Institutional Morality

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5.1 Introduction

A central problem in the design of institutions is the assignment of responsibility. Almost all moral theories are about the morality of individuals, not of supra individual entities such as organizations or societies. Therefore, the focus of discussion here is on the composition of institutions: How is necessary or responsible for which part of what? It is in these compositional problems that are the focus of discussion.

In general, we may say of an institution as a whole that its morality is reasonably well defined by its purpose and its likely effects. In this sense, an institution's morality is inherently consequentialist. It might not be utilitarian, however, because its purpose could be the support of equality, justice, or autonomy, and not necessarily the support of welfare. Once the institution's morality is defined, we may infer or deduce

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Notes:
1The same is true of law in, at least, the United States. See Dan-Cohen 1986.
2The political institutions in John Rawls's theory are clearly intended to achieve consequences: "to maximize human achievement in art, science, and culture" (Rawls 1971, p. 325). Also see Scanlon 1977, esp. pp. 61-65.

5.2 Morality by Design

When an institution fails to accomplish its purpose, we may charge the failure to one of two causes: (1) misdesign of the institution for that purpose and (2) failure of particular people within the institution. I am concerned with institutional design and therefore with the first class of
Institutional Morality

the actions of such a secretary may be necessary for the success of an organization with a heinous purpose.

Much of the debate over the inherent morality of the law seems to have been a debate at cross purposes from these two quite different linguistic conventions. Fuller, assuming that law is to have some function or purpose, then argued that it has an internal morality. Much of his argument was muddled, but it makes relatively clear sense if it is seen as an argument from functional fit within the law rather than as an argument for specific moral content in the law. He blurred these two categories somewhat when he further assumed that human psychology to argue that certain purposes could not readily be achieved by law and were therefore generally not consistent with the morality of law, and when he assumed specific content for the external morality of law, which he thought must be to facilitate human interaction.

Institutions typically have the structure of law roughly as Fuller saw it. Again, this means merely that the rightness within an institution of a particular action by one of its officeholders is determined contingently by the functional fit of that action with the institution’s purposes. This need not allow an Eichmann defense against personal responsibility for one’s actions within an institution, because one’s personal moral responsibility may be to oppose an institution’s purpose and the means it uses to achieve that purpose. The discussion here will focus on the internal problem and will simply assume that the purposes of the institutions under discussion are externally justifiable.

Note that the internal morality of an institution is, as Hume called duties of justice, artificial. That is, it depends for at least part of its content on what humans have first created. In this sense, the morality of a profession is artificial and what Fuller roughly called the internal morality of law is artificial. What it is right for a professional or an officer of the law to do depends on how the profession’s services or the law’s institutions are organized. Hence, the argument for institutions more generally has its more specialized counterparts in professional ethics and the internal morality of law (Hardin 1991; 1994).

5.3 Collective Responsibility

No one would want to live in a world in which just anyone could have significant effect on major policy issues. For example, if, during the recent superpower standoff, just any individual American or Soviet citizen could have had major impact on whether nuclear weapons would be put to use, all of us would have been at much more grievous risk even than what one might suppose we did face from those weapons. There is even a logical problem in supposing that each of us could have
a major impact. What could it mean to suppose that you and I could
each individually have great impact on whether the weapons were to
be used this week if it is not logically precluded that my impact would
be to cause their use and yours would be to prevent their use? Yet, de-
spite the obvious sense in which it is absurd to suppose many of us can
have substantial impact on such policies, many of us were inclined
to think we were somehow partly responsible for those weapons. If
"ought" implies "can," as we generally believe it does, then our sense
of responsibility in such cases is typically wrong.

In common usage and in much of our moral concern with it, respon-
sibility is a causal notion. This is not the only sense of the word "re-
sponsibility." Dictionaries typically make casual notions the first sense
of "responsible." One or something is responsible that is the primary
cause, motive, or agent – the cause or explanation, for example, of an
accident. Dictionaries then include a second sense, which generally ap-
plies only to persons or collective persons. One is responsible if one is
able to answer for one's conduct and obligations, able to choose for
oneself between right and wrong. Hence, by taking on ambivalent
meaning, responsibility plays a role in both consequentialist and de-
ontological moral theories.

In a utilitarian moral theory "responsibility" is inherently a causal
notion. To say, on a utilitarian account, that I am responsible for result
x is to say that I caused or helped to cause x. It follows that a proper
assignment of responsibility requires a relevant assessment of causal ef-
fects. But causal assessments are notoriously difficult in many contexts,
perhaps most especially in social contexts. Difficulties in making causal
claims may be epistemological or informational in large part but the
more important difficulties are conceptual in the following sense. If my
action is one of many contributions to a result, there may be no compell-
ing way to resolve the full cause of that result into its partial causes.
The collection of causes may violate John Stuart Mill's principle of the
composition of causes (Mill 1974 [1843], book 3, chap. 6).

It is often supposed that the possibility of doing experiments has been
the major reason for the relative success of certain of the hard sciences
as compared to the social and behavioral sciences. A far more important
consideration may be differences in the causal structures of the phe-
nomena of interest in these sciences. For many physical laws, especially
in classical physics, the principle of the composition of causes is valid
or approximately so. For example, a classical electron may be acceler-
ated by the combination of gravitational and electrical forces, each of
which can be partialed out from the sum of the two forces. It is because
the effects of gravitational and electromagnetic forces are straightfor-
wardly separable that the Millikan oil-drop experiment for determining
the charge of the electron was possible.3

For much, perhaps most, of what interests us in the social sciences
and, hence, in moral theory, the principle of composition of causes is
clearly not valid. There have been theories, such as Arthur Bentley's
group theory of politics (Bentley 1949), that presumed such simple re-
relationships. But the once commonplace phrase, "the vector sum of
forces," has rightly fallen out of vogue in the social sciences. We are
now too accustomed to the importance and pervasiveness of threshold
and other complex effects in social causation to suppose lightly that the
result of a large number of actions by many people is somehow merely
a vector addition of the results of the actions taken singly.

