

Can a Non-State Actor be a Collective Moral Agent that is Ethically Responsible for Its Actions?

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Introduction

From the Treaty of Westphalia to the present day, states were the dominant actors in the international arena. However, a different kind of actor is now on the world stage. Non-state actors emerged largely after World War I. While one may argue that non-state actors existed before World War I in the form of treaty alliances or the Vatican, alliances before the Cold War were shifting sand pictures that could be easily erased with the wind and formed into a new picture. They were not formal institutions that could govern actions. Likewise the Vatican for all practical purposes acted as a state.

The League of Nations was perhaps the first true effort to create a non-state institution that attempted to govern, moderate, or at least impact international behavior and the relationships between states. Unfortunately, the League had no way to truly develop an effective governance structure and enforce behavior. As a result, it was largely symbolic and incapable of meaningful action. Even papers during the time were skeptical of the League's ability to address problems (Beneš, 1932), (Sulzbach, 1945). Looking back on the League the record is not much clearer. On the whole, however, statesmen felt the League did not live up to its promise and dissolved it to create the United Nations (UN).

Post World War II, the international community tried to create a different international body with more capabilities. The UN was designed to improve upon the weaknesses of the League and create a body that could take action on the international stage. Arguably, it has done so in various peace operations, UN sanctions, and the various international organizations it created to address specific problems. While the UN record may be considered mixed with some successes, some failures and a lot of efforts still undecided, it did take many actions in its name and has successfully managed programs, operations, and sanctions.

While the differences between the League and the UN are not the direct subject of this paper, the key difference in governance is perhaps relevant. While the League almost certainly could not be considered a collective moral agent with moral responsibilities for the actions taken in its name, perhaps the UN can be considered a collective moral agent. This paper broadens the scope beyond the UN and looks at non-state actors in general and whether they can be collective moral agents.

To do this, the paper will first discuss the key attribute that allows an individual to be a moral agent—that is someone who is capable of making a moral decision and acting upon it. It will then show that groups have the same capacities to be a moral agent. From there, the paper will extrapolate to institutions and show that an institution may have the capacity to be a moral agent depending upon its structure. Finally, it will show that non-state actors that meet the prescribed institutional requirements can be moral agents.

Approach

Can non-state actors be collective moral agents that are morally responsible for their collective actions? If so, at what point does a non-state actor become a responsible collective moral agent? Is there a point at which a non-state actor moves from a loose collection of individual actors to becoming a collective moral agent that is responsible for its collective actions? The paper's premise is that once a non-state actor gains an effective governance structure that can set and implement policy and guide and govern individual agents working within the institutional structure it becomes a collective moral agent.

The paper will discuss the key requirements for individual moral agency and then show how a group can have the same attributes and be a collective moral agent. It will then review applicable theory to build the new institutional collective moral framework. The key is to support the notion that states are collective moral agents and then to show that the state is simply one well defined type of institution with an established and enforceable governance structure and personæ. Next, it will use this theory to build the framework. Then it will review an alternative view and address it. Finally, the paper will review potential cases that help to illustrate the concept.

The paper will use an inductive methodology to show that as non-state actors develop the institutional governance capacity they become more state-like. Thus, if states are collective moral agents and non-state actors through effective governance structures take on state-like characteristics, they may also become collective moral agents. The key is a set of enforceable processes that can be effectively monitored and a common culture based on norms and values and member buy-in to this culture. Thus, there are both qualitative and quantitative aspects to the "state-like" ability to govern member actions and sanction illicit behavior. The institutional non-state actor is morally responsible because it sets the culture, the processes and monitoring and then sends sub-actors out into the environment to do its will. In effect the institution takes on its own personæ. The stronger the institutional personæ and the less subject it is to individual actor's attempt to change it, the more the institution is a collective moral agent. Likewise, similar to the social contract theory, the more the institutional members support the cultural norms and values, the more the institution is morally responsible.

Some may initially find the absence of a general discussion on ethics and morality a flaw in the methodology. However, the specific form of ethics or morality is less important to this argument than whether a collective entity can be held responsible under that form. Thus, the paper takes an existing ethical construct, be it virtue-, duty-, or consequentialist-based, as a given rather than argue the relative merits of each construct. The fundamental question is then whether a collective agent can execute moral or immoral actions and be held responsible or is this solely the domain of individual responsibility?

What makes an individual a moral agent?

Ethics generally applies to individuals. Therefore, what makes an individual capable of both understanding the ethical construct in which he or she lives, make decisions based on this construct, and then execute them? Simply put, the individual must have a moral capacity to make decisions and implement them.

Moral Capacity

The fundamental basis to determine whether any actor can make a moral decision is judgment.

David Thomasma, in *The Variables of Moral Capacity*, states:

Normally moral capacity is conflated with competency. For competent decisional capacity we expect that an individual has the possibility of making choices and is able to recognize their consequences. We recognize in the law and in ethics the chances that some individuals will vary in their capacity to make decision due to age and/or disease, so even when there is doubt, we test for competence often. (Thomasma & Weisstub, 2004, p. 9)

He goes on to say:

...the very point of moral capacity is that the decisional ability is open to moral evaluation. There are many values and value-systems: economic, political, religious, etc. What gives the capacity to make decisions a moral cast is the ability of the individual and external observers to evaluate the decision and its consequences from a distinctly moral perspective, i.e., the perspective of what is right and good (Thomasma & Weisstub, 2004, p. 10)

If the actor does not have capacity to make judgment, then the actor cannot be held responsible for moral decisions and actions. This is a recognized component of both law and ethics. It is fundamentally why we treat children differently than adults as well as why we treat cognitively impaired individuals different than mentally competent adults.

