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## A Catholic Vision of the Corporation

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Susan J. Stabile<sup>1</sup>

### INTRODUCTION

Some see the world of business and the world of God as two separate spheres and find it anomalous to inject Catholic theology and religious values into discussions about corporate and securities law.<sup>2</sup> This is not true just of those who are nonreligious; many religious Catholics also believe it is not the task of the Church to influence secular economic matters.<sup>3</sup>

However, a separation of Godly and worldly spheres is not possible for those who take Catholicism seriously.<sup>4</sup> Catholicism is an “incarnational faith” that sees God in everything,<sup>5</sup> and the Gospel is a living message, intended to be infused into the reality of the world in which we live. The Catholic call is, and has always been, a call to integration—a call to transform the world into the Kingdom of God.<sup>6</sup> This calling makes it impossible to separate the world of business and politics from the world of God.<sup>7</sup> In the words of Thomas McKenna, C.M., “the Kingdom of justice and peace and concern which Jesus announced [is] not an abstraction; it [has] to be built right into the dilemmas and ambiguities of marketplace realities.”<sup>8</sup> Thus, the principles of Catholic Social Thought, as Mark Sargent has suggested, “are not merely a series of well-meaning platitudes,” but rather “have substantive content that should influence how choices are made in the real social and economic worlds.”<sup>9</sup>

Now is a particularly important time to ask the question whether there is a Catholic vision of the corporation, to seek an alternative way of addressing the issues of how we think about corporations, and whether there is a legitimate basis upon which to argue that corporations have an obligation to behave in ethically and socially responsible ways. The reason

the question is important now is that post-Enron, there has been a tendency by many to reduce the meaning of corporate responsibility to simply telling the truth, and to reduce the concept of responsible business behavior to accountability and transparency. Thus, for example, the Sarbanes-Oxley Act, enacted by Congress in the wake of the recent financial scandals, does not—despite the behavior of Enron executives—require public corporations to adopt a code of ethics for senior financial officers; rather, the Act merely requires corporations to disclose whether they have such a code and if they do not, to explain why.<sup>10</sup> There is also a danger post-Enron that socially responsible corporate behavior becomes defined as simply obeying the law, as though merely not violating law, which is often the product of interest-group politics, is in and of itself laudable.<sup>11</sup> Thus, New York Stock Exchange provisions proposed in 2002 and adopted in final form in 2003 require listed companies to “adopt and disclose a code of business conduct and ethics for directors, officers, and employees,” but the code limits the topics to be covered to those dealing with technical compliance with the law.<sup>12</sup>

Many of us believe, however, that socially responsible corporate behavior must mean more than merely not telling lies and not violating the law. Much corporate activity that is conducted quite above board and does not involve any violation of law is nonetheless harmful to workers, communities, and the environment. In his book, *Corporate Irresponsibility: America's Newest Export*,<sup>13</sup> Professor Lawrence Mitchell, one of the driving forces behind the progressive corporate law movement, offers as examples of such conduct Unocal's use of slave labor in Burma, Coca-Cola's lay-off of thousands of workers, and General Motors' conscious decision to pay the damages resulting from deaths or injuries caused by fires in their vehicles rather than to make safer fuel tanks.<sup>14</sup> Although less dramatic, we also frequently hear of corporations failing to provide their employees with living wages or health care, structuring workplaces in ways that fail to allow employees any real say in management, permitting

employees to work in hazardous work environments, producing dangerous products, and engaging in other activities damaging to the environment and to the communities in which they operate.

Thus, the question becomes whether Catholic legal theory contributes to our thinking about the nature of the corporation. Does it help us articulate the standard of behavior to which we believe corporations should be held? It is easy to say in broad and general terms that corporations should recognize their obligations and perform their duties, and that they should be “good citizens,”<sup>15</sup> but can Catholic Social Thought provide a more defined notion of what being a “good citizen” means? Moreover, to the extent that Catholicism helps us define a vision of the corporation, does it also have something to say about how best to achieve that vision?

My goal in this article is two-fold. The first goal is to articulate a particular Catholic vision of the corporation: a communitarian vision that sees the corporation both as a community and as existing as part of a larger community. This vision emphasizes the corporation’s social responsibilities. An alternative Catholic vision has been articulated by others: a vision that emphasizes the importance of economic liberty to the flourishing of the human person as well as the need to protect against overreaching by the state.<sup>16</sup> Section I of this article sets forth my articulation of the communitarian vision of the corporation as the authentic Catholic vision of the corporation,<sup>17</sup> and Section II talks about how that vision might be realized.

The second goal of this article is to defend the value of proposing a Catholic vision of the corporation, addressing the question of why Catholic Social Thought has something useful to say to those who are not Catholic. Thus, Section III addresses the legitimacy of using Catholic Social Thought in a pluralist society. In the course of discussing that question, Section III also speaks to whether the Catholic vision of the corporation articulated in Section I is a distinctively Catholic or Christian vision.

## I. DEFINING AN AUTHENTIC CATHOLIC VISION OF THE CORPORATION

### *A. The Starting Point for Articulating a Catholic Vision: The Common Good*

Promotion of the common good is a central principle of Catholic Social Thought and therefore must be the starting point for defining a Catholic vision of the corporation. The recently released *Compendium of the Social Doctrine of the Church* identifies the notion of the common good as one of the “permanent principles of the Church’s social doctrine.”<sup>18</sup>

From the perspective of Catholic Social Thought, the common good involves recognition and advancement of the universal dignity of the human person. *Guadium et Spes* defines the common good as “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.”<sup>19</sup> This common good—the protection and promotion of the dignity of the human person—must be the primary orientation of society.<sup>20</sup>

Because of the primacy of promoting the common good, Catholic Social Thought demands that it must be the aim of *every human institution* to promote human dignity, to promote the fundamental rights of persons to life, bodily integrity, and “the means that are suitable for the proper development of life.”<sup>21</sup> As a result, our thinking about the corporation cannot be divorced from this notion of the primacy of the common good.<sup>22</sup> In the words of the *Compendium*, “businesses should be characterized by their capacity to serve the common good of society.”<sup>23</sup>

Several related conclusions flow from the demand that corporations be characterized as instruments of the common good. The first is the idea that the corporation is a community formed so that the members of that community “are able to accomplish something collectively that they could not accomplish separately—they make a contribution to society, a phrase which sounds trite, but is fundamental.”<sup>24</sup> The second is that, as a result of

their participation in the business, the participants in the corporation have an obligation to one another that is rooted far deeper than the contractual obligations they agree to undertake. The ultimate conclusion is that the corporation—like all human institutions—should be judged by how it protects or undermines the life and dignity of the human person, by how it supports the family, and by how it “enhances or threatens our life together as a community.”<sup>25</sup>

The *Compendium* further gives content to what it means for the corporation to serve the common good by speaking of “the production of useful goods and services,” and the performance of “a social function, creating opportunities for meeting, cooperating, and the enhancement [of] the abilities of the people involved.”<sup>26</sup> Part of that enhancement includes the requirement that all of the participants in the corporate enterprise have a real ability to have a say. *Gaudium et Spes* explains that

[i]n economic enterprises it is persons who are joined together, that is, free and independent human beings created to the image of God. Therefore, with attention to the functions of each—owners or employers, management or labor—and without doing harm to the necessary unity of management, the active sharing of all in the administration and profits of these enterprises in ways to be properly determined is to be promoted.<sup>27</sup>

This includes the need for workers, either “in person or through freely elected delegates” to contribute to “decisions concerning economic and social conditions, on which the future lot of the workers and of their children depends.”<sup>28</sup>

Sargent has described the corporation under this vision as an institution:

(i) that must be dedicated to the flourishing of its employees as human beings; (ii) in which the shareholders’ rights of ownership are constrained by duties to others within the corporate community; (iii) whose managers must concern themselves with the common good; and (iv) which, as a matter of Christian

anthropology, must produce not just wealth, but the conditions under which human persons may flourish spiritually.<sup>29</sup>

Michael Novak describes external corporate responsibilities as including establishing a sense of community and respect for the dignity of persons, promoting social justice and contributing to making society a better place. He describes internal corporate responsibilities as including satisfying customers with goods and services of real value, making a reasonable return for investors, creating new wealth and new jobs, and rewarding hard work and talent.<sup>30</sup>

As my discussion in Part B of this section will address more fully, this primacy of the common good does not mean that there is no role for profit or economic liberty, nor does it mean that a corporation may not define objectives in economic terms. It does mean, however, that economic interests are limited by the need to develop the person; economic interests are to be subordinated to promotion of human dignity.<sup>31</sup> As *Centesimus Annus* reminds us, all economic activity has a communal purpose. Thus, every economic decision is measured in terms of whether it promotes or undercuts the dignity of the human person. As recognized by the U.S. Catholic Bishops in their pastoral message, *Economic Justice for All*, we measure the economy “not by what it produces, but also by how it touches human life and whether it protects or undermines the dignity of the human person.”<sup>32</sup> In the same vein, the liberty Catholic Social Thought seeks to promote is liberty exercised for the purpose of choosing a life that is lived in seeking and living truth.<sup>33</sup>

Promotion of the common good in the corporate context will include a number of different elements, and I have outlined elsewhere some corporate obligations that might be viewed as inhering in a notion of common good.<sup>34</sup> To give one specific example regarding the meaning of the promotion of the common good in the corporate context, consider the failure of corporations to ascertain and address the needs of those who have been traditionally underrepresented in the corporate structure, such as women and minorities.

Despite nominal gains, people of color hold less than 1 percent of senior executive positions in large, publicly held corporations<sup>35</sup> and only about 15 percent of all management jobs in large companies.<sup>36</sup> And when they do achieve senior positions, “black male executives and managers earn 23 percent less than white ones.”<sup>37</sup>

Similarly, although women make up about one-half of the work force, only about 12 percent of corporate officers are women, and those women who do hold managerial positions are paid significantly less than their male counterparts.<sup>38</sup> When women do attain senior executive positions, they are twice as likely as their male counterparts to leave those positions because of “disappointment in closed management styles that micromanage and denigrated their work. Many women felt that their roles were not valued and that they were not ‘heard’ by senior management.”<sup>39</sup>

Nor is the situation substantially better at nonmanagerial levels within the corporation. Minorities<sup>40</sup> and women<sup>41</sup> are still paid less than white men for equivalent positions. The differential is far worse for women of color. “The average black woman will earn approximately \$464,000 less than the average white man over a thirty-five-year career; a Latina woman will earn \$645,000 less.”<sup>42</sup>

A corporate workplace acting consistently with principles of Catholic Social Thought would refrain from engaging in intentional, illegal<sup>43</sup> behavior designed to prevent women and persons of color from reaching their potential within the corporate environment. Equally importantly, such a workplace would also strive for a style more conducive to the traditionally underrepresented wishing to remain in the corporate structure,<sup>44</sup> and would also recognize the value of the variety of perspectives offered by a more meaningful presence of women and minorities.<sup>45</sup>

To give a second example, promotion of the common good also has implications regarding our reaction to the negative effects of globalization. Such corporate activities as promoting trade policies among industrialized nations that artificially protect their products at the expense of those of



developing nations,<sup>46</sup> or profiting from human rights abuses committed by foreign government entities,<sup>47</sup> are easily justified under a system that sees maximization of shareholder profit as the overriding goal. Even some who recognize the interests of nonshareholder stakeholders of the corporation may be unconcerned with the effect of the activities of American corporations abroad. However, Catholic Social Thought sees the common good in the broadest possible terms, reaching beyond the needs of more immediate corporate stakeholders to embrace those more remotely affected by corporate actions. Opportunistic corporate behavior such as that described above is clearly inconsistent with the common good as defined by Catholic Social Thought.

This emphasis on the common good highlights a fundamental difference between Catholic Social Thought and the prevailing secular vision of the corporation. The law and economics nexus of contracts model of the corporation<sup>48</sup> does not speak in terms of common good. Rather, it expresses the notion that each of the participants in the organization is a rational, self-interested actor who seeks her own utility and contracts in a manner that optimizes self-interest.<sup>49</sup> The corporation is simply an aggregate of independent contractors,<sup>50</sup> each pursuing her own interests, and each presumed capable of looking out for her own interests. Under this model, each participant in the corporate enterprise owes to the other only those obligations contractually agreed to; everything to do with the relation between the corporation and the people with whom it deals, including employees, suppliers, customers, etc., is contractual in nature.

Far from being concerned with the common good, the values embodied in the nexus of contracts perspective “are values primarily of individual autonomy and self-sufficiency.”<sup>51</sup> Law and economics does not admit of any objective ranking or judgments about individual preferences; rather, that model merely seeks to allow individuals to maximize their ability to attain their own preferences. From a law and economics perspective, social welfare is maximized when individual preferences are maximized,

regardless of the nature of those preferences. The theory is “emphatically not a meditation upon the Good.”<sup>52</sup> Catholic Social Thought emphatically rejects the idea that social welfare is merely a question of giving people what they want without regard to what it is that people want.

