

# Corporations, Moral Agency, and Reactive Attitudes

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## ABSTRACT

*In 2015, executives of Mitsubishi Minerals Corporation apologized to James T. Murphy for Mitsubishi’s abysmal treatment of him as a POW in their copper mines in World War II. In this article I consider what this case of moral interaction might mean for the claim that corporations can in their own right be members of the moral community, with the relevant reactive attitudes.*

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## INTRODUCTION

On July 19, 2015, executives of Mitsubishi Minerals Corporation apologized to James T. Murphy for Mitsubishi’s abysmal treatment of Murphy as a prisoner of war (“POW”) in its copper mines in World War II. It was clear both from the

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words and attitudes of the executives and from Murphy himself that what was at stake was a grave moral wrong committed by Mitsubishi against Murphy and thousands of other Allied POWs. Such moral wrongs can be committed only by morally responsible agents, so it is natural to suppose that Mitsubishi was (and is) just such an agent.<sup>1</sup> This is of course far from an isolated incident: we are sadly familiar with corporate moral misconduct from Bhopal to BP's Deep Horizon to Facebook's privacy violations. These incidents should suggest that there is nothing especially surprising about considering modern corporations to be moral agents.

Yet we ought not to be hasty in doing so. I will argue that we can see in the Mitsubishi-Murphy apology case ("Case") seeds for discomfort with this conclusion. At least, this discomfort will arise if we take seriously one kind of moral theory which especially purports to explain moral interactions such as this one. *Relational moralities* is the terminology I shall use for such theories, which claim that there is something especially interesting, and especially significant, about moral transactions between dyadic pairs of moral persons, such as that apparently involved in the Case.<sup>2</sup>

In particular, I will argue that on relational views there is tension between two widely-accepted propositions about corporate moral agency.<sup>3</sup> If we take the Case at face value, these Propositions seemingly cannot both be true:

- A. Corporations as collective agents (that is, not as reduced to a function of their individual members) are full-fledged members of the moral community.
- B. Membership in the moral community requires not just the capacity for response to moral reasons, but the capacity to engage other moral agents dyadically with the full range of reactive attitudes.

Neither of these Propositions is vulnerable to being overthrown by a single case, but the tension between them is uncomfortable. I do not have a fully worked-out resolution to this tension, but I will indicate where I think the best promise may lie for moving forward in thinking about this challenge to corporate moral agency.

I begin by explicating the Propositions, which are generally (if not universally) accepted. My argument for the tension will be inductive and the development of

1. Obviously, comparable harms can be inflicted by things that are not agents at all. The point here is that making *harms* into instances of *wronging* requires morally responsible agency, referred to as "moral agency" in this article.

2. There are numerous versions of this kind of theory. The most recent, and to my mind the most cogent, is in R. JAY WALLACE, *THE MORAL NEXUS* (2019). Perhaps the most carefully worked out version is in STEPHEN DARWALL, *THE SECOND PERSON STANDPOINT* (2006). But T.M. SCANLON, *WHAT WE OWE TO EACH OTHER* (1998) has also been very influential. The concerns I raise will not be limited to any one form of the relationalist project.

3. I limit my attention to business corporations, but there is nothing about my argument that could not apply with full force to other corporate entities often taken to be moral agents in the same sense.

it will be primarily via explication. I begin by explaining what is involved in each, and then I consider their implications when combined.

## I. THE PROPOSITIONS

Let us take our Propositions serially.

### A. *Corporations as Collective Agents (That Is, Not as Reduced to a Function of Their Individual Members) Are Full-Fledged Members of the Moral Community*

Something like this Proposition has been defended vigorously since Peter French's pioneering work forty years ago. Obviously, there is an easy, but reductive, sense in which "corporations are people." After all, they are not comprised of robots, or bonobos, or spreadsheets. *People* make them up, and people are members of the moral community. In that sense, corporate membership in the moral community is not controversial.

More controversial, but still widely accepted, is the idea that they are members *as collective entities*.<sup>4</sup> It is *General Motors*, not just the people who comprise General Motors, that is a member of the moral community. A recent representative paper by Gunnar Björnsson and Kendy Hess makes this claim explicitly. Björnsson and Hess believe that a "fully fledged"—unqualified—status as moral agents requires two things: (i) to "be capable of acting freely in some relevant sense, and of recognizing and acting on moral considerations," and (ii) to be "capable of certain reactive attitudes, in particular those of guilt and indignation."<sup>5</sup> We will return to the issue of reactive attitudes shortly. The present point is that on their view, the burden that must be shifted to make the case for "fully fledged moral agency" requires showing that it is the *collective* itself—not its constituent human moral agents—that must be shown to have the relevant properties. That is what is necessary for full membership of the corporate body in the moral community.

In this, Björnsson and Hess take a well-developed line. Adam Winkler reports that as early as 1877 the non-reducible nature of corporate personality was being explicitly accepted in law.<sup>6</sup> And this is the first and most important point Peter French set out to demonstrate in his work on the subject. French begins with a metaphysical argument that corporations do not reduce to the sum of their human members; when we refer to a corporation, we refer to "an entity that is itself an individual."<sup>7</sup> Moreover, the point of French's metaphysical argument is to position him to argue for "treatment of corporations as full-fledged members of the

4. See Michael McKenna, *Collective Responsibility and an Agent Meaning Theory*, 30 MIDWEST STUD. PHILOSOPHY 16 (2006). I am less sanguine than McKenna that our metaphysical commitments should be prior to our normative commitments and, in particular, our moral commitments.

