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Corporate Prophet
An Introduction to Susan Stabile's
A Catholic Vision of the Corporation

Kellye Y. Testy¹

Public trust in business has waned as large-scale failures of corporate accountability and governance have rocked domestic and international marketplaces in the past several years. Efforts to bolster trust and improve corporate governance have received substantial public attention and have stemmed from many sources, including new regulatory initiatives and enhanced attention to governance by both public and private corporations in an attempt to stave off further regulation. At the same time, corporate law scholars have seized upon this milieu in order to reinvigorate scholarly debates about the roles and purposes of corporations in society.²

Professor Susan Stabile, a scholar of considerable note in both corporate and employee benefits law,³ has tackled this issue from a new perspective. In the article that follows, Professor Stabile asserts that a communitarian vision of the corporation that emphasizes the corporation's social responsibilities is one that is authentically Catholic. She draws upon Catholic Social Thought to defend her description of this vision of the corporation and to argue that it is the normative vision required to cure what ails corporate law and governance today.

Professor Stabile first is to be commended for her boldness. Her vision of the corporation is at odds both with the dominant secular vision as well as with another Catholic vision of the corporation previously defended by both Michael Novak and Stephen Bainbridge.⁴ The dominant secular view of the corporation is based in neo-classical economics and privileges a norm of shareholder wealth maximization. The previously articulated Catholic view of the corporation privileges economic liberty and a need to limit state intervention in line with the principle of subsidiarity that is vital in catholic

thought. Instead of either shareholder wealth maximization or economic liberty and limited state intervention, Professor Stabile's vision privileges the common good and human dignity instead.

Though Professor Stabile's Catholic vision of the corporation diverges both from dominant secular models and from previously dominant Catholic models of the corporation, its insistence upon promotion of the common good and the value of human dignity bears more affinity to other strands of corporate theory including communitarian, progressive, and feminist critiques of corporate law as well as with more traditional corporate social responsibility, or "CSR" movements.⁵ Notably, Stabile's vision also bears close affinity to a new set of principles that has recently emerged from a new initiative, Corporation 2020, which has developed as set of six principles that should govern corporate redesign for a social purpose:

1. The purpose of the corporation is to harness private interests in service to the public interest.
2. Corporations shall accrue fair returns for shareholders, but not at the expense of the legitimate interests of other stakeholders.
3. Corporations shall operate sustainably, meeting the needs of the present generation without compromising the ability of future generations to meet their needs.
4. Corporations shall distribute their wealth equitably among those who contribute to its creation.
5. Corporations shall be governed in a manner that is participatory, transparent, ethical, and accountable.
6. Corporations shall not infringe on the right of natural persons to govern themselves, nor infringe on other universal human rights.⁶

What is different even here, however, is that none of these extant critiques of the dominant theory of corporate law draws from religious traditions or sources for normative values. That is not to say that these CSR-based theories and movements do not contain normative values, but their source is not an overtly religious one. One of the core questions that Professor Stabile's work calls us to ask, then, is whether there are added

benefits or detriments from bringing religion to the fore in corporate law and governance.

The role of religion in law and government, or in the “public square,” is a topic that has long been and continues to be the subject of substantial attention.⁷ Particularly amid today’s “culture wars,” religion’s role in the political sphere is both intensely and publicly debated. Not so for religion’s role in business, or for religion’s role in corporate law and governance. In large measure, the failure to discuss the role of religion in corporate affairs stems from the tendency to view business as “private” rather than “public.” Whether religion should play a part in politics and law is often characterized as a question about whether the private (religion) and the public (politics and law) spheres should be separate. Because business has long been conceived of as also in the private realm along with religion, there has been less debate on whether it is appropriate that the two spheres overlap.