The law and economics model is based on a view of the human person as self-existent and separate from others.<sup>53</sup> This impoverished vision of the human person is inconsistent with a concern for the common good because seeing the person as self-existent and separate carries with it the conclusion “that the only standards against which [individual] choices can be evaluated and judged are those that he generates or endorses.”<sup>54</sup>

*B. The Common Good and the Shareholder Wealth Maximization Norm*

In 1932, Adolph Berle asserted that the exclusive purpose of corporations is to make profits for shareholders,<sup>55</sup> a refrain that has been taken up by many since then.<sup>56</sup> The norm of shareholder wealth maximization is a logical outgrowth of the secular law and economics model of the corporation.<sup>57</sup>

The question is whether the widely accepted<sup>58</sup> norm of shareholder wealth maximization is consistent with the notion of the common good. Some would argue that it is. Professors Hansmann and Karaakman, for example, have suggested that although “[a]ll thoughtful people believe that corporate enterprise should be organized and operated to serve the interests of society as a whole, and that the interests of shareholders deserve no greater weight in this social calculus than do the interests of any other members of society,” the shareholder primacy norm is the best means to achieve aggregate social welfare.<sup>59</sup> Indeed, a “common response to the question of whether directors should have a duty to serve the interests of nonshareholders has been to argue, as Friedman did, that all stakeholders are automatically protected, as though by an invisible hand, if we allow corporations to do what they do best: maximize profits.”<sup>60</sup>

This belief is shared by those who support the economic liberty Catholic vision of the corporation. Stephen Bainbridge defends shareholder wealth maximization as the “rising tide [that] lifts all boats,”<sup>61</sup> and he believes it to be an “an appropriate moral norm” upon which a Christian scholar committed to advancement of the common good<sup>62</sup> can rely. For Bainbridge, shareholder wealth maximization is central to corporate law, that it is central to the legal regime within which the corporation has made its “valuable societal contribution.”<sup>63</sup> He thus strongly rejects claims that corporations should take into account the interests of non-shareholder constituencies as seriously as those of shareholders.<sup>64</sup>

Michael Novak, another strong proponent of the Catholic vision of the corporation that emphasizes economic liberty, also believes that maximization of shareholder wealth is consistent with Catholic norms. Novak clearly believes that the independence of business corporations is central to democratic capitalism, which he sees as central to the promotion of the common good, and he is critical of claims of non-shareholder stakeholders and efforts to “socialize the corporation.”<sup>65</sup> Although Novak speaks in terms of “optimization of profit,” rather than profit maximization, by “optimization” he means no more than looking to the long-term self-interest of the corporation and its shareholders, rather than to short-term interest.<sup>66</sup>

Novak is undoubtedly right that one cannot simply jettison a profit goal, and Catholic Social Thought does not demand that we do so, as it recognizes that there is a legitimate role for profit.<sup>67</sup> It is self-evident that

[e]very economy that intends to progress must have as its motive the ability to get more out of the economic process than it puts in. Unless there is a return on investment, the economy simply spins its wheels in stagnation, neither accumulating nor growing . . . . Economic progress, growth, and forward motion cannot occur unless the return on investment is larger than the investment itself.<sup>68</sup>

However, one can accept that there are values to a capitalist system and to the role of corporations within that system without accepting profit-maximization as an exclusive driving force. As the discussion in the previous section suggests, from the standpoint of Catholic Social Teaching, an exclusive focus on maximizing shareholder wealth is inconsistent with the promotion of the common good. As early as 1931, in *Quadragesimo Anno*, Pope Pius XI warned that “free competition and especially economic domination . . . must be kept within definite and proper bounds,” and that an excessive focus on profits and competition leads to great injustice and fraud.<sup>69</sup> Similarly, sixty years later, in *Laborem Exercens*, Pope John Paul II criticized the exclusive focus on maximizing profits.<sup>70</sup> Sargent summarized the papal critique of the shareholder wealth maximization norm as suggesting that “[t]o the extent that the corporation’s determined pursuit of profit transforms greed into a virtue, and treats acquisition of wealth as an end in itself, it contributes to the spiritual emptiness of a materialistic culture and undermines the common good.”<sup>71</sup>

The *Compendium* further reminds us that:

All those involved in a business venture must be mindful that the community in which they work represents a good for everyone and not a structure that permits the satisfaction of someone’s merely personal interests. This awareness alone makes it possible to build an economy that is truly at the service of mankind and to create programs of real cooperation among the different partners in labor.<sup>72</sup>

The criticism of an excessive focus on corporate profits is more than justified. As Professor Lynn Stout has observed, a corporation that sees views raising share prices as the dominant business objective is one “that will cook its books; . . . fail to invest in projects or programs that cannot be understood and appreciated by unsophisticated investors; . . . raise share prices by opportunistically exploiting its creditors, employees and customers; and . . . pursue strategies that harm its diversified shareholders’

other investments.”<sup>73</sup> Professor Stout and others have persuasively shown that share price is not a good measure of desirable corporate performance.<sup>74</sup>

This suggests that profits are, in a sense, a means rather than an ends. The proper end of business is serving the common good; profits are both a necessary means for serving the common good and, often, a sign that a company is succeeding in its aim.<sup>75</sup> However, profits cannot be regarded “as the dominant objective of a business.”<sup>76</sup>

The shareholder profit maximization norm inverts means and ends. As one commentator put it,

[t]he difficulty with the shareholder model lies not with the goods the model includes, but with the way it *prioritizes* them. In other words, it controverts . . . our working model of the organizational common good, which requires that all other goods be ordered in light of human development in the context of the firm. The shareholder model instrumentalizes the excellent goods of employee and community development and directs them to one foundational good—profits—and their effect on share price/shareholder wealth. By elevating shareholder wealth to the status of the ultimate good, the shareholder model in effect erects a “tyranny of foundational goods,” inhibiting managers from considering the more excellent goods except as instruments to increase profits.<sup>77</sup>

A business world infused with Catholic values would recognize what is the means and what is the end. It would consider nonshareholders as well as shareholders, examining particularly the effect of corporate policy on those at the bottom. Such an examination would entail asking questions such as, how does a particular action affect the pensions of lower income workers? How does an action affect the consumer who relies on the company’s products? How does this action affect those who live in proximity to the corporation’s operations? The interests of such persons must be factored into the debate about corporate decisions and activity.

This analysis is consistent with the Catholic Social Thought view of private property as being constrained by the principle of stewardship. Pope

Leo XIII was vigorous in his defense of private property in *Rerum Novarum*.<sup>78</sup> At the same time, he recognized that there are limits on how one may use that property, quoting Thomas Aquinas' words that "[m]an should not consider his outward possessions as his own, but as common to all," and his warning to those who have received a large share of blessings from the divine bounty that they have received such blessings for the purpose of perfecting their own nature and should use them for the benefit of others.<sup>79</sup> Thus, while property may be private, it is held "under a 'social mortgage,' which means that it has an intrinsically social function."<sup>80</sup>

The foregoing discussion does not deny the entitlement of shareholders to receive a reasonable return on their investment. It does, however, suggest that our understanding of what constitutes a reasonable return on investment should be determined with reference to the effect of corporate activity on nonshareholder constituencies.<sup>81</sup>

## II. HOW TO REALIZE THE AUTHENTIC CATHOLIC VISION

### *A. Direct Legal Regulation*

There has been tremendous debate about the appropriate role of law in regulating corporations. Secularists adhering to the prevailing nexus of contracts model of the corporation are critical of any regulatory intervention into corporate affairs. For the most part, they believe that agency costs are best addressed by private contract and by the operation of the market and that legal intervention will create inefficiency and disturb the operations of the market.<sup>82</sup> Others argue for allocating to shareholders more power in the management of the corporation.<sup>83</sup>

Some argue that this view of a limited role of law in regulating corporate affairs is consistent with Catholic Social Teaching. Behind much of both Bainbridge's and Novak's insistence on shareholder profit maximization as consistent with the common good is their opposition to the use of the law to promote greater social responsibility. Bainbridge sees state intervention as

inconsistent with human freedom and subsidiarity and as posing “an unwarranted threat to economic liberty.”<sup>84</sup> For Bainbridge, preserving the economic liberty of the corporation is necessary to preserve the human freedom of those who make up the corporation.<sup>85</sup> Similarly, Novak also views legal intervention as an unwarranted infringement on human freedom.<sup>86</sup>

These views find some support in the principle of subsidiarity,<sup>87</sup> which counsels hesitation about governmental interference in economic life where private actors can better succeed in meeting goals. If, in fact, the free market already allows the pursuit of values embodied in Catholic Social Thought through the ability of shareholders to move their money to corporations that reflect those values, subsidiarity would argue against government interference with “the initiative and responsibility of individuals and of intermediate communities.”<sup>88</sup>

However, others have argued that the failure of the market to act as a sufficient discipline on corporate behavior,<sup>89</sup> combined with the lack of reliability of professional gatekeepers to sufficiently guard against corporate malfeasance, justifies legal intervention.<sup>90</sup>

I have no theoretical difficulty with the idea of legal regulation of corporations from either the standpoint of Catholic Social Thought or from a more secular standpoint. With respect to the former, papal documents have consistently recognized that there is a role for law in regulating the economy. Pope John XXIII expressed the expectation in *Mater et Magistra* that, inspired by social justice, lawmakers will regulate such that economic activity is carried out in conformity with common good.<sup>91</sup> John Paul II in *Laborem Exercens* similarly recognized the role of law, calling on governments to act to address the overemphasis on maximizing profits that exploited workers and others.<sup>92</sup> Again, in *Centesimus Annus*, he called on government to regulate corporate entities to promote the common good.<sup>93</sup> The United States Bishops, in *Economic Justice for All*, also recognize that human dignity can be protected only in community and that society as a

whole has a moral responsibility to contribute to the enhancement of human dignity.<sup>94</sup> The Bishops' statement explicitly calls for government intervention to promote corporations working for the public good.<sup>95</sup>

From a more secular standpoint, the fact that corporations are creations of society and possess only those rights given to them by the law, is sufficient basis to justify greater regulation of them.<sup>96</sup> Moreover, the federal and state governments spend an enormous amount granting financial benefits to corporations.<sup>97</sup> If the government is going to grant such benefits, it may rightfully demand something in return from the corporation in terms of a contribution to the common good.

However, the fact that there is no theoretical difficulty with the notion of using the law to promote greater corporate responsibility does not necessarily mean legal solutions are always the best approach. Moving from the broad conclusions that (1) corporations should promote the common good and not just promote shareholder interests, and (2) there is some justification for the law playing a part in helping corporations act for the common good, to a specific prescription for law is not simple. Over the years there have been warnings both by secular scholars<sup>98</sup> and by those promoting the economic liberty Catholic vision of the corporation<sup>99</sup> who have raised concerns that attempting to create greater corporate social responsibility through legal intervention would destroy the market and the positive benefits of the corporation.

A consideration of some specific proposals illustrates the difficulties. Let me set out two possible approaches for this purpose. First, the Internal Revenue Code has always been used to shape policy and not merely to raise revenue. Thus, it would require no great leap to tie tax breaks to socially responsible corporate behavior, rewarding, for example, the creation of partnerships between corporations and other entities to provide benefits for the poor and marginalized or microcredit to small borrowers. Similarly, the law could heavily tax polluters or other corporations who engage in behavior inimical to the common good. Such an approach avoids



mandating particular corporate behavior. The law here is merely encouraging certain behavior, leaving it to the corporation to decide whether to accept the rewards offered for positive behavior, or incur the penalty imposed for engaging in undesirable behavior.

A second possible approach would be to mandate particular behavior as a matter of corporate law in one of two ways. One would be to change state corporate law to require that corporate boards of directors consider broader interests, modifying current provisions of the laws of many states that permit, but do not require, managers to take into account nonshareholder interests.<sup>100</sup> Another way would be to create more specific, particular mandates concerning corporate behavior with respect to employees, consumers, or other constituencies. Examples of such mandates might include imposing limits on executive compensation or strengthening employee safety protections.