5. Gunnar Björnsson & Kendy Hess, *Corporate Crocodile Tears? On the Reactive Attitudes of Corporate Agents*, 94 PHIL. AND PHENOMENOLOGICAL RES. 273, 273 (2017).

6. ADAM WINKLER, *WE THE CORPORATIONS* 51 (2018).

7. PETER FRENCH, *COLLECTIVE AND CORPORATE RESPONSIBILITY* 29 (1984).

moral community, of equal standing with the traditionally acknowledged residents: human beings.”<sup>8</sup>

Similarly (though not with the focus on membership in the moral community), Christian List and Phillip Pettit, in their influential work on group agency, emphasize the non-reductive nature of group agents:

Given that talk of group agents is not readily translatable into individualistic terms, and given that it supports a distinct way of understanding and relating to the social world, we can think of such entities as autonomous realities. Although their agency depends on the organization and behavior of individual members . . . they display patterns of behavior that will be lost on us if we keep our gaze fixed at the individual level.<sup>9</sup>

List and Pettit’s argument is grounded in the cogency of attributing not only intentional attitudes such as beliefs, preferences, and intentions, but also *reasoning*, to group agents. While they are less interested than French or Björnsson and Hess in the moral dimensions of these features of corporations, they do hold that “corporate bodies are fit to be held responsible in the same way as individual agents,” and that this is true even when the individuals involved in some malfeasance are individually held responsible.<sup>10</sup>

The crucial elements in this Proposition, then, are twofold. First, our interest in corporations is as moral agents themselves, not as a function of the moral agency of the people who make them up. Second, as moral agents, they are members of the moral community, in a “full-fledged” sense, as French, Björnsson, and Hess put it.

*B. Membership in the Moral Community Requires Not Just the Capacity for Response to Moral Reasons, but the Capacity to Engage Other Moral Agents Dyadically With the Full Range of Reactive Attitudes*

A special hallmark of the relational tradition in ethical theory is a focus on the work of the moral community, as constituted by agents with reactive attitudes, in understanding morality and moral norms. The guiding notion of contemporary relational theories of morality is that there is something morally crucial to our relations of accountability to one another. Our moral standing in the moral community is one in which we have obligations to others, and they have obligations to us. If I strike you or abuse you, I have not just failed to comply with some element of a moral code. I have also wronged you in some way that both establishes and reflects a distinctive moral relationship between me, the wrongdoer, and you, the victim. That relationship includes accountability: you have the standing to hold me accountable for my mistreatment of you, and vice versa. The moral

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8. *Id.* at 32. See also Peter French, *The Corporation as a Moral Person*, 16 AM. PHIL. Q. 207–15 (1979).

9. CHRISTIAN LIST & PHILIP PETIT, *GROUP AGENCY* 6 (2011).

10. *Id.* at 157, 165.

community is made up of moral agents standing in just this sort of relation to one another.

Reactive attitudes are the prime mechanism for holding one another accountable for these obligations. Peter Strawson focused attention on reactive attitudes such as gratitude, resentment, and forgiveness in mediating our relationships with others as “participants” in the moral community; we might add to that list *apology*.<sup>11</sup> In relational ethical theories, these attitudes are taken to be at least marks, if not constitutive, of being, and of holding others to be, morally responsible agents.<sup>12</sup>

Though French’s early work predates the relational tradition, his view reflects the depth and centrality of its crucial insights. Indeed, we can see the roots of this tradition all the way back in John Locke’s work on the concept of the *person*. Locke famously described this concept as “forensic,” by which he means that it is connected with our desert for sanctions (positive or negative) for what we are responsible for.<sup>13</sup> It is this sense of responsibility-as-accountability that French ties to his notion of moral personhood:

To be a moral person is to be a proper subject of certain kinds of judgments, moral responsibility ascriptions, moral blaming, and praising statements.<sup>14</sup>

French sees the relevant kind of responsibility as tied to “answerability”:

“Having a responsibility” is interwoven with the notion “having a liability to answer,” and having such a liability or obligation seems to imply . . . the existence of some sort of authority relationship . . . between people. . . . [For] someone to legitimately hold someone else responsible for some event there must exist or have existed a responsibility relationship between them such that in regard to the event in question the latter was answerable to the former.<sup>15</sup>

So, the relational focus on accountability has been deeply embedded in thinking about moral personality from the start of the serious consideration of corporate moral agency.

11. PETER F. STRAWSON, *Freedom and Resentment*, in *STUDIES IN THE PHILOSOPHY OF THOUGHT AND ACTION* 75 (1968).

12. McKenna cautions us against tying too tightly together the ideas of being and being held morally responsible. McKenna, *supra* note 4, at 31. But on some plausible metaphysical construals, the latter of these will constitute the former. Though I do not defend a “constructivist” view of moral responsibility there, the sorts of normative metaphysics I have in mind are defended in MARK LEBAR, *THE VALUE OF LIVING WELL* (2013) (especially chapters 5 and 6).

13. LOCKE, JOHN, *Of Identity and Diversity*, in *AN ESSAY CONCERNING HUMAN UNDERSTANDING* 217 (Hayes & Zell Publisher 1860) (1689).

14. FRENCH, *supra* note 7, at 170.

15. French, *supra* note 8, at 210–11. The ellipses here cut French’s broadening of the notion of answerability to answerability to a deity or in some fashion to social norms.