Judgment is based upon perception, the ability to weigh the perceived data, and the ability to make a rational decision based upon the perceived information. This is a critical part of moral judgment and decision-making (Blum, 1994, p. 38). The individual must have a clear perceptual field and relate our perceptions to some form of consensus reality. Reinhold Niebuhr, in *Moral Man and Immoral Society*, wrote:

The measure of our rationality determines the degree of vividness with which we appreciate the needs of other life, the extent to which we become conscious of the real character of our own motives and impulses, the ability to harmonise[sic] conflicting impulses in our own life and in society, and the capacity to choose adequate means to approved ends. In each instance the development of reason may increase the moral capacity. (Niebuhr, 1960 (2005), p. 20)

The ability harmonize the conflicting impulses speaks to the ability manage the perceptual fields as well as to integrate various inputs from them. The ability to choose appropriate means to

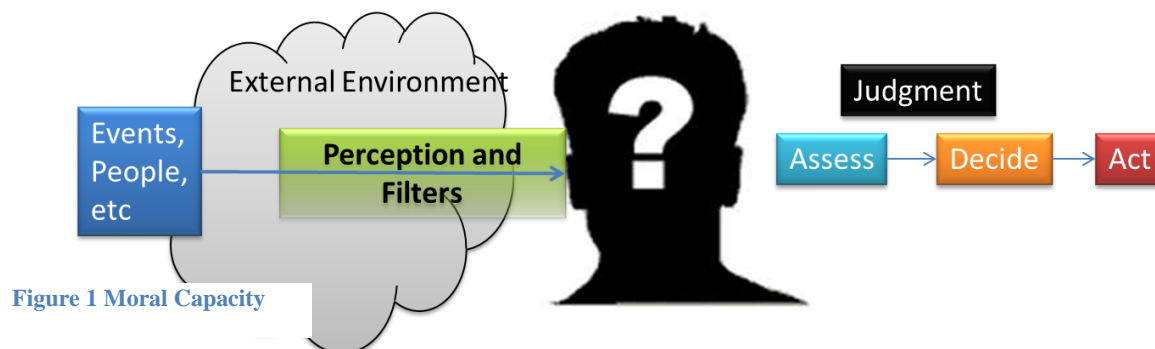
approved ends speaks to a rational moral decision-making construct. See also Bagnoli and moral perception (Bagnoli, Forthcoming).

The ability to act is the second major component for moral capacity. This is fundamentally based on the Kantian notion that “ought implies can”. As the Blackwell Dictionary of Western Philosophy states:

A formula in Kant's ethics, meaning that correctly judging that a given agent is morally obliged to perform a certain action logically presupposes that the agent can perform it. He can perform it not just if he wants, prefers, or wills to, but in some absolute sense. This capacity is a categorical freedom in contrast to the hypothetical freedom defended by Hume and others, for it is freedom both to do and to forbear doing a certain action under the same set of conditions. (Bunnin & Yu, 2004)

If an actor makes a moral judgment, but cannot act upon it can we hold the actor responsible for the consequences? We clearly cannot. Kant is right on both a practical and a theoretical basis.

Therefore moral capacity includes the entire spectrum from perception through action as shown in the figure below (see also (Haidt, 2001, p. 815)).



Can the individual moral agent be extended to a collective moral agent?

Clearly, people are moral agents. But can states and other groups be moral agents as well? Toni

Erskine and others have argued that states can be collective moral agents. She states:

To say that an individual is a moral agent is to say that he or she has the capacity to both understand and respond to ethical reasoning. It is also to say that the same individual can incur moral responsibilities. By claiming that institutions (in the sense of formal organizations) can be moral agents in international relations, one is extending the same assumptions to collectivities. (Erskine, 2001)

I agree with Erskine, and as noted above, this paper will use an inductive approach to show that institutions have the capacities noted in Figure 1 above. In addition, the argument must also show that the institutional moral capacity subsumes the individual member's capacities. That is the institutional moral capacity governs the individual member's actions and is therefore the dominant moral capacity when the individual acts on behalf an institution that has sufficient moral capacity. However, as the Greenpeace case study shows, individuals still retain their own moral responsibility.

Group Mind. Culture, and Moral Capacity

The argument about moral capacity works well for an individual person, but what about groups? Groups are collections of individuals, each with their own moral capacity. Therefore, can a group have a moral capacity or is each individual his or her own independent moral agent? Group culture has the power to shape individual's perceptions and actions. Look for a moment at Nazi Germany. Arguably, Nazi Germany was an immoral construct that shaped years of unethical behavior that resulted in well over 10 million deaths. Was the German Reich responsible or was each individual German responsible? After all, Hitler and the Nazi regime were democratically elected.

Group Mind

Some theories, such as those posited by Dunbar state that the structure and capabilities of the human brain, which inherently governs individual moral capacity, are shaped by social forces and requirements to interact in a group. Humans and other primates are social creatures that evolved to work together in effective groups. (Dunbar, 2003). Perhaps humans greatest evolutionary advantage is to work together effectively in groups and make and carry out group decisions.

Let us start with a clear statement of the problem and the theory:

First:

... We ordinarily think of individual intentions of some kind of mental state on a par with other mental states such as beliefs and desires. But it is not clear whether a group can be said to have a mental states of all, at least not without positing the existence of group minds, which we suspect will turn out to be unacceptable from an ontological perspective. Without group minds, however, it is puzzling whether group intentions exist in the minds of individual agents, or whether group intentions are somehow to be identified with a set of related individual intentions in the minds of individual agents.

... a group has an intention to form an action collectively when their beliefs and desires have achieved a particular kind of equilibrium. The conditions for such an equilibrium are best understood in game theoretic terms especially with the help of Auman's theory of interactive epistemology. (Chant & Ernst, 2007, p. 96)

Auman addresses the group decision-making process through 'interactive knowledge' that is collectively gained about each member's knowledge and intentions in the group. The sum total

of this interactive knowledge forms the group knowledge and guides the group's collective action. Chant and Ernst argue that group intention is a particular kind of interactive knowledge. (Chant & Ernst, 2007, p. 105). Their conclusion is that in order for a group to operate together and synchronize individual actions, it must have a collective group intention. They furthermore think that a group's structure will influence that way that a group forms its group intention (Chant & Ernst, 2007, p. 107).

In reviewing the issue of "groupthink" Schafer and Crichlow cite Janis that certain structures and situations can actually lower group decision-making quality below what the individuals would do on their own. (Schafer & Crichlow, 2002) . Structure and organization does matter and influences group interactive knowledge and hence decision-making. The concept of groupthink speaks to how the composition of a group can lower decision-making. The opposite effect is used when groups are deliberately constructed to employ specific personality types using, for example, Meyers-Briggs personality types. See, for example, Webb, Nemer and Zuniga for a study on group composition (Webb, Nemer, & Zuniga, 2002).