Proponents of CSR, however, view the public-private dichotomy as a harmful and misleading one in the corporate context and assert that the corporate realm is at least a quasi-public one.⁸ As such, then, questions about the role of religion in the “public square” are equally applicable to the role of religion in the corporate context. Though this question is not one addressed much less answered in the scholarly literature, I would hazard an assertion that most pro-CSR scholars would not support increasing religious influence in the public square on most matters. As a result, Stabile’s work presents a bit of a quandary: while its normative values are quite aligned with pro-CSR scholarly efforts, is it possible that the source of those values will create a divergence between her work and those of secular progressive and communitarian corporate scholars? Will concerns about the extension of religion into corporate matters that go beyond a conceptualization of the corporation cause this divergence? For instance, might a Catholic vision of the corporation at the conceptual level lead to a Catholic corporation at an

operational level that would concern progressive corporate law scholars whose espouse strong views on gender and other forms of equality?

These questions are difficult to answer for several reasons. First, they are premature in that Stabile's Catholic vision of the corporation is both contested and at a nascent stage of development, both as to its conceptualization and certainly as to its implementation. Second, these questions would depend in large measure on what it means to be a Catholic corporation, whether conceptually or operationally. And that in turn depends on what it means to be Catholic. This latter inquiry is not a new question nor is it one that is capable of easy answer. But it is surely one worth asking.

What is so exciting about Professor Stabile's work is that it engages this question in a new realm, and in doing so promises to make the consideration both of the meaning of Catholicism and of corporate law and governance all the richer.

Professor Stabile's work is thus a positive development for corporate law scholarship and for the promotion of justice and human welfare. In a world where corporate power rivals, or is often indistinguishable from, the power of nation states to govern citizens' lives, the question of how corporate power will be used and for what ends is an urgent one. That power too often is deployed for the relentless pursuit of short-term corporate profit, most of which is funneled to shareholders at the expense of other constituents' welfare, including that of workers' physical and spiritual health and the natural environment. By using religion as a means with which to expand this short-term focus, Professor Stabile may indeed be the corporate prophet for whom we have all been waiting.

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² See generally, Kellye Y. Testy, *Linking Progressive Corporate Law with Progressive Social Movements*, 70 TULANE L. REV. 1227 (2002) (providing an overview of the evolution of the corporate social responsibility debates in corporate law scholarship).

³ Professor Stabile's publications include: Susan J. Stabile, *State Attempts to Define Religion: The Ramifications of Applying Mandatory Prescription Contraceptive*

