

Feinberg on Collective Responsibility

Individual, Vicarious, and Collective Liability

Contributory Fault. In the case of *individual liability*, the following three preconditions must be satisfied:

- (1) The individual causally contributed to the harm.
- (2) The individual's action was *faulty*.
- (3) There's a direct connection between the faultiness of the action and harm caused.

Strict Liability. Cases in which the agent is *liable* but the contributory fault conditions are not met.

1. *Vicarious Liability.* "There is vicarious liability when contributory fault, or some element of it, is properly ascribed to one party, but liability is ascribed to a different party." Different kinds: authorization, hierarchy, mastership, suretyship.
2. *Collective Liability.* "[D]iffers from (other) vicarious liability only in that it involves organized groups and their members." Different Kinds of Collective Liability:
 - (a) Group Liability Without Fault
 - (b) Group Liability With Noncontributory Fault
 - (c) Group Liability With Contributory Distributive Fault
 - (d) Group Liability With Contributory Non-distributive Fault

Important point about **vicarious punishment**: only liability – not fault – can be passed from one party to another; there can be no such thing as vicarious guilt, for example.

Collective Liability: contributory vs noncontributory & distributive vs non-distributive

- (a) **Group Liability Without Fault.** The entire group is liable for the actions of one or several of the members of the group even though the group is not at fault.

This is true only of those organizations where there is already a high degree of *de facto* solidarity. Collective responsibility not only expresses the solidarity, it also strengthens it, and thus is a good thing to whatever extent the preexistent solidarity was a good thing.

Form of Self-Policing: "parties who are largely of one mind to begin with are led (or forced) by circumstances to act in concert and share the risk of common failure or the fruits of an indivisible success."

Examples: business partnerships, joint authorships, athletic teams, "compulsory universal suretyship" (early Anglo-Saxon kindred liability)

- (b) **Group Liability With Noncontributory Fault.** “ Where every member of a group shares the same fault, but only one member’s fault leads to any harm, and that not because it was more of a fault than that of the others, but only because of independent fortuities, many outsiders will be inclined to ascribe collective liability to the whole group.”

Drunk Driver Example

- (c) **Group Liability With Contributory Distributive Fault.** The whole group is liable because each member of the group is at fault.

Group responsibility, so conceived, is simply the sum of all the individual responsibility. Since each individual is coresponsible for the harm in question, no one’s responsibility is vicarious.

Three Different Kinds:

- (a) *Independent Fault*: people are independently at fault without any communication between them.

Example: none of us rescued the drowning man.

- (b) *Joint, Cooperative Undertaking*: the harm is caused by a joint action resulting from cooperation among the individually responsible members.

Example: conspirators, accomplices (perpetrators, abettors, inciters), joint tortfeasors

- (c) *Common Culture*: the harm results from some feature of the “common culture” endorsed and participated in by each member.

- (d) **Group Liability With Contributory Non-distributive Fault.** The group is responsible for the harm but not every, or even any, of the group’s members.

No individual person can be blamed for not being a hero or a saint (what a strange “fault” that would be!); but a whole people can be blamed for not producing a hero when the times require it, especially when the failure can be charged to some discernible element in the group’s “way of life” that militates against heroism.

Example: Train Robbery

Even though group-fault is non-distributive, group-liability *is* distributive.