Suppose my institution is badly designed and it does harm (or it fails
to do the good it could do) or that it is well designed and it does good.
And suppose I fulfill my role in the institution as I am supposed to do.
What is my responsibility for the harm or the good that my institution
now does? This question is merely an instance of the common question
of how causal weights should be assigned in cases of plural causation.
To keep the general question clear, let us consider varied contexts in
which it might arise, contexts that display strategic as well as substan-
tive variety.

5.3.1 Some examples

In an election, many of us may vote. Some of us vote for the losing
side. Do we share responsibility for the result? The votes of many of
those who vote for the winning side may be otiose – victory does not
depend on them, given the other votes cast. Many of us may not vote.
If the victor wins by, say, a million votes, does any particular nonvoter
bear any responsibility for letting the loser down? Do a million and one
nonvoters bear any responsibility? During the Watergate scandal that
followed Richard Nixon's landslide reelection as president in 1972,
there was a widely appreciated bumper sticker that said, "Don't blame
me, I'm from Massachusetts." While every other state went for Nixon
in his reelection, 54 percent of voters in Massachusetts voted against
Nixon.4 Was someone in Massachusetts who voted for Nixon less re-
ponsible than someone in Illinois who voted with a state majority for

3Mill makes this point with reference to differences between chemistry and physics
(Mill 1974, sec. 1).
4The District of Columbia voted 78% for McGovern. No state other than Massa-
chusetts topped 47%.
partly out of place for choices of strategies. At the very least, it is complicated by the plural, complex causation of outcomes.

Collective action and organizational problems raise the same issues for individual moral responsibility. In either context, my particular action or choice may not be the cause of our outcome and therefore I am not responsible for that outcome in the simple commonsense meaning of the term. Indeed, it is a fallacy of composition to suppose the notion of responsibility generalizes from simple choice to interactive choice situations. For such problems of choice, deontological action theories are in need of further articulation. It seems likely that relevant articulation must rely heavily on consequentialist considerations. Hence, strategic interaction captures the problem of institutional design: Its moral assessment is inherently consequentialist (see further, Hardin 1988, pp. 68-70).

5.3.2 Practical Resolutions

How do we resolve assignments of responsibility in practice? This is a descriptive question about what we do, not what we ought to do. But an understanding of actual practices may inform our normative arguments, even if only by suggesting a range of possibilities. It is to this descriptive issue, as it arises in the law, that H.L.A. Hart and Tony Honoré address their concern in *Causation in the Law* (Hart and Honoré 1985, esp. chaps. 3 and 4). It is also to a descriptive question that contemporary economic analysis of the value of inputs in production is addressed.

In the law, a standard device is to focus on what was anomalous in the causal background of a result. Law commonly confounds actions and their effects as, for example, in the definition of murder as death brought about in certain ways with relevant intentions. Simple theories of direct causation may only poorly fit the actions that, taken together, bring about a particular death. I will take up more extensively the determinate nature of legal rules that may be arbitrary.

Business firms may commonly assess causal relations only at the design stage and then ignore the problem of individual-level causal responsibility, at least for most individuals, for what the firm creates or the profits it makes. For the individual level they focus instead on market allocations of prices for various causal inputs. They do not pay workers according to what the workers contribute causally but according to the market wages for such work. Those wages can change dramatically for demographic reasons of supply of workers having nothing to do with economic valuations of the firms’ products.

In many contexts, proxy measures of inputs are used. For example, A

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did not act in certain ways, and is therefore held responsible for not helping to prevent some harm. Focusing on such proxy measures, particularly on kinds of actions, threatens to make our focus not causal but deontological, especially when we begin to focus on symbolic rather than efficacious action. But there may be good epistemological reasons for using proxy measures, as, for example, the test of alcohol concentration in the blood for a driver or an airline pilot. Stochastically, we may know there is a strong correlation between alcohol levels and incidence of accidents. Although we will not typically know that your high alcohol level means you will have an accident, we can still be sure that going after all drivers with high alcohol levels will reduce the rate of accidents.

In a variant of proxy measures of inputs, we may assign responsibility to someone – for example, in an organization – in order to create incentives for relevant action. We know that a lot of certain kinds of activity will produce the results we want and we wish to motivate such activity. We cannot assign shares of the responsibility for the final result to each activity or person, but we can enhance the prospect of achieving that result.

The striking fact is that all these resolutions of our problem are irrelevant for standard individual-level moral theory except in a contingent way. My following the incentives offered by my organization or reprimanding you for violating some proxy measure of output cannot be justified merely by the kinds of actions these are but must be justified with reference to consequences. To handle all of our individual actions within institutions in standard consequentialist moral theory we would be well served by a genuine capacity for assessing the composition of causes that would allow us to assign shares of responsibility for various outcomes. Proxy, pragmatic, and incentive devices are beside the point for such direct moral responsibility. And we surely have no ready moral analog of the economist's sly substitution of supply-and-demand price for causal contribution.

5.4 The Legal Model of Responsibility

Law is fundamentally unlike morality in the structure of its rules. In law we may conventionally select one of many possible rules for settling some class of issues. The rule need not be an a priori logical inference – it can be arbitrary. Often its main burden is to be determinate. All of this is possible in law because there are authoritative bodies to enforce application of legal rules, no matter that they may be arbitrary. Unless we turn moral restrictions into legal requirements, or we concede determination of morality to a religious authority, or we have a strong communal sense of unquestioned morals, there is no authoritative body to enforce an arbitrary moral rule. Note that legal, religious, and communitarian theories are typically command theories of the right, at least in part. The state, god, or the community commands rules, therefore it is right to follow those rules. If our morality is not under the duress of some authority's command, we will want our moral rules to be persuasively well grounded and not arbitrary.

