

ARTICLES

CHARITY, TRUTH, AND CORPORATE GOVERNANCE

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I. INTRODUCTION

For the modern mind, and perhaps even more so for the mind of the modern businessperson, charity—or love—and truth seem foreign to corporate governance. In fact, talking about love and truth in most contexts makes people a bit uncomfortable. Yet, both love and truth are absolutely critical to answering fundamental questions, including those regarding corporate governance.

Should corporations be managed to maximize shareholder wealth? Should they be managed in a socially responsible manner, taking into account the interests of both shareholders and other stakeholders? Without a firm grounding in charity and truth, we will never find satisfactory answers to these questions.

Without truth, answers to questions of corporate governance merely lead to more questions. It is only in truth that we can find real answers, and it is only when we are grounded in truth that we can know how to love—that is, how to seek what is good and “take effective steps to secure it.”¹ According to Pope Benedict XVI, to know how to love, we must begin with truth; for without it, it is impossible to know what is good.² Absent truth, our answers to the fundamental questions regarding corporate governance ever will remain subject to personal preference and “cultural and historical limitations.”³

Modern debate about corporate governance dates back to the 1930s.⁴ Since then, two primary schools of thought have emerged. One contends that corporations are to be managed to maximize shareholder wealth.⁵ The other asserts that corporations are to be managed in a socially responsible manner, taking into account not only the interests of its shareholders, but also the interests of its various other stakeholders, such as employees, customers, suppliers, local communities, and society at large.⁶

1. POPE BENEDICT XVI, *CARITAS IN VERITATE* ¶ 7 (U.S. Conference of Catholic Bishops 2009) [hereinafter *CARITAS IN VERITATE*].

2. *See id.* ¶ 3 (noting that, without truth, “[l]ove becomes an empty shell, to be filled in an arbitrary way.”).

3. *Id.* ¶ 4.

4. *See* William Quigley, *Catholic Social Thought and the Amoralism of Large Corporations: Time to Abolish Corporate Personhood*, 5 *LOY. J. PUB. INT. L.* 109, 118 (2004) (noting that the corporate social responsibility debate was shaped in the 1930s).

5. *See* Stephen M. Bainbridge, *The Bishops and the Corporate Stakeholder Debate*, 4 *VILL. J.L. & INVESTMENT MGMT.* 3, 3 (2002) (indicating that one side of the debate argues in favor of shareholder primacy).

6. *See id.* (indicating that one side of the debate contends that stakeholders ought to be considered in corporate decisionmaking).

Until the past decade or so, religious thought largely has been absent from the corporate governance debate.⁷ This is unfortunate because the very nature of religious thought involves an explanation of truth.⁸ In religious thought, therefore, we might hope to find the truth about the appropriate norm for corporate governance.

This Article focuses on how one branch of religious thought—Catholic Social Thought—and its explanation of the truth and the requirements of love inform the debate about corporate governance. More specifically, it considers what Pope Benedict XVI's third encyclical,⁹ *Caritas in Veritate*, offers the debate. *Caritas in Veritate*, which translated from Latin means “Charity in Truth,” broadly addresses the problems the world currently faces and clearly speaks to the corporate governance debate.

Scholars have had differences of opinion regarding how to apply the fundamental principles of Catholic Social Thought—human dignity, the common good, subsidiarity and solidarity¹⁰— to corporate governance. Those who emphasize human dignity and subsidiarity claim that Catholic Social Thought supports the “shareholder wealth maximization” norm.¹¹ Those who focus on the common good and solidarity espouse a communitarian, “stakeholder” approach.¹² In *Caritas in Veritate*, Pope Benedict places his imprimatur on the principles underlying the communitarian interpretation, but without employing a communitarian interpretation himself and without foreclosing shareholder wealth maximization entirely.

Pope Benedict warns that “[t]echnological development can give rise to the idea that technology is self-sufficient when too much attention is

7. See Lyman P.Q. Johnson, *Faith and Faithfulness in Corporate Theory*, 56 CATH. U. L. REV. 1, 17 (2006) (noting that “very little corporate law scholarship examines the corporation from the religious vantage point”).

8. See Susan J. Stabile, *A Catholic Vision of the Corporation*, 4 SEATTLE J. FOR SOC. JUST. 181, 202 (2005) (noting that it does not make sense to dismiss the explanation of truth that religious thought offers).

9. An encyclical is a “formal pastoral letter by the pope concerning matters of morals, discipline, or doctrine, usually addressed to the universal church.” KEVIN E. MCKENNA, A CONCISE GUIDE TO CATHOLIC SOCIAL TEACHING 151 (2002).

10. Part II.A, *infra*, explains each of these principles.

11. See Mark A. Sargent, *Competing Visions of the Corporation in Catholic Social Thought*, 1 J. CATH. SOC. THOUGHT 561, 588-89 (2004) (indicating that one liberty-based adherent’s approach “recognize[s] the importance of economic liberty to human liberty and dignity . . . [and] the crucial function of private associations”).

12. See Sargent, *supra* note 11, at 565 (suggesting that the communitarian approach recognizes that human beings are social in nature and are not self-sufficient, “but part of a community that should be ordered toward the common good”).

given to the ‘*how*’ questions, and not enough to the many ‘*why*’ questions underlying human activity.”¹³ A similar risk applies to law. If not enough time is spent considering “why” questions, we might erroneously conclude that the law is “self-sufficient.” Mindful of Pope Benedict’s admonition, this Article considers the “why” questions about corporate governance. It does not propose policy prescriptions, but instead explores what principles ought to guide how we structure corporate law.

Part II of this Article describes the fundamental principles of Catholic Social Thought and gives a brief history of Catholic Social Thought relevant to corporate governance as articulated in *Rerum Novarum*¹⁴ and papal encyclicals since. Part III discusses the focus of *Caritas in Veritate* and its explanation of principles of Catholic Social Thought relevant to corporate governance. Part IV discusses how various scholars have applied Catholic Social Thought to the debate about corporate governance and evaluates the two existing interpretations of Catholic Social Thought in light of *Caritas in Veritate*. Finally, Part V concludes that *Caritas in Veritate* offers important lessons to those on both sides of the corporate governance debate by stressing that shareholder wealth maximization must be tempered by charity and that corporate social responsibility must be grounded in truth.