On relational views, moral obligation arises out of recognizing others as having the authority to make demands of us. By virtue of what Stephen Darwall calls their “second-personal competence”—their capacity to “determine themselves by these reasons” (that is, the reasons addressed by second-personal demands)<sup>16</sup>—others have the standing both to make demands of us and to be subject to our demands. As Darwall puts it:

Reactive attitudes thus concern themselves not with a person’s overall agency, but specifically with his conduct with respect to claims or demands that other persons have standing to make of him. They respond, that is, not simply to how he regards, or acts regarding, others, but to how he respects others in the sense of recognizing their valid claims and demands along with their authority to make them.<sup>17</sup>

The paradigmatic case here is one in which a reactive attitude of resentment might arise in Victim from some malfeasance on the part of Offender. Victim’s reactive attitudes concern not just Offender’s overall agency, but also—specifically—Offender’s recognition of and respect for Victim as a maker of second-personal claims and demands, as having this sort of second-personal authority. But these second-personal relations are reciprocal, and Victim’s reactive attitudes are themselves reflections of *respect for Offender* as second-personally competent, as someone bearing second-personal authority himself. This leads Darwall to claim, following Strawson, that the reactive attitudes themselves are a form of respect.<sup>18</sup> Thus, second-personal respect for others involves seeing them as appropriate targets of one’s reactive attitudes and directing those attitudes toward them as appropriate.

There is broad and general support for both Propositions, certainly among those working on corporate agency, and in particular those attracted to relational accounts of morality. While that is of course just one family of ethical theories, it is appropriate to focus on it here, as it is just that sort of theory that focuses on moral “transactions,” such as the ones involved in our Case. It holds that there is something important about our moral agency that is to be seen in these kinds of transactions. I will now argue that the Case shows that we have a problem in trying to hold onto both Propositions.

## II. THE CASE

The interesting thing about the Mitsubishi-Murphy case is not James Murphy’s mistreatment but Mitsubishi’s response to it. Mitsubishi Metals was one of a handful of Japanese companies that collaborated closely with the Japanese war effort, in effect managing the conditions of Allied POWs. They and other

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16. DARWALL, *supra* note 2, at 21.

17. *Id.* at 80.

18. *Id.* at 84; *see also* STRAWSON, *supra* note 11, at 93.

Japanese firms, not the Japanese armed forces, controlled, supervised, and assigned duties to the POWs.<sup>19</sup> James T. Murphy was one of several hundred U.S. POWs who were forced to work in Mitsubishi's Osarizawa Copper Mine in 1944 and 1945. The mine was primitive and the conditions were horrific; prisoners were allowed only two hours of heat a day, and pneumonia killed many POWs.<sup>20</sup>

By 2015, Murphy was one of few living survivors of Mitsubishi's abuse. The Japanese government had earlier offered a half-hearted generic "apology" for the mistreatment of the POWs. In 2009, then-Ambassador of Japan Ichiro Fujisaki offered a "heartfelt apology" to "many people, including prisoners of wars [sic] . . . to all those who have lost their lives in the war . . . and after the war, and their family members."<sup>21</sup> Many of the POWs gathered for this apology turned their backs and left the room, Murphy among them. Presumably, they responded to the failure of this apology to track facts about what apologies *are* as moral transactions between moral agents. As R. Jay Wallace puts the point, "agential responses to wrongdoing are owed to another party in particular. They cannot be discharged by directing an apology to just anyone."<sup>22</sup>

What Mitsubishi offered in 2015, however, was promising enough that, even though he was barely fit to travel, Murphy made it to Los Angeles to have a private meeting with Mitsubishi representatives. The meeting had been arranged by a Japanese writer, who wished for something more than just the pretense of an apology offered by the government. She wished for something that was also short of the "mistaken burden of the soul" to be borne for hundreds of years, which Mitsubishi feared would be the consequence of a genuine apology. The POWs did not want that either. They wanted an acknowledgment of the moral crimes against them. Mitsubishi was willing to make such an apology, but only if it could be sure in advance that it would be accepted, and Murphy was the only one well enough to be able to do so. The apology was made by senior executive Hikari Kimura, board member Yukio Okamoto, and five other Mitsubishi executives. The apology itself was made privately, without the presence of the press, which waited elsewhere. This was something that Mitsubishi insisted upon. Their apology was for the specifics of the maltreatment of the prisoners, including deprivation of food, water, medical treatment, and sanitation. Kimura concluded the apology by saying, "[W]hen I understand the sad truth of the matter, I feel a pained sense of ethical responsibility as a fellow human being."<sup>23</sup> Then the seven Mitsubishi executives rose, faced Murphy, and bowed from the waist. Murphy's

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19. LINDA GOETZ HOLMES, UNJUST ENRICHMENT xxi (2001).

20. *Id.* at 85.

21. See Gregory Warner, *A Case Study in How to Apologize for A War Crime*, NPR (June 13, 2018), <https://www.npr.org/2018/06/13/619447126/a-case-study-in-how-to-apologize-for-a-war-crime> [<https://perma.cc/JBP4-R9YZ>] (providing transcript of NPR podcast *Rough Translation* and Ambassador Fujisaki's apology).