Consider an arbitrary rule for assigning responsibility for harms that we might adopt in the law. If a corporation does harm, we might hold the corporation responsible for compensating the harmed and then let the organization work out how the burden is to be disaggregated down to the individual members of the corporation. This device might be fine as a matter of determinate law. But as a matter of morality, this device is afflicted with two problems. First, there is moral hazard – the Board and the chief executive officer, who work out the disaggregation, have a strong interest in the outcome.

Second, the device is afflicted with the problem of extracting resources from people who cannot be sensibly seen as morally responsible for the relevant harm. For example, a firm might do something whose harmful effect becomes legally clear only decades later, when virtually all individuals who might be considered causally responsible for the harm are gone. Johns-Manville was eventually held accountable for the harms that were inflicted on those who worked with its asbestos, as in the U.S. naval yards of World War II. Its liabilities bankrupted the firm, whose stockholders lost much of their investment. Suppose a small company's or church's retirement fund invested substantially in the stock shortly before news broke of its impending liability and the fund lost much of its retirees' reserves. That the system should work this way might be good for general productive efficiency or determinateness; or this way might be better than any alternative we think of because the alternatives require knowledge that is unavailable or too costly. The result is then right, but for large systemic reasons, not for reasons of the causal responsibility of the retirees for the asbestos and mesothelioma caused by Johns-Manville's products.

Also consider a relatively abstract rule: Corporate responsibility for corporate harm should be disaggregated into personal responsibilities whose sum is equal to the corporate responsibility. Unfortunately, causal relations do not sum in this way. If we could disaggregate causally, the collective responsibility might be greater than, less than, or equal to individual responsibilities. Arbitrarily stipulating that they are equal may be a good legal rule. For one thing, it avoids the horrendous analytical problem of determining the full causal story and of parcelling causal responsibility to individuals. And this may be a good moral rea-
son for adopting the rule in the law. But, again, this means we have a systemic moral justification for setting corporate and individual responsibilities equal, not a reason of direct causal responsibility.

5.5 Institutional Purposes

How should we define the purpose or purposes of an institution? We could define the purpose narrowly or broadly. But the critical question is, as it is for organizational responsibility, one of composition. Who defines the purpose of institution X? Its current leaders? Its founders? Its entire membership, somehow determined? Can we discover an organization’s purpose from an external vantage point with or without testimony from its members? And if we have such testimony, does it trump other claims we might make?

These are inherently difficult conceptual questions to which there are no easy answers. They are conceptually difficult the way the question of partial individual responsibility for a group or institutional action or result is difficult. There may be no way to braid the various contributions to an institution’s purpose into a single, coherent strand. It is probably in the law that the problem of multiple determination of purpose has been most extensively addressed. Since it would be odd to speak of the intentions of the collection of people who were the relevant legislators, judges, and citizens, we can speak of the “meaning” of a law. The meaning of a law is how the law comes to be interpreted and understood and how it is filled out with tacit assumptions. Clearly, the focus of meaning is on the result of a long process, not merely the origin in, say, the many minds of a legislature. Such origin might be the more typical focus of an intentional account.

In assessing purposes of institutions we might do no better than to think of the organizational analog of legal meaning. We thereby escape the compositional problem of determining the purpose as an output of some complex process with many causal contributions. The result is a naturalistic, descriptive account of purpose rather than a developmental, intentional account. But if the account is descriptively accurate, it is hard to see what would be gained from a causal, intentional account. The latter might be of interest if our problem were to assess the rightness of actions of current organizational members by reference to what was intended for them. For example, some theorists of constitutional interpretation are concerned with what they call original intent. One might justify this concern by noting that constitutional constraints tend to lead to mutually beneficial stable expectations. Such a justification would be far less compelling for many other institutions and organizations.

For many institutions and organizations we may have no difficulty in determining central purposes. Among the purposes of universities are education and the support of research. The purposes of police forces include the maintenance of order, of business firms the making of profits, of certain professional organizations the service of particular clienteles. As we expand the list of purposes for any of these organizations, we are apt to find less agreement. Moreover, we may often be convinced that some ostensibly other purpose is derivable from the central purposes. We may also suppose that some other purposes are themselves imposed from some larger context. For example, business firms might be constrained to further the larger social purpose of eliminating racial or sexual discrimination even if doing so might interfere with profitability.

Organizations often achieve their apparent purposes. Yet, it does not follow that we can assign individual causal responsibility for contributions to their collective products. What we might be able to do, instead, in some cases is determine what form an organization must take to accomplish its purpose and then hold officials responsible for fulfilling the specified duties of their offices. We would have only a relatively rough causal account of how the organization would achieve particular purposes. We would be unable in the cases of many office holders in the organization to show the causal relations between their particular actions and achieving the organization’s purposes. The causal relations might often take the form of John Mackie’s INUS conditions. One contributor to the grand result might be insufficient but necessary to a part of the organization that was unnecessary but sufficient to accomplish some task that helps achieve a purpose of the organization. Redundancy would be built into the system. We might not be able to factor any contributor out of the organization and find a resultant loss; yet we know that if we factor out enough contributors, the organization will fail.7

for the rightness of having today’s citizens be governed according to the intentions of men from centuries earlier. I think none of these claims is compelling; only a consequentialist claim that addresses effects on present and future people can be compelling. One who finds a nonconsequentialist claim compelling might have difficulties with the question, “Why obey the law?” If that, too, is a matter of intuition, how do we decide empirically that this is the law? 7Iris Murdoch provides a reverse analog in Black Prince. Bradley Pearson is secretly at a vacation house where he has eloped with his beloved. He receives a telegram from Marloes asking him to telephone to learn of his sister’s suicide. Such an event might seem to call for breaking off his elopement, although it was not yet consummated and might be fragile. Marloes should not have known how to find him, how-

