

U.S. copyright law (title 17 of U.S. code) governs the reproduction and redistribution of copyrighted material.

Baruch College ILL



46974

ILLiad TN:

Borrower: VDB

Lending String: XME,*VVB,XBM,YGM,YTM

Patron: Chopra, Samir

Journal Title: Journal of business ethics ; JBE.

Volume: 7 **Issue:**

Month/Year: 1988**Pages:** 639-643

Article Author:

Article Title: Rita Manning 'DISMEMBERMENT,
DIVORCE AND HOSTILE TAKEOVERS; A
COMMENT ON CORPORATE MORAL
PERSONHOOD'

Imprint: Dordrecht, Holland ;, Boston, U.S.A. ; D

ILL Number: 50187625



Call #:

Location:

ARIEL

Charge

Maxcost: \$25.00IFM

Shipping Address:

Brooklyn College, CUNY
via Land
Brooklyn, NY 11210
HUB - TET

Fax: (718) 951-5603

Ariel: 146.245.216.112

Dismemberment, Divorce and Hostile Takeovers: A Comment on Corporate Moral Personhood

Rita C. Manning

ABSTRACT. We can explain our intuitions about corporate takeover cases by appeal to Peter French's picture of the corporation as a moral person. He argues that corporations are persons in much the same sense as you and I, and are entitled to the same rights as humans. On this analysis, takeovers are murders, attempted murders, attempts to enslave, etc. I want to explore the consequences of this view for corporate takeovers. I shall argue that, though French can explain why our moral intuitions seem to arise in response to some concern about the corporations themselves, his analysis commits us to the wrong intuitions in some cases. I shall then offer an account of these intuitions which focuses on the character of corporations.

When ATT agreed to settle with the SEC by allowing itself to be dismembered, some cheered, some booed, but most thought that the victory or defeat was, in some sense, a moral one. When Bendix and Martin Marieta slugged it out in one of the first destructive hostile takeover fights, many expressed moral indignation. When animators from Disney studios broke away to form a new studio in the summer of 1983, those of us who remember *Bambi* sensed a moral victory in the air.

Our moral intuitions about these cases cannot be completely explained by appeal to the affects of such corporate realignment on the lives of individual human beings. In some sense, it is the corporate person that is the focus of our concern.

We can explain our intuitions about these cases

by appeal to Peter French's picture of the corporation as a moral person. He argues that corporations are persons in much the same sense as you and I and are entitled to the same rights as human beings.¹ In this paper, I want to explore the consequences of his view for each of the cases mentioned above. I shall argue that, though French can explain why our moral intuitions seem to arise in response to some concern about the corporations themselves, his analysis commits us to the "wrong" intuitions. I shall then offer an account of these intuitions which focuses on the character of the corporations.

If corporations are moral persons entitled to the same rights as human persons, what should we say about the dismemberment of ATT? One might argue that this would be a clear case of cruel and unusual punishment. The right being violated here would be the right to bodily integrity. Dismembering a human person for the sole reason of controlling his behavior would be viewed as an obvious violation of this right. Even if we argue that ATT was dismembered as a punishment for its illegal acts, we could not justify this response in the case of a human person. One could argue here that "dismemberment" is simply the wrong description. ATT was instead forced to sell many of its subsidiaries. A similar punishment for a human person would be seen as appropriate in similar cases. Hence, no rights are violated.

I'm not convinced that this is the right description of what happened to ATT. In some sense, ATT is no longer the same company after it sells off a sufficient number of subsidiaries. No one talks about "Ma Bell" anymore, and along with losing this nickname, ATT has lost its image as an all powerful monopoly. ATT is no longer exclusively identified with phone service, but is beginning to be identified with new products, e.g. computers. This marks a profound

Rita C. Manning is Assistant Professor of Philosophy at San Jose State University. She has published widely — on Artificial Intelligence, Ancient Philosophy, Ethics, Philosophy of Law, Social and Political Philosophy, and Informal Logic, in addition to Business Ethics. She is currently working on a Feminist critique of Moral Philosophy.

change for ATT, from monopolistic utility to competing producer. ATT could change sufficiently that we could say of it "the only thing this new company has in common with the old ATT is its name". This claim could not be made about a human person. A human person would also change if faced with the loss of all his property, but a central core would remain the same. The person would retain, among other things, his body, his relationship with certain other persons, and his memories. What would we have to do a human person before we would say, "the only thing he has in common with the old Jack is the name"? Perhaps a serious injury would do. A burn which would change a healthy, active, outgoing pilot into a reclusive, introverted, essentially inactive person might count as forcing the victim to undergo a rebirth.² A lobotomy might also justify the claim that Jack is a new person. A deliberate burning would surely be morally repugnant in large part because of the pain, but even a relatively painless lobotomy as punishment for human indiscretion would be morally repugnant, so French would presumably be unwilling to settle for this description of what happened to ATT.