Collective Actions/Commitment

Groups reach consensus on actions and create a group-level commitment. While a top-down controlled group may seem to be an exception, many of these groups do build consensus to reduce overall friction. This is especially true for IGO's and other organizations where the membership may voluntarily exit, which are the primary groups under consideration in this analysis. Gilbert emphasizes that once a group commitment is established; it can only be retracted by the group rather than on an individual basis (Gilbert, 1997). The group commitment then guides and governs group actions, even if all of the group members do not participate in the action (Gilbert, 1997, p. 71). This concept is similar to the NATO operation in Libya and Afghanistan. In both cases, NATO established a group intention and acted, but not all NATO members participated in the operation and some, such as Turkey in Libya, opposed the operation outright or significant parts of it. Yet the Libyan operation was conducted by NATO, using NATO command and control assets.

Culture

Culture is another key component to shaping group mind and decision-making through shared norms and values. Dimaggio notes:

Many sociologists believe, following Gramsci (1990), the culture, embedded in language in everyday practices, constraints people's capacity to imagine alternatives to existing arrangements. At the same time we know that people act as if they use cultural elements strategically to pursue valued ends. (DiMaggio, 1997, p. 268)

Culture therefore helps to establish the filters through which a person or a group perceives the external environment. These filters therefore shape the data that the actor receives and hence the actor's judgment. The group's cultural effects not only the individual, but the group's collective

interactive knowledge. Since collective intention is a sub-set of interactive knowledge, culture will affect intention as well.

Norms

Norms help to set the rules that guide and govern an agent's actions. MacCormick uses the term 'norm' as "a general catch-all term to cover any explicit or implicit 'ought-proposition' that is supposed to play this judgmental role in somebody's practical thought" (MacCormick, 1998, p. 303). He notes that norms can be either formal or informal. Thus, there does not have to be a written governance document. Norms can derive from accepted group behavior. Norms come from the group construct and arguably may not exist outside of the group construct. Stellmacher and Petzel use norm compliance in several of their Authoritarian Scale scoring (Stellmacher & Petzel, 2005, p. 268). In the body of their paper they argue that authoritarianism places the group and its norms above the individual, while libertarianism subordinates the group norms to the "autonomy and self-regulation of the individual member." (Stellmacher & Petzel, 2005, p. 247) While I do not think group norms necessarily equates to a degree of authoritarianism, the concept is similar to that noted by Gilbert above. Since Stellmacher and Petzel use a sliding scale of authoritarianism, there may be some utility in this approach to assess collective versus individual responsibility in a group action. An interesting corollary may be the degree to which a group may compel and individual's actions and compliance as well as state sovereignty as discussed below.

Groups may be summed up as shown in the figure below.

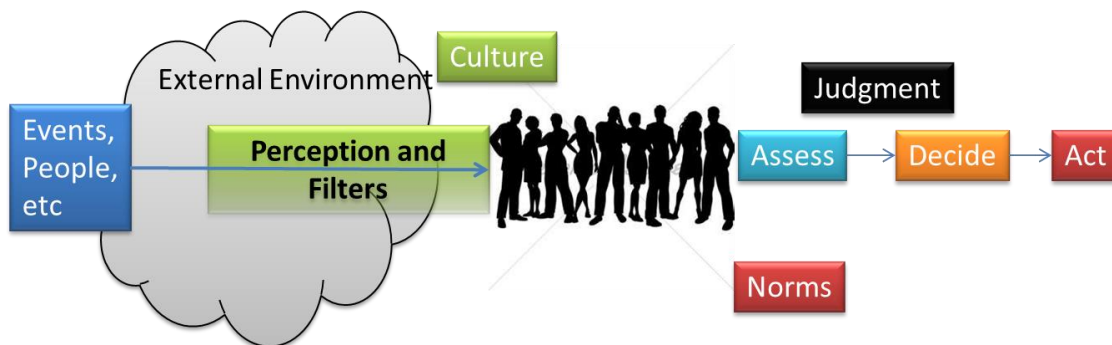


Figure 2 Group Moral Capacity

Figure 2 is very similar to Figure 1 with the substitution of a group for the individual and the addition of culture and norms. As noted above, culture influences the perceptive process and provides some glue that helps to bond the group together. Norms govern the collective judgment process.

The State

A state is a special type of group that has sovereignty—the power to compel behavior within a specific geographical construct. The modern state concept is relatively new. The concept’s birth is largely linked to the Treaty of Westphalia that ended the Thirty Years War, a war that tore the German territories apart and wreaked tremendous devastation. While groups compelled behavior in the past, even over specific geographic constructs, the governments now recognized each other’s autonomy from external interference, even from religion (Axtman, 2004, p. 260). Therefore, the state has a monopoly on force and control within its territory. Lindsay deftly notes this ability to compel by force separates the state from other organizations (Lindsay, 1924, p. 246).

The state has at least a rudimentary governance structure in order to observe citizens and other states and to compel behavior and respond to hostile actions. Lake makes the point that not all states are fully sovereign by many definitions (Lake, 2003). After reviewing the realist and dependency theory views of sovereignty and finding issues with them, he states that sovereignty is a “social fact” and not a rigid concept the way many realists portray it. He builds upon Kasner and others to discuss a spectrum of sovereignty. Lindsay presaged many of these ideas and noted that sovereignty is a malleable idea that changes as the form of government changes (Lindsay, 1924, p. 246). Lindsay’s insights are especially interesting as they were written during the midst of what Huntington calls the second wave of democracy (Huntington, 1991) as well the rise of the League of Nations when there was a profound hope of a lasting peace and end to war.

Likewise Barkin and Cronin note that sovereignty’s essence is rarely fully agreed upon. They note, however, that Ruggie’s definition, “the institutionalization of public authority within mutually exclusive jurisdictional domains” is widely accepted, but most definitions tend to focus on the legal aspects of sovereignty defined. They, like Lindsay, note that concept seems to change a lot and even the institutional legitimacy “tends to change from era to era” (Barkin & Cronin, 1994).

However malleable the concept, sovereignty may flow from one of three historical sources: the “people” ala Rousseau, from “God” ala the “divine right of kings” or simply through the force of force ala “might is right”. The concept of divine right of kings has largely fallen into the dustbin of history, leaving the people and the hegemon. The more sovereignty flows from the people, the more the people are directly complicit with the intentions and actions of the state. Otherwise, they are at least implicitly complicit with the intentions and actions of the state if they do not rise up against it. Thus, either implicitly or explicitly the people are the ultimate source of sovereign legitimacy. Lindsay notes this wryly:

Then Rousseau and those who came after him, especially the Hegelians, gave up the determinateness, which was the sound part of the old theory and kept the obedience to persons, which was now out of date, and invented a new kind of person, the people, the general will, the state or the nation, distinguished from the individuals composing the community.

