life, or to liberty or to property, or to all three at once, under the form of a disdainful indifference, a conscientious defense or claim of rights, a straining legal dispute, a no-holds-barred commercial competition or an all-out war. Certainly, aggressive attitudes are often displayed by persons in situations of conflicting interests. Yet we strongly disagree with the bias that a human being's spontaneous reaction towards another be of such nature; we think, rather, that a human being's basic attitude with regard to another is one of sympathy, of incipient friendship. What is «natural» (if we accept the Aristotelian intuition of man as a «social animal» or a «living being endowed with reason and speech») and «logical» is to think that cooperation works to mutual benefit; and what is obvious is that cut-throat competition, in business or in any other endeavor for that matter, is extremely harmful, if not completely sterile (the contrary opinion would be valid only if human economic good were to be considered statically, as a mere physical object, instead of viewing it as something dynamic and subject to growth and perfection, precisely through the concerted work of human persons).

Finally, whereas the social contract theory has dominated the scene of modern political philosophy under the guise of a hypothesis, Donaldson seems to put it forward as a

factual or historical event that serves to explain the genesis of business firms. It could even be vaguely mistaken for the moral dimension implicit in and inseparable from a corporation's legal charter. The very fact of its being present in all social agreements seems to suggest that it has never –at any specific, given point in time– occurred. Otherwise, we would be forced to posit it at every instance, and go on presupposing it *ad infinitum* for whatever relationship we would like to get ourselves involved in.

III. The Corporation as an Intermediate Institution

It is only natural that men should live together with their own kind in community in order better to satisfy their basic economic needs by way of reciprocal help. Men, however, are capacitated by their spiritual nature for something greater than the mere satisfaction of material needs; they possess a desire for a more total fulfillment that would include not only the absence of economic scarcity and the development of one's individual capacities, but also the harmonious flourishing of interdependent human lives in society.

By himself, man is incapable of attaining the essential ends of his life; he can only attain them by joining with others in society. In the first place, «society» takes the form of the family, but this in itself is insufficient. Man needs to live in «civil society», which is the only one adequately equipped with all the resources that are indispensable for the flourishing of human lives. Among these resources, we must have «lesser societies» or institutions which –though they focus mainly on the economic dimension of human existence, for example– are nonetheless necessary on the whole. Modern corporations are an example of this sort of «lesser society», and their contribution to the common good lies in producing goods and performing services, understood in the widest sense. Given their position between the family and civil society, they could be called «intermediate institutions»; and this is a status which they share with numerous other types of organization that pursue very diverse ends.

Probably the best way of classifying societies consists in studying the ends which each society proposes to achieve. We discover that some of these ends are essential to human life –e.g., the family has as its proper ends the transmission of life and the provision of basic education– and therefore, the societies that further them are necessary; whereas others are aims which merely have a mediate reference to the essential ones –a sports association, for example, which enhances physical health and strength– and consequently, are voluntary and free.

This analysis may be called a modal one since it focuses on the different «modes of being» societies take as a function of the ends they pursue. «Necessary» is said of that which cannot be otherwise; «contingent», of that which could either be or not be, and if it is, could adopt one form or another. Necessity could later on be predicated of a society's existence or its form; and the same goes for contingency. Necessity is not opposed either to what is voluntary (i.e., whatever originates from an internal principle, as opposed to what is involuntary or violent) or to what is free (i.e., the undetermined).

For example, the family may be said to be necessary on two counts, both in its existence and in its form (monogamous family). Civil society, on the other hand, is necessary only with regard to its existence, but not in the concrete historical form it assumes (a city, a nation, a modern state, the international community etc.) Taken loosely, we may consider some other societies as «necessary» to the extent that they are essential for the balanced

development of the human person, despite the generally informal nature that they acquire: a group of neighborhood friends, professional acquaintances, etc. Time is likewise a trustworthy index of the necessity of societies: «Have such societies always existed? Have they always existed in the same form, or have they evolved? Is one always attached to such a society, independently of his preferences?» etc.

Let us now apply this set of modal criteria to our consideration of the modern corporation. Firstly, insofar as the corporation pursues the goal of providing more adequately and efficiently for men's economic needs, we may predicate «necessity» of its class or genus. But since no business firm would ever formulate its corporate aim in such abstract terms as «to produce goods and to perform services» or «to provide adequately and efficiently for men's economic needs», this «necessity» is not ascribable to any particular enterprise; on the contrary, we have reason for saying that, in its concrete form, every business endeavor is contingent.