French could insist that I've overstated the case. ATT is still ATT; it just lacks its local subsidiaries. I agree that we are not justified in saying that the only things the new ATT has in common with the old ATT is the name. The point I want to make is that there is a point at which the forced selling of subsidiaries would justify the claim. This would not be true for the forced sale of the property of a human person. So the analogy with the forced sale of the property of a human won't work.

If we agree that "dismemberment" is the right description, and if we agree with French that ATT is a person with the same rights as a human person, then we should be appalled at the action of the SEC. In fact, the intuitions of many were just the opposite. They greeted the news of the dismemberment with satisfaction. I think that French is right to insist that this reaction cannot be explained by saying that these critics were thinking ahead to better days for all current and future customers and employees. Instead, they saw it as a just punishment for the misdeeds of ATT. This suggests that we do in fact commonly think of corporations as responsible agents. French's analysis provides a justification of

such ordinary intuitions. He argues that corporations do have moral obligations because they can recognize the immorality of their actions, and because they can choose to do otherwise.³ Though I do want to endorse this analysis, I want to stop short of saying that corporations also share the same rights as human persons.⁴ It seems to me that French has three options here. The first is to say that "dismemberment" is not a strong enough description for what the SEC did to ATT. "Killing" might be a better description. The analogy with capital punishment could then be made. This would explain why the intuitions of many were that the SEC action was appropriate. On this analysis, ATT would be seen as a murderer of its potential competitors. Many share the same intuition about the appropriateness of capital punishment for a particularly vicious murderer. The problem with this response is that the descriptions of ATT as a murderer of potential competitors and of the SEC's action against ATT are too strong. ATT is not dead, and it's not clear how anyone can murder a potential person. Even if we view the competitors as actual persons, it's hard to see how ATT's protection of its monopoly status, no matter how jealousy and wickedly defended, would count as murder. Competitors had the option of choosing to go head to head with ATT or producing another service. If these actual persons were killed in combat with ATT, it was because they kept getting up after the knockout punch. They could have thrown in the towel. We could blame ATT for the deaths, but I'm not convinced that we would call the deaths murder. Anyway, I'm not convinced that many people cared about ATT's competitors. They were incensed by ATT's treatment of its customers, and no one would want to argue that ATT was killing customers. If this is right, we can't explain our intuitions about ATT as repugnance at its murder of competitors.

The second option for French is to urge that we reject our intuitions as a source of moral insight. I'm inclined to sympathize with this response. I do think that the appeal to intuition is suspect. After all, where do these intuitions come from? Unless we accept some account of intuition as an infallible source of moral knowledge, we must take an intuition with a grain of salt. If the intuition fits in with a theoretical account which we find persuasive, then

we can save the intuition. If not, then so much the worse for our intuitions. If we accept this answer, then we need to answer the question of whether ATT is a person whose dismemberment ought to bother us by a dispassionate assessment of French' analysis of the corporation as a moral person. Since I've made this argument in another paper, I won't repeat it here.

The third option for French is to agree that dismemberment is the right description, but that dismemberment need not be morally repugnant. The reason why we consider dismemberment morally repugnant is because it would cause severe pain and it would interfere with proper functioning. If we were to find a human person who felt no pain and who could function in a reasonable way without the use of all four limbs, we would not find dismemberment so awful. ATT is just such a person. It does not suffer physical pain at being dismembered, and its functioning may even improve after the dismemberment. It seems to me that we would still be appalled by the dismemberment of a human, even if such dismemberment was not felt and caused no significant impairment of function. I suspect that this is so because we take it that our limbs are not property, but part of us, and that we wouldn't be the same persons without them. I think that this is the right thing to say about corporations too, but we still don't find the dismemberment of a corporation necessarily morally repugnant. One explanation for the difference in intuition is that corporations are not moral persons in the same sense as human persons.