As, however, it is not a sufficient criticism of the social contract theories of the seventeenth and eighteenth centuries to point that the social contract theory is, taken literally, nonsense, neither is it enough to point out that the theory of sovereignty as applied to a constitutional state is, taken literally, nonsense, though nonsense it is. As we ask what Hobbes was trying to say in the inadequate language of contract, so we must ask what the modern upholders of sovereignty are trying to say in the inadequate language of sovereignty. (Lindsay, 1924, p. 249)

Social Contract

Jean Rousseau's Social Contract Theory influenced Kant and several other important authors. The net effect of Rousseau's work is to establish that under the social contract, people bond together to create a greater collective institution, which is an end in and of itself (Rousseau, 1762, pp. Book II, Chapter 7). Likewise, Mills, also spoke of citizens coming together to form a "single political community entitled to act collectively to determine their own affairs" (Walzer, 1977, p. 87). Mills specifically discussed statesmen who "speak or act in the name of England" that "are bound by the strongest obligations" to act in the state's interests (Mills, 1859).

So what does the social contract actually imply for the state and sovereignty? Is it nonsense like Lindsay asserts? However, even Lindsay notes that a state cannot rely upon force alone and the state, at least the modern state, relies on a constitution and that "the great mass of its citizens are in the last resort prepared to fight if necessary for what the state stands for, the maintenance of the constitution." (Lindsay, 1924, p. 248)

A constitution is an expression of the social compact that creates a sovereign entity empowered to act for the people. Individual people do not have the requisite power and capacity to effect the collective action required of a state. Only a collective body can effectively establish and enforce laws and regulate behavior across the collective. While the social compact is explicit in representative forms of government, it is at least implicit in authoritarian forms of government. The spate of revolutions from the Baltics in the 1990's to the Middle East in 2011 is a testimony to this fact. In all of these revolutions, people arose to take the power they implicitly had all along and formed a new social compact.

Indeed, the United States government is arguably an expression of this popular will to sweep away a less representative order and to develop a new social compact (McLaughlin, 1900). The Declaration of Independence implicitly states it:

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States;

This social compact is explicitly stated in the Preamble to the Constitution:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and

secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

In both the implicit and the explicit reference to the social compact, the source of power and legitimacy is ultimately to the people.

Once the government is constituted, however, it takes on its own personæ and power. It creates organizations to manage various aspects of sovereignty. These organizations form collective agents that channel power. When individuals become members of the collective agent, they take on many of the cultural and normative traits of the organization and act within its bounds and constraints. Speaking of collective agents, Hindriks states:

Members of collective agents have certain roles that can be represented in an organizational chart. Furthermore, they are bound by procedural roles and policies. Finally, they rely on some kind of collective decision-making mechanism. Instead, Margaret Gilbert (1989, 2006) argues that a collection of individuals becomes a collective agent by openly expressing their willingness to be part of such an agent in conditions of common knowledge. (Hinriks, 2008)

Once the member has expressed this willingness, they take on the personæ. That is, their work is shaped by the collective is no longer truly their own. In addition, they have access to the resources of the collective that give them the capacity to act in venues and manners in which they would not be able to act as an individual.

Principal-Agent

The notion an agent is well grounded in principal agent theory as well as in law. While its origins are in the economy and contractual law, principal-agent theory is now a well-developed part of political science as well. Essentially, a principal contracts with an agent to carry out a specific task. The agent is bound by law and contract to carry out the task on behalf of the

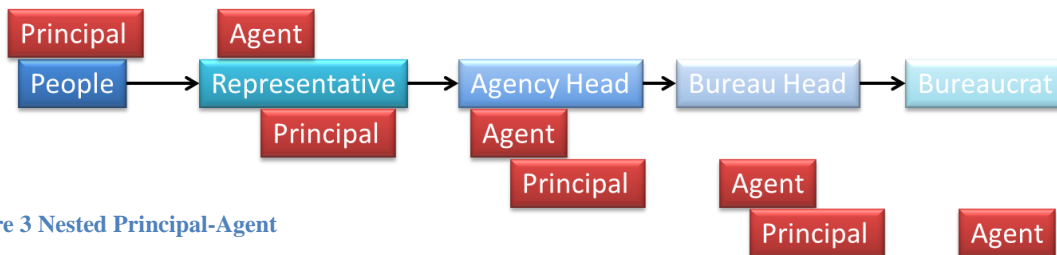
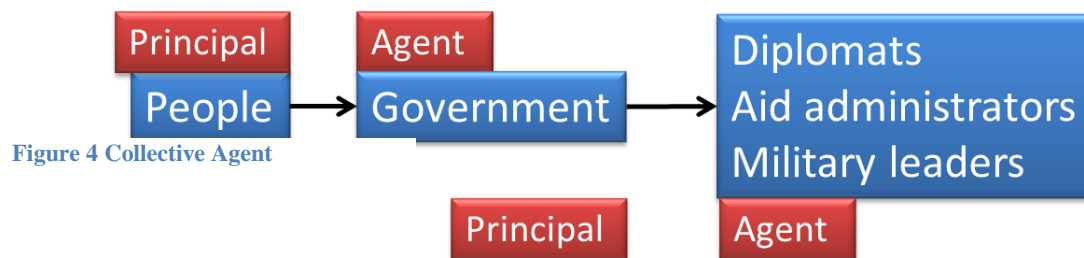


Figure 3 Nested Principal-Agent

principal. In political terms, the People are the ultimate principals and the representatives are their agents. However, since the representatives do not carry out the normal day-to-day means of government, they become nest principals with the bureaucratic heads as agents. This nesting can continue down to the street-level bureaucrat as shown in the figure below:

These relationships can be distilled down to a simple view of the collective agent and government as shown in the figure below:

The individual agent has little power of his or her own. Their source of power resides in the organization they represent. As they make decisions and implement them, they do so within the construct of the culture, norms, values and constraints of the organization to which they belong. In many cases, they take positions that they may not agree with personally, but must take because that is the collective organization's position and policy. Hence we rarely hear people state an individual went to war. Rather, they say a country goes to war (see for example, Miller (Miller, 2004)). Even in the case of Hitler in World War II, he had to coopt the national institutions and mobilize them to go to war. The agreement between Hitler and the military that brought about the end of the SA in the "Night of the Long Knives" (Jablonsky, 1988) is just one



example of many.

