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DOES THE STATE HAVE MORAL DUTIES?
STATE DUTY-CLAIMS AND THE
POSSIBILITY OF INSTITUTIONALLY HELD
MORAL OBLIGATIONS

by

Christoffer Spencer Lammer-Heindel

An Abstract

Of a thesis submitted in partial fulfillment of the
requirements for the Doctor of Philosophy degree
in Philosophy in the Graduate College of
The University of Iowa

July 2012

Thesis Supervisor: Professor Diane Jeske

ABSTRACT

We commonly attribute to states and other institutional organizations moral duties and obligations. For example, it is widely held that the state has a moral duty to protect its citizens from external threats and (more contentiously) it is claimed that it ought to positively promote the welfare of its members. When we focus on the surface grammar of such *institutional* duty-claims, we see that they seem to differ from *individual* duty-claims only with respect to the subject of the claim. Whereas an institutional duty-claim asserts that an institution (e.g., the state) has a duty to do some action *a*, an individual duty-claim asserts that a particular individual person has a duty to *a*. For example, we might claim that parents ought to protect their children, or that a particular person, Doe, ought to take better care of his child. Many scholars have argued or at least assumed that institutions are ultimately just collections of individuals, and hence institutional duty-claims can be analyzed in terms of claims about individuals' duties and obligations. Other scholars have rejected this *reductive* approach to institutional duty-claims as well as the *individualist* assumption upon which it is premised—viz., that institutions are nothing "over and above" individuals. Instead, it is argued that at least some institutional organizations are moral agents in their own right which have duties and obligations that are uniquely their own. According to this *antireductive holist* approach, at least some institutional duty-claims resist being analyzed into claims about individuals' duties and obligations. My aim in this dissertation is to clarify what is meant when we assert that the state (or some other institutional organization) has moral duties, and I do so by entering into dialogue with both the reductive individualist and antireductive holist views.

In Chapter One I situate and motivate my project by reference to two well-known debates in which claims about the state's duties play an inescapably central role; viz., the debate concerning the propriety of using so-called "enhanced interrogation techniques" in the War on Terror and the debate surrounding the most recent reforms to the health care system here in the United States. Since my aim is to shed light on the meaning of and

truth-makers for institutional duty-claims, I devote Chapter Two to the task of clarifying what we mean and imply when we advance duty-claims in what we may assume to be paradigmatic circumstances: namely, those circumstances in which an *individual* is said to have a duty to do something or another. I then frame the further investigation into the meaning and significance of *institutional* duty-claims as one which has the aim of revealing whether the phrase 'has a duty' has a univocal, analogous, or equivocal signification across institutional and individual contexts.

In Chapter Three I take up the task of characterizing and distinguishing the relevant reductive individualist and antireductive holist viewpoints, considering both historically significant and contemporary versions of each. In Chapter Four I present and critically evaluate a rather influential argument in favor of institutional moral agency, which, if true, would vindicate the antireductive holist approach. I conclude that chapter by arguing that, contrary to the claims made by those who defend institutional agency, we are unjustified in believing that institutions possess those properties requisite for moral agency. Having set aside what I take to be a "best-case" for an antireductive holism, I turn, in Chapter Five, to the task of making plausible the reductive individualist approach. In doing so, I propose that some institutional duty-claims actually resist reduction to claims about individuals' duties and that such claims are thus better understood as claims about the extrinsic value of an institutional arrangement.

Abstract Approved:

Thesis Supervisor

Title and Department

Date

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Graduate College
The University of Iowa
Iowa City, Iowa

CERTIFICATE OF APPROVAL

PH.D. THESIS

This is to certify that the Ph.D. thesis of

Christoffer Spencer Lammer-Heindel

has been approved by the Examining Committee for the thesis requirements of the Doctor of Philosophy degree in Philosophy at the July 2012 graduation.

Thesis Committee:

Diane Jeske, Thesis Supervisor

Richard Fumerton

David Stern

Evan Fales

Ali Hasan

To Haley and Iris

America is not anything if it consists of each of us. It is something only if it consists of all of us; and it can consist of all of us only as our spirits are banded together in a common enterprise.

Woodrow Wilson, January 29, 1916

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ABSTRACT

We commonly attribute to states and other institutional organizations moral duties and obligations. For example, it is widely held that the state has a moral duty to protect its citizens from external threats and (more contentiously) it is claimed that it ought to positively promote the welfare of its members. When we focus on the surface grammar of such *institutional* duty-claims, we see that they seem to differ from *individual* duty-claims only with respect to the subject of the claim. Whereas an institutional duty-claim asserts that an institution (e.g., the state) has a duty to do some action *a*, an individual duty-claim asserts that a particular individual person has a duty to *a*. For example, we might claim that parents ought to protect their children, or that a particular person, Doe, ought to take better care of his child. Many scholars have argued or at least assumed that institutions are ultimately just collections of individuals, and hence institutional duty-claims can be analyzed in terms of claims about individuals' duties and obligations. Other scholars have rejected this *reductive* approach to institutional duty-claims as well as the *individualist* assumption upon which it is premised—viz., that institutions are nothing "over and above" individuals. Instead, it is argued that at least some institutional organizations are moral agents in their own right which have duties and obligations that are uniquely their own. According to this *antireductive holist* approach, at least some institutional duty-claims resist being analyzed into claims about individuals' duties and obligations. My aim in this dissertation is to clarify what is meant when we assert that the state (or some other institutional organization) has moral duties, and I do so by entering into dialogue with both the reductive individualist and antireductive holist views.

In Chapter One I situate and motivate my project by reference to two well-known debates in which claims about the state's duties play an inescapably central role; viz., the debate concerning the propriety of using so-called "enhanced interrogation techniques" in the War on Terror and the debate surrounding the most recent reforms to the health care system here in the United States. Since my aim is to shed light on the meaning of and

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In Chapter Three I take up the task of characterizing and distinguishing the relevant reductive individualist and antireductive holist viewpoints, considering both historically significant and contemporary versions of each. In Chapter Four I present and critically evaluate a rather influential argument in favor of institutional moral agency, which, if true, would vindicate the antireductive holist approach. I conclude that chapter by arguing that, contrary to the claims made by those who defend institutional agency, we are unjustified in believing that institutions possess those properties requisite for moral agency. Having set aside what I take to be a "best-case" for an antireductive holism, I turn, in Chapter Five, to the task of making plausible the reductive individualist approach. In doing so, I propose that some institutional duty-claims actually resist reduction to claims about individuals' duties and that such claims are thus better understood as claims about the extrinsic value of an institutional arrangement.

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CHAPTER ONE

INTRODUCTION

1.1 State Duty-Claims in Political Discourse

In the April 1917 speech in which he outlined the case for declaring war upon Germany, Woodrow Wilson remarked, "We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states."¹ In the decades since the two world wars, Wilson's vision has, of course, more or less come to realization. We tend to describe many of the major atrocities and international incidents of the last century and their aftermaths using the language of collective and national responsibility. Individual states are now regularly thought of as having duties and obligations towards one another and towards the international community as a whole. For example, the United States' relationships with such countries as Israel, Afghanistan, and Iraq are often described using the language of duties and obligations. Likewise, the US is said to have obligations to the community of nations which would allegedly justify joining international institutions such as the World Court, or justify signing international agreements such as the Kyoto Protocol.

Of course, this rather common way of speaking and thinking is not restricted to discussions of international politics and foreign relations. Just as the state is thought to have moral duties and obligations vis-à-vis other *states*, so too it is thought to have duties and obligations vis-à-vis its *citizens and residents*. The most obvious examples are those which correlate with codified legal rights, such as the state's duty to refrain from infringing upon one's right to free expression, or one's right to politically organize. But we also find it natural to attribute to the state duties and obligations beyond those articulated in law. One might consider here the duty to ensure equality of opportunity, or the duty to protect

1. Wilson, *Woodrow Wilson*, 254.

citizens from violence.² These duties are among those which are commonly understood to stand over and above the state's legal duties, and it is against the moral standard which they partially embody that we suppose the system of positive laws and policies is to be judged as adequate or inadequate, legitimate or illegitimate. A state which systematically fails to protect its residents from private violence or does not take steps to ensure equality of opportunity among its citizens may be viewed as failing to fulfill those duties or obligations which it possesses in virtue of being a state.

Similar things may be said—often *are* said—about other complex organizations. In our attempts to make sense of all manner of corporate and institutional actions and bring order to organizational decisions we resort to the language of morality. Thus, not only the state, but business corporations, aid organizations, educational institutions and so on are regularly said to have duties and obligations which attach to these organizations in virtue of the fact that they are the sorts of organizations they are and in light of the various goods and evils they can bring about or perpetrate. For example, after the 2010 oil spill in the Gulf of Mexico there was much discussion of BP's duties and obligations vis-à-vis Gulf Coast residents. And numerous questions regarding the duties and obligations of financial institutions occupied the minds of many people following the financial crisis of late 2008 and 2009, especially regarding the sale of mortgage-backed securities and the executive compensation practices of corporations that received government "bail-out" money.

The question with which I am concerned in this dissertation is how we should understand institutional duty-claims generally and state duty-claims in particular. (When I speak of duty-claims I have in mind statements of the form "S has a duty to *a*," where *S* is either the state or some other institution and *a* is some action to be undertaken).

2. Although the state is widely thought to have a responsibility to protect its citizens and residents from violence, this is not, strictly speaking, a constitutionally enumerated legal duty. See *DeShaney v. Winnebago*, 489 189 (U.S. Supreme Court 1989), in which the Court ruled, "A State's failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause, because the Clause imposes no duty on the State to provide members of the general public with adequate protective services." See also *Castle Rock V. Gonzales*.

Specifically, I want to explore whether statements of this sort can be construed literally or whether they must be understood figuratively. Can we say that states and other institutions have duties *just like* individuals? Or must we reject such a notion, supposing instead that institutions are not sufficiently similar to individuals, and hence institutional duty-claims are at best figures of speech?

1.2 The Significance of the State

The debate that I will be entering into is one which concerns institutional organizations broadly construed; however, I will focus my discussion primarily on the issue of *state* moral agency and state moral duties. I have chosen to do so primarily because of the special importance the state has in our lives. It is commonly thought that most if not all aspects of our lives are "of interest" to the state, and there is certainly some truth to this. The state's laws and regulations govern or influence our economic, social, and even intimate relationships—if not the internal character of these relationships, then certainly their outward manifestations.

In his 1970 essay *On the Medieval Origins of the Modern State*, Joseph Strayer captured the important place of the state in our lives. "In the world of today," he wrote, "the worst fate that can befall a human being is to be stateless."

A man can lead a reasonably full life without a family, a fixed local residence, or a religious affiliation, but if he is stateless he is nothing. He has no rights, no security, and little opportunity for a useful career. There is no salvation on earth outside the framework of an organized state.³

Although this latter claim may seem a bit overblown, there is no denying that Strayer is correct in suggesting that the liberty, peace, and material wealth which many people enjoy is an actual consequence of living within or under a state system of political organization. Indeed, even if we find the talk of salvation to be a bit odd, the core intuition is one that the U.S. Supreme Court had occasion to reflect upon in *Trop v. Dulles*. In that case the court ruled that the profound indignities suffered by the person who is made stateless are

3. Strayer, *On the Medieval Origins of the Modern State*, 3.

such that punitive expatriation or denaturalization constitutes a form of cruel and unusual punishment. In his opinion for the Court, Justice Warren explained,

There may be involved no physical mistreatment, no primitive torture. There is, instead, the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights and, presumably, as long as he remained in this country, he would enjoy the limited rights of an alien, no country need do so, because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.⁴

To imagine a person without a "political existence" is to imagine that person in need of precisely the kind of earthly salvation mentioned by Strayer.

Clearly, no other institution determines the contours of our public lives in the way the state does. The state is a community of communities, or in John Rawls's terminology, a social union of social unions.⁵ Presumably, it is because we recognize that the state is the guarantor of rights, the source of earthly "salvation," that we find it natural to concern ourselves with questions concerning how the state morally ought to act, and what limits there are on state policies, projects, and endeavors. Although business corporations, religious organizations, political parties, and so forth figure into our lives in ways that cannot be overstated, most of the various institutional organizations with which we are familiar exist within or are subsumed under the state structure. At the very least, these organizations take the form they do in light of the state's laws and regulations. For example, the goals and social obligations of corporations, as well as the fiduciary responsibilities of managers of such organizations, are largely shaped by the highly contingent ways in which corporate law has evolved. Although a state system is simply one among many possible forms of political organization, I suspect many people find it difficult

4. *Trop V. Dulles*, 101-102.

5. Rawls, *A Theory of Justice*, 527.

to imagine life, especially life in a technological society, without such a system of political organization.

For these reasons we find it necessary to place moral constraints upon the activities of the state. One of the principal ways in which we do this is by attributing to the state duties and obligations. It might be supposed that a state that is not guided by duties or is not constrained by its obligations to other morally significant beings is a state which will act capriciously, which is prone to victimize and abuse those who are defenseless against its superior might, and which is easily manipulated for the private gain of either the loudest or most powerful individuals. This indicates the relevance of the question I will be exploring: the question of what state duty-claims amount to—whether they are literal or figurative—is interesting and relevant because we seem to both assume and require that the state be constrained in the way which is suggested by our ethico-political language. To suggest that our attributions of duties and obligations are merely figurative seems tantamount to suggesting that the state is not really so constrained. Either way, exploring this question should offer us an opportunity to deepen our understanding of the state and perhaps root out some mythical, superstitious, or otherwise spurious beliefs we have concerning the state.

Given the nature of the discussion as it will be unfolding in the coming chapters, I want to devote the remainder of this introductory chapter to the task of situating my project by reference to two familiar moral and political controversies; namely, the use of torture in the so-called "War on Terror" and the most recent attempts to reform the health care system. My discussion of these controversies will serve as an occasion to further isolate the topic with which I shall be concerned, while also further indicating the prevalence and importance of state duty-claims in popular political discourse. Moreover, I will be able to tease out a set of examples which I will refer to throughout the remainder of the dissertation.

1.3 Prisoner Abuse and Torture in the War on Terror

The use of torture and the mistreatment of prisoners by military and intelligence personnel involved in the "War on Terror" has been the subject of widespread public discussion for the better part of a decade now. Recent debate over the question of whether and in what circumstances the state may be justified in torturing individuals may be traced back at least to 2002 when reports began to surface regarding cases of prisoner abuse at coalition detention facilities in various parts of the world.⁶ In one such report, an unidentified official was quoted as saying, "If you don't violate someone's human rights some of the time, you probably aren't doing your job."⁷ While these reports piqued the interest of various human rights groups, the public did not take clear notice of the issue until after the well-known case of prisoner abuse at the now notorious prison complex known as Abu Ghraib.

In January 2004, the military began an investigation into misconduct by members of the 372nd Military Police Company and the 800th Military Police Brigade more broadly. This investigation was carried out at the request of the commander of Combined Joint Task Force Seven, who had received reports of detainee abuse, "which indicated systemic problems with the brigade and suggested a lack of clear standards, proficiency and leadership."⁸ For all intents and purposes, the public became aware of this investigation in April of 2004 when *60 Minutes II* released photos of the prisoner abuse⁹ and *The New Yorker* reported that the chief investigator—Major General Antonio Taguba—had found that prisoners at Abu Ghraib were subject to a variety of abuses, including exposure to

6. See, e.g., Priest and Gellman, "U.S. Decries Abuse but Defends Interrogations"; Hanley, "U.S. Closes Controversial Detention Camp"; Seattle Times Staff, "Army Colonel Fined for Firing Gun Near Iraqi."

7. Priest and Gellman, "U.S. Decries Abuse but Defends Interrogations."

8. Taguba, *The Taguba Report on Treatment of Abu Ghraib Prisoners in Iraq*, 1.

9. Leung, "Abuse Of Iraqi POWs By GIs Probed."

phosphoric liquid from chemical lights, beatings, threats of rape, and actual sodomization.¹⁰

In 2005, further cases of abuse at other facilities in Iraq were anonymously reported by officers in the Army's 82nd Airborne Division.¹¹ According to a Human Rights Watch report which publicized the officers' claims, "the torture and other mistreatment of Iraqis in detention was systematic and was known at varying levels of command."

Military Intelligence personnel... directed and encouraged army personnel to subject prisoners to forced, repetitive exercise, sometimes to the point of unconsciousness, sleep deprivation for days on end, and exposure to extremes of heat and cold as part of the interrogation process. At least one interrogator beat detainees in front of other soldiers. Soldiers also incorporated daily beatings of detainees in preparation for interrogations.¹²

A particularly troubling report which was leaked to the *New York Times* in mid-2005 documented the Army's internal investigation into widespread misconduct at Bagram Air Base in Afghanistan during 2002. At least one prisoner died as a result of the beatings he received at Bagram: a 22-year-old taxi driver named Dilawar, who was later found to be innocent, had been beaten and otherwise abused during his interrogation and left to hang by his wrists from the ceiling of his cell.¹³

Contrary to the claims made by the officers in the 82nd Airborne and the commander of the Combined Joint Task Force Seven, military investigators and administration officials concluded that cases of prisoner abuse, while surprisingly numerous, were nevertheless isolated. In other words, abuse was not *systematic*. In his responses to the media following the release of Taguba's findings, Defense Secretary Donald Rumsfeld argued that detainee abuse did not occur as a result of systemic failures

10. From the report by Antonio Taguba (op. cit., pages 17-18), as quoted by Hersh, "Torture at Abu Ghraib: American Soldiers Brutalized Iraqis."

11. Zagorin, "Pattern of Abuse."

12. Human Rights Watch, *Leadership Failure*, sec. I.

13. Golden, "In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths." The fact that the military was investigating these deaths was reported, with little detail, in 2002; see Priest and Gellman, "U.S. Decries Abuse but Defends Interrogations."

within the military; to the contrary, he explained, "The facts so far demonstrate... that from the enlisted ranks to the officer corps, when those allegations came to light members of our armed forces immediately launched investigations and sought to uncover wrongdoing."¹⁴

Nevertheless, a related set of concerns regarding the intelligence community soon came into focus. In November 2005 the *Washington Post* published a detailed investigation into claims that the CIA had been interrogating terrorism suspects in secret "black site" prisons located in foreign countries. These prisons had been built using federal dollars for the express purpose of giving the agency the ability "to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system..."¹⁵ According to officials quoted in the article, "The CIA program's original scope was to hide and interrogate the two dozen or so al Qaeda leaders believed to be directly responsible for the [September] 11 attacks." Over time, however, the agency became better equipped to capture suspects, and it began seizing individuals "whose intelligence value and links to terrorism were less certain..."—this, despite the protests of both current and former intelligence officials.¹⁶

In addition to the black-site prison operations, the CIA was also involved in a program of "extraordinary rendition," in which intelligence officers would take custody of terrorism suspects and transport them overseas where they would be turned over to foreign intelligence officials. In an early *Washington Post* article regarding the rendition programs, a U.S. official reportedly explained, "We don't kick the shit out of them. We send them to other countries so they can kick the shit out of them."¹⁷

14. "Rumsfeld Backs Military's Handling of Abuse Scandal."

15. Dana Priest, "CIA Holds Terror Suspects in Secret Prisons."

16. Ibid.

17. Priest and Gellman, "U.S. Decries Abuse but Defends Interrogations."

In one such case, a Canadian citizen, Maher Arar, was detained at JFK Airport in New York. After two weeks in detention, he was flown to Amman where Jordanians took custody of him. He was subsequently transferred to Syria.

The Syrians placed him in a nearly pitch-black, three-by-six cell. Periodically, they beat him with an electrical cable and threatened him with electric shocks and a device called "the metal chair," which stretches the spine. During one such session, he confessed to attending an al-Qaeda training camp in Afghanistan (a confession he now disavows). Ten months later, he was released back to Canada, where he has not been charged with any crime.¹⁸

A similar account has been given by a German citizen named Khaled El-Masri who was detained in Macedonia in late 2003, and then transported to Kabul, Afghanistan via Baghdad, Iraq. During his captivity, El-Masri was beaten, and at one point he was forced to the ground and anally violated. He was interrogated and detained for four months in Afghanistan. During his captivity, an American official confirmed to El-Masri that they realized he was innocent, but he would need to await a release authorization from Washington, D.C. Eventually, in May 2004, he was once again blindfolded and transported, this time to an unfamiliar location in Albania (a country with which he was unfamiliar and to which he had no ties) where he was released onto the side of a road.¹⁹

As we would expect, these reports provoked strong reactions by the public, academics, and human rights advocates, and raised a series of difficult questions. Were abuses the result of a few "bad apples," as Rumsfeld suggested? Or had the military fostered—even if unwittingly—a "culture of torture" amongst its enlisted ranks? Had the Bush administration endorsed the use of cruel interrogation techniques? Were members of the government guilty of violating the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been codified in U.S. law?

18. Beinart, "Outsourcing Torture."

19. See Kulish and Shane, "Flight Data Show Rendition Planes Landed in Poland" and Grey, "Flight Logs Reveal Secret Rendition." This account from Dick Marty, *Alleged Secret Detentions and Unlawful Inter-State Transfer Involving Council of Europe Member States: Explanatory Memorandum*.

We now know that although prisoner abuse at the hands of military personnel was arguably and perhaps clearly unauthorized, the activities of the CIA received authorization at the highest levels. The agency's authority to create and administer the network of secret interrogation facilities stemmed from President Bush's September 17, 2001 presidential finding in which he granted to the CIA broad authority to pursue and detain members of al Qaeda. Shortly thereafter the agency received Congressional funding for more permanent facilities when a temporary solution—allowing Afghan generals to keep CIA prisoners in cargo containers—resulted in prisoners dying from asphyxiation.²⁰ It was later revealed that during the initial wave of public scrutiny regarding the black site prisons that swept through the media in 2005 the CIA destroyed videotaped evidence of its use of controversial "enhanced interrogation techniques" (EITs). According to officials interviewed for a *New York Times* report, the tapes were destroyed because the harsh interrogation techniques which they documented would open the agency and its officials to legal risks—indicating, of course, that the interrogation methods may not have comported with the law or would be grounds for tort action. The director of the CIA at the time, Michael Hayden, explained that they had no intelligence value, and were destroyed to protect the identities of undercover officers.²¹

In September 2006, President Bush officially acknowledged the existence of the overseas prisons and indicated that they were set up in order to allow the CIA to engage in "an alternative set of procedures" on high-value suspects, including Abu Zubaydah, who was once supposed to be among the organizers of the September 11, 2001 terrorist attacks.²² The procedures, Bush explained, were "designed to be safe, to comply with our

20. Priest, "CIA Holds Terror Suspects in Secret Prisons."

21. Mark Mazzetti, "C.I.A. Destroyed 2 Tapes Showing Interrogations."

22. Although Zubaydah was initially described as a high-ranking member of al Qaeda, it has since been revealed that he was not a member of al Qaeda and that he was far from being the "mastermind" of the 9/11 attacks. Moreover, the information gathered as a result of subjecting him to harsh interrogation techniques has been of little use. See Finn and Warrick, "Detainee's Harsh Treatment Foiled No Plots."

laws, our Constitution and our treaty obligations."²³

It is now well-known that the Bush administration had considered and explicitly approved the use of EITs on Abu Zubaydah, Khaled Sheikh Mohammed, as well as other suspects.²⁴ The administration's legal justification was expressed in two memos—both dated August 1, 2002—which were drafted by Deputy Assistant Attorney General John Yoo and signed by Assistant Attorney General Jay Bybee of the Office of Legal Council (OLC).²⁵ One such memo was leaked to the press in 2004. In 2008, both memos, as well as a number of other relevant documents, were officially declassified by the Obama administration.²⁶

Among the interrogation techniques specifically authorized were the use of stress positions, walling (i.e., slamming the shoulders of the suspect against a false wall), slapping, placing the suspect in a confinement box containing insects, sleep deprivation, and—perhaps most infamously—waterboarding.²⁷ In his memo to the CIA's General Counsel, Bybee provided a detailed account of waterboarding:

In this procedure, the individual is bound securely to an inclined bench... The individual's feet are generally elevated. A cloth is placed over the forehead and eyes. Water is then applied to the cloth in a controlled manner. As this is done, the cloth is lowered until it covers both the nose and mouth. Once the cloth is saturated and completely covers the mouth and nose, air flow is slightly restricted for 20 to 40 seconds... This causes an increase in the carbon dioxide level in the individual's blood. This increase in the carbon dioxide level stimulates increased effort to breathe. This effort plus the cloth produce the perception of "suffocation and incipient panic," i.e., the perception of drowning... After this period, the cloth is lifted, and the individual is allowed to breathe unimpeded for three or four full breaths... The procedure may then be repeated... it is likely that this procedure would not last more than 20 minutes in any one application.²⁸

23. Karl, "'High-Value' Detainees Transferred to Guantanamo President Bush Announced Major Reversal in Handling of Terror Suspects."

24. Serrano, "Waterboarding: Interrogation or Torture?"

25. For a statement regarding his authorship and involvement with the memos, see Yoo, "Behind the Torture Memos: As Confirmation Hearings Near, Lawyer Defends Wartime Policy." Because Bybee ultimately signed the memos, I will simply attribute the contents of these memos to Bybee.

26. See Mazzetti and Shane, "Interrogation Memos Detail Harsh Tactics by the C.I.A."

27. Bybee, "Memorandum for John Rizzo," 2.

28. *Ibid.*, 2-3.

In his memoir, *Decision Points*, President Bush discussed the use of EITs generally and waterboarding in particular:

I would have preferred that we get the information another way. But the choice between security and values was real. Had I not authorized waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked. In the wake of 9/11, that was a risk I was unwilling to take. My most solemn responsibility as president was to protect the country. I approved the use of the interrogation techniques.²⁹

Bush went on to explain that the introduction of the waterboard in Zubaydah's interrogation was "highly effective" and that the stress it placed him under was sufficient to render him cooperative. "His understanding of Islam was that he had to resist interrogation only up to a certain point. Waterboarding was the technique that allowed him to reach that threshold, fulfill his religious duty, and then cooperate."³⁰

In his memo, Bybee addressed the question of whether these methods constitute torture, as defined in the relevant portion of the U.S. Code—viz., Title 18, §2340A, where torture is defined as follows:

"torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control...³¹

Bybee concludes that neither waterboarding, nor any of the other proposed procedures, would cause severe pain or suffering. Writing specifically about waterboarding, he explained, "[A]lthough the subject may experience the fear or panic associated with the feeling of drowning, the waterboard does not inflict physical pain."³² While he acknowledged that it constitutes a "threat of imminent death" insofar as "it creates in the subject the uncontrollable physiological sensation that the subject is drowning,"³³ Bybee

29. Bush, *Decision Points*, 169.

30. *Ibid.*

31. "United States Code," §2340A.

32. Bybee, "Memorandum for John Rizzo," 11.

33. *Ibid.*, 15.

argued that waterboarding does not result in *prolonged* mental harm, and is thus not prohibited on statutory grounds.³⁴

In a separate memo to White House Counsel Alberto Gonzales, Bybee also argued that individual interrogators might justify their actions by appeal to both their own and the nation's right to self-defense:

[T]he nation's right to self-defense has been triggered by the events of September 11. If a government defendant were to harm an enemy combatant during an interrogation in a manner that might arguably violate Section 2340A, he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network. In that case, we believe that he could argue that his actions were justified by the executive branch's constitutional authority to protect the nation from attack. This national and international version of the right to self-defense could supplement and bolster a government defendant's individual right [to self-defense].³⁵

Various scholars have argued that these legal opinions were ill-conceived. In testimony delivered at Gonzales's confirmation hearings, Harold Koh, Dean of Yale Law School, remarked, "in my professional opinion as a law professor and a law dean, the Bybee memorandum is perhaps the most clearly legally erroneous opinion I have ever read."³⁶ Echoing Koh's view, Kathleen Clark has provided a detailed examination of the memos, arguing that each of the principal claims made by Bybee were "grossly inaccurate."³⁷ Many current officials, including Attorney General Eric Holder, now agree that the use of

34. Ibid.

35. Bybee, "Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340-2340A," 46.

36. See John W. Dean, "The Torture Memo by Judge Jay S. Bybee that Haunted Alberto Gonzales's Confirmation Hearings." See also O'Connell, "Affirming the Ban on Harsh Interrogation" (1266), who described the OLC's opinions as "wishful legal analysis."

37. She writes, "The first major inaccuracy is in the memorandum's assertion that the federal criminal statute prohibiting torture applied only where a government official superficially intends to and actually causes pain so severe that it 'rise[s] to...the level that would ordinarily be associated with...death, organ failure, or serious impairment of body functions.' This claimed standard is bizarre for a number of reasons. In the first place, organ failure is not necessarily associated with pain at all." Clark goes on to explain that Bybee found this legal standard in an area of law completely unrelated to the issue at hand; viz., a Medicare law which details when a hospital is required to provide emergency care. She is also critical of Bybee's opinion that an individual interrogator might have recourse to a claim of self-defense, as well as his claim that the president would be permitted to authorize acts which would be considered torture under the statute. Such a position, she argues, is based on a view of executive power which seemingly does not take into account, and certainly does not mention, case law that denies that the president possesses unilateral executive power. Clark, "Ethical Issues Raised by the OLC Torture Memorandum," 459-461.

waterboarding constitutes torture as defined in the U.N. Convention against Torture and Section 2340A of the U.S. Code.³⁸

Rather obviously, the use of EITs or torture is a profoundly moral issue, regardless of whether one thinks their use was ultimately justified or not. Interrogation in general raises a number of moral questions—e.g., questions regarding the appropriateness and justification available for engaging in acts of deception—and the peculiar nature of torture only magnifies and multiplies these concerns. At the very least this is because torture involves the infliction of physiological and psychological pain or suffering upon a literally *defenseless* individual in a concerted effort to undermine his or her rational autonomy. Whatever we ultimately conclude about enhanced interrogation techniques, we cannot deny that the decision to torture is and was a morally momentous one.

As with many ethico-political controversies, discussions regarding the moral dimensions of this issue often revolve around or otherwise make reference to the duties of the state and the rights of those with whom the state's agents interact—in this case, the suspected terrorists.

As a case in point we may consider some of the remarks made by former vice-president Cheney regarding EITs. Prior to the release of Bush's memoir, Cheney was arguably the most vocal defender of the Bush-era policies and an outspoken critic of the Obama administration's decisions to release the memoranda pertaining to the use of EITs. In a series of public appearances he defended the endorsement and use of waterboarding and the other controversial methods by the Bush administration. The point to which he regularly returned was that they were ultimately justified in light of the fact that the state has a moral duty to protect its citizens.

I was and remain a strong proponent of our enhanced interrogation program. The interrogations.... were legal, essential, justified, successful, and the right thing to do. The intelligence officers who questioned the terrorists can be proud of their work and proud of the results, because they prevented the violent death of thousands, if not hundreds of thousands, of innocent people.

38. See Mazzetti and Shane, "Interrogation Memos Detail Harsh Tactics by the C.I.A."

....Apart from doing a serious injustice to intelligence operators and lawyers who deserve far better for their devoted service, the danger [in releasing the memos] is a loss of focus on national security, and what it requires... All the zeal that has been directed at interrogations is utterly misplaced. And staying on that path will only lead our government further away from its duty to protect the American people.³⁹

What I wish to draw attention to here is not the particular duty which Cheney mentions but the putative *subject* to which this duty is attributed—viz., the government or state. One gets the sense that the reason Cheney supposes he and other officials were justified in making the decisions they did was *because* the government has a moral duty to protect its citizens. This alleged "moral fact" as we might call it, when coupled with other important facts (e.g., alleged empirical facts concerning the effectiveness of EITs) made it the case that the CIA should be authorized to employ enhanced interrogation techniques on various high-value suspects. This expresses, I think, a rather standard view about the duties of people in public office: *the individual obligations of bureaucrats and officials are derived from the broader and seemingly more fundamental duties which the state is thought to possess. Were it but for the fact that the state had a duty to protect its citizens, as well as the fact that they occupied offices within the state, particular individuals such as Bush and Cheney would not have had the duties they allegedly had (or believed they had).*

Of course, those on the other side of this issue do not typically dispute the notion that the government has a duty of this sort—they do not dispute the claim that the state or government is the bearer of moral duties and obligations and they do not dispute that it has a duty to protect its citizens. Rather, the claim is that the possession of this duty did not justify—was *insufficient* to justify—torturing terrorism suspects. Typically, this is said to be because individuals have a right not to be tortured and thus, the state has (in addition to its duty to protect its citizens) a duty not to torture individuals, whether they be citizens, foreigners, combatants or noncombatants.⁴⁰

39. Cheney, "Remarks to the AEL."

40. For an overview of the torture issue as viewed from a human rights perspective, see generally Roth, Worden, and Bernstein, *Torture*.

It may be useful at this point to mention (without endorsing) a few of the rather common ways in which moral philosophers attempt to ground those rights which are relevant to this discussion. The first is by appeal to what Noah Feldman refers to as the "universally true and infeasible value of human dignity."⁴¹ On such a view, rights are understood as entitlements owed to individuals in virtue of the needs and interests they have and their standing as more or less equal members of the moral community. The claim that individuals have a right not to be tortured is commonly premised on the view that human beings have a right to be treated as autonomous individuals—i.e., they deserve to be treated in such ways that their faculties for making informed and conscious decisions are not deliberately undermined. Since torture is straightforwardly a way of undermining a person's autonomous decision-making capacities, it is strongly or perhaps absolutely forbidden.

A different way of explaining why torture is wrong is offered by David Rodin. He argues that society values those virtuous dispositions and attitudes which would lead one to *disregard* torture as a means to achieve desirable ends (e.g., the goal of protecting innocent citizens from future attacks), and that it is committed to rejecting the vice of cruelty, which is manifested in acts of torture. These communal values, he claims, "shape and condition the obligations owed by governments to their people, their subjects."⁴² Given the nature of these values, he suggests that the state has an absolute duty to not use torture. It is as a consequence of this duty on the part of the state that we can understand particular human beings as having a right not to be tortured. That is to say, the right against torture can be understood as grounded in a conceptually prior duty on the part of the state. Whereas human rights advocates often suggest that the rights which individuals are alleged to possess give rise to duties on the part of the state, Rodin suggests the inverse: the state's

41. Feldman, "Ugly Americans," 276.

42. Rodin, "Torture, Rights, and Values: Why the Prohibition of Torture Is Absolute."

absolute duty to refrain from torturing can ground a moral right on the part of all individuals to be free from torture.⁴³

Regardless of how one understands the issue of conceptual or justificatory priority of rights and duties, we may usefully distinguish rights as being either negative or positive in polarity. A right to be free from torture, like most rights grounded in the alleged dignity or autonomous nature of individuals, correlates with a duty of forbearance or omission on the part of all other moral agents: all individuals have a duty to refrain from subjecting a fellow human being to cruel, degrading or inhumane treatment. For this reason, the right against torture is a negative right. Positive rights, by contrast, correlate with duties of commission on the part of other moral agents: if you possess a positive right to *g*, then presumably some other agent has a duty to ensure that you receive *g*.