II. FUNDAMENTAL PRINCIPLES OF CATHOLIC SOCIAL THOUGHT AND PRE-CARITAS IN VERITATE SOCIAL ENCYCLICALS

To understand what *Caritas in Veritate* contributes to the corporate governance debate, one must understand the fundamental principles of Catholic Social Thought and how popes from Pope Leo XIII to Pope John Paul II, Pope Benedict XVI’s immediate predecessor, have explained those principles in addressing matters related to corporate governance. Such a foundation is particularly important because there is no single source that definitively sets out the requirements of Catholic Social Thought.¹⁵ Indeed, Catholic Social Thought represents “an *evolving* response to a concern

13. CARITAS IN VERITATE, *supra* note 1, ¶ 70.

14. On May 15, 1891, Pope Leo XIII issued *Rerum Novarum*, a papal encyclical addressing the condition of the working classes. See generally POPE LEO XIII, RERUM NOVARUM (1891), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 14 (David J. O’Brien & Thomas A. Shannon, eds. 1992) [hereinafter RERUM NOVARUM]. *Rerum Novarum* is regarded as the beginning of modern Catholic social doctrine. See PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 87 (2004) [hereinafter COMPENDIUM] (noting that Pope Pius XI asserted that the “doctrinal ‘corpus’ concerning issues relevant to society” began with *Rerum Novarum*).

15. See Robert G. Kennedy, *Corporations, Common Goods, and Human Persons*, 4 AVE MARIA L. REV. 1, 5 (2006) (observing that Catholic Social Thought is not codified).

about the context in which human persons grow, develop and live their lives.”¹⁶

A. FUNDAMENTAL PRINCIPLES

The *Compendium of the Social Doctrine of the Church* identifies the dignity of the human person, the common good, subsidiarity, and solidarity as the four fundamental principles of Catholic Social Thought.¹⁷ Although the explanation of these principles has evolved over time as new circumstances have arisen, the principles themselves are constant.¹⁸ They represent a unified framework to be applied collectively, and it is inappropriate to apply one or more principles to the exclusion of others.¹⁹

16. Kennedy, *supra* note 15, at 5. (emphasis added); See POPE PIUS XI, QUADRAGESIMO ANNO ¶ 2 (1931), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 42 [hereinafter QUADRAGESIMO ANNO] (asserting that the fundamental principles do not change, but their application does as circumstances change); POPE JOHN XXIII, MATER ET MAGISTRA ¶ 50 (1961), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 92 [hereinafter MATER ET MAGISTRA] (noting that the encyclical applies teaching of prior popes to current circumstances); POPE PAUL VI, OCTOGESIMA ADVENIENS ¶ 1 (1971), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 265 [hereinafter OCTOGESIMA ADVENIENS] (same); POPE JOHN PAUL II, LABOREM EXERCENS ¶ 11 (1981), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 365 [hereinafter LABOREM EXERCENS] (noting that the social doctrine has remained unchanged over the years); POPE JOHN PAUL II, SOLLICITUDO REI SOCIALIS ¶ 3 (1987), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 396 [hereinafter SOLLICITUDO REI SOCIALIS] (indicating that the social doctrine is “constant” and “ever new”); POPE JOHN PAUL II, CENTESIMUS ANNUS ¶ 3 (1991), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 440 [hereinafter CENTESIMUS ANNUS] (noting that the encyclical would review principles in *Rerum Novarum* and apply them to current and future circumstances).

17. COMPENDIUM, *supra* note 14, ¶ 160. Not everyone agrees on the nomenclature for the fundamental principles or that there are only four. The United States Conference of Catholic Bishops lists seven “key themes” of Catholic Social Teaching: (1) life and dignity of the human person, (2) call to family, community, and participation, (3) rights and responsibilities, (4) option for the poor and vulnerable, (5) the dignity of work and the rights of workers, (6) solidarity, and (7) care for God’s creation. See United States Conference of Catholic Bishops, Themes of Catholic Social Teaching, <http://www.usccb.org/sdwp/projects/socialteaching/excerpt.shtml> (last visited Jan. 1, 2011). In *Competing Visions of the Corporation in Catholic Social Thought*, Mark Sargent lists seven “core principles”: “human dignity, the common good, the reciprocity of rights and obligations, the contingency of property rights, solidarity, subsidiarity, and the preferential option for the poor.” Sargent, *supra* note 11, at 562 (emphasis added).

18. See QUADRAGESIMO ANNO, *supra* note 16, ¶ 2 (asserting that the fundamental principles do not change); LABOREM EXERCENS, *supra* note 16, ¶ 11 (noting that the social doctrine has remained unchanged over the years); SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 3 (indicating that the social doctrine is “constant”).

19. See CONGREGATION FOR THE DOCTRINE OF THE FAITH, DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE ¶ 4 (2002), available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html (“The Christian faith is an integral unity, and thus it is incoherent to isolate some particular element to the detriment of the whole of Catholic doctrine”); see also

This is not to say, however, that each principle is given equal weight. Dignity of the human person is the foundational principle from which the other principles derive.²⁰

According to Catholic Social Thought, the dignity of the human person is grounded in the natural law²¹ and in the human person's creation in the image and likeness of God.²² Civil structures—political, economic, social, and others—exist for the benefit of the human person and must be arranged to serve the human person.²³ The human person must never be considered an object to be utilized for the purposes of another or of society.²⁴

Human dignity requires both personal freedom²⁵ and community.²⁶ Freedom, as understood in Catholic Social Thought, is not unbounded, but is limited by the moral law.²⁷ Catholic Social Thought distinguishes true freedom from licentiousness. Said another way, true freedom is not freedom to do what one wants, but freedom to do what one ought.²⁸

CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 40 (noting that Pope Pius XI believed that all aspects of social doctrine must be accepted).

20. COMPENDIUM, *supra* note 14, ¶ 160; *see* MATER ET MAGISTRA, *supra* note 16, ¶ 219 (“[I]ndividual [persons] are necessarily the foundation, cause, and end of all social institutions”); CENTESIMUS ANNUS, *supra* note 16, ¶ 11 (stating that the dignity of the human person is the “guiding principle” of Catholic social doctrine); *see also* CARITAS IN VERITATE, *supra* note 1, ¶ 8 (“Openness to life is at the centre of true development” (emphasis omitted)); SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 33 (indicating that, for true development, one must recognize the rights of each person).

21. COMPENDIUM, *supra* note 14, ¶ 140.

22. *Id.* ¶ 108 (quoting *Genesis* 1:27 (Revised Standard Version, Catholic Edition)).

