IS THE GROUP RESPONSIBLE FOR THE INDIVIDUAL'S CRIME?

Collective sanctions have ancient roots, and are used more widely today than is often realized. But are they ethical? And do they work?

By Adam Liptak
The Pakistani Army not long ago gave tribal elders near the Afghan border a choice: Either turn over 72 men wanted for sheltering Al Qaeda members, or soldiers would demolish houses in their town.

Holding a group responsible for the actions of its members is not a new idea. Consider the pitcher who retaliates for a beanball thrown at one of his teammates by throwing at the next batter he faces. Or the grandmother evicted from public housing because her grandson sold drugs from their apartment. Or the class that loses the privilege of eating off school grounds because one student got into trouble.

In each case, people were threatened or punished not for their own actions but for their failure to control the actions of others. Some recent legal scholarship defends this approach.

"Group members might be punished not because they are deemed collectively responsible for wrongdoing," Daryl J. Levinson, who teaches law at New York University, wrote last November, "but simply because they are in an advantageous position to identify, monitor, and control responsible individuals, and can be motivated by the threat of sanctions to do so."

**UTILITY VS. MORALITY**

Others accept the utility of such sanctions but question their morality.

"It's possible to say that tribes are supposed to help the government," says George P. Fletcher, a law professor at Columbia University in New York. "It doesn't follow that you can threaten mass destruction as a method of coercing the tribe. It doesn't follow from collective guilt that you can impose collective punishment."

The main objection to collective sanctions put forward by legal scholars and philosophers is that moral responsibility should rest with the individual, not the family, tribe, or nation.

But those who defend such sanctions say that there is often little difference, in terms of responsibility, between someone who acts wrongfully—commits a crime, say—and a person around him who fails to stop the crime, warn others about it, or report it afterward. "It's not so obvious to me that the people who bear the burden of many of these punishments are truly innocent," says Levinson.

Collective sanctions have ancient roots. Two examples in the Bible are the destruction of Sodom and Gomorrah and blood feuds. Modern examples are international sanctions, like those imposed by the United Nations against Iraq in the 1990s. And war itself may be seen as a collective sanction. In justifying the invasion of Afghanistan in 2001, for example, President Bush offered its leaders essentially the same choice given the Pakistani tribal elders. "The Taliban will hand over the terrorists," a statement issued by the White House warned, "or they will share their fate."

The legal system often imposes liability on groups for the actions of individuals; corporate liability is the classic example. Collective liability is occasionally imposed in criminal cases, too. Co-conspirators can be held liable for crimes committed by their allies in the conspiracy. Sometimes the failure to inform authorities of a crime is characterized as the obstruction of justice.

**DO SANCTIONS WORK?**

Defenders concede that there are moral objections to many group sanctions, but say the problem is not with the concept but with its application.

Collective sanctions, Levinson says, are neither more nor less likely to be unfair or immoral than individual ones. Both depend on societal judgments about what actions deserve to be punished, and how severely.

But do they work? Referring to Israel's actions in the occupied territories, Fletcher writes: "There is not much evidence that the violent reprisals on the West Bank have had much of a deterrent impact on terrorists and suicide bombers." On the other hand, the Pakistani tribal elders turned over most of the men being sought.

If there is a problem with collective sanctions, says Saul Levmore, dean of the University of Chicago Law School, it is that they may be applied unfairly to the powerless or unpopular. The Pakistani Army, he suggests, should perhaps not be trusted with such a powerful weapon.

"If we recoil at the idea of collective responsibility," he says, "it's because we're afraid the village is out of the political mainstream. The government never says it's going to do this in downtown Kabul, where the rich guys live."

Adam Liptak is the national legal correspondent for The New York Times.