The State as a Moral Agent

The Kantian Perspective

Once enacted, the social contract is not voluntary. Rauscher notes:

The social contract is a rational justification for state power, not a result of actual deal-making among individuals or between them and a government. Another link to Hobbes is that the social contract is not voluntary. Individuals may be forced into the civil condition against their consent (6:256). Social contract is not based on any actual consent, one might say the voluntary choice to join a society. Since the social contract reflects reason, each human being as a rational being already contains the basis for rational agreement to the state. Are individuals then coerced to recognize their subjection to state power against their will? Since Kant defines "will" as "practical reason itself" (*Groundwork*, 4:412), the answer for him is "no." If one defines "will" as arbitrary choice, then the answer is "yes." (Rauscher, 2012)

Wilkins makes the wry comment, "But what makes Kant difficult to interpret is that he believed both in the "rights of man" and in the rights of states, which sets him apart from cosmopolitan liberals on the one hand and political realists on the other." (Wilkins, 2007, p. 148) Kant often gets quoted on various sides of an argument, seemingly as a way to add gravitas to the opinion.

So what does Kant actually say about states? Perhaps the best source is *Perpetual Peace*. In section 1.2, he stated:

A state is not, like the ground which it occupies, a piece of property (*patrimonium*). It is a society of men whom no one else has any right to command or to dispose except the state itself. It is a trunk with its own roots. But to incorporate it into another state, like a graft, is to destroy its existence as a moral person, reducing it to a thing; such incorporation thus contradicts the idea of the original contract without which no right over a people can be conceived (Kant, 1795)

Kant clearly says the state is a moral person and becomes an entity in its own right. Once constituted and permitted to exist by the people, it sets policies, acts and effectively becomes a moral agent. He then implicitly calls on the Categorical Imperative to show that a state cannot be treated as a mere means to an end, but is an end in itself.

Categorical Imperative

Kant stated the Categorical Imperative in three different formulations, the second of which is important for our purpose: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.” Generally, the formulation applies to individuals, rather than collective groups, based on the use of the word "person". However, as we look at international relations and the roles that states play, the state can often fulfill the role of an actor and hence the "humanity" Kant references. He clearly intended this formulation in the passage of *Perpetual Peace* cited above.

International Law

While law is not necessarily related to ethics, law is the other side of the coin so to speak to ethics. Ethics provide a foundation for the law, and law provides a means to enforce ethical violations. There is a very clear standing for the state as an entity in its own right in international law and treaty. Chapter II of the UN Charter is quite specific about treating states as actors that can join or be expelled from the UN. Article 6 states: “A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.” The Montevideo Convention of 1933 is even more explicit:

ARTICLE 1

The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.

ARTICLE 2

The federal state shall constitute a sole person in the eyes of international law. (Conference of American States, 1933)

The Rome Statute that effectively established the International Criminal Court (ICC), in the Preamble, calls on states to “guarantee lasting respect for and the enforcement of international justice” (International Criminal Court, 1998).

The UN clearly states in Article 4 of *Responsibility of States for Internationally Wrongful Act*:

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

(United Nations, 2001)

These key citations clearly help to establish the state an actor on the international stage and, like Kant on the moral side of the coin, treat the state as a person.

The State is a Moral Collective Agent

The idea of a state as a collective moral agent is clear based on Kant's theories, Rousseau's Social Contract theory, Mills' theories, the nature of the state and sovereignty, and principal-agent theory. In addition, as we move into the practical aspects of ethics in conflict, international law is also important and clearly supports the idea of the state as an actor. The state has all of the attributes noted in Figure 2 to exhibit collective moral capacity. As noted in the discussion on sovereignty, however, there may be degrees of sovereignty that shape the degree to which a state is a collective moral agent and can be held accountable for moral actions.

This statement, however, needs to be qualified. Earlier, the paper addressed the spectrum of sovereignty. This spectrum has an impact on whether a state is a complete collective moral agent, a partial moral agent, or has no capacity to be a collective moral agent. Toni Erskine differentiates the spectrum with the notion of positive sovereignty and writes that only states with positive sovereignty can be collective moral agents (Erskine, 2003).

Institutions as Collective Moral Agents

States are specific kind of institution. So if states are collective moral agents, can we extend the concept to institutions in general? This section will first review institutional theory and then establish a working definition of an institution and an institutional framework for analysis. It will then compare the institution against the collective moral capacity standard derived previously to determine if institutions fit into the standard and if so, what restrictions apply. Erskine discusses the problems of attributing moral agency to non-state institutions. She cites French (French, 1984) and the concept of corporate personhood as a model to view the institution as a person along the lines of Kant and states (Erskine, 2003, p. 23). See also Dubbink (Dubbink & van Liedekerke, 2009) and Soares (Soares, 2003). For an alternative view, see Altman (Altman, 2007)

Institutional Theory

Douglass North's influential book *Institutions, Institutional Change and Economic Performance* is a key work in institutional analysis. He defines an institution as:

Institutions are the rule of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence they structure incentives and human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve through time and hence is the key to understanding historical change. (North, 2007, p. 3)

Likewise, Elinor Ostrom, in her path breaking book, *Governing the Commons: The Evolution of Institutions for Collective Action*, similarly defines institutions as:

"Institutions" can be defined as the sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions (Ostrom, 1990).