23. *Id.* ¶ 132.

24. *See* QUADRAGESIMO ANNO, *supra* note 16, ¶ 83 (noting that labor must not be considered “mere chattel” because human dignity is inherent in labor); LABOREM EXERCENS, *supra* note 16, ¶ 7 (asserting that it is an error to treat humans as instruments); CENTESIMUS ANNUS, *supra* note 16, ¶ 13 (observing that socialism’s error is to consider “the individual person simply as an element, a molecule within the social organism”).

25. *See* SECOND VATICAN COUNCIL, GAUDIUM ET SPES ¶ 17 (1965), *reprinted in* VATICAN COUNCIL II: VOLUME 1: THE CONCILIAR & POST CONCILIAR DOCUMENTS 903 (Austin Flannery ed., 1965) [hereinafter GAUDIUM ET SPES] (indicating that a person must be free in order to turn to God).

26. *See id.* ¶ 12 (pointing out that a person is by nature a social being).

27. *See* CENTESIMUS ANNUS, *supra* note 16, ¶ 17 (“[A]n understanding of human freedom which detaches it from obedience to the truth, and consequently from the duty to respect the rights of others” is an error).

28. *See* Pope John Paul II - Homily in Orioles Park at Camden Yards - 8 October 1995 ¶ 7, <http://www.catholic-forum.com/saints/pope0264is.htm> (last visited Jan. 1, 2010). For a discussion of the true meaning of freedom, *see* THOMAS MERTON, NO MAN IS AN ISLAND 24-31 (1955). Thomas Merton explains the erroneous view that freedom is unbounded in the following way:

There are some men who seem to think their acts are freer in proportion as they are without purpose, as if a rational purpose imposed some kind of limitation upon us. That is like

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Personal freedom in Catholic Social Thought is not rugged individualism.²⁹ The human person is by nature a social being and is called to life in a community.³⁰ In fact, community is necessary to protect each person's dignity.³¹

The common good “is the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily.”³² It is not merely the “sum” of the individual good of members of the community.³³ Rather, it truly is common, requiring collective action³⁴ and consisting of the good—that is, the moral good—both of society as a whole and of each person.³⁵ The common good is not an end, but has value only to the extent that it allows each individual and society as a whole to attain the ultimate Good, which is God.³⁶

The principle of subsidiarity requires that organizations of a higher order make decisions and take actions only to the extent that organizations of a lower order or individuals are not competent or able to do so.³⁷ In the United States, for example, to be consistent with the principle of subsidiarity, the Federal government should not do what State governments are competent to do. Similarly, State governments should not undertake matters that private associations, families, or individuals may address competently. Government's role is to support and assist lower organizations and individuals and to perform functions that lower

saying that one is richer if he throws money out the window than if he spends it.

Id. at 28.

29. See OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 23 (noting that equal rights must be tempered by solidarity so that they are not inconsistent with the common good).

30. See GAUDIUM ET SPES, *supra* note 25, ¶ 149 (asserting the importance to life of human relationships).

31. COMPENDIUM, *supra* note 14, ¶ 145.

32. GAUDIUM ET SPES, *supra* note 25, ¶ 26.

33. See CENTESIMUS ANNUS, *supra* note 16, ¶ 47 (“The [common good] is not simply the sum total of particular interests . . .”).

34. COMPENDIUM, *supra* note 14, ¶ 164.

35. See SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 38 (defining the common good as “the good of all and of each individual”); see also POPE PAUL VI, POPULORUM PROGRESSIO ¶ 42 (1967), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE, *supra* note 14, at 240 [hereinafter POPULORUM PROGRESSIO] (asserting that “complete humanism” is “the fully rounded development of the whole [person] and of all [people]”).

36. COMPENDIUM, *supra* note 14, ¶ 170.

37. See MCKENNA, *supra* note 9, at 50 (“Governments should undertake only those initiatives that exceed the capacity of individuals or private groups acting independently”); QUADRAGESIMO ANNO, *supra* note 16, ¶¶ 25, 79 (noting that individuals and families should have freedom to act, but only if the common good is maintained, and that it is wrong to give to society what individuals can do and to give to higher organizations what lower ones can do).

organizations and individuals are not able to handle themselves.³⁸ Consistent with each person's dignity and necessary for his or her proper development, subsidiarity encourages participation in the community by its members in order to contribute to the common good.³⁹

Solidarity requires the giving up of self for the sake of the common good.⁴⁰ “[Solidarity] is frequently stated by Pope Leo XIII, who uses the term *friendship* Pope Pius XI refers to it with the equally meaningful term *social charity*. Pope Paul VI, expanding the concept to cover the many modern aspects of the social question, speaks of a *civilization of love*.”⁴¹ Solidarity represents a resolve to seek the common good, recognizing a responsibility for all.⁴²

B. PRE-CARITAS IN VERITATE SOCIAL ENCYCLICALS

Modern Catholic Social Thought originated with *Rerum Novarum*,⁴³ which Pope Leo XIII issued in 1891.⁴⁴ “The whole of the Church's social doctrine can be seen as an updating, a deeper analysis and an expansion of the original nucleus of principles presented in *Rerum Novarum*.”⁴⁵ Popes since Pope Leo XIII have commemorated various anniversaries of the issuance of *Rerum Novarum* by issuing their own social encyclicals to apply the principles of *Rerum Novarum* to the conditions of the day.⁴⁶

38. See MATER ET MAGISTRA, *supra* note 16, ¶ 117 (noting that public entities should intervene only to the extent required for the common good); CENTESIMUS ANNUS, *supra* note 16, ¶ 48 (asserting that “a community of a higher order . . . should support [a community of a lower order] in case of need”). Pope Pius XI suggested that the principle of subsidiarity benefits government because it requires that government do only what it alone is competent to do. QUADRAGESIMO ANNO, *supra* note 16, ¶ 80.

39. COMPENDIUM, *supra* note 14, ¶ 189; see GAUDIUM ET SPES, *supra* note 25, ¶ 75 (indicating that human nature supports participation in community); OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 30 (indicating that government must encourage individuals and private organizations to work together for the common good).

40. SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 38.

41. CENTESIMUS ANNUS, *supra* note 16, ¶ 10.

42. SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 38.

43. See COMPENDIUM, *supra* note 14, ¶ 185 n.395 (recognizing *Rerum Novarum* as the “first great social encyclical”); Leo L. Clarke et al., *The Practical Soul of Business Ethics: The Corporate Manager's Dilemma and the Social Teaching of the Catholic Church*, 29 SEATTLE U. L. REV. 139, 173 n.95 (2005) (noting that *Rerum Novarum* represents the beginning of modern Catholic Social Thought). Although modern Catholic Social Thought began with *Rerum Novarum*, the entire corpus of Catholic Social Thought is founded on the teaching of the Apostles. See CARITAS IN VERITATE, *supra* note 1, ¶ 12 (“Social doctrine is built on the foundation handed on by the Apostles to the Fathers of the Church, and then received and further explored by the great Christian doctors.”).

44. See generally RERUM NOVARUM, *supra* note 14.

45. COMPENDIUM, *supra* note 14, ¶ 90.

46. See generally QUADRAGESIMO ANNO, *supra* note 16, ¶ 2 (commemorating the 40th

Not all social encyclicals since 1891 are offshoots of *Rerum Novarum*. In 1967, Pope Paul VI struck out on his own in *Populorum Progressio*⁴⁷ to address the complications presented by an ever-shrinking world.⁴⁸ Pope John Paul II in *Sollicitudo Rei Socialis*⁴⁹ and Pope Benedict XVI in *Caritas in Veritate*⁵⁰ commemorated the issuance of *Populorum Progressio*, and Pope Benedict has suggested that *Populorum Progressio* is “the *Rerum Novarum* of the present age.”⁵¹

By and large, the modern social encyclicals prior to *Caritas in Veritate* have not addressed corporate governance directly.⁵² They have had much to say, however, about topics that are relevant to corporate governance: private property, freedom of contract, the role of profit, and the business organization as a community.

1. PRIVATE PROPERTY

Pope Leo XIII was very clear in *Rerum Novarum* that each person has a right to private property that derives from the natural law.⁵³ This right, he declared, exists even though God gave the earth to all of humankind.⁵⁴ Pope Leo observed that private property serves both the individual and the

anniversary of *Rerum Novarum*); MATER ET MAGISTRA, *supra* note 16, ¶ 50 (commemorating the 70th anniversary of *Rerum Novarum*); OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 1 (commemorating the 80th anniversary of *Rerum Novarum*); LABOREM EXERCENS, *supra* note 16, ¶ 11 (commemorating the 90th anniversary of *Rerum Novarum*); CENTESIMUS ANNUS, *supra* note 16, ¶ 3 (commemorating the 90th anniversary of *Rerum Novarum*). Technically, *Octogesima Adveniens* is an apostolic letter, not an encyclical. Nevertheless, when this Article refers to social encyclicals, it also is referring to *Octogesima Adveniens*.

47. See generally POPULORUM PROGRESSIO, *supra* note 35.

48. See *id.* ¶ 3 (acknowledging that social questions now must be addressed on a worldwide basis and that the Church must speak about how to address social questions in this context).

49. See generally SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 3 (commemorating the 20th anniversary of *Populorum Progressio*).

50. See generally CARITAS IN VERITATE, *supra* note 1, ¶ 8 (commemorating the 40th anniversary of *Populorum Progressio*).

51. *Id.*

52. Some of the modern encyclicals, however, have directly addressed corporations. See, e.g., QUADRAGESIMO ANNO, *supra* note 16, ¶¶ 105, 132-33 (observing the concentration of power in corporations and the potential for abuse resulting from the corporate attributes of limited liability and separation of ownership and management); MATER ET MAGISTRA, *supra* note 16, ¶¶ 104, 152 (observing that the separation of ownership and management in corporations makes it difficult for government to ensure the common good, but asserting, consistent with the principle of subsidiarity, that government should “favor and help private enterprise”); OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 44 (noting that the concentration of power in multinational enterprises inhibits the ability of government to preserve the common good).

53. RERUM NOVARUM, *supra* note 14, ¶ 5.

54. *Id.* ¶ 7.

common good because it encourages innovation.⁵⁵ Government, he asserted, has a strict obligation to preserve the right to private property because “neither justice nor the common good” sanctions the taking of another’s property.⁵⁶ Pope Leo explained, however, that charity—a moral duty not enforceable by law—imposes limits on the right to private property.⁵⁷

Pope Leo’s successors affirmed that private property is a natural right,⁵⁸ but began to emphasize more and more that its use may be limited to the extent required for the common good. Pope Pius XI in *Quadragesimo Anno* indicated that property owners must use their property not only for themselves, but also for the common good, and he acknowledged that government properly could define the limits of its use in light of the common good.⁵⁹ In *Mater et Magistra*, Pope John XXIII asserted that the right to private property is necessary for human freedom, but admitted the legitimacy of public ownership when private ownership posed a danger to the common good and when public ownership did not conflict with the principle of subsidiarity.⁶⁰ Pope Paul VI in *Populorum Progressio* warned that the “exclusive pursuit of possessions” is dangerous to the protection of the dignity of the human person⁶¹ and noted that, therefore, the right to private property must give way to a just distribution of goods.⁶² In *Sollicitudo Rei Socialis*, Pope John Paul II cautioned that private property “is under a ‘social mortgage,’ which means that it has an intrinsically social function, based upon and justified” by the fact that the goods of the world were meant for use by all.⁶³

55. RERUM NOVARUM, *supra* note 14, ¶ 66 (indicating that giving people the opportunity to work for their own property contributes to a nation’s wealth).

56. *Id.* ¶ 30.

57. *Id.* ¶ 19.

58. See QUADRAGESIMO ANNO, *supra* note 16, ¶ 46 (affirming the individual right to own property); MATER ET MAGISTRA, *supra* note 16, ¶ 109 (“[T]he right of private property . . . is permanently valid.”); SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 42 (“The right to private property is *valid and necessary*.” (emphasis added)); CENTESIMUS ANNUS, *supra* note 16, ¶ 6 (affirming that the right to private property remains valid).

59. QUADRAGESIMO ANNO, *supra* note 16, ¶¶ 47, 49.

60. See MATER ET MAGISTRA, *supra* note 16, ¶¶ 109, 116-17 (observing that private property is important for liberty and that public ownership is acceptable to the extent necessary for the common good and so long as the “principle of subsidiarity . . . is to be strictly observed” (emphasis omitted)).