*Original-intent theorists also have deontological and purely intuitionist claims
In the law, there is an additional consideration that the law be fairly applied. This cannot be achieved through ad hoc devices of particular legal officeholders who override standard procedures. Could an organization which is not bound to the same degree by considerations of fairness more readily act from ad hoc assessments of the effectiveness of particular officeholders? Plausibly. For example, we might think the correct general purpose for a company in the market is to secure profits by securing sales. If an officeholder in a particular company happened to be an irritant to other officeholders, a supervisor might reasonably conclude that higher productivity would follow from dismissing the irritating colleague. Unless there were a larger social purpose that governed the company’s personnel relations and that trumped the supervisor’s discretion, it could be moral within the institution to allow such discretion. There might be a company rule not to allow such discretion to supervisors – perhaps on the belief that it could not be reliably put to use for the benefit of the company’s goals. Then it would be immoral within the institution for the supervisor to act with such discretion. The supervisor might successfully appeal to higher authorities in the organization for authorization to act with such discretion, and then it would be moral within the organization. But to do so merely on her own belief in the fit of her actions with the fundamental profit-making purpose of her firm would be immoral within the firm.

5.6 The Limits of Moral Design

Consider a near analog of institutional responsibility at the level of individual responsibility: stochastic problems of large-number or frequent interactions involving low levels of risks of large harms (for more extensive discussion, see Hardin 1989). The difficulties of handling such problems in standard ethical discourse have led philosophers to treat them as matters of “moral luck” (Nagel 1979; Williams 1981). For example, I may be one of thousands of drunk drivers on the road tonight, but I am unlucky enough to lose control of my car just where there happens, oddly, to be a pedestrian, whom I kill. Many others merely weave out of lane, jumped a curb, or spun out of control and then recovered to drive on without harm to anyone. If my pedestrian had not been there, I might have been harmless. It is in part, therefore, merely a matter of luck that I am held blameworthy while these other drivers are not.

An institution, such as the law, need not be bothered by the moral theorist’s problem of moral luck. It can address such matters as drunk driving stochastically, counting the act of driving drunk as a crime. And it can choose to handle harms that occur according to an efficient rule, such as requiring drivers to have liability insurance to protect those with whom they have accidents, or according to a rule that sets up incentives to reduce the incidence of behavior that correlates with harm. Similarly, an organization that has rules for handling flammable or otherwise dangerous chemicals need not, when I violate those rules, defend the rules by claiming that I would have caused harm; it need only claim that, because following its rules has stochastic benefits, enforcing the rules has general benefits.

Such stochastic problems as drunk driving are morally serious not merely because of the actions involved but because of the plausible and likely consequences of the actions. However, any account of responsibility for such problems must focus not on actual results of action but on ex ante expectations of the results. For example, a drunk driver on a crowded superhighway in a city is culpable of a transgression, of an ex ante likelihood of harm to someone else. The same drunk driver on a secluded and abandoned military roadway in the desert or on a private racetrack may be much less culpable of such a transgression because there is so little ex ante chance of that driver’s harming someone else. When we assign responsibility on ex ante suppositions, however, we may generally do so according to some proxy for the kinds of results we think likely to follow. You may be a better and safer driver while legally drunk than I am while legally sober. Or you may be much more careful in handling a jug of explosive chemical than I am even though you violate our organization’s rules and I do not. For various informational and epistemological reasons, however, institutions may not be able to take the possibility of such considerations into account in a very fine way and we may satisfy on relevant calculations by simply resorting to a legal definition of drunkenness and culpability for drunk driving or a clear rule on safe procedures.

Perhaps an institutional authority could properly ask of the institution’s officeholders, “What if everyone did that?” In private life, I might be able to answer this rule-utilitarian query that my action did not disrupt the more general achievement while it brought benefits of its own. I might plausibly be able to show that perfect compliance with some ostensible rule would be suboptimal, that occasional violation of the rule would produce a better outcome (Hardin 1988, pp. 65–68). One might suppose that if I have to answer an institutional query why I
violated one of its rules, the very fact that my violation has been noticed in the institution suggests, prima facie, that it may have effects on the behavior of others in the institution through the example it presents. The institution's mobilization behind a particular rule of behavior, thereby standardizing it, might actually make it more likely to be optimal to adhere perfectly to the rule. But even if such an argument tended to be valid, so that there were a seeming difference between institutional and individual strictures, this difference would only entail a greater likelihood that the individual violation of institutional procedures or rules is genuinely counter to the purposes of the institution. On some occasions, the violation might still be justified even by the purposes of the institution.

Suppose my office requires certain actions from me to enable my institution to achieve its purpose. The requirement is causally deduced. Hence, there may be disagreement over how well the requirement fits the institution's purpose. Suppose I share my institution's purpose and genuinely wish to further it. But I conclude that what I am supposed to do, under the institution's rules, hinders rather than furthers that purpose. Have I done wrong if I therefore violate the institution's rules to help the institution? Within the institution I may have done wrong. If, however, my action is externally judged, just as the purpose of the institution itself must be externally judged, it may seem right. From that perspective I can conclude I have done right. Yet, my institution may rightly judge that I have done wrong. The difference turns merely on the differential assessments of causal facts. There may be understandable differences in epistemological capacities for organizations and individuals that lead them to reach different conclusions.

For an organization, unfortunately, we can commonly expect incoherence in the internal requirements on various office holders because there will be no fully worked out causal account of how the organization's structure and procedures achieve its purposes. And we can probably expect many of the requirements to be little more than conventional in the sense that no one could give a causal account of how the requirements contribute to the organization's purposes. Hence, the claim that the official requirements of an institution constitute the internal morality of the organization might be on shaky ground, at least for some requirements, although perhaps not for others.