Peter Hall and Rosemary Taylor provide a solid overview of three schools of institutionalism in "Political Science and the Three New Institutionalisms". The work covers historical, rational-choice, and sociological institutionalism. These three schools each approach institutions from a slightly different perspective. A summary of the definitions they state or imply is found in the table below:

Table 1 The Three Schools of Institutionalism

Historical	Rational Choice	Sociological
<p>[H]ow do historical institutionalists define institutions? By and large, they define them as the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the policy or political economy. They can range from the rules of constitutional order or the standard operating procedures of a bureaucracy to the conventions governing trade union behavior or bank-firm relations. In general, historical institutionalists associate institutions with organizations and the rules or conventions promulgated by formal organization. (Hall & Taylor, 1996, p. 938)</p>	<p>As this suggests, the rational choice institutionalism political science drew fruitful analytical tools from the 'new economics of organization' which emphasizes the importance of property rights, rent – seeking, and transaction costs and the operation and development of institutions. (Hall & Taylor, 1996, p. 943)</p>	<p>[F]irst, the sociological institutionalists tend to define institutions much more broadly than political scientists do to include, not just formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action. (Hall & Taylor, 1996, p. 947)</p> <p>They add further clarification with: Against this, the new institutionalists in sociology began to argue that many of the institutional forms and procedures used by modern organizations were not adopted simply because they were the most efficient for the tasks at hand, in line with some transcendent 'rationality'. Instead, they argue that many of these forms and procedures should be seen as culturally-specific practices, akin to the myths and ceremonies devised by many societies, and assimilated into organizations, not necessarily to enhance their formal means-ends efficiency, but as a result of the kind of processes associated with the transmission of cultural practices more generally. (Hall & Taylor, 1996, pp. 946-947)</p>

Ostrom is particularly important as she studies institutions and collective action. Some examples of collective action institutions include Intergovernmental Organizations (IGO) such as the International Atomic Energy Agency (IAEA), International Bank for Reconstruction and Development (IBRD), the Office for the Coordination of Humanitarian Affairs (OCHA), and the United Nations High Commissioner for Refugees (UNHCR). But collective action institutions also include Non-Governmental Organizations (NGO) such as Greenpeace, Doctors Without Borders, and the Carnegie Commission on Preventing Deadly Conflict. They also include collective bodies such as the North Atlantic Treaty Organization (NATO), the UN, the African Union (AU), and the Arab League (AL).

As collective action institutions work to solve thorny issues, particularly trans-national issues, they will be exposed to ethical and moral issues and need to make ethical decisions for which they may be held accountable. What happens if a Greenpeace vessel is sunk and people die? The problem is non-trivial. As Fisher, referencing Salamon (Salamon, 1994) states:

In the views of some observers, the third world in particular is being swept by a nongovernmental, associational, or "quiet" revolution that at least one analyst believes may prove to be as significant to the latter twentieth century as the rise of the nation-state was to the latter nineteenth century. (Fisher, 1997, p. 440)

All of these IGO's and NGO's are some form of institution. Their composition and organization will range from loosely organized coalitions of actors with little or no governance to larger institutions with well-defined governance structures, norms, and culture. Some, such as the UN and NATO, are involved with operations that involve deadly force.

Institutional Framework

Let us first work with the institutional framework. With the exception of Historical Institutionalism and perhaps Social Institutionalism, the accepted definitions of an institution focus on the rules and not the actors and the governance processes. With this limitation in mind, perhaps part of the problem lays with Ostrom and North's definition of an institution and the separation of the rules from the players. This artificial separation removes the governance section from the institutional model. Perhaps a better definition of an institution that addresses this governance issue is: *A system of actors, both individuals and collective groups, operating within defined constraints and structure that employs rules, and governance processes and procedures to accomplish a purpose. The structure, constraints, and rules may be created by strict design or through a process of historical path-dependency and cultural accumulation. Governance mechanisms have the capability and capacity to monitor actors, adjudicate non-*

compliance, and induce compliance through either inducements or compulsion. Schematically, this definition can be represented as:

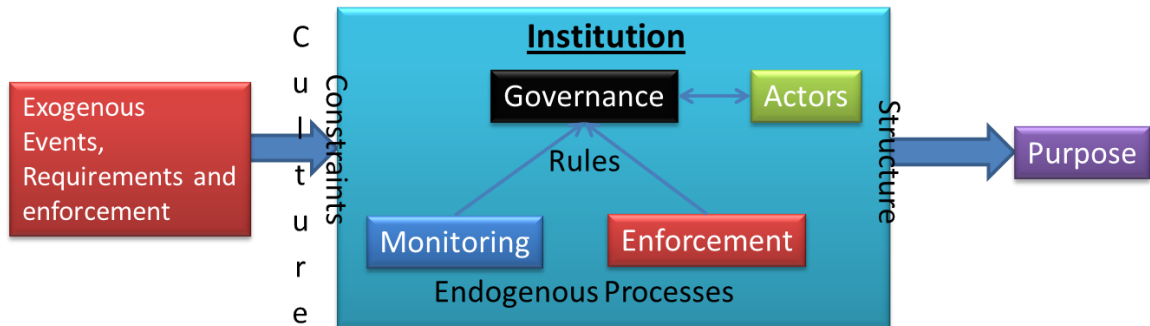


Figure 5 Institutional Model

Institutions and moral capacity

If we compare Figure 5 and Figure 2 we can clearly see that in general, institutions have the inherent attributes to have moral capacity. They have the ability to perceive the environment, make effective decisions based upon judgment, and to act upon them. Their governance structures, depending upon how extensive they are, have the ability to compel or at least share member behavior. The question is whether an institution can subsume individual actions and take on a “person-like” existence similar to a state, recalling that a state is just a special type of institution. See also Harbour (Harbour, Collective Moral Agency and the Political Process, 2003).

Institutions as Collective Moral Agents

In the case of states, we could clearly examine the social compact theory and established philosophers such as Kant and Mills to establish agency/”personhood”. Institutions outside of states, however, do not have such a well-established analytical path. Clearly, a non-state institution cannot completely compel membership and use force to sanction members. They must use other forms of governance since membership is generally voluntary and sanctions that stop short of force. While at first blush this requirement seems different than personhood, but it is important. Perhaps the best analogy with a person is to prevent schizophrenia. The institution must be able to make and implement decisions. Therefore, institutions in general may not be collective moral agents. The governance structures must be such that individuals work based on institutional norms and culture and employ institutional resources. Otherwise the institution may not qualify as a collective moral agent as there is no binding sense of collectivity.