Because they correlate with duties of commission, positive rights are highly contentious. There is a certain amount of resistance to the notion that people are obligated or duty-bound to do things which would positively benefit other individuals, especially if doing so would inconvenience or deprive the agent who is alleged to have the duty. In the past few years, one of the *most* contentious of our alleged positive rights has proven to be the alleged right to health care. Here in the United States, the recent "overhaul" of the health care system has focused attention on this alleged right. I will thus turn now to a brief consideration of this debate.

1.4 The Case of Health Care Reform

Stuart Butler, a vice-president at the Heritage Foundation, captured the driving intuition behind health care reform in testimony which he delivered to the Senate Committee on Aging in 2003:

In a civilized and rich country like the United States, it is reasonable for society to accept an obligation to ensure that all residents have affordable access to at least

43. For a careful discussion of rights, understood as the grounds for duties in others, see Raz, "On the Nature of Rights", especially 196ff. For a discussion of the contrary view, see Jeske and Fumerton, "The Right and Wrong Ways to Think About Rights and Wrongs."

basic health care—much as we accept the same obligation to assure a reasonable level of housing, education and nutrition.⁴⁴

Butler is pointing to the notion that there ought to be what is called *universal access* to health care. The most recent reforms to our health care system by the 111th Congress⁴⁵ were informed by a commitment to achieve universal access and made pressing by the fact that growing numbers of U.S. citizens and residents are uninsured under the existing system—the Census Bureau estimated that in 2010, 46.3 million individuals, or about 15% of the population, were without health insurance.⁴⁶

Although political rhetoric oftentimes clouds the issue, most parties to this controversy agree that this is a very serious and troubling fact, requiring—in some sense or another—action on the part of the state. All agree that access to health care is obviously in the interest of the uninsured, and even those already insured. Dispute arises over two more focused questions: viz., what are the most efficient *means* for ensuring universal access to health care, and which of the various systems for ensuring universal coverage are most morally defensible or appropriate?

With respect to the first of these questions, David Cummiskey usefully distinguishes four models for delivering health care: a private market insurance scheme, a single-payer insurance scheme, a national health service, and a social insurance model.⁴⁷ In its purest form, the first of these systems would involve private health insurance companies competing with one another to attract individual consumers. In practice, employers often finance and negotiate these contracts, as is the case in the U.S. It is well-known that the second form of delivery has long been implemented in Canada. On the single-payer model, private health care providers receive compensation for services rendered, not from individual patients, but from the government. A national health service like the one

44. Butler, "Laying the Groundwork for Universal Health Care Coverage."

45. For a brief account of the health care reform effort and the legislation which was ultimately approved by Congress, see New York Times Staff, "Health Care Reform."

46. Rovner, "Ranks of the Uninsured Keep Growing."

47. Cummiskey, "Health Care Justice: The Social Insurance Approach," 157.

employed in Great Britain is similar to a single-payer system, the difference being that the state controls (via ownership) some or all of the means of providing health care (e.g., clinics and hospitals).⁴⁸ Cummiskey presents the fourth system as incorporating elements of the other three:

Specifically, the social insurance model is funded primarily by employer and employee contributions like private markets. Moreover, the social insurance funds are not run by the government, and yet as in nationalized health care, there is still a public guarantee of basic health care for all.⁴⁹

Under such a system, the government uses its coercive power to compel individuals to purchase insurance; however, the funds are not owned or operated by the state. They are, rather, independent not-for-profit organizations.⁵⁰

Each and every one of these systems or models may be understood as providing a means by which affordable health coverage will be extended to all people, although the timeframe required to achieve universal coverage may vary significantly under the various systems. For example, it might take longer to achieve the goal of universal coverage under a market model than compared with a national health care system, since universal coverage will be an outcome of the "invisible hand" of the market. (That having been said, it might *not* take longer, since it takes more or less the stroke of a pen to deregulate markets, whereas it takes a great deal of time to socialize the means of health care or insurance delivery. This seems to be a matter which social scientists would need to investigate.) Although some of the more vocal defenders of a market model often scoff at the notion of universal health care, so much so that the phrase "universal health care" has come to be associated with socialism, it is more sensible to understand a market model as being justified, at least in part, by the fact that it might serve as an efficient way of reaching the goal of sustained universal access.

48. Ibid.

49. Ibid., 158.

50. Cummiskey argues that by comparison to for-profit insurance corporations, "social insurance funds are simply more likely to be responsive to patient and employer interests in quality, costs, and efficiency, rather than to profits and stock prices." Ibid., 167-168.

The health care reform bill which was ultimately approved by Congress retains the existing private market system while incorporating elements of a social insurance model (e.g., mandatory buy-in and risk-pooling). In the quite heated debates that surrounded the legislation and which continued well past the 2010 mid-term elections, commentators, activists, and politicians on all sides of this issue have sought to provide moral justification for their particular views, often couching their discussions in terms of the duties of the state vis-à-vis citizens.

Traditional progressives' criticisms of the private market model are well-known: it is inefficient, expensive, and fails to take seriously the goal of improved health on the part of its customers. As many critics have argued, insofar as insurance companies are profit-driven enterprises, they are systematically led to reduce payouts (a cost incurred by the company) to whatever extent possible. In practice this has had the consequence that individuals are denied coverage on the basis of preexisting conditions, and attempts have allegedly been made to withhold obviously preferable forms of treatment on the grounds that the procedures which physicians have requested are medically unnecessary, experimental, or so forth. More importantly, it is often claimed that insofar as the private market is not supplemented by a public guarantee of adequate coverage, the basic needs of millions of individuals are systematically ignored.

Because these are pressing problems that (allegedly) can be addressed and corrected by legislation, we are thought to have sufficient reasons for implementing appropriate reforms. Hence, in his remarks at the 2009 Tennessee Democratic Party's annual Jackson Day dinner, former vice-president Al Gore said that the country "has a moral duty to pass health care reform."⁵¹ Similarly, in a letter sent to members of Congress, Bishop William F. Murphy of the U.S. Council of Catholic Bishops' Committee on Domestic Justice and Human Development voiced the Committee's support for comprehensive health care

51. Nichols, "Clinton and Gore Reunite in Tennessee."

reform by explaining that the state has a "moral imperative" to ensure universal access to health-care for all under its jurisdiction.⁵²

Far from disputing the notion that the state possesses a moral duty which bears on the issue of health care reform, those who most clearly favor a market approach tend to counter the claims made by traditional liberals or progressives by arguing that the state has a duty to keep health care and insurance markets free and open—a duty which it would, as a matter of practical fact, violate by implementing many of the policies and rules included in the health care reform bill. According to this conservative/libertarian view, regulation of either the health insurance or health care industries would result in the violation of the rights of those who produce or distribute these services, since "the producers of health care goods and services have an inalienable right to dispose of the fruits of their thought and labor as they see fit, seeking their best interests through free trade in the marketplace."⁵³

There is a related claim which has direct bearing on the so-called "individual mandate" which is scheduled to be implemented in 2014 as part of the Patient Protection and Affordable Care Act.⁵⁴ As a means of ensuring that private insurance companies would be able to extend coverage to individuals with preexisting conditions without sacrificing their fiscal health, the reform act mandates that all individuals have health insurance. Mandatory buy-in of this sort may be understood as a political compromise that answered some of the right-wing objections to more radical potential reforms: rather than the state taking control of either the insurance or health care industries, it simply uses its coercive power to usher as many individuals as possible into the health insurance market. While this may be largely in keeping with the demand to respect the rights of health care and insurance producers and providers, it has been attacked as a clear violation of

52. Murphy, "Letter to US Representatives and Senators," 3.

53. Zinser and Hsieh, "Moral Health Care Vs. 'Universal Health Care!'"

54. Whether it will be implemented is, at the time of this writing, unclear. In March 2012 the Supreme Court entertained a challenge to the constitutionality of this aspect of the act.

consumers' liberties. Once the mandate is in place, individuals will have to purchase insurance on pain of being assessed a tax penalty. As critics have pointed out, this is tantamount to the government forcing consumers to buy a product.

A related argument that occasionally crops up in discussions of comprehensive reform concludes that health insurance or health care schemes financed via taxes are to be opposed on the grounds that they would cause an unjust redistribution of wealth. Any tax levy would have the consequence that some individuals would involuntarily pay for the care of other individuals. Although it is good for people to be charitable, it is wrong (so the argument goes) for the state to use its coercive power to require such charitable giving. On these or related bases, it is claimed that the state should not regulate the health care or insurance industries, and it should not create (or continue) government-run insurance or health care programs that are financed by taxes. If the state were to do either of these things (or continue to do them), it would run afoul of its moral duties.

One of the interesting things about this debate as it has unfolded in the media, and especially in the so-called "blogosphere", is that those who defend a private market model of health care insurance tend to portray their opponents as "statists," i.e., as concentrating economic, political and—significantly—*moral* powers and responsibilities in the government or state.⁵⁵ It should be noted, however, that if and insofar as libertarians conceive of the state as the principal entity against which rights are asserted—as many seem to—their dispute with traditional liberals may be understood as a dispute over *which* moral duties and obligations the state possesses, not *whether* the state has moral duties. This is particularly true insofar as some participants in this debate explicitly claim that individuals have a right to health care.

55. Some commentators state the matter explicitly; others couch these claims in much more inflamed language, often misapplying and confusing such terms as Nazism, fascism, socialism, and totalitarianism. For an example of a statist claim see the blog post, "Is Government Run Health Care a Moral Duty and the New American Dream?"

Even if we set aside these seemingly more ideological arguments, there are importantly difficult questions that crop up, which may lead us to adopt a more skeptical attitude towards claims that individuals have a right to health care. In an editorial published in the *British Journal of Medicine* some years ago, Dr. Philip Barlow captured the problem rather succinctly: "all rights possessed by an individual imply a duty on the part of others," he writes. "Thus the right to a fair trial imposes a duty on the prosecuting authority to be fair. On whom does the duty to provide health care to all the world's citizens fall?"⁵⁶ Barlow goes on to ask, incredulously, whether individual doctors or hospitals would bear this burden. Diane Jeske and Richard Fumerton raise the same worry. After suggesting that claims regarding positive rights may be translated into claims about what "suitably positioned individuals" should do, they note, "it is not obvious who those suitably positioned are. If you have a right to health care and there is no national health care system, is every wealthy person who can afford to pay your health care costs morally required to do so?"⁵⁷ Surely this is not the case.

One way in which we might avoid this problem—indeed, one way in which human rights theorists *do* try to avoid this problem—is by claiming that positive human rights are those which are asserted primarily against states or governments. In other words, the duties which correlate with them are held not by individual persons, but by the state. This is a perspective articulated by James Nickel, who explains, "human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly to interpersonal conduct."⁵⁸ While this leaves open the very important question of whether all governments and states are equipped to fulfill those obligations or discharge those duties associated with the vast array of human rights that are asserted in various international documents, it does limit the

56. Barlow, "Health Care Is Not a Human Right (Letter to the Editor)."

57. Jeske and Fumerton, "The Right and Wrong Ways to Think About Rights and Wrongs," 313.

58. Nickel, "Human Rights," sec. 1 (emphasis removed).

scope of the moral claims in a somewhat useful way. And there are even ways of hedging the worry about ill-equipped states: in reference to those rights articulated in the United Nations' *Universal Declaration*, Thomas Pogge states, "they all are to be understood as claims on the 'order,' or institutional structure, of any *comprehensive* social system."⁵⁹ Since some countries lack such a comprehensive system, human rights might thus be understood as ideals, realization of which ought to be a *goal* of any state.

1.5 The State as Bearer of Moral Obligations

It will be recalled that I set out to describe and characterize both of the aforementioned political controversies in order to draw out some examples of those duty-claims, reflection upon which gives rise to the questions I will be exploring in the remainder of this dissertation. I am now in a position to do just that.

In the torture debate we met with Vice-President Cheney's claim that the state has a duty to protect its citizens, as well as critics' claims that the Bush administration, CIA, and military violated the rights of terrorist suspects or otherwise flouted the state's moral duties. Within the health care debate we have met with the rather broadly accepted claim that the state ought to ensure universal access to health care, as well as the limiting claim that the state has a moral duty to respect the economic rights of individuals by keeping health care and insurance markets free and open.

As I think is rather clear, I have simply chosen two rather well-known and relatively recent political controversies, but examples may be found in numerous other contexts. Debate over gay marriage oftentimes proceeds on the basis of assumptions and disputes regarding the state's duties. So, too, do discussions of victims' rights in the criminal justice system. And most international political concerns end up getting couched in terms of state-held duties and obligations—e.g., global warming, the proliferation of nuclear weapons and other weapons of mass destruction, responses to natural disasters, and the spread of HIV/AIDS, to name just a few. With the rise to prominence of Tea Party Republicans in

59. Pogge, "The International Significance of Human Rights," 52. Emphasis added.

recent years, many of the budgetary and tax issues that perennially arise at both the state and federal levels have taken on an increasingly moralistic tone. This has been exacerbated by the recent financial crisis which has spurred various states to make cuts to welfare and service programs, many of which are thought to be the means by which the state discharges its duties pertaining to the well-being of its citizens.

What I wish to point out here is that the claims which I have highlighted take the same form as claims regarding the duties of individual human beings. Just as we often suppose that a parent has a duty to protect his or her children, so too might we suppose that the state has a duty to protect its citizens. Just as individuals should not dehumanize one another, neither should the state dehumanize those whom it holds captive. This is not to suggest that the state has precisely the same kinds of duties and obligations as individuals. To the contrary, the state is often thought to have duties which are uniquely its own. As previously mentioned, the state (rather than private individuals) is thought to be the moral agent that possesses duties which correlate with human rights. Moreover, the picture which has emerged is one according to which the state is conceived of as occupying a *central* place in our deliberations concerning ethico-political matters. This is a point which has been made by Roger Riddell in the context of an examination of the moral and practical issues surrounding foreign aid programs: "it is," he remarks, "the state which constitutes the *core moral unit* around which obligations and potential obligations revolve."⁶⁰

The elevation of the state to this position of central moral importance is perhaps not surprising; we conceive of many of the problems with which we are faced as too "big" for us to adequately deal with as individuals. On the domestic side, health care reform, racial and gender discrimination, and poverty are a few such examples. Specifically addressing *international* political concerns, Toni Erskine has written,

60. Riddell, *Does Foreign Aid Really Work?* 142-143. Emphasis added.

[E]ach of us, however talented, and however influential the roles we inhabit, would be hard pressed to confront the most serious problems in international politics as individuals. Indeed, as individuals, we cannot meet many of those responsibilities that we variously voice with caution and conviction. *Moral burdens, it seems, must often be borne elsewhere.*⁶¹

As the locus of unique capabilities and powers which make it suited to address large-scale problems, the state is conceived of as possessing moral obligations that are uniquely its own.

What all of this suggests is that we speak about the state as if it were a *fellow member* of the moral community to which we belong. It is said to have duties and obligations which not only parallel those of individuals, but it is also thought to occupy a central place in the moral scheme of things: in many cases we conceive of individuals as having the duties they have *because* the state has the duties it has.

We have seen, of course, that there is little agreement concerning the matter of *which* duties the state has. While people rarely deny that the state has moral duties, they do deeply disagree about which duties it in fact has. The torture and health care debates are illustrative of this point. So, too, are the examples of gay marriage, international public health crises, and global warming. We could, of course, add to this list such controversial issues as abortion, physician-assisted suicide, consumer protections, and so on. It is worth pointing out that many debates concerning policy issues boil down to competing conceptions of the state's *fundamental* or *basic* duties and obligations. For example, it isn't as if opponents and proponents of gay marriage disagree *merely* on the issue of marriage policy; differing views on such policy issues typically reflect much deeper disagreements concerning which ends or goods are properly understood as being the state's concern, which things are or are not worthy of protection and promotion by the state. Just as an answer to the question of whether the state has a duty to defend and promote a traditional conception of marriage requires that one have at hand a more general conception of the proper role or most basic duties of the state, so too would an answer to the question of

61. Erskine, *Can Institutions Have Responsibilities?* 1.

whether the state has a duty to prevent terminally ill individuals from ending their lives, or to restrict access to abortions, or so on. Those who think that the state's fundamental duty is to protect individual liberty would presumably take a rather liberal view of such matters. Those who think that the state's fundamental duty is to foster a community in which a certain (independently specified) set of moral virtues are developed and promoted may take a very different view.

Of course, even when two parties can agree on a list of the state's alleged duties, they might deeply disagree about how to rank-order the duties, or the relative importance of one kind of obligation compared to another. In the cases of both the use of torture and health care reform we saw that political disputes might be grounded in rival views concerning the order and relative importance of the various duties the state is said to possess. The positive duty to protect citizens may or may not be thought to be more pressing than the negative duty to refrain from dehumanizing suspected terrorists. The negative duty to refrain from interfering with individuals' economic liberties may or may not be thought to be more pressing than the positive duty to provide for basic health care needs. But whatever duties end up being most basic—whether one adopts a traditional liberal, a communitarian, or a libertarian conception of the state's basic duties, or something else entirely—they play a crucial role in our conceptual order: they allegedly justify constitutional enumerations and limitations of state power and they provide the basic framework within which policies and actions are discussed and legitimately acted upon.⁶²

62. This is one way of understanding the political thesis known as constitutionalism, which is arguably the dominant political philosophy in the United States. Constitutionalism holds that the state acts with legitimacy only when it complies with the constitutional limitations of its power. One of the philosophical questions that arises with respect to constitutionalism is the question of what grounds constitutional limitations? Are they grounded merely in the will (whatever it may be) of the people? Or are they grounded in a prior conception of the moral limits of government? Grounding legal limitations in a superior moral law is a way of avoiding the worry that they are arbitrary from the perspective of morality. See Waluchow, "Constitutionalism" especially sec. 3, 4, and 12. The tensions between a positivistic and moral version of constitutionalism were illustrated by President Obama's 2010-2011 policy to continue defending the ban on gay military service known as "Don't Ask Don't Tell" (DADT), despite his personal objections to the ban and his intentions to bring about its demise—a goal which was ultimately achieved in September 2011. When a federal court granted an injunction against enforcing DADT on the grounds that it was unconstitutional, Obama requested a stay in order to give his administration time to file an appeal. Although gay rights

Interestingly, a robust conception of institutionally held moral duties compliments the commonly held view that *individuals* have very few positive duties and obligations towards one another, especially distant others. On such a minimalist view, individuals are, roughly speaking, obligated to leave one another alone and not much else. Of course, it is often acknowledged that it is, in some sense, good to pursue one's own best interests in a field or organization which (as it is said) one can be proud of—i.e., which serves some socially valuable end—but when it comes down to it, we are hesitant to attribute to individuals many positive social or moral obligations. Indeed, anecdotal evidence suggests that people think of rendering aid to the poor and needy, helping strangers, and generally inconveniencing themselves in the service of others as supererogatory rather than obligatory actions—as matters, perhaps, of charity rather than justice. The sociologist Alan Wolfe has suggested that this view is a result, in part, of the striking social, political, technological, and economic developments, many of which have, for better or worse, upset traditional social arrangements. Our situation is now such that we feel largely freed from traditional moral and social obligations, and yet our needs and relations have changed little at all:

Severed from traditions and ties of place, [liberal democratic citizens] are free to make choices about how to lead their lives irrespective of the actions of others, yet, because they live in complex societies organized by large states and even larger economies, they are dependent on everyone around them to make their societies work. The essence of the liberal condition is freedom, yet a people who are completely free are a people unencumbered by obligations, whereas economic growth, democratic government, and therefore freedom itself are produced through extensive, and quite encumbered, dependence on others.⁶³

advocates were widely critical of this decision, Obama appealed to the fact that he was acting in accordance with the duties and obligations associated with the office of the president, namely, the duty to administer and defend challenges to legislation that had been approved by Congress. See Adler, "Is Obama's Excuse for Not Repealing 'Don't Ask, Don't Tell' Legitimate?" Those who adopt a moralistic conception of the grounds of state limits and responsibilities may be more inclined to suppose that the president should not continue to enforce an unjust policy or law.

63. Wolfe, *Whose Keeper?* 1–2.

The price of preserving our "freedom from economics and liberation from politics," as Wolfe refers to it,⁶⁴ has been the exultation of both the state, with its laws and regulations, and markets, with their ability to harness self-interest for social ends, as the means of ordering our relationships and interactions with one another.⁶⁵ "As the moral world associated with civil society comes to be taken less and less for granted," he writes, "liberalism moves in two directions:"

either toward a reliance on economic models of politics (in which it is assumed that rules of self-interest can bring about appropriate results without civil society playing a role) or into a defense of the state (as the only agent capable of serving as a surrogate for moral ties of civil society that are no longer especially binding).⁶⁶

In fact, of course, these two impulses seem to inform and drive many of our current political discussions, as evidenced rather clearly in the case of health care reform, but also in policy debates concerning CO₂ emissions and global warming, income disparity and poverty, and so on. In each of these cases, certain parties advocate government intervention while others advocate market-based solutions.

1.6 Is the State a Moral Agent?

I am now in a position to restate with some amount of clarity the topic I wish to explore in the remainder of the dissertation. As I mentioned at the outset, I am interested in the question of how we should understand institutional duty-claims generally and state duty-claims in particular. Having before us now some examples and a better understanding of why people make these claims and what seems to be implied when they do, I trust that we can set aside the possibility that institutional duty-claims serve a merely rhetorical purpose or have merely what ethicists refer to as an *emotive* meaning.⁶⁷ While it is certainly true that duty-claims are occasionally used merely to whip up support for some favored cause or policy or to create within another person certain attitudes or a tendency to act in a

64. *Ibid.*, 1.

65. *Ibid.*, 107.

66. *Ibid.*, 108-109.

67. See Stevenson, "The Emotive Meaning of Ethical Terms."

certain way, their meaning and significance is not *restricted* to this usage. When considered in context it is apparent that they are often intended to be substantive moral claims. They are used to convey what the speaker assumes is a moral fact which ought to figure into moral deliberation.

The overarching task I am setting for myself is to explore whether attributions of duties to the state should be taken literally or figuratively. This may strike some as a rather trivial matter, but I think this is far from being the case. Not only is this a matter on which scholars are divided—some claim that institutional duty-claims must be figurative; others claim that they may be interpreted literally—but it is also a matter of potentially deep practical import. As we have seen, settling whether it is ultimately true that the state has a duty, say, to ensure access to health care is a matter on which our policy decisions ride. But if we are ever to decide the truth-value of such a claim, we must have some sense of what would *make* claims of this sort true, and that requires settling the meaning or signification of the terms and phrases used in these claims. In short, it requires settling whether institutional duty-claims are to be interpreted literally—i.e., as claims about the state's duties—or figuratively—i.e., as either a claim about someone or something other than the state or as a claim that isn't about duties at all.

It has been claimed that one obvious way in which institutional duty-claims could be understood to be figurative rather than literal would be to suppose they didn't really attribute duties to the state, but rather to individuals. For example, if the statement, "The state has a duty to *a*," was understood to mean nothing more than, "The head of the state has a duty to *a*," then the former claim would (it has been said) simply be a figure of speech, not a literal attribution of a duty to the state.

Notice, however, that putting the matter in this way suggests that the state is something other than a mere collection of individuals. If we adopted the perspective that the state is nothing more than a set individuals, such that any claim about the state is capable of being reductively analyzed in terms of claims about this set of individuals, then

moral claims about the state need not be viewed as *figurative*. If the term 'state' picks out nothing other than a set of individuals, then a duty-claim in which that term figures would be identical in meaning to a claim in which I substituted the names of those individuals for the term 'state'. Typically when we say that a statement has a figurative meaning, we mean to imply that at least some of the terms in that statement are not being used in accordance with their strict definition. Consider, e.g., the statement, "Jones flew down the stairs when she heard Smith let out a blood-curdling scream." Here the term 'flew' and the term 'curdling' are not being used in their strict, literal sense. This is not the case when we *reduce* state-claims to individual-claims, since a theory of reduction is *just* a theory of the analyzability of claims of one type into claims of another. I will have more to say about this in Chapter Three.

To illustrate what I have in mind, suppose that I say, "The state has a duty to ensure universal access to health care," a position which my friend denies. If my friend and I genuinely wish to figure out which of us is correct, we would need to have in mind some idea of what the truth-makers for such a claim would be. That is, if we are to conclusively determine whether the proposition, *The state has a duty to ensure universal access to health care* is true or false, we need to know what would have to be the case *in order* for it to be true, regardless of whether it is or is not *in fact* true. If institutional duty-claims are taken as being strictly analogous (but not identical) to individual duty-claims, we may presume that the truth-makers for an institutional duty-claims would be strictly analogous (but not identical) to the truth-makers for an individual duty-claim. This would amount to supposing that whatever kinds of facts must obtain with respect to an individual in order for that individual to be truly said to "have a duty" must also obtain with respect to an institution in order for that institution to be truly said to "have a duty." If, however, institutional duty-claims are not to be taken in this manner, we would expect there to be divergence with respect to which kinds of facts serve as the truth-makers in the two cases.

Of course, it is a hotly disputed issue within the philosophy of social science whether or not the state is something other than (something over and above) individuals. If it turns out that the state *is* something over and above individuals, and if we thus conclude that the term 'the state' refers to this supra-individual or uniquely social entity, then a state duty-claim will turn out to be literal if it ascribes a genuine duty to that entity. When taken in this sense, the claim will have the same meaning and significance as *individual* duty-claims, differing only with respect to the purported *subject* of the duty. This is what I meant to draw attention to when I said that we speak about the state as if it is a fellow member of our moral community. If, however, the state (understood in this way) is only the *putative* subject of the claim, whereas the actual subject is some other entity, the claim will be figurative.

At this point it may be necessary to head off a possible misunderstanding. It would be improper to conclude that if state or other institutional duty-claims are figurative they thereby fail to express substantive moral claims. This is potentially mistaken, since figurative statements clearly can express facts. For example, the figurative claim, "Jones flew down the stairs when she heard Smith let out a blood-curdling scream," expresses a fact, though it doesn't do so by using terms in their literal sense. Hence, even if institutional duty-claims cannot be interpreted literally, we need not deny they express facts of *some* sort. But this concession only serves to emphasize the point that the question of whether institutional duty-claims are figurative or literal is worth exploring, since clarity on that issue may indicate how ethico-political discourse should proceed once two parties find themselves making what seem to be contrary claims regarding the state's duties. In such cases the parties might find it useful to drop the figurative language, favoring more literal ways of speaking.

A straightforwardly literal interpretation according to which the state is an entity that exists (in some sense) independent of (or over and above) individuals may seem somewhat plausible given the fact that both institutional and individual duty-claims share

the same structure or form. The claim "Smith has a duty to protect his child" and the claim, "The state has a duty to protect its citizens" share in common the form,

Subject S has a duty to engage in action *a*.

If, as it appears, we suppose that the state can be the subject of a duty-claim in the same sense an individual can be the subject of a duty-claim—that is, if we think of it as having rights and being the bearer of duties and obligations—we are conceiving of the state as a *moral agent* or a *person*.

Those who are not well-versed in discussions of moral personhood may be taken aback by this way of speaking. However, it is rather commonplace within moral philosophy to distinguish between *human beings* (a biological kind) and *moral persons* (a metaphysical kind). This distinction is related both genetically and conceptually to the legal distinction between a natural person (i.e., a human being) and an artificial or juristic person (e.g., an individual citizen, John Doe, or a corporate entity such as Verizon or Microsoft). Many rather well-known moral debates are thought to turn on the notion of moral personhood. For example, proponents and opponents of abortion often disagree on the question of whether a fetus is a person. Although most people agree that a fetus is a biological human being (i.e., it is a member of the species *Homo sapiens*), there is much disagreement concerning the question of whether it is a morally significant being, a person. If it were a person, it has been argued, it would have rights like other moral persons, such that it would be wrong to kill it without sufficient reason.⁶⁸

Up to this point I have assumed that an institutional duty-claim will be literally true if it ascribes a duty to *the state* (however that subject-term is understood), and it will be figurative if it ascribes that duty to someone or something else. There is another (or perhaps a *further*) way in which such a claim could turn out to be figurative. We may deny the literal interpretation on the grounds that the predicate phrase of the duty-claim has either an analogous or an equivocal signification. That is to say, if the phrase "has a duty"

68. For one rather well-known argument to this effect, see Marquis, "Why Abortion Is Immoral."

means one thing in the case of paradigmatic individual duty-claims but another thing in the case of institutional duty-claims, then the institutional duty-claim may be interpreted as a figure of speech, or a metaphor. In such a case, the sense that attaches to the phrase as it figures into institutional duty-claims would be different than the sense which attaches to the phrase as it figures into individual duty-claims, and this is really just to say that the state (or whatever the actual subject of the claim is) may be thought of as "having duties" in only a metaphorical sense. If this is the case we should lay bare the two different meanings and, at least for philosophical purposes, stipulate its proper application.

We should reserve judgment concerning the question of whether the phrase "has a duty" has a univocal meaning across institutional and individual contexts until we have a clear sense of (a) what it means to say that an individual has a duty and what is implied about the individual when we make such claims, and (b) whether or not the same things can be said or conceived to be true about the state. I shall take up the first of these issues in Chapter Two where I will provide an account of moral duties and an explanation of some of the basic requirements (necessary conditions) a being *S* must meet if *S* is to be said to have a duty to *a*. I shall turn to the second question in the third and fourth chapters. As we will see, a number of thinkers have supposed that states or other institutions really are moral agents or persons in their own right, over and above individual agents or persons. While some of these views seem to be largely indefensible flights of fancy or mystical thinking run amok, a few recent attempts have been made at working out a thoroughgoing *theory* of corporate or institutional moral personhood. If states are similar to individuals in sufficiently relevant ways, we would be justified in supposing that institutional duty-claims may be interpreted as straightforwardly literal. The theory of moral personhood I shall be surveying intends to establish just this conclusion.

Although I think the theory of institutional moral personhood that I will be discussing is the most plausible theory available, I will conclude it rests on a faulty or underdeveloped notion of moral agency and that it is illicitly anthropomorphic. These are

points that I shall make in Chapter Five. In addition to criticizing the theory of institutional moral agency, I shall argue that we ought to interpret institutional duty-claims as literal, but only in a reductive sense: they are analyzable in terms of claims about individuals. The strongest case for this interpretation of institutional duty-claims would consist in showing that it is *inconceivable* that the state has those features requisite for moral agency. A weaker case would consist in showing that we simply *have no reasons to suppose* that the state possesses those features requisite for moral agency. I shall be defending the weaker claim.

CHAPTER TWO

AN ANALYSIS OF DUTY CLAIMS

As I have indicated, my aim in this dissertation is to clarify what is meant when we assert that the state (or some other institutional organization) has moral duties. In light of this, the natural point at which to begin is by considering the meaning of duty claims in general. The precise way in which I propose to do this is by examining what we mean and imply when we advance duty-claims in what we may assume to be paradigmatic circumstances: namely, those circumstances in which an *individual* is said to have a duty to do something. Doing so will allow us to frame our further investigation into the meaning and significance of *institutional* duty-claims as one which has the aim of revealing whether the phrase 'has a duty' has a univocal, analogous, or equivocal signification across institutional and individual contexts. In other words, if we treat the attribution of a duty to an individual as our paradigm case, we can then ask whether or not institutions have duties in precisely the same manner as individuals, such that whatever is implied about an individual when we say that she has a duty is also implied about an institution when we say that it has a duty. I will have more to say about this way of framing the question in the introductory remarks to Chapter Three.

We may begin our project here by noting that the history of moral philosophy is rich with rival conceptions of what it means to say that an individual has a duty (i.e., what such attributions entail and what the truth-makers for such claims are), as well as widely different accounts of *which* duties or obligations we are thought to have. Although these two issues are obviously rather intimately related, they are at least potentially distinct in a conceptual sense. It seems possible to give a general account of what a duty-claim implies about the subject to which it is attributed and what sorts of things make true such claims *without* having to make substantive judgments concerning the question of which duties moral agents in fact have. At the very least, individuals who have widely different views

concerning the content of the moral law may agree on the formal structure or application-conditions of a duty-claim. Although I shall largely ignore the numerous perspectives which have been developed concerning the more substantive question regarding the content of our moral duties, I shall mention a few of the more well-known views concerning the more formal question.

2.1 What is it to Have a Duty?

Etymologically, the term 'duty' is connected up with the Latin term for debt; thus, what one has a duty to do may be, and often has been, understood to be a function of what one owes to others, or what is proper given one's station or position. This etymological meaning is reflected in our common moral parlance, especially the parlance of moral philosophers who regularly distinguish between role-specific, legal, and moral duties. These different kinds of duties seem to be distinguished by appeal to their grounds. For example, legal duties are grounded in facts concerning positive law, including facts about which things have legal standing or are subjects under the law.⁶⁹ This is a highly contingent matter, and we should expect that the legal duties of moral agents may vary widely from one legal system or society to another. Indeed, when it comes to rather trivial matters such as which side of the road one is obligated to drive on, or to which agency one is obligated to send one's taxes, the actual content of duties relating to these matters will be obviously contingent in that way.

Role-specific duties may be thought to share much in common with legal duties. Indeed, I am inclined to think that legal duties are simply a form of role-specific duties, although I won't insist on that point here. We may simply observe that role-specific duties seem grounded in facts concerning the tasks, goals, and responsibilities associated with a

69. I take it that whether something is a subject under the law is a contingent feature of the legal system. For example, the fact that corporations are persons in the intendment of the law is in no sense necessary. Corporations would not have legal standing but for the fact that this is how the law has been designed. There are, of course, moral reasons for supposing that a legal system ought to be constructed in certain ways. A legal system in which certain natural persons are denied standing (e.g., on the grounds of their race) is wrong on moral grounds even if it is not internally inconsistent (i.e., even if this feature of the law fails to stand in discord with some other statute or provision).

particular role, position, or office, as well as facts concerning the conditions that must be met if a person is to occupy this role, position, or office. I will have occasion to mention role-specific duties in Chapter Five, so it is worth devoting a small amount of space here to considering a few possible ways of understanding the relationship between moral and role-specific duties.

When viewed in a certain light, role-specific duties seem distinct from moral duties, since we might suppose that we can determine the truth-value of a claim concerning an individual's role-specific duties without consulting the moral law. As I suggested a moment ago, a claim concerning one's role-specific duties expresses that one is bound or required to undertake an action (or a kind of action) in virtue of occupying a particular role. Examples of role-specific duties are numerous: the duties of a teacher *vis-à-vis* her students or a business owner *vis-à-vis* her employees are simple examples. But such examples do not serve to highlight the present point—viz., that claims about one's role-specific duties seem conceptually unrelated to claims about one's moral duties. This is largely because many of the duties which we assume public servants or private business owners have, or at least many of the ones which are worthy of discussion, should be understood either as *role-specific moral duties* or as role-specific duties which are consistent with one's moral duties. Part of the reason that individuals actually have some of the moral duties we presume they do have is because they actually occupy certain roles, and when one occupies a role, one takes on new forms of relating to morally significant others. So long as the relationships in which we stand can give rise to uniquely moral reasons for action, we can expect individuals who occupy roles will have moral duties that are dependent upon institutional or social structures in which they are situated.⁷⁰

To see the potential disconnect between role-specific duties and moral duties, we may reflect on the following example: prior to his assassination, it seems appropriate to say

70. I will have more to say about moral reasons for action and possible ways of distinguishing moral from non-moral duties below.

that Osama bin Laden had role-specific duties that attached to him in virtue of the fact that he was the leader of the al-Qaeda terrorist organization. While it surely wouldn't be surprising to learn that bin Laden conceived of his role-specific duties as *also* being moral duties, we need not—indeed, should not—admit anything of the sort. We can admit that bin Laden had a role-specific duty to raise funding for al-Qaeda or any number of other things, whereby we merely commit ourselves to the claim that this was something which he was *expected* to do given his place within the organization. Although bin Laden had duties of this sort, we would, of course, go on to say that in carrying out these duties he ran afoul of his *moral* duties.