But note that the assertion that a requirement is merely conventionally, and not causally, justified is misleading. As in the argument above for institutions in general and for similar epistemological reasons, we can conclude that, in my life as a citizen under the law, it can be right for me to violate the law and nevertheless right for officials of the law to punish me for my violation (Hardin 1994). There is a perhaps urgent difference between the law and other kinds of institutions in this respect. Among the purposes of the law may be to achieve fairness and to reach finality. Hence, individual divergences by officers of the law may actually be causally harmful to its purposes. It might matter less which of various resolutions is reached than that the same resolution is reached for all like cases. Hence, although no one resolution may be clearly best, consistent application of any one of several might be better than inconsistent application of each of these in some fraction of cases. Insofar as similar concerns enter in the design of other institutions, the fact that a particular requirement is merely conventionally defined need not block its moral force within the institution. But there must be many instances in varied organizations in which there is not even this reason of precedent and fairness to moralize conventionally adopted rules for behavior.

5.7 Individual vs. Institutional Morality

A common response to institutions and their moral problems is to suppose that morality is only for individuals and that institutions are a problem, not a solution. In some moral traditions, this seems to be a relatively natural inference, although it is unlikely to be a hard logical inference. In other traditions, the move from individual-level to institutional-level theories seems to be incumbent on the theories. For example, utilitarianism was both institutional and personal from the beginning. Kantian theory has clear connections to institutional concerns already in Kant's own jurisprudence. And on a plausible reading, Aristotelian virtue theory requires functional derivation of personal virtues from the requisites for institutional roles. But much of what may be called commonsense ethics is virtually blind to institutions.

The novelist and philosopher Iris Murdoch judges people by their character, to which their actions give clues. She writes, "I daresay human wickedness is sometimes the product of a sort of conscious leeringly evil intent. . . . But more usually it is the product of a semi-deliberate inattention, a sort of swooning relationship to time" (Murdoch 1975, p. 189). Moreover, "The wicked regard time as discontinuous, the wicked dull their sense of natural causality. The good feel being as a total dense mesh of tiny interconnections" (Murdoch 1975, p. 125). Apparently, Murdoch supposes much of the world shares her views, at least instinctively, and she may be right. For example, Bradley Pearson, the protagonist of Black Prince, concludes in the end that he is "condemned for being a certain awful kind of person" rather than for a particular action (Murdoch 1975, p. 387).

One might suppose Murdoch merely asserts a definition when she
associates wickedness with regarding time as discontinuous (which implies having a weak sense of personal identification) and having a dull sense of natural causality. But that would not be an interesting move. The extraordinary feature of Murdoch’s view is that it makes morality a causal correlate of epistemology and sense of personal identification. Many of us dull “our sense of natural causality” because we do not have or believe in this view of the causal structure of the world, in which one’s actions have explicit, determinate effects. The view of personal identity as “a total dense mesh of tiny interconnections” is also somewhat insular and archaic, although it may be widely held. In speaking of “being,” Murdoch presumably means to imply not only identity but also identification with, or commitment to, one’s self. Both Murdoch’s epistemology and her views of personal identification are reasonably up for debate independently of moral theory. It is plausible that one would conclude that, epistemologically and as a matter of personal identification, one should be as Murdoch describes the wicked person. How odd— we are plausibly wicked out of good sense.

We require large organizations for the achievement of many of our purposes, including moral purposes, including moral purposes that Murdoch would likely share. But such organizations inherently share the burden of the epistemology and identification of Murdoch’s wicked. We are therefore damned to wickedness if we strive to achieve certain moral purposes. Murdoch’s vision is consistent with Hannah Arendt’s view of the amorality of institutions and the banality of evil. Large institutions break the sense of personal causal connection and they commonly produce a semideliberate inattention. These tendencies are, indeed, part of their great value. Institutions can bring things about despite the weakness of personal causal efficacy. And they achieve efficiency by dealing with problems in routinized aggregates rather than through deliberate, individualized attention.

As readers of Murdoch know, many of her central characters, if judged by what they do, are rotten— often merely because they are weak and self-obsessed and, in their self-obsession, they have what Murdoch calls “a swooning relationship” to time and much else. One of the greatest values of institutions is to block many kinds of rotten action. They may or may not succeed in elevating character, but they can often do well with the material they have. Given that institutions are necessary for our lives, we should wish to understand morality by design and its limits.

*Identity over a lifetime is a perverse notion no matter how widely held it may be. See further, Hardin 1988, pp. 191–98.

5.8 Omega School, Public School

Large organizations that have extensive experience dealing with problems tend to handle problems under two fairly distinct sets of rules:

1. Rules governing putative moral infractions that are not functionally related to the institution’s purpose; and
2. Rules governing actions that harm the institution’s capacity to fulfill its purpose.

It is the second category that is the focus of institutional morality. Indeed, for many organizations, it is the only category of concern, because these organizations have opted out of trying to regulate private behavior not clearly related to organizational success.

Because institutions must generally be concerned with legal as well as moral problems, these two categories will typically be more complex than this. The first category will commonly include legal infractions on matters not functionally related to the institution’s purpose. The second category will include legal rules that blind the institution and hence become part of its purpose. For example, legal rules on nondiscrimination in hiring may govern central aspects of an organization so forcefully as to make nondiscrimination a part of the working purpose of the organization. Violation of these rules would be both an organizational and a legal matter. One might prefer to treat legal constraints as strictly external and not bring them into an institution’s purpose or mission.

Smaller institutions are often less experienced in and burdened with handling problems of ethical violations within the institutions. They may therefore tend to run all these problems together as though they were one general class and to treat them in a somewhat ad hoc way, relying on seat-of-the-pants moral intuitions. Variance within and variance across such institutions is likely to be very large not merely because of differences in factual assessment of cases but because of idiosyncratic normative assessment.