If we view Bendix and Martin Marieta as persons with the same rights as human persons, we should be appalled at the takeover fight because it is either an attempt to kidnap a person into slavery, or an attempted murder. If Martin Marieta planned to sell off all of Bendix's assets after the takeover, then this would look like an attempted murder. Bendix would cease to exist if all its assets were sold. If Martin Marieta planned to keep Bendix as a subsidiary, then it would look like slavery. Bendix would be working for the enrichment of Martin Marieta. Both of those descriptions are fanciful, and they are fanciful precisely because we don't view these, or any, corporations as persons with rights against bodily harm, or against involuntary servitude. I think that we can object to this takeover attempt because of its harm-

ful effects on the shareholders, employees and customers. In addition, there is legitimate concern about the effect on the economy of such unproductive ways of creating assets. We can make the same point about any takeover attempt. If we find it objectionable, it is in virtue of the consequences of such takeovers, and, to a lesser extent, in virtue of the character of the respective firms.

French could take some comfort in the Martin Marieta — Bendix case. Our intuitions would correspond to the intuitions which his analysis would support. On this view, hostile takeovers are either murders or enslavements of persons. I am not convinced, though, that we ought to accept this result. Suppose that the Morally Upright Corporation takes over the Morally Bankrupt Corporation with a hostile bid. If the Morally Bankrupt Corporation is discriminating against employees, cheating customers and ignoring the safety of the workers, and the Morally Upright Corporation maintained a willingness to end these practices, we would probably applaud the takeover. We wouldn't view it as a murder even if Morally Upright swallowed up Morally Bankrupt, nor would we see it as slavery if Morally Upright forced Morally Bankrupt into line. I think that the right thing to say about hostile takeovers is that where the characters of each firm are equivalent from a moral point of view, we have moral grounds for objecting only if the takeover would have a negative impact overall. By character, I mean the morally relevant properties that are exemplified by a firm. These properties can be either virtues or vices. A company can exemplify avarice, whether or not it makes sense to say that, the company can actually be avaricious. I think that it does make sense to make the latter claim; I am convinced by French that a company can be said to exhibit behavior properly described in moral terms. Here, I need only defend the weaker claim, *viz.* that firms can exemplify moral properties. On my view we would have to settle the issue of whether a hostile takeover was morally permissible on a case by case basis, unless we had reason to think that such takeovers were generally likely to create negative utility. I am beginning to think that such evidence is forthcoming. The poison pill strategies, the golden parachutes, and the emphasis on the short term bottom line which are going on in virtually every

firm which considers itself a possible takeover victim attest to the negative utility of allowing hostile takeovers. On French's view, we would have a *prima facie* reason to see any hostile takeover as morally repugnant.

The Disney case arouses our sympathies because the traditional Disney concern with high quality, innovative animation was being lost in the new Disney Studios. Animators who shared this concern broke away to create a new studio dedicated to this goal. How would we describe this case if we viewed Disney as a person in the same way as you and I? Divorce is the metaphor which comes to mind, but divorce requires at least two parties to begin with. A person cannot divorce herself. I suppose we could view this as a possession case. Disney is taken over by evil forces bent on destroying cartoons, but the real Disney triumphs and escapes. This implies that the animators are the real Disney, and the official Disney is the interloper. Though this captures my feeling about this case, it won't help us because it is not a description that most of us would be willing to apply to human persons. It commits us to an interesting claim about human persons, viz. that they can be possessed and exorcise themselves. Another option is that Disney divided into two persons. This is not a dramatic feat for corporations, but it's currently practically, though not theoretically, impossible for human persons.

Even if we could make the claim that one person could be possessed or divided in two, it's not clear what our moral intuitions about these possibilities would be. I suspect that we would applaud the exorcism, but regret the fact that the real person had to leave to much of her body behind. We would probably object to dividing a person in two and creating two persons even if we could do this without harming the original person, but my intuitions about this possibility are not at all clear. If I have correctly described this case, then, on the French analysis, we should have the same unclear intuitions about Disney Studios.