61. POPULORUM PROGRESSIO, *supra* note 35, ¶ 19.

62. See *id.* ¶ 22 (noting that the right to private property and free commerce is subordinate to the right of individuals to a reasonable share in the use of goods).

63. SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 42 (citation omitted).

2. FREEDOM OF CONTRACT

The modern social encyclicals, consistent with the principle of subsidiarity, undeniably favor freedom of contract in establishing private relationships. In *Rerum Novarum*, Pope Leo XIII asserted that, in general, employers and employees are to be free to structure their economic relationships.⁶⁴ Pope Pius XI, in *Quadragesimo Anno*, affirmed freedom of contract in the employment context by indicating that, although it is preferable for employees to be given an ownership stake in a business, a contract that merely provides for the payment of wages is just.⁶⁵ Pope John XXIII in *Mater et Magistra* more broadly declared that private citizens should be free to order their economic relationships⁶⁶ and emphasized that the common good requires that private individuals be free to form their own organizations and to set the rules for those organizations.⁶⁷ Observing that the free market is superior to government in efficiently allocating resources and responding to needs,⁶⁸ Pope John Paul II's *Centesimus Annus* advocates freedom in structuring economic relations, so long as such freedom is used responsibly.⁶⁹

Just as the right to private property is not unbounded, neither is freedom of contract. Pope Leo XIII indicated in *Rerum Novarum* that, in the employment context, freedom of contract applies only to the extent there is parity in bargaining power⁷⁰ and to the extent that employees receive a just wage.⁷¹ According to Pope Paul VI in *Populorum Progressio*, when bargaining power is unequal, mutual consent does not ensure fairness, and the principle of freedom of contract remains subject to the requirements of justice.⁷² In *Mater et Magistra*, Pope John XXIII expressed similar sentiments, stating that “remuneration for work cannot be left entirely to

64. See RERUM NOVARUM, *supra* note 14, ¶ 34 (suggesting that employers and employees are to agree freely upon wages).

65. QUADRAGESIMO ANNO, *supra* note 16, ¶¶ 64-65 (noting that partnership contracts are not required and that a wage contract may be just).

66. MATER ET MAGISTRA, *supra* note 16, ¶ 51.

67. See *id.* ¶ 65 (“[W]e regard it as necessary that the various intermediary bodies and the numerous social undertakings wherein an expanded social structure primarily finds expression[] be ruled by their own laws . . .”).

68. See CENTESIMUS ANNUS, *supra* note 16, ¶ 34 (“[T]he free market is the most efficient instrument for utilizing resources and effectively responding to needs.”).

69. See *id.* ¶ 32 (noting a right to freedom in economic activity and a duty to use that freedom responsibly).

70. See RERUM NOVARUM, *supra* note 14, ¶ 34 (suggesting that it is unjust for an employer to take advantage of an employee’s necessity or fear).

71. See RERUM NOVARUM, *supra* note 14, ¶ 34 (indicating employees must receive consideration sufficient to support them “in reasonable and frugal comfort”).

72. POPULORUM PROGRESSIO, *supra* note 35, ¶ 59.

unregulated competition” and may not “be decided arbitrarily at the will of the more powerful.”⁷³ Pope Pius XI in *Quadragesimo Anno* urged that freedom in structuring economic relationships be tempered by efforts of government to protect social justice,⁷⁴ and Pope John Paul II in *Laborem Exercens* reaffirmed the government’s role in imposing limits on the freedom of employers and employees in structuring their relationships.⁷⁵

3. ROLE OF PROFIT

Pope Leo XIII, does not speak much of the role of profit in business in *Rerum Novarum*, but the social encyclicals after *Rerum Novarum* discuss the topic at length. In *Quadragesimo Anno*, Pope Pius XI declared that neither capital nor labor is entitled to all of the profits of a business;⁷⁶ capital is entitled to a “fair share” of profits, and labor is entitled to an “ample sufficiency.”⁷⁷ Pope Pius admitted that pursuing wealth is not bad—indeed it is consistent with God’s plan—but the pursuit must be tempered by concern for the common good.⁷⁸ According to Pope Pius, an excessive desire for wealth is inconsistent with the requirements of Christian moderation.⁷⁹ Pope John XXIII in *Mater et Magistra* similarly noted that the generation of wealth always must be subordinate to the preservation of the dignity of the human person. Pope John indicated that, even if wealth is distributed equitably, its acquisition is unjust if the manner in which it is acquired violates human dignity.⁸⁰

According to Pope Paul VI in *Populorum Progressio*, focusing on profit as the primary motivation for economic activity encourages the pursuit of money in a manner that is inconsistent with the principle that the economy should serve humans, not the other way around.⁸¹ Like Pope John

73. *MATER ET MAGISTRA*, *supra* note 16, ¶ 71.

74. *QUADRAGESIMO ANNO*, *supra* note 16, ¶ 88.

75. *See LABOREM EXERCENS*, *supra* note 16, ¶ 17 (noting government’s responsibility for adopting “a just labor policy”).

76. *See QUADRAGESIMO ANNO*, *supra* note 16, ¶ 53 (asserting that it is unjust for either capital or labor to have all of the profits from a business).

77. *Id.* ¶ 61.

78. *See id.* ¶ 136 (noting that a person who provides services and increases societal wealth is entitled to a fair share of the increased wealth, but must respect “the law of God and the rights of his [or her] neighbor” and “use[] his [or her] property in accord with faith and right reason”).

79. *Id.* As a result of difficult economic times, Pope Pius XI lamented, “[S]ome have become so hardened against the stings of conscience as to hold all means good which enable them to increase their profits . . . Easy returns . . . lead many to interest themselves in trade and exchange, their one aim being to make clear profits with the least labor.” *Id.* ¶ 132.

80. *See MATER ET MAGISTRA*, *supra* note 16, ¶ 83 (indicating that if “an economic system . . . compromise[s] human dignity, . . . [it] is altogether unjust—no matter how much wealth it produces, or how justly and equitably such wealth is distributed”).