Of course, as I have already indicated, it could end up being the case that an act that one is expected to do given one's role is also an act which one has a moral duty to do, or that such an act is at least consistent with one's moral duties. Moreover, it is conceivable (though I think it is ultimately not the case) that one could have a *carte blanche* moral duty to discharge non-moral duties of a certain specific sort. This is the idea expressed by certain naïve relativistic moral theories. For example, it is not uncommonly supposed that our sole moral duty is to act in accordance with the law. According to this perspective, insofar as we act within the bounds of the law, we act in morally permissible ways; insofar as we act outside the bounds of the law, we act in morally impermissible ways. Here the view is that one's moral duty is to discharge one's legal duties, whatever they end up being. As another example, a certain form of cultural relativism holds that one's duty is to act in accordance with the folkways, or in other words, to discharge those culturally specific duties one has (that is, the duties that attach to one in virtue of being a member of a certain group).⁷¹

71. This is one interpretation of the version of cultural relativism promoted by William Graham Sumner in his famous *Folkways*. As I understand the overall gist of his argument, Sumner claims that members of society come to see their culture's traditions and customs as being objectively right. Although he occasionally writes as if all it *means* to say that something is right is that it is traditional, at other times he suggests that the terms are simply coextensive. For instances of both, see Sumner, *Folkways*, 28–29. This view may be understood as standing in subtle contrast with the version of cultural relativism offered up by Ruth Benedict. Benedict explicitly states that all it means to say of an action, "It is right," is "It is socially approved of." See Benedict, "Anthropology and the Abnormal," 73.

Now, it is rather apparent at this point that I have been using the term 'duty' in a rather broad sense: to say that one has a duty to do *a* or pursue *g* is to say that one is *justified* in doing *a* or pursuing *g* (or one has a justifying reason to do *a* or pursue *g*), and one is unjustified in not doing *a* or pursuing *g*. In light of this, I would maintain that in a statement like the following, the phrase 'has a duty' is being misused—the statement is flatly contradictory: "Although *S* has a duty to *a*, there is no sense in which *S* is justified in doing *a*." Of course, it is possible to construct a metaethical perspective or theory according to which such an utterance may be viewed as meaningful and devoid of contradiction. For example, if we adopt a noncognitivist view of duty-claims, we might suppose that the utterance, "*S* has a duty to *a*," is more or less equivalent in meaning to an expression of a pro-attitude towards *S* doing *a*, which perhaps has, as C.L. Stevenson has put it, a "quasi-imperative force"—that is, it is an utterance which attempts to elicit the appropriate reaction on *S*'s part.⁷² If one were to subscribe to this sort of emotivist interpretation of duty-claims, there is no sense in which the claim, "*S* has a duty to *a*," implies that *S* is justified in doing *a*. This is because the emotivist denies that such moral claims have any cognitive content whatsoever. Since the claim has no cognitive content—it fails to *state* anything—nothing can be logically implied or inferred from it. Moreover, according to this view, when one makes a claim about *S*'s duties, one is to be understood as expressing one's feelings about *S* doing *a* or exhorting *S* to do *a*; strictly speaking, however, nothing is being said about *S*. As long as we suppose that there is some significant, non-emotivist sense in which one can speak about an individual's justification for action, and thus there is some significant, non-emotivist sense in which it can be either true or false that *S* is justified in doing *a*, one would be able to claim that although *S* has a duty to *a*, there is no sense in which *S* is justified in doing *a*. For example, if the emotivist adopts the rational egoist

72. Stevenson, "The Emotive Meaning of Ethical Terms," 19. On Stevenson's view, the meaning of a moral utterance is its tendency to produce or elicit approval or disapproval in those to whom the utterances are directed; however, he grants that such utterances also express the speaker's approval or disapproval. Cf. Ayer, *Language, Truth, and Logic*, chap. 6.

perspective according to which to say that *S* is justified in doing *a* is to say *S*'s doing *a* is in *S*'s self-interest, then the emotivist could say, "Although I am inclined to use moral language as a means of getting *S* to do *a*, there is no sense in which *S*'s doing *a* is in *S*'s self-interest." The fact that saying *this* would undermine the effectiveness of the first-order duty-claim need not concern us. The point is simply that the statement may be understood as expressing the philosophical point that facts about the speaker's attitudes or inclination to try to cause *S* to do *a* do not entail or imply anything about *S* or about *S*'s justification.

While there are numerous reasons to reject emotivism, I will not concern myself with recapping those objections, since it will take me too far afield.⁷³ I assume that my readers share my intuition that duty-claims have cognitive content and that they are about justifying reasons agents have for acting. Those who do not share this intuition may simply note that if duty-claims are to be interpreted in a manner that is consistent with the emotivist view I have sketched, the question of what institutional duty-claims amount to is no longer interesting or puzzling; such claims are simply sophisticated "tools" we use for creating attitudes or inciting agents to action.

Although it does not rise to the level of a defense, I think the viewpoint according to which duty-claims express justifying reasons an agent has for acting may be made plausible by focusing our attention on how claims about individual's duties are made and used in everyday discourse. While it must be granted that such claims are *sometimes* used merely to express attitudes and incite feelings within or actions on the part of others, as the emotivist claims is always the case, there are at least two further significant and intimately related purposes to which such claims may be put. They may be used either to provide *input* for moral deliberation, or they may be used to signal what one takes to be the *outcome* of moral deliberation. This in itself isn't very revealing and it is admittedly question-begging since any statement that has cognitive content may be thought of as at least potentially

73. Those readers who are interested in this issue may see Adams, "A Critique of the Emotive Theory of Ethical Terms" and Fumerton, *Reason and Morality*, 18–30.

figuring into thought as either input or output. Nevertheless, it does focus our attention on the fact that we use duty-claims to express the practical reasons we take ourselves or others to have.

Let me illustrate what I have in mind when I say that duties express practical reasons by quoting an exchange between two of the main characters in Henrik Ibsen's play, *Rosmersholm*. The exchange takes place between Johannes Rosmer and his conservative brother-in-law and local headmaster, Rector Kroll. Rosmer is a former clergyman and the owner of Rosmersholm who has, in addition to quitting the priesthood, come to support radical political reformers. He has indicated to Kroll that he wishes to devote his life to helping people emancipate themselves from traditional religious and social conventions and prevailing ideologies. Upon learning of Rosmer's orientation and intentions, Kroll warns him of the social and personal, even *bodily* harms that might befall him if he is to carry out his mission, indicating that he may be spared these ill effects by reaffirming his former place in society, especially his place as a "retired" pastor of an influential, ruling-class family. To this, Rosmer replies,

ROSMER. I feel an absolute need to get out of a false and ambiguous position.

KROLL. But you have a duty towards the traditions of your race, Rosmer! Remember that Rosmersholm has, so to speak, radiated morality and order from time immemorial—yes, and respectful observance of all that is accepted and recognised by the best people. The whole district has taken its stamp from Rosmersholm. It would lead to deplorable, irremediable confusion if it were known that you had broken with what I may call the family tradition of the Rosmers.

ROSMER. My dear Kroll, I cannot see the matter in that light. It seems to me an imperative duty to spread a little light and gladness here, where the Rosmer family has from generation to generation been a centre of darkness and oppression.⁷⁴

Kroll undoubtedly intends his claim to express both a consideration which he believes Rosmer has overlooked when deciding on his current course of action, as well as what he supposes should be the outcome of moral deliberation on Rosmer's part once this consideration is brought to mind. In spite of whatever pull Rosmer may feel towards

74. Ibsen, "Rosmersholm," 48.

abandoning his social position, he should set himself aright and uphold the ruling-class position which has been bequeathed to him, distancing himself, even setting himself against, the activities and the philosophy of the reformers. Rosmer of course cannot accept that Kroll is correct, for he has come to see this very position and all that it involves as playing a stultifying role in both the community at large and his life in particular.

There are two different ways of understanding the nature of the disagreement between Rosmer and Kroll—that is, the nature of the disagreement in its most general form.

On the one hand, we might suppose, as I think Ibsen intends us to suppose, that Rosmer outright rejects the notion that he has a reason (any reason) to uphold his position in society. This would be the most radical way in which he and his brother-in-law might disagree, for if this is the case, the disagreement arises because the two men have very different and perhaps incompatible beliefs concerning the question of what reasons for action Rosmer has available to him. What we are to imagine here is that Kroll, but not Rosmer, believes that upholding and trumpeting the "moral order" (something which he could do by maintaining his position in society) is something which he ought to do.⁷⁵

On the other hand, Rosmer could very well *grant* Kroll's point. He could acknowledge that he has a reason to act as his brother-in-law wishes. Although one doesn't get the sense that this is the case in the play, it is conceivable that Rosmer is of the opinion that maintaining and rehabilitating his position in the community may tend to be his duty for the very reasons Kroll identified: namely, because the preservation of the traditional moral order is valuable. And yet Rosmer could, with complete consistency, go on to suggest that he has a more pressing or weighty reason to abandon the role. If this were the case, the disagreement would not be quite so radical, for Rosmer and Kroll would share some common ground. What we are to imagine in this case is that the disagreement doesn't

75. For the present purpose it need not concern us whether Kroll conceives of the upholding of the moral order as intrinsically or extrinsically valuable.

concern the matter of whether preservation of the social order *counts* as a reason for Rosmer to act in the relevant ways, but rather, it concerns the question of whether this reason is or is not *outweighed* by some more pressing consideration—namely, the value of "spread[ing] a little light and gladness", of living one's life freely and helping others liberate themselves from prevailing ideologies and social structures.

As I have indicated, I think this example illustrates two different but closely related ways in which duty-claims may be used, and hence two different senses that may be attached to a duty-claim. When a duty-claim is used to provide input for moral deliberation the claim expresses nothing more than the notion that the subject has a reason (that is, at least *one* reason) to do *a*. When a duty-claim is used to express the outcome of moral deliberation, it expresses not only the fact that one has a reason to do *a*, but that doing *a* is what one *ought* to do, all things considered. To suggest that one has a reason to act or behave in a certain way is to suggest that one has access to some consideration which counts in favor of her taking that course of action. In other words, there are grounds for supposing that acting in that way would be appropriate or justified.

There is a potential ambiguity surrounding the phrase "has a reason" that must be addressed. Some fact about me might "count in favor" of my acting in a certain sort of way—might make it that I "have a reason" to so act—in the sense that my behavior may be *explained* by appeal to that fact about me.⁷⁶ For example, let us suppose (very much contrary to fact) that I have lipophobia, which is the irrational fear of eating fatty foods. Now imagine (again, very much contrary to fact) that I experience intense anxiety when eating dinner at my grandmother's house. My anxiety may be explained by reference to my lipophobia in conjunction with my belief that my grandmother makes liberal use of fatty substances when preparing dishes. That is to say, my being lipophobic is a partial *cause* of

76. On this topic I have been very much influenced by Diane Jeske's way of stating the issue in Jeske, *Rationality and Moral Theory*.

my anxiety. The "explanatory reason" for my odd behavior would be the fact that I am lipophobic.

Compare the work played by this fact in this account to a similar but significantly different account. Suppose my grandmother prepares a meal of fried chicken, veggies smothered in hollandaise sauce, and cheesy biscuits, which she intends to follow up with a large pan of triple-fudge brownies. Suppose further that I am not feeling too well, and I suspect that a meal high in fatty foods will upset my stomach. The fact that I do not wish to have an upset stomach would not only *explain* why I refrained from eating the meal (were I to do so), but it would also, presumably, *justify* me doing so (whether or not I actually go on to refrain from eating it). That is to say, given the fact that I do not want to become ill, as well as relevant facts concerning the likely consequences of eating the aforementioned foods, it would be *rational* for me to refrain from eating my grandmother's meal.

Although we may aspire to live our lives in such a way that our actions are wholly explainable by appeal to justifying reasons, the two kinds of reasons must be kept distinct. As Diane Jeske has noted,

it is quite possible for an explanation of a person's action to have nothing to do with any justification of that action. After all, it is quite possible for a person to act in an unjustified manner and, further, for her to believe, even at the time of acting, that she was unjustified in doing what she did. Pettiness, lust, greed, laziness, and too much alcohol can all be factors that *explain* our behavior, but rarely, if ever, do such factors *justify* our behavior.⁷⁷

Duty-claims do not purport to explain our behavior nor do they tell us how we *will* act; rather, they purport to tell us how we *should* act, whether we in fact go on to act that way or not. When it comes to the reasons expressed by duty-claims, the relevant way in which a consideration "counts in favor" of one taking a course of action is by way of justifying rather than explaining one's behavior.

When a claim of the form, "S has a duty to *a*" is interpreted as expressing the fact that S has a justifying reason to *a*, it would not be incoherent or contradictory to go on and

77. Ibid., 5.

admit that S also has justifying reasons to abstain from or omit doing *a*. This is owing to the fact that a person can, presumably, have a variety of reasons for acting in a variety of ways, not all of which can in fact be acted upon and some of which may conflict with one another. In his influential book, *The Right and the Good*, W.D. Ross usefully distinguished between what he called "*prima facie* duties" and one's "duty *sans phrase*."

I suggest '*prima facie* duty' or 'conditional duty' as a brief way of referring to the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant. Whether an act is a duty proper or actual duty depends on all the morally significant kinds it is an instance of.⁷⁸

Ross goes on to explain that a *prima facie* duty is not itself a duty in the proper sense, "but something related in a special way to duty."⁷⁹ The way in which *prima facie* duties are related to duties in the proper sense is that *prima facie* duties are simply reasons for action which figure into deliberation in the sense I have just discussed, whereas one's duty proper is whatever is supported by the preponderance of these reasons. Whether a particular *prima facie* duty is also one's duty proper will depend on whether there are stronger or conflicting reasons to act; if there are not, then this *prima facie* duty would thereby also be one's duty proper. Ross is rightly inclined to reserve the term 'duty' to denote that which is supported by the preponderance of reason, that course of action which, all things considered, is what one ought to do.

Let us adopt this understanding of duty-claims from here on out. When we say of a person that she has a duty to do something we mean to suggest that she is required or bound to act in that way; more precisely, she is justified in undertaking the action and unjustified in failing to undertake the action. Before moving on, however, let me note two important points.

78. Ross, *The Right and the Good*, 19–20.

79. *Ibid.*, 20.

First, when we say, "S has a duty to *a*," we imply that S has (at least in principle) epistemic *access* to some consideration which would justify S doing *a*. If a person cannot access the consideration which counts in favor of her acting, quite obviously she does not *have* a reason, does not *have* a duty to act, and hence the allegation that she does would be erroneous, or false. To be sure, a third party may have reasons to suppose that S's doing *a* would be justified. For example, it may be good (in the sense of being productive of value) if S did *a*. But if S does not have epistemic access to the fact that her doing *a* would be justified in some sense or another, she cannot, strictly speaking, be said to *possess* a justifying reason to *a*.⁸⁰ This reveals, at least in part, why we do not think that non-human animals, infants, or individuals with profound mental disabilities have duties or obligations: we are not confident that they have access to reasons which would justify action; they cannot comprehend any reasons they might otherwise be imagined to have for acting in particular ways. Or at least we do not take ourselves to be justified in supposing that they do. The point here is that duty-claims are not to be analyzed merely in terms of reasons (justification) available for action, but rather in terms of reasons (justification) which the subject has (or at least epistemically *ought* to have) access to. In other words, to say, "S has a duty to *a*," is to say that S has (or ought to have) access to a reason for doing *a*. This preserves the sense in which when we say of a person that she has a duty to do something or another we mean to suggest that she is in some sense required or bound to act in that way; she is bound by reason(s).

The second point is related to the first by way of implication. It is simply this: there is a significant difference between the claim, "It would be good if S did *a*," and the claim, "S has a duty to *a*." The former is what I shall call a value-claim: it expresses the notion that a certain state of affairs—perhaps the mere doing of *a* on S's part, or perhaps the

80. None of what I just said is intended to suggest that justifying reasons are subjectively rather than objectively determined. Whether *p* counts as a justifying reason for S to *a* is, I presume, an objective matter: *p* either does or does not count, and whether it counts is not *essentially* a matter of whether S believes it counts. Although I do not think that the notion of a justifying reason is subjectively defined, as I will explain in the next section, I do think we should distinguish between subjective and objective *grounds* for justifying reasons.

consequences of S doing *a*—would be valuable in some sense. The latter claim is not a claim about the value of a certain state of affairs. It is, rather, a claim about the person S—namely, what S has reasons to do. Significantly, non-moral agents such as toddlers and non-moral entities such as water heaters and cars can be the subjects of a value-claim, so long as there is some relevant sense in which these beings or entities can "do" things. However, only a rational agent can be the proper subject of a duty-claim.

2.2 Moral Reasons for Action

Now, I think it will turn out that the foregoing analysis of duty-claims will be sufficient for my purposes in this dissertation; it is sufficiently rich to allow us to make significant headway in clearing up the meaning of institutional duty-claims. However, it must be noticed that the account provided so far has been a *general* account of duty-claims; aside from the occasional mention of *moral* duties (as in the example from Ibsen's play), the analysis I provided was intended to apply to any and all duty-claims. While moral duty-claims may be the sorts of duty-claims which come most naturally to mind when we think about duties, I have already acknowledged that, in addition to moral duties, individuals are commonly thought to have legal, professional, and various other role-specific duties. I mention this because the subject of this dissertation is the meaning of institutional *moral* duty-claims. It is thus worth exploring a bit further the distinction between moral duties and the various non-moral duties which agents may be thought to possess.

As I have explained, some claims concerning one's non-moral duties (namely, claims about one's role-specific duties) are best understood as expressing the fact that one is *expected* to engage in a certain range of actions. Claims of this sort are not, in the end, claims about one's *reasons* for action, although the fact that one is expected to do some action *a* may, of course, give rise to a reason for action on that person's part. Setting aside claims of that sort, the question is whether there is some other sense in which we could distinguish moral from non-moral duties.

In light of the analysis I provided above, if we genuinely have non-moral duties which are distinguishable from moral duties, it seems that one of two things must be true. Either claims concerning these duties are to be distinguished by appeal to the *kinds of reasons* the subject has, such that moral duty-claims express reasons of one sort and non-moral duty-claims express reasons of different sorts, or else they are to be distinguished in terms of the *kinds of actions* they justify. According to this latter approach, moral duty-claims would express the justification available for actions of one kind, whereas non-moral duty-claims would express the justification available for actions of a different kind. Each option gives rise to a further question. If we suppose that duty-claims are distinguished by appeal to the kinds of justifying *reasons* they claim a subject has, we should rightly wonder what distinguishes reasons of a moral sort from reasons of a non-moral sort. Similarly, if we suppose that duties are distinguished by appeal to the kinds of *actions* they recommend or prescribe, we should then ask what distinguishes moral actions from non-moral actions.

Those who have advocated a certain kind of subjectivist and relativistic analysis of reasons may be understood as being committed to the view that moral duties are distinguished from non-moral duties by appeal to the kinds of *actions* they prescribe—assuming of course that such theorists wish to acknowledge that we have moral duties. According to the viewpoint which I have in mind here, to say that *S* has a reason to do or pursue *a* is just to say that *S* wants or values doing or pursuing *a* as either an end in its own right, or as a means to some further end, *e*, which is desired or valued intrinsically.⁸¹ Assuming that this is a complete and accurate analysis of the concept of having a reason for action, agents have, at bottom, only one kind of justification for action: for any action *a*, *S* is justified in doing *a* if and only if *a* is either an end for *S* or *a* is a means of achieving *e*, which is itself an end for *S*.⁸² Presumably, then, if a distinction is to be drawn between moral duties and non-moral duties, the distinction must be drawn by appeal to the kinds of

81. This is an analysis defended by Richard Fumerton. See Fumerton, *Reason and Morality*.

82. *Ibid.*, 94–96.

actions that are justified, which is in turn a matter of distinguishing between the kinds of ends or goals *S* might have. One plausible way of cashing out such a distinction could be by appeal to the distinction between self-concerning goals and actions on the one hand and non-self-concerning goals and actions on the other. Among the non-self-concerning ends which subjects typically have are other-concerning ends which take as their object the achievement of what is in another person's interests; for example, I might desire as an end that others be happy and flourish, or that they at least be adequately clothed and fed. Moral duties could be classified as those which prescribe actions that are a means of achieving some of a subject's other-concerning ends; non-moral duties could be classified as those which prescribe actions that are either self-interested, or which make no reference to persons at all (neither the self nor an "other"). In this way, there might be some sense in speaking of "duties of self-interest" which can be contrasted with moral duties.

A subjectivist view of this sort enjoys a certain amount of plausibility insofar as it does seem to be the case that if *S* desires *a*, either as an end or as a means to some further end *e*, then *S* is at least *prima facie* justified in doing *a*. Very few people wish to deny that our goals and desires serve as grounds for justifying action. However, the stronger claim that *S* is justified in acting in a certain way *only* if *S* desires to act in that way (or desires as an end the consequences of acting in that way) is highly contentious. Numerous moral philosophers have suggested or argued that justification can be grounded in facts other than facts about subjective interests. Indeed, it is rather commonly supposed that when we speak of a *moral* reason for action we mean to denote, at the very least, an *objectively grounded* reason for action, or what we can call an 'objective reason' for short. The crucial claim here is that objective reasons for action should be understood in contrast to subjective reasons for action. The subjective reasons which an agent has are those which are grounded *merely* by the fact that the agent has a subjective interest in doing the action. Objective reasons, by contrast, are not grounded merely by an agent's subjective interests.⁸³

83. Jeske, *Rationality and Moral Theory*, 12.

This distinction, if it holds, may inform the distinction between moral and non-moral duties: moral duties would be those which enjoy objective grounding, and non-moral duties would be those which are subjectively grounded.

In saying that moral duties are those that enjoy objective grounding, I do not mean to make the absurd suggestion that an agent has objective reasons *only* when the agent doesn't want to do that thing. Although it *may* be the case that she doesn't want to act in the relevant way, that is irrelevant. All that is to be insisted upon is that some other consideration—something other than consideration of her desires or attitudes—speaks in favor of her acting in that way. Moreover, the distinction between subjectively and objectively grounded reasons must not be confused with the distinction between reasons which are relative to a particular agent and reasons which are *not* relative to a particular agent—i.e., which are *neutral* with regards to agents.⁸⁴ It is perfectly possible that I may be the only person to have an objective reason to do some particular action *a* and that I have this reason in virtue of the fact that I am who I am, or because I have available to me certain resources or so forth. The fact that my reasons are agent-relative rather than agent-neutral does not imply that they are subjective.

In a certain sense, the distinction between subjective and objective grounds for reasons seems to capture the distinction between non-moral and moral reasons. At the very least, it seems that any reasons for action which are of a moral nature are such that they enjoy objective grounding. However, it does not seem to be true by definition that all objective reasons are moral reasons; it seems conceptually possible that there may be objective, non-moral reasons for action. For example, it has been suggested that the fact that an action or policy would result in a decrease in biodiversity is reason-giving: the mere fact that this would be so is allegedly sufficient to make it the case that we are justified in foregoing that action or rejecting that policy.⁸⁵ If this is the case (and I am not sure that it

84. Ibid.

85. Oksanen, "The Moral Value of Biodiversity."

is), I presume that this would be an example of an objective, non-moral reason for action. This raises the question, "What distinguishes such an objective reason for action from other objective reasons for action which we would classify as being of a moral nature?" I must admit that this strikes me as an exceedingly difficult question to answer. It is tempting to say that moral reasons for action are not only objectively grounded, but they are grounded in a certain kind of objective fact; namely, facts concerning the welfare or interests of other beings which can be made better or worse off. By contrast, non-moral reasons for action do not make reference to, are not grounded in, facts concerning the welfare or interests of other morally significant beings. Tempting as this might be, it runs into difficulties. It is widely assumed that promise-making gives rise to objective reasons for action without requiring any reference to the welfare or interests of morally significant beings. Indeed, in a rather famous discussion of promise-making, Ross explicitly denies the utilitarian view that promise-making is reason-giving only in virtue of the expected utility of keeping the promise:

When a plain man fulfils a promise because he thinks he ought to do so, it seems clear that he does so with no thought of its total consequences, still less with any opinion that these are likely to be the best possible. He thinks in fact much more of the past than of the future. What makes him think it right to act in a certain way is the fact that he has promised to do so—that and, usually, nothing more. That his act will produce the best possible consequences is not his reason for calling it right.⁸⁶

Ross supposes that the mere fact that a promise has been made is sufficient to make it the case that the agent has a reason (a *prima facie* duty) to do the thing promised. And, yet, the duty to keep a promise is widely considered a paradigmatic *moral* duty. Assuming that all of this is true, and assuming that there are other objective reasons for action which are of a non-moral nature, we see that the criterion for distinguishing moral from non-moral reasons for action stands in need of revision. However, since nothing of crucial importance to my project hinges on carefully distinguishing moral from non-moral objective reasons, I will not here pursue other possible ways of articulating such a criterion.

86. Ross, *The Right and the Good*, 17.

I will simply proceed by acknowledging that moral reasons for action enjoy objective grounding.

Now, although I am inclined to suppose that we have objective reasons for action, I have not defended this notion. And unfortunately, I cannot provide a defense of the view that will resolve the doubts which a skeptic with respect to objective reasons might have. I suppose it may be worth noting, however, that it is not at all obvious that a commitment to objective reasons is mistaken. The distinction between subjective and objective reasons seems implicit in the widely held belief that one can have moral reasons to do some action *a* even when one does not *want* (in any sense) to do *a*. We have no trouble imagining, for example, a sadistic serial killer who really does not in any sense desire the happiness or welfare of others. He may even be somewhat fatalistic and unconcerned with his own welfare so that it wouldn't be appropriate to claim that he at least desires that other people flourish as a means of securing a commodious lifestyle for himself. What he *does* desire, we can imagine, is to inflict pain and watch other creatures suffer. Despite having such an odd psychology, we might suppose that this individual nevertheless is unjustified in pursuing his ends and he would be justified in denying satisfaction of his desires. While we might be mistaken about this (and presumably, the subjectivist must claim we are), the fact that we find these sorts of judgments somewhat irresistible seems sufficient to motivate us to search for a non-relativistic account of reasons. Certainly, if we find ourselves *believing* that the serial killer so described ought to deny satisfaction of his desires, we owe it to ourselves, philosophically speaking, to try to find some way of vindicating an objectivist account of justification. That is, we ought to see if there can be other grounds upon which actions may be justified other than by appeal to subjective interests.

W.D. Ross, whom I mentioned above, held that the notion of a *prima facie* moral duty is explanatorily basic; although being obligated to act in a particular way is partly a function of the circumstances in which an agent finds herself, the fact that she has a justifying reason to, say, repay a debt which she incurred is a brute, objective fact. While

facts about the agent make it the case that she has the duties she has (e.g., she, as a matter of fact, incurred the debt), such facts merely constitute the conditions for the possibility of the duty. But the fact that incurring a debt has reason-giving force is not something which can, itself, be explained. It is a brute fact that must simply be recognized or intuited.

This reliance on intuition has struck many philosophers as highly suspect, and indeed, anyone who fails to "see" that incurring a debt or making a promise gives rise to a justifying reason for action can't be expected to find such a view plausible. Those who have such doubts might find it tempting to deny that *prima facie* duties are explanatorily basic, opting instead to develop an account of how normative claims of the form, "If such-and-such conditions hold, then *S* has a duty to *a*," can be wholly explained by appeal to non-normative claims. In other words, it might be thought that normative truths can be grounded in non-normative truths in such a way that the former can be wholly explained in terms of the latter. If this were the case, we could give up the notion that it is a brute fact that the making of a promise, the incurring of a debt, or so forth are themselves reason-giving.⁸⁷

Arguably, one of the most well-known theories of this sort is that which goes by the name *divine command theory*. According to this view, normative requirements are laid upon us by God. To be more precise, this view maintains that *S* has a duty to *a* if and only if, and in virtue of the fact, that God has commanded that *S* do *a*.⁸⁸ The divine command theorist as I am imagining her wishes to ask, "Why should we suppose that making a promise or incurring a debt or some such similar thing would provide reasons for acting?" She can be understood as answering the question by saying that God has commanded that if we make

87. See Heathwood, "Could Morality Have a Source?" 4.

88. There are other ways of formulating divine command theory or, rather, there are various different divine command theories. A different formulation, which is widely discussed on the part of analytic ethicists, is a semantic analysis. According to the semantic analysis, the statement, "*S* has a duty to *a*" is strictly defined as meaning, "God approves of *S* doing *a*."

a promise to do *a*, we should do *a*; if we have incurred a debt, we should repay the debt, and so on.

Against this divine law conception of the grounds of duties, the 17th century moral philosopher Ralph Cudworth argued that if we are to believe that we must do the various things which God has allegedly commanded us to do, it seems that it must be the case that we have, as he put it, an "antecedent obligation" to obey God.⁸⁹ The reason is simple: the claim, "We must do the various things which God has commanded," is itself a normative claim that can be made to fit the form, "S has a duty to *a*." The problem is that the duty to obey God's commands is not a duty that can be coherently grounded in divine legislation; God could not bind us to obey his commands merely by issuing a command. As Cudworth indicates, to accept such a view is to push the question of the grounds of duties back a step. We must now seek to understand the grounds of *that* duty (i.e., the duty to obey the command that we ought to obey God's commands).⁹⁰

In a recent article concerned with "constructivist" accounts of normative requirements, including divine command theory, Chris Heathwood has argued that any such account fails to make good on its promise of showing how normative requirements can be generated out of and explained wholly in terms of non-normative facts or considerations. Heathwood points out that the divine command theorist is committed to the claim that if God commands *a*, then *a* is thereby morally obligatory. It is in this sense that normative requirements are alleged to be constructed out of non-normative facts, since a claim to the effect, "God has commanded that S do *a*," is not itself a normative claim. It is, rather, a descriptive claim, albeit a descriptive claim of a rather unusual sort, since it describes the acts of God. That having been said, the following is a normative claim: "If God commands *a*, then *a* is thereby morally obligatory." As Heathwood rightly notes, formally, this claim is no different than the widely acknowledged normative claim,

89. Cudworth, *A Treatise Concerning Eternal and Immutable Morality*, 18.

90. For the complete discussion, see *Ibid.*, pp. 17-22.

P: If *S* has promised to *a*, then *S*'s doing *a* is thereby morally obligatory.⁹¹

The question then arises, what grounds the claim that if God commands *a*, then *a* is thereby morally obligatory? Heathwood suggests that unless the divine command theorist grants that some normative requirements are brute, she will find herself committed to an infinite regress.⁹² An infinite regress arises if we suppose, in a manner similar to Cudworth, that we can ground the claim,

DCT: If God commands *a*, then *a* is thereby morally obligatory,

by making a meta-level claim to the effect,

mDCT: If God declares that DCT, then, and in virtue of that, DCT.⁹³

But as Heathwood explains, this is a normative claim of precisely the sort that the divine command theorist wished to explain by appeal to DCT. Again, this is made obvious by reflecting on the fact that P, DCT, and mDCT all share the same formal structure: they state that some condition obtaining is sufficient for explaining some normative requirement. But now we can ask for the grounds of mDCT, and so on, *ad infinitum*.⁹⁴

Again, Heathwood's point is that if the divine command theorist is to avoid an infinite regress of this sort, she must admit that some normative truths are brute, or unexplained. In other words, she must admit that there are objective normative requirements such as the one expressed by P which are simply a feature of reality. Of course, she may prefer to say that DCT, rather than P, is the brute normative truth from which other normative claims are derived, but that does not undermine the overarching point: if we grant that there are normative truths, at least some of those truths will have to be brute.⁹⁵

91. See Heathwood, "Could Morality Have a Source?" 4–6.

92. *Ibid.*, 7–8.

93. In the original, Heathwood words mDCT in this way: "mDCT: If God declares that DCT is true, then, and in virtue of that, DCT is true." *Ibid.*, 7.

94. *Ibid.*

95. *Ibid.*, 1–3.

This insight can be brought to bear on another rather traditional account of the grounds of moral obligations and duties. Whereas a divine law account of the grounds of morality seeks to ground moral duties in the will or commands of God, a natural law account maintains that the requirements expressed by moral duties are in some sense written onto the nature of things, capable of being discovered by reflecting on the natural order. Those who have thought that duties are imposed upon us by nature have not typically supposed that nature was an "authority" in the sense that God or a political leader may be thought of as an authority: nature doesn't *command*, doesn't *tell* us what to do. How then are we to understand the "bindingness" of moral duties? Robert Frazier usefully summarizes the view this way:

On [the natural law] view, duties (or moral laws) would be analogous to physical laws. Just as we are subject to physical laws, such as Newton's law of gravitation, we are subject to binding normative requirements, for example, the duty to help others who are in need. It is not that the universe has authority over us and we must obey its command, rather it is that normativity is part of the very fabric of the universe.⁹⁶

According to this view, then, true propositions concerning what we are to do must be "read" off of the structure of the world. The perspective of Jacques Maritain, a 20th-century neo-scholastic and a defender of natural law theory, may be taken as representative on this point. "[T]here is, by the very virtue of human nature," he writes, "an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being."⁹⁷ I take Maritain to be suggesting that human beings have certain capacities *c*, the actualization of which requires that we engage in certain actions, *a*. Since *c* can (we will presume) only be actualized by doing *a*, it is thought we *ought* to do *a*, we have a *duty* to do *a*.

At this point it may be tempting to ask, if I am to do *a* merely because it is a means of actualizing my potential, must it not be the case that I have an antecedent obligation to actualize my potential, to bring about *c*? From whence does *that* duty arise? The lesson

96. Frazier, "Duty," sec. 3.

97. Maritain, *Man and the State*, 86.

which we were to take away from Heathwood's criticisms of constructivism in its various forms was that some such questions are improper, for they lead us into an infinite regress. On the whole, the natural lawyers are sensitive to this issue and thus they deny that a question of this form makes any sense: in the normative domain, they admit that the claim that good is to be done and evil avoided is absolutely foundational.⁹⁸ In the phrasing suggested by Frazier, we find ourselves subject to the duty to do *a* (where *a* is a necessary means of actualizing our potential), much in the way we are subject to the laws of nature. This is simply an alleged feature of reality—"normativity is part of the very fabric of the universe."⁹⁹

Now, I tend to favor a Rossian view according to which certain relevant facts about past actions, present circumstances, future consequences and so forth are sufficient in themselves to give an agent reasons for action and where the reason-givingness is brute and unexplainable. Insofar as these reasons for action are not grounded in the agent's subjective interests, they are objective reasons for action. Moreover, I believe Heathwood is correct in claiming that any constructivist account of the grounds of moral truths which purports to completely explain or account for normative truths by appeal to non-normative truths will fail to deliver on its promise. Nevertheless, I hasten to add that it is not necessary that my readers agree with me on these points. Since our primary aim is to consider the meaning and significance of claims concerning institutional moral duties, we can proceed with our investigation by acknowledging the following two conditional statements:

(1) If the only considerations which serve to justify action are facts about what individuals desire, and if moral duties are thereby distinguished from non-moral duties insofar as they are grounded in other-directed desires, then institutions will have moral duties only if they have other-directed desires.