Note that in our explanation of the genesis of the corporation, we have not resorted to any version of the social contract whatsoever. Nevertheless, we have managed to establish its justification or «reason for being», both in general and in particular, by way of the necessary economic aspect (and not simply of the «profit-motive») that is a constituent of a truly human life; or in other words, by way of the economic demands of human nature. The fact that the corporation responds to a requirement of human nature, however, does not in any way work to the detriment of its «artificial» (or, more specifically, «socio-cultural, legal and historical») embodiments. The intrinsic and inalienable right to free association of the human person guarantees this. At the same time, we have managed to identify the peculiar and distinctive locus of the modern corporation within the fabric of society, between the family and civil society, together with other institutions (e.g., educational, cultural, health or charitable institutions) which may make equally valuable contributions to the whole.

We believe that it is in this context that the issue of the moral status of corporations can be properly dealt with. Bearing in mind the nature of the corporation as an «intermediate institution», we shall now try to elaborate an account of its agency, its responsibility, its commitments and its perspectives for flourishing and growth (or, conversely, for decline and demise).

As regards agency, a medieval adage of undoubtable repute says, «*actiones sunt suppositorum*» («actions belong to subsistent subjects or individual substances»). We believe that this maxim still holds true, even in the case of modern business firms. Although from the legal, economic and financial perspectives, corporations are considered to be single agents, this is nothing but a (legal, economic and financial) fiction, given that from the metaphysical as well as from the moral viewpoint, actions can only be done or carried out by concrete, individual persons. All sorts of parallelisms may and have been drawn, of course, between the psychosomatic make-up of the human person and the decisional (as possessors of knowledge and freedom) and bureaucratic (as rank-and-file executors of commands) structure of the firm; but in the definitive and final outcome, individual persons are always involved, each inevitably leaving his peculiar stamp. Our emphasis on real persons as opposed to mathematical-logical abstractions called «individuals» saves us from the pitfalls of the social contract theory: persons are inconceivable independently of their particular socio-political roles in society.

That actions, in the strict and final analysis, belong to subsistent persons (although these, in themselves, might be considered as agents of the corporation) in no way prohibits us from attributing a shared responsibility to the firm. This is so precisely because the

corporation is endowed with a decision-making structure –some sort of «subjectivity»– capable of working towards the achievement of objective common ends following certain rules, and therefore also capable of facing the liabilities that might tangentially issue from those actions.

The consideration of the firm as an intermediate institution avoids its being viewed either as a mere aggregate of individuals or as an organism, machine or bureaucracy in which each of its constituents loses his personal attributes. A properly organized firm is, above all, a community of persons bound by a singleness of purpose in cooperative work.

Whereas Donaldson explains the firm's responsibilities in terms of direct and indirect obligations, we think it better to recover what is known in philosophical tradition as the «species» or «subjective parts» (i.e., a classification in accordance with the subjects or terms of the relationship) of justice (32). The main division is between «organic» and «inorganic» justice; wherein by the former we understand the supportive relationships between the «subjective» whole and its parts, and by the latter we understand the mutual relationships between individual subjects, leaving aside their common membership of an organization, institution or society. Organic justice consists in achieving a «geometric» or «proportionate» equality –perhaps «equitableness» would be a better term– between the whole and its members. Inorganic justice, on the other hand, consists in strict arithmetical equality between parties. Inorganic justice is also known as commutative justice: it is a mere commercial interchange either of goods or of services; an application of the formula «do ut des». On the other hand, organic justice bifurcates into the «general» or «legal» kind of justice and the «distributive» kind. General or legal justice looks primarily towards the obligations of the governor or recognized authority –and by extension, of any individual member– towards the common good of a given organization, institution or society. Distributive justice deals with the obligations of that organization, institution or society towards any of its individual members, including the governor or the legitimate authority.