Each of these approaches creates difficulties. The use of the tax code is less intrusive than an approach that mandates particular behavior, but for that very reason is not a reliable way to achieve the desired goal. Depending on the financial value of the socially undesirable behavior, corporations may be quite willing to forego whatever tax benefits would be given to avoid the behavior or incur whatever additional tax costs are imposed.<sup>101</sup>

Mandating that corporate boards take into account nonshareholder interests is something that is “more easily said than done”<sup>102</sup> and several commentators have expressed concerns about the agency costs and other difficulties that would be associated with such a mandatory regime.<sup>103</sup> As a practical matter, there are questions as to how boards will respond and how their behavior will be judged. Some hard questions have to be addressed, such as what responsibility does a corporation have to seek the common good even when it may be in conflict with achieving financial goals or other corporate objectives, and how does a company deal with issues such as just wages and reductions in force in difficult economic times? The likely

reality is that requiring boards to take into account nonshareholder interests will give many constituencies losing lawsuits, allowing boards to essentially do what they please, with little external check on their behavior.<sup>104</sup>

If the law starts mandating particular corporate behavior, how will it be determined which behavior it mandates? At one level, the idea of having socially desirable behavior imposed as a matter of law may be tempting. However, the process by which governments determine what behavior is consistent with the common good is not always reliable, and there is no guarantee that the mandates put in place are in fact consistent with the common good. To be sure, some aspects of the common good can be agreed to easily. Others, however, would be more difficult. For example, over the last twenty years, a number of state legislatures have passed laws of various types requiring all employers, including many religious employers, who provide their employees with prescription coverage to also provide coverage of prescription contraceptives.<sup>105</sup> While many would argue that it is in the common good for all employers, including religious employers, to provide such coverage, from a Catholic standpoint the mandate does grave violence to religious freedom and self-determination.<sup>106</sup> This is not an argument for not strengthening the law in areas where there is clear societal harm to corporate behavior, such as in the case of violations of environmental laws. Some corporate behaviors are clearly inimical to the common good and it is an appropriate use of the law to attempt to eliminate those behaviors. However, we should be cautious in other areas either because there is less agreement about whether something is consistent with the common good or because a legal mandate may not be the best way to achieve a commonly agreed up goal.

Additionally, even if we could all agree on what we would like the law to mandate, certain things may be beyond our ability to address adequately by U.S. law. For example, the revised General Agreement on Tariffs and Trade (GATT) treaty, to which the United States is a signatory, prevents a signatory from restricting trade based on process standards.<sup>107</sup> As a result,

World Trade Organization (WTO) standards would restrict the United States from passing a law prohibiting American companies, for example, from importing goods produced in sweatshops or shops employing child labor. Thus, if an American corporation is going to refuse to import goods produced under those conditions, it must do so voluntarily or at least it must be a voluntary response to public pressure.

Finally, as I have suggested elsewhere,<sup>108</sup> although the law can help change the norms under which corporations operate, absent an underlying change in the view of persons and their relation to each other and to the world, the law alone will not be effective. The state cannot make people virtuous.

One thing the law can do without raising these concerns is to force more corporate disclosure. In the next section, I will discuss that approach in the context of talking about ways to achieve greater corporate social responsibility that do not involve direct legal mandates.

#### *B. Alternatives to Direct Legal Regulation*

The ability of the law to mandate more socially responsible corporate behavior is clearly limited. This suggests the need to give greater consideration to non-legal approaches to promoting corporate behavior consistent with the common good.<sup>109</sup>

There clearly are things outside of direct legal mandates that can contribute to this goal. For one, as others have argued,<sup>110</sup> management education needs to do a better job of focusing on ethical corporate behavior. A national survey of MBA students conducted five years ago found that no more than a quarter would refrain from hiring a competitor in order to wrongfully acquire a patent from the competing company,<sup>111</sup> suggesting that schools have not done a sufficient job training those who will run America's businesses. Perhaps if the model promoted in business schools looked less like the large American corporation and more like the

Mondragon Corporacion Cooperativa that exists in the Basque region of Spain,<sup>112</sup> there would be less need for legal intervention.

Second, while I have argued that profit maximization should not be the exclusive norm governing corporate behavior, the reality is that corporations desire profits. Therefore, more should be done to convince corporate entities that a socially responsible company can be a successful company, and that “far from being an impediment to success in business, moral conduct is, in the long run, more in keeping with probabilities of success than is immoral behavior.”<sup>113</sup>

Many corporate executives clearly have come to the view that ethical business conduct and more socially responsible behavior can be good for business. Beyond the obvious examples of companies like Starbucks,<sup>114</sup> Proctor & Gamble,<sup>115</sup> and Ben & Jerry’s,<sup>116</sup> many companies have started to realize that there need not be a tradeoff between making a good profit for their shareholders and behaving responsibly toward nonshareholder interests.<sup>117</sup>

If the public demands greater corporate responsibility as a condition for purchasing goods, companies will increasingly realize that socially responsible behavior is good for business. The success of students at American campuses, who were vocal in their demands that school apparel be produced under acceptable labor conditions, suggests the importance of this element in the strategy.<sup>118</sup> More recently, consumer demand has spurred the growth of the fair trade movement, forcing U.S. importers to ensure that workers in developing countries are provided with living wages and safe working conditions.<sup>119</sup> The demand of faith-based institutional investors, through groups such as the Interfaith Center on Corporate Responsibility, is also helping corporations to understand that “doing good can translate to doing well.”<sup>120</sup>

One way to contribute to greater public demand for greater responsibility is to require greater disclosure of non-financial corporate performance, a term that refers to an array of non-financial measures ranging from

customer loyalty and employee turnover to stakeholder responsiveness, human rights, labor conditions, and environmental impact.<sup>121</sup> Although some corporations have begun to voluntarily disclose business practices addressing various social issues, most do not,<sup>122</sup> raising the question whether forcing all companies to make such disclosures would have a positive impact on corporate behavior.

Many are optimistic about an approach that focuses on greater disclosure.<sup>123</sup> I confess a certain skepticism that it represents a total solution. The mild public reaction to reports of corporations engaging in racial discrimination in their employment practices<sup>124</sup> or in human rights abuses abroad<sup>125</sup> raises the question of whether mandating disclosure of nonfinancial performance measures will produce the desired effect in all cases.<sup>126</sup> Still, such a mandate is at least a tool in the fight to help convince corporations that ethical corporate behavior is good business, and thus an important means of attempting to create corporations whose behavior is more consistent with principles of Catholic Social Thought. If corporations are forced to disclose an array of nonfinancial measures of performance and believe that public awareness of any shortcomings will have adverse repercussions, such disclosure may provide an incentive for corporations to act in a more socially responsible fashion.

Finally, many businesses are run by Catholics and other Christians, and many business people are quite religious in their personal lives.<sup>127</sup> Raised in a secular culture that treats religion and faith as a private matter, I suspect many have failed to see the connection between their faith and their life in the business world.<sup>128</sup>

However, there seems to be increasing interest in incorporating values and faith into the workplace.<sup>129</sup> Spurred by more prevalent and visible discussions of Catholic Social Thought and the examples of those who treat the Gospel as a living message that informs all of the decisions, such as the Economy of Communion businesses rooted in the Catholic Focolare

movement,<sup>130</sup> Catholic business people, indeed, business people of all religions, can be encouraged to bring their faith into their business dealings.

### III. THE VALUE OF ARTICULATING A CATHOLIC VISION OF THE CORPORATION

It is one thing to say that being a follower of Christ requires avoiding a separation between faith and everyday life and that the Catholic Church's social teachings offer a set of principles by which those who adhere to the Catholic faith will guide their behavior and their lives. It is another to argue that Catholic Social Thought has something to say in a pluralist society.<sup>131</sup> The question here is: why should anyone other than a Catholic care about what Catholic Social Thought has to say about corporate obligations and the role of law in regulating corporations?

In general terms, Catholic Social Thought is a valuable lens through which to view all questions of law, not just those relating to the nature of the corporation. First, although the principles of Catholic Social Thought are based on the Gospels and the teachings of Jesus Christ, they have been developed and grounded, not in Catholic orthodoxy, but in natural law,<sup>132</sup> and recent popes especially have reasoned in their encyclicals regarding social teaching using arguments accessible to non-Catholics. Indeed, "while the earlier Papal encyclicals were directed to Catholics, more recently they have been directed to all people of good will."<sup>133</sup>

Second, the Catholic Social Thought lens does not introduce individual religious values into a field that is non-neutral. Although many behave as though our legal and political systems are divorced from any underlying theological and ethical worldview, and view the set of principles from which we derive our notions of regulation as flowing from a neutral or rational source, this supposed neutrality is a fiction. "Every political theory promotes a particular kind of person even if it denies doing so."<sup>134</sup> Thus, we cannot have law or talk about law divorced from some vision of the human person.

The prevailing secular discourse about corporations is clearly rooted in a particular vision of the human person that is not morally non-neutral. As discussed earlier, the law and economics model of the corporation is based on a view of the individual as self-existent and separate, a view that generates a vision of social welfare as meaning no more than the maximization of the preferences of those self-existent individuals. Catholic Social Thought is based on a different underlying view of the human person, one that sees the inherently social nature of the person and the fundamental interrelatedness of all persons and things of the world. The vision of the human person underlying Catholic Social Thought does not replace neutral premises with non-neutral premises; rather, it merely substitutes a different underlying theological and ethical worldview for the prevailing secular one.

Whether or not one ultimately accepts the vision of the human person underlying Catholic Social Thought or the vision underlying the secular law and economics theory, it is necessary to address the fact that there are two visions and that those visions lead to different views of what promotes social welfare. We cannot avoid making a conscious choice about which vision should be the basis of our judgments about the regulation of corporations in particular and about the role of law in general. Catholic Social Thought helps to highlight the need to make that choice.

Some categorically ignore “the possibility that any insight might be gained from a religious perspective,”<sup>135</sup> rejecting the vision of the human person offered by Catholic Social Thought merely because it derives from a religious source. But there is a truth and the truth matters. It is neither justifiable nor sensible to ignore the possibility of the truth advanced by a religious perspective without examining the value that the truth promotes. Catholic Social Teaching demands that the underlying, often unarticulated, values be examined, and it offers a developed and rich view of the human person as a serious alternative to the secular perspective.

This does not mean that examining a question through the lens of Catholic Social Thought will always produce a different result than an alternative lens. With respect to the issue I have been discussing, the communitarian vision of the corporation that flows from Catholic Social Thought is a vision shared by other religious perspectives. As I have discussed in great length elsewhere,<sup>136</sup> all religions support communitarian values, pointing “the way beyond ourselves to a deeper connection, both to others and to something sacred, immortal, and timeless . . . [motivating people] toward a sense of wholeness from which they are inspired to serve humanity.”<sup>137</sup> Thus, the notion of the common good and of the need for all human institutions to promote the common good is not unique to Catholic Social Thought. Catholic Social Thought contributes uniquely to the discussion, however, because it has a much more organized and well-developed body of social teachings, embodied in numerous papal encyclicals and other documents over the years, than other religions have.

In addition, the principles of Catholic Social Thought that lead to a communitarian vision of the corporation also resonate with secular critiques of the traditional law and economics model, such as those put forth by secular progressive corporate law scholars.<sup>138</sup> For example, Lawrence Mitchell has suggested that shareholder wealth maximization is “as destructive as it is simple,” and has suggested that it is “an ethic that will destroy us in the long term.”<sup>139</sup> More recently, similar critiques have been offered by those applying feminist insights to corporate law,<sup>140</sup> whose emphasis on connectedness and furthering equality and human flourishing<sup>141</sup> aligns them closely with the aims of Catholic Social Thought. Finally, in the international arena, the 2000 Organization for Economic Co-Operation and Development Guidelines for Multinational Enterprises and the United Nations Global Compact have defined certain core principles of corporate social responsibility, including issues of human rights obligations, labor rights and relations, and environmental protection,<sup>142</sup> that are not



dissimilar from the principles that flow from a Catholic vision of the corporation.

However, the fact that Catholic Social Thought does not necessarily yield different answers to other lenses does not take away from the value of the alternative means it uses to reach those answers.<sup>143</sup> A methodology that focuses on what it means to be human is itself valuable. Catholic Social Thought aims to place in our debates about our legal and political institutions those principles which allow the human person to flourish and which allow human institutions to aid in our growth as persons.<sup>144</sup> In some cases, Catholic Social Thought may provide a richer rationale for accepting conclusions that might have been reached on different grounds. In others, it may cause us to rethink decisions we have made about our human institutions, particularly in those areas where the values championed by Catholic Social Thought have been ignored in political and legal discourse.<sup>145</sup> In either event, however, it keeps our attention focused on our authentic needs as humans, “promot[ing] integrity by clarifying the goals or ends to which human beings are called to aspire, and the ways of living toward those ends that follow the Gospel,”<sup>146</sup> helping to change the cultural norms and ethos out of which we operate.

#### CONCLUSION

Over twenty years ago, Roberta Romano criticized advocates of corporate law reform for being “uninterested or unwilling to articulate the vision of the good society that informs their policy package.”<sup>147</sup> Lamentably, few have attempted to provide the normative theory of the corporation that she suggested the need for, despite the fact that some vision of the corporation and the human individual must underlie all discussions of the subject.

It may be that, for some people, the idea of talking about Catholic theology and religious values in the same breath as talking about corporate law and corporate behavior is anomalous. However, Catholic Social

Thought does offer a vision of humans and human institutions that provides a meaningful basis for discussions about the nature of the corporation and the role of law in regulating corporate affairs. That vision is one that resonates with non-Catholics as well as Catholics and, therefore, offers real hope for providing a normative theory of the corporation that can be widely accepted.

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<sup>2</sup> See, e.g., HELEN J. ALFORD, O.P., & MICHAEL J. NAUGHTON, *MANAGING AS IF FAITH MATTERED: CHRISTIAN SOCIAL PRINCIPLES IN THE MODERN ORGANIZATION* 10 (2001) [hereinafter ALFORD & NAUGHTON] (citing the conclusion of Tom Peters, author of *In Search of Excellence*, that "religious or spiritual talk simply has no place in the 'secular corporation'").