81. *See POPULORUM PROGRESSIO*, *supra* note 35, ¶¶ 25, 34 (indicating that it is misplaced to

XXIII, Pope Paul VI considered it misplaced to think that a just distribution depends on increasing profits.⁸² In *Octogesima Adveniens*, Pope Paul asserted that a healthy economy is measured not just by increasing wealth, but also by “[t]he quality and the truth of human relations, the degree of participation and of responsibility.”⁸³

Pope John Paul II in *Laborem Exercens* asserted that profit maximization cannot be the fundamental standard for an economic system.⁸⁴ Instead, respect for the worker—for human dignity—must be the guiding principle of the economy.⁸⁵ In *Sollicitudo Rei Socialis*, Pope John Paul was even more direct, indicating that an overwhelming desire for profit is contrary to God’s will.⁸⁶ Building up goods and services “even for the benefit of the majority” does not lead to human development.⁸⁷ To achieve peace, the pursuit of individual profit must give way to a quest for the common good.⁸⁸ According to Pope John Paul, an excessive desire for profit is inconsistent with and must be overcome by solidarity, “a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual.”⁸⁹

Pope John Paul II’s harsh critique of the profit motive in *Laborem Exercens* and *Sollicitudo Rei Socialis* is counterbalanced by his discussion of the topic in *Centesimus Annus*, in which he explained it as an important, but nonexclusive criterion, for determining the health of a business.

The church acknowledges the legitimate role of profit as an indication that a business is functioning well. When a firm makes a profit, this means that productive factors have been properly employed and corresponding human needs have been duly satisfied. But profitability is not the only indicator of a firm’s condition. It is possible for the financial accounts to be in order, and yet for the people—who make up the firm’s most valuable asset—to be humiliated and their dignity

consider the profit motive as the primary mode of economic progress and that an economic system is “meaningless” if it does not serve humanity).

82. See POPULORUM PROGRESSIO, *supra* note 35, ¶ 34 (“It is not sufficient to increase overall wealth for it to be distributed equally.”).

83. OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 41.

84. LABOREM EXERCENS, *supra* note 16, ¶ 17.

85. *Id.*

86. See SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶¶ 37, 47 (stating that the “*all-consuming desire for profit*” is an attitude “opposed to the will of God” and that “one may sin through selfishness and the desire for excessive profit and power”).

87. *Id.* ¶ 28.

88. See *id.* ¶ 10 (“[I]n a different world, ruled by concern for the *common good* of all humanity . . . instead of by the quest for individual profit, peace would be *possible*.”)

89. *Id.* ¶ 38 (emphasis omitted).

offended. Besides being morally inadmissible, this will eventually have negative repercussions on the firm's economic efficiency. . . . Profit is a regulator of the life of a business, but it is not the only one; other human and moral factors must also be considered which, in the long term, are at least equally important for the life of the business.⁹⁰

Based on Pope John Paul's explanation of Catholic Social Thought, then, seeking profit is legitimate, but businesses must be oriented to the common good.⁹¹

4. BUSINESS ORGANIZATION AS A COMMUNITY

Although not all of the modern social encyclicals have emphasized the communitarian nature of the business enterprise,⁹² a number of them indicate that businesses are not only participants in the broader community, but communities themselves. Pope Leo XIII in *Rerum Novarum* encouraged recognition of mutual interdependence of capital and labor and promoted their working together for the common good.⁹³ In *Mater et Magistra*, Pope John XXIII suggested,

[M]utual relations between employers and directors on the one hand and the employees of the enterprise on the other be marked by mutual respect, esteem, and good will. . . . [T]hey [must] perform their work not merely with the objective of deriving an income, but also of carrying out the role assigned them and of performing a service that results in benefit to others.⁹⁴

According to Pope John, business entities are "true human [communities]," and as communities, they must be "concerned about the needs, the activities and the standing of each of its members."⁹⁵

Just as Pope Leo XIII recognized that both labor and capital need each other, Pope John Paul II described them as "inseparably linked."⁹⁶ The conflict between labor and capital arose, according to Pope John Paul, when

90. CENTESIMUS ANNUS, *supra* note 16, ¶ 35.

91. *Id.* ¶ 43.

92. Pope Pius XI's *Quadragesimo Anno* acknowledged the mutual dependence of labor and capital of which Pope Leo XIII had spoken. QUADRAGESIMO ANNO, *supra* note 16, ¶ 53. Similarly, Pope Paul VI in *Populorum Progressio* recalled Pope John XXIII's description of the business enterprise as a community. POPULORUM PROGESSIO, *supra* note 35, ¶ 28.

93. See RERUM NOVARUM, *supra* note 14, ¶¶ 15, 18 (emphasizing that capital and labor both need each other and that they should be bound "in friendliness and good understanding").

94. MATER ET MAGISTRA, *supra* note 16, ¶ 92.

95. MATER ET MAGISTRA, *supra* note 16, ¶ 91.

96. LABOREM EXERCENS, *supra* note 16, ¶ 13.

human work began to be valued only for its economic purpose.⁹⁷ Pope John Paul declared that work is much more; it unites people and has the power to build a community.⁹⁸ In *Centesimus Annus*, Pope John Paul was explicit about the communitarian nature of the business enterprise:

In fact, 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.⁹⁹

III. CARITAS IN VERITATE

A. FOCUS

In *Populorum Progressio*, Pope Paul VI spoke about integral human development—development that “promote[s] the good of every [person] and of the whole [person].”¹⁰⁰ In *Caritas in Veritate*, Pope Benedict XVI takes a fresh look at integral human development and applies Pope Paul’s teachings to the present.¹⁰¹ As one would expect given its title, the encyclical focuses on charity and truth, which Pope Benedict asserts drive integral human development.¹⁰² “In the present social and cultural context, where there is a widespread tendency to relativize the truth, practising charity in truth helps people to understand that adhering to the values of Christianity is not merely useful but essential for building a good society and for true integral human development.”¹⁰³

According to Pope Benedict, the concepts of charity—or love—and truth are inseparable.¹⁰⁴ One must know truth in order to know how to love. Without truth, love is subject to distortion and can devolve into mere subjective sentimentality.¹⁰⁵ Without truth, love may be enslaved to emotion and blind faith.¹⁰⁶

Pope Benedict observes that truth is founded on and discovered

97. See *LABOREM EXERCENS*, *supra* note 16, ¶ 13 (noting that it is wrong to consider labor only from an economic perspective).

98. *Id.* ¶ 14.

99. *CENTESIMUS ANNUS*, *supra* note 16, ¶ 35.

100. *POPULORUM PROGRESSIO*, *supra* note 35, ¶ 14; see also *CARITAS IN VERITATE*, *supra* note 1, ¶ 18 (quoting *POPULORUM PROGRESSIO*, *supra* note 35, ¶ 14).

101. *CARITAS IN VERITATE*, *supra* note 1, ¶ 8.