Coverage Statutes to Religious Employers, 28 HARV. J.L. & PUB. POL'Y 741 (2005); Susan J. Stabile, *Using Religion to Promote Corporate Responsibility*, 39 WAKE FOREST L. REV. 839 (2004); Susan J. Stabile, *Religious Employers and Statutory Prescription Contraceptive Mandates*, CATH. LAW. 169 (2004); Susan J. Stabile, *I Believed my Employer and Didn't Sell my Company Stock: Is there an ERISA (or '34 Act) Remedy for Me?*, 36 CONN. L. REV. 385 (2004); Susan J. Stabile, *John Sexton Tribute*, 60 N.Y.U. ANN. SURV. AM. L. 27 (2004); Susan J. Stabile, *Sarbanes-Oxley's Rules of Professional Responsibility Viewed Through a Sextonian Lens*, 60 N.Y.U. ANN. SURV. AM. L. 31 (2004); Susan J. Stabile & Nichol Hart, *Pension Plan Investments 2003: Confronting Today's Issues*, PRACTISING LAW INSTITUTE PLI ORDER NO. J0-0080 (2003); Susan J. Stabile, *Symposium: Enron and its Aftermath*, 76 St. John's L. Rev. 815 (2005); Susan J. Stabile, *Another Look at 401(k) Plan Investments in Employer Securities*, 35 J. MARSHALL L. REV. 539 (2002); Susan J. Stabile, *Freedom to Choose Unwisely: Congress' Misguided Decision to Leave 402(k) Plan Participants to Their own Devices*, 11 CORNELL J.L. & PUB. POL'Y 362 (2002); Susan J. Stabile, *The Behavior of Defined Contribution Plan Participants*, 77 N.Y.U. L. REV. 71 (2002); Susan J. Stabile, *The Use of Personality Tests as a Hiring Tool: Is the Benefit Worth the Cost?*, 4 U. PA. J. LAB. & EMP. L. 279 (2002); Susan J. Stabile, *Insurance Company Developments: More on Harris Trust vs. John Hancock*, PRACTISING LAW INSTITUTE PLI ORDER NO. J0-003X (2001); Susan J. Stabile, *My Executive Makes More than your Executive: Rationalizing Executive pay in a Global Economy*, 14 N.Y. INT'L L. REV. 63 (2001); Susan J. Stabile, *Breach of ERISA Fiduciary Responsibilities: Whose Liable Anyway?*, 5 EMP. RTS. EMP. POL'Y J. 135 (2001); Susan J. Stabile, *Paternalism isn't Always a Dirty Word: Can the law Better Protect Defined Contribution Plan Participants?*, 5 EMP. RTS. EMP. POL'Y J. 491 (2001); Susan J. Stabile, *Viewing Corporate Executive Compensation Through a Partnership Lens: A Tool to Focus Reform*, 35 WAKE FOREST L. REV. 153 (2000); Susan J. Stabile, *Motivating Executives: Does Performance-Based Compensation Positively Affect Managerial Performance?*, U. PA. J. LAB. & EMP. L. 227 (1999); Susan J. Stabile, *Is There a Role for tax law in Policing Executive Compensation?*, 72 ST. JOHN'S L. REV. 81 (1998); Susan J. Stabile, *Pension Plan Investments in Employer Securities: More is not Always Better*, 15 YALE J. ON REG. 61 (1998); Susan J. Stabile, *Beyond Verity v. Howe: What will the Fallout Be?*, PRACTISING LAW INSTITUTE PLI ORDER NO. J4-3687 (1997); Susan J. Stabile, *The Employer as Fiduciary: Settlor v. Fiduciary Functions*, PRACTISING LAW INSTITUTE PLI ORDER NO. J4-3682 (1996); Susan J. Stabile, *The Role of Congressional Intent in Determining the Existence of Implied Private Rights of Action*, 71 NOTRE DAME L. REV. 861 (1996); Susan J. Stabile, *Aids, Insurance and the ADA*, 10 ST. JOHN'S J. LEGAL COMMENT. 533 (1995); Susan J. Stabile, with assistance by Jeffrey Fahs, *Fiduciary Standards*, PRACTISING LAW INSTITUTE PLI ORDER NO. J4-3676 (1995); Susan J. Stabile, *Preemption of State law by Federal Law: A Task for Congress or the Courts?*, 40 VILL. L. REV. 1 (1995); Susan J. Stabile, *Symposium: Concluding Remarks*, 68 ST. JOHN'S L. REV. 481 (1994); Arthur H. Kohn, Susan J. Stabile, Richard Susko & Alan S. Wilmit, *Selected Issues Respecting Stock Based Compensation Schemes*, PRACTISING LAW INSTITUTE PLI ORDER NO. B4-7017 (1992).

⁴ See Susan J. Stabile, *A Catholic Vision of the Corporation*, 4 SEATTLE J. FOR SOC. JUST. fn 60-71 and accompanying text (2005).

⁵ See Testy, *supra* note 2, for a summary of the various schools of corporate thought related to corporate social responsibility.

⁶ See Corporation 2020 at <http://www.corporation2020.org> (last visited December 27, 2005).

⁷ See *e.g.*, ROBERT AUDI & NICHOLAS WOLTERSTORFF, RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN PUBLIC DEBATE (1996).

⁸ See Kellye Y. Testy, *Capitalism and Freedom – For Whom?: Feminist Legal Theory and Progressive Corporate Law*, 67 LAW & CONTEMP. PROBS. (Autumn 2004) (explaining public/private dichotomy and its relationship to progressive corporate law).