22. WALLACE, *supra* note 2, at 89.

23. Warner, *supra* note 21.



response: "It was almost embarrassing. I wasn't expecting so much feeling to be put into it."<sup>24</sup>

There are several observations to make about this case. First, it is striking that Mitsubishi's executives required that the apology be made "out of the public eye." Partly, this is to be explained by the reticence they felt to expose themselves to public shame in a way that is, perhaps, best understood within the framework of Japanese culture. But what it reveals is the *directedness* of their apology. Unlike the earlier bland and meaningless government apology, this one was directed *to the victims* of Mitsubishi's misconduct. It is true that Murphy functioned in a sort of representative role, standing in for those who had suffered and could not be present. But he was able to do this because the apology was directed in part *to him*, as an individual victim whom Mitsubishi had wronged. The private and directed nature of how its executives understood the moral nexus between Mitsubishi and those it had wronged is revealed in its privacy. It was not a matter to be taken up by "the moral community" (let alone the press) except secondarily.

Second, the *feeling* or *emotional* content of what Mitsubishi did is also striking and, of course, notable for its absence in the earlier apology. It was this feeling dimension that conveyed the sincerity of the apology to Murphy and provided the closure he sought to the breach of relations between moral agents that the earlier abuse had occasioned. The feeling dimension of the apology was manifested or realized in the persons of the seven Mitsubishi executives.

Third, there is thus an aspect of the relationship between the corporate moral agent, Mitsubishi, and the individual agents, the executives, who manifested its attitudes. There does not seem to be a good model for this relationship in our understanding of corporate moral agency. The closest is perhaps what French refers to as "affine agents," who—unlike agents in other common agent-principal relationships, such as lawyer-client relationships—have internalized the interests of their principals, as in parent-child relationships.<sup>25</sup> The Mitsubishi executives involved in the apology to Murphy do seem to have undertaken this internalization, so it is a promising start. But there are also difficulties with this model. I take these up in more detail in the next section.

Meanwhile, we can now see that the Mitsubishi-Murphy case poses at least a *prima facie* problem for the conjunction of Propositions A and B. It is hard to see how they can be true together if we take this Case to be an example of the sort of moral agency that the Propositions are intended to characterize. Here I indicate how each is *prima facie* rendered problematic by the truth of the other in our Case. In the next section, I consider the plausibility of relaxing either or both of these Propositions.

How does the Case generate a problem for Proposition A? Given that membership in the moral community involves the capacity to engage dyadically with the full range of reactive attitudes (Proposition B), then A would imply that we see

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24. *Id.*

25. PETER FRENCH, CORPORATE ETHICS 135–36 (1995).



Mitsubishi itself—the corporate entity, not the individuals who comprise it—as having those attitudes. It is far from obvious how this might be so. Mitsubishi *itself* could seemingly have articulated its thoughts in any number of ways, including issuing a formal apology through its various channels of communications. But that is not what happened. Instead, its *executives*—individual moral agents—personally and bodily appeared before James Murphy to *express* that apology. That is not something a corporate entity itself is capable of doing. Somehow the abstract had to be rendered *literally* corporate: bodily and capable of the embodied expression of the relevant reactive attitudes. It follows that, if Mitsubishi itself is incapable of the reactive attitudes its representatives were capable of, it cannot be a full-fledged member of the moral community.

What problem is there for Proposition B? Now we have a stipulation (via Proposition A) that Mitsubishi itself (again, not the individual people who make it up) is a fully-fledged member of that community. But since the Case identifies an important incapacity in the holding and expressing of reactive attitudes—at least, those involved in a transaction such as an apology, as in our Case—it must be, *contra* B, that such attitudes cannot be a requisite part of membership in the moral community.

Something needs to give. If we are to accept that the Case offers a datum of moral experience that an adequate theory of corporate moral agency should be able to explain, then we face an awkward choice. We have (prima facie anyway) an obstacle to accepting either that corporations are full-fledged members of the moral community or that such membership entails the capacity for the full range of reactive attitudes or both. How should we respond?

### III. POSSIBLE RESPONSES

It seems that our Propositions cannot stand together in the face of our Case, at least as cast. If we are not to give up on the idea of corporate moral agency itself, our options depend on which of them we decide to relax, and how.

1. We can “de-fledge” the full-fledged membership of corporate moral agents in the moral community. Perhaps, in virtue of their deficiencies in answering to the need for reactive attitudes such as in the Case, corporate moral agents are something like second-class citizens in the moral community.

2. We can (i) walk back from the relational understanding of membership in the moral community as entailing full engagement in dyadic moral relations with associated reactive attitudes, or (ii) perhaps reinterpret what having those reactive attitudes entails.

Option 1 means accepting that there are (at least) two classes of actors in the moral community.<sup>26</sup> I think there is a slippery slope here we are better off avoiding just because of the significance of recognizing the moral equality of others in the moral community. Acknowledging a distinct “tier” in the community for

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26. Mitchell R. Haney, *Corporate Loss of Innocence for the Sake of Accountability*, 35 J. SOC. PHIL. 391, 406 (2004).

collective agents such as corporations does not by itself begin a slide into gradations of moral authority depending on some set of arbitrary criteria. But especially if we notice that the basis for *this* distinction is a certain affective incapacity of corporate agents, it is not a stretch to appreciate how the argument might be extended to *human* moral agents with similar incapacities.<sup>27</sup> At the same time, it is evident that corporations are, as French puts it, “not illegitimate aliens in the moral community.”<sup>28</sup> Thus, we would need a way of recognizing that they belong in some different way from ordinary human moral persons.