<sup>3</sup> See R. Scott Appleby, *The Triumph of Americanism*, in *BEING RIGHT: CATHOLIC CONSERVATIVES IN AMERICA* 37 (Appleby & Weaver eds., 1995); Charles M. Clark, *Bringing Realism to Management Education: Contributions from Catholic Social Thought*, 25 *REV. OF BUS.* 6, 7 (2004) (relaying sense of many that "when the Church speaks out on economic or social issues it is overstepping its authority"); William Ryan, S.J., *The Coady Lectures: Notes on the Development of Catholic Social Teaching*, Oct. 24, 2000, available at [http://www.stfx.ca/institutes/coady/text/about\\_publications\\_coadylectures\\_notes.html](http://www.stfx.ca/institutes/coady/text/about_publications_coadylectures_notes.html) (last visited Nov. 1, 2005) (observing that many "good Catholics" believe Catholicism "is about saving souls—not about social justice or attempts to build a more human and just local community or world").

<sup>4</sup> Although I focus on Catholicism here, what is true for Catholics regarding an inability to separate religion and spirituality from public issues is no less true for serious adherents of other religions. "To say that religion and spirituality have nothing to do with public issues, with economics or politics, is to define a 'religion' at odds with most actual religious life. Gandhi is credited with the view that those who say religion has nothing to do with politics do not know what religion means." ALFORD & NAUGHTON, *supra* note 2, at 11-12 (further observing that to accept that religion has no role in thinking about corporations "is to accept the death of religion and spirituality as believers of most world religions daily live them").

<sup>5</sup> ALFORD & NAUGHTON, *supra* note 2, at 12.

<sup>6</sup> As used here, the term “Kingdom” does not refer to a place or a goal to be attained sometime in the future. Rather, I speak here of “Kingdom” in the sense of uniting oneself and the world to God, enshrining the Spirit of God into the world in which we live.

<sup>7</sup> See POPE PAUL VI, *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World) ¶ 43 (1965) (declaring that Christians cannot “immerse themselves in earthly activities as if these latter were utterly foreign to religion, and religion were nothing more than the fulfillment of acts of worship and the observance of a few moral obligations”). Clark, *supra* note 3, at 7 (discussing centrality to the Church’s mission of its commitment to social justice).

This has been recognized by saints throughout the ages. St. Vincent is a good example of someone who “did not see himself inhabiting two worlds, but as holding two facets of it together to form a third. It is one thing to claim citizenship in an ideal religious universe and seem to keep that unblemished by avoiding society’s demands. It is another to say that involvement in the pressure cooker of institutions precludes taking a religious outlook seriously. Both positions assume that the worlds are separate . . . Vincent certainly knew the distinctness of each. But he refused to act as if they stood outside one another . . . Vincent’s saintliness existed right in engagement with commerce and politics and bottom lines. For Vincent, the Kingdom was pursued in the roughness of ocean currents and not in the clear serenity of a high mountain lake.” Thomas F. McKenna, C.M., *Vincent de Paul: A Saint Who Got His Worlds Together*, 16 J. BUS. ETHICS 299, 305 (1997). Similarly, a central focus for St. Ignatius was finding God in all things, a focus that is still a central characteristic of Jesuit spirituality. See WILLIAM A. BARRY, S.J., FINDING GOD IN ALL THINGS 14, 20 (1991).

<sup>8</sup> McKenna, *supra* note 7. McKenna speaks of the need to incarnate religious values in a marketplace setting and to “steer business by a values-directed compass.” *Id.*

<sup>9</sup> Mark A. Sargent, *Competing Visions of the Corporation in Catholic Social Thought*, 1 J. OF CATH. SOC. THOUGHT 561, 562 (2004).

<sup>10</sup> Sarbanes-Oxley Act § 406 (codified at 15 U.S.C. § 7264).

<sup>11</sup> Obviously, I do not mean to suggest that is this not a good start. “In the last three years alone, the corporate crime wave has looted trillions of dollars from millions of investors and workers, often including their pension funds. Bank robbers took no more than approximately \$100 million from banks in the last year.” Ralph Nader, *Legislating Corporate Ethics*, 30 J. LEGIS. 193, 194 (2004). Thus, even ensuring compliance with the law would bring some benefit. However, as the following textual discussion demonstrates, mere legal compliance is not enough.

<sup>12</sup> NYSE CORPORATE ACCOUNTABILITY AND LISTING STANDARDS COMMITTEE, CORPORATE GOVERNANCE RULES PROPOSALS SUBMITTED FOR SEC APPROVAL, at Item 10 and Commentary to Item 10 (Aug. 1, 2002). It is true that one of the provisions discussed in the Commentary requires that listed corporations “proactively promote ethical behavior” by encouraging employees to raise questions “when in doubt about the best course of action in a particular situation,” but what is intended by that language is ambiguous. The final NYSE corporate governance rules, approved by the Securities and Exchange Commission on November 4, 2003, contain substantially the same language. The final rules are codified in Section 303A of the NYSE’s Listed Company Manual.

<sup>13</sup> LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT (2001).

<sup>14</sup> *Id.* at 19-29 (also describing a Marriott corporate restructuring designed to force the company's debt-holders and preferred stockholders to bear the cost of maximizing the price of its common shares).

<sup>15</sup> See E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1154 (1932) (quoting General Electric officer Owen D. Young, Address at the Park Avenue Baptist Church (Jan. 1929) that a corporation must recognize its "public obligations and perform its public duties—in a word, vast as it is, that it should be a good citizen").

<sup>16</sup> These two competing visions of the corporation are described and contrasted more fully in Sargent, *supra* note 9. That there are two competing visions of the corporation should not come as a great surprise. As in so many areas addressed by the Catholic Church's social teaching, we are dealing here with an area where Catholicism provides the underlying norms, but does not necessarily specify a required means to implement those norms. POPE JOHN PAUL II, *Centesimus Annus* (On the Hundredth Anniversary of Rerum Novarum) ¶ 43 (1991). Michael Novak has suggested that "[t]he official documents of the pope and of Protestant ecumenical bodies (the World Council and the National Council) are notably strong on moral vision, much less so in describing economic principles and realities." MICHAEL NOVAK, TOWARD A THEOLOGY OF THE CORPORATION 27 (rev.ed.1990). See also Sargent, *supra* note 9, at 562-63 (discussing the need to translate "the broad moral norms established in papal documents and bishops' statements into guiding legal principles for the resolution of specific legal problems in the law of corporations"). Pope John Paul II in *Centesimus Annus* was explicit about the fact that his goal was not to set forth a particular economic model, but rather to set out principles to be employed in establishing (and critiquing) any such model. *Centesimus Annus*, *supra*, at ¶ 61; S. Prakash Sethi & Paul Steidlmeiser, *Religion's Moral Compass and a Just Economic Order: Reflections on Pope John Paul II's Encyclical Centesimus Annus*, 12 J. BUS. ETHICS 901 (1993). Those who would seek to apply Catholic social thought are thus left to discern "the means for permeating social, political, and economic realities with the demands of Christian doctrine and life." CATECHISM OF THE CATHOLIC CHURCH ¶ 899 (1994).

<sup>17</sup> For a different defense of the communitarian vision of the corporation, see generally Mark A. Sargent, *Utility, the Good and Civic Happiness: A Catholic Critique of Law and Economics*, (Vill. U. Sch. L., Pub. L. & Leg. Theory, Working Paper No. 2005-06) (forthcoming 2005) [hereinafter Sargent, *Utility*] (on file with the Seattle Journal for Social Justice).

<sup>18</sup> PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 160 (2004) [hereinafter COMPENDIUM].

<sup>19</sup> *Gaudium et Spes*, *supra* note 7, at ¶ 26.

<sup>20</sup> COMPENDIUM, *supra* note 18, at ¶ 165.

<sup>21</sup> JOHN XXIII, *Pacem in Terris* (On Establishing Peace in Truth, Justice, Charity, and Liberty), ¶ 131, 132-35 (1963); LEO XIII, *Rerum Novarum* (On the Condition of the Working Classes), ¶ 28 (1891); *Gaudium et Spes*, *supra* note 7, at ¶ 181-82; POPE JOHN

PAUL II, *Christifideles Laici* (On The Vocation and the Mission of the Lay Faithful in the Church and in the World) ¶ 14-15 (1988).

<sup>22</sup> See Dennis O'Connor, *By Their Fruits You Shall Know Them*, U.S. CATHOLIC, May 2004, at 12, 14 (quoting a leader of Cincinnati Archdiocese's Global Solidarity initiative as saying: "[i]f business managers really use Catholic social teaching as a principle for their daily work lives, then they will understand that everything boils down to the dignity of the human being in all corners").

<sup>23</sup> COMPENDIUM, *supra* note 18, at ¶ 338.

<sup>24</sup> MICHAEL NOVAK, *BUSINESS AS A CALLING: WORK AND THE EXAMINED LIFE* 24 (1996) (quoting David Packard of Hewlett-Packard).

<sup>25</sup> National Conference of Catholic Bishops, *Economic Justice for All, Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, at A PASTORAL MESSAGE ¶ 14 (1986) [hereinafter *Economic Justice for All*].

<sup>26</sup> *Id.*

<sup>27</sup> *Gaudium et Spes*, *supra* note 7, at ¶ 68.

<sup>28</sup> *Id.*

<sup>29</sup> Sargent, *supra* note 9, at 565.

<sup>30</sup> See NOVAK, *supra* note 24, at 138-53 (describing corporate responsibilities as including establishing a sense of community and respect to dignity).

<sup>31</sup> POPE PAUL VI, *Populorum Progressio* (On the Development of Peoples) ¶ 240, 245 (1967).

<sup>32</sup> *Economic Justice for All*, at A PASTORAL MESSAGE ¶ 1, 13.

<sup>33</sup> See Lucia A. Silecchia, *Reflections on the Future of Social Justice*, 23 SEATTLE U. L. REV. 1121, 1135, 1140-46 (2000) (discussing correlative rights and duties, including freedom to investigate truth and obligation to seek truth "ever more completely and profoundly").

<sup>34</sup> See Susan J. Stabile, *Using Religion to Promote Corporate Responsibility*, 39 WAKE FOREST L. REV. 839, 855-860 (2004).

<sup>35</sup> Judith A. Ross, *What it Takes: Minorities in the Executive Suite*, HARV. BUS. SCHOOL WORKING KNOWLEDGE, Oct. 12, 1999, available at [http://hbswk.hbs.edu/tools/print\\_item.jhtml?id=84&t=bizhistory](http://hbswk.hbs.edu/tools/print_item.jhtml?id=84&t=bizhistory) (last visited Nov. 2, 2005). Among the causes of this seems to be that minorities (and women) fail "to hear about internal promotions and changes in policy until after the positions had been filled or the policies implemented. Competing successfully for top executive positions requires an early knowledge of changes ahead." Robert Bellinger, *CEOs, Women Execs Disagree on What Holds Women Back—Different Reflections in Glass Ceiling*, ELECTRONIC ENGINEERING TIMES, Mar. 11, 1996.

The same disparity is found at the board level. Hispanics comprise less than 2 percent of corporate boards according to Washington Based Hispanic Association on Corporate Responsibility and African Americans account for 7 percent of directors according to Korn Ferry. Dianne Solis & Suzanne Marta, *Minority Firm Members Tackle Diversity from Top in Texas*, DALLAS MORNING NEWS, May 19, 2002.

<sup>36</sup> Roy Harris, *The Illusion of Inclusion*, CFO MAGAZINE, June 1, 2001, available at [http://www.findarticles.com/p/articles/mi\\_m3870/is\\_6\\_17/ai\\_75620815](http://www.findarticles.com/p/articles/mi_m3870/is_6_17/ai_75620815) (last visited Dec. 12, 2005).

Some companies have done a better job than others of recognizing the importance of diversity. See Molly McDonough, *Corporate Pressure is Changing the Racial Mix at Some Law Firms*, 91 A.B.A. J. 52 (Mar. 2005).

<sup>37</sup> Roger O. Crockett & Peter Coy, *Progress Without Parity: Fewer are Poor, But Blacks are No Closer to Economic Reality*, BUS. WK., Jul. 14, 2003, at 102.

<sup>38</sup> Marianne Bertrand & Kevin F. Hallock, *The Gender Gap in Top Corporate Jobs*, 55 INDUS. & LAB. REL. REV. 3 (2001) (reporting study of compensation of five highest-paid executives in large U.S. companies that women earned about 45 percent less than men); Elizabeth Becker, *Study Finds a Growing Gap Between Managerial Salaries for Men and Women*, N.Y. TIMES, Jan. 24, 2002, at 24 (citing findings of General Accounting Office study).