98. Aquinas, *Summa Theologica*, I-II, 94, ii.

99. Frazier, "Duty," sec. 3.

(2) If, however, agents can have objective reasons for action (as I believe they can), and if moral duties are distinguished from non-moral duties at least in part by the fact that the former are grounded in or express an agent's objective reasons for action, then institutions will have moral duties only if they have access to objective reasons for action.

2.3 Intentionality and Personhood

It follows from the preceding remarks that in order for a thing *S* to be said to truly have duties it must be the sort of thing which can cognitively access whatever justifying reasons there might be in favor of action, whether they be objective or subjective. *S* must, in other words, have beliefs or relevantly similar psychological states. This is to imply that *S* must be what is called an intentional agent;¹⁰⁰ that is, *S* must be a thing which exhibits intentionality or has intentional states. The word 'intentionality' is something of a term of art among philosophers. It denotes the ability of a thing to have beliefs, desires, or other states which are *object-directed*, or *about* other things.¹⁰¹ In one sense, any number of things may be about other things; as examples, the sentence "Obama declassified the Bush 'torture' memos" is about an action undertaken by Barack Obama, and the drawing hanging in my study is of (that is, it is about) Mahatma Gandhi. However, these things have intentionality only in a derivative sense: they are about these other things only insofar as they are crafted or put forth by agents who *intend* them to be taken in that way, or are developed within contexts in which they will be taken in that way, or at the very least, the observer treats them *as being* representational in this way. The intention in virtue of which a scribble, symbol, drawing, or so forth is about another thing is itself intentional, but unlike the scribble, symbol, or drawing, it seems to be object-directed in a non-derivative

100. As we will see, this is an assumption shared by Peter French, whose view I shall be considering below, and it figures prominently in his argument for institutional moral agency. See French, *Collective and Corporate Responsibility*, 38-40 and ch. 6. It is thus not an unfair assumption on my part.

101. I take it that only *mental states* can be intentional in this sense; however, I shall be considering whether non-mental states—specifically, organizational states—can exhibit intentionality in the sense required for intentional and moral agency.

sense.¹⁰² I take it that to be an intentional agent, *S* must exhibit or possess intentional states that are intentional in a non-derivative or primary sense.

Moral agents must necessarily be intentional agents because only things which can have reasons to act can be truly said to possess (have, be subject to) moral duties and obligations, a point that follows from the prior discussion. While it is clearly not the case that all intentional agents have access to justifying reasons—squirrels, for example, seem to be intentional agents—necessarily, if one does have access to justifying reasons for action, one is an intentional agent. Of course, in addition to being intentional agents, in addition to having access to justifying reasons for action, moral agents must also be responsive to or capable of acting on the reasons they have. Hence, if a being is in principle or in fact incapable of acting on the reasons it has (or which we suppose it has), it may be an intentional, though not a moral agent.

It should be noted that I have not said anything about *which* duties and obligations moral agents have. Although I have taken pains to explicate what is implied by an attribution of a duty to a person (whatever that duty ends up being), apart from the claim that moral reasons are reasons which largely seem to pertain to the welfare, interests, and rights of individuals I do not wish to insist upon a particular list of duties and obligations.

2.4 The Relevance of these Remarks

The relevance of the aforementioned remarks to the question of this dissertation has already been suggested, but let me reiterate the crucial point.

Let us suppose for the moment that the phrase "has a duty" as it is used in both institutional and individual duty-claims has a univocal meaning—i.e., it has the same meaning and significance across applications. If that is the case, institutional duty-claims differ from individual duty-claims only with respect to the purported subject of the duty.

102. It should be noted that if all intentionality is derivative, such that *y* is about *z* only in virtue of *x*, and *x* is about *y* and *z* only in virtue of *w*, and so, then we would be confronted with an infinite and vicious regress. Hence, if anything is a genuinely intentional state, it seems there must be some intentional state which exhibits original, primary, or non-derivative intentionality.

Hence, if we are to answer the question of whether and in what sense the state has duties, we would have to determine whether and in what sense the state, like an individual, can be said to possess reasons for action. Put another way, if we conclude that, indeed, the state can be said to have reasons for action of a moral nature, then we would be permitted to interpret state duty-claims literally, as being perfectly in order as they stand. The remarks offered in this chapter have revealed that duty-claims can only be interpreted literally if the putative subject of the duty-claim actually has reasons for action.

Let us assume for the time being that the state is an entity in its own right, such that state duty-claims are not analyzable in terms of claims about individuals' duties. Granting this, there are, as far as I can tell, only two ways of making sense of our attributions of duties and obligations to the state without accepting—however begrudgingly—that the state is a moral person, a thing which is the bearer of moral duties and obligations.

First and perhaps most plausibly, one might try to argue that the state can be said to have moral duties and obligations *without* being a person. This tactic requires that one reject the understanding of duties laid out in the foregoing sections, providing an alternative account which allows for the attribution of duties to non-persons. I presume that if one is to pursue this route, one would have to conflate duty-claims with what I have called value-claims. In other words, one would have to insist that all it means to say, "S has a duty to *a*," is that it would be good for S to *a*.

This approach is in keeping with a kind of metaethical consequentialist theory—viz., the theory that all alleged deontic properties or duty-claims may be reduced to axiological properties or value-claims.¹⁰³ The metaethical consequentialist thesis which I have in mind here may be concisely stated in this way:

103. In referring to this as a kind of metaethical consequentialist theory, I do not mean to imply that this is a theory to which consequentialists are necessarily committed. There are numerous other metaethical analyses of duty-claims which they might adopt. In fact, many of the more well-known utilitarian or consequentialist thinkers do *not* seem to subscribe to the view stated here. John Stuart Mill, for example, can be interpreted as having a perfectly ordinary conception of moral duties according to which they are binding normative

MC: To say "S has a duty to *a*" is just to say "S's doing *a* is optimific (i.e., productive of the best outcomes)."

This theory is to be distinguished from a more familiar *normative* consequentialist thesis, one simplified version of which may be stated in the following way:

NC: S has a duty to *a* if and only if S rationally believes that doing *a* would be optimific.

The distinction between MC and NC is a subtle but important one. Under MC, duty-claims are *analyzed* or strictly defined in terms of consequences; under NC, the notion of having a duty and the notion of an action being rationally believed to be optimific are coextensive,¹⁰⁴ which is to imply that the former is *not* analyzable in terms of the latter. Put another way, MC purports to tell us what it *means* to say of a person that he or she has a duty, whereas NC purports to tell us what a person's duty *is*, albeit in very general terms. NC is compatible with the account of duties offered above (i.e., the account according to which an attribution of a duty is an attribution of reasons for action), whereas MC is an *alternative* to that view.

I do not think that we ought to adopt MC because I do not think that it captures what we mean when we make assertions concerning individuals' duties. To adopt this view is to reject the notion that duty-claims are primarily about the persons' or agents' reasons, instead understanding them to be about the value of things or states of affairs. Excluding reference to the agent in this way leads to rather counterintuitive conclusions. Notice that MC implies that the fact that S's doing *a* would be optimific is sufficient grounds upon which to make it the case that S has a duty to *a*. But now suppose that the subject in question is a grizzly bear and the action under consideration is the mauling of an absent-

requirements, not disguised claims about what is productive of value. See Mill, *Utilitarianism*.

104. An answer to the question as to why these concepts are coextensive is to be found in a theory of practical justification. That is, if we are to understand why it is the case that we have duties (reasons) for acting only in those ways which are optimific, we need an account of why those kinds of facts serve to justify courses of action.

minded hiker. Supposing that the grizzly's act of foregoing mauling the hiker is optimific, it follows that the grizzly has a *duty* to forego mauling the hiker. Now, the ardent defender of MC (if there were one) could simply bite the bullet and admit all of this. And indeed, if we used the phrase 'has a duty' in the way she wishes, we too should admit that there is nothing strange about this conclusion, for according to MC, all it means to say that the grizzly has a duty to forego mauling the hiker is that this would be the best action that the grizzly could engage in. If we find such ways of speaking odd, I presume it is because we think that at the very least something *more* is being implied when we say that S has a duty to *a*. While it is certainly open to us to adopt MC, doing so would constitute a rather drastic overhaul of our moral language, leaving us in a rather impoverished position when it comes to describing or narrating our moral deliberative processes. (In lodging my objection to this view I do not mean to suggest that there are no morally significant claims regarding the values of states of affairs; to the contrary, such value-claims are *very* important to morality. Indeed, I am of the view that they provide non-trivial justification for judgments concerning one's *prima facie* duties: insofar as the state of affairs in which I do *a* is good—i.e., it is productive or constitutive of human flourishing or welfare—I can be said to have a moral reason to do *a*.)

Now, I entered into this discussion of consequentialism because I thought it offered the best hope for explaining how the state could be said to have duties without admitting that the state is a person. It is able to meet that challenge because it analyzes duty-claims into value-claims in such a way that it is irrelevant whether the subject of a duty-claim is capable of having reasons; all that must be true of it is that it must be able to "act" or make a difference in the world, but it need not do so *thoughtfully*. Even though I have rejected this thesis on the grounds that it conflates two significantly different concepts, we might admit that it has a partial appeal. We could admit that when we restrict ourselves to discussions of *institutional* duty-claims, a consequentialist interpretation seems most plausible. What must be noticed, however, is what this amounts to: to take this route

is to simply affirm that the phrase "has a duty" has an equivocal meaning: it means one thing when used in reference to individuals, another thing when used in reference to institutions. Hence, if we are at all persuaded that institutional duty-claims such as those offered in Chapter One really amount to value-claims, we should take the view that institutional duty-claims stand in need of *translation*. Taken as they are, they are deceptive, confused, or metaphorical.¹⁰⁵

There is a second way in which we may make sense of our attributions of duties and obligations to the state without accepting that the state is a moral person. It will, I suspect, strike many people as unappealing, and I do not know that anyone would seriously countenance adopting it. It is, nevertheless, a conceptual possibility. The second option is this: we could adopt what is known as an *error theory* with respect to institutional duty-claims. According to such an approach, all claims about the state's moral duties and obligations would be *false*. The error theorist (if there were one) would agree that when we attribute a duty or obligation to the state, we do in fact imply that it is a moral person—all it is to be a moral person is to be the kind of thing that has moral reasons for action, to be a bearer of moral duties and obligation. Yet the error theorist would deny that the state is a moral person. Hence, all attributions of duties and obligations to the state would be false.

However unappealing this might seem, given our assumption concerning the unanalyzability of state duty-claims in terms of individual duty-claims, if one is unwilling to admit that either (a) the state is a moral person, or (b) institutional duty-claims stand in need of translation, then I see no other option than to insist upon (c) the error theory. Of course, if the assumption under which we have been operating is false, a further option would present itself: viz., (d) state duty-claims might be reducible to individual duty-claims.

105. In Chapter Five I will revisit this claim concerning the possible need for a translation, and I will distinguish the task of "translating" moral claims from the task of providing an analysis of moral claims.

2.5 The Program for the Remainder of the Dissertation

Having laid out the options in this way, the program for the remainder of the dissertation may be stated rather clearly. The first task going forward is to clarify the realist position with respect to state moral agency. I will begin to do so in Chapter Three by exploring the distinction between two important perspectives concerning the nature of social objects: individualism and holism. I will continue this task in Chapter Four where I will present a rather influential argument in favor of institutional moral agency. If the realist position offered in Chapter Four is defective, as I will argue it is, then we must entertain the possibility of analyzing and/or translating institutional duty-claims. This is the task I have set for myself in Chapter Five. I will defend the more inclusive option according to which *some* institutional duty-claims are to be analyzed, whereas *others* are to be "translated" into something other than duty-claims. I have already indicated what this alternative translation will amount to: I will argue that some institutional duty-claims are in fact disguised value-claims.

If I am correct in rejecting the realist argument but am mistaken in thinking that it is appropriate to provide either an analysis or translation of institutional duty-claims, I presume the reader will have reasons to adopt the error theorist perspective.

CHAPTER THREE

INDIVIDUALISM AND HOLISM

The task which I have set for myself is settling the question of the signification of the term 'duty-bound' and various cognate terms or phrases as they appear in statements of the form, "S is duty-bound to *a*," or, "S has a duty to *a*," where *S* denotes the state or some other institutional organization. As we have noted, when we focus on the surface grammar of institutional duty-claims, they seem to differ from individual duty-claims only with respect to the subject of the claim. In the latter, *S* designates a particular individual human being and in the former *S* designates an institution. Examples of the latter include statements like, "Smith has a duty to protect his children from online predators," and "Jones ought to ensure that her husband receive proper medical care." Examples of the former include those surveyed in Chapter One, such as, "The state has a duty to protect its citizens," and "The state has a duty to keep markets free and open." The question is whether the term 'duty-bound' and its cognates have a univocal, analogous, or equivocal signification across these two relevant contexts. To say that the term has a univocal signification is to say that it is always used with the same sense, whereas to say it has an equivocal signification is to say that it is used in at least two unrelated senses. To say that the term has an analogous signification is to say that the sense is different across the two contexts, but related in some relevant and identifiable way.

My project from here on out will be guided by two assumptions: first, I shall be assuming that both individual and institutional duty-claims have cognitive content, and second, I shall be assuming that when we claim that a subject has a duty, we thereby imply that the subject is a rational agent (an intentional agent who is responsive to justifying reasons for action). I also identified two different ways of distinguishing moral from non-moral duties. On the one hand, we might assume that a statement of the form, "S has a (moral) duty to *a*," will be true only if *S* has an objective reason to *a*. In other words, a

minimal condition for an individual having a moral duty to *a* is that he or she has a reason to do *a* which is not grounded merely in that individual's subjective interests or concerns. On the other hand, we might suppose that moral duties relate not to justifying reasons which enjoy objective grounding, but to justifying reasons that enjoy a kind of subjective grounding, namely reasons that are grounded in the interests or desires a subject has in it being the case that *others'* interests or desires are being achieved or satisfied. If we assume that these two options are exhaustive, and if we assume that the term 'duty-bound' is a univocal term—if it has one and the same meaning across individual and institutional contexts—then we can make the following disjunctive claim: a statement such as, "The state has a moral duty to protect its citizens" will be true only if, according to the first option, it is true that the state has an objective reason to protect its citizens, or, according to the second, it is true that the state has a subjective interest in its citizens being protected or free from threat. Similarly, the statement, "The state has a moral duty to keep markets free and open" will be true only if the state has an objective reason to keep markets free and open, or alternatively, only if it has a subjective interest in its citizens being able to engage in free and unregulated enterprise. What should be noticed is that the conclusion that the term 'duty-bound' has a univocal meaning across both institutional and individual contexts will require that we have in hand a theory of institutions according to which certain claims about its psychology or intentional states may be rendered true. If there are to be true claims concerning the state's duties, which, at the most general level, have the same meaning and signification as claims about individual's duties, there must be true claims about what the state has reasons to do, just as there are true claims about what individuals have reasons to do.

Two principal positions have been developed and widely discussed concerning the question of whether and in what sense institutions can be understood to have duties and obligations, which meet these basic requirements: I will refer to these as the reductive individualist and antireductive holist approaches to institutional duty-claims. I shall explore

these positions by adopting the following program. In §3.1 I will distinguish individualism from holism and provide an initial characterization of the dispute between these two positions. In §3.2 I will provide a brief sketch of a cluster of historically significant holist perspectives. In the remainder of this chapter, I will flesh out the individualist and holist alternatives in greater detail, and I will conclude by highlighting a strategy that holists may take in order to demonstrate that social objects such as states or other complex institutions exist in the sense required by those who wish to defend the notion of institutionally held moral duties. In Chapter Four I will, at long last, present the contemporary antireductive holist account according to which institutions are thought to be moral persons, or fellow members of the moral community.

3.1 Reductive Individualism and Antireductive Holism

For my purposes, the terms *individualism* and *holism* refer to two rival kinds of views concerning the nature of alleged social objects. By "social objects," I mean, roughly, the various things that are typically thought to constitute human society: individual persons, groups of persons, nations, institutional organizations, governments, states, etc. However, as we will see, our principal focus will be on those social objects which, to put it in a slightly question-begging sort of way, we think of as being constituted by two or more individuals (i.e., social groups, institutions, and organizations).

Holism may be initially characterized as the view that some social wholes are greater than the sums of their parts (their individual members), whereas individualism is characterized as the view that a social whole is nothing more than the sum of its parts. It is notoriously difficult to provide a more thorough characterization of either individualism or holism that would easily garner widespread support. This is due in part to the fact that it is very difficult to unpack the sense in which the whole is or is not "greater" than the sum of its parts. The matter is further complicated by the fact that there is a variety of individualist and holist views (e.g., methodological, ontological, and epistemological) which may or may not be compatible with one another. For example, Philip Pettit has defended a version of

social holism that is primarily an *epistemological* thesis according to which our ability to identify properties and entities is dependent upon "socially shared dispositions and responses."¹⁰⁶ This alleged dependency relationship is not merely one of causal dependency. The traditional "atomistic" individualists (traditional empiricists and rationalists) against which Pettit is opposed can grant that our knowledge of things and our ability to know things in the way we do is causally dependent upon social facts or socially shared dispositions. What Pettit claims is that in addition to thought being causally dependent upon one's community, it is also non-causally dependent upon there being criteria against which we can verify that terms which pick out basic or unanalyzable properties are being employed or applied appropriately. He argues that such criteria in fact appeal to shared dispositions. Whether such a view is defensible is not my present concern. Rather, I wish to point out that Pettit's thesis is alleged to be a *holist* thesis insofar as the epistemological claim which he defends implies that "individuals are not entirely free-standing. They depend upon one another for the possession of some property that is central to the human being"—namely, the property of thinking, and, in particular, the property of being able to determine that things exemplify simple or basic properties.¹⁰⁷ Like many holist theses, this thesis asserts that individual persons (i.e., thinkers) cannot be adequately understood in isolation from the society of which they are members or parts.¹⁰⁸ However, Pettit's thesis need not entail a commitment to some version of *ontological* holism according to which social groups exist or "have being" independent of individuals. Indeed, if I understand his view correctly, he would likely reject this claim, since the community of thinkers with which he is concerned is presumably wholly constituted by individual organisms that develop shared dispositions and relate to one another in ways that modify over time.

106. Pettit, "Defining and Defending Social Holism," 169 and 172–176.

107. *Ibid.*, 170.

108. Phillips, *The Expanded Social Scientist's Bestiary*, 44–45.

The characterization of holism which Pettit relies upon is that individuals as we actually find them in our world cannot be properly identified, characterized, or understood except by appeal to the group(s) of which they are members. This suggests that the identity, nature, or essential properties of individuals are, in some crucial sense, dependent upon the "whole" (in this case, the group of thinkers) of which they are "parts"—a version of the thesis that is referred to as *the principle of internal relations*.¹⁰⁹ While this has been a very influential form of holism, finding expression within the work of such idealists as Hegel and Bradley,¹¹⁰ a different but equally influential form of holism states that the identity of a social group is not wholly a matter of the sum of the identities of its particular individual members. Those who have defended such views have attempted to highlight the plausibility of this view by drawing attention to the fact that we think certain social wholes can survive an ongoing or even a complete turn-over in membership.¹¹¹ For example, we might suppose that the United States has survived as "essentially" the same thing, the same state, since the current constitution was adopted in 1788. Of course, we would also grant that the composition of the United States has varied greatly over the course of its existence. To hold both of these beliefs, it seems necessary that the seat of the identity of the United States, that which accounts for the fact that it persists over time, must be something other than the actual individuals that figure into the state as its members.

As I have already suggested, those who are committed to the first form of holism (the notion that individuals cannot be properly identified or understood except by reference to the groups of which they are members) need not also be committed to the second form of holism. This lack of entailment also goes the other way: those who are committed to the second form (the notion that the identity of a group is not wholly a function of the sum of the identities of its members) need not necessarily be committed to

109. Phillips, *Holistic Thought in Social Science*, 3.

110. Hegel, *Phenomenology of Spirit*; Bradley, *Appearance and Reality*.

111. See French, *Collective and Corporate Responsibility*, chap. 1.

the first form. Although neither thesis entails the other, each has been advanced as a way of capturing the sense in which the well-known holist mantra—namely, that the whole is greater than the sum of its parts—is true.¹¹² Individualism in its various stripes either rejects claims of this sort, or else attempts to show that these claims do not entail or imply that the whole is greater than, or something over and above, individuals.

Perhaps one thing which holists and individualists may agree upon is that holism is contrasted with and opposed to individualism, and a particular holist thesis is often most easily explained by reference to the individualist thesis to which it is opposed. Indeed, when it comes to providing a richer characterization of the differences between individualism and holism, it seems advisable to move past sweeping generalizations that attempt to neatly identify the core elements which all individualist or all holist theories share in common, instead focusing on particular holist and individualist theses. Doing so reveals that there are numerous ways in which the relationship of contrariety that obtains between individualism and holism may be articulated, and it is typically fruitful to characterize one or the other thesis as a positive view, with the other serving as the negation of that view. For example, *ontological* holism may be presented as the denial of ontological individualism. Friedrich Hayek and Karl Popper are among the figures most commonly associated with this individualist thesis, which holds that the only constituents of the social realm are individual persons and those individuals' beliefs, attitudes, and actions.¹¹³ Clubs, organizations, states and other institutions do not exist as social objects in their own right; rather, they are to be understood (very roughly put) as aggregates of individuals. Ontological holism would thus be characterized as the denial of this view:

112. Although neither thesis should be understood as entailing the other, it does happen to be the case that some holists accept both theses. It is my understanding that Hegel, for example, would subscribe to both such theses.

113. See Popper, *The Poverty of Historicism*; Hayek, "Scientism and the Study of Society."

clubs, organizations, states and other institutions *do* exist as entities in their own right; they are not to be understood as mere aggregates of individuals.¹¹⁴

A modified and clearly more plausible form of ontological individualism admits that in addition to individuals and their beliefs, attitudes, and actions, we must also admit that individuals stand in *relationships* with one another. Thus, according to this modified thesis, the only constituents of the social realm are individual persons, their properties, and relations. This is clearly preferable, since we must admit that the same three individuals, Tom, Dick, and Harry, can constitute various *different* groups. At one time, they may be the pool of applicants for a position in a firm; at a later time, they may be a group of poker players; at yet another time, they may be the outfielders for the company baseball team. Although the members of all three groups are the same individuals, the groups seem clearly different. Allowing relations into the analysis of the group accommodates this intuition.

Holists have responded to this modified thesis by pointing out that the individualists' admission of relations yields precisely the kind of unity that holism requires. As Paul Sheehy has put it, "to offer an explanation in terms of individuals-in-relations carries with it a commitment to regarding those individuals as united, for it is the unity of those parts that bears the relevant property"—i.e., the property of the whole which leads us to regard it as an ineliminable "composite material particular."¹¹⁵ This reveals, I think, what is at stake in the dispute between ontological holism and individualism: do social wholes have properties that resist reductive analysis in terms of individuals' properties and relations? Holists allege there are properties of some social wholes that cannot, even in principle, be defined or analyzed in terms of the properties of their individual parts, for although the relevant properties emerge once individuals stand in relation to one another,

114. I do not pretend that these characterizations withstand careful scrutiny; I wish only to indicate how these views are often characterized. Even when an individualist and holist view are presented as a thesis and antithesis in the manner in which I have presented them here, careful analysis seems to reveal that the disagreement may sometimes be more apparent than actual.

115. Sheehy, "Social Groups, Explanation and Ontological Holism," 205. For his discussion of social groups as "composite material particulars," see 193ff.

they cannot be reductively analyzed in terms of individuals' properties and relations. Individualists may be understood as denying that social wholes have such properties, or at least rejecting the holist arguments offered up in support of an affirmative answer to this question.

The viewpoint which is widely known as *methodological* individualism may, by subtle contrast, be understood not directly as an ontological thesis, but rather as a thesis concerning explanation and methodology within the social sciences. However, given the characterization of the ontological dispute which I just provided, the ontological and methodological versions of holism and individualism converge, so much so that very few philosophers of social science use the phrase "ontological individualism." Nevertheless, purer forms of the methodological thesis can be identified. As a case in point, we may consider the version put forth by the well-known sociologist, Max Weber. The methodological character of Weber's individualism is a direct function of his view concerning the proper aim of sociology. As he states in *Economy and Society*, "Sociology... is a science concerning itself with the interpretive understanding of social action and thereby with a causal explanation of its course and consequences."¹¹⁶ Sociologists on Weber's view seek to identify "pure types" of social motives, the ultimate aim being an understanding of the end and trajectory of various kinds of social action.¹¹⁷ In light of this, he maintains that sociologists should seek to explain macro-level social phenomena as the products of the intentions and goals of hypothetical, rational human actors.

For still other cognitive purposes—for instance, juristic ones—or for practical ends, it may... be convenient or even indispensable to treat social collectivities, such as states, associations, business corporations, foundations, as if they were individual persons. Thus they may be treated as the subjects of rights and duties or as the performers of legally significant actions. But for the subjective interpretation of action in sociological work these collectives must be treated as *solely* the resultants

116. Weber, *Economy and Society*, 4.

117. Weber writes, "'Meaning' may be of two kinds. The term may refer first to the actual existing meaning in the given concrete case of a particular actor, or to the average or approximate meaning attributable to a given plurality of actors; or secondly to the theoretically conceived *pure type* of subjective meaning attributed to the hypothetical actor or actors in a given type of action. In no case does it refer to an objectively 'correct' meaning or one which is 'true' in some metaphysical sense." Ibid.

and modes of organization of the particular acts of individual persons, since these alone can be treated as agents in a course of subjectively understandable action.¹¹⁸

At the methodological level, Weber's approach is in many ways related to the much earlier approach taken by Thomas Hobbes, and we may, in retrospect, attribute similar methodological approaches to David Hume and Adam Smith.¹¹⁹

John Stuart Mill's well-known formulation of individualism, which is also often given the label "methodological individualism," seems to carry with it much clearer ontological assumptions than Weber's. In *A System of Logic* he explains, "All phenomena of society are phenomena of human nature."

The laws of the phenomena of society are, and can be, nothing but the laws of the actions and passions of human beings united together in the social state.... Men are not, when brought together, converted into another kind of substance, with different properties, as hydrogen and oxygen are different from water, or as hydrogen, oxygen, carbon, and azote, are different from nerves, muscles, and tendons. Human beings in society have no properties but those which are derived from, and may be resolved into, the laws of the nature of individual man.¹²⁰

Social facts and social laws are in this way thought to be explicable in terms of psychological facts and laws concerning individuals and aggregates of individuals.

J.W.N. Watkins, another well-known proponent of methodological individualism and a student of Popper's, explicitly stated that individualism should be understood as expressing a metaphysical assumption concerning reality that was neither verifiable nor falsifiable using the scientific method. This individualist assumption is classified as a methodological thesis since it serves as a "regulative principle" for social scientific investigation. According to this principle,

the ultimate constituents of the social world are individual people who act more or less appropriately in the light of their dispositions and understanding of their situation. Every complex social situation, institution, or event, is the result of a particular configuration of individuals, their dispositions, situations, beliefs, and physical resources and environment. There may be unfinished or half-way explanations of large-scale social phenomena... in terms of other large-scale phenomena... but we shall not have arrived at rock-bottom explanations of such

118. *Ibid.*, 13.

119. Udehn, "The Changing Face of Methodological Individualism," 481-482.

120. Mill, *A System of Logic*, 2:469.

large-scale phenomena until we have deduced an account of them from statements about the dispositions, beliefs, resources, and interrelations of individuals.¹²¹

As a regulative principle, individualism guides scientific investigation. Although it cannot be tested, it may (he alleges) be confirmed or disconfirmed by appeal to its comparative adequacy in providing simple and comprehensive explanations of phenomena. Put another way, the individualist thesis serves as a background principle that guides the construction of social scientific research programs and discourages others. While the background principle cannot be directly tested, if the program is successful, then it enjoys "confirmation."

Since Watkins thinks that we must assume that institutions are nothing more than collections of individuals, he assumes that any properties of an institution as well as any facts about an institution or a social phenomenon are reductively explainable, at least in principle, in terms of the properties of, or facts about, hypothetical, idealized individual actors.¹²² He rejects the holist alternative to this approach on the grounds that it leaves many of the more interesting social phenomena with which we might be concerned largely unexplained insofar as it seems to require an appeal to rather spooky or mysterious non-human agents, a point that he indicates elsewhere: "I do not see how someone can abandon the idea that individuals (together with their material resources) are the only moving agents in history without introducing the idea that there are other, superhuman or subhuman, agencies at work in history."¹²³ Now, as this suggests, in contrast to methodological individualism, methodological *holism* may either deny that all social phenomena are explicable in terms of individual's psychological states or rational preferences (either hypothetical or real), or at least insist that there are uniquely social laws governing macro-level phenomena, the explanatory power of which is not dependent upon micro-level facts and laws in precisely the way individualism supposes.

121. Watkins, "Historical Explanation in the Social Sciences," 167–168.

122. For Watkins' account of "ideal types," see "Ideal Types and Historical Explanation."

123. Watkins, "The Alleged Inadequacy of Methodological Individualism," 395.

For my purposes, the viewpoint that I have labeled "reductive individualism" may be viewed as the union of two individualist theses: an ontological thesis on the one hand and an epistemological/methodological thesis on the other. As I indicated a moment ago, the ontological thesis states that the ultimate constituents of the social world are individual persons and their properties and relations. The epistemological/methodological thesis pertains to claims about alleged social objects; it states that all claims about social objects may be reductively analyzed in terms of claims about individuals, for all knowledge concerning social objects is ultimately resolved into knowledge concerning individuals. (In the literature, this view—the combination of an ontological and an epistemological thesis—oftentimes goes by the name "methodological individualism." I have taken care to separate ontological and methodological versions of both individualism and holism primarily because, as we have seen, there are scholars who seem to subscribe only to the methodological principle or who at least remain agnostic on the ontological thesis. The example we have before us is Weber who seems to acknowledge that, at the philosophical level, states and other institutions might have ontological standing.¹²⁴)

The viewpoint I have labeled "antireductive holism" may be viewed as the union of the corresponding holist ontological and epistemological/methodological theses. According to the ontological thesis, in addition to individuals, the social realm contains objects which are properly referred to as "social objects." While some holists (e.g., Sheehy) have argued that these social objects are to be viewed as composite material particulars, others (e.g., Ruben) have supposed they are immaterial social substances.¹²⁵ According to the antireductionist thesis, it is not possible to reductively analyze all claims concerning social objects by appeal to claims concerning individuals; some such claims resist reduction. Put in a more positive light, knowledge concerning social reality requires not only

124. Weber, *Economy and Society*, 13. See also Udehn, "The Changing Face of Methodological Individualism," 480 and 486–487.

125. Sheehy, "Social Groups, Explanation and Ontological Holism"; Ruben, *The Metaphysics of the Social World*.

knowledge of individuals and their relations, but knowledge of the social objects or "wholes" of which they are "parts."

Much more needs to be said about the distinction between holism and individualism, and I will do so in §3.4 and §3.5. For the time being, however, I wish to situate this discussion by providing a brief historical sketch of some rather influential and highly relevant holist views. As we will see, the antireductive holist perspective has a long and perhaps even a venerable history. As with so many issues in philosophy, we may begin with Plato.

3.2 Historically Significant Holist Perspectives

Plato is sometimes described as a holist with respect to the state insofar as he may be interpreted as holding the view that the state has explanatory priority to the individual, at least within certain contexts. In Book II of *The Republic*, Socrates explains to Adeimantus that the *polis* has a character that is constituted not primarily by the attitudes and desires of its leaders or members, but by the relationship of the classes to one another. Happiness at the level of the state is not identical to or even constituted by the happiness of those whom we might otherwise consider its constitutive members.¹²⁶ On the Platonic view, the ruling class (the guardians) stand in relation to the lower classes (the warrior class and laboring class) as the intellect stands in relation to an individual's spirit and the appetites, and this suggests that certain relations obtain between the classes themselves. Later, Socrates explains to Glaucon that the pattern of organization found in the ideal state is to be the law according to which the wise individual rules his own life: "In heaven... there is laid up a pattern of [the city]... which he who desires may behold, and beholding, may set his own house in order. But whether such an one exists, or ever will exist, is no matter; for he will live after the manner of that city, having nothing to do with any other."¹²⁷ This suggests, then, that the ideal state serves as a basis for constructing a standard of right action. What

126. Plato, *The Republic of Plato*, 420b–421c.

127. *Ibid.*, 592a.

is (in some sense) right for an individual to do is a function of what she would be required to do were she a member of one of the classes in the ideal state.

While I suspect that it may be a mistake to read into Plato a commitment to either the contemporary holist or individualist social ontology—after all, at least with respect to his ideal state, he suggests whether it exists or not "is no matter"—the analogy between the state and the individual has certainly influenced later political philosophers. Seneca drew on the imagery of the state as a person or body when instructing Nero—perhaps not very successfully, we might suppose—on the virtue of mercy or clemency. "You are the soul of the state and the state [is] your body," he explained. "[Thus] you see, I think, how requisite is mercy; for you are merciful to yourself when you are merciful to another. And so even reprobate citizens should have mercy as being the weak members of the body..."¹²⁸ In the medieval era, John of Salisbury spoke of the prince of a territory as occupying the place of the head: "subject only to God and to those who act in His place on earth, inasmuch as in the human body the head is stimulated and ruled by the soul."