Chief among the differences between less experienced and more experienced organizations is that the more experienced tend to ignore the first category of rules. They do not take moral infractions that do not fairly directly relate to the organization’s tasks and achievements to be matters for institutional resolution. For example, if I lie to you about the positions of the chess pieces at the end of our lunch break yesterday in order to win the game when we set it back up today, that is not an organizational matter even though it happens in the organization and between members of the organization. Of course, there are some moral infractions that could take place entirely outside an institution and still
be considered to have effect on organizational functioning. For example, many people think that pedophiles should not be entrusted with the care or teaching of children. Hence, the boundaries between the range of rules and (1) and (2) above may not be clear. Even then, however, the debate over where the boundary lies should be a debate about the causal implications of the proscribed behavior for the institution's purpose.

This is not to say that actions that are unrelated to relevant institutional purposes are beyond moral censure. Indeed, they need not even be beyond legal censure. For example, it might be fully reasonable that the law forbid and penalize driving beyond some speed, but it would be unreasonable if a member's legal guilt for speeding were taken as grounds for the organization's penalizing the member. One might reach this conclusion from Michael Walzer's claim that there are different spheres of justice and that they typically should not be mixed (Walzer 1983). But it follows simply enough from pragmatic and utilitarian concern with the division of labor and responsibility and from standard moral and legal concern with keeping sanctions fair by avoiding double jeopardy. It also follows for most organizations from the fact that investment in regulating matters unrelated to the functioning of an organization would interfere with its functioning.

What is wrong with running the two categories of rules together? In a philosophy department in which there was a perennial shortage of faculty to teach ethics, a colleague of mine once quipped to students that he could teach ethics but that his colleagues would not let him. Why not? Because he knew what is right and what is wrong. In fact his disqualification may affright most of us. The trouble with one person's knowing what is right and wrong is that others know differently. You may think lying is a mortal sin worthy of banishment from our society; I may think it merely foolish in most cases. If organizations are to apply one knower's standards to cases this year and another knower's standards to cases next year, the result may be outrageous variance in the treatment of like cases. Seat-of-the-pants ethics is bad enough for parents to inflict on their children; it can be disastrous for organizations and broad institutions. This problem is exacerbated if the two categories of cases above are not kept separate, with organizational invocation reserved for the second category of functionally relevant actions.

Let us consider a comparative case of two institutions that display important features of institutional morality. We wish to highlight differences in degree of institutionalization and in the degree of separation of ordinary personal morality from institutionally functional morality. Consider an example of a small institution that has a large, more gene-

erally institutionalized counterpart. A private school, call it Omega, that is not part of some larger organization of schools may make up all its procedures on its own. Its personnel may be clearly superb in some functions, such as teaching. But it does not readily follow that they will be good at moral regulation of students' behavior. Omega has few cases of problem behavior and understandably, therefore, it has very little available procedure for dealing with them. Two decades ago it had only administrative procedures. But it was caught by the drug revolution that permeated the school and wrecked many students' lives. In part, its problem was lack of knowledge at all of what was going on. The faculty were not even competent to discover the facts until the harm was widespread. Omega then made the use of drugs under certain circumstances -- such as in the school and at events sanctioned by the school -- subject to penalties in the school. Before the drug days, discipline problems at Omega were handled administratively by a couple of people. They were probably moralized and personalized in both bad and good ways and with a range of variance and, therefore, unfairness that depended on who the particular administrators were. Idiosyncratic, seat-of-the-pants morality may have intruded heavily into many decisions.

After the drug disaster, Omega's experience with problems that seemed to interfere with the mission of the school grew more diverse. Its sense that it was not handling them uniformly and fairly and that it needed more discussion from diverse parties led to the establishment of a standing disciplinary committee that included students and faculty. That committee is to determine facts and to recommend sanctions. Perhaps out of fears the committee would not perform well, the administration reserved to itself the power to assign punishment, but in actual practice it came to respect the committee's recommendations.

Omega has a handbook that includes guidelines on behavior. The most important guideline is one which is almost undefinable. Students are to respect the Omega community and to adhere to the Omega spirit.

The facts as reported here are somewhat stylized, but they are from an actual school, and they roughly fit a second school as well.

Historically, seat-of-the-pants morality ruled many schools, even at the policy level. Plenipotentiary school principals have banned crewcuts for boys in some years and then long hair for boys in other years, banned ponytails for girls, banned and also required petticoats for girls, severely punished the use of even minor expletives, have required that shoes have laces, and so on in extremis. The long list of what individuals have seen fit to ban would be funny if the bans were not backed with sufficient power to harm young lives to no good purpose. One is reminded of the Texas fundamentalist preacher, possibly apocryphal, who ranted against teaching kids foreign languages, saying, "If English was good enough for Jesus, it's good enough for our children."
Failure to do so can result in substantial penalties, including expulsion. A school with far more experience might list the major things that have been found to violate the school’s mission and thereby give students clearer guidelines for behavior. Omega often has to create its guidelines in the heat of considering actual cases. Of course, the Supreme Court and other appeals courts do likewise when the law seems ambiguous, but these courts are brought to bear on only a tiny fraction of all cases that arise in the law. Omega’s creativity is brought to bear on many of its cases. There are categories of cases, such as plagiarism and cheating of other kinds, that occur frequently enough that there are clear and relatively definitive guidelines for them. But, given the creativity of students at Omega, including students who may very carefully try to determine whether their potential actions have ever been subject to school sanction, there is little surprise that a range of new behaviors is a constant challenge to the disciplinary system.

How does Omega handle the challenge of novel cases? First, some of the parties — perhaps many of them — no doubt apply seat-of-the-pants ethics to the cases, as though, with my philosophy colleague, they had access to true knowledge of what is objectively right or wrong. Seat-of-the-pants ethics in such a context is a variant of natural law. We determine what is right not by reading from the printed rules or law, but rather by inference from the supposed body of generalized natural law that some of us are privileged to know. Taking the stance of natural law leads Omega officials to ask “Should Omega condone behavior X?” A positive law theorist would insist that the proper question must be “Do the Omega guidelines prohibit behavior X?” If the answer to the latter question is a simple no, then Omega must adopt new guidelines before it can punish behavior X and it can only punish instances of it that follow adoption of the new guidelines. The natural lawyers at Omega might conclude that, since they believe it would be wrong for Omega to condone behavior X, that behavior is already prohibited and can be punished.