However, there may well be institutions other than states that can qualify as collective moral agents. We need some other vehicle or criteria to determine whether a specific institution is a

collective moral agent. The criteria needs to address whether the institution has effective governance (similar in concept to a state’s sovereignty) and an established purpose and membership structure that can include a concept similar to the social contract. These characteristics may therefore include:

- A specific purpose that directs or at least strongly shapes member actions
- A culture, norms, governance, and resources separate from its composite member
- Members act in the name of the institution
- The institution can sanction or expel members that act contrary to the institution’s directives, norms, and culture

With this set of criteria in mind, then perhaps institutional collective moral agency is not so much of a yes or no question, but rather is a spectrum of agency ranging from no agency to full collective moral agency. As the institutions governance structure, culture, norms, and resources grow and it specifically directs actions in its name, it becomes more responsible as a collective moral agent. Therefore, an institution such as Mothers Against Drunk Driving may rate very low on the scale of collective moral agency even though it has a sharply defined purpose, while NATO, with its well-defined governance, culture, and norms will rate high on the spectrum. Even states are subject to rating. As noted above, the degree of sovereignty can vary from strong sovereignty in the US and many European states to nearly nothing as in Somalia. Potential ideas such as Criddle and Fox-Decent discuss in “Deriving Peremptory Norms from Sovereignty” may help (Criddle & Fox-Decent, 2009).

Potentially we can establish some criteria for scoring an institution to determine its institutional moral responsibility as shown in the table below:

Table 2 Spectrum of Institutional Collective Moral Agency

Attribute	Low	High
Purpose	The purpose no specific call to action that guides member behavior. Members act as they see fit.	The purpose specifically guides and shapes member behavior and member acting on behalf of the institution are working the institutional purpose
Culture	A loose culture that does little to shape behavior or collective perceptions	A clearly defined culture that sets the institution apart from other organizations. The culture shapes institutional perceptions and members conform to the culture.
Norms	Little or no norms that shape or guide behavior.	A strong set of norms that shape and guide behavior. These norms are well known externally as well as internally.
Governance	No formal governance processes to compel behavior	Formal governance processes that can compel behavior within the institution and can sanction and expel members.
Resources	Few if any non-member controlled resources	Most of the resources employed are controlled by the institution

Nations...a Different perspective

There are institutions that are very state-like. These are nations that have no state. The Palestinian Authority is perhaps the best example of a developed state-like institution. Others, with differing levels of governance and structure, include the Kurds, Chechens, Basques, and Tamils. Miller has some interesting views on this as well (Miller, 2004). The number of these state-like institutional actors may continue to grow. Quebec, Flanders, and Wallonia are potential examples, as well as Scotland. As the notion of sovereignty in Europe changes as the European Union (EU) evolves and takes on sovereign-like powers, there may be others as mixed-nation states devolve. We may see this happen in Africa as states based on colonial boundaries devolve as well, particularly if the AU takes a path similar to the EU.

A quote from Barkin and Cronin sums this section up nicely:

Yet the very foundation of the nation-state system—its diplomatic procedures, treaties, international laws, wars, and all other institutions that provide for communication and interaction among states—rests on the mutual recognition among government leaders that they each represent a specific society within an exclusive jurisdictional domain. Diplomatic recognition and legitimation are prerequisites for participation in the system as a full member. The type of legitimacy, Inis Claude argues, is essentially a political rather than a legal or moral function.¹² Thus a nationalist group claiming to represent a population and territory that takes military action in support of its claim is considered terrorist; as such, it is generally condemned and opposed (often militarily) by the world community. At the same time a state, however much it is disliked, is recognized as having the right to defend its claims with military force. (Barkin & Cronin, 1994)

NGO Governance

NGO governance is an interesting topic. While many of the key NGO's have specified governance systems, many are not representative in nature or allow the members to vote on actions and representation (Weidenbaum, 2009). The point of Weidenbaum's article is that these organizations that are increasingly active and a potent force on the world stage must also be held accountable. While Weidenbaum focuses primarily on accountability to members, there is a greater level of accountability for their actions beyond their members. Their actions have potential international and global ramifications as illustrated by the Greenpeace case study below.

Case Studies

Given the space constraints, these three case studies will be necessarily short and succinct, with summary detail only. The three cases are specifically selected to illustrate a security institution, an activist NGO, and a nationalist movement.

North Atlantic Treaty Organization (NATO)

NATO has a well-defined governance process that rests upon a written charter (NATO Charter, 1949). While NATO's primary task is collective security against a hostile force, over the last

fifteen plus years, it collectively resolved to implement “out of area” operations in the Balkans, Afghanistan, and Africa. The institution collectively determines the course of action solicits member contributions towards the operation and then establishes *NATO* command and control mechanisms to conduct the operations. Once a headquarters and task force are constituted, they are NATO forces, operating under the NATO command and control structure. While a commander may be dual-hatted as a NATO commander and state-component commander, his NATO command responsibilities are clear. While nations may put caveats on how their forces may be used by this commander, the NATO commander can employ these forces within the constraints of the national caveats. While most of the forces and equipment for operations are supplied by member states, NATO does have its own funds and has procured equipment and resources directly for NATO. For example, see the NATO E-3A Component (NATO E-3A Component History). Also see Cornish and Harbour (Cornish & Harbour, 2003).

Greenpeace

Greenpeace is a well-organized environmental defense organization that has an established governance process, culture, norms, and collective resources (Greenpeace Governance). They own three ships, a thermal airship, and inflatable boats and hot air balloons (Our Ships). Their website discusses forty years of Greenpeace victories in events that Greenpeace as an institution collectively planned and conducted (40 Years of Greenpeace Victories).

In 1985, France sunk the Greenpeace ship *Rainbow Warrior* in order to stop a Greenpeace protest of French nuclear testing. The case is a fascinating blend of state, institutional, and individual actors. Clearly, the state of France was morally culpable and the UN so stated and held France liable (UN, 1987). The state of France, in its Memorandum to the UN Secretary-General, stated:

The "Greenpeace" movement has nevertheless pursued, for more than 15 years, campaigns of disparagement and indeed hostile action against the French nuclear tests. To this end, it has on several occasions attempted to have vessels penetrate into the waters prohibited to navigation which surround Mururoa Atoll. The National Navy has obviously opposed these illegal attempts, particularly in 1973 and 1982. The "Greenpeace" movement again planned to provoke similar incidents in 1985 by sending several vessels, including the "Rainbow Warrior", into the neighbourhood of the French Pacific Nuclear Testing Centre. (UN, 1987, p. 1358)

Clearly France was legally and morally responsible for the sinking and the death of a person on the ship. Just as clearly, the two French agents were morally responsible. France was sanctioned by the UN and had to pay damages and the two French nationals were incarcerated by New Zealand. But what of Greenpeace's responsibility? Greenpeace clearly knowingly put the ship in a high-risk situation. They must bear some of the ethical responsibility for the death.