Transposing this terminology to «corporate» terms or figures, we may say that principles of organic justice should regulate all intra- (i.e., «within») firm relationships; whereas principles of inorganic justice refer to the inter- (i.e., «without») firm ones, in which each enterprise acts as an individual party and no common affiliation –except perhaps, broadly, to civil society– intervenes. General or legal justice examines the duties of all who work in or for the firm –not only the rank-and-file employees, but more especially the managers, executives, board members and outstanding stockholders whenever they act as such– towards the firm itself (33). Distributive justice bears on the duties of the firm as a whole –although agency is to be achieved only through its representatives– towards anyone who works in or for it; in this sense, it determines the reverse relationships of general or legal justice (34). And finally, inorganic or commutative justice would apply, under normal operating conditions, for example, to the relationships between a manufacturing firm and its suppliers or between a real estate firm and any other entity to which it rents out office space (35): their commitment to each other is notably inferior to that which may be established among the workers of either corporation; and their relationship, in its essence, is a simple commercial transaction. Our intention is obviously not to limit inter-firm relationships to the observance of the principles of commutative justice, but rather, to establish the limits –those set by commutative justice– in order to prepare the ground for other sorts of «virtuous» (i.e., humanly fulfilling) relationships to flourish. In other words, only when the demands of justice in whichever of its forms are satisfied, can any economic agent seek to include other dimensions of virtue (e.g. generosity) in its actions.

Perhaps, for the sake of both brevity and clarity, it would be useful to deal with the corporation's commitments to moral principles and its prospects of moral flourishing together. Here is where the notion of a corporate *ethos* or culture comes into view. Neither productivity nor profit, neither efficiency nor efficacy are valid as sole objects or as exclusive contents of a corporation's commitments, inasmuch as the corporation is an intermediate *human* institution. Human values such as service necessarily enter the discourse, although, as we said earlier, such values have to be incorporated or translated into economic benefits (which a *fortiori* respond to human desires and needs), since that is what is proper to the business firm (its specific «mission»). Not only do these values indicate the direction in which all entrepreneurial efforts should be aimed; but also, the materialization and embodiment of these values in the actions and character of each and every member of a firm is what determines, in the long run, that particular enterprise's moral worth and status. And this moral worth and status is the expected contribution of the business firm to the common good of civil society, to the flourishing of the lives of human persons as members of that society. □

-
- (1) Thomas Donaldson, *Corporations & Morality*, Englewood Cliffs, N.J.: Prentice-Hall, 1982; Thomas Donaldson/Patricia H. Werhane (eds.), «Constructing a Social Contract for Business», *Ethical Issues in Business*, Englewood Cliffs, N.J.: Prentice-Hall, 1983 (2nd edition); Thomas Donaldson, *The Ethics of International Business*, Oxford: Oxford University Press, 1989.
 - (2) Cfr. Donaldson: 1982, pp. 2-14.
 - (3) Compare this to the «legal recognition view» and the «legal creator view» respectively, as explained by Richard T. De George (*Business Ethics*, New York: MacMillan, 1990, 3rd. ed., pp. 101-102).
 - (4) Chief Justice Marshall, *Dartmouth College v. Woodward*, 4 Wheat 518.636 (1819).
 - (5) Richard Eels and Clarence Walton, *Conceptual Foundations of Business*, Homewood Ill.: Richard D. Irwin, 1969, p. 134.
 - (6) Cfr. Milton Friedman, «The Social Responsibility of Business is to Increase its Profits», *New York Times Magazine*, September 13, 1970: «Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible.»
 - (7) Cfr. Theodore Levitt, «The Dangers of Social Responsibility», *Harvard Business Review*, September-October 1958: «The function of business is to produce sustained high-level profits. (...) Welfare and society are not the corporation's business. Its business is making money, not sweet music.»
 - (8) Cfr. John Ladd, «Morality and the Ideal of Rationality in Formal Organizations», *The Monist*, vol 54, no. 4: «Insofar as morality in the strict sense enters into practical reasoning it must do so as an "ethical" premise, not as an empirical one. Hence, morality as such must be excluded as irrelevant in organizational decision making...»
 - (9) Cfr. Michael Keeley, «Organizations as Non-Persons», *Journal of Value Inquiry*, 15 (1982) pp. 149-155: «If, in fact, truly *organizational* goals or intentions defy identification, there is not much point pretending that they exist or that organizations resemble persons in any significant way. (...) From the fact that an organization can so act in the sense of *producing* an effect, it is a large leap to the claim that it can act in the sense of *intending* an effect.»
 - (10) Cfr. Richard T. De George: 1990, p. iv: «I therefore attempt not only to discuss what is morally required of a person in a business (a worker, a manager, a member of the board of directors), but also what structures are conducive to a person's accepting moral responsibility and fulfilling his or her moral obligations. (...) Business is a social activity and, like all social activity, cannot function unless certain moral prerequisites are fulfilled.»