Second, some of the parties — perhaps including many of the first group — apply reasoning that is an amateurish but serious version of what lawyers use in assessing the fit of extant law to new cases, such as cases that arise out of new technology. For example, does a century-old law prohibiting the use of vehicles in the park prohibit the use of roller blades? Such reasoning at Omega should include attempts to fit the new case to the mission of the school. If previous guidelines were fitted to the mission of Omega, this consideration would be at least partially met. But if the previous cases have been resolved with large intrusions of seat-of-the-pants ethics, the body of rules or guidelines is apt to crumble into a hodgepodge of moralistic and functional elements. Analogical reasoning not heavily constrained by overarching concern with extant guidelines and with functional fit will be poor reasoning. Given the radical disagreements among school officials over proper behavior and what it is right for schools to do about their charges’ morality, any argument for there being a credible natural law position on these matters seems implausible. Hence, it might seem that Omega must adhere closely to its specific guidelines in meting out punishments. But this may not be the whole story, as suggested below in the discussion of a violation of the “Omega spirit.”

Omega is a school in a large city that has a huge public school system. That system has had enormous experience in dealing with putatively bad behaviors and it has been under constitutional, legal regulation much more extensive than what affects Omega. A particular school in that system — call it City School — benefits vicariously from the experience of the entire system. City School has to make its discipline open and somewhat formal. Indeed, to the extent that it has become directly regulated by law, it is very formal, with lawyers often involved at all stages on behalf of students accused of serious infractions that might lead to sanctions that would jeopardize their further education. Private schools often have quite closed procedures, closed by practice if not strictly by rules. One might say, as defenders of private school practices do, that private schools are more personal with their students. Alas, they can also be more draconian and more personalistic and moralistic in their official treatment of students. The moralism that could not stand up in a court case against City School could wreck the life of a student in Omega.

One might suppose personalism must cut both ways, that we must take the bitter with the sweet. But personalism could be structured to play only to the advantage of students, not to their detriment. For example, a school could treat an action that does not clearly fall under stated guidelines as an opportunity for the school community to learn something about how to behave in the future, rather than as an unfortunate opportunity to teach some student a lesson, in the sense to which this phrase has been degraded in the vernacular. Virtually any private school must think broad community teaching is true to its mission. Hence, it is a treatment that is arguably functionally required. At least it would have to be shown why such a policy should not trump the idiosyncrasies of Omega’s disciplinary proceedings.

In comparing Omega and City School we can see an analog of a fairly natural historical development in institutional morality. We move from justification from idiosyncratic, seat-of-the-pants morality to justification from functional fit with the educational mission of the school. The sheer number of occasions on which to discuss the problem of discipline
induces a move to institutionalization. No doubt, there is also increasing bureaucratization, with its mixture of good and bad effects. Merely because of increased scale, personalization declines because the people (administrators, teachers, and others) in the disciplinary system have typically had less personal contact with the accused students. This must often lead to less judgment of the person and more strict reliance on judgment of the accused action. All of these changes together lead to a vision of institutional morality, in which individual actions are sanctioned only for their dysfunctional harm to the mission of the school. That mission, for both Omega and City School, is primarily educational, but it is also partly directly moral. Insofar as it is the latter, the argument here from institutional morality will not apply.

Even if we conclude that the City School disciplinary system is more procedurally just, we cannot conclude, merely therefore, that it is morally wrong of Omega to organize its disciplinary procedures as it does. After all, it faces the massive constraint of limited knowledge, the constraint of its very limited experience from its not very large, well-behaved student body. Good social scientists know that their understandings of particular things — practices, institutions, groups, cultures — are apt to be misleading. For example, accidental associations may be assigned casual significance. A standard way to escape this dilemma is to do comparative studies. But it does not take social science to comprehend the value of broadening the range of one’s limited experiences by looking at the experiences of others. We do it daily, to choose restaurants and movies, to evaluate acquaintances, to come to a better understanding of our norms, and even to understand ourselves better. Still, systematic comparison of several schools, including City School, might well be beyond the competence of Omega and its staff. And if we were recommending where Omega should put its resources, we might well conclude that putting more resources into mastering or improving disciplinary procedures was a poor way to fulfill its mission. If so, then Omega is right not to invest in revision of the procedures.

Suppose Omega has done well so far but that it now faces an action by a student that is not directly or even analogically covered by its specific guidelines. It might nevertheless seem justified in arguing that the action violates the vague “Omega spirit.” If the action does not seem to be a very great violation, Omega might invoke no sanction beyond serious discussion and it might add a new offense to its guidelines for future cases. But suppose the action is a major offense. It seems worse than, say, plagiarism or cheating or than abusive dealing with fellow students or teachers, but it is not even analogically related to these.

In the world of the law, if all the relevant judges are agreeable, there is no authority to block the use of severely stretched analogy to punish an action that seems not covered by statute or case law and that, therefore, should not be punished (at least not in the American legal system, in which punishment for an action before relevant law is created violates the prohibition of ex post facto law). We may rightly criticize a judge who allows such punishment even though we may not be able to prevent judges from doing so on occasion, perhaps especially when they are judging the person as much as the action.

Should Omega act like such an overreaching judge and deliberately, consciously punish what cannot be said to have been widely understood as a violation of its guidelines? Plausibly, yes. (But if so, it should probably temper its sanctions.) Omega can honorably attempt to act for the interests of its students, for its mission, even when this might violate what, in the law, is a compelling norm. The norm is compelling in the law for essentially pragmatic reasons: to block officials from abusing the law to attack certain people, such as blacks in the Jim Crow South, anarchists and leftists in the United States through much of the twentieth century, the homeless, and other people who supposedly do not “fit” by someone’s standards. The mission of the law is to do justice; it is hard (though perhaps not impossible) to argue that doing procedural injustice is a good way to achieve procedural justice. The mission of Omega is to create a splendid atmosphere for education and character development. City School has had imposed upon it the legal requirement that it do justice, even at potential cost to creating the best atmosphere for education. Eventually the law may also impose upon Omega to do justice in its disciplinary proceedings, and then Omega will be legally, and probably morally (Hardin 1994), bound to follow the norm against ex post facto laws or guidelines.11 Or even before that, Omega may decide that it should include justice in disciplinary proceedings in its mission, even at the sometime cost of educational atmosphere.