The place of the heart is occupied by the senate, from which proceeds the beginning of good and bad works. The duties of the ears, eyes and mouth are claimed by the judges and governors of provinces. The hands coincide with officials and soldiers... Treasurers and record keepers... resemble the shape of the stomach and intestines; these, if they accumulate with great avidity and tenaciously preserve their accumulation, engender innumerable and incurable diseases so that their infection threatens to ruin the whole body. Furthermore, the feet coincide with the peasants perpetually bound to the soil...¹²⁹

Although he was familiar with and clearly influenced by Plato's writings, Salisbury's direct inspiration is thought to be the Aesopic fable of the Belly and the Members. According to this fable, after the Hands and Mouth refused to deliver food to the Belly, which was perceived to be slothful, indolent and consumptive, the various members discover that if

128. Seneca, *Moral Essays*, 371.

129. Salisbury, *Policraticus*, 67.

they fail to work together and deliver sustenance to the Belly, the Body as a whole will perish.¹³⁰

The social contract theorists of the 17th and 18th centuries used this same metaphor to great effect. For example, in the *Discourse on Political Economy*, Jean Jacques Rousseau wrote,

The body politic, *taken individually*, may be considered as an organized, living body, resembling that of man. The sovereign power represents the head; the laws and customs are the brain, the source of the nerves and seat of the understanding, will and senses, of which the Judges and Magistrates are the organs...¹³¹

Similarly, in his magnum opus, *Leviathan*, Thomas Hobbes explained that the State is an "artificial person":

For by art is created that great "Leviathan" called a "Commonwealth," or "State"... which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defense it was intended; and in which the "sovereignty" is an artificial "soul," as giving life and motion to the whole body...¹³²

Significantly, on Hobbes's view the state is not analogized to a mere human being: the commonwealth is to be understood by analogy to the terrifying Leviathan—the beast of Hebrew mythology which, according to *Isaiah*, will be destroyed only at the end of time, and which is second only to Yahweh in terms of might: "Nothing on earth is his equal—a creature without fear. He looks down on all that are haughty; he is king over all that are proud."¹³³ Of course, while Hobbes is responsible for injecting into our culture this rather vivid, seemingly holist metaphor of the state, he ultimately provided what has come to be a paradigmatic reductive individualist account of social phenomena according to which natural laws, political obligation, sovereignty, and even the institution of morality itself are explained by appeal to the interests and reasons of individual actors.

130. See Patterson, *Fables of Power*, pp. 112ff. Patterson reports (via William Camden) that Pope Hadrian IV had recounted the fable to Salisbury in response to questions that had been raised about the Church's policies concerning tithing.

131. Rousseau, "A Discourse on Political Economy," 252. Emphasis added. For further discussion of the General Will see also *The Social Contract*, see Book II, Chapter 3.

132. Hobbes, *Leviathan*, "Introduction," 11.

133. *Isaiah* 27:1 and *Job* 41:33-34.

In the early 19th century, G.W.F. Hegel would not merely compare the state's power to that of God—he *identified* the state with the Holy Spirit: "The state is mind on earth and consciously realizing itself there," he wrote. "The march of God in the world, that is what the state is."¹³⁴ Unlike Hobbes, who demonstrated a commitment to the notion that macro-level social phenomena and moral properties could be explicated by appeal to the reasons and intentions of self-interested, rational individuals, Hegel supposes that the very identity of an individual is partially a function of the fact that a "consciousness" (his preferred term) stands in relation with other consciousnesses and to Consciousness understood as a whole—the so-called Absolute Consciousness.¹³⁵

The clearest representatives of antireductive holism are those who, like Hegel, suppose that the state is itself a person or that it embodies a consciousness. While such a vision of the state may seem strange or even shocking, it is interesting to notice that it was inspired by the well-known but equally peculiar doctrine that the Church is the body of Christ—a sociological entity in possession of a unique will and having an existence over and above that of its physical members or individual components.¹³⁶ Such *substantialist* conceptions of the state, as they are often called, are commonly and historically contrasted with *instrumentalist* conceptions of the state. In his widely read book, *Man and the State*, Jacques Maritain provided a useful characterization of each of these perspectives. According to the instrumentalist view, "the State is but an agency entitled to use power and coercion, and made up of experts or specialists in public order and welfare, an instrument in the service of man."¹³⁷ This instrumentalist conception of the state comports with the image expressed through the well-known metaphor of the ship of state—a metaphor which

134. Hegel, *Philosophy of Right*, §258.

135. Hegel, *Phenomenology of Spirit*, pt. I.

136. For the relationship between this doctrine of the *corpus mysticum* and Hegel's view, see O'Regan, *The Heterodox Hegel*, Chapter 5, and esp. note 24. For a general overview of the doctrine of the *corpus mysticum*, see Joyce, "Mystical Body of the Church." Hobbes's discussion of this doctrine may also be of interest. It can be found in *Leviathan*, Chapter XXXIX.

137. Maritain, *Man and the State*, 13.

has its origins in the ancient Greek tragedies and which was appropriated with great effect by a variety of figures, including Plato, Augustine of Hippo, and Henry Wadsworth Longfellow.¹³⁸ According to the substantialist view, which has historically been associated with the aforementioned metaphor of the body politic, "the State is a subject of a right, i.e., *a moral person*, and consequently a whole; as a result it is either superimposed on the [political community] or made to absorb [it] entirely, and it enjoys supreme power by virtue of its own natural, inalienable right and for its own final sake."¹³⁹

In his treatment of these views, Maritain suggests that the latter perspective according to which the state is a being possessed of absolute political sovereignty evolved out of medieval and early modern conceptions of the King as absolute sovereign.¹⁴⁰

For centuries, political authority was the privilege of a superior "social race" which had a right—and believed it to be an innate or immediately God-given and inalienable right—to supreme power over, and leadership as well as moral guidance of, the [political community]... [W]hile the reality of the State and the sense of the State progressively took shape as great juridical achievements, the concept of the State emerged more or less confusedly as the concept of a whole—sometimes identified with the person of the king—which was superimposed on or which enveloped the [political community] and enjoyed power from above by virtue of its own natural and inalienable right,—that is to say, which possessed sovereignty.¹⁴¹

In an important sense, the notion of absolute sovereignty migrated from the king to the state. The state came to be seen as an entity which was the genuine bearer of political power and authority. This conception of the state would wait upon Hegel's reimagining of it as a *corpus mysticum*: the body within which the Spirit is manifest.¹⁴²

In order to understand how this migration took place and how the absolutist or substantialist conception of the state evolved, we may notice that the early groundwork for

138. Both Aeschylus and Sophocles employ this imagery. See Aeschylus, *The Suppliants*; Sophocles, *Antigone*; see also Plato, *The Republic of Plato*, 488a-489a; Augustine, *Nicene and Post-Nicene Fathers of the Christian Church*, Sermon 25; Longfellow, "O Ship of State."

139. Maritain, *Man and the State*, 13–14. I have substituted the phrase 'political community' for the original 'body politic' as a way of avoiding confusion regarding my own use of the term. Maritain defines the body politic as the political community of a society (see 9ff.). Emphasis added.

140. *Ibid.*, 14–15.

141. *Ibid.*, 15.

142. See Redding, "Georg Wilhelm Friedrich Hegel," §3.3.

Hegel's view had undoubtedly been laid as early as 830 C.E. when the Bishop of Orleans described earthly governments as *within* the *corpus Christi*: "All the faithful must know that the Universal Church is the Body of Christ, that the same Christ is its head and that there are in it mainly two exalted persons, the priestly and the kingly."¹⁴³ This expresses an aspect of the broader doctrine known as the doctrine of *Christ's Two Bodies* which received further developed at the hands of Simon of Tournai during the 12th century. According to this doctrine, Christ's *natural* body was to be found in the form of the sacrament and his *mystical* body was the Church. In his now classic, *The King's Two Bodies*, Ernst Kantorowicz explains the significance of this doctrine: "the distinction between *Christ's Two Bodies* was not simply identical with the ancient christological distinction between the *Two Natures* of Christ, divine and human. What Simon of Tournai produced was rather a sociological distinction between an individual body and a collective body..."¹⁴⁴ Christ was believed to exist at once in the body of the host on the altar *and* as (the head of) the sociological entity that was the Church. The two are not to be confused, for the "[o]ne is the body which is the sacrament, another the body *of which* it is the sacrament."¹⁴⁵ (It is important to note that 'head' is not being used here in the now common sense of meaning an authority or leader. To say that Christ is the head of the Church is a bit like saying I am the head of this human body. Aquinas thus wrote, "Just as the whole Church is styled one mystical body for its similarity to man's natural body and for the diversity of actions corresponding to the diversity of limbs, so is Christ called the 'head' of the Church..."¹⁴⁶)

Under the framework advanced by the Bishop of Orleans, princes and their governments were understood to be a part of the all-encompassing Church, and as part of this whole, they had a more or less well-defined purpose. In the 11th and 12th centuries,

143. Bishop Jonas of Orleans, "On the Institution of Kingship," as quoted in Ladner, "Aspects of Mediaeval Thought on Church and State," 407.

144. Kantorowicz, *The King's Two Bodies*, 198.

145. *Ibid.*, quoting Gregory of Bergamo (emphasis added).

146. *Ibid.*, 200, citing Aquinas, *Summa Theologica* III.8.1.

however, the proper role and powers of the king were thrown into question. Ecclesiastical authorities came to view kings under the rubric with which we are now familiar, viz., as territorial rulers rather than as agents of Christ.¹⁴⁷ Once Aristotle's writings were rediscovered in the 13th century, medieval thinkers were well-placed to synthesize his conception of the state with their largely Platonic view of the Church. According to the Aristotelian view, the state or political community was viewed as "the highest of all"—it is that all-encompassing social reality which "embraces all the rest, [and] aims... at the highest good."¹⁴⁸ The resulting conception of the State as a community distinct from the Church yet very much its secular analog was given a mystical treatment that paralleled the theological doctrine of Christ's two bodies. According to the 14th and 15th century doctrine of the *King's Two Bodies* the king was understood not merely as the head of the body politic in the sense that he was the chief administrator of the kingdom, but its embodiment and the seat of its identity. Just as Christ was thought to exist as (the head of) the Church, the *corpus mysticum*, the King was here thought to exist as (the head of) the body politic.

This "mystic fiction,"¹⁴⁹ as Kantorowicz has called it, was perhaps most clearly recorded by Edmund Plowden, an Elizabethan era lawyer who collected important legal arguments and judgments from the time in the pages of his *Reports*. The account of the doctrine provided by Plowden comes from the *Case of the Duchy of Lanchaster* in which the court was asked to determine whether Queen Elizabeth was bound by the terms of a lease issued by her predecessor, Edward VI, who at the time of the contract was not of age. It was determined that insofar as the lease was made by Edward *the King*, the contract must stand. The jurists explained,

no Act which the King does as King, shall be defeated by his Nonage. For the King has in him two Bodies, viz., a Body natural, and a Body politic. His Body natural (if

147. Ladner, "Aspects of Mediaeval Thought on Church and State," 409ff.

148. Aristotle, *Politics*, 1252a ; for a reconstruction of the impact of Aristotle on medieval conceptions of both the Church and State see Ladner, "Aspects of Mediaeval Thought on Church and State," 416ff. See also Kantorowicz, *The King's Two Bodies*, 210ff.

149. Kantorowicz, *The King's Two Bodies*, 3.

it be considered in itself) is a Body mortal, subject to all the Infirmities that come by Nature or Accident, to the Imbecility of Infancy or old Age, and to the like Defects that happen to the natural Bodies of other People. But his Body politic is a Body that cannot be seen or handled, consisting of Policy and Government, and constituted for the Direction of the People, and the Management of the public weal, and this Body is utterly void of Infancy, and old Age, and other natural Defects and Imbecilities, which the Body natural is subject to, and for this Cause, what the King does in his Body politic, cannot be invalidated or frustrated by any Disability in his natural Body.¹⁵⁰

The lawyers added to their explanation that the body natural and the body politic are "indivisible" and that "these two Bodies are incorporated in one Person, and make one Body and not divers..."¹⁵¹ The crucial point was that through the mysterious unity of the body natural and body politic into an indivisible one, the person of Edward was thought to be perfected: "His Body politic, which is annexed to his Body natural, takes away the Imbecility of his Body natural, and draws the Body natural, which is the lesser, and all the Effects thereof to itself, which is the greater, *quia magis dignum trahit ad se minus dignum* [because the worthier draws to itself the less worthy]..."¹⁵²

Whatever limited familiarity laypersons might have with this doctrine is probably owing to the fact that it is the myth which gives meaning to the well-known pronouncement associated with the accession of a monarch: "The king is dead. Long live the King!"¹⁵³ While any human being who happens to enjoy the status of being the king can and will die, the King is said to be immortal; although the body natural is subject to death, the body politic cannot be. "The king never dies," William Blackstone explained:

Henry, Edward, or George may die; but the king survives them all. For immediately upon the decease of the reigning prince in his natural capacity, his kingship or imperial dignity, by act of law, without any *interregnum* or interval, is vested at once in his heir; who is, *eo instanti*, king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that this natural dissolution is generally called his *demise*... an expression which signifies merely a transfer of property; for... when we say the demise of the crown, we mean only that, in consequence of the disunion of the king's natural body from the body politic, the

150. Ibid., 7; Plowden, *Commentaries or Reports*, 213a.

151. Plowden, *Commentaries or Reports*, 213f.

152. Ibid., 214.

153. See Giesey, "The Presidents of Parlement at the Royal Funeral."

kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual.¹⁵⁴

The doctrine of the king's two bodies thus served to provide a framework in which it could be said that the kingdom was never without a ruler. To be sure, in the person of the king, the political community was alleged to be given *substance*. But far from marking the extinction of the kingship, death marked merely the occasion on which the king was re-embodied. In this sense, then, there were thought to be two kings: the human person who is the embodiment of the political community and its chief administrator, and the mystical King of which he is the embodiment. Jurists during this time would use the term 'Body Politic' as a synonym for the immortal King.

Although *Lanchaster* marked the occasion on which English jurists could articulate this strange doctrine, Eric Enlow has explained that it also ended up providing a legal and conceptual foothold upon which Parliamentarians could launch criticisms of the monarchy and begin the arduous political and legal maneuverings which led to the abandonment of absolute monarchy in favor of parliamentary democracy.¹⁵⁵ Traditional monarchists—those who were committed to the notion that sovereignty inhered naturally in the person of the king—would view the king's political status as being a function of his natural person. By contrast, Parliamentarians would come to view the kingship in terms of a corporate office, the conditions of fulfillment of which were an artifact of the law.¹⁵⁶ They understood the king not as the embodiment of a ghostly *persona*, but as an officer within a broader institution. In other words, the King was to be understood as a mere *part* of the broader body politic, not the body politic itself—neither its embodiment nor its animating force. Like their Royalist brethren, the Parliamentarians spoke of the king as having two distinct

154. Blackstone, *Commentaries on the Laws of England*, 249.

155. See Enlow, "The Corporate Conception of the State and the Origins of Limited Constitutional Government" generally, but esp. 4-9. See also Kantorowicz, *The King's Two Bodies*, 18.

156. Enlow, "The Corporate Conception of the State and the Origins of Limited Constitutional Government," 6-10 and Part II more generally. In fact, even the much earlier articulations of the doctrine of Christ's two bodies had the trappings of corporate law to them. See Kantorowicz, *The King's Two Bodies*, 206-210.

capacities: personal and political. However, they rejected the mystical interpretation of the doctrine of the king's two bodies in favor of a legal interpretation: the king's political capacities attached to him in virtue of the office he occupied. During the English Civil War, those opposed to the so-called "personal rule" of Charles I would thus claim, "We fight the king to defend the King." And in May 1642 Parliament would declare that it, not the person of Charles I, had taken on the powers and responsibilities as well as the dignity associated with the office of the King.¹⁵⁷

Just as we saw that the doctrine of Christ's two bodies was adapted in such a way that there arose the doctrine of the King's two bodies, following the ascendancy of constitutionalism and corporate law conceptions of the king we can identify what we might, for the sake of consistency, call the doctrine of the *State's Two Bodies*. As in the previous cases, we are to distinguish here between a material or organic body—the actual collection of and relationships between the members of parliament, the king, the knights and so forth—and the corporation of the kingdom or the state, which is embodied by these flesh-and-blood individuals.¹⁵⁸ In a manner of speaking that parallels the previous doctrine, we might say that the collective-material and corporate bodies are not to be confused since the one *is* the embodiment, the other, that *of which* it is the embodiment. The vaguely defined "mystical dignity" that once was associated with the Crown and which allegedly accounted for the king's sovereignty, or absolute authority, comes to be associated first with the government of the constitutional monarchy, later with parliament, and eventually with the entire bureaucratic structure which is known as the state—the legislature and government, as well as the courts, military, and so forth, all functioning as a unit.¹⁵⁹

157. Enlow, "The Corporate Conception of the State and the Origins of Limited Constitutional Government," 9.

158. Kantorowicz, *The King's Two Bodies*, 447–448.

159. Philpott, "Sovereignty," sec. 1. Ann Hughes has noted that perceptions on the ground concerning the nature of political sovereignty are never so clean as the jurists' opinions. She notes that under Elizabeth I, the Queen was viewed simply as the head of a "monarchical republic," and as such her station was viewed as one which was grounded in practical necessity, rather than mystical fictions. Hughes, "The Execution of Charles I," sec. 3.

Now although this doctrine of state or institutional personhood is clearly grounded in and motivated by concerns of political and legal expediency (recall Plowden's account of *Lanchaster*), and although it may be viewed as reflecting a rather spooky metaphysics, it serves as a clear example of a form of social holism: the state is not wholly identical to the individuals who are associated with the state via membership or leadership any more than you or I are thought to be wholly identical to the various parts that constitute our respective bodies. Indeed, the analogy to the human being cannot be overstated. Just as an individual is sometimes conceived to be an embodied personality—a being whose identity is constituted by something more than facts about her body parts, but whose body ensures her facticity—so too the state may be thought to have an identity that is constituted by more than its individual parts, but which would lack facticity were it not embodied by individuals. Such a view, however ill-founded it may be, encourages those who subscribed to it to conceive of the state as a personal being, an entity to whom they can relate—perhaps fearfully—and to whom they can ascribe duties and obligations.

3.3 Evaluation of Substantialism

The point that we may take away from the preceding historical sketch is that the state has often been thought of as a powerful super-human person rather than a mere instrument or tool. Addressing an audience of international relations (IR) scholars, Alexander Wendt has noted that such holist views do not garner much support within international relations; to the contrary, most scholars are inclined to adopt an individualist position. He begins by indicating the prevalence with which we speak of states and so-called state actors:

Despite our state-centric world... if pressed on whether state persons are 'real', in my experience most IR scholars will back away. States are not really persons, only 'as if' ones. State personhood is a useful fiction, analogy, metaphor, or shorthand for something else. That something else, what state persons really are, is the behavior and discourse of the individual human beings who make them up. To attribute reality to state persons per se would be to reify them... In philosophical terms, then, this would make most IR scholars reductionists rather than holists about state persons; states are nothing but the structured interactions of their members.... The concept of state personhood is a useful instrument for organizing experience and

building theory, but does not refer to anything with ontological standing in its own right.¹⁶⁰

Reductive individualism would direct us to understand claims about what the state ought to do as amounting to nothing more than claims about what, for example, the *prince* ought to do, or in the case of a constitutional democracy, what particular *legislators* and *executives* should jointly do.¹⁶¹ It should be noted that reductionism allows for the fact that it isn't always appropriate to predicate of an individual member of an institution the very same duty that was predicated of the institution. For example, we do not want to say that a claim such as, "BP had a duty to compensate the victims of the Gulf oil spill" should be translated rather unsophisticatedly into a claim such as, "Tony Hayward (the CEO of BP) had a duty to compensate the victims of the Gulf oil spill." Although it may be somewhat humorous to imagine the CEO of a corporation having such a duty, it seems much more fitting to translate the claim in terms of a duty to oversee or ensure that compensation is provided. In this case, as in many other cases, analyzing the institutional duty-claim involves identifying multiple different individuals and predicating of them various different duties and obligations. Indeed, the following propositions are all plausible reductionist analyses of the claim, "Institution S has a duty to *a*":

- (1) *M* (an individual member-agent of S) has a moral duty to *a*.
- (2) M_1, M_2, \dots, M_n (all member-agents of S) each have a moral duty to *a*.
- (3) M_1, M_2, \dots, M_n (all member-agents of S) each have moral duties to engage in those particular actions, a_1, a_2, \dots, a_n , which would, in aggregate, constitute S doing *a*.

As (3) makes apparent, when providing a reductionist analysis, things can get very complicated, very quickly. Hence, reductionists might insist upon the *usefulness* of talking about institutionally held duties and they might admit that it is rarely necessary to spell out

160. Wendt, "The State as Person in International Theory," 289–290.

161. There are, of course, very interesting further problems with providing a philosophical account of joint or collective intentions.

in very great detail the reductionist translation.¹⁶² It is important, however, not to confuse an admission concerning the probable utility of using unanalyzed institutional duty-claims with a thesis concerning the truth-makers for such claims. While the strict reductionist can admit that it is useful to continue using institutional duty-claims as a form of moral shorthand, they would nevertheless claim that the states of affairs or facts which would need to obtain in order for an institutional duty-claim to be true would be states of affairs or facts about *individuals*.

Of course, none of this rises to the level of a *defense* of individualism; these remarks merely stake out the position and indicate how it is distinct from holism. I wish to now begin considering some of the arguments that have been given against holism.

A rather common objection to holist conceptions of the state is to argue that states, like all other social objects, are the *creations* of human beings and are *sustained*, as it were, by human attitudes and conventions. Watkins puts the objection in this way:

Whereas physical things can exist unperceived, social 'things' like laws, prices, prime ministers and ration-books, are created by personal attitudes. (Remove the attitudes of food officials, shopkeepers, housewives, etc., toward ration-books and they shrivel into bits of cardboard.) But if social objects are formed by individual attitudes, an explanation of their formation must be an individualistic explanation.¹⁶³

Certainly, this point may serve to undermine the plausibility of the mystical-embodiment theory discussed above. As we saw, the 17th century doctrine of the king's two bodies and the substantialist conception of the state both hinged on the claim that a material or organic entity (either a particular person or an aggregate of persons) could come to embody a mystical or transcendent being: the body politic. Of course, the mystical King which various individuals have allegedly embodied is nothing more than a hypostatization: the idea of a king is treated as an existent in its own right. The rights, duties, and responsibilities of a king are viewed as adhering in a unique substance which can then

162. Wall, "The Problem of Group Agency," 196.

163. Watkins, "Ideal Types and Historical Explanation," 150.

(with a bit of hocus-pocus) become joined with a unique existent—viz., the flesh-and-blood individual who "embodies" the King.¹⁶⁴ Watkins encourages us to see that kingships are created by personal attitudes. This is really just to suggest that the so-called *embodiment relationship*, which was supposed to exist between the person of, say, Elizabeth I and the Immortal King, is completely explainable in terms of perfectly ordinary claims concerning individuals' dispositions, attitudes, and so on: if we remove those attitudes we dissolve the alleged relationship. The mystical dignity in which the king is alleged to be clothed is somewhat like the outfit which Hans Christian Anderson's weavers bestowed upon their emperor. Although no one can perceive this awesome garb, for it does not really exist, that is no matter, so long as everyone buys into the pretense.

It might be supposed that the sort of individualistic account suggested by Watkins mixes up the order of things. It suggests Elizabeth's status as Queen is explainable by appeal to the fact that a large number of individuals were inclined to demonstrate respect towards her, seek her counsel, dutifully carry out her wishes, etc. The retort is that it is the other way around: large numbers of individuals demonstrated respect and so forth *because* she was Queen. But of course, this leaves open the all-important question of how we account for the fact that Elizabeth was the queen: if not a mystical-embodiment theory, then what?

Although it would be anachronistic to suggest that this precise concern was operative at the time, the 17th century move towards a corporate conception of kingship may be understood as providing a solution to this dilemma. In a nutshell, a corporate conception of kingship allows us to claim that Elizabeth was Queen only insofar as she met a set of legal conditions, carried out (or demonstrated a willingness to carry out) a range of duties or obligations, and exercised a set of more or less enumerated rights. While it may be perfectly true that large numbers of individuals came to respect Elizabeth *because* she was Queen, the rules and conditions that made it possible for her to become Queen were

164. To speak of "hocus-pocus" is deliberately abusive; however, it is not much of an exaggeration. In Britain and France, there were quite intricate ceremonies surrounding the "demise" of the king. Kantorowicz, *The King's Two Bodies*, chap. 36.

created and sustained by the personal attitudes of individuals. The office itself is an artifact, and a *legal* artifact at that, and the conditions of fulfillment are highly (or rather purely) contingent upon individuals' attitudes. What undoubtedly made the corporate conception of kingship appealing to jurists at the time was the fact that it was more amenable to reform than the mystical-embodiment conception. Under a mystical-embodiment theory it is not at all clear how one would justify reformist claims that the king ought to no longer engage in certain acts or pursue certain policies which were hitherto thought to belong to the king by right. One would either have to ground this claim in some antecedently assumed heaven-sent duty, or else suppose a change in the nature of the Immortal King. Under the corporate conception, since the kingship is simply an office within the corporation of the kingdom, change can be explained by reference to the goals of the corporation, or if that is not possible, by making *changes* to the goals of the corporation.

3.4 Revisiting and Revising Holism

From the perspective of many social ontologists, the medieval and early-modern substantialist theories are an albatross around the neck of holism, lending undue credence to the individualist claim that holism is an outdated metaphysic that is incompatible with the epistemic standards associated with modern science. While criticisms of such views have largely emanated from the individualist camp, in recent decades attempts have been made to defend a variety of more respectable versions of holism from both the reductive eliminativism of certain individualists and the spooky metaphysics of the substantialists. For my purposes, we can distinguish between two related clusters of recent holist theories. The first cluster is comprised of theories which either emphasize the predictive success of holist explanations or highlight the ways in which social properties inescapably figure into explanations of social phenomena.¹⁶⁵ These approaches seem more methodological than ontological in orientation; however, this may simply reflect the assumption made by those within this camp that methodology is ontology. The other cluster of theories is more

165. See, for example, Bratman, "Shared Cooperative Activity" and Clark, "Beliefs and Desires Incorporated."

properly or straightforwardly ontological, though these theories seem to largely agree with those in the other cluster at the level of their conclusions. Paul Sheehy's recent work, which I briefly mentioned above, stands out here, and an overview of his defense of ontological holism will prove useful.

Sheehy characterizes ontological holism as the thesis that complex social objects such as clubs and mobs are, as we have already noted, "composite material particulars," not unlike the various medium-sized objects we regularly admit in our ontology (e.g., tables, oak trees, houses, and so forth). "Social groups," he writes, "are material objects with causal powers and they figure as such (in their own right) in the set of our best descriptions and explanations of the social world—the domain of human interaction."¹⁶⁶ To say that social groups are composite material particulars is to say they are unified wholes, or entities constituted by simpler parts. These wholes stand in causal relationships with other entities, and any one such complex object may be individuated from other objects (social or otherwise) in virtue of the various causal roles it plays.¹⁶⁷

Of course, the overarching point that Sheehy wishes to establish is that these complex social objects are as real as any other composite material particular. On one interpretation, he may be understood as operating under the assumption that for any entity *E*, *E* is real, rather than fictional, if and only if *E* cannot be eliminated from our "best" theoretical model. Complex social objects are real, then, in the sense that they are ineliminable from those theoretical models of human interaction which enjoy the virtues of simplicity and predictive force.¹⁶⁸ Of course, putting the matter in precisely this manner gives rise to a worry that I suspect Sheehy wishes to avoid. If the aforementioned claim is taken as an *analysis* of what it is for a thing (or a class of things) to be real rather than fictional, it may be objected that it admits too much: there are surely things which

166. Sheehy, "Social Groups, Explanation and Ontological Holism," 193.

167. *Ibid.*, 194.

168. *Ibid.*, 197.

currently cannot be eliminated from our best theoretical models which we might plausibly assume *will* be eliminated. The corrective is simple and instructive: we should interpret the claim as an evidentialist epistemic claim: ineliminability from our best theoretical model is good evidence—indeed, it may be the only evidence we have—that a putative existent in fact exists. This is, as far as I can tell, a point that Sheehy's opponent, the ontological individualist, should accept. Indeed, as I have indicated, ontological individualism owes much of its plausibility to the suspicion that everything we wish or need to say about the social world may be put (at least in principle) in terms of statements concerning individual human beings and their attitudes, desires, intentions, and so forth.

The point of dispute between the ontological individualist and ontological holist as Sheehy understands them is thus the question of whether reference to groups is, in fact, ineliminable from our "best" descriptions and explanations of the social world. As he points out, it certainly *seems* as if they are ineliminable, since we have a very hard time *performing* the reductions that individualists claim are possible. Consider the difficulty of providing a complete reduction of a social phenomenon such as the looting of a store by customers during a Black Friday sale. The reduction may begin in a straightforward sort of way: we would speculate as to the intentions of the various shoppers, taking note of their likely goals and beliefs. But as we push the causal question of *why* each individual believes what he or she happens to believe or has the goals he or she happens to have, Sheehy suggests that we will inescapably find ourselves making reference to complex social objects or having to predicate properties of a group of individuals. For example, as a way of explaining why shoppers were able to make off with merchandise, we might find it necessary to reference a clerk's perception of the fearsomeness of the oncoming mob of shoppers.¹⁶⁹

169. This is an appropriation of the example Sheehy considers. He puts it in terms of a soldier's perception of the fearsomeness of a mob. *Ibid.*, 204.

The individualist may respond by claiming that this is simply a property held by a set of individuals, not some supra-individual entity—a move which Sheehy anticipates. "To explain the fear of the [clerk] by reference to the charging mob approaching his post, the individualist can say the individuals of the mob together instantiated certain properties, which induced the [clerk's] fear."¹⁷⁰ The suggestion here is that individualists, committed as they are to providing reductive explanations, will resort to predicating a property of an aggregate of individuals. Sheehy attempts to show that in doing so the individualist gives over to the holist precisely what he needs, for the properties in question are not properties of any particular individual (any solitary person), but rather properties of the "individuals-in-relations" or the group.¹⁷¹

The property is not held by any one individual, but is instantiated through individuals standing in certain relations. This kind of collective or plural predication seems, however, to be committed to an irreducible 'them'.... Rather than explaining away the introduction of a group *qua* object, this individualist strategy has in effect identified an equivalent in the form of a plural entity. Furthermore, the notion that a property is held by persons standing in certain forms of relations suggests that the property disappears from view if the relations undergo sufficient change. That is, it is the units held together (as a whole) which possess or instantiate or give rise to the property.¹⁷²

The point is that in cases such as the one currently under discussion, certain properties, such as the mob's fearsomeness, are emergent properties and intrinsic properties of groups. It is a mistake, however, to interpret Sheehy as claiming that the group or collective is some unique *substance* over and above the various individuals, just as it is a mistake to suppose that if I admit tables have properties, as I of course do, I must thereby be committed to the claim that the table is a separate substance over and above its various legs, leaves, nuts, and bolts.¹⁷³

170. Ibid. I've substituted "clerk" for the original "soldier."

171. Ibid., 203.

172. Ibid., 204–205.

173. Ibid., 193–194.

There are some important difficulties facing Sheehy's argument which undermine the force of his criticism of individualism. First, it is not at all clear that plural predication of the sort Sheehy rightly supposes individualists will allow commits them to an *irreducible* 'them.' As far as I can tell, the plural subject—the group—of which a property is predicated is capable of being viewed as a plural subject precisely because it is understood that it is entirely constituted by a plurality of individuals. Of course, it must be insisted that the individualist does acknowledge that there are groups of people. Indeed, individualism can be understood as a view concerning the question of what groups *are* (they are individuals-in-relations). If the claim is merely that individualists must allow that there are groups, the retort should be that of course they must, but this is hardly the devastating admission it is thought to be; it is, rather, a clarification of what individualism is all about. I suspect that Sheehy mistakenly supposes that the individualist, in offering a theory about how to reduce groups, thereby takes herself to be showing the irreality or fictitiousness of groups. While historically individualists may have understood this to be their aim and intention, the contemporary individualist need not and should not accept such a characterization of her project. Second, it must be noted that individualists need not deny that a person's beliefs or attitudes about what they *take* to be an existent thing will influence that person's actions and choices. At the level of explanation of behavior, it makes no difference whether the boogeyman which the child fears exists or not: the mere fact that she (falsely) believes that the boogeyman will visit harm upon her when the lights go off is sufficient to get off the ground an explanation of why the child rushes into her parent's bedroom. Similarly, it may be that the perception of a collection (a group) of individuals may give rise to beliefs concerning alleged social wholes which are, strictly speaking, either nonexistent or susceptible to reductive explanation. It might be insisted that in the case of the Black Friday store clerk, he *does* seem to perceive something, does seem to take notice of some property or properties of the mob, which we describe as the fearsomeness of the mob. The claim that the clerk's case serves as a counterexample and thus grounds for an objection to

individualism hinges on the claim that the mob has an emergent property (fearsomeness) that cannot be accounted for by looking to the individuals, their properties, and relations. Sheehy provides the following assessment, which indicates as much: "Taking the individuals severally, one by one as it were, ignores the way in which they are related, and it is just in virtue of being so related that they together possess the property."¹⁷⁴ But of course, the individualists who admit that groups are reducible to individuals-in-relations does not ask that we take the individuals "one by one." Doing so forces the relations to drop out of view. Finally, Sheehy suggests that if we can identify an emergent property of a social object, we would thereby be justified in claiming that the group is an irreducible entity. This is not true. In order to explain the error, we need to quickly flesh out the relevant sense in which we are using the term 'reduction'.

3.5 Reductionism

As I have been suggesting, the notion of reduction which is relevant to the current discussion of individualism is that of analyzability. Any reductive thesis must specify *what* precisely is to be reduced or analyzed. Within the philosophy of science there are a variety of such theses, some pertaining to laws or theories, others to entities or objects, and others pertaining to claims or propositions.¹⁷⁵ Because we are presently concerned with the question of whether we have reasons to suppose that social objects exist as irreducible subjects of institutional duty-claims, I am concerned to explore the possibility that claims about social entities may be wholly reduced to claims about individuals.

In his essay, *The Logic of Society*, Laird Addis has argued that the relevant point of dispute between individualists and holists can only be the question of whether social objects possess *simple properties*. While I think that this is ultimately at least incomplete, it is provocative and may be brought to bear on the larger issues I will be exploring shortly.

Addis writes:

174. Ibid., 205.

175. Addis, *The Logic of Society*, 38.

There are, so far as my imagination can construe, only three remotely possible interpretations that could be given to the [holist view]—that, ontologically speaking, there are social objects. They are (a) that some social objects can exist without there being people, (b) that some social objects have properties which no individual person or thing has, and (c) that some social objects have simple properties.¹⁷⁶

Addis rightly concludes that (a) is too strange to be seriously considered—although the aforementioned mystical-embodiment theory, if true, would imply this is possible—and that (b) is so obviously true that no one could seriously deny it. Hence, he concludes that the only interesting and controversial sense in which social objects such as states or corporations could be said to exist as "more than" individuals is if social objects have simple properties.¹⁷⁷

Simple properties must be understood by contrast to complex properties. A simple property is one which does not have any other properties as parts, whereas a complex property is one which is composed of other properties. Addis provides a useful example, which I shall repeat here: "When I see something which is a particular shade of red, the shade is given to me as having no other properties as 'constituents'. On the other hand when I see an apple, the property of being an apple is at least sometimes given to me as having other properties as 'constituents'—a certain shape, a certain color, and so on."¹⁷⁸

The explanation of why pointing to simple properties of social objects is alleged to serve as a defense of holism follows from this distinction: if there are emergent, simple properties of a thing, it cannot, as Addis sees it, make any sense to reductively define those properties in terms of anything else.¹⁷⁹ Although we could, presumably, explain the conditions that must be in place for the simple property to emerge, the property itself would be simple and unanalyzable. While this claim about the unanalyzability of simple properties is true, I do not think that the possession of a simple property by a collection of things is itself sufficient grounds upon which to conclude that the *collection* is an

176. Ibid., 41.

177. Ibid., pp. 41-42.

178. Ibid., 9.

179. Ibid.

irreducible entity in its own right (the property, if simple, will be, but the subject of which that property is predicated may not be). At the very least, the simple and unanalyzable property must also be intrinsic to the collection and not essentially relational or observer-dependent; moreover, the property must be predicated of the collection of things not as a collection of things, but as a unified, structured thing. To see that the mere fact that we register a simple property when observing a collection of things is insufficient grounds upon which to conclude that the set is an irreducible entity, we need only reflect on a simple example. Suppose that all of the members of a crowd of individuals assembled in a stadium have worn red shirts and red hats. When the crowd is viewed from a sufficient distance, we would register a particular shade of red, which as we have already noted has no other properties as constituents. And yet, the crowd is not, on those grounds alone, an irreducible entity: it is perfectly possible to provide a reductive analysis of the subject term in the statement, "The crowd is red." While the property (the particular shade of red) is unanalyzable, the subject is not.