Some have claimed that the dearth of women in senior positions in corporations is a result of women opting out in order to spend time with their families. See, e.g., Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES MAGAZINE, Oct. 26, 2003, at 42; Patricia Sellers, *Power: Do Women Really Want It?*, FORTUNE, Oct. 13, 2003, at 80. However, research findings suggest the opt-out theory is more myth than reality. See Bonnie Erbe, *Corporate Culture, Not Kids, Drives Women to Opt Out*, CHI. SUN-TIMES, INC., July 4, 2004, at 30 (citing findings of Catalyst that women want top jobs as much as men do); Deborah Merrill-Sands, Jill Kickul, & Cynthia Ingols, *Women Pursuing Leadership and Power: Challenging the Myth of the "Opt-Out Revolution"*, CFO INSIGHTS, BRIEFING NOTE NO. 20, Feb. 2005, available at [http://www.simmons.edu/som/docs/centers/insights\\_20.pdf](http://www.simmons.edu/som/docs/centers/insights_20.pdf) (last visited Nov. 2, 2005) (citing the findings from two surveys). See also Bellinger, *supra* note 35 (reporting complaint of female executives that "male stereotyping and preconceptions of women" are primarily responsible for holding women back and discussing study findings that women fail to hear about internal promotions and changes in policies until after the fact).

<sup>39</sup> Erbe, *supra* note 38.

That the legal system does not afford a meaningful remedy to women in executive positions who are discriminated against in their pay contributes to women's sense "that society does not take them seriously." Juliene James, *The Equal Pay Act in the Courts: A DeFacto White-collar Exemption*, 79 N.Y.U. L. REV. 1873, 1877 (2004) (discussing lack of success of white-collar workers in Equal Pay Act claims and women's perception of social hostility against women executives).

<sup>40</sup> In 2000, white full-time wage and salary workers' median weekly earnings were \$591 while Hispanics earned \$396 and blacks earned \$468. This earnings gap is more defined among men than women. The median weekly earnings for a black man was 75.2 percent of the median earnings for white men. The median weekly earnings for a Hispanic man was 61.9 percent of the median earnings for white men. Among women, black women earned 85.8 percent of the median earnings for white women and Hispanic women earned 72.8 percent. Report of the American Workforce; Chapter 1: Counting Minorities: A Brief History and a Look at the Future, U.S. Department of Labor, 2001, available at <http://www.bls.gov/opub/rtaw/pdf/chapter1.pdf>.

<sup>41</sup> See U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Highlights of Women's Earnings in 2003*, Report 978 (Sept. 2004), at 1-3.

<sup>42</sup> See Theresa Minton-Eversole, *Minority Women Face Bleak Retirement*, HR MAGAZINE, Feb. 1, 2003, at 48.

<sup>43</sup> Engaging in illegal racial discrimination is also inconsistent with the maximization of shareholder wealth and thus indefensible by even those who believe a corporation should be motivated by the shareholder wealth maximization norm. As Cheryl Wade and others have argued, “directorial failure to monitor compliance with antidiscrimination laws reduces rather than maximizes shareholder wealth. Companies that discriminate often pay large amounts to settle class actions brought by employees or consumers of color alleging that boards breached duties of care in failing to avoid the losses incurred when settling discrimination suits.” Cheryl Wade, *The Intersection of Race, Corporate Law and Economic Development: Attempting to Discuss Race in Business and Corporate Law Courses and Seminars*, 77 ST. JOHN’S L. REV. 901, 907-8 (2003). See also Steven A. Ramirez, *The New Cultural Diversity and Title VII*, 6 MICH. J. RACE & L. 127, 135-40 (2000) (showing that diversity has a positive effect on productivity, stock price, etc.); Cheryl Wade, *Racial Discrimination and the Relationship Between the Directorial Duty of Care and Corporate Disclosure*, 63 U. PITT. L. REV. 389 (2002) (discussing negative effect on shareholder wealth of inadequate corporate responses to racial discrimination).

<sup>44</sup> Catholic Social Thought also provides support for disparate impact analysis of discrimination, meeting the charges made by law and economics scholar such as Christine Jolls, who argue that disparate impact analysis is unjustified. Cf. Christine Jolls, *Antidiscrimination and Accommodation*, 115 HARV. L. REV. 642 (2001). Since Catholic principles of common good and human flourishing do not depend on racial animus, they provide a justification for looking beyond whether the defendant engaged in intentional discrimination.

<sup>45</sup> On the value of diversity in the workplace, see, e.g., Cynthia Estlund, *Taking Grutter to Work*, 7 GREEN BAG 215, 220 (2004); Kenneth L. Karst, *The Revival of Forward-Looking Affirmative Action*, 104 COLUM. L. REV. 60, 70-74 (2004). See also Scott A. Moss, *Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for both Occupational Segregation and Economic Analysis of Law*, 27 HARV. WOMEN’S L.J. 1 (2004) (arguing that women are particularly sensitive to diversity in the workplace).

Some might argue that religion, in general, and the Catholic Church, in particular, have not sufficiently recognized the talents and contributions of women. See, e.g., Elisabeth Schussler Fiorenza, *Public Discourse, Religion and Wo/Men’s Struggles for Justice*, 51 DEPAUL L. REV. 1077, 1077 (2002) (noting that religion is seen by feminists “solely as patriarchal and repressive,” leading to the view that it is impossible to be both a feminist and engaged in religious practice). See Berta Esperanza Hernandez-Truyol, *Out of the Shadows: Traversing the Imagery of Sameness, Difference, and Relationalism—A Human Rights Proposal*, 17 WIS. WOMEN’S L.J. 111, 156 (2002) (observing that religion, “via its leaders, is complicit in locating women in a different and inferior space and, at times, in actively holding them down”). Some of this criticism has come from women who identify themselves as Catholics. At the time of the death of the John Paul II, there were many voices calling for the ordination of women, saying that the conclave only reflected half of the Church’s actual constituency. Catholic News Service, *Pink Smoke Declares Priestly People Come in Both Sexes*, NAT’L CATHOLIC REP., Apr.

29, 2005, at 3. However, despite the Church's insistence that certain matters are not amenable to change—such as its belief that women may not be ordained as priests—there has been some movement toward greater recognition of the contributions of women. See, e.g., POPE JOHN PAUL II, *Letter to Women*, ¶ 2-3 (1995); POPE JOHN PAUL II, *Evangelium Vitae* (On the Value and Inviolability of Human Life) ¶ 99 (1995); POPE JOHN PAUL II, General Audience, *Women as Masterpieces of God's Creation*, Nov. 24, 1999; Richard John Neuhaus, *True Christian Feminism*, NAT'L REV., Nov. 25, 1998 (summarizing John Paul II's teaching on women). Similarly, some would suggest that the Church's historical response to the sex abuse scandal exhibited a form of the cost-benefit analysis engaged in by GM in deciding to continue to produce cars with risky fuel tanks that I criticized earlier. However, the fact that the Catholic Church as an institution may not perfectly embody these principles is not a criticism of the principles themselves.

<sup>46</sup> See Mary Durrant, *In World Trade, Cotton Fields Aren't Level; Global Trade Meeting Fails African Farmers*, NAT'L CATHOLIC REP., Oct. 10, 2003, at 4 (discussing \$3 billion in subsidies paid to American cotton farmers, resulting in their ability to flood the world market with inexpensive cotton, preventing "West African farmers from competing even in their own domestic market.").

<sup>47</sup> The complicity of U.S. corporations in violations of human rights has been reported by Amnesty International and Human Rights Watch. See their reports at <http://www.amnestyusa.org/business/index.do> (last visited Nov. 2, 2005) and <http://www.hrw.org/advocacy/corporations> (last visited Nov. 2, 2005). A number of lawsuits have been filed under the Alien Torts Claim Act (the "ATCA") 28 U.S.C. § 1350 seeking corporate liability for participation in international human rights violations. See, e.g., *Estate of Rodriguez v. Drummond Co.*, 256 F.Supp. 2d 1250, 1254 (N.D. Ala. 2002) (alleging defendant corporation hired paramilitary security forces to silence union leaders and that those so employed engaged in murder, torture and unlawful detention); *Bowota v. Chevron*, 312 F. Supp. 2d 1229, 1233 (N.D. Cal. 2002) (alleging Chevron participation and assistance in Nigerian military raids in connection with demonstrations on Chevron oil rigs). Unfortunately, the ATCA has generally not proven effective in holding U.S. corporations liable for their participation in human rights abuses. See G. Jeffrey MacDonald, *Now, Execs Pay for Firm's Sins*, CHRISTIAN SCI. MONITOR, Jan. 31, 2005, at 14.

<sup>48</sup> The law and economics view, which sees the corporation as a nexus of contracts, has been the dominant model for thinking about the regulation of corporations. See Melvin A. Eisenberg, *The Conception that a Corporation is a Nexus of Contracts, and the Dual Nature of the Firm*, 24 J. CORP. L. 819 (1999); William T. Allen, *Contracts and Communities in Corporate Law*, 50 WASH. & LEE L. REV. 1395, 1400 (1993); FRANK H. EASTERBROOK & DANIEL R. FISCHER, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 92 (1991); Michael C. Jensen & William H. Meckling, *The Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

<sup>49</sup> See Ernst Fehr & Soman Gächter, *Fairness and Retaliation: The Economics of Reciprocity* 1 (CESifo, Working Paper No. 336, 2000), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=260736](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=260736) (last visited Nov. 2, 2005) (describing the view of "human beings as exclusively self-interested" as a "long standing



tradition in economics”); GARY BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 14 (1976) (describing all human behavior as “involving participants who maximize their utility from a stable set of preferences and accumulate an optimal amount of information and other inputs in a variety of markets”).

<sup>50</sup> The “nexus of contracts” approach conceptualizes the corporation as a nexus of numerous contractual relationships. See HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 18 (1996) (describing business as a nexus of contracts in which the business is “in essence the common signatory to a group of contracts”); Michael C. Jensen & William H. Meckling, *The Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structures*, 3 J. FIN. ECON. 305 (1976). For an in-depth analysis of the nexus of contracts notion and its shortcomings, see Melvin A. Eisenberg, *The Conception That the Corporation is a Nexus of Contracts, and the Dual Nature of the Firm*, 24 J. CORP. L. 819 (1999).

<sup>51</sup> Lawrence E. Mitchell, *Trust. Contract. Process*, in *PROGRESSIVE CORPORATE LAW* 185, 186 (Lawrence E. Mitchell, ed., 1995).

<sup>52</sup> Sargent, *Utility*, *supra* note 17, at 2. See LOUIS KAPLOW & STEPHEN SHAVELL, *FAIRNESS VERSUS WELFARE* 26 (2002); Sargent, *Utility*, *supra* note 17, at 4-10 (describing at length the irrelevance of values in law and economics).

<sup>53</sup> I have suggested this idea elsewhere. See Stabile, *supra* note 34, at 855-60.

<sup>54</sup> Richard W. Garnett, *Christian Witness, Moral Anthropology, and the Death Penalty*, 17 NOTRE DAME J. L. ETHICS & PUB. POL’Y 541, 555 (2003) (calling this notion a “superficially appealing but in fact untruthful, unreliable and ultimately unworthy account of what it means to be human”).

<sup>55</sup> Adolph A. Berle, Jr., *For Whom Corporate Managers are Trustees: A Note*, 45 HARV. L. REV. 1365, 1367-69 (1932).

<sup>56</sup> See, e.g., Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH. & LEE L. REV. 1423, 1424-25 (1993) (observing that corporate law remains committed to the norm of shareholder maximization); Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 32, 33 (corporation works for shareholders).

<sup>57</sup> See, e.g., Jeanne L. Schroeder, *Economic Rationality, Empathy, and Corporate Responsibility*, 70 GEO. WASH. L. REV. 875, 875 (2002) (observing that the “proposition that the corporation’s sole goal is profit maximization, and the conflation of profit maximization with shareholder value maximization” stems from the law and economics paradigm).

<sup>58</sup> When I say “widely accepted,” I speak of courts, academics, and other commentators. The shareholder primacy norm, interestingly, is not one widely shared by the public. A Business Week poll conducted several years ago found only 4 percent of respondents agreeing with the statement that “U.S. corporations should have only one purpose—to make the most profit for their shareholders—and that their pursuit of that goal will be best for America in the long run.” Aaron Bernstein, *Too Much Corporate Power?*, BUS. WK., Sept. 11, 2000, at 149. In contrast, 95 percent believed that U.S. corporations “owe something to their workers and the communities in which they operate, and they should sometimes sacrifice some profit for the sake of making things better for their workers and communities.” *Id.*

<sup>59</sup> Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 441 (2001).

<sup>60</sup> Ronald Chen and Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 46 (2004).

<sup>61</sup> Stephen M. Bainbridge, *The Bishops and the Corporate Stakeholders Debate*, 4 VILL. J. L. & INVEST. MGMT 3, 27 (2002) [hereinafter *Bishops*] available at <http://www.law.vill.edu/scholarlyresources/journals/joflawandinvgmt/docs/fall2002volume4number1.pdf> (last visited Nov. 1, 2005); Stephen M. Bainbridge, *Law and Economics: An Apologia*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 208, 210 (Angela C. Carmella, Robert F. Cochran, Jr. & Michael W. McConnell, eds., 2001) [hereinafter *Law and Economics*]; Bainbridge, *supra* note 54 at 1423.