Option 2.i seems equally ill-advised. It is unacceptable for those in the tradition of relational morality, just as the focus on susceptibility to reactive attitudes is central to that tradition.<sup>29</sup> But it is also ill-advised for those most committed to moral community membership for corporations in the business ethics literature, beginning with Peter French.<sup>30</sup> Reactive attitudes are all around taken to be central to moral agency and membership in that community. Without recourse to them, we would seem to be without any resources to explain the moral significance of what transpires in the Case. Thus, this avenue too is a non-starter.

The right approach to rethinking things, I believe, is 2.ii. The idea is to vindicate the claim that corporations *do* have the reactive attitudes in a sense required for full membership in the moral community, despite the obvious fact that they are not human nor equipped with affective biological systems, and despite the awkwardness for such a move framed by the Case. However, I do want to register reservations about two suggestions along these lines that I think will not get the job done, before concluding with a positive suggestion.

The first of the suggested strategies comes from Björnsson and Hess. Following upon arguments that we can understand corporate bodies to have beliefs, desires, and other intentional states if we understand those states functionally,<sup>31</sup> they argue that we can do the same with reactive attitudes. That is, if we accept that corporations are capable of the former kinds of state that are necessary

27. For a careful examination of those close by the “membership boundary” for the moral community without the suggestion that we consider gradations of membership, see David Shoemaker, *Moral Address, Moral Responsibility, and the Boundaries of the Moral Community*, 118 *ETHICS* 70 (2007).

28. See Peter A. French, *Responsibility with No Alternatives*, in *Loss of Innocence, and Collective Affectivity: Some Thoughts on the Papers by Haji, McKenna, and Tollefsen*, 7-2 *NEWSL. ON PHIL. & L.*, (APA, Newark, Del.), 2008, at 13.

29. Certainly, this is true for Darwall and Wallace as well as for David Shoemaker (this volume). See DARWALL, *supra* note 2; WALLACE, *supra* note 2; David Shoemaker, *Blameworthy, but Unblamable: A Paradox of Corporate Responsibility*, 17 *GEO J.L. & PUB. POL’Y* (SPECIAL ISSUE) 897 (2019). Less so for Scanlon, but even he maintains that susceptibility to the reactive attitudes is necessary for moral blameworthiness. SCANLON, *supra* note 2, at 276.

30. See French, *supra* note 28. I also include in this number, among others, Deborah Tollefsen, Mitchell Haney, and Gunnar Björnsson and Kendy Hess. See Deborah Tollefsen, *Participant Reactive Attitudes and Collective Responsibility*, 3 *PHIL. EXPLORATIONS* 218 (2003) [hereinafter Tollefsen, *Reactive Attitudes*]; Deborah Tollefsen, *Affectivity, Moral Agency, and Corporate-Human Relations*, *APA NEWSL. ON PHIL. & L.*, Spring 2008 [hereinafter Tollefsen, *Affectivity*]; Haney, *supra* note 26; Björnsson & Hess, *supra* note 5.

31. LIST & PETTIT, *supra* note 9, at Part I.

for moral agency, then by the same kind of reasoning we can see them as having reactive attitudes.<sup>32</sup> In particular, they make this case for guilt and indignation.

I am not sure that the functional account of indignation they have in mind does the work it needs to for full membership in the moral community. Their argument turns on a demonstration of the possibility of a functionally indignant response to a threat from a competitor.<sup>33</sup> But more is required of the moral community by way of indignation. Consider Wallace's example of the reactions he might feel to a report about Robert Mugabe's horrific governance.<sup>34</sup> Wallace supposes that his reaction will be indignation, and this reaction is entirely deserved, even though none of Mugabe's offenses is directed at Wallace himself. Instead, it is called forth by his (Wallace's) membership in the moral community.<sup>35</sup> This general capacity to have reactive attitudes towards wrongdoing not directed at oneself is nothing new, of course; it is one of the principal elements in Mill's account of the "feelings of justice."<sup>36</sup> It is commonplace that such reactions flow from us (human moral agents) naturally as members of the moral community, directed at others we take to be in that community, without ourselves being the victim of the wrongdoing. Such indignation may even be a potent mover in history,<sup>37</sup> but it is difficult to imagine a functional equivalent in a corporate body.

However, a more serious worry comes from the Case. It is hard to imagine that there can be any functional equivalent to the demonstration of contrition and apology by Mitsubishi's executives, and it was that act that allowed for such reconciliation as was possible in the Case. To say that is not, of course, to argue that there can *be* no such functional equivalent, but it is far from clear what one might be, and I think pending such an argument we should restrain our enthusiasm for the Björnsson-Hess proposal as a way of amending our understanding of corporate moral agency.

The second strategy is sketched by Deborah Tollefsen, building on French's notion of "affine agents." Affine agents "identify their interests . . . with the corporation's interests, their plans with its plans."<sup>38</sup> French's model for affine agency, again, is the parent-child relationship, in which, though there is no principal-agent exchange of the sort in common agency, the agent takes up the principal's interests as her own, and is satisfied with the principal's satisfaction.<sup>39</sup> Tollefsen thinks the

32. Björnsson & Hess, *supra* note 5, at 273, 275.

33. *Id.* at 291.

34. WALLACE, *supra* note 2, at 30.

35. *Id.*

36. JOHN STUART MILL, UTILITARIANISM 42–64 (George Sher ed., Hackett 2d ed. 2001) (1863).

37. David Brink argues that such attitudes in response to moral wrongs play a significant role in explaining responses to social injustice. See DAVID O. BRINK, MORAL REALISM AND THE FOUNDATIONS OF ETHICS 188 (1989).