A compelling reason for including a concern with justice to Omega’s (or any school’s) mission is the grotesque limits to which unregulated censure can go. A remarkably successful black student in a Miami high school gained admission to Harvard University in 1994. The student was then a graduation speaker at his high school. Following school custom, he had his speech approved by an administrator. He then added a brief passage encouraging his fellow black students to take education seriously. “America’s true worst nightmare is someone young, black, and educated,” he said, “for education is the key that unlocks the door

11One could phrase a stronger requirement that Omega include concern for distributive justice, but that could be an impossible burden if Omega is still to maintain its current educational mission.
of oppression.” The administrator then wrote to Harvard to report the student’s action. According to a Harvard admissions officer, such letters from school officials occasionally lead to the revocation of admission. The administrator may have reacted to the student’s action merely as a violation of school policy, but he also characterized the speech as “of questionable taste.” It is striking in this case that a large fraction of citizens would strongly disagree with the administrator’s seat-of-the-pants moral judgment of the content of the speech. Yet, the administrator’s attempted punishment could have radically affected the student’s further education and eventual career. The severity of the punishment of getting him barred from admission to Harvard is arguably grim and beyond the measure of anything of which the student might have been judged wrong under any actual rules or under any reading of a putative “natural law” principle. Such grim punishment cannot justly be left to the discretion of a particular individual’s whim.

Finally, note that Omega has a distinctively complex moral problem in that it sees its mission in part as teaching or inculcating morality. It could not (indeed, would not) articulate a coherent or general morality, as some religious schools might do. But it does want to foster certain character traits in its students: in particular, a sense of respect for fellow students and teachers in the common enterprise of education and a strong sense of honesty in intellectual matters. The latter concern may heighten the degree to which the school sees plagiarism and other cheating as bad. They are functionally bad in the educational mission of the school and also bad for the kind of character the school wishes to develop in students. But these two concerns—character development and functional fit with the educational mission of the school—have independent weight. In this respect, Omega is different from many institutions. It is even different from City School to some degree, in that the content of morality in the mission of City School may be more minimal than that in Omega. In the multicultural city, City School and its larger school system could not politically succeed in teaching very much morality. In fact, the New York City schools are even prohibited from teaching tolerance, which is perhaps the most utterly minimal moral principle for life in that city. Omega can and does teach tolerance. Indeed, when its guidelines speak of respect, they largely mean tolerance, so that tolerance is at the core of the Omega spirit.

Clearly, part of the Omega spirit is to develop creativity and autonomy. The histories of individual creativity and autonomy are not exclusively but substantially histories of flouting authority. There is therefore some tension in a charge to be creative and autonomous, as though these were a matter of following orders from an authority. This tension is more destructive in the so-called codes of honor of the military academies. These commonly seem directed at honor. But among the ways to honor are squealing on fellow cadets who violate the honor code and submitting to virtually absolute obedience to authority. Honor is violated by its requirements. In this, the honor codes of the military academies are reminiscent of the brutal codes of honor in the duel, from which they may largely derive. The Omega board and administration must want much of the Omega spirit to be not a charge but an ideal or aspiration for its students. But that makes it an odd principle for enforcement. Where guidelines are poorly articulated, treating the Omega spirit as an overarching guideline may encourage administrative refuge in idiosyncratic, seat-of-the-pants ethics and the sometime corruption of natural law. That is, it encourages the violation of the understanding of institutional morality.

5.9 Concluding Remarks

In assessing the internal morality of an institution, our chief difficulty is compositional. We can, in our ordinary vocabulary, understand what we mean when we say that an individual is responsible for a certain action or that the individual acts morally or immorally. To say of a group or institution that it acts morally or immorally or is responsible is not completely contrary to sense, but it would be odd to think of an organization as an intentional being in the sense in which a person is an intentional being. The organization may be composed of intentional beings, but it is not one itself. Not least of the oddities of treating an organization as an intentional being would be in assigning moral responsibility and even punishment to the organization without having these be reductively applied to the individuals in the organization. Despite the difficulty of assigning moral responsibility to an institution or organization without assigning it to individuals in the organization, organizations have capacities that transcend those of individuals. For example, organizations can have superior capacities to collect relevant information and theory for handling their tasks and radically superior capacities to mobilize resources to get things done. Organizational policies and actions may also often be much more coherent and consistent over time than individual “policies” and actions. If responsibility is typically associated with capacity, it seemingly makes sense to assign responsibility for outcomes to organizations that bring them about. But moral theories are not sensibly brought to bear on

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12*New York Times*, 31 July 1994, 1. The student’s admission was not revoked and the administrator was reassigned to teaching after substantial public protest.
organizations and other institutions without reassessment of notions of responsibility.

In general, the internal morality of acting within an institution is not simply composed from the ordinary morality of individuals. It is artificially constructed to a large extent. The moral theory of institutions and of the behavior of institutional office holders must be derived from the purpose of the institutions. Complex, plural causation and the stochastic nature of many outcomes block the simple association of individual-level moral responsibility with causal responsibility. Hence, an uninstitutionalized act-utilitarian account or a deontological account based on individual-level action theory is largely irrelevant to institutions. We might conclude that institutions are therefore outside the realm of moral discourse. But that would be perverse. Without institutions we can achieve far too few of the moral purposes we have.

References

Institutional Morality