<sup>62</sup> Bainbridge, *Law and Economics*, *supra* note 61 at 210. See also Stephen M. Bainbridge, *Executive Compensation: Who Decides?*, 83 TEX. L. REV. 1615, 1645 (2005) (calling shareholder wealth maximization “the proper decision-making norm in corporate governance”).

<sup>63</sup> Stephen M. Bainbridge, *Corporate Decisionmaking and the Moral Rights of Employees: Participatory Management and Natural Law*, 43 VILL. L. REV. 741, 827-28 (1998).

<sup>64</sup> Bainbridge, *Bishops*, *supra* note 61 at 27.

<sup>65</sup> MICHAEL NOVAK, ON CORPORATE GOVERNANCE, THE CORPORATION AS IT OUGHT TO BE 9, 20 (1997).

The more communitarian Catholic vision of the corporation seriously considers a norm of economic justice, which includes an element of distributionist goals. See, e.g., Sargent, *Utility*, *supra* note 17, at 3 (observing that a Catholic jurisprudence “ultimately will be about ends”). This is not a notion easily accepted by the more conservative liberty Catholic vision, which expresses concern about what it sees as the “collectivist moral vision” in some expressions of Catholic social thought. Milton Friedman, *Good Ends, Bad Means*, in THE CATHOLIC CHALLENGE TO THE AMERICAN ECONOMY 99, 104 (Thomas M. Gannon, ed., 1987). See also Novak, *supra* note 16, at 59 (criticizing “precapitalist or a frankly socialist set of ideals about political economy” of Christian theologians).

<sup>66</sup> See Novak, *supra* note 16, at 51-52. Novak observes that “[t]o aim at maximizing profit—that is, to obtain the greatest profit possible out of every opportunity—is to be greedy in the present at the expense of the future,” whereas to aim at optimizing profit means to take other factors into account, including long-term investment, consumer loyalty and fair service for a fair price. *Id.*

<sup>67</sup> See *Centesimus Annus* ¶ 43 (recognizing that there is a legitimate role for profit): CATECHISM OF THE CATHOLIC CHURCH, ¶ 2432 (1994) (acknowledging that profits “make possible the investments that ensure the future of a business and they guarantee employment”).

<sup>68</sup> <http://www.newadvent.org/summa/306602.htm>.

<sup>69</sup> PIUS XI, *Quadragesimo Anno* (After Forty Years), ¶ 132-33 (1931).

<sup>70</sup> POPE JOHN PAUL II, *Laborem Exercens* (On Human Work), ¶ 17.1-17.4 (1981). In the period between the *Quadragesimo Anno* and *Laborem Exercens*, the same theme was echoed by Pope Paul XXIII in *Mater et Magistra*, by the Second Vatican Council in

*Gaudium et Spes*, and by Pope Paul VI in *Populorum Progressio*. See POPE JOHN XXIII, *Mater et Magistra* (On Christianity and Social Progress), ¶ 38-40 (1961); *Gaudium et Spes*, ¶ 68; POPE PAUL VI, *Populorum Progressio*, (On the Development of the Peoples) ¶ 22 (1967). Pope Paul VI also criticized looking to economic growth as the exclusive indicator of measuring the development of countries. POPE PAUL VI, *Populorum Progressio*, ¶ 14. Even more recently, Pope John Paul II told an Italian banking group in September 2004 that the pursuit of profit must be subordinate to ethical values. *Ethics Comes Before Profit, Pope Tells Bankers*, ZENIT DAILY DISPATCH, Sept, 17, 2004, available at <http://www.zenit.org> (ZE04091706).

<sup>71</sup> Sargent, *supra* note 9, at 566.

<sup>72</sup> COMPENDIUM, *supra* note 18, at ¶ 339.

<sup>73</sup> Lynn A. Stout, *Share Price as a Poor Criterion for Good Corporate Law*, 8 UCLA Law & Economics Research Paper Series, Research Paper No. 05-7, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=660622](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=660622) (last visited Dec. 12, 2005).

<sup>74</sup> See *id.*; Lynn A. Stout, *The Mechanisms of Market Inefficiency: An Introduction to the New Finance*, 28 J. CORP. L. 635 (2003); ANDREI SHLEIFER, *INEFFICIENT MARKETS: AN INTRODUCTION TO BEHAVIORAL FINANCE* (2000). See also Jonathan R. Macey, *Efficient Capital Markets, Corporate Disclosure, and Enron*, 89 CORNELL L. REV. 394, 396-97 (2004) (discussing how Enron dealt a blow to the efficient capital market hypothesis in that its share price continued to do well despite management improprieties).

<sup>75</sup> See Jim Wisloff, *Catholic Social Thought and Business Ethics: The Application of 10 Principles*, 25 REV. OF BUS. 15, 22 (2004) (observing that in “Catholic economics, the ruling purpose of the economy is not power or profit, but human well-being in its totality”).

<sup>76</sup> Robert G. Kennedy, *Business and the Common Good in the Catholic Social Tradition*, 4 VILL. J. OF LAW & INV. MGMT 29, 46 (2002). In *Centesimus Annus*, Pope John Paul II expressed the view that “the purpose of a business firm is not simply to make a profit but is to be found in its very existence as a community of persons who in various ways are endeavoring to satisfy their basic needs, and who form a particular group at the service of the whole of society.” *Centesimus Annus*, ¶ 35. Professor Kennedy observes that this idea of profits as means rather than ends is not “a quaint theological position,” quoting the views of Peter Drucker. See Kennedy, *supra*. (quoting PETER DRUCKER, *MANAGEMENT: TASKS, RESPONSIBILITIES, PRACTICES* (1973)).

<sup>77</sup> Alford & Naughton, *supra* note 2, at 47.

<sup>78</sup> *Rerum Novarum*, ¶ 4-12.

<sup>79</sup> *Rerum Novarum*, ¶ 19. See also Thomas Aquinas, *Summa Theologica*, Part I-II, Q. 66, Art 2 available at <http://www.newadvent.org/summa/306602.htm> (last visited Nov. 2, 2005) (observing that “man ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in their need”).

<sup>80</sup> POPE JOHN PAUL II, *Sollicitudo Rei Socialis* (On Social Concern), ¶ 42 (1987).

<sup>81</sup> See Kennedy, *supra* note 76, at 48 (observing the Catholic Social Thought “could defend the right of shareholders to receive the ‘net’ income generated by a business, providing employees are justly compensated,” but that it would not be a reasonable return on investment for shareholders to receive “an unfairly large portion of the revenues generated by the business”).

<sup>82</sup> For a fuller discussion of the secular law and economic approach to corporate regulation, see Stabile, *supra* note 34, at 859-60.

<sup>83</sup> See Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833 (2005) (arguing that granting shareholders more power in relation to management would successfully address agency problems).

<sup>84</sup> Bainbridge, *Bishops*, *supra* note 61.

<sup>85</sup> Bainbridge emphasizes the centrality of human freedom to Catholic Social Thought. Certainly there is support for the importance of free choice in many papal documents. See, e.g., *Centesimus Annus*, ¶ 13 (observing that “the good of the individual [cannot] be realized without reference to his free choice, to the unique and exclusive responsibility which he exercises in the face of good or evil”).

<sup>86</sup> See Novak, *supra* note 16, at 45.

<sup>87</sup> Pope Pius XI expressed the principle of subsidiarity in these terms: “One should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies.” *Quadragesimo Anno* ¶ 79. See CATECHISM OF THE CATHOLIC CHURCH ¶ 1883 (1994) (“A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with the view to the common good”) (quoting *Centesimus Annus*).

<sup>88</sup> Congregation for the Doctrine of the Faith, *Instruction on Christian Freedom and Liberation*, Mar. 22, 1986, at ¶ 73 available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19860322\\_freedomliberation\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19860322_freedomliberation_en.html) (last visited Nov. 2, 2005).

<sup>89</sup> See, e.g., Mark A. Sargent, *Lawyers in the Perfect Storm*, 43 WASHBURN L. J. 1, 6-8 (2003); Woodrow W. Clark, Istemi Demirag, *Enron; The Failure of Corporate Governance*, 8 J. CORP. CITIZENSHIP 105 (2002), available at <http://www.greenleaf-publishing.com/pdfs/jcc8clar.pdf> (last visited Nov. 2, 2005) (reviewing Enron’s conduct in California energy crisis as proof of the failure of market forces to regulate corporate conduct.); William S. Lerach, *Plundering America: How American Investors Got Taken for Trillions by Corporate Insiders—The Rise of the New Corporate Kleptocracy*, 8 STAN. J.L. BUS. & FIN. 69, 78-9 (2002) (stating that the federal deregulation of the 1990s resulted in corporate fraud, not the promised increases in employment and stock value).

<sup>90</sup> See Sargent, *supra* note 89, at 14-19.

<sup>91</sup> *Mater et Magistra*, ¶ 89-92.

<sup>92</sup> *Laborem Exercens*, ¶ 17.

<sup>93</sup> *Centesimus Annus*, ¶ 35 (noting that the Catholic tradition “demands that the market be appropriately controlled by the forces of society and by the state to assure that the basic needs of the whole society are satisfied”).

<sup>94</sup> *Economic Justice for All*, *supra* note 25, at ¶ 14.

<sup>95</sup> There is no inconsistency between these statements and the principle of subsidiarity. Subsidiarity means action at the level most suited to address the problem, not merely the lowest level. Where nongovernmental approaches fail or cannot be effective, subsidiarity

contemplates that the federal government will intervene. See Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Application*, 11 NOTRE DAME J. L. ETHICS & PUB. POL'Y 549, 567 (1997); Susan J. Stabile, *Subsidiarity and the Use of Faith-Based Organizations in the Fight Against Poverty*, 2 VILLANOVA J. CATH. SOC. THOUGHT 313, 326-32 (2005).

<sup>96</sup> See Stabile, *supra* note 34, at 898; David Millon, *Theories of the Corporation*, 1990 DUKE L. J. 201, 206 (1990) (corporation is created by operation of law, although it is often granted rights of a natural person); Susan J. Stabile, *Freedom to Choose Unwisely: Congress' Misguided Decision to Leave 401(k) Plan Participants to Their Own Devices*, 11 CORN. J. L. & PUB. POL'Y 361, 396 (2002) (justifying government regulation of 401(k) plans based on notion that corporations have no rights except those given to them by the law); Steven M. H. Wallman, *Team Production in Business Organizations: Understanding the Purpose of a Corporation: An Introduction*, 24 J. CORP. L. 807 (1999) ("The courts recognized the integral public-interest purpose of early corporations as part of a regulatory quid pro quo exacted for grant of the entity status which only the law could give." (Quoting JAMES WILLARD HURST, *THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES: 1780-1970*, 56 (1970))).

<sup>97</sup> See, e.g., Martin E. Gold, *Economic Development Projects: A Perspective*, 19 URB. LAW. 193, 193 (1987) (listing real property exemptions, low-interest loans, loan guarantees, grants, sales-tax exemptions, reduced energy costs, tax-exempt bond financing, and subsidized rent as programs that state and local governments use to induce private industry to relocate); Kary L. Moss, *The Privatizing of Public Wealth*, 23 FORDHAM URB. L.J. 101 (1995) (examining the abuses in corporate tax incentives and their impact on local economies.); Lisa Renze-Rhodes, *Lebanon snares parts facilities; \$8 million in state, city incentives lures Case New Holland and up to 700 new jobs*, INDIANAPOLIS STAR, Mar. 11, 2003, at 9C; Kirk Ladendorf, *City, Dell \$ 46 Million Apart on Tax Plan*, AUSTIN AM. STATESMAN, Feb. 23, 1993, at C7, C8 (discussing incentive package aimed at persuading Dell to expand in Austin).

<sup>98</sup> See, e.g., Eugene V. Rostow, *To Whom and for What Ends is Corporate Management Responsible?*, in *CORPORATION IN MODERN SOCIETY* 46 (Edward S. Mason, ed., 1959).

<sup>99</sup> Sargent, *supra* note 9, at 588 (discussing contributions of Bainbridge in pointing out problems with moving from broad principles of Catholic Social Thought to specific policy recommendations).

<sup>100</sup> For examples of such statutes, see MINN. STAT. ANN. § 302A.251; MO. ANN. STAT. § 351.347(1).(4); OHIO REV. CODE ANN. § 1701.59(E).

<sup>101</sup> For example, when Section 280G was added to the Code, denying a corporate deduction for excess golden parachute payments and imposing an excise tax on individuals who received such payments, many corporations decided to continue to pay amounts in excess of those permitted, foregoing the deduction and often grossing up executives to negate the effect of the excise tax. See Susan J. Stabile, *Is There a Role for Tax Law in Policing Executive Compensation*, 72 ST. JOHN'S L. REV. 81, 90-93 (1998). Similarly, when §162(m) was added to the Code, denying a deduction for compensation in excess of \$1 million, some corporations decided to simply forego the deduction and continue to pay amounts in excess of the cap. See *id.* at 86.