102. *Id.* ¶ 1.

103. *Id.* ¶ 4.

104. *CARITAS IN VERITATE*, *supra* note 1, ¶ 2.

105. *Id.* ¶ 3.

106. *Id.*

through both faith and reason.¹⁰⁷ Without love, truth cannot be properly understood and cannot be expressed and explained credibly.¹⁰⁸ Therefore, just as truth is necessary for love, so is love necessary for truth.

Catholic social doctrine, according to Pope Benedict, revolves around charity in truth,¹⁰⁹ and the principle of charity in truth is expressed in the standards that guide moral action.¹¹⁰ Charity both requires justice and transcends justice.¹¹¹ Justice requires that I give to another what is rightfully his or hers; charity involves giving to another what is rightly mine.¹¹² Love always goes beyond justice, incorporating “gratuitousness, mercy and communion.”¹¹³

Pope Benedict asserts that striving for the common good is required by charity and justice.¹¹⁴ According to the pope, in our interconnected world, the common good encompasses the good of all of humanity.¹¹⁵ “The more we strive to secure a common good corresponding to the real needs of our neighbours, the more effectively we love them.”¹¹⁶ To strive for the common good requires concern for and use of the institutions that make up society, including the corporation.¹¹⁷

B. RELEVANCE TO CORPORATE GOVERNANCE

Perhaps more than the other modern social encyclicals, *Caritas in Veritate* speaks directly to matters related to corporate governance. The encyclical includes a discussion of freedom of contract, extensively addresses the role of profit and devotes considerable attention to stakeholder interests and social responsibility. Through consideration of these topics, the encyclical provides a clear Catholic vision for corporate governance, one that employs the principles underlying the communitarian interpretation, but without requiring one to concur with the premise that a corporation is a community.

107. CARITAS IN VERITATE, *supra* note 1, ¶ 3.

108. *Id.* ¶ 2.

109. *Id.*

110. *Id.* ¶ 6.

111. *Id.*

112. *Id.*

113. CARITAS IN VERITATE, *supra* note 1, ¶ 6.

114. *Id.* ¶ 7.

115. *Id.*

116. *Id.*

117. *Id.*

1. FREEDOM OF CONTRACT

Pope Benedict, consistent with prior modern social encyclicals, recognizes that parties should be free to structure their own economic relationships, but within limits. He acknowledges the necessity of contracts for commutative justice,¹¹⁸ but asserts that commutative justice is not enough and that the Church consistently has emphasized the importance of distributive justice.¹¹⁹ Commutative justice, he states, is not sufficient to “produce the social cohesion” that the market requires; solidarity must be fostered to achieve that end.¹²⁰ Pope Benedict stresses that, although government is primarily responsible for seeing that distributive justice and social justice are achieved, a spirit of gratuitousness also must pervade the free exchange in the market.¹²¹

2. ROLE OF PROFIT

Caritas in Veritate reaffirms profit’s place within the economy. Pope Benedict explains that, to be faithful to charity in truth, maximizing profit must not be the sole basis on which business decisions are made.¹²² According to the pope,

Profit is useful if it serves as a means towards an end that provides a sense both of how to produce it and how to make good use of it. Once profit becomes the exclusive goal, if it is produced by improper means and without the common good as its ultimate end, it risks destroying wealth and creating poverty.¹²³

Pope Benedict, therefore, clearly explains the boundaries for maximizing profit. Maximizing profit is legitimate so long as the means by which profit is achieved are not unjust and the end sought is not other than the common good. Profit maximization, therefore, is inappropriate if achieved by, for example, paying employees an unjust wage, charging prices that border on extortion, or indiscriminately using natural resources. On the other end of the spectrum, profit maximization is inappropriate if it is for the purpose of maximizing personal consumption without regard to the needs of others.

118. See *CARITAS IN VERITATE*, *supra* note 1, ¶¶ 35, 37 (noting the necessity of contracts and explaining commutative justice). Commutative justice requires the exchange of equivalent value for goods and services. See *id.* (noting that commutative justice “regulates the relations of giving and receiving between parties to a transaction”).

119. *Id.* ¶ 35.

120. *Id.*

121. *Id.* ¶ 37.

122. See *id.* ¶ 71 (indicating that using profit maximization as the sole basis for action is not appropriate).

123. *Id.* ¶ 21.

Within the bounds of just means and the common good, however, managers seeking to maximize profits have a lot of room to work.

Pope Benedict seems to suggest that there may have been a time when corporate managers could seek to maximize shareholder wealth without specifically focusing on the common good.¹²⁴ Historically, government has been charged with the task of preserving the common good and thus could be relied upon to regulate economic activity so that it would be oriented to that end.¹²⁵ Pope Benedict asserts that, when government can regulate effectively, the economic system can rely on government to reign in the economic system's excesses.¹²⁶ Globalization has hampered substantially the ability of government to preserve the common good, however, and now the economic system itself must be directed to that end.¹²⁷

Measurement of profit, of course, is subject to varying definitions, and *Caritas in Veritate* warns against the dangers of a short-term economic focus. Pope Benedict laments the rarity of managers who focus on the long-term well-being of a business rather than short-term returns.¹²⁸ Not surprisingly, he asserts short-term profits must not be sought at the expense of the long-term viability of a business.¹²⁹ Speculative practices, he stresses, damage the economy and threaten "the present and future good of humanity."¹³⁰

In *Caritas in Veritate*, Pope Benedict emphasizes the necessity of fostering new enterprises that are geared to principles other than pure profit.¹³¹ This emphasis makes one wonder whether he has given up on

124. See *CARITAS IN VERITATE*, *supra* note 1, ¶ 37 (noting that it may have been possible at one time to allow wealth creation to be left to the economy and to leave wealth distribution to the political sphere, but it is no longer so).

125. See *QUADRAGESIMO ANNO*, *supra* note 16, ¶ 110 (indicating that free competition must be subject to governmental control to ensure the common good).

126. See *CARITAS IN VERITATE*, *supra* note 1, ¶ 24 (observing that, when economic activity was limited by national boundaries, governments could "determine the priorities of the economy and to some degree govern its performance").

127. See *id.* ¶ 37 (suggesting that globalization has required justice to be respected as profit is being created because local governments are not able to regulate sufficiently global economics). Almost 40 years earlier, Pope Paul VI recognized the same problem. See *OCTOGESIMA ADVENIENS*, *supra* note 16, ¶ 44 (noting that multinational businesses are "largely independent of the national political powers and therefore not subject to control from the point of view of the common good").