Now, if we are able to identify a property of a social object which is a simple and intrinsic property of that social object, and which is possessed by that object in virtue of something other than its parts standing in relation to one another, it seems that we would be permitted to treat the social object as an irreducible entity (a composite material particular) in its own right. For in such a case, predication of the unanalyzable property to the group could not proceed once the group is "analyzed out." The objection to individualism would not be, as Sheehy in fact puts it, that "[t]aking the individuals severally, one by one as it were, ignores the way in which they are related, and it is just in virtue of being so related that they together possess the property."¹⁸⁰ Rather, if he is to make a case against individualism understood in the way I have been presenting it, he must show that there are properties of groups which cannot be predicated of the group once it is analyzed as a set of individuals-in-relations. Of course, showing that there are such

180. Sheehy, "Social Groups, Explanation and Ontological Holism," 205.

properties is a burdensome task, and I am skeptical that any such property can be identified.

In the case which we were considering—that of the Black Friday clerk—the property in question was the *fearsomeness* of the mob. It seems rather obvious to me that the fearsomeness of a mob is a bit like Addis's example of an object having the property of being an apple: it is a property that has other properties as constituents. Moreover, it seems that these constituent properties are not themselves simple properties of the *mob* (where this picks out something *other than* the individuals-in-relation), but rather a confluence of both simple and complex properties of the *individuals* which constitute the mob. Presumably, for example, the rush of the various individuals through the aisles of the store, the sounds they are making, the looks on their faces and so forth all partially constitute the fearsomeness which the clerk perceives and attributes to the mob. Put another way, the subject of which the property is predicated (the mob) seems reducible, and once we have in hand a reductive analysis of the subject, we can still predicate of that set of individuals-in-relation, the fearsomeness which we predicated of the unanalyzed subject. More simply, we can give a rather complicated reductive analysis of the claim, "The mob is fearsome" which reveals the truth-makers for that claim. Finally, it must be admitted that fearsomeness is a relational, observer-dependent property, not something that is intrinsic to the mob itself. This example thus fails to serve as a counterexample to individualism, even though in at least one sense, the fearsomeness is something that "emerges" once the individuals are viewed as standing in relations (as being a group).

3.6 Do States Possess Simple Agential Properties?

Even if the example of the fearsome mob fails to support holism, the strategy which has been identified seems correct: if we wish to establish that a social object is an *irreducible* social object, it must have intrinsic, simple properties which are not properly predicated of the individuals-in-relations. This is, at the very least, a plausible way of understanding what is meant or what is implied when it is said that social objects are irreducible.

With this now on the table, I want to turn my attention back to the question of whether states or other institutions are potential agents or persons.

A rather specious objection to the view that institutions are persons may be put this way: although institutions are *composed* of persons, they are not themselves persons any more than the stack of records next to my stereo is itself a record or a forest is a tree. Although this line of argumentation reflects an uncharitable interpretation of the available antireductionist views, it is worth surveying insofar as it reflects the suspicion that the attribution of personhood to an institution is straightforwardly fallacious or reducible. Such an attribution would be fallacious if it rested upon an error in reasoning—e.g., the attribution of a property to the institution (which is a kind of "whole") that is only exemplified by its individual members (its "parts"). This would be the kind of error involved if I were to claim that since each record in the stack was produced in the 1970s, the stack of records was produced in the 1970s. Strictly speaking, this is false since the stack itself was produced last week when I arranged the individual records in this particular manner. The attribution of personhood to an institution would be *analyzable* if it amounted to nothing more than a claim about individual members, or if every attribution of personhood to an institution could be reduced without remainder to claims about individuals.

We are well-served to keep in mind the difference between part-whole claims being erroneous or being reducible in these ways. If you heard me say, "That stack of records was produced in the 1970s," you would take me to *mean*, "Each of the records in that stack was produced in the 1970s". Indeed, in this case it would be strange to interpret my claim literally, as regarding the *stack* rather than the individual records. This is partially because of the history of the usage of the term 'produced' as used in association with records, and partially because of the novelty of using that term to describe the construction or arrangement of a stack of things. Suppose, however, that I advanced the following argument:

- (1) Premise: Each record in that stack of records was produced in the 1970s.
 ∴ (2) That stack of records was produced in the 1970s.

In this case it would be more readily granted that I have committed the fallacy of composition. That is to say, I have erroneously attributed to a collection of things a property that is properly attributed only to its component parts. (Of course, this judgment rests upon the assumption that the two statements used in the argument do not express identical propositions.)

The principal reason I have claimed that the present argument constitutes a specious objection to antireductive individualism is because those who have advanced plausible antireductive holist theories concerning institutional personhood do *not* commit the fallacy of composition; they do not attribute personhood to institutions solely on the basis of the fact that institutions are composed of persons. Indeed, the principal defender of institutional agency, Peter French, whose theory I shall be considering in detail below, insists that certain kinds of groups, or what we could call "person aggregates," are *not* agents. Specifically, he argues that mobs are examples of person aggregates which are not, themselves, possessed of agency.¹⁸¹ This may, for the present purposes, assuage the worry that antireductive holists attribute personhood to groups solely on the basis that they are composed of persons; if that were true, we would expect them to classify mobs as persons.

As I have indicated, the reductionist thesis with which I am interested is that any claim which is putatively about an institution may be understood as reducible to a claim or conjunction of claims about individuals. Hence, if the reductionist thesis is true, we would expect state duty-claims to be reducible to individual duty-claims; whatever duties and obligations we attribute to the state would presumably be thought of as coming down on the shoulders of the real, flesh-and-blood moral persons employed by or in charge of that institution. For example, when it is claimed that the U.S. has a duty to protect its citizens, the reductionist would understand this as being reducible to the claim that those charged

181. French, *Collective and Corporate Responsibility*, 5 and 19ff.

with the administration of the government—the president and his secretaries—have a duty to take the steps required to ensure the safety and well-being of the citizens.

There is, however, a difficulty that seems to arise when we adopt this interpretation; viz., it does not seem to square with the way in which institutional duty-claims figure into moral deliberation. In our commonsense moral thinking, claims about institutional moral duties seem to (at least some of the time) provide novel justification for judgments regarding how particular individuals ought to act.¹⁸² In more technical terms, the judgments regarding individual duty-claims which are derived from institutional duty-claims seem to sometimes be synthetic and justified *a posteriori*. That is to say, they are ultimately justified (in part) by appeal to contingent facts which can only be known by consulting our experience—namely, facts about which role or position in the state the individual agent occupies. However, if institutional duty-claims are analyzable in terms of individual duty-claims, and if we have ready at hand such an analysis, then conclusions concerning individuals' duties would be reached via deduction. For example, if we suppose that the claim, "The U.S. has a duty to protect its citizens" is completely reducible to a claim of the form, "Individuals $M_1 \dots M_n$ have a duty to ensure that the citizens of the U.S. are protected," then the following argument would be deductively valid and the conclusion knowable *a priori*:

- (1) The U.S. has a duty to protect its citizens.
- (2) The U.S. has a duty to protect its citizens if and only if individuals $M_1 \dots M_n$ have a duty to ensure that the citizens of the U.S. are protected.
- ∴ (3) Individuals $M_1 \dots M_n$ have a duty to ensure that the citizens of the U.S. are protected.

Against this, the argument from moral reasoning, as we might call it, insists upon the *a posteriori* character of the justification of such practical reasoning as evidenced in our experience. It doesn't seem to be the case that a particular official's own duties are

182. This is a point that seems to inform Frances Harbour's discussion of collective moral agency and the processes of compromise which make bureaucratic activity possible, despite the fact that he doesn't give the matter explicit treatment. Harbour, "Collective Moral Agency and the Political Process."

"contained" within a statement concerning the state's duties, as would be the case if the state duty-claim is analyzable in terms of individual duty-claims.

The argument from moral reasoning admits that claims about what an individual person ought to do are thought to be derived, in some sense, from claims about what the state itself ought to do, but at least some such judgments are justified by appeal to contingent facts concerning that person's place in the institutional structure. To recall the statement by former vice-president Cheney, Bush administration officials may have been thought of as having the duties they did in virtue of the fact that the *state* had a basic duty to protect its citizens and *they* happened to occupy certain positions within the state which made it the case that they were uniquely capable of meeting the moral demands expressed by the state duty-claim.

The worry which is associated with the reductionist approach to state duties is that it cannot adequately explain *why* the individuals employed by or in charge of an institution would be said to have the duties and obligations they do. The critic charges that such an explanation must inevitably make reference to a prior or more fundamental duty or obligation which the institution is said to possess or which attaches to an office within the institution, thus begging the question. To continue with the example, President Bush would have been thought of as having a duty to ensure measures were taken to protect the citizens of the U.S. because the institution which he headed up was thought to have a duty to protect its citizens; if he were not the president, he surely would not have had such a duty any more than you or I have such a duty. As another example, it only makes sense to say that the human being named Barack Obama has moral duties pertaining to the reform of the health care system if the state *itself* has duties or obligations pertaining to the provision of health care.¹⁸³

183. In Chapter Five I will return to this issue, arguing that the worries stated here can be rather easily accommodated by the reductive individualist. The response will involve making two critical points. First, institutional duty-claims which are reductively analyzable in terms of individual duty-claims often refer to individuals via description. Recognition of this point allows us to admit that certain claims about individual officials' duties *are* deducible from claims about the state's duties. However, I will grant that many

The critic of the reductionist approach claims that despite any *prima facie* plausibility that might attach to the perspective that institutions are not themselves persons but merely composed of persons, in the final analysis institutions are persons in a more technical sense: they are the bearers of duties and obligations, the subjects of moral claims. While institutions are clearly not "natural" moral persons (they are obviously not human beings), they are "artificial" moral persons in the sense that they are artifacts which have reasons of their own. Even if we grant (as antireductionists claim we should) that individuals end up acting on *behalf* of institutions, we are to recognize that there are normative requirements which bear on how institutions expend their resources (human or otherwise), how they structure themselves, which powers and what kinds of authority they extend to their members, and so on.

Now, the upshot of the discussion in §§3.4-3.5 was that we identified a possible strategy for defending holism: viz., if we are justified in supposing that a social object possesses (intrinsically) simple properties, and if these properties are possessed by that object in virtue of something other than its parts standing in relation to one another, then it seems like we would be justified in treating the social object as an irreducible entity. I wish to now suggest a derivative claim concerning social *agency*: if a social object is to be an irreducible agent, we must be justified in supposing that it possesses simple agential properties (e.g., the property of having a duty, or having a reason to act), which (again) it possesses in virtue of something other than its parts standing in relation to another.

As we will now see, French's argument for corporate moral responsibility may be understood as an argument which attempts to meet this demand.

institutional duty-claims do not make reference to individuals at all. And this gets at the second point. As we will see, claims of this sort must be understood as claims about the instrumental value of an institutional arrangement obtaining, and they often cannot be reduced to claims about individual's duties since the valued arrangement can be obtained in any number of ways.

CHAPTER FOUR

THE CASE FOR INSTITUTIONAL MORAL AGENCY

In recent decades, the notion that institutions are persons or moral agents has received a fair amount of attention, particularly within the fields of business ethics and international relations. According to those who defend what is variously known as *corporate* or *institutional moral agency* or *moral personhood*,¹⁸⁴ corporate bodies ought to be viewed as moral agents in their own right. This is an importantly different notion than the more well-known issue of "collective responsibility." As Toni Erskine has pointed out, the debate over collective responsibility is, in the end, the debate over whether putatively uninvolved individuals may be held responsible—may be blamed, praised, or held to account—for the deeds of other individuals with whom they commune or with whom they invested authority or power. She further suggests that this sort of responsibility is almost entirely retrospective rather than prospective, and it often ends up amounting to the assertion that individuals are subject to claims of "vicarious" or "indirect" responsibility for the misdeeds of other individuals.¹⁸⁵

The question of whether a person may be held responsible in a retrospective sense for the misdeeds of other individuals who are fellow members of her collective is very different from the question of whether collectivities themselves may be thought to possess moral duties and obligations. First of all, unlike the question of collective responsibility, the question of whether institutions have duties is, at least in its standard form, the question of whether we can, with propriety, say that institutions have reasons to go forth and engage in certain sorts of actions and refrain from engaging in others. The paradigmatic form of a claim of collective responsibility is one concerning present

184. French, *Collective and Corporate Responsibility*; French, Nesteruk, and Risser, *Corporations in the Moral Community*; Wendt, *Social Theory of International Politics*; Wendt, "The State as Person in International Theory"; Erskine, *Can Institutions Have Responsibilities?*; Sadler, "Collective Responsibility, Universalizability, and Social Practices"; Soares, "Corporate Versus Individual Moral Responsibility."

185. Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'," 21–22.

individuals' responsibility for *past* misdeeds—e.g., "The German people are 'collectively responsible' for the Holocaust."¹⁸⁶ By contrast, the paradigmatic form of an institutional duty-claim is one which prescribes a future action—e.g., "Germany ought to help Italy weather the European debt crisis." Of course, these two kinds of moral claims concerning collectives are related. Those who either deny that institutions are moral agents or those who deny that there are true claims concerning an institution's duties may be more inclined to hold individuals responsible for those actions which, on first blush, seem attributable to institutions or organizations. Moreover, those who believe that institutions are moral agents may be less inclined to insist on vicarious individual responsibility for some past misdeeds. Erskine, who defends a version of institutionally held moral duties, carefully notes that if institutions are the irreducible bearers of moral obligations, we should expect that the propriety of certain collective responsibility claims will be radically undercut:

An implication of the model of institutional moral agency that I will propose cannot be that *all* members of a group are responsible for the actions of discrete agents within that group. Responsibility is simply not distributive in this way. Instead, *the group itself is the agent*. There is nothing "vicarious" about either the ascription of duties or the assignment of blame in this case.¹⁸⁷

The theory of institutional moral agency which Erskine advocates is an extension of the theory of corporate moral personhood which was developed by Peter French, and which has enjoyed a great deal of influence within the field of business ethics.¹⁸⁸ In his work concerning corporate ethics, French argued that corporations are "full-fledged members of the moral community," which have "whatever privileges, rights, and duties as are, in the normal course of affairs, accorded to all members of the moral community."¹⁸⁹

186. *Ibid.*, 22.

187. *Ibid.*

188. Prior to Erskine, Alexander Wendt extended French's arguments concerning corporate intentionality to political institutions. See Wendt, *Social Theory of International Politics*, 215–221. Erskine understands her project as an adaptation of French's view and an extension of Wendt's. See Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'."

189. French, *Collective and Corporate Responsibility*, 32.

On the French-Erskine view, corporate bodies such as businesses and states have certain goals and they weigh information, and upon this basis they may be said to form intentions to act. The organizational structures and policies that allow for this kind of supposedly deliberative action render corporations teleological or goal-directed systems whose behavior in the world is not properly characterized as a "spontaneous convergence of individual interests."¹⁹⁰ Unlike crowds or mobs, businesses and states may be said to purposively enact policies and expend resources, much in the way individuals purposively seek to satisfy their desires and goals. Insofar as they are voluntary actors who are responsive to reasons, institutions are said to be moral persons.¹⁹¹

It is important to note that French and Erskine intend for their theory of corporate or institutional moral agency to provide an obvious basis for an antireductive account of institutional duty claims. In other words, their account of institutional agency is intended to provide the background against which it may be claimed that institutions have duties in the same manner that individuals have duties. It is equally important to note that the distinction between an *antireductive* and a *reductive* account of institutional duty claims is not equivalent to the distinction between a *realist* and an *antirealist* account of institutional duties. It may be tempting to suppose that those who deny that institutions are agents must thereby deny that there are any true claims concerning the duties of institutions. This is too hasty. Both reductionist and antireductionist interpretations of institutional duty claims are realist views; each may be understood as providing an explanation concerning the truth-makers for institutional duty claims, and neither commits us to supposing that such claims are necessarily false (although both may provide a framework in which it can be shown that particular duty claims are, in fact, false). Reductionist and antireductionist views simply provide different accounts of what would make true (or false) a claim of the

190. Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'," 23-24 and French, "Kinds and Persons," 241-254.

191. *Ibid.*

form, "Institution S has a duty to *a*." The most straightforward reductionist theory states that this sort of claim will be true so long as relevantly situated individuals—namely, those individuals who constitute the institution—have reasons to *a*. French, Erskine, and other defenders of institutional moral agency may be understood as arguing that claims of this sort are sometimes true simply because the institution itself, in some nonreductive sense, has reasons to *a*. This points up the importance of their claim that institutions themselves are deliberative, voluntary actors. It is because institutions are thought to be capable of corporate action which is the upshot of corporate deliberation that the institution itself may be said to have reasons for action.

To say that corporate entities are voluntary actors *seems* to challenge what we can call an instrumentalist conception of corporate entities. Recall, in Chapter Three we briefly considered Jacques Maritain's distinction between substantialist and instrumentalist conceptions of the state. Whereas substantialism asserts that, "the State is a subject of a right, i.e., *a moral person*, and consequently a whole," instrumentalism encourages us to view the state as a collection of offices, resources, and individual experts who have been granted authority to make decisions and act for the benefit of the larger community.¹⁹² In more literary terms, instrumentalism may be associated with the metaphor of the *ship of state*. Just as a ship does not and cannot really *do* anything—it cannot act—neither, we might suppose, can a state. Although neither a ship nor a state can act, each can be *acted upon* by individuals and each can be *used* or put into service in the pursuit of various ends: individuals can act upon, influence, and use the rules, offices, resources, and even other individuals that constitute the state. Instrumentalism stands in opposition to substantialism insofar as it claims that institutions are *mere* instruments; although it is admitted that institutions have an *objective* existence—they are things with which we may interact and upon which we may rely—they lack *subjectivity* in the sense required for agency. Substantialism, by contrast, insists that there is some sense to be made of the claim that

192. Maritain, *Man and the State*, 13–14.

states exhibit subjectivity, that they are agents. Earlier, more mystical views of the state premised such a claim upon a doctrine of a supraindividual soul or absolute consciousness; more recent theories such as French's make the weaker and much more plausible claim that institutional facts—viz., facts about how institutions are structured and how policy decisions are arrived at and implemented—render true certain claims concerning an organization's goals, beliefs, and reasons for action. The important point is alleged to be that there is some sense in which the organizations themselves, and not merely the organization's stakeholders and participants, have intentions and reasons for acting.

4.1 Toward a Contemporary Theory of Institutional Agency

Insofar as it is opposed to instrumentalism, the contemporary theory of institutional moral agency advanced by French may be expected to share certain features in common with the highly speculative and mystical doctrine of the absolute state surveyed in the previous chapter. However, it is important not to overstate the similarities. Indeed, there is really only one critically important similarity: the contemporary theory, like its predecessor theory, attempts to preserve the sense in which an institution's identity is not wholly reducible to the sum of the identities of the flesh-and-blood individuals which are associated with the institution—its members. In this sense, both past and present viewpoints are holist viewpoints. Whereas individualists conceive of institutions as constituted by individuals (or more precisely, the attitudes, actions, beliefs, and relations of individuals), French and Erskine encourage us to see that institutions are goal-oriented, deliberative bodies, which are constituted not by human beings (and their properties) but by *rules*. What should be noticed is that this view makes no claims concerning ghostly substances, nor does it appeal to vague notions of embodiment. To the contrary, when it comes to describing the material causes of institutions—that is, the "stuff" out of which institutions are created—French's view has much in common with instrumentalism: it insists that corporations and states are *mind-dependent* human artifacts, in some respects not unlike other human creations—e.g., cars, computers, or water heaters. Of course,

whereas cars, computers, and water heaters are constructed out of metals, plastics, and so forth, institutions are constructed out of agreements, contracts, and conventions—all of which exist and remain in force only because of individual attitudes, actions, and beliefs. To this extent, French's theory may be viewed as *compatible* with the point advanced by J.W.N. Watkins, which was mentioned above in §3.3: if we take away individual attitudes, the institutions will no longer exist.¹⁹³ Although the ultimate constituents or component parts of a social entity are very different than those of a material entity (at least when the social entity is understood *as* a social entity and not merely as a material entity), the essence of any constructed thing *qua* constructed thing is its *structure*, the relations of its parts and the properties which emerge from that arrangement. Therein lays the crux of the issue for French: facts concerning an institution's structure and most basic policies render true some attributions of goals, intentions, and actions to the institution, and these facts need not immediately depend on the preferences or desires concerning the corporation which those individuals who are its members happen to have. Speaking directly to this point, French writes,

Usually, of course, the original incorporators will have organized to further their individual interests and/or to meet goals which they shared. But even in infancy the melding of disparate interests and purposes gives rise to a corporate long-range point of view that is distinct from the interests and purposes of the incorporators viewed individually. Also, corporate basic purposes and policies... tend to be relatively stable and are not generally couched in the kind of language appropriate to individual purposes.¹⁹⁴

Let's consider a simple example to illustrate the point French wishes to make.

Suppose that for a number of years, Smith and Jones have hosted a local folk music festival. They are now aged, and they suppose that the best way to ensure that the festival survives for years to come is to form a non-profit corporation for the purposes of funding and organizing the event when they are no longer capable of doing so. A charter and by-laws are drawn up, a board of directors is appointed, and offices are established and

193. Watkins, "Ideal Types and Historical Explanation," 150.

194. French, *Collective and Corporate Responsibility*, 45-46.

occupied by Smith, Jones, and a few other individuals. As the years pass, we might imagine that Smith and Jones are succeeded by their children or other individuals, none of whom, it turns out, share the founders' passion for folk music. Perhaps the younger Smith carries out his corporate duties out of a sense of duty to his elder's legacy; perhaps the younger Jones has an eye on gaining experience while serving in the corporation which he plans to put to use in establishing his own, punk rock music festival. In any case, the point is that whoever comes to occupy the offices of the corporation or serve on the board of directors need not necessarily share the desires and goals of the corporation's founders. Presumably, they must have *some* desire or reason for serving in the corporation, but the desire or reason which is effective or operative need not take as its immediate object the funding and organizing of the folk music festival. If the officers draw a salary, the motivation might be purely economic. The point which French would like us to draw from such a case is that the policies of a corporate body need not be assumed to reflect the goals of its officers or directors. Moreover, these policies can remain stable and operative even when the individuals who occupy offices or serve as directors don't care a whit about them, at least not directly or immediately. A corporation survives to the extent that its basic policies and essential rules remain operative and intact. Membership is, when viewed from a certain perspective, only of relatively minor importance.

In the words of John Searle, whose work concerning social ontology has been very influential, institutions and the rules and policies which seem to constitute them are "observer-dependent."¹⁹⁵ They are ontologically dependent upon the attitudes, beliefs, and actions of conscious individuals. For this reason we may say of any institution that it would not exist were it not for individuals; this is equally true of simple institutions like the music festival corporation and more complex institutions such as the Federal Government of the United States.

195. Searle, "Social Ontology and Political Power," 3.

At this point, we should reflect on the following question. If French and other defenders of institutional agency accept this ontological point, how can they go on to insist that institutions have an identity which is not identical to the sum of the identities of the individual members of the institution? I believe that Searle has articulated the connective tissue that corporate agency theorists implicitly rely upon in order to present a holist theory that is at all plausible and which avoids the mysterious substantialist theories of their predecessors. Searle explains that in addition to the distinction between observer dependent and observer independent things, when engaging in social ontology, we must make a separate distinction; viz., we must distinguish between epistemic subjectivity and epistemic objectivity. "*Epistemic objectivity and subjectivity are features of claims,*" he explains. "A claim is epistemically objective if its truth or falsity can be established independently of the feeling, attitudes and preferences, and so on, of the makers and interpreters of the claim."¹⁹⁶ While institutions or corporations are *ontologically* subjective, or at least "have an element of ontological subjectivity" (owing to the fact that they are observer dependent), claims about institutions or corporations may be *epistemically* objective.¹⁹⁷ For example, the various state duty claims surveyed in Chapter One—e.g., that the United States ought to protect its citizens, or that the government has a duty to ensure universal access to health care—are either true or false in an epistemically objective sense; whether they are true or false is presumably not a matter of subjective preference or taste, personal conviction, or any such thing.

Of course, this raises the question of how it is that there can be epistemically objective claims about institutions. Or in other words, how can there be institutional facts? Searle argues that institutional facts arise because human beings assign functions to things which those things would not have were it but for the fact that the thing in question is

196. Ibid., 4. It is significant that Searle puts this in terms of the "makers and interpreters of the claim," since a claim such as, "Obama enjoys golfing," while clearly contingent on Obama's preferences, is an epistemically objective claim, since it states a matter of fact that is not contingent upon the preferences of the *speaker*.

197. Ibid.

viewed as having a certain *status*.¹⁹⁸ For example, a document has the function of defining the basic goals of a corporation because it is accorded the status of a corporate charter. A piece of paper with marks on it can only enjoy this status because we are able to recognize and obey a rule that tells us to treat this thing not only as a document, but as a document of this sort. A rule of this sort is what Searle refers to as a *constitutive rule*. Constitutive rules are to be contrasted with regulative rules. He describes regulative rules as constraining or guiding behavior which can be characterized without reference to the rule itself. Examples of such rules of conduct abound. Searle provides the example, "drive on the right hand side of the road."¹⁹⁹ Other familiar examples include, "Hold the door when others are following close behind," and "Maintain eye contact when speaking to a group of people." Constitutive rules, by contrast, "create the very possibility, or define, new forms of behavior." As he points out, they typically have the form, "X counts as Y in context C."²⁰⁰ For example, it is because we obey a rule of this form that a document "counts" as a corporate charter, and it is because a corporate charter outlines specific goals or purposes that we can say that it is objectively true that the corporation has those goals or purposes.

[T]he key element that gets us from the sheer animal imposition of function and collective intentionality [i.e., having shared beliefs and attitudes] to the imposition of status functions is our ability to follow a set of rules, procedures or practices, whereby we count certain things as having a certain status.... It is this feature, the distinctly human feature, to count certain things as having a status that they do not have intrinsically, and then to grant, with that status, a set of functions, which can only be performed in virtue of the collective acceptance of the status and the corresponding function, that creates the possibility of institutional facts.²⁰¹

An account of this sort provides a useful and plausible background against which to understand French and Erskine's claim that corporations or institutions have goals, beliefs, intentions, and so forth—attributions which are necessary for establishing the moral agency of institutions. On this view, the identity of a corporation is primarily a function of the

198. *Ibid.*, 6.

199. *Ibid.*

200. *Ibid.*, 7.

201. *Ibid.*

institutional facts concerning that corporation's goals and intentions, not the immediate goals and intentions of the individuals who are related to that corporation via membership, ownership, or so forth.

4.2 The Identities of Groups

Although he insists that the identity of an institution is primarily a function of its rules and most basic policies, French does not deny that there are groups which *are* wholly constituted by their members. Simple groups, or what French calls "aggregate collectivities," are *nothing more* than groups of individuals. To say this is to imply that the identity of the group—the group being what it is—is wholly a matter of its actual membership. For example, if we take the former Bush administration officials at their word, we might suppose that the group of military personnel who carried out brutal acts of torture on prisoners at Abu Ghraib was a simple group in this sense. We may refer to this group of individuals as the Abu Ghraib Gang. What distinguishes an aggregate collective from what French refers to as a "conglomerate collective" is the fact that in the case of the former (but not the latter) a change in the membership of the group will, strictly speaking, entail a change in the identity of the group.²⁰²

In brief, a group or aggregate's existence as that particular aggregate is not compatible with a varying or frequently changing membership. The meaning of a sentence about an aggregate would be different if one of the individuals actually belonging to the aggregate had not, in fact, been a member of it.²⁰³

French acknowledges—indeed, he insists upon the fact—that aggregate collectives *are* susceptible to reduction in the sense discussed in Chapter Three. Since simple groups are nothing more than collections of individuals standing in certain relations to one another, claims about what a simple group or person-aggregate is doing, what it wants, what its goals are and so on may obviously be reduced to claims about what the particular individuals in the group are doing, what they want, what their goals are and so on. To continue with the

202. French, *Collective and Corporate Responsibility*, 5.

203. *Ibid.*

example, presumably all it would mean to say, "The Abu Ghraib Gang fears that it may be subject to courts-martial" is that the individual members of this group—such people as PFC Lynddie England, Staff Sergeant Ivan Frederick, or Lieutenant Colonel Steven Jordan—each fear that they might be brought before a court-martial.²⁰⁴ To say, "The Abu Ghraib Gang will be held to account for its crimes" would be just to say that each individual who is a member of the Abu Ghraib Gang will be held to account for his or her crimes.

What French alleges is that in addition to aggregates or simple collectives, there are other kinds of social groups. Namely, there are what he calls "conglomerate collectivities" which include institutional organizations and corporations. Unlike aggregates or simple collectives, conglomerates can survive a turn-over in their membership.²⁰⁵

A conglomerate collectivity is an organization of individuals such that its identity is not exhausted by the conjunction of the identities of the persons in the organization. The existence of a conglomerate is compatible with a varying membership. A change in the specific persons associated in a conglomerate does not entail a corresponding change in the identity of the conglomerate.²⁰⁶

The music festival organization mentioned earlier would be an example of such an organization, as would a baseball team, which regularly trades players (and could even trade all of its players) while nevertheless surviving as the same team. The more obvious and relevant example for my purposes is the federal government of the United States or even one of its composite institutions such as the Justice Department, the CIA, the Army, etc. What French wishes to draw attention to is the intuition that such institutions or organizations remain, at their core, one and the same despite the fact that the particular individuals who occupy offices within these institutions may, and in fact do, vary from one time to another. The federal government retained its identity following the inauguration of Barack Obama in 2009. Similarly, the CIA retained its identity following the resignation of

204. For a list of those who were revealed to be involved in the abuses at Abu Ghraib, see Hersh, "Torture at Abu Ghraib: American Soldiers Brutalized Iraqis."

205. French, *Collective and Corporate Responsibility*, 13ff.

206. *Ibid.*, 13.

George Tenet as the Director of Central Intelligence in 2004. To be sure, a change in personnel often brings with it other changes; indeed, that is typically the reason *why* a change in personnel is brought about. What is being claimed here is not that changes in personnel make no difference or impact upon an organization, but only that an organization does not typically lose its *identity* (does not become, in the strictest sense, a new or unique organization) when such changes are brought about. Particular individuals and even entire aggregates of individuals are more or less interchangeable within institutional organizations. This is owing to the fact that the actions such individuals carry out within the organization are more or less guided by rules and role-specific duties, and claims about these rules and role-specific duties are epistemically objective, even if the offices themselves are ontologically subjective. To an important degree, it doesn't matter whether Jones or Smith occupies some office as long as either one would carry out (or has officially agreed or demonstrated a willingness to carry out) the duties and tasks associated with that office.

Having made these preliminary remarks concerning French's view, I will now reconstruct his argument for corporate moral personhood or institutional moral agency.

4.3 Corporate Intentional Agency

At the most basic level, French's argument for institutional moral agency may be understood as unfolding in two steps. First, he argues that corporations are intentional agents, or beings which can form and then act on the basis of intentions. Second, he argues that anything which is an intentional agent is a moral person. Neither of these claims is obvious, so French spends a great deal of time defending each. I will examine the arguments provided for each of these claims.

The argument for the first claim—that corporations are intentional agents—may be understood as resting on the assumption that an entity *S* is an intentional agent if and only if (i) *S* has intentional states such as beliefs and desires, and (ii) *S*'s actions are explicated by

reference to these intentional states.²⁰⁷ If we wish to explain why an intentional agent did something, we will presumably appeal to her desires and the beliefs she has about how to satisfy those desires. If we are to believe that corporations or institutions are intentional agents, it must be shown that they have intentional states and that it is by reference to these states that we can explicate the institution's actions. French's strategy is to identify certain crucial features of institutions which serve as the functional equivalents of what, in human beings, we refer to as beliefs and desires. These functional equivalents are rather obvious, even if they are ultimately inadequate: whereas we have beliefs, institutions create, manage, store, and access *information*; whereas we have desires or ends which we aim to pursue, institutions have goals which are codified in the form of policies or become operative within corporate culture.

On French's view, the relevant issue here is that corporations have "corporate internal decision structures" (CID structures), which do two important things: they organize personnel, defining the relationships that exist between offices or departments, and they articulate what is known as "corporate policy."²⁰⁸ Part of what this involves is setting the rules which govern the exchange of information, recommendations, orders, etc. between the officers or the personnel of a corporation.²⁰⁹ These rules should be understood as primarily creating role responsibilities and duties; they create *individual* responsibilities and duties only in a derivative sense. While it is true that the chief financial officer in a corporation is responsible for risk management, it will only be true that Jane Doe is responsible for risk management if she occupies the role of chief financial officer; if John Roe instead occupies the office, he will have this responsibility.

To say that a CID structure also articulates corporate policy is to say that it establishes the "recognition rules" according to which a decision or act is judged to have

207. Ibid., 39-40.

208. Ibid., 41ff.

209. Ibid., 42-43.

been done for corporate reasons. For a decision or act of an *individual* to be properly described as the *corporation's* decision or act, French argues it must accord with what is called "the basic belief of the corporation," or the corporation's most basic policy.²¹⁰

By focusing on CID structures, we are to notice at least two things. First, it is the CID structure which incorporates the individual actions of the members of the corporation in such a way that they may be said to be collectively pursuing corporate goals or engaging in corporate projects.²¹¹ It is because a CID structure of a certain sort is in place that individual persons engage in some of the acts they do (i.e., their "official acts"), and it is only because a particular set of rules is in force that individual actions "count" as official acts (e.g., the raising of hands in a particular context counts as voting). Second, the CID structure allows us to attribute intentionality to a corporation. Suppose, for example, a sufficient number of relevant individuals (e.g., board members) vote in a certain way; this typically counts as the corporation deciding to do something. Now suppose that such a decision is implemented:

[W]hen the corporate act is consistent with an instantiation or an implementation of established corporate policy, then it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so, in other words, as corporate intentional.²¹²

What French takes to be importantly relevant to the issue of institutional moral agency is that CID structures give rise to information processing and decision-making procedures which are potentially *distinct* from those which isolated individuals would otherwise engage in, and these in turn result in decisions which are not properly attributable to the involved individuals. His point is that insofar as an institution has an internal decision-making procedure, there is a sense in which *it* deliberates. "When operative and properly activated," he explains, "[a] CID structure accomplishes a

210. *Ibid.*, 43, citing G.C. Buzby, "Policies—A Guide to What A Company Stands For," 5-12.