38. FRENCH, *supra* note 25, at 137. French's treatment of this form of agency and its realization in corporations derives in part from his dubious assumption that shareholders are not owners of the corporation, *id.* at 95–96, a claim which ignores the fact that the corporation's existence and action supervenes not only on its member agents but on its capital. However, I set aside that concern here.

39. *Id.* at 135–36.

model fits the kind of ready emotional identification we make with others and can be extended to the corporate case.<sup>40</sup> As an example, she offers the kind of feeling she might have should she witness her husband slip and fall.<sup>41</sup> She might feel embarrassed, but she would be embarrassed *for him*, not for herself. Her embarrassment would be vicarious; she knows what it is to be in his shoes and feel what he feels. Just so, she thinks, we can have something more than merely functional corporate emotion. Corporate emotions “are individuated from individual emotions in terms of the employee’s role in the corporation, they are judged fitting by appeal to the norms of corporate behavior, and they lead to changes in corporate policy and action and not necessarily changes in employees’ ‘personal’ lives.”<sup>42</sup>

But application of affine agency to the Case at hand is problematic.<sup>43</sup> One problem is that, unlike parents and their children, where the affinity is thought to lie in the fact that there is no agent-principal exchange, there clearly *is* such an exchange between corporations and executives. Few employees maintain their affine agent status once their paychecks have stopped.

Second, in the parent-child case, part of what underwrites that relationship is its extension and development across time. Parents do what they do for and with their children in the hope and expectation that their children will one day grow out of that agency relationship, and be capable of full-fledged agency on their own. That end shapes and determines the fittingness of the various plans and actions parents take *as* affine agents. But there is no such end in sight in the corporate case. Corporations can never be full-fledged agents, capable in particular of the complete range of reactive attitudes that characterize full-fledged moral agency. They are, by constitution, permanently limited in that regard. That means the relationship that their agents have to them and their ends must be very different from the relationship in the case of parent-child affinity.

Finally, and most important for our purposes, while it is easy to understand the vicarious nature of emotion on behalf of another human person (such as Tollefsen’s husband), that sort of empathy seems to have no place in the corporate analog. There is no point of view comparable to that of a human person to be occupied, even if various intentional attitudes can be thought to be functionally realized.<sup>44</sup> There are no shoes to be in there: the attitudes expressed by the representatives of Mitsubishi are *instead of*, not in resonance with, the attitudes of the collective, precisely because Mitsubishi lacks those attitudes. This point bears elaboration, as it is in danger of being under-appreciated.

40. Tollefsen, *Affectivity*, *supra* note 30, at 9, 12; *see also* Tollefsen, *Reactive Attitudes*, *supra* note 30, at 228.

41. *Id.*

42. *Id.*

43. French himself acknowledges similar limitations on the model. *See* FRENCH, *supra* note 25, at 139.

44. Tollefsen is cognizant of this point, but she does not offer a response. Tollefsen, *Affectivity*, *supra* note 30, at 12.

Focusing on phenomenology helps us to see what is at stake here. Mitchell Haney argues that the functionalist approach to the reactive attitudes “fails to be able to account for phenomenal character or the ‘what it’s likeness’ of experience.”<sup>45</sup> For this reason, Haney finds recourse to affine agents unsatisfactory. The Case makes that point clearly. It certainly seems as though the regret, guilt, and shame manifested by the Mitsubishi executives *are* felt by them personally, not as a matter of vicarious experiencing of emotions functionally realized in their corporation.<sup>46</sup>

Björnsson and Hess respond to Haney (in effect) that it is hard to see why the phenomenology *per se* should matter, if the functional effects of the relevant attitudes (here, guilt and remorse as components of the attitude of apology) are present.<sup>47</sup> If phenomenology were the only concern, that point might strike home. But our Case shows where their response—as well as Haney’s original formulation of the objection—stops short of grasping the entire picture.

For in the Case, what we see is a *relation* between the apologizing agents of Mitsubishi and the person to whom they owe the apology (viz. Murphy, representing the cohort of former POWs). Though the phenomenology might not matter to Mitsubishi (how could it? since it has no subjective experience), or perhaps even to the moral community generally, it *does* seem to have been part of the story as to why Murphy was satisfied with the apology, particularly in contrast to the strikingly bad earlier apology. The feeling of the emotion pertinent to the reactive attitude seems to have mattered *relationally* or *dyadically* in ways that the pure phenomenological point, as well as the functional approach, seems to miss. It is the engagement of the audience for the apology (notably Murphy himself) that marks the emotions of the Mitsubishi executives as morally significant. As David Shoemaker succinctly puts the point, “it’s the remorse we’re really after.”<sup>48</sup>

Shoemaker’s discussion of the significance of remorse for reconciliation makes clear the dynamic at work here: my remorse “is the painful acknowledgement of what I did to you *from your perspective*. . . . This *pained empathetic acknowledgement motivating rumination* is remorse’s essential feature.”<sup>49</sup> What matters for the success of Mitsubishi’s apology to Murphy is that Mitsubishi’s remorse is manifest. To the extent that Shoemaker is right that remorse is an essentially empathetic attitude, there can be no functional substitute for a living, breathing,

45. Haney, *supra* note 26, at 403.

46. It seems much more closely akin to what Margaret Gilbert calls “membership guilt.” MARGARET GILBERT, *JOINT COMMITMENT: HOW WE MAKE THE SOCIAL WORLD* 248 (2014). In her view, the guilt and remorse felt by the Mitsubishi executives would have been appropriate given “their participation in the foundational joint commitment” that is constitutive of the enterprise as a collective. *Id.* at 249. On the other hand, as Gilbert observes, this form of guilt seems to have the wrong subject: it misses the notion that somehow the group itself has the guilt. *Id.* at 250–51.

