Conclusion

This book has argued four major points:

• The corporation is not a moral agent.
• The corporate legal form is descriptively an instrument of the state.
• The corporate legal form prescriptively ought to be an instrument of the state.
• Actual corporations prescriptively ought to be primarily the instruments of their incorporators.

This conclusion will briefly summarize the main arguments for these points but also highlight how these points are interconnected.

First, I argued that the corporation is not a moral agent by setting up three necessary conditions for moral agency which are: an ability to intend an action, an ability to perform an action, and an ability to autonomously choose an intentional action. These three abilities are the metaphysical foundation that any corporation would at least have to meet in order to qualify as a moral agent. As I progressed with the explication of the theories of Peter French and other advocates of corporate moral agency I found that disagreement did not lie in the choice of conditions for moral agency, but primarily in the interpretation of the moral agency abilities. The morally relevant sense of these abilities was then further specified. I said that awareness of one’s intentions and one’s choices are necessary for lodging moral responsibility with an agent for its actions, which suggests that the intention and autonomy abilities are metaphysically mental states. The ability to perform an action was also specified further. I maintained that a moral agent must be able to perform an action on its own or through the help of non-free agents who do not act independently when representing their principal. This is because moral responsibility is not transferable from an agent to a principal if the agent is acting independently.

I primarily considered the theories of French, De George, Donaldson, Werhane, and Pettit, who all advocate some form of corporate moral agency that may be logically distinct from the corporate members. I found that these theories
could not satisfy the three necessary and morally relevant criteria in part because they instrumentally attribute moral agency abilities to the corporation rather than showing that the corporation can possess these abilities itself as distinct from its corporate members. This instrumental attribution of moral agency abilities to corporations parallels our linguistic use of corporate names as the subjects of moral responsibility attributions. However, we cannot simply move from a semantic attribution of moral blame to corporations and then claim that corporations are moral agents in a metaphysical sense.

Nevertheless, making sense of our linguistic use of corporate names for attributing moral blame is far from irrelevant. I went on to discuss what it is we are referring to when we use corporate names as the subjects of moral responsibility attributions, which is the flip side of inquiring whether or not a corporation is a moral agent. Having already maintained that a corporation is not a moral agent logically distinct from its members, I suggested that the corporate names refer to the corporate structure, which in turn specifies the positions that corporate members fill. Because it might only be a subset of the corporate membership that are morally responsible for a certain event we only use the corporate name to broadly encompass those in whom responsibility resides, but we do not distribute responsibility until it is transparent exactly who those individuals are.

I then proceeded to explore if we could construct a more robust theory of corporate moral responsibility with the aid of either Bratman or Tuomela’s theory of collective intentionality. The idea was that it might be possible to construct a better theory of corporate moral agency that meets our necessary moral agency conditions if the theory is based on the intentionality of the corporate members who are themselves moral agents.

Part I was summed up with a taxonomy of two illegitimate and two legitimate corporate moral responsibility attributions where my expansion Tuomela and Bratman’s theories took part. I said that a Moral Responsibility Attribution to a Collective Whole (my expansion of Tuomela’s position) is illegitimate primarily because the attribution of responsibility encompassed some members who are not responsible. I also said that a Moral Responsibility Attribution to a Corporate Structure (in accord with Peter French and others) is illegitimate because the responsibility attribution does not lodge with a moral agent. In other words the corporate structure as distinct from its members simply does not satisfy our three necessary conditions for moral agency. Next, a Moral Responsibility Attribution to a Unanimously Intending Collective (my expansion of Bratman’s position) was said to be legitimate because every single member is morally responsible for the event being attributed. I finally maintained that an Elliptical Moral Responsibility Attribution to a Collective Whole is also legitimate because the attribution of the responsibility aims to lodge with those members who are morally responsible for the event, but one abstains from distributing responsibility until the corporate veil is pierced and the identity of those individuals is revealed. The central conclusion to be drawn from Part I is that moral responsibility may only be legitimately attributed to corporations when that responsibility is meant to lodge with corporate members and that corporations are never moral agents in and of themselves.
Having established that the corporation is not moral agent Part II proceeded to inquire about the role of the corporation in society, both descriptively and prescriptively. I started by establishing descriptively what the corporation is by tracing the evolution of the corporate legal form in English and American law. This involved explicating the historical development of the main corporate legal attributes which are: the shareholder primacy norm, the separation of the corporation from its incorporators, that corporate shares count as a separate form of property, and finally that shareholders are afforded limited liability. By following the development of these legal attributes I suggested that the corporation is primarily a legal agent and that the corporate legal form is an instrument of the state to promote the public good.