<sup>102</sup> Bainbridge, *Bishops*, *supra* note 61, at 22 (discussing the difficulty managers and directors would have juggling the interests of multiple constituencies). See Timothy L. Fort, *Religion in the Workplace: Mediating Religion's Good, Bad and Ugly Naturally*, 12 NOTRE DAME J. OF LAW, ETHICS AND PUB. POL'Y 121, 146 (1998) (observing that if the law mandated consideration of nonshareholder constituencies, "[t]he hard unanswered questions revolve around specifying what weights to give to the relevant stakeholders, at what times, and for what reasons").

<sup>103</sup> See, e.g., Bainbridge, *Bishops*, *supra* note 61, at 27; Anita Indira Anand, *Voluntary vs. Mandatory Corporate Governance: Towards an Optimal Regulatory Framework* (2005) (unpublished manuscript on file with author). See also MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133-34 (1962) (discussing practical difficulties of asking corporations to make socially beneficial decisions rather than simply looking to maximize profits for shareholders); Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1976, §6, at 122; Randall S. Thomas, *What is Corporate Law's Place in Promoting Societal Welfare?: An Essay in Honor of Bill Klein*, Vanderbilt University Law School Law & Economics Working Paper No. 05-03, 4, available at <http://ssrn.com/abstract=655228> (last visited Nov. 2, 2005) (discussing imprecision of using corporate law to force directors to pay more attention to nonshareholder interests).

<sup>104</sup> See, e.g., Bainbridge, *Bishops*, *supra* note 61, at 17-18 (discussing the fact that mandating boards pay attention to nonshareholder interests would put too much discretion in the hands of the board). See also Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm*, *supra* note 55 at 1424-225 (discussing superiority of shareholder wealth maximization over system where directors are required to consider the interest of other nonshareholder interests).

<sup>105</sup> See The Alan Guttmacher Institute, *State Policies in Brief: Insurance Coverage of Contraceptives* (Feb. 1, 2004), available at [http://www.agi-usa.org/pubs/spib\\_ICC.pdf](http://www.agi-usa.org/pubs/spib_ICC.pdf) (last visited Nov. 2, 2005).

<sup>106</sup> I discuss the issues associated with such mandates in 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).

<sup>107</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, TIAS No. 1700. See also Nader, *supra* note 11, at 196.

<sup>108</sup> See Stabile, *supra* note 34, at 889.

<sup>109</sup> Not everyone would agree. Professor William Quigley, for example, would argue that "modern large corporations are by size, power, and operation of law either amoral or immoral and so powerful that they cannot be made to act in accordance with Catholic social thought under current legal regulations. Since other arrangements are making little progress, legal corporation personhood should be abolished." William Quigley, *Catholic Social Thought and the Amorality of Large Corporations: Time to Abolish Corporate Personhood*, 5 LOY. J. PUB. INT. L. 109, 109 (2004). Professor Quigley's notion is that abolition of the fiction of corporate personhood would force those doing business "to assume personal and social responsibility for their business actions." *Id.* at 109-10.

<sup>110</sup> See Clark, *supra* note 2; George Garvey, *Business as a Vocation: Implications for Catholic Legal Education*, 25 REV. BUS. 37, 41-43 (2004).

<sup>111</sup> Phillip M. Thompson, *The Stunted Vocation: An Analysis of Jack Welch's Vision of Business Leadership*, 25 REV. BUS. 45, 45 (2004) (also reporting that more convicts would refrain from such behavior than MBA students).

<sup>112</sup> The Mondragon principles that promote economic justice and the common good include providing aid to socio-economically disadvantaged job applicants, a no lay-off policy, limited pay ratios between top executive and factory/field workers and investment of a majority of profits in the creation of new jobs. See David Herrera, *Mondragon: A For-Profit Organization That Embodies Catholic Social Thought*, 25 REV. BUS. 56, 60-61, 66 (2004); David Herrera, *Laborem exercens, "Traditional" Organizations and the Democratic Mondragon Model*, in PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, WORK AS KEY TO THE SOCIAL QUESTION, 235-54 (2002).

<sup>113</sup> NOVAK, *supra* note 22, at 10. See Louis A. Mohr & Deborah J. Webb, *The Effects of Corporate Social Responsibility and Price on Consumer Responses*, 39 J. OF CONSUMER AFFAIRS 121, 122, 142 (2005) (observing that majority of studies have found a "significant positive relationship between corporate social responsibility (CSR) and financial performance" and that "consumers want companies to behave more responsibly"); Lee E. Preston & Douglas P. O'Bannon, *The Corporate Social-Financial Performance Relationship: A Typology and Analysis*, 36 BUS. & SOC'Y 7 419 (1997) (reporting "overwhelming evidence of a positive relationship between social and financial performance indicators"); WILLIAM DAMON, THE MORAL ADVANTAGE: HOW TO SUCCEED IN BUSINESS BY DOING THE RIGHT THING 7 (2004) (suggesting that the moral road is the surest path to business success and therefore that aligning moral and personal goals is the wisest aim). See also Jeff Frooman, *Socially Irresponsible and Illegal Behavior and Shareholder Wealth: A Meta-Analysis of Event Studies*, 36 BUS. & SOC'Y 221 (1997) (finding that behaving in "socially irresponsible and illegal manner" results in decrease in shareholder wealth).

I am not suggesting that companies should only behave in a socially responsible fashion if it is good business for them to do so. Certain activities clearly should be avoided regardless of their impact on the company's bottom line. However, first, the process of changing norms of behavior is a slow one and clearly the effort to move companies to behave more consistently with the principles articulated earlier will be aided by the ability to show that such behavior can be considered to be good business. Second, it was suggested in a conference I recently attended that it often appears that some companies use unethical decision making as a proxy for shareholder value, assuming that immorality leads to profits. To the extent such misconception exists, it is necessary to combat it.

<sup>114</sup> Starbucks' commitment to corporate social responsibility has many elements and addresses both the communities in which it operates as employer and communities from which it purchases its coffee. With respect to the former, it is committed to being both a good neighbor and employer, investing in communities where employees and customers live. See Starbucks Social Responsibility, available at [http://starbucks.co.uk/en-GB/\\_Social+Responsibility](http://starbucks.co.uk/en-GB/_Social+Responsibility) (last visited Dec. 12, 2005). This includes a variety of different initiatives, including in-store book drives and participation in an American Sign Language program so that employees can better interact with hearing-impaired customers. See Carla Tishler, *Heartfelt Motivation, Bottom-Line Accountability*,

HARVARD BUSINESS SCHOOL WORKING KNOWLEDGE, May 6, 2002, available at <http://www.hbsworkingknowledge.hbs.edu/item.jhtml?id=2922&t=globalization> (last visited Nov. 2, 2005). With respect to the latter, Starbucks' "Commitment to Origins" involves making investments that benefit coffee producers and their families and communities, in an effort "to promote a sustainable model for the worldwide production and trade of high-quality coffee." Starbucks Corporate Social Responsibility, *supra*. Starbucks' CEO Orin Smith summarizes the company's efforts as part of a commitment to make a positive difference to all of the company's stakeholders—coffee growers, employees, shareholders and customers. Tishler, *supra*. Although he accepts that the company must answer to its board of directors and its investors, he views social responsibility as an outgrowth of best business practices, viewing "aligning self interest and social responsibility" as a powerful tool in improving society. *Id.* (quoting Orin Smith).

<sup>115</sup> Proctor & Gamble's commitment to corporate social responsibility has many elements, including the P&G Fund, which makes contributions to humanitarian and disaster relief, Technology Donation Program, which helps foster scientific research and training in universities, and P&G's Safe Drinking Water Program, which addresses the UN Millennium Development Goal of improving access to safe drinking water. "Proctor and Gamble believes it has a responsibility to society to use its resources—its money, people, and energies—wisely, for the long-term benefit of society as well as the company." *See Our Commitment*, available at [http://www.pg.com/company/our\\_commitment/index.jhtml](http://www.pg.com/company/our_commitment/index.jhtml) (last visited Nov. 2, 2005).

Also, P&G supports employee diversity and submitted an amicus brief in the University of Michigan affirmative action case. *See also* David Teather, *The Giving List 2003: United States: Step change: Nothing but the truth: Some businesses have heard the wake-up call and are way in front of the White House*, THE GUARDIAN, Nov. 17, 2003, at 23.

<sup>116</sup> Ben & Jerry's commitment to corporate social responsibility can be seen in the company's sourcing ingredients, support for non-profit organizations, and commitment to the environment. Ben & Jerry's mission statement is comprised of three interrelated parts: Product Mission, which promotes "business practices that respect the Earth and the Environment," Economic Mission, which seeks to increase stockholder value while expanding employee's opportunities, and Social Mission, which "recognizes the central role that business plays in society by initiating innovative ways to improve the quality of life locally, nationally & internationally." An example of Ben & Jerry's efforts to achieve their Product Mission is ingredient sourcing from socially conscious businesses like the Greyston bakery and Saint Alban's Cooperative Creamery. Ben & Jerry's Foundation and employee-led Community Action Teams empower employees to use available corporate resources in support of organizations that address social and environmental problems. PartnerShop Program addresses their Social Mission by waiving the franchise fee and providing support to community based non-profit organizations that own and operate Ben & Jerry's scoop shops. *See Ben & Jerry's Values*, available at [http://benjerry.com/our\\_company/our\\_values](http://benjerry.com/our_company/our_values). Cofounder, Ben Cohen explains Ben & Jerry's corporate responsibility, "We wanted to see if business could be different, a neutral tool like a hammer that can destroy things, but can also build things." Amy



Hsuan, *Ben & Jerry's Latest: Portland Nonprofit Swirl*, THE OREGONIAN, Nov. 8, 2004, at E01.

<sup>117</sup> See Damon, *supra* note 113, at 19-41 (giving several examples of “leading lights,” business persons who demonstrate that it is not necessary to put moral values on hold to succeed in business); Arthur D. Little Innovation High Ground Report, *How Leading Companies are Using Sustainability-Driven Innovation to Win Tomorrow's Customers*, at 1 (reporting survey findings that 95 percent of companies believe that Sustainability-Driven Innovation, i.e., “the creation of new market space, products & services or processes driven by social, environmental or sustainability issues” has the potential to bring business value and that almost 25 percent believe it will definitely do so). For example, shortly after Sears announced that it would extend its military pay differential and benefits continuation to sixty months for eligible employees called to duty in the Reserves or National Guard, *Sears Newsroom, Sears Commitment to Military Families Fact Sheet*, available at <http://www.searsmedia.com/aboutsears/military.htm> (last visited Nov. 2, 2005) e-mails started making the rounds, urging recipients to shop at Sears in order to recognize the company for its outstanding contribution. Another example is Shell, who, seeking to improve its public image, engaged in a campaign to scrutinize its environmentally hazardous processes and make substantial investments in greenhouse gas reductions, leading to an improved public image, better employee morale and an ability to hire better people. Markku Wilenius, *Towards the Age of Corporate Responsibility, Emerging Challenges for the Business World*, 37 FUTURES 133, 135 (2005).

<sup>118</sup> In the “biggest surge in campus activist in nearly two decades” students from Duke, Georgetown, Yale and twenty other institutions focus on the labor conditions under which their university apparel is being produced. Steven Greenhouse, *Activism Surges at Campuses Nationwide, and Labor is at Issue*, NY TIMES, Mar. 29, 1999, at A14. Duke students staged a thirty-one-hour sit-in to protest Duke's contract with Collegiate Licensing Company that did not require the disclosure of factory names and locations. Students insist on disclosure so that independent monitors can regulate labor conditions. *Sweatshop Protest Ends with Agreement at Duke*, NY TIMES, Feb. 1, 1999, at A18. “Seventeen colleges and universities, including Harvard, Yale, Princeton, Duke and Notre Dame, announced yesterday that they would be the first to join a new factory monitoring association [Fair Labor Association] that the White House supports in an effort to insure that apparel carrying their names is not made in sweatshops.” University officials admit that student demands played a part in their decision to join the association. Steven Greenhouse, *17 Colleges Join Against Sweatshops*, NY TIMES, Mar. 16, 1999, at A22. United Students Against Sweatshops (USAS) is the international student movement behind campus groups demanding fair labor conditions and insisting that colleges “take responsibility for the conditions under which their licensed apparel is made by adopting Codes of Conduct to regulate the behavior of their manufacturers.” *History USAS*, United Students Against Sweatshops, available at <http://www.studentsagainstsweatshops.org/about/history.php> (last visited Nov. 2, 2005).