There are three rejoinders to this analysis of the Disney case. First, one might argue that I have not described the case accurately. I'm not quite sure how to respond to this objection because I cannot imagine another possible description. This might be a failure of imagination on my part, and I am willing to be persuaded if someone comes up with a better

description. The second possibility is that the appeal to intuition is illegitimate. We simply haven't gotten used to thinking of corporations as moral persons, and, if and when we do, we will begin to have different intuitions about this and similar cases. This would be a telling objection if there weren't theoretical objections to the view of the corporation as a moral person. I won't rehearse these arguments here. The last option is to suggest that not all corporate acts will have a description which could apply to human persons, and this may be one of those cases. If this is right, then we can't test our moral intuitions about corresponding acts involving human persons. There are things that a corporation can do that a human person cannot do, and perhaps dividing into two is one of them. If there is no human parallel, then there can be no appeal to intuition. I agree that corporations and human persons differ widely, and I do not suppose that the French analysis is committed to anything more than the claim that they are similar in respect to moral personhood. Still, it seems to me that there are actions which are at least theoretically possible for both corporations and human persons, and that the Disney case involves such an action.

It appears then that our intuitions about all of these cases do not correspond to the intuitions we ought to have if we shared French's belief that corporations have the same moral rights as human persons. If we shared his view, we would be aghast at what happened to ATT, unhappy at what happened at Disney Studios, and enraged at the Bendix - Martin Marietta slugfest. In fact, these are not the intuitions shared by all who watched these events. Still, we do sometimes care about the corporation itself, not just because what happens to the corporation affects the economy and the lives of its employees, customers, and shareholders. I think that we can explain this concern as a concern that certain values be protected or rejected. I am borrowing this analysis from Mark Sagoff's defense of wilderness preservation. Sagoff says of obligation to protect natural environments:

We have an obligation to protect natural environments insofar as we respect the qualities they express. We have seen that these qualities do actually belong to some environments, which are their paradigms; and the discovery or identification of these qualities is effected in

no
for
tal
wh
of
she
im
no
im
col
to
de
rej
the
tio
cic
int

rec
to
int
dit
th.

our language and by our arts. Preserving an environment may be compared to maintaining an institution, for symbols are to values as institutions are to our legal and political life. The obligation to preserve nature, then, is an obligation to our cultural tradition, to the values which we have cherished and in terms of which nature and this nation are still to be described.⁵

In the case of Disney Studios, we value the innocence and simplicity of Bambi, and the concern for animals and nature expressed by a whole tribe of talking animals. Many of us cried along with the boy who had to kill his rabid dog, Ole Yeller, and none of us emerged from a screening of *Bambi* without shedding a tear. We also value the artistry and the imagination which made *Fantasia* possible. This is not to say that all Disney creations exemplified such important values, but that Disney was unique as a corporation for expressing these values. Our desire to see this company continue in this tradition is a desire to see these values reflected and respected. We rejoiced at the end of *Ma Bell* because we rejected the capricious, arrogant posturing of this corporation. In this case, we rejected arrogance and capriciousness. In both cases, we can explain why our intuitions concerned the corporations themselves.

If French were right, and if there were a general recognition that corporations were persons entitled to the same rights as human persons, then our intuitions about ATT and Disney would be very different. One might argue that French is right, and that our ordinary intuitions about corporations are

suspect. I have argued elsewhere⁶ that there are theoretical reasons for rejecting the claim that corporations share the same moral rights as human persons, but I want to suggest here that my analysis of our concern for corporations themselves is less ambitious and more consistent with our common evaluations of corporations.

Notes

¹ Peter French, 'The Corporation as a Moral Person', *The American Philosophical Quarterly*

² Professor Amnon Goldworth describes the Coward case, a famous case in Medical Ethics, in this fashion.

³ French.

⁴ See my 'Corporate Responsibility and Corporate Personhood', *Journal of Business Ethics* 3(1), 77-84, 1984.

⁵ Mark Sagoff, 'On Preserving the Natural Environment', *Today's Moral Problems*, ed. Richard A. Wasserstrom, 613-622.

⁶ I argue for this in 'Corporate Responsibility . . .'. There I argue that corporations lack the features necessary for being moral rightholders. If I were writing this paper now, I would argue that rights are founded on certain properties, and that absence of the relevant property made the rights claim invalid.

Department of Philosophy,
San Jose State University,
San Jose, CA 95192-0096,
U.S.A.

THIS MATERIAL MAY BE
PROTECTED BY COPYRIGHT LAW
TITLE 17, U.S. CODE