Another interesting note about this case is that Greenpeace was not a party to the UN proceeding. The UN proceeding was conducted between the UN, France, and New Zealand. If the case happened in 2012, would Greenpeace be a party to the proceeding?

European Union and Nationalist Movement

The European Union (EU) has grown from a simple economic base of coal and steel between France, Germany, and four other states to an increasingly state-like institution. It now has many powers attributed to sovereign states and its member states have transferred increasing sovereign powers to the EU. For example, most EU members no longer have their own currency or directly control their borders.

The Schengen Accord, while initially outside of the formal EU structure could not develop without the EU (Morris, 1997) (Garner, 2007). While Garner argues Schengen is a loss of autonomy vice sovereignty, the difference when added to the loss of currency and the increasing powers of the EU to enforce economic and social policy is perhaps moot.

The EU's transfer of sovereign power from the member states to the EU is facilitating the rise of nationalism in Europe. For example, see Csergo and Goldgeier (Csergo & Goldgeier, 2004). Belgium nearly came apart as Flemish nationalists flexed their muscles. Likewise Scottish nationalists and others are making efforts to obtain autonomy. The partition of Kosovo from Serbia is yet another trend. As states lose some of their trappings of sovereignty and the EU takes them, nationalities may no longer see the need to maintain what they feel are artificial states. If the EU backs these new entities economically when the form, as it has with Kosovo, it effectively underwrites their movement and takes implicit responsibility for the consequences. Additionally, as the EU expands, it has consequences for all member states and the EU itself. See, for example De Witte's "Anticipating the Institutional Consequences of Expanded Membership of the European Union" (De Witte, 2002).

In addition, the EU has now established a foreign affairs function and a military function. While these two arms are currently somewhat anemic, they could, like other aspects of EU sovereignty, grow in strength and power. The EU has sent military forces to the Balkans and Africa under the EU name and with EU command and control functions. The EU conducted Operation Atalanta to combat Somali pirates when NATO was unable to act (EU NAVFOR, 2008). The EU deliberately authorized the operation through Joint action 2008/851 (EU, 2008) and EU Council Decision 2008/918 (EU, 2008) in support of UNSCRs 1814 (UNSCR, 2008), 1816 (UNSCR, 2008), and 1838 (UNSCR, 2008).

The current economic crisis in European will be a supreme test for the EU. If it can weather the test, it will almost certainly gain additional powers and bind the EU more closely together. If it cannot, then the EU could begin to devolve sovereign powers back to its member states.

Comparison

Table 3 Case Study Summary

Institution	Purpose	Culture	Norms	Governance	Resources	CMA Assessment
NATO	High	High	High	High	Medium	High
Greenpeace	High	High	High	High	Low-Medium	High

European Union	High	High	High	Medium-High	Low-Medium	Medium-High
United Nations	High	High	High	Medium-High	Low-Medium	Medium-High

Alternative views

Just after the second world war, many philosophers argued that the German people be considered collectively responsible for the Holocaust. Writing in 1948, H. The. Lewis strongly rebuts this trend. He asserts the simple principle "that value belongs to the individual and that it is the individual who is the sole bearer of moral responsibility,". There may be very good pragmatic reasons for assigning nonmoral responsibility to groups and institutions, but it would be unfair to the individual to merge his or her moral responsibility with all other fellow group members. For this would fail to treat the individual person in terms of what "we can reasonably estimate could have been expected of the individual." (May & Hoffman, 1991)

As noted above, Altman argues specifically against a Kantian perspective for non-state organizations. In this and views like that cited above, only individuals can be moral agents. Also, as noted above, the concept of state and sovereignty is somewhat malleable. There are many state-like institutions based on nations that are starting to act on the world stage. While most will hopefully eschew violence, their actions, as Miller notes (Miller, 2004), do have consequences.

While this idea has merit, in the complex environment of the twenty-first century it is getting increasingly hard to differentiate the individual from the collective body as few individuals have the capacity to act upon their own.

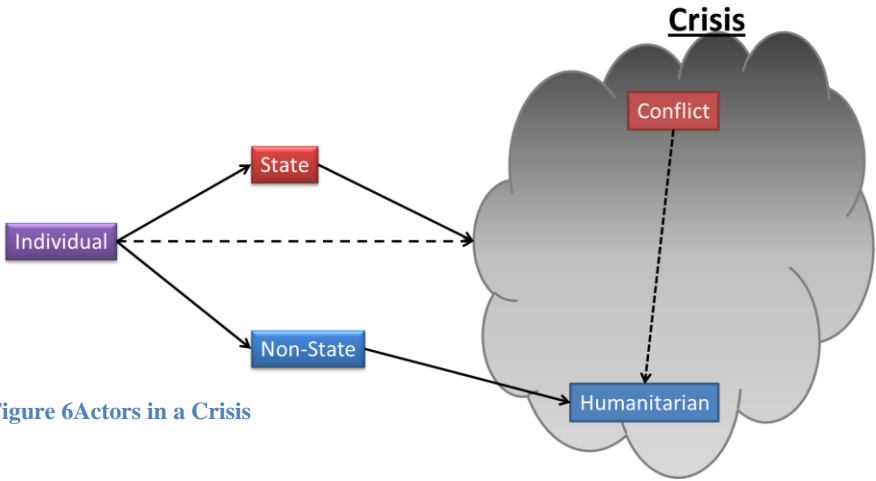


Figure 6 Actors in a Crisis

As shown in Figure 6 above, individuals often have very little role in a crisis, be it open conflict or a natural disaster. Quite often if they have any role at all, it tends to be more monetary than actual action. As noted above non-state institutions involvement in the third world, home to many of the world's crises, is exploding. Individuals almost exclusively operate through some form of state or non-state institution when they respond to a crisis. Obviously an individual can "go rogue" and do something outside of the institutional purview or culture. In that case, the individual is clearly responsible, especially if the institution has also sanctioned the person. But regardless, the institution must bear some of the moral and ethical burden for selecting the individual and bringing him or her to the crisis. When culpable behavior becomes more endemic, then the institution is even more morally and ethically responsible.

Conclusions

Institutions are transitive actors that can be collective moral agents depending upon their specific attributes as shown in Table 2 Spectrum of Institutional Collective Moral Agency. As long as the policies, processes, and constraints are constant, they are actors as the individuals that work in them are guided and constrained. Policies, processes, and constraints, however can be changed. When they do, the character of the institution changes, hence the constraints on its members change.

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