211. *Ibid.*, 41-42.

212. *Ibid.*, 44. Cf. Arnold, "Corporate Moral Agency," 281.

subordination and synthesis of the intentions and acts of various biological persons in a corporate decision."²¹³ In other words, it *incorporates* their individual actions and intentions, and it does so in such a way that the personal interests or parochial concerns a particular employee or executive might have get "diluted" by the subordination process.²¹⁴ Indeed, it is not difficult to imagine a situation in which the individual members of an institution who participate in decision-making may, as a group and under the influence of institutional roles and rules, reach a decision that no particular individual finds appealing. In such cases, we may say that the institutional decision diverged from the individuals' own preferences.

We may summarize the foregoing argument in the following way (I will refer to this argument in subsequent sections as "the argument for corporate intentional agency"):

- (1) S is an intentional agent if and only if (i) S has intentional states such as beliefs and desires, and (ii) S's actions may be explicated by reference to these intentional states.
 - (2) Institutions have intentional states. (Institutional *beliefs* take the form of information; institutional *desires* are codified in the form of policies or the operative goals within corporate culture.)
 - (3) It is by reference to an institution's beliefs and desires that we explicate an institution's actions.
- ∴ (4) Corporations are intentional agents.

Now, because he believes that corporations can have intentions and engage in intentional action in this sense, French believes they are *responsible* agents.

There are at least three different senses that may be given to the term 'responsible' and its cognates. Manuel Velasquez has referred to these senses as the *virtue*, *deontic*, and *causal* senses.²¹⁵ When we say of a person, "She is very responsible," we use the term in the first way. That is, we mean to say of the person that she is reliable, thoughtful, etc.—she

213. French, *Collective and Corporate Responsibility*, 41.

214. *Ibid.*, 44.

215. Velasquez, "Debunking Corporate Moral Responsibility," 532.

possesses certain praiseworthy character traits, or virtues. When we say, "It is his responsibility to inform her of the situation," or "He is responsible for making sure everyone shows up on time," we use the term in the second way. That is, we mean to say of the person that he has a duty or obligation (either role-specific or moral) to do something or another.²¹⁶ Finally, when we say, "She is (or was) responsible for the damage," or "The tornado is (or was) responsible for the damage," we attach a causal sense to the term. As these two examples illustrate, both agents and non-agents may be identified as the relevant cause of a particular event. When we describe a mere object (a non-person) as the cause of a thing, we ascribe to the thing *natural* causal responsibility. Typically when we describe a person as a cause of a thing, we ascribe to that person *agent-causal* responsibility.²¹⁷ To describe someone *S* as being responsible for some event *e* in this latter sense is to indicate that *S* is answerable for *e*. To say *S* is answerable for *e* is not necessarily to say that *S* is to be blamed or praised for *e*, but simply that *S* is able to (and thus can be expected to) give an account of what her reasons for action were. Any further judgments regarding *S*'s praiseworthiness or blameworthiness, culpability or liability, hinge on *S* first being responsible in this sense.²¹⁸

It is this agent-causal form of responsibility which, French argues, corporate entities possess. The argument for corporate intentional agency is intended to help us see that there is a sense in which a corporation can have reasons for bringing about *e* which are not completely reducible to the reasons the involved individuals would have for assisting in bringing about *e*. This view enjoys a certain amount of commonsense support, since people often explain why they engaged in a pattern of action by appealing to corporate reasons. For example, following the Enron fiasco, it was claimed that some individual acts of fraud

216. Duties and obligations of this sort are sometimes referred to as "prospective responsibilities". See Duff, "Responsibility."

217. Velasquez, "Debunking Corporate Moral Responsibility," 532. Ascriptions of causal responsibility are always retrospective, and so those things which one was causally responsible for are sometimes referred to as "retrospective responsibilities". Duff, "Responsibility."

218. Duff, "Responsibility."

were perpetrated not primarily for private gain, but because the corporation wanted to "dwarf" Wall Street earnings estimates.²¹⁹ Perhaps more plausibly we might consider the actions of particular CIA operatives engaged in the interrogation of terrorism suspects. Presumably, "corporate" reasons rather than individual reasons were what led individual interrogators to use enhanced interrogation techniques. If this picture is correct, French suggests, there is some sense in which the corporation or institution, over and above any involved individuals, may be answerable for the event in question. Indeed, in the case of enhanced interrogation techniques this seems to be the view adopted by the Obama administration insofar as they have responded to the problem of torture by modifying institutional policies and avoided holding individuals responsible.

4.4 From Intentional to Moral Agency

French, as well as many of those who have assisted in developing, modifying, and extending his basic view, have suggested that because corporate entities or institutions are deliberative, purposive agents that are responsible for the things which they do, they should be understood as "full-fledged members of the moral community," which have "whatever privileges, rights, and duties as are, in the normal course of affairs, accorded to all members of the moral community."²²⁰ As I have already suggested, French's overarching argument is a straightforward syllogism. The major premise is that corporations are intentional agents (metaphysical persons); the minor premise is that anything which is an intentional agent (a metaphysical person) is a moral person. The argument for corporate intentional agency expresses the reasons we are alleged to have in support of the major premise. It remains to be seen why we should accept the minor premise.

French's argument in favor of the notion that anything which is an intentional agent is a moral person is rather complicated and drawn out—something which perhaps should not be surprising given the fact that the claim is rather unintuitive. I say that it is

219. "Ex-Enron Exec Says Company Cooked Books."

220. French, *Collective and Corporate Responsibility*, 32. See also Erskine, *Can Institutions Have Responsibilities?*

unintuitive because it is commonly supposed that *not* all agents are moral agents. For example, many people believe that most if not all mammals are agents: dogs, cats, beavers, bears, and horses are regularly thought of as agents, since they seem to be the sorts of things which engage in action. In other words, they are all thought to be things which have intentional states (e.g., desires or volitions) which lead them to behave in at least some of the ways they do. This is a point which has been made by Thomas Donaldson:

Some entities appear to behave intentionally which do not qualify as moral agents. A cat may behave intentionally when it crouches for a mouse. We know that it intends to catch the mouse, but we do not credit it with moral agency... One seemingly needs more than the presence of intentions to deduce moral agency.²²¹

Of course, the idea that cats and so on are agents has not always been accepted.

The Cartesian view that animals are complicated automata whose behavior is explainable in purely mechanistic terms has, historically, been rather influential, and it may hold some sway even to this day. Nevertheless, a simple argument from analogy is often sufficient to persuade one that one is epistemically justified in supposing, first, that animals likely have mental lives and, second, that their mental lives are probably not *radically* different from our own (although they may be different in very important ways). It is difficult to imagine that our animal companions do not experience joy and sadness; it seems obvious that they can experience pleasure and pain.

Nevertheless, it may and perhaps should be insisted that merely being *conscious* is not sufficient to establish that a thing is an agent. Although being conscious (as opposed to non-conscious) is necessary for agency, it may be that we should restrict agency only to a certain subclass of conscious beings.²²² One well-known objection to including non-human animals (or at least most non-human animals) within the community of agents is that they do not seem capable of having a language, and consequently it is difficult to make

221. Donaldson, *Corporations and Morality*, 22, quoted in French, *Collective and Corporate Responsibility*, 165.

222. I will revisit this claim concerning consciousness below, in §4.6.

sense of the idea that they have the intentional states requisite for agency.²²³ While they may and presumably do have intentional states, it seems highly unlikely that non-human animals have the second-order intentional states which would allow them to exhibit the kind of awareness of and responsiveness to first-order intentional states that normal adult human beings (paradigmatic agents) in fact exhibit.²²⁴

French himself claims that even if we admit that cats and other animals act in ways that seem to suggest that they can engage in intentional behavior, they are not "full-blooded intentional actors," since they do not seem capable or free to select their mode of behavior in light of reasons for action.²²⁵ It has not gone unnoticed in the literature that French's treatment of this issue is underdeveloped and perhaps deeply erroneous.²²⁶ However, the task of clearing up this aspect of his argument need not concern us. What must be noted is simply that he takes the view that a thing is an intentional agent only if it is *very* much like a human being in terms of its ability to engage in deliberative behavior that is backed up by reasons. As he puts it, to say a thing is a person is just to say it is a thing whose behavior is explicable by appeal to "a coherent set of true empirical generalizations," viz., those of folk psychology.²²⁷ Once the particular way in which French is using the term "intentional agent" is understood, his assertion that anything which is an intentional agent is a moral person becomes less problematic, since it amounts to little more than the claim that anything which is very much like a normal (adult) human being is a moral person. The

223. See Himma, "Artificial Agency, Consciousness, and the Criteria for Moral Agency: What Properties Must an Artificial Agent Have to Be a Moral Agent?"

224. The claim that being in possession of a language is necessary for having beliefs is a topic which has interested many philosophers. An entertaining and thought-provoking treatment of the issue can be found in William James' *Principles of Psychology*. James proposes that beliefs or mental images can be instantiated by a variety of "mind-stuff," not just language. Positing such variety seems necessary, he thinks, for accounting for the reports of deaf-mutes who recall having had thoughts prior to learning language. See James, *The Principles of Psychology*, 173-174. Ludwig Wittgenstein provides an equally interesting meditation on James's remarks; see his *Philosophical Investigations*, sec. 342.

225. French, *Collective and Corporate Responsibility*, 166.

226. Wall, "The Problem of Group Agency," 191.

227. French, "Kinds and Persons," 249.

significance of this claim arises when we notice how it figures into his over-arching argument: in claiming that corporations are intentional agents, French is presumably suggesting that they not only have intentional states such as beliefs and desires (or the functional equivalent of those states), but that they are capable of or free to select a mode of behavior in light of reasons for action.

4.5 Evaluation of French's Argument

French's argument for corporate moral personhood has received a great deal of critical scrutiny. In light of the trajectory of the discussion as it has unfolded here, I want to focus on two criticisms. The first concerns the claim that institutions can be moral agents. The second concerns the claim that institutions are agents in any sense.

It will be recalled that according to French, a corporation is said to act intentionally only when its decision to act follows from its internal decision-making structure in the appropriate way and when this decision accords with the corporation's most basic policies or goals. Within this framework for thinking about corporate action, if a corporate entity successfully organizes its individual members—its "human resources"—in such a way that they (and thereby it) acts in what we are to count as an ideally corporate rational manner, no non-corporate reason for action which is not also a corporate reason for action serves as an action- or policy-guiding consideration. For this reason, it seems inappropriate to think that institutions could possess what I have called moral reasons for action. As I explained in Chapter Two, according to the perspective that I favor, moral reasons for action are *objective* reasons for action of a certain sort. The question of what it is, precisely, that distinguishes moral reasons from other, non-moral, objective reasons for action is an interesting question; however, settling that question is not necessary for the present purposes. It need only be pointed out that an ideally rational corporate decision is not, under the provided framework, premised upon a non-corporate (i.e., an objective) reason for action. Although individual members of an institution or corporation are presumably guided, at least in part, by their own non-corporate reasons and motives (e.g., self-interested

reasons or moral reasons), when it comes to the corporation itself, no reasons for action which are not, in some sense, tied to the basic goal of the corporation serve as action-guiding considerations. The successful incorporation of individual actions and intentions in furtherance of the corporate goal ensures that this is the case. Indeed, according to the picture under which we are operating, to imagine a non-corporate goal or interest as providing the ultimate ground for a policy decision is, at best, to imagine the corporation as acting in a corporate non-rational manner. There may even be a sense in which such a policy is no longer properly attributable to the corporation. It may, e.g., only be attributable to those individuals who collectively make up the board of directors, or in the case of the state, the government. This is because boards and governments—subject as they are to corruption, idiocy, and thoughtlessness, or even moral scruples and pangs of conscience—can fail to make decisions which accord with the basic goal of those corporate entities they allegedly represent.

The point made a moment ago is one which Patricia Werhane has made, although she develops the idea in a significantly different manner. Werhane argues that corporations are systematically or structurally precluded from engaging in moral deliberation; however, she argues that the same is not true of states or other public institutions.

The relationship of a club or a nation to its members or citizens is different from the relationship of a corporation to its employees. The well-being of individuals, or groups of individuals, constitutes an essential part of the ends or goals for which a club or nation is constituted. Clubs and nations are, by and large, structured for their members, and many, if not all, of the rules, by-laws, constitutions, etc., of these institutions apply to their members or to the rights and conduct of their members. The modern business corporation, however, is an economic institution structured primarily for the achievement of material ends external to the corporation... Corporate rules and guidelines are aimed at the efficient maximization of these goals.²²⁸

I agree, of course, that a theory of corporate moral personhood is internally inconsistent, since the theory of agency upon which it is premised precludes acting on the basis of reasons *understood* as moral reasons. However, I wish to extend this criticism to all

228. Werhane, "Formal Organizations, Economic Freedom and Moral Agency," 44.

forms of institutional moral personhood. Werhane suggests that since states and other public institutions have the welfare of their members as a goal, they are thereby moral agents (assuming, of course, they were also agents to begin with). This is a mistake, at least if we assume that moral reasons are those which enjoy objective grounding. Even if a corporate entity is given what might naturally be called "moral goals" (as when, e.g., a business corporation adopts an environmental sustainability goal, or when a state issues a bill of rights which has the effect of limiting its sovereignty in morally appropriate ways), this does not make the corporate entity into a moral person. These goals will serve to legitimate the adoption of further institutional policies in the same fashion as any other goal, even a criminal or morally reprehensible goal; namely, they serve as subjective, corporate reasons for action. (Of course, I must admit that those who believe that all reasons for action are grounded in subjective interests may, at least at this stage, accept Werhane's assessment. Readers who find that approach appealing can wait upon the second set of criticisms of the agency theory, which I turn to in just a moment and which addresses the claim that institutions have any intentional states whatsoever.)

The preceding point may be made by imagining two very different organizations: the Neo-Nazis League and the Society for the Protection of Cuddly Animals. Under the theory of corporate intentionality presented by French, *ceteris paribus*, it will be as rational for the Neo-Nazis League to act on a policy of racial discrimination, even decimation, as it will be for the Society for the Protection of Cuddly Animals to give shelter to abandoned and abused kittens. The mere fact that the one institution happens to have a corporate goal that is morally praiseworthy and the other does not has no bearing on the how that goal figures into the account of the institutions' alleged agency. In both cases, the goal justifies more particular corporate actions and policies *because* it is the basic goal of the corporation. It does not figure into corporate deliberation as an objective reason for action, although those who founded the one organization presumably had objective reasons for creating their organization, whereas those of the other clearly did not (even if they erroneously

thought they did). As we will see in Chapter Five, I believe Werhane's suggestions provide important insight concerning the proper interpretation of institutional duty-claims; however, I deny that merely giving corporate bodies morally praiseworthy goals renders them moral agents in the sense required for a full-blown theory of moral personhood.²²⁹ This point is supported even further if we consider the second kind of objection to French's theory.

Whereas the first objection is directed against the claim that institutional agents are moral agents, the second objection is directed against the more fundamental claim that institutions are agents at all. Various commentators have pointed out that we are not justified in supposing that institutions meet the necessary conditions for intentional agency; we have little to no reason to suppose that corporations or institutions really "desire" anything, or "possess reasons," or "have an interest" in anything.

Let's consider first the issue of institutional goals. French is of the view that corporations may be said to have reasons for action because "they have interests in doing those things that are likely to result in the realization of their established corporate goals..."²³⁰ Moreover, a corporate or institutional "decision" can only be recognized as a corporate decision (as opposed to the decision of mere individuals) if it comports with what is called the "basic belief of the corporation." As I previously noted, this is a term French found in the work of G.C. Buzby, who argued that the interactions, decisions, and goals of individuals involved in a corporate enterprise give rise to or serve to create a corporate "image" that serves as the basis for making judgments concerning whether a putative corporate policy may be attributed to the corporation itself. Buzby suggests that

229. It isn't entirely clear that Werhane would say that states are moral persons. A careful study of the language she uses reveals an ambiguity that could be exploited in order to resist such a conclusion. The relevant issue is that she concerns herself with the question of whether corporations, states, and clubs can be held *morally responsible*. It could be insisted that this question is distinct from the question of whether such organizations are persons. Nevertheless, she does indicate that she thinks states operate as "morally responsible *individuals*." See *Ibid.* (emphasis has been modified).

230. French, *Collective and Corporate Responsibility*, 45.

when a more particular policy does not comport with a corporation's basic policy, "it is no longer the policy of that company."²³¹

There is a way of reading these passages in which it may seem like we are slipping back into a mystical conception of corporate entities: the picture seems to be one according to which the various individuals who constitute (the material aspect of) a corporation can fail to embody the soul of that corporation—its mystical essence and the seat of its personality. Of course, this is not the sort of view that French wishes to advance. Something like the following more closely approximates the picture of things which lies behind French's claims concerning attributions of decisions and actions to corporations.

The success of a corporation in following and pursuing its basic goals and policies is highly contingent upon individual persons faithfully, diligently, and—perhaps most importantly—intelligently discharging their role-specific duties within the corporate or institutional structure. As French notes, "[A] corporation's only method for achieving its desires or goals is the activation of the personnel who occupy its various positions."²³² Success is also highly contingent upon the rules which govern offices and define relationships within the corporation or institution being sufficiently well developed, so as to ensure that the intelligent administration of any of the various offices is, in fact, likely to lead to the furtherance and achievement of the basic goals and policies. As this view of things makes rather obvious, there is significant room for error, and missteps are likely to occur. At the very least, some problems are likely to arise because individuals do not always faithfully and diligently discharge their role-specific duties in an intelligent manner. In the best cases, we are able to distinguish between failures and missteps that are the immediate result of individual failures and those which are the immediate result of systemic problems or structural flaws.²³³ Although it is often difficult to judge who or what is causally

231. *Ibid.*, 43, citing G.C. Buzby, "Policies—A Guide to What A Company Stands For," 5-12.

232. *Ibid.*, 45.

233. The fact that systemic problems or structural flaws are always, in the end, the outcomes of individuals'

responsible when problems arise, the distinction between individual and institutional failure may still be appropriate. We may understand French as taking the view that when a policy or decision made by individuals within the corporation does not comport with the basic goals of the corporation, that policy or decision is more properly attributable to the individual decision-makers and officers, rather than the corporation itself. This view, of course, assumes that corporations do, in fact, have goals or basic policies that *are* properly attributable to the corporation itself. More generally, it assumes that the corporation has a personality which is not immediately reducible to the personalities of its individual member-constituents.

It is here that we ought to take pause. Although French anticipates that his readers may fall under the spell of an "anthropocentric bias" when they reflect on the claim that corporations have goals and desires, he does little to convince us that we are in an epistemic position to grant that corporations and institutions literally have intentional states of this sort which are not reducible to the goals and interests of involved individuals. Michael Keeley has stated the difficulty facing French's view rather nicely. We must, he points out, distinguish between the goals people have *for* an organization and the notion that there are goals *of* an organization. The goals *for* an organization are goals or preferences possessed by natural people (we might refer to them as the stakeholders). We need not restrict ourselves to shareholders (owners) or employees when we survey the various goals people have for corporations. As Keeley notes, many people in various different positions in a community often have goals or at least expectations concerning any particular institution or corporation. While owners may view a corporation as having the goal of making a return on their investment, employees may view it as having the goal of providing a stable and livable wage. Consumers, of course, tend to describe the goal of a

actions is not thought to invalidate this way of speaking, since we are, for the time being, assuming that the structured relationships and rules which are created by individuals can give rise to a collectivity that has properties that are irreducible to the individuals considered separately—i.e., not united by rules and formal relationships.

corporation in terms of the services or goods which it makes available in the marketplace.²³⁴ Similarly, individuals have goals for their public institutions such as the military, CIA, government. The goals of an organization would be those that we claim the organization itself (somehow) possesses. French's view requires that there be goals of an organization—i.e., outcomes intended by the organization itself. Keeley raises the skeptical worry that we have no way of determining what these alleged goals are *except* by reference to the goals actual people have for the organization. We can identify the goals for an organization by surveying the various stakeholders and participants in the organization. But, Keeley argues, "it is not apparent that the... goals of an organization... can be identified by any means."²³⁵ Even if we suppose that the goals of an organization can be found in official documents (e.g., charters, annual reports, etc.), we need only recognize that these documents and statements were crafted by individuals and presumably they describe participants' goals for the organization. Or to put the matter in slightly different terms, we seem wholly justified in supposing that these documents do express or describe some participants' goals, yet we lack any epistemic reason to suppose they express or describe the corporation's own goals. There appears to be a gap between claims about what individuals want and what a corporation wants, and the present point is that this gap cannot be bridged by amassing further evidence about what individuals want or the goals they have.

Keeley imagines that a defender of institutional agency might insist that we can figure out what the organizational procedures are which govern organization behavior, and infer from those the "operative" (but perhaps unarticulated) goals of a corporation or institution. From these, we can then derive organizational intentions. But of course, inferring from behavior what the "rules of the game" are (whether they are articulated or

234. Keeley, "Organizations as Non-Persons," 150.

235. *Ibid.*

not) does not reveal that the organization itself has intentions, nor does it reveal anything by way of what "the game itself intends."²³⁶

Edmund Wall has presented a criticism of a similar form, pertaining to the claim that institutions themselves, rather than individuals, make decisions. In response to this claim, Wall points out that we must distinguish between two importantly different claims: on the one hand, we might say that a group of people may arrive at a joint intention by following an agreed-upon process of deliberation; on the other hand, we might say that there is some entity which is not identical to the group of individuals which employs a process of deliberation.

A group of individuals may have a decision-making procedure amongst themselves which, in fact, directs their individual actions so that certain results can be achieved, but that does not imply that there is some entity beyond those individuals which actually makes decisions.²³⁷

A similar thing can be said about the alleged "beliefs" of an institution, which are said to take the form of the information which is processed within an organization. Although the members of an organization may read and process and synthesize information, form beliefs, frame conclusions, etc., we need not suppose that some further entity has done any of those things.

4.6 The Consciousness Objection

Each of the aforementioned criticisms challenges the notion that we have reasons to suppose that institutions possess the cognitive or intentional states requisite for agency. They are compatible with an even broader epistemic objection. It should be noted, however, that this objection relies to some degree upon highly contentious views in the philosophy of mind concerning the nature of consciousness and the relationship between the phenomenal properties of consciousness and intentionality. In a nutshell, the objection is that we have no epistemic reasons to suppose that institutions are conscious as opposed

236. *Ibid.*, 151.

237. Wall, "The Problem of Group Agency," 189.

to non-conscious, and since we necessarily imply that a being is conscious when we claim that it is an intentional agent, we ought to be highly suspicious of the claim that the being in fact has the intentional states it is alleged to have. In a moment, I will flesh out this objection in greater detail. Before doing so, however, let me note that my aim in the remainder of this section is merely to indicate the plausibility of each premise. It is beyond the scope of this dissertation to enter into the complex philosophical disputes concerning intentionality and consciousness which ultimately bear on the soundness of this argument; hence, I do not pretend to present a thorough defense of the argument in the sense of establishing the truth of each of the premises. I must leave that task to those who are better versed in the philosophy of mind.

It is well-known that we owe our notion of intentionality—that is, the *directedness* or *aboutness* of mental phenomena—to the late-19th and early-20th century German philosopher, Franz Brentano. Brentano famously claimed that desires, judgments, perceptions, emotions and so forth are mental as opposed to physical states insofar as they are intentional states, or "acts of presentation."²³⁸ Whereas physical states cannot really be *about* anything (except when *taken* to be about other things by conscious beings), mental states standardly *are* directed toward or about things, states of affairs, or properties (simple pain and pleasure are obvious examples of mental states that seem to lack this kind of directedness). Such intentional states are inescapably conscious states; there is no sense in which one state can be about another state (or thing or property) without it being about that other thing (etc.) *for* someone. Now, as I indicated in §4.3, we may suppose that *S* is an intentional agent if and only if (i) *S* has intentional states such as beliefs and desires, and (ii) *S*'s actions are explicated by reference to these intentional states. It seems to me that the possession of an intentional state on *S*'s part entails in some sense that *S* is conscious: *S* cannot be said to have an intentional state unless *S* is a conscious being. If we are unjustified in supposing that a thing is a conscious being, I take it we are thereby

238. Brentano, *Psychology from an Empirical Standpoint*, 60–61.

unjustified in supposing that it is an agent. This point accords with common sense; we would reject the possibility that trees, for example, are agents not primarily on the grounds that they do not *do* anything—we regularly talk about what trees do—but rather on the grounds that trees do not have beliefs, desires, or other conscious mental states. While we can speak about the states of a tree bringing about certain outcomes, and in that limited sense make true claims about what trees do, we do not take ourselves to be justified in claiming that their doings are caused or properly backed up by mental states.

With this in mind, I wish to suggest that recognition of the fact that we are not in an epistemic position to ascribe to institutions the sort of consciousness which the agency theorist requires can serve as a check on their claims concerning the possession of intentional states by institutions. In that way this "consciousness objection" serves to undermine the force of the arguments provided in defense of institutional moral agency.

The consciousness objection proceeds by making a claim about institutions which is similar in form to the claim made above about trees. While we can speak about the internal decision making structures which (at least partially) constitute an institution bringing about or making possible certain outcomes, and thus in this limited sense we can make true claims about what institutions do, we are not justified in claiming that the outcomes of individuals acting within an institutional structure are caused by mental states of the institution itself (rather than the mental states of its participants, stakeholders, or other relevant individuals).

The matter is very different when we consider the individuals themselves. We feel confident and justified in claiming that certain of the things which individuals do are caused by their mental states for at least two reasons. First, and perhaps most intuitively, we rely on a kind of analogical reasoning. Each of us believes that certain of our *own* actions are caused by antecedent mental states. For example, I have typed this English sentence because a moment ago I found myself desiring to provide an example of behavior on my part that is caused by one or more conscious mental states—in this case, a desire, as well as

the belief that typing this sentence will cause my readers to recognize the sort of phenomena currently under discussion. When I see other people engaging in behavior which is very similar to my own, I justifiably (though fallibly) conclude that their behavior is also caused by conscious mental states. The second reason we are justified in claiming that certain of the things which individuals do are caused by their mental states is related to the first in an important way. In addition to recognizing an analogy between my own case and the case of another, I also recognize that I have no other viable explanation available to account for the other's behavior. When I read my students' essays, for example, the only viable explanation I have available to account for the fact that they have handed me sheets of paper containing markings that I interpret as English words strung together in sentences and paragraphs is that they had a certain understanding of my expectations concerning what they were to do over the weekend as well as certain desires and beliefs concerning how to meet those expectations.²³⁹

Returning to the case of the institutions, we find ourselves lacking either of these two bases for ascribing conscious mental states. While we can and do construct narratives in which we anthropomorphize institutions, we do not find ourselves observing the behavior of institutions in a way that would justify drawing an analogy between our own inner mental life and the possible inner mental life of the institution. What we *do* see are fellow human beings acting. This speaks to the second issue: since the only behaviors we observe when we look to see what an institution is doing are the behaviors of our fellow human beings, we have a ready-at-hand explanation for these institutional goings-on. Namely, we can appeal to the same sorts of psychological explanations which we would use to account for our own behavior. What is to be taken note of is the fact that we are not

239. Notice that saying that I lack a viable *alternative* explanation for this behavior does not preclude me from admitting that there is some *further* explanation or account to be given concerning the underlying causes or states of affairs that make it the case that my students have the mental states I imagine them to have. I need not import any philosophical preconceptions concerning mental substances, mental properties, or the reducibility or irreducibility of mental states to brain states, or so on. And I need not necessarily deny that any such further account may be true.

justified on pain of inexplicability to suppose that institutions themselves have an inner mental life. We can explain institutional goings-on by appeal to facts about individuals and their relations. In the case of these individuals, by contrast, we *are* justified on pain of inexplicability in supposing that they each have an inner mental life. We take it that observations of at least some of their behaviors require attributing to them conscious mental states.

Against this line of argumentation, a defender of the institutional agency theory will argue that the "doings" or "decisions" of a corporation are not always immediately attributable to particular individuals, but rather to the institutional structure which is to be taken as the core or essence of the institution. Hence a robust and fully adequate explanation of corporation "action" does place us in the position of needing to posit that the institution possesses intentional states, else these institutional outcomes would be unexplained. Let us carefully examine how this story is supposed to go to see whether this conclusion is inescapable.

The first task is to explain the sense in which certain doings or decisions are not properly attributable to individuals. As we saw, French correctly supposes that when individuals find themselves within an institutional structure, their personal values, desires, and beliefs can be effectively silenced or rendered inoperative through the incorporating efforts brought about by the policies and rules which govern their official activities. For example, it is not uncommon for academics to accept positions at private colleges which are associated with religious organizations to which the academic herself does not belong. While the individual may not share the values or beliefs which the institution as a whole is expected to promote, it often remains possible for her adequately to fulfill the role of, say, a philosophy or history professor in the institution, and even to contribute in a role-specific way to the promotion of the institution's religious goals (e.g., by offering certain courses relating to the religious worldview promoted at the institution). Similarly, those who are familiar with Bernard Williams's criticisms of utilitarianism will be familiar with his

hypothetical situation concerning a chemist, George, who is morally opposed to the use of biological weapons, and yet finds himself presented with the opportunity to take up a position in a weapons manufacturing facility. Williams fully accepts that George could, conceivably, fulfill the role-specific duties associated with such a position despite his personal commitments.²⁴⁰ Although situations like this may raise interesting problems concerning moral integrity—a point which Williams makes—the following point seems largely beyond doubt: as long as a role is defined by rules that govern behavior and activity, not beliefs or values, then it is largely unimportant which particular beliefs or values an individual occupying the role happens to have. Such an individual can usually be caused to act in ways that she otherwise would not have were she not placed in the institution in precisely that way. If an institution is understood primarily as a set of offices or roles, and the behavior of those who fill these offices or roles is governed in this manner, it is both conceptually and practically possible for individual officers within the institution to make decisions that diverge from the decisions they would have otherwise made.

Let's carefully note what is being said here. The foregoing considerations simply reveal that it can end up being the case that a group of individuals, standing in the relations made possible by the rules and policies under which they operate, will, individually or in tandem, reach decisions and bring about outcomes that they would not have reached or brought about were it not for the fact that these rules and policies were in place. The defender of institutional agency wishes to suggest that this evidences the fact that some of the decisions and actions of individual corporate actors are thus more properly understood as being caused by the institutional arrangement, rather than the individuals themselves.²⁴¹ But it cannot be emphasized enough that reductive

240. Smart and Williams, *Utilitarianism; For and Against*, 97–98.

241. This is what Erskine has in mind when she writes, "Responsibility is simply not distributive in this way [to individuals]. Instead, *the group itself* is the agent." Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'," 22. See the introductory remarks to this chapter for my earlier reference to this claim.

individualists need not and should not deny any of this. Any sufficiently comprehensive reductionist approach to corporate activity admits that it is facts about individuals, their properties, and their relations, which are sufficient to explain "corporate" activity, and as we saw in Chapter Three, the individualist should not deny that individuals-in-relations (groups) cause things to happen. I thus do not see how an appeal to the joint activity of individuals or their responsiveness to institutional circumstances and demands justifies us in making attributions of even the most rudimentary or lowest forms of consciousness or intentional states to institutions. As long as institutions are populated by conscious, intentional actors, explanations of corporate outcomes are forthcoming which make reference to their beliefs, desires, and so forth.

The agency theorist's case may, at least on the face of it, be strengthened by considering a thought-experiment. If it can be shown that it is conceivable that an institution could continue to operate without relying on individuals at all, that might seem like persuasive evidence in favor of antireductive holism. Patricia Werhane has offered a fictional scenario that may be put to precisely this end. (Note, however, that this is not the purpose to which Werhane herself puts this fictional account. Like me, she is engaged in criticism of French's view, and she uses this scenario to conclude that institutions are not free agents.)

One might imagine a corporation that was operated solely by robots and computers. Such an organization, let us call it Robotron, would have a charter and legal status. It would operate like other corporations. It would own property, manufacture products, conduct marketing, correspond with other corporations and with customers, replace obsolete equipment, develop new product lines, write proxy statements, answer SEC inquiries, etc. Robotron would have stockholders and pay out dividends. It could draw up rules for robot-corporate behavior, and could develop corporate goals and a hierarchy. The rules and structure of its electronic decision-making could be such that one might call Robotron an intentional system.²⁴²

It would clearly be inappropriate to claim that statements concerning the beliefs, desires, and actions of Robotron are reducible to statements concerning the present

242. Werhane, *Persons, Rights, and Corporations*, 38.

members of Robotron, and this is due to the simple fact that Robotron has no members which are individual human beings.²⁴³ Moreover, in this case, like in the cases of other institutions, it would be inappropriate to conclude that the institutions' "doings" or decisions are random. So, does this thought-experiment thereby count as a case in which it would be appropriate to ascribe to the institution itself—to Robotron—conscious mental states? Should we conclude that Robotron has intentional states? I think not. Indeed, I think this thought-experiment may help us see precisely what is at issue in this controversy.

Robotron clearly does things, at least in one sense of that phrase. Things happen in the world as a result of Robotron remaining in operation; goods are produced and released in the market, money is deposited into shareholders' accounts, and so on. The appropriate and clearly justified way of stating what is going on here is that Robotron's organizational structure, the input of resources, and so forth cause certain outputs, and there is clearly a causal relationship between the outputs and Robotron (that is, the organization structure, the policies, rules, and goals that largely constitute Robotron). Yet notice that this merely establishes that corporate outputs may be given a mechanistic explanation, and such a mechanistic explanation does not imply agency. Here again we find ourselves utterly without grounds upon which to believe that Robotron has conscious mental states, for the mechanistic explanation is a wholly adequate explanation. There is no explanatory gap that must be filled by positing that Robotron has internal mental states.

To head off a possible objection, let me note that none of this should be construed as denying the potential utility of using intentional language to describe and predict institutional outcomes. As a way of defending the notion that institutions are intentional agents it is sometimes argued that the language of collective intentionality has predictive

243. Of course, Robotron was presumably created by individuals, and thus a causal story of why it does what it does will ultimately make reference to individuals. But let us set aside that worry. We might, after all, imagine that Robotron is no longer within the control of anyone; it has "gone rogue." The causal story will be important in fixing responsibility for the things Robotron does, but if the company is genuinely beyond the control of anyone, it will have little bearing on claims about Robotron's duties and obligations (assuming, of course, it even makes sense to say that it has duties and obligations).

power. It is well known that Daniel Dennett has advocated adopting an "intentional stance" when we are trying to predict future behavior of a complex system. Dennett explains what is involved in adopting this stance:

first you decide to treat the object whose behavior is to be predicted as a rational agent; then you figure out what beliefs that agent ought to have, given its place in the world and its purpose. Then you figure out what desires it ought to have, on the same considerations, and finally you predict that this rational agent will act to further its goals in the light of its beliefs. A little practical reasoning from the chosen set of beliefs and desires will in most instances yield a decision about what the agent ought to do; that is what you predict the agent will do.²⁴⁴

Dennett is careful to note that it is not the case that all systems whose behavior is susceptible to being cast in intentional language in fact have intentional states. However, it has become somewhat popular for defenders of institutional intentional agency to rely on the predictive power of the intentional stance when making their case. Deborah Tollefsen, for example, uses this "interpretationalist" approach to defend the notion that corporations are "true believers."²⁴⁵ But such an approach takes too narrow of a view. What is at stake in the debate over intentional agency is not whether it is sometimes or even oftentimes useful to describe institutional behavior using the language of intentionality. It is, rather, whether we are ultimately justified in supposing that the attributions of intentional states ought to be construed literally. The availability of mechanistic or quasi-mechanistic explanations speaks strongly against us being so justified. When we contemplate the doings of corporations and when we contemplate the doings of our fellow human beings we do not find ourselves in precisely the same epistemic position. As I stated earlier, unlike when we are attempting to explain the behavior of individuals, when we turn our attention to institutions we are not justified on pain of inexplicability in supposing that they have an inner mental life.