47. Björnsson & Hess, *supra* note 5, at 288; see also GILBERT, *supra* note 46, at 231.

48. David Shoemaker, *Blameworthy but Unblamable: A Paradox of Corporate Responsibility*, 17 *GEO. J.L. & PUB. POL’Y* (SPECIAL ISSUE) 897 (2019).

49. *Id.*

*empathizing* human agent to accomplish the apology. That is what the Mitsubishi executives bring to the table.

In other words, the emotion involved in the apology does not only (or even primarily) seem to matter for the moral agent experiencing it, but also for the partner in this moral transaction. There is an ineliminable relational quality to the work done by the actual remorse experienced by the apologizing agent.<sup>50</sup> Why might this be? And why might this relational element be important to our understanding of moral agency, corporate or otherwise? I am not certain, but one can speculate.

For starters, there is an evolutionary case to be made. Michael Tomasello has argued that the evolutionary advantages of interdependence led our forebears to develop the capacity for joint intention, opening the door to joint commitment.<sup>51</sup> The advantages of dyadic relations of cooperation and interdependence provided a foundation for the building of social norms and eventually moral community. In his account a “natural second-personal morality” paved the way for the development of new cognitive skills, collective intentionality, and an “impersonal collective morality of cultural norms.”<sup>52</sup> The highly cooperative modern societies we have today began with dyads taking up moral attitudes toward one another and seeing that each other did so.

Although Tomasello does not explicitly take up the issue of reactive attitudes generally, or apology in particular, it is highly plausible that the kind of interaction between Mitsubishi and Murphy can be readily understood on his account. It is just this sort of interaction that allows for the restoration of moral relations, allowing for trust and cooperation to proceed, following a history marred by the deep wronging of one party by another. This is not to say that Mitsubishi apologizes or Murphy accepts with this evolutionary story in mind, but instead to surmise that they are equipped to do so in part because of the roles that the reactive attitudes and emotions that facilitate such relationships play in productive and successful human lives.

Second, Paul Russell offers a related developmental argument. Russell points to both developmental and motivational considerations to argue that “moral sense”—of a sort that essentially involves emotionality—is necessary for the moral agency that is required for full membership in the moral community.<sup>53</sup> He writes, “[M]oral competence of the kind required for responsible agency develops

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50. This line of argument may open itself up to a new form of functional interpretation: the character of Data on *Star Trek* is, although a robot, so designed as to seem to provide just the sort of empathetic interaction that we are after here. The “attitudes” of Data that might be taken as empathetic or remorseful are realized in silicon, somehow, rather than organically, as in us. Does that sort of multiple realizability suggest that a functional simulacrum in the corporate case might be possible too? My response: I think it does open that door conceptually, and at a point at which such multiple realization becomes *actually* (rather than conceptually) possible, it might influence our attitudes towards one another. But we have no grip on that sort of realization now in order to conceive of a functional equivalent. I thank Sahar Akhtar for discussion of this point.

51. MICHAEL TOMASELLO, *A NATURAL HISTORY OF HUMAN MORALITY* (2016).

52. *Id.* at 7.

53. PAUL RUSSELL, *THE LIMITS OF FREE WILL* (2017).



in a social and emotional matrix that fosters and nourishes the general capacity to recognize and respond to moral considerations.”<sup>54</sup>

Our Case shows that Russell’s point applies in a sense perhaps beyond what he intended. The “matrix” is not only the cognitive-affective machinery responsible for our capacity for reactive attitudes and moral thought and action. It is also essentially interpersonal, in the sense that *human* emotion—not merely a functional simulacrum—is necessary for the kind of exchange of attitudes between agents that apology and acceptance involve. The relevant kinds of reasons for attitudes in our Case—and likely elsewhere in our moral ecosystem—seem to have a public dimension to them that reaches beyond the limits of functions within an organization and that essentially involves actual emotional engagement with members of the community.

Finally, Robert Frank offers a functional argument that our emotions play an important role in allowing us to solve a problem crucial to cooperation.<sup>55</sup> The problem is that our local or immediate incentives can be in poor alignment with our long-term benefit, particularly in cases of potential cooperation. What we need, then, is a tool for credible *commitment* in the face of competing incentives. Moreover, such commitment needs to be signaled reliably to our potential cooperative partners. That, he claims, is a role that emotion is well-suited to play, and perhaps explains its evolutionary purpose.<sup>56</sup>

Now, Frank does not consider the reactive attitudes and associated emotions, but, following Tomasello, we can consider what *dyadic* emotion and its interpretation by others can do for facilitating and sustaining cooperation. For fallings-out far less serious than that of the Case can inhibit cooperative relationships with others. One role, then, for the expression of reactive attitudes that others can perceive and understand is to allow for the healing of such relationships, restoring the possibility of cooperation.<sup>57</sup>

I do not know which of these explanations, or others, does the most justice to our moral experience and to specific instances such as the Case. I suspect, however, that attending to the dynamics of such relations can increase our understanding of ourselves—and corporations—as moral agents. And while I do not have a proposal for a tidy integration of the phenomenon highlighted by the Case into our accounting for corporate moral agency, I do believe that there is a promising way to think about our Case and the moral agency of Mitsubishi in it—one we can draw from suggestions French himself has offered.