<sup>119</sup> Worldwide, consumer emphasis on fair trade and especially fair employment policies are on the rise. See Alison Maitland, *A Responsible Balancing Act*, THE FINANCIAL TIMES, June 1, 2005. (“ . . . consumers in the US, France, Italy, Switzerland, the

Philippines and much of South America agree that the most important thing a company must do if it wants to be regarded as socially responsible is to treat employees fairly.”). Consumer support companies with fair trade practices. For example, American Apparel, a company that advertises its sweatshop-free policies, is one of the fastest growing chains of casual wear in the United States and has expanded abroad. See Rebecca Klienman, *American Apparel Stretches Out*, WWD, March 31, 2005, at 11. Businesses are starting to find that fair trade policies have been economically beneficial. See Alison Maitland, *From a Handout to a Handup*, FINANCIAL TIMES, February 3, 2005, at 11.

<sup>120</sup> Richard Galant, *Guiding the Flocks in the Boardrooms*, NEWSDAY, May 16, 2005, at A37, 38. See generally Interfaith Center on Corporate Responsibility, <http://www.iccr.org> (last visited Nov. 2, 2005).

<sup>121</sup> See David Monsma and John Buckley, *Non-Financial Corporate Performance: The Material Edges of Social and Environmental Disclosure*, 11 U. BALT. J. ENVTL. L. 151, 154 (2004). See also Mohr & Webb, *supra* note 113, at 142 (finding that “when consumers are given information that they trust about a company’s level of social responsibility, it affects how they evaluate the company and their purchase intentions”).

<sup>122</sup> *UN Survey Finds Most Companies Not Reporting on Social, Environmental Risks*, UN News Service, Nov. 1, 2004, available at <http://www.un.org/apps/news/story.asp?NewsID=12412&Cr=environment&Cr1> (last visited Nov. 2, 2005). World Business Council for Sustainable Development, *Survey: Vast Majority of Execs Say CSR Guides Investment Decisions*, Feb. 15, 2005, available at <http://www.wbcsd.org/plugins/DocSearch/details.asp?type=DocDet&ObjectId=13207> (last visited Nov. 2, 2005) (noting that about one quarter of Global Fortune 500 companies chart environmental, social or sustainability efforts); THE GLOBAL REPORTERS 2004 SURVEY OF CORPORATE SUSTAINABILITY REPORTING, RISK & OPPORTUNITY: BEST PRACTICES IN NON-FINANCIAL REPORTING 1, available at [http://www.sustainability.com/downloads\\_public/insight\\_reports?R&02004.pdf](http://www.sustainability.com/downloads_public/insight_reports?R&02004.pdf) (noting that “well over 50,000 multinational companies still fail to report”).

<sup>123</sup> See e.g., David Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness*, 25 J. CORP. L. 41, 63 (1999) (suggesting that public disclosure of corporate social behavior will institutionalize responsible decision-making); Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197 (1999) (arguing for greater social disclosure).

<sup>124</sup> For example, consider the relatively short life span of public outrage to reports of racial discrimination in companies like Cracker Barrel or Denny’s. See, e.g., *Follow Through: June 21, 2004*, FORBES, June 20, 2005 at 48. (Despite Denny’s being plagued earlier that year with a racial discrimination lawsuit, it was able to lower any initial financial losses by the end of the year.); Anne-Marie G. Harris, Geraldine R. Henderson, & Jerome D. Williams, *Courting Customers: Assessing Consumer Racial Profiling and Other Marketplace Discrimination*, 24 J. PUB. POL’Y & MARKETING 163, 164 (2005) (“A Denny’s poll found that approximately 50 percent of African Americans said they would never eat at Denny’s again following negative publicity surrounding a CRP lawsuit, though in a subsequent poll, the number fell to 13 percent because of aggressive efforts by Denny’s to address CRP issues.”)

<sup>125</sup> See Claire Moore Dickerson, *Ozymandias as Community Project: Managerial/Corporate Social Responsibility and the Failure of Transparency*, 35 CONN. L. REV. 1035, 1065 (2003) (discussing lack of media coverage and little public interest of in the disclosure of corporate human rights abuses).

<sup>126</sup> See Dickerson, *supra* note 125 (discussing failure the of disclosure process in addressing non-financial corporate abuses).

<sup>127</sup> See NOVAK, *supra* note 22, at 43-45 (suggesting that of all the “elites” in American society, “people of business appear to rank among the most religious”). Although it is difficult to get figures on the numbers of businesses run by Catholics and other Christians, the growth of religious business organizations suggest that there are a significant number doing so. Examples include The International Christian Chamber of Commerce, *see* <http://www.iccc.net>, Wise Counsel for Christian Entrepreneurs, *see* <http://www.wisecounselonline.com> (last visited Nov. 2, 2005); Christ@work, *available at* <http://fcci.org> (last visited Nov. 2, 2005).

<sup>128</sup> LAURA NASH & SCOTTY MCLENNAN, CHURCH ON SUNDAY, WORK ON MONDAY 5 (2001) (observing that “even deeply faithful Christians in business tend to feel a strong disconnect between their experience of the church or private faith, and the spirit-challenging conditions of the workplace”).

<sup>129</sup> See, e.g., *Doing Business on Faith*, THE CHRISTIAN POST, May 23, 2005, *available at* <http://www.christianpost.com/article/technology/635/21%7C35/doing.business.on.faiht/2.htm>. One of the companies highlighted by the Christian Post is Ukrop’s, a chain of supermarkets with its headquarters in Richmond, Virginia. The owners of the business are Christians who operate the stores under a set of leadership principles that include the Christian values of “Servant Leadership, Financial Stewardship and Respect for Diversity.” See *Ukrop’s Team Values*, [http://www.ukrops.com/about/about\\_ukrops.asp](http://www.ukrops.com/about/about_ukrops.asp) (last visited Nov. 2, 2005). In addition to giving 20 percent of pre-tax profits back to employees, Ukrop’s contributes 10 percent of its pre-tax profits to the community. Carol Hazard, *Ukrop’s A Best Place to Work*, RICHMOND TIMES DISPATCH, Jan. 7, 2003, *available at* <http://www.ukrops.com/about/Articles/best2003.asp> (last visited Nov. 2, 2005) (also observing that the company was on Fortune magazine’s 100 best companies to work for for several years).

<sup>130</sup> Economy of Communion businesses “commit themselves to following management principles that enable them to bring Gospel values to bear on their day-to-day decisions while working within market structures.” LUIGINO BRUNI & AMELIA J. UELMEN, RELIGIOUS VALUES AND CORPORATE DECISION MAKING: THE ECONOMY OF COMMUNION PROJECT 4 (2005) (describing Economy of Communion businesses rooted in the Catholic Focolare movement). Hundreds of companies around the world follow the Economy of Communion model, *id.* at 3, and the experience of such companies could serve as an inspiration to others.

<sup>131</sup> A focus on non-legal concerns makes this less of a concern. There is a greater burden in a pluralist society in arguing that principles of Catholic Social Thought should guide legislative determinations, which raises concerns in the minds of many about government supporting the perspective of a particular religion, than in using Catholic Social Thought as a basis for non-mandatory approaches.

<sup>132</sup> See Angela C. Carmella, *A Catholic View of Law and Justice*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 255, 258 (Michael W. McConnell, et al. eds, 2001) (discussing the “natural-law emphasis in Catholic social thought”); MICHAEL NOVAK, THE CATHOLIC ETHIC AND THE SPIRIT OF CAPITALISM 51 (1993) (discussing centrality of natural law in *Rerum Novarum*).

Although some would suggest that natural law can not be separated from “its Roman Catholic presuppositions,” natural law “has no Roman Catholic presuppositions. Its only presupposition is threefold: that man is intelligent; that reality is intelligible; and that reality, as grasped by intelligence, imposes on the will the obligation that it be obeyed in its demands for action or abstention. JOHN COURTNEY MURRAY, WE HOLD THESE TRUTHS, 109 (1960). Murray goes on to say that even those three statements “are not properly ‘presuppositions,’ since they are susceptible of verification.” *Id.*

<sup>133</sup> Clark, *supra* note 3, at 7. See MICHAEL NOVAK, CATHOLIC SOCIAL THOUGHT AND LIBERAL INSTITUTIONS: FREEDOM WITH JUSTICE xiii (2d ed. 2000) (observing that Catholic Social Thought is something that “all who are concerned with the moral and religious quality of human systems should find...both instructive in itself and parallel to developments in their own intellectual histories”).

<sup>134</sup> Steven H. Shiffrin, *Liberalism and the Establishment Clause*, 78 CHI.-KENT L. REV. 717, 722 (2003). See also Stephen M. Bainbridge, *Competing Concepts of the Corporation (a.k.a. Criteria? Just Say No)*, UCLA Law & Econ. Research Paper Series, Research Paper No. 05-1, at 5 n.5 available at <http://ssrn.com/abstract=646821> (last visited Nov. 2, 2005) (observing that “there may be no such thing as truly neutral priors” and that for normative discussions to be useful, non-neutral priors must be disclosed and examined).

<sup>135</sup> ALFORD & NAUGHTON, *supra* note 2, at 10. The intellectual tradition that has shaped much of Western thought is based on a suppression of any talk of God and religion.

<sup>136</sup> See Stabile, *supra* note 34, at 847-52.

<sup>137</sup> Lewis D. Solomon, *Reflections on the Future of Business Organizations*, 20 CARDOZO L. REV. 1213, 1221-22 (1999). See John Russell, *Gerald May on Unitive Experience: Oneness and Self-Identity in Spirituality*, 15 J. RELIGION AND PSYCHICAL RESEARCH 127, 128 (1992) (quoting May’s definition of spirituality as referring to “experience in which one feels at one with creation, deeply meaningful, and in pervasive union with all things” and observing that “through spirituality we experience meaning and oneness”); Martin Buber, *God and the Soul*, available at <http://radicalacademy.com/adiphiljewishessay5.htm> (last visited Nov. 2, 2005) (all mysticism, regardless of particular religious tradition, shares an experience of unity).

<sup>138</sup> See Kellye Y. Testy, *Capitalism and Freedom—For Whom?: Feminist Legal Theory and Progressive Corporate Law*, 67 LAW AND CONTEMP. PROBS. 87, 91-93 (2004) (discussing contours of progressive corporate law scholarship).

I say “resonate” because the views are not identical. While Catholic Social Thought shares with progressive corporate thought the notion that the corporation has obligations beyond those to it has for its shareholders; the progressive notion of who is a stakeholder to the corporation may be narrower than the perspective that focuses on the common good.

<sup>139</sup> Mitchell, *supra* note 11, at 4. He elaborates, arguing that “layoffs, plant closings, alienated workers, unsafe products, and a polluted environment, all in the name of today’s profit . . . leads to underinvestment in worker training and research and development; . . . has dangerously increased stock market volatility and turned our capital markets into unstable casinos of unimaginable proportions which threaten the long-term economic well-being of our society.” *Id.* at 5.

<sup>140</sup> See Testy, *supra* note 138, at 98-99 (citing work of Cohen, Sarra, Wade, Kahn, O’Connor and Testy utilizing feminist legal theory to challenge shareholder primacy and the need for corporations to consider the interests of a broader array of constituencies); Barbara Ann White, *Feminist Foundations for the Law of Business: One Law and Economics Scholar’s Survey and (Re)view*, 10 UCLA WOMEN’S L.J. 39, 51-64 (1999) (discussing feminist analysis of corporate law).

<sup>141</sup> See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 62-67 (1999); Testy, *supra* note 138, at 104.

<sup>142</sup> See Ilias Bantekas, *Corporate Social Responsibility in International Law*, 22 B.U. INT’L L.J. 309, 327-36 (2004).

<sup>143</sup> This question of whether there is value in viewing legal questions through the lens of Catholic Social Thought has been among the subjects discussed on the Mirror of Justice weblog, a blog devoted to the development of Catholic legal theory. See <http://www.mirrorofjustice.com> (last visited Nov. 2, 2005).

<sup>144</sup> One scholar who has attempted to articulate a notion of human flourishing in non-religious terms of Margaret Jane Radin. See, e.g., MARGARET JANE RADIN, *CONTESTED COMMODITIES: THE TROUBLE WITH TRADE IN SEX, CHILDREN, BODY PARTS AND OTHER THINGS* (Harv. U. Press 1996); Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987). Radin’s notion of human flourishing recognizes the interrelationship between self and others. See Radin, 100 HARV. L. REV. at 1907. She has used the lens of human flourishing to examine issues such as prostitution, baby-selling and surrogate motherhood. However, Radin offers no underlying theoretical support for her model of the human person. Catholic Social Thought offers a means of providing that support.

<sup>145</sup> As Professor Charles Clark observed, Catholic Social Thought “represents values that are important to the functioning of a peaceful and just society, but . . . are not promoted by the vested interests of the powerful, nor are the natural outcomes of the ‘invisible hand’ of the market. [It] speaks for the voiceless and powerless, demanding that their interests be promoted.” Clark, *supra* note 3, at 7.

<sup>146</sup> ALFORD & NAUGHTON, *supra* note 2, at 19.

<sup>147</sup> Roberta Romano, *Metapolitics and Corporate Law Reform*, 36 STAN. L. REV. 923, 923-24 (1984). See also Bainbridge, *supra* note 134, at p.6 (observing that “one’s overarching vision of corporate law cannot be defended absent an articulation of its relation to a ‘vision of the good society.’”)