Where does this leave us? The picture I wish to advance is one in which we should take seriously the fact that individuals can and sometime do occupy the role of "cogs in the

244. Dennett, *The Intentional Stance*, 17.

245. Tollefsen, "Organizations as True Believers."

machine." While this does make it true that certain events and states of affairs cannot be wholly accounted for except by partial appeal to the structure of an institution (namely, those events and states of affairs which we describe as institutional or corporate outcomes), we should not thereby conclude that the "machine" is conscious, or in possession of intentional states, and therefore we should not conclude that institutions are agents in any sense.

CHAPTER FIVE
AN INTERPRETATIVE FRAMEWORK FOR MAKING SENSE OF
INSTITUTIONAL DUTY-CLAIMS

In the previous chapter I argued that we are not justified in believing that states or other institutions are themselves agents capable of having and acting on reasons. Those who have wished to defend the notion of institutional agency have adopted the strategy of arguing that we (third-party observers) occupy more or less the same epistemic position when contemplating whether institutions have intentional states as when we contemplate whether other human beings have intentional states. Since we take ourselves to be justified in supposing that our fellow human beings are intentional agents, we are also justified in supposing that institutions are intentional agents. I have argued that this is false; we do not find ourselves in the same epistemic position. The significant difference is that when we set out to account for corporate or institutional outcomes, we have a perfectly sensible and relatively clear explanation of how these outcomes are brought about, and this explanation does not require that we posit that the institution is itself conscious, or that it has intentional states.

I would like to emphasize that I have *not* claimed that institutions are, in fact, non-conscious; I have not claimed that it is impossible or inconceivable that an institution may be possessed of consciousness or have intentional states. My claim is a much weaker one. I have merely insisted that we lack any *evidence* that institutions are conscious.

I would also like to note that although I will advocate a reductive individualist thesis concerning the appropriate analysis of institutional duty-claims, I will remain agnostic on the question of whether institutions are, in all respects, reducible social objects. In other words, although I think that moral claims about institutions are susceptible to either reduction or translation (a distinction I will explain below), I have not insisted that *all* claims about institutions are reducible to claims about individuals. In Chapter Three I

discussed a set of conditions that, if met, might suggest that certain claims about a social object are irreducible to claims about individuals, their properties, and their relations. Namely, it would have to be the case that the social object has, intrinsically, at least one simple property which cannot be predicated of the group once it is analyzed as a set of individuals-in-relations. This, it seems to me, is the only possible strategy available for resisting a reductive analysis, for it is built into the requirement that the property not be one which is possessed merely in virtue of the social object's individual parts standing in relation. Although I cannot think of an example of such a property held in such a way, and although I doubt there is any such property, even if such a one were found, it would have little bearing on my view. As long as none of the properties relevant to moral agency attach to institutions in this way, a reductive individualist approach seems called for. But again, whether social objects are in some other sense irreducible is, as far as I am concerned, an open question.

Of course, those who defend institutional moral agency may be understood as holding that institutions *do* have the relevant agential properties (that is, properties that are necessary for or constitutive of agency). If they are correct in supposing that institutions possess simple agential properties in a way that resists reduction, they would clearly be correct in asserting that institutions are irreducible or ineliminable agents. However, if I am correct in claiming that we are *not* justified in supposing that institutions possess agential properties, we must conclude that the case for irreducible moral agency has not yet been made.

Although I will continue to remain agnostic on the issue of whether social objects more generally and institutions in particular are in *some* sense irreducible objects, I believe that in the absence of reasons to think otherwise, we are methodologically justified in adopting a reductive individualist perspective. It is sometimes suggested that those who take this individualist line commit themselves to the position that social objects are fictional entities, or in other words, that social objects do not (really) exist. This is

undoubtedly because some scholars who favor the individualist ontological thesis *have* suggested that the state or other social objects do not exist. For example, the international relations scholar Robert Gilpin has explained, "the state does not really exist.... Only individuals really exist..."²⁴⁶ I firmly deny that institutions or other social objects are fictional entities. As I briefly indicated in Chapter Three, such a view misunderstands what is being asserted when we assert that claims about social objects may be reduced to claims about individuals.

I will explain what I have in mind here in the following section. I will then revisit the worries associated with a reductive individualist analysis of institutional duty-claims in §5.2. In §5.3 I will flesh out a reductive individualist analysis which avoids these worries. As I will explain, this reductive individualist analysis reveals the truth-makers for a certain important class of claims which we make about institutions; however, it becomes apparent that certain other claims cannot be fruitfully analyzed in that manner. Thus, in §5.4 I will argue that certain of our institutional duty-claims stand in need of *translation* rather than *analysis*, a distinction I will explain at that time.

5.1 Reducibility and Eliminability

As explained in Chapter Three and as mentioned above, reducibility of the kind that I am concerned with is a matter of terms of one sort being analyzable in terms of another sort. To say that claims about a social object are reducible to claims about individuals is to say that we can analyze the former in terms of the latter.

It is sometimes supposed that if the reduction of claims about social entities to claims about individuals is possible, then social objects do not really exist, where this seems to mean that they do not exist in any sense. This is an erroneous and pernicious supposition. I would claim that it is obviously erroneous; but as things stand, it is clear that the error is *not* obvious to some commentators and so it must be made so. This may be achieved by first reflecting on the fact that if it were true that social objects do not exist,

246. Gilpin, "The Richness of the Tradition of Political Realism," 301.

then most claims in which a social object figures as a subject-term would be false. For example, suppose there are a number of musicians who regularly perform together and who bill themselves as Orchestra Iowa. Let's also assume, as the individualist is alleged to assume, that the social object known as Orchestra Iowa does not exist. It would follow, then, that the claim, "Orchestra Iowa performed Mahler's *Resurrection*" would be false, for any claim about what a non-existent entity does is *ipso facto* false. This is clearly a strange conclusion for if the aforementioned musicians assemble in their normal concert venue, and together they played Mahler's symphony, and they did all this while billing themselves as "Orchestra Iowa," then it would be *true* that Orchestra Iowa performed Mahler's *Resurrection*.

The solution, here, isn't to reject reductionism. What ought to be jettisoned is, instead, the strange supposition that the subjects of reducible claims are non-existent insofar as claims about them are susceptible of reduction. The great benefit of reductive individualism is that it helps us see what has to be the case in order for a claim about social objects to be true. Indeed, the conditions just surveyed capture perfectly a very simple and very straightforward individualist account of the truth-makers for the claim concerning the performance of Mahler's *Resurrection*: the various relevant individuals show up, perform the appropriate piece of music in the appropriate sort of way, etc. Far from denying the existence of social objects, reductive individualism reveals *what it is* for social objects to exist. Of course, it thereby does reveal what it is for a social object not to exist as well. If the individual musicians do not actually exist (if I made them up), then the group they allegedly constituted would also not exist.

Why the confusion? A partial answer may be that critics of reductive individualism are prone to commit a related error: they seem to interpret the individualist as holding the implausible view—or rather, the clearly false view—that all properties of social objects are properties had by individuals. But reductive individualism does not commit us to anything of the sort. There clearly are properties of social objects which no individual persons

possess (e.g., the property of being the object of disdain, or the property of having been subject to a lawsuit). What reductive individualism as I have presented it claims is that any such property is (a) an extrinsic or relational property, (b) a complex property, and/or (c) a property which is capable of being predicated of the individuals understood as standing in relations. This is the case with both of the examples; the property of being the object of disdain is clearly a relational property, and the property of being the subject of a lawsuit is dependent upon a variety of external factors, most obviously, the legal system. Even if claims about social objects are always capable of being reduced (at least in principle) to claims about individuals and their properties and relations, and thus social objects do not figure into our ontology as basic constituents, social objects would nevertheless figure into our ontology as complexes built up out of ontologically more basic parts (individuals).

In short, the reductive individualist should be understood as having a view concerning the manner in which social objects exist which rivals antireductive holism; it should not be viewed as holding that social objects are fictional entities. Eliminativism or fictionalism is a rival to *both* reductive individualism and antireductive holism. Moreover, once we understand the individualist view, the fictionalist alternative ought to be viewed as a *highly suspect* rival thesis, for clearly groups do exist—individuals do stand in relation to one another and standing in these relations gives rise to states of affairs, facts, and properties which would not be possible if the individuals were isolated from one another.²⁴⁷

5.2 Revisiting the Concerns Facing Reductionism

In Chapter Two I argued that when we say, "S has a duty to *a*," we imply that S has (or ought to have) epistemic access to some consideration which would justify S doing *a*. I explained that if S—the subject in question—cannot access the considerations which count in favor of such action, S does not *have* a reason; hence, any claim to the effect that S does

247. For a discussion concerning various perspectives on this issue, see March and Olsen, "The New Institutionalism."

have a reason would be false or metaphorical. For example, if someone were to argue that a housecat had a moral duty to refrain from tearing up the furniture, we ought to reject such a claim as false since the cat cannot access whatever reasons there might be in favor of it refraining from tearing up the furniture. If the speaker would insist that this isn't the point, we should assume that he was using the utterance to register his dismay at the cat's actions or some such thing. The same is true for non-conscious things; if someone were to make a claim about the moral duties or obligations of a car or water heater, such claims ought to be dismissed as obviously false when interpreted literally since cars and water heaters cannot access whatever reasons we might have for wanting them to function in certain ways rather than others. If the conclusion of the argument from Chapter Four is correct—if we are unjustified in supposing that institutions are conscious and are thus unjustified in supposing that they have access to reasons for action—it will follow that institutional duty-claims, if strictly interpreted as claims about the reasons institutions have for acting, will be metaphorical or false, much in the way that the claims about the moral duties or obligations of a car or water heater are metaphorical or false.

Notice, however, that this conclusion concerning the falsity of institutional duty-claims is premised upon the assumption that duty-claims have a strictly univocal meaning across individual and institutional contexts (they are not metaphorical) *and* that reference to an institution is not a short-hand way of making reference to individuals (they are not analyzable into claims about individuals). The question that arises is whether either or both of these assumptions *ought* to be accepted.

The first assumption seems justified. In at least some of the contexts in which people have occasion to speak of an institution's duties, they do mean to make a moral claim about the institution; they seem to mean what they say. Of course, sometimes claims which, on the face of it, *seem* to be institutional duty-claims may in fact be used to convey propositions that have nothing to do with the attribution of a duty to an institution. However, we need not concern ourselves with such cases at this time.

The second assumption expresses an antireductive holist approach to institutional duty-claims; in the absence of any reasons to suppose that institutions have properties of the sort that would make them irreducible objects for the purposes of duty claims, we seem justified in rejecting the second assumption. However, this raises an important difficulty. It will be recalled that in the first chapter I presented some cases in which it seemed appropriate to interpret institutional duty-claims in an antireductive manner. I indicated that a reductive individualist analysis seemed inappropriate because it would effect a loss of meaning; specifically, we saw that when we interpret institutional duty-claims as individual duty-claims the former were no longer able to figure into moral deliberation as providing non-trivial justification for action on the part of those persons who would presumably be referenced as subjects in the reduced individual duty-claim. It seemed plausible to say that one of the non-trivial reasons Bush administration officials thought that they had duties to take whatever steps were required to secure the protection of U.S. citizens was because they believed the *state* had a duty to protect its citizens. On a straightforward reductive individualist analysis of the institutional duty-claim, however, the claim that the state had such a duty would provide only trivial justification for such a conclusion since the relationship of the institutional duty-claim to the individual duty-claim is of *analysandum* to *analysans*. The former claim *does* justify the latter on this view, but it does so only because the latter is an analysis of the former. The matter is strictly parallel to the following well-worn argument:

- (1) S is a bachelor.
- (2) S is a bachelor if and only if S is an unmarried man.
- ∴ (3) S is an unmarried man.

In this case, premise one does serve to justify the conclusion in the sense that its truth guarantees the truth of the conclusion, but it does so only in a trivial sense. As asserted in the second premise, it is true by definition that if *S* is a bachelor, then *S* is an unmarried man. Similarly, if we suppose that the duty-claim, "The state has a duty to

protect its citizens" is to be analyzed into a complicated conjunctive claim which includes as one of its conjuncts, "Individual members of the state $M_1, M_2, \dots M_n$ have duties to do $a_1, a_2, \dots a_n$ " (where M refers to particular individuals and a refers to actions or action-types of the sort administration officials did undertake), then the first premise of the following argument provides only trivial justification for the conclusion:

- (1) The state has a duty to protect its citizens.
- (2) The state has a duty to protect its citizens if and only if individual members of the state $M_1, M_2, \dots M_n$ have duties to do $a_1, a_2, \dots a_n$.
- \therefore (3) Individual members of the state $M_1, M_2, \dots M_n$ have duties to do $a_1, a_2, \dots a_n$.

Now, to say that the justification is trivial is not to say that the conclusion will always strike someone who believes the first premise as being obvious nor is it to deny that working through the argument may foster a greater understanding on the part of the individual member of the state who is performing the deduction.²⁴⁸ To say this would be to suggest that a large part of what philosophers do is unimportant! All that is being suggested at this point is that *if* we maintain that institutional duty-claims stand in relation to individual duty-claims as *analysandum* to *analysans*, then claims about the duties of particular relevantly situated individuals (those referred to above as " $M_1, M_2, \dots M_n$ ") may be deduced from claims about institutional duties. This feature of a reductive individualist approach to institutional duty-claims seems problematic, for it is clearly not always the case that substantive claims about individual duties can be so deduced. To see that this is so, we need only recognize that it is logically possible for the institutional duty-claim and the individual duty-claim which is allegedly derived from it to have divergent truth-values. For example, I would grant that claims concerning my duties vis-à-vis students at the University of Iowa may be derived in some way from the institutional duty-claim, "The philosophy department has a duty to educate undergraduates" (or some such thing). However, I also

248. Of course, we should hope that if someone believed *both* (1) and (2), then the conclusion would be obvious; in a related manner, if one knew both (1) and (2), then working through the argument would *not* foster a greater understanding on his or her part.

know that there will come a time when I no longer occupy a place within the philosophy department. When that time comes, those same claims concerning my duties vis-à-vis students at the university will no longer be true; most of them will turn out to be false. Let us call the set of claims concerning the duties of specific individuals within the philosophy department (including myself) ϕ , and let us refer to the relevant institutional duty-claim from which ϕ is derived as D . To say that ϕ is related to D as analysans to analysandum is to assert a biconditional relation ($D \equiv \phi$) such that if either D or ϕ is false, then the other is false. Since, however, it is conceptually possible for D to be true, while ϕ is false, we must be mistaken in claiming that $D \equiv \phi$; that is, we must have been mistaken in supposing that D was to be analyzed in terms of ϕ .

Now, this much seems true: the claim "The philosophy department is responsible for teaching philosophy to undergraduates and assessing their work" will be true if and only if the department's teaching assistants, professors, and so forth are responsible for teaching philosophy and assessing student work. However, a substantive claim such as, "Chris is responsible for teaching philosophy and assessing his student's work" will be true only in virtue of certain additional institutional facts not referenced or encompassed by the institutional duty-claim. Specifically, it must also be the case that I am, as a matter of institutional fact, a teaching assistant in the philosophy department. The lesson here is that the kinds of propositions which relate to institutional duty-claims as analysans to analysandum are propositions concerning *role* responsibilities or role-specific duties; they are not propositions concerning particular individuals such as Chris, Diane, Richard, and so on.

Let us return to the case concerning the Bush administration officials. As I suggested, it seems plausible to suppose that Dick Cheney and other officials thought they were justified in making the decisions they did concerning the interrogation of terrorism suspects because they antecedently believed the government had a moral duty to protect its citizens. When Cheney, et al., reason from this premise concerning the state's duties to

conclusions concerning their particular individual duties, the reasoning seems clearly synthetic; what they come to believe about themselves (namely, that they have duties of the relevant sort) is something new, which was not contained within the original premise. And yet, in the aforementioned argument, we are presumably to understand " $M_1, M_2, \dots M_n$ " as a chain of rigid designators which pick out particular individuals such as Dick Cheney, George Bush, Condoleezza Rice, and so forth. If we apply the previous lesson here, we should recast the second premise (and thus also the conclusion) in terms that designate roles, not particular individuals, or at least terms that designate individuals *qua* their official status. The following argument reflects this modification and it seems to capture the kind of deliberation we might plausibly imagine an individual engaging in. Since the argument is intended to express the ratiocination process, the fourth premise has been worded in the first-person:

- (1) The state has a duty to protect its citizens.
 - (2) The state has a duty to protect its citizens if and only if individual members occupying offices within the state $R_1, R_2, \dots R_n$ have role-specific duties to do $a_1, a_2, \dots a_n$.
 - (3) Individual members occupying offices within the state $R_1, R_2, \dots R_n$ have duties to do $a_1, a_2, \dots a_n$.
 - (4) I occupy the role of R_1 .
- \therefore (5) I have a duty to a_1 .

The analysis of the institutional duty-claim being employed avoids the worry concerning moral deliberation which arose when we assumed that reduction had to be made in terms of specific, named individuals. We have preserved the sense in which a judgment concerning a particular individual's duties derived from an institutional duty-claim is a synthetic rather than an analytic judgment.

It may be objected that this analysis is no longer a properly individualist analysis, for in addition to individuals, their properties, and their relations, we must now, it seems, posit the existence of institutional offices. This would be a mischaracterization of the view.

Claims about institutional offices are themselves analyzable in terms of claims about individuals. The relevant kinds of claims here are ultimately claims about individuals' beliefs about the conditions a person must meet in order to "count" as an official, as well as claims about the dispositions of individuals to treat those persons as having that status. As John Searle has explained, these are perfectly ordinary and non-mysterious sorts of facts about individuals which require only that we be able to engage in what we call joint-intentions. A joint-intention has the form, "We will *a* in C," where *a* denotes some action (most relevantly, a mental act) and C denotes a relevant circumstance in which the action is to be performed. Our ability to engage in joint-intentions makes it possible for us to accord things and individuals "status functions" whereby a thing or person X is said to count as Y—for example, Barack Obama is said to be (to count as) the President of the United States because we agree that when a person meets certain conditions he or she thereby comes to possess the duties, obligations, and rights which we associate with the presidency.²⁴⁹

A difficult question arises at this point. It ought to be asked, "Which individuals' attitudes and beliefs matter? Who among the various people of the world must come to agree that when X meets such-and-such conditions, he or she thereby counts as a Y?" We set out in the passage above with the goal of trying to make sense of what an office is, and the proposal put forward appeals to the beliefs and attitudes of individuals. The temptation is to say that the truth-makers for claims about offices are the beliefs and attitudes of individuals who occupy certain *roles*. For example, we might say that it is the shared beliefs and attitudes of the citizens of the United States which are relevant when it comes to defining and sustaining the office of the presidency. But then we must ask, "In virtue of what is a person to count as a citizen? What accounts for *that* office or role?" The problem with which we are faced is that we require a criterion for group membership: we need to know what kinds of facts would ensure that individuals are to be considered members of that class of people whose beliefs and attitudes serve as truth-makers for claims about

249. Searle, "Social Ontology and Political Power," 7-8.

institutional offices. While I cannot, here, provide a well-worked out response to this problem, I would like to suggest the kind of response which I anticipate will be correct. It seems to me that a correct account will involve an appeal to the actual practices or behaviors of individuals; the relevant individuals will be those who, in some sense and to some degree, share in a common form of life. That is, of course, to say that they stand in relations to one another. Such an account may also admit into the story facts about the power and influence exerted by some individuals over others, as well as (perhaps arbitrarily held) notions of privilege, since such notions in fact color individuals' beliefs and attitudes, give rise to tendencies to act in relevant ways, and in large part shape the relations in which they stand with others.

In short, I believe group membership of the sort currently under discussion is ultimately a matter of fact concerning the practices, habits, beliefs, and attitudes of individuals: when certain individuals who in fact relate to one another as sharing a form of life agree to count X as a Y , then (at least for them) X is a Y . But we need not suppose that they have antecedently agreed to count themselves *as* a unit, or *as* members. The rather natural bonds of communal living, fellowship, and so forth are usually sufficient to get off the ground conditions in which joint-intention are possible.

A useful analogy may be found in H.L.A. Hart's work in the philosophy of law. In *The Concept of Law*, Hart argued that the move from a *pre-legal* system, which consists merely of primary rules of conduct (and often a highly unstable set of rules, at that), to a *legal* system is brought about in major part by the introduction of "secondary rules." Hart labels as "primary rules" those rules of conduct which actually govern behavior. Secondary rules, however, are rules *about* the primary rules:

Under rules of the one type, which may well be considered the basic or primary type, human beings are required to do or abstain from certain actions, whether they wish to or not. Rules of the other type are in a sense parasitic upon or secondary to the first; for they provide that human beings may by doing or saying certain things introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations. Rules of the

first type impose duties; rules of the second type confer powers, public or private.²⁵⁰

Perhaps the most important of the secondary rules—that rule which any legal system must have—is what Hart calls the "rule of recognition." This rule sets the criteria against which we can judge whether any of the primary rules in the system are *valid*:

Wherever such a rule of recognition is accepted, both private persons and officials are provided with authoritative criteria for identifying primary rules of obligation. The criteria so provided may... take any one or more of a variety of forms: these include reference to an authoritative text; to legislative enactment; to customary practice; to general declarations of specified persons, or to past judicial decisions in particular cases.²⁵¹

A primary rule is valid just in case it accords with the various criteria (whatever they might be) expressed by the rule of recognition. Since the rule of recognition states or expresses the criteria of validity, it itself can be neither valid nor invalid.²⁵²

The question thus arises, "How do we determine what the rule of recognition is?" It is in his response to this question that the analogy is to be found. Hart's response hinges on acknowledging a crucial difference concerning the recognition of primary and secondary rules by individuals within the societies in which they are found: whereas primary rules can be ignored or disregarded—that is, it is possible for *everyone* to fail to recognize the validity of a certain primary rule—the same is not true of the rule of recognition. "[T]he rule of recognition exists only as a complex, but normally concordant, practice of the courts, officials, and private persons in identifying the law by reference to certain criteria."²⁵³ The rule of recognition is thus a matter of *behavior* or *practice*. "Its existence is a matter of fact."²⁵⁴

250. Hart, *The Concept of Law*, 78–79.

251. *Ibid.*, 97.

252. *Ibid.*, 102–103.

253. *Ibid.*, 107.

254. *Ibid.* Of course, the worry about "Which individuals?" arises here, too. Earlier we asked whose attitudes and beliefs serve as the truth-makers for claims about offices. Here we might ask whose behavior matters? So although I have presented Hart's treatment of primary and secondary rules as an analogy that helps demonstrate the plausibility of grounding certain questions about social facts in practices or forms of life, I think we should admit that it will ultimately require something like the very explanation I provided above.

5.3 The Reductive Analysis of Institutional Duty-Claims

I've provided an analysis of institutional duty-claims in terms of role-specific responsibilities, where the analysis of the institutional duty-claim does not (typically) specify particular individuals, but rather institutional roles or role-specific duties. This analysis allows that in order for an individual within an institution to know what her specific duties are, she needs to know not only what the duties of the institution are (what the role-specific duties of officials are), but that she *occupies* an office or role within that institution.

There is, it seems to me, a large number of state duty-claims which are analyzable in this way. For example, both of the duty-claims which I pulled out of the discussions concerning the use of enhanced interrogation techniques seem susceptible to this kind of reduction. I have already suggested how we might analyze the claim, "The state has a duty to protect its citizens." The claim, "The state has a duty not to torture individuals" may be given a similar treatment. Presumably, if we were to carry out the reductive analysis, we would identify a set of claims concerning the duties or obligations that attach to certain critically important offices within the government (e.g., the office of the chief executive), or claims about the sorts of actions various agents are and are not authorized to undertake. Language from President Obama's executive order concerning the use of enhanced interrogation techniques may be taken as representative of some of the elements of such a reductive analysis; we might suppose, that among other things, the analysis would include statements such as the following:

persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.²⁵⁵

255. Obama, "Executive Order 13491: Ensuring Lawful Interrogations."

Let us refer to the conjunction of propositions expressed in this statement as well as any other relevant propositions concerning the duties and obligations of agents of the state as θ . The reductive analysis reveals that the institutional duty-claim, "The state has a duty not to torture individuals" will be true just in case θ is true. If θ is false—if some or all of the conjunctive propositions are false—then the institutional duty-claim will be false.

At this point it may be useful to comment on the practical value of this reductive individualist approach. One of the troubling features of political discourse is that it is not manifestly clear what people mean when they assert the state has a duty to do one thing rather than another, and it is thus very difficult to determine how such a claim could be *refuted*. This is particularly troubling when we recognize that the state duty-claims put forth by rival political factions are practically incompatible, and thus at least one of the claims seems to require refutation. For a set of examples, consider again the duty-claims put forth in the disputes concerning health care reform. The notion that the state has a duty to ensure universal access to health care seems largely incompatible with the notion that the state has a duty to respect the economic rights of individuals by keeping health care and insurance markets free and open. When faced with this fact, those of us who wish to find some kind of resolution of the dilemma might rightly wonder whether one or both of these claims is actually false or at least improperly formulated. If we were able to invalidate the one, we might have a better sense of how to go forth and shape our policies.

It is here that the reductive analysis I have presented may be of some use. Insofar as state duty-claims are to be analyzed in terms of conjunctive statements concerning the role-specific duties and obligations of officials within the state, we have before us a general account of the truth-makers for those state duty-claims. As I mentioned just a moment ago, a state duty-claim will be true just in case its analysis is true; if the propositions which constitute its analysis are false, the state duty-claim will be false. (Of course, there may be a similar proposition somewhere in the neighborhood of this proposition which is true, owing to the fact that the propositions which constitute *its* analysis are themselves true.)

When we wish to figure out whether a state duty-claim is true, we would be well-served to provide a more or less rough analysis of that duty-claim and then assess whether the reduced claim is true or false.

While this may seem overly complicated, it is not. The suggestion here is one which should garner widespread support. It is merely the two-part claim that (1) all it is for the state to have a duty to do something *a* is for the officials which constitute the state to have duties of relevant sorts, and (2) if we are to determine whether we are correct in saying that the state has a duty to do *a*, we must determine whether we are correct in saying that officials have duties of those relevant sorts. My suspicion is that political discourse oftentimes stays at the level of assertion and counter-assertion concerning the state's duties and for that reason it is difficult to resolve disputes concerning the state's duties. But this difficulty may be overcome at least to some degree by turning our attention to questions concerning the duties of officials.

5.4 Toward a More Complete Interpretive Framework

Now, it may happen—indeed, I anticipate that it will often happen—that once we come up with a rough-and-ready analysis of a state duty-claim which we have hitherto relied upon in crafting an argument concerning social policy we will find that the analysis does not reflect what we meant when we made the original assertion. Consider again as an example someone saying that the state has a duty to ensure universal access to health care. According to our reductive analysis, if such a speaker meant what he was saying, this ought to be equivalent to a (perhaps complicated) conjunction of claims concerning the actual duties of officials. Yet it is apparent when we reflect on the typical contexts in which such a claim is made that this is *not* what is meant. A claim of this sort is typically advanced as a consideration in favor of reforming or modifying the kinds of role-specific duties officials have; it is not put forth as an assertion concerning their current duties. This point may be emphasized by considering how advocates of universal health care have responded to the recent challenges that have been made to the Health Care Reform Act. In March of 2012,

the Supreme Court heard arguments concerning the constitutionality of the so-called "individual mandate"—the part of the law which would institute a tax penalty on individuals who failed to purchase health insurance.²⁵⁶ Given, at that time, the perceived unlikelihood that the Court would uphold the individual mandate, some advocates of universal health care were much more explicit about the fact that they took the important question not to be whether our current legal structures allow for such policies, but whether they *ought* to be made to allow for such policies. The admission they made was that the individual mandate might, in the end, be unconstitutional, but that would simply point up the need for a carefully worded amendment to the constitution. In a similar manner, we might assume that those who make the broader or more basic claim that the state ought to ensure universal access to health care do not mean that this is currently something which officials have an obligation or duty to do, but rather that it would be valuable to make it the case that officials have an obligation or duty to pursue such a goal.

This case is meant to illustrate a broader point: we may realize that much of the time when we find ourselves claiming that the state has a duty to do something or another, we don't really intend to be saying anything at all about officials' actual role-specific duties. And yet, this is what the aforementioned analysis yields. It may seem that this evidences the inadequacy of the reductive analysis; however, careful attention will reveal that in such cases, the putative institutional duty-claims are not duty-claims at all.

In one sense, I think this must be obvious, given everything that has been said up to this point. What could we possibly mean when we assert that the state has a duty to do some action *a* or bring about some outcome *o*, other than that *a* is something which the officials who wholly constitute the state ought to do, or *o* is something which they ought to bring to fruition? If the state isn't an agent over and above individual actors, this *must* be what we mean. How, then, are we to respond to the present difficulty?

256. See Mears, "Supreme Court Considers Whether to Let Parts of Health Care Law Stand."

I wish to argue that the solution lies in recognizing that claims which take the grammatical form, "The state has a duty to *a*," oftentimes stand in need not of direct analysis, but *translation*. Translation is required when we find that (a) we are attributing duties or reasons for action to individuals other than those individuals which constitute the state, and/or (b) we are not making a claim about anyone's duties whatsoever. In other words, translation is required when we realize that the apparent attribution of a duty to the state was a metaphorical way of stating something else entirely.

I have suggested that when people say, "The state has a duty to ensure universal access to health care," they may be fruitfully interpreted as claiming that a possible state structure—viz., a structure in which the goal of universal access is within the purview of the state's officials—would be *good*; that is, it would be productive of value. Of course, they also seem to mean something else in addition to this; in stating that this is the state's duty, they mean to suggest not only that it would be good, but that it thereby ought to be brought about. For this reason, we should interpret the claim to be not about *the state*, but about *us*. When we claim that the state has a duty to ensure universal access to health care, we should understand ourselves to be saying that *we* ought to make it the case that the goal of universal access is within the purview of the state's officials. When a putative state duty-claim is used in this way it is not really about the duties of the state (that is, it is not about the duties of the state's officials); rather, it is a claim about the kinds of institutional structures that we are morally justified in putting into place. In other words, the statement, although it appears to be a statement about the state's reasons for action, is actually better understood to express the reasons we have for acting: we, the people—understood here as the sovereign authority whose will is the ultimate grounds upon which policies are to be based—ought to will it to be the case that the state be structured differently. Assertions of this sort capture the reasons we have for crafting our institutional policies and conferring upon individuals who occupy offices within our institutions new and perhaps hitherto unusual duties, obligations, and rights. I choose to call this a translation rather than a

direct analysis because the underlying propositions expressed by a "genuine" duty-claim and those expressed by a merely putative duty-claim seem to be of very different kinds. The former are properly characterized as institutional duty-claims since they are about the reasons for action officials have; the latter are not properly characterized as institutional duty-claims since they are not directly about reasons officials have for action, but rather about the utility or value of modifying our state structures.

The interpretive framework that I have presented here is one in which certain putative state duty-claims can and should be understood (by way of analysis) as claims about what officials within the employ of the state have reasons to do in virtue of the fact that they are in the employ of the state. Other putative state duty-claims can and should be understood (by way of translation) as claims about how the state ought to be structured, and thus the reasons we have for affecting or bringing about such a structure. The plausibility of this interpretive framework rests upon the recognition that it captures everything which we want and need to say when we engage in ethico-political discourse concerning the state.

5.5 Conclusion

It will be recalled that my overarching task has been to settle the question of the signification of the term 'duty-bound' and various cognate terms or phrases as they appear in statements of the form, "S is duty-bound to *a*," or, "S has a duty to *a*," and where it is acknowledged that there are contexts in which *S* designates a particular individual human being and contexts in which *S* designates an institution. As I explained in the opening passages of Chapter Three, the question is whether the term 'duty-bound' and its cognates have a univocal, analogous, or equivocal signification across these two relevant contexts.

I have argued that claims about institutions, including the state, ought to be understood as being analyzable in terms of claims about individuals; however, I have also argued that when it comes to claims about the duties of institutions, the relevant individual claims are not claims about *particular* individuals, but rather individuals *qua* their status as

officials within an institution. In an important sense, then, the subject of an individual duty-claim that figures into an analysis of institutional duties is an *office*, or the person (whoever he or she might be) that fills that office.

I have been suggesting (and now wish to make explicit) that the term 'duty-bound' and its cognates figure into genuine institutional duty-claims as having what seems to be a perfectly *univocal* signification; across both institutional and individual contexts, the term has the same sense. In both such contexts, when we claim that a subject *S* has a duty to *a*, we make an assertion concerning the reasons for action to which the subject has (or ought to have) access. However, in light of the reducibility of claims about institutions to claims about individuals, we have seen that this univocal signification is rather cheap and easy, for the subjects of an institutional duty-claim are actually institutionally situated individuals.

Were that the end of the matter, we should conclude that the term 'duty-bound' not only seems to have a univocal signification, but in fact has a univocal signification. For better or for worse, however, we have revealed that there is a rather common way in which we speak of institutions having duties whereby we do *not* use the term 'duty-bound' in this same sense. In at least some institutional contexts, when we claim that the state has a duty to *a*, we mean to refer not to the reasons institutionally situated individuals have for acting, but rather the reasons which would justify an institutional arrangement. We may thus conclude that in actual practice, the term 'duty-bound' has an analogous signification: it means one thing in certain contexts, and it means something else in others, but the meanings are related in rather obvious ways.

As a matter, I suppose, of personal philosophical preference, I think that we ought to restrict our usage of the phrase 'has a duty' in such a way that it always signifies that the subject of the statement has access to reasons in favor of action. In other words, we ought to use the phrase or the term in such a way that it has a univocal meaning. We *may* do so if we wish, and I think *choosing* to do so would be preferable because it would allow us to avoid confusion when we engage in policy debates. It is one thing to assert that a certain

institutional or social arrangement *is* in place such that officials have duties to act in various ways; it is another thing to suggest that it would be preferable or valuable for there *to be* an institutional or social arrangement in place such that officials would have duties to act in various ways. Unwittingly confusing these two different kinds of claims undoubtedly gives rise to the appearance that certain of our policy debates are interminable, and there is no reason to allow the confusion to persist unchecked.

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