54. *Id.* at 65. Compare *id.* with Shoemaker, *supra* note 27, at 71 (pointing to our capacity for involvement in “genuine exchanges — moral conversations, if you will,” as a necessary condition on membership in the moral community).

55. ROBERT H. FRANK, *PASSIONS WITHIN REASON* (1988).

56. *Id.*

57. As Frank’s discussion of the benefits of *reputation* indicate, this sort of healing can ramify through what we are here taking to be the moral community, so it is not just the narrow benefit of restoration of relationship with a wounded partner that is at stake. *Id.*



## IV. THE WAY FORWARD?

It was French's idea originally, recall, that prompted Tollefsen's proposal that we see individuals as "affine agents" for corporations.<sup>58</sup> Though the affine agency model—at least as on the model of parents and children, as French introduced the idea—will not work for reasons we have seen, it does get us to recognize that there is important work being done *by* the affective "machinery" of particular, concrete human persons *on behalf of* corporate moral agents. That work is not merely functional, but rather seems essential for understanding corporate moral agents as involved in a "moral nexus" with concrete individuals in the way that human agents can be. That understanding, in turn, is crucial for understanding the relational content and work of reactive attitudes in moral personality. But that is not by itself enough. How are we to understand the crucial role of the genuine, embodied, emotional reactive attitudes contributed by Mitsubishi's executives? We do not yet have a model for how these flesh-and-blood humans fit into a picture of Mitsubishi's *corporate* moral agency.

French has a further suggestion that might be helpful at this point. We begin by observing that *Mitsubishi's* apology must consist in something other than several of its executives feeling and expressing the attitudes they have, remorseful as they may be, for actions undertaken long before they were associated with Mitsubishi. Without more information, these would be simply strange expressions of *personal* guilt, shame, or other reactions on their part, as individual moral agents. What makes *their* expression of those attitudes count as *Mitsubishi's* is the role of Mitsubishi's formal institutional governance in recognizing and endorsing those personal expressions of attitudes *as its own*. In effect, the corporation has appointed these individual humans as its affective agents. This is in effect what French suggests. He writes:

[A]t some level of true description it is the action(s) of a person(s) in a corporate role(s) and it is redescribable, as licensed by the rules of the corporation's internal decision structure, as an act of the corporation. . . . The corporate actor makes its appearance on the moral stage at the level of redescription that those corporate structures, including their organizational and policy/procedural rules, make possible. When an action performed by someone in the employ of a corporation filling a specific role in the corporate structure is an implementation of its corporate policy, then it is proper to describe the act as done for corporate reasons or for corporate purposes and so as an action of the corporation. . . . My suggestion, though I am afraid that is all it is at this time, is that the same redescriptive account might be applied to reveal something that will pass as corporate affectivity. What I need to allow is that a corporation's decision structure may contain conversion rules for descriptions of certain types of utterances by appropriate employees into descriptions of corporate reactive attitudes.<sup>59</sup>

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58. See *supra* notes 38–42 and accompanying text.

59. French, *supra* note 30, at 13, 18.

In other words, it is the endorsement of Mitsubishi through its normal decision structure that allows for the individual attitudes of its executives to *count* as the relevant sort of attitudes needed to enter into the dyadic moral relation we see in the Case. Their remorse counts as Mitsubishi's remorse, their apology as Mitsubishi's apology. That certainly seems to be how Murphy construed things.

This idea is not very revolutionary. Affect, after all, generally does not need to be cogent, well-directed, or at all appropriate. There is no reason to suppose that corporate reactive attitudes, however realized, should be any different. What is needed to locate corporate moral agents within the genuine moral community is precisely the element of responsiveness to reasons that corporate decision structures are designed to provide. The affective response, coupled with the reasons-responsive direction, makes for the kind of reactive attitude that is characteristic of human attitudes in moral relations with one another. And perhaps the way to understand that affect in the corporate case is not merely functional, but as involving a more complex relationship between the corporate moral agent and the individual moral agents who comprise it. Just as (some of) their acts become the corporation's acts, under the proper circumstances what they feel can become what the corporation feels, and the moral nexuses they enter become nexuses to which the corporation is a party.<sup>60</sup>

I take this point not to be metaphysical, but rather one of interpretation and ascription. It seems to capture what transpired with Murphy in accepting the apology. He interpreted the bows of the executives as an emotional expression of the corporation they represented and ascribed the relevant apologetic attitudes not (at least, not merely) to them as individuals, but to Mitsubishi itself. And that apparently was accomplished with as little effort as was the ascription of blame to Mitsubishi in the first place.

My thought here, like French's, is suggestive rather than conclusive. It provides a way to "save the data" that the Case provides, consistent with recognizing corporate moral agents as full members of the moral community. But it does not leave that recognition untouched because it requires an amendment to our understanding of the nature of the moral agency we can ascribe to corporations. That agency cannot be merely in virtue of "functional" reactive attitudes, as on the Björnsson and Hess account. Instead, it seems that full membership in the moral community requires actual flesh-and-blood human beings to be involved *as* moral agents, bearing in their persons the authorized reactive attitudes of the corporation.

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60. The distinction between the corporate decision structure and the decision-making of any individual within a corporate structure explains why this strategy for affective representation is available to the corporate form, but not to, for instance, a psychopathic entrepreneur. It is just the distinction between shareholding and proprietorship that opens up space for both the need for this sort of affective representation and for its possibility. I thank David Shoemaker and Peter Jaworski for discussion of this point.