- (11) Cfr. John Kenneth Galbraith, *The Age of Uncertainty*, Boston: Houghton Mifflin, 1977, p. 261: «From the interpersonal exercise of power, the interaction (...) of participants, comes the *personality* of the corporation».
- (12) Cfr. Kenneth Goodpaster, «Morality and Organizations», *Proceedings of the Second National Conference on Business Ethics* (Michael Hoffman, ed.), Waltham, Mass.: Center for Business Ethics, Bentley College, 1977: «That corporate conduct has in fact come to dominate the lives of individuals is only slowly beginning to occur to the moral philosophical community, together with an attendant imperative to accommodate this fact to ethical theory. One important stage in this accommodation process includes a shift in levels of agency (and consequently, moral responsibility or virtue) from the individual to the corporate or organizational decision-maker».
- (13) Cfr. Peter A. French, «The Corporation as a Moral Person», *American Philosophical Quarterly* 3 (1979), pp. 207-215: «... corporations can be full-fledged moral persons and have whatever privileges, rights and duties as are, in the normal course of affairs, accorded to moral persons».
- (14) Cfr. Donaldson: 1982, pp. 18-30.
- (15) Cfr. De George: 1990, pp. 88-93.
- (16) Cfr. *ibid.*, p. 101: «Corporations lack the interiority characteristic of human individuals; therefore their actions, not their motives, are the proper object of moral evaluation».
- (17) Cfr. French: 1979, p. 207: «I hope to provide the foundations of a theory that allows treatment of corporations as members of the moral community, of equal standing with the traditionally acknowledged residents, biological human beings, (...)».
- (18) Cfr. Donald Davidson, «Agency» in *Agent, Action and Reason* (Binkley, Bronaugh and Marras, eds.), Toronto, 1971.
- (19) Cfr. G.E.M. Anscombe, «Modern Moral Philosophy», *Philosophy*, vol 33. (1958), pp. 1-19.
- (20) Cfr. Kenneth E. Goodpaster & John B. Matthews, Jr., «Can a Corporation Have a Conscience?», *Harvard Business Review*, January-February 1982.
- (21) Cfr. Donaldson: 1982, 36-58; Donaldson 1983: 153-165.
- (22) Cfr. Donaldson: 1982, pp. 40-41.
- (23) Compare with the view expressed by Sir Ernest Barker, *Social Contract, Essays by Locke, Hume and Rousseau*, Oxford: Oxford University Press, 1947 (Connecticut: Greenwood Press, 1980), vii-viii, which stresses the values of liberty and justice inherent in all versions of the social contract theory.
- (24) Cfr. Domènec Melé, «La responsabilidad empresarial según la Doctrina Social de la Iglesia» in *Doctrina Social de la Iglesia y Realidad Socio-económica (en el centenario de la Rerum Novarum)*, Pamplona: EUNSA (XII Simposio Internacional de Teología), 1991, p 1102: «Enterpreneurial responsibility does not derive from a social contract; rather, it is founded on the respect towards the human person and on the solidarity of the firm in promoting harmoniously and actively the common good, inasmuch as the fundamental norm of all economic activity is service towards man, of all men towards the whole of man, in his full integrity».
- (25) Cfr. Thomas Hobbes, *Leviathan, or the Matter, Forme & Power of a Common-wealth Ecclesiasticall and Civil*, Düsseldorf: Wirtschaft und Finanzen (Faksimile Edition Klassiker der Nationalökonomie -1651), 1990.
- (26) Cfr. John Locke, *Two Tracts on Government*, Cambridge: Cambridge University Press, 1967.
- (27) Cfr. Ronald Dworkin, *Taking Rights Seriously*, London: Duckworth, 1978.
- (28) Cfr. Robert Nozick, *Anarchy, State and Utopia*, Oxford: Blackwell, 1974.