This historic evolution of the corporate legal form was in part viewed through the perspectives of the three competing legal theories over the nature of the corporation: the Legal Fiction Theory, the Nexus-of-Contracts Theory, and the Real Entity Theory. The Legal Fiction Theory maintains that the corporation is an artificial creation of law that is granted to an association of individuals, but is legally a distinct entity from the incorporating members. I argued that the Legal Fiction Theory is descriptively more accurate because it is the only one out of the three that is consistent with all the legal characteristics of the corporation and it is the only one that is consistent with the actual historical granting of the corporate form by the state. The historical impact of the corporate form as part of the industrial revolution was then traced. In this context we could clearly see the role of the corporate legal form as an instrument of the state to further socio-economic ends, but also the significance of the corporate form as an instrument for furthering the goals of individuals when incorporated in actual corporations.

I then moved on to consider the two prescriptive questions of whether the corporate legal form ought to be an instrument of the state and whether actual corporations ought to primarily be the instruments of the incorporating parties. It was argued that the corporate legal form ought to be an instrument of the state, in part, by showing that the libertarian nexus-of-contracts argument to the contrary is not tenable. Libertarians maintain that state augmentation of the corporate form is a violation of the incorporators’ absolute property rights as shareholders. However, on examination of the justification for absolute property rights we find no robust argument for justice in initial acquisition of property and no good reason for why property rights should be absolute and outweigh all other considerations of justice in our society. Instead the best justification for private property rights rests on instrumental grounds for the economic benefits that such rights enable by making a free market economy possible. By conceiving of property rights instrumentally they may be construed in whatever way that promotes the public good. Accepting that property rights are not absolute and that the government has a role to play in promoting the public good (in accordance with the preferences of citizens) this then opens the door for the state to use the corporate legal form as an instrument for promoting such goods.

The prescription that actual corporations ought to be primarily the instruments of their incorporators was then set against the prescriptions espoused by the Corporate Social Responsibility movement (CSR). The CSR movement primarily advocates
that a wider constituency of stakeholders than merely shareholders ought to be taken into account in managerial decision making, which might range from a mere dabbling in philanthropy to more engaging projects of solving social problems or even restructuring the corporation to take equal consideration of stakeholder interests. However, I maintained that such normative prescriptions often rely on the illegitimate assumption that corporations are moral agents. Instead I advocated a version of Friedman’s Shareholder Theory (which prescribes the primacy of satisfying the interests of shareholders), and I explained some of the adverse effects of an increasing adherence to the CSR agenda. I maintained that the prescriptions of CSR inappropriately promote private solutions to social problems, which usually demand social solutions.

As a legal instrument the corporation can be put to use for many different purposes, but the force of my argument is that the corporation is not a good all-purpose tool. It is as an efficient producer and allocator of resources and to ask it to also perform social tasks that it cannot simultaneously deliver may interfere with its considerable contribution to society as a producer, employer, and tax payer.

The train of thought that has run through this book has started with the issue over corporate moral agency. The corporation is not a real entity that participates in business that is guided by moral obligations; it is merely a vehicle through which business is done. To believe otherwise puts undeserved faith in corporations holding themselves accountable in the absence of legal constraints. As legal fictions created by the state the law should be the primary tool for corporate accountability. In a democracy we know that the ends of the state are a reflection of the normative preferences of citizens and that the state manifests those preferences regarding public policy through legislation. Therefore if citizens have preferences regarding how corporate legal entities ought to behave it seems reasonable that they should make calls for legal enactments in accord with their preferences. Actual corporations are then free to focus their attention on pursuing the goals for which they were created while acting within the constraints of the law.

This model of accountability assumes a well-functioning democracy that represents the will of the people and a well-functioning judiciary that faithfully represents those preferences in the law. However, the dominant actors in our global economy are multinational corporations that are active not only in democracies with just legal systems, but also in developing countries with varying degrees of democracy and functioning judiciaries. Should corporations merely satisfy shareholder interests within the constraints of the law in these developing democracies?

My scope here is abridged to focus on the moral and political ideal of corporate accountability and does not tackle corporate accountability under undemocratic regimes. That much said, one can firmly acknowledge that a continued misperception of corporations as moral agents that are led by moral duties and held accountable to their own conscience does nothing but hinder corporate accountability at home and in the world. This book is a work in ideal theory, and while no countries in the world are ideal, it provides a direction towards which we can strive. Only when we know where we want to go can we take steps to get there. A well-functioning democracy with legislation that addresses stakeholder concerns is the way forward.
Bibliography