- (29) Cfr. Jean Jacques Rousseau, «Du Contrat Social» (1762) in *Oeuvres Complètes* (Gagnebin & Marcel, eds.), vol. III, Paris: Gallimard, 1976.
- (30) Cfr. John Rawls, *A Theory of Justice*, Cambridge, Mass.: Harvard University Press, 1976.
- (31) Cfr. Annette Kleinfield-Wernicke, «The Concept of a Person as the Anthropological Basis of Business and Corporate Ethics» in *Ethics in Economics, Business and Economic Policy* (Peter Koslowski, ed.), Berlin: Springer-Verlag, 1991. Although we are not in complete agreement with certain views expressed by the author -overly tainted by the phenomenological approach, perhaps- the article, nevertheless, offers a valuable summary of the features of the classical notion of «person» that are relevant for the actual needs and development of business ethics.
- (32) Cfr. Aristotle, *Nicomachean Ethics*, 1130 a 20-25, 1131 a-b 15, 1132 a 1-5; Thomas Aquinas, *Summa Theologiae*, II-II q. 58 a.6; In V Eth. lect. 2, 911. For an updated, but nevertheless faithful version of these principles see John Finnis, *Natural Law and Natural Rights*, Oxford: Clarendon Press, 1986 (chapter VII).
- (33) Examples of cases of legal justice would refer to the duties and obligations of the firm towards civil society in general, the duties and obligations of the firm towards the government or the state, the duties and obligations of the employees –including the members of the managerial and executive classes–towards the firm, the duties and obligations of the employees towards the firm’s managers and executives as such, the duties and obligations of the shareholders towards the firm, perhaps the «duties» and «obligations» of the more or less stable and longstanding individual clients or customers towards the firm, etc.
- (34) That is, we would expect the principles of distributive justice to be followed in the duties and obligations of civil society in general towards the firm, in the duties and obligations of the government or state towards the firm, in the duties and obligations of the firm towards its employees –the members of the managerial and executive classes included–, in the duties and obligations of the firm towards its shareholders, in the duties and obligations of the firm towards its stable and longstanding individual clients or customers, etc.
- (35) Paradigmatic of cases of commutative justice would be the bulk of trade and retail activities; that is, initially, the mere «buy and sell» relationships.

IESE**DOCUMENTOS DE INVESTIGACION - RESEARCH PAPERS**

No.	TITULO	AUTOR
D/ 231	La empresa familiar entre las 1000 mayores empresas de España. Julio 1992, 29 Págs.	Gallo M.A. Estapé M.J.
D/ 231 BIS	The family business among the top 1000 Spanish companies. July 1992, 29 Pages	Gallo M.A. Estapé M.J.
D/ 232	La relación fabricante de cabecera y proveedor como factor de competitividad industrial en las estrategias de fabricación. Septiembre 1992, 65 Págs.	Luchi R.R.
D/ 233	La desregulación de la economía española: Pasado y presente. Septiembre 1992, 16 Págs.	Argandoña A.
D/ 234	Focused export consortia. October 1992, 28 Pages	Renart L.G
D/ 234 BIS	Groupements d'exportation mis au point Octubre 1992, 28 Págs.	Renart L.G
D/ 235	Las correcciones sociales al modelo económico de la Comunidad Europea y su valoración ética. Octubre 1992, 30 Págs.	Argandoña A.
D/ 236	Innovation: Key elements and characteristics. October 1992, 21 Pages	Muñoz-Seca B.
D/ 237	Normalidad de las rentabilidades bursátiles. Octubre 1992, 41 Págs.	Martínez Abascal E Arnillas M.L.
D/ 238	Historical returns of stocks, bonds, bills and inflation in the Spanish capital markets. December 1992, 23 Pages	Sebastian A. Suárez J.L.

IESE**DOCUMENTOS DE INVESTIGACION - RESEARCH PAPERS**

No.	TITULO	AUTOR
D/ 239	Sobornos y extorsiones en los negocios. Enero 1993, 17 Págs.	Melé D.
D/ 240	Elementos relevantes para el análisis del sector bancario en los años 90. Enero 1993, 58 Págs.	Noussan G.L.
D/ 241	A resource - Based view of information systems: A proposal for a resource based theory of IS and an agenda for research. March 1993, 38 Pages	Andreu R.
D/ 242	Formación, entrenamiento y desarrollo de capacidades y habilidades directivas en las empresas españolas en los primeros noventa. Marzo 1993, 48 Págs.	Pin J.R.
D/ 243	Initial public offerings (IPOs): The Spanish experience. March 1993, 20 Pages	Rahnema A. Fernández P. Martínez Abascal
D/ 244	Outsourcing in Spain: An empirical study of top management's perspective. March 1993, 18 Pages	Valor J. Andreu R. Fonstad D.
D/ 245	La credibilidad de los códigos éticos. Abril 1993, 17 Págs.	Argandoña A.
D/ 246	Occasional ethical consultancy. April 1993, 13 Pages	Argandoña A.
D/ 247	La competencia en el mercado español de depósitos bancarios. Abril 1993, 28 Págs.	Gual J.
D/ 248	Business, law and regulation: Ethical issues June 1993, 32 Pages	Argandoña A.