128. *CARITAS IN VERITATE*, *supra* note 1, ¶ 40.

129. *Id.*

130. *CARITAS IN VERITATE*, *supra* note 1, ¶ 21.

131. See *id.* ¶ 37 ("Space also needs to be created within the market for economic activity carried out by subjects who freely choose to act according to principles other than those of pure profit, without sacrificing the production of economic value in the process."); *id.* ¶ 38 ("What is

reforming the traditional, profit-seeking business. It seems, however, that this is not Pope Benedict's intent.¹³² According to *Caritas in Veritate*, traditional, profit-seeking businesses have a place within the economy, but they must be understood in a fundamentally new way, with principles employed in the nonprofit world finding their way into the world of profit-seeking businesses.¹³³

Pope Benedict notes favorably the trend toward economic structures that look beyond profit to loftier goals.

In recent decades a broad intermediate area has emerged between [profit-based companies and non-profit organizations]. It is made up of traditional companies which nonetheless subscribe to social aid agreements in support of underdeveloped countries, charitable foundations associated with individual companies, groups of companies oriented towards social welfare, and the diversified world of the so-called "civil economy" and the "economy of communion."¹³⁴

Caritas in Veritate specifically rejects the idea that these types of businesses represent a "third sector," a separate class of entity from profit-based and nonprofit organizations.¹³⁵ Instead, Pope Benedict asserts that the shift in focus represents a new reality that recognizes profit as a means toward the greater end of a civilized economy and society.¹³⁶

3. STAKEHOLDER INTERESTS AND SOCIAL RESPONSIBILITY

Caritas in Veritate unambiguously supports the principle that managers must be concerned with all of a corporation's stakeholders, including employees, suppliers, customers, society, and the environment.¹³⁷ Additionally, Pope Benedict considers it risky for a business to be accountable solely to its owners.¹³⁸

needed . . . is a market that permits the free operation, in conditions of equal opportunity, of enterprises in pursuit of different institutional ends.").

132. *Caritas in Veritate* acknowledges the "importance and the economic and social benefits of the more traditional forms of business," CARITAS IN VERITATE, *supra* note 1, ¶ 46, and indicates that it is important to have "enterprises in pursuit of different institutional ends." *Id.* ¶ 38. In fact, "[t]he very plurality of institutional forms of business gives rise to a market which is not only more civilized but also more competitive." *Id.* at ¶ 46 (emphasis omitted).

133. *Id.* ¶ 41; see John Breen, *Love, Truth, and the Economy: A Reflection on Benedict XVI's Caritas in Veritate*, 33 HARV. J.L. PUB. POL'Y 987, 1015 (2010) (asserting that Pope Benedict XVI is suggesting changes to the corporate form).

134. CARITAS IN VERITATE, *supra* note 1, ¶ 46.

135. *Id.*

136. *Id.*

137. CARITAS IN VERITATE, *supra* note 1, ¶ 40.

138. *Id.*

Pope Benedict declares that friendship and solidarity within economic activity are necessary to make the market operate properly, but even more so because the market, in its essence, involves encounters between human beings.¹³⁹ *Caritas in Veritate* distinctly contends that *every level of economic activity* must incorporate gratuitousness to encourage solidarity and responsibility for the common good among all of the different participants in the economy.¹⁴⁰ “Solidarity is first and foremost a sense of responsibility on the part of everyone with regard to everyone, and it cannot be merely relegated to the State.”¹⁴¹ Therefore, for Pope Benedict, managers must be responsible for all of the stakeholders of a business, and it is not sufficient to leave to government the task of protecting the interests of stakeholders other than owners.

Consistent with other modern social encyclicals, *Caritas in Veritate* states that “the primary capital to be safeguarded and valued is . . . the human person in his or her integrity”¹⁴² Pope Benedict specifically applies this principle in the context of business ethics. He notes favorably the recent focus on ethics in business and lauds the positive contributions of a new emphasis on ethical investment and financing.¹⁴³ He warns, however, that the term “ethics” can be distorted.¹⁴⁴ If not firmly grounded in moral norms that focus on the dignity of the human person and respect for the natural law, “ethics” may justify actions that are in fact unethical.¹⁴⁵ When detached from the dignity of the human person and the natural law, “ethics” is a mere label that is subject to the danger of “becoming subservient to existing economic and financial systems rather than correcting their dysfunctional aspects.”¹⁴⁶ *Caritas in Veritate* declares that a true system of ethics—whether labeled as such or not—is needed, one that is focused on the dignity of the human person and the natural law.¹⁴⁷ This system of ethics, Pope Benedict emphasizes, must pervade the entire economic system, not just certain parts.¹⁴⁸ Corporations and their managers, therefore, certainly are not exempt.

139. CARITAS IN VERITATE, *supra* note 1, ¶ 35.

140. *Id.* ¶ 37.

141. *Id.* ¶ 38 (citations omitted).

142. *Id.* ¶ 25.

143. *Id.* ¶ 45.

144. *Id.*

145. CARITAS IN VERITATE, *supra* note 1, ¶ 45.

146. *Id.*

147. *Id.*

148. *Id.*

IV. CATHOLIC SOCIAL THOUGHT IN THE CORPORATE GOVERNANCE DEBATE

In the secular debate regarding the responsibilities of corporate managers, two primary theories have been competing with each other for years.¹⁴⁹ The first theory maintains that corporations are to be managed to maximize shareholder wealth.¹⁵⁰ Under this theory, the corporation operates efficiently and to the benefit of society if its managers focus on shareholder wealth, without taking into account other corporate stakeholders such as employees, customers, suppliers and the community in which the corporation operates.¹⁵¹ Shareholder wealth-maximization proponents claim that other stakeholders can protect themselves by contract or through legislation.¹⁵² They also claim that other stakeholders are protected because shareholders are entitled to a corporation's assets only after other interests have been satisfied.¹⁵³

The second theory in the secular debate contends that, in making decisions, a corporation's managers must be socially responsible and take into account not only the interests of its shareholders, but also the interests of the corporation's various other stakeholders.¹⁵⁴ The premise of this theory is that corporate benefits come with responsibilities.¹⁵⁵ The benefits of limited liability and perpetual existence that corporations enjoy are coupled with an obligation to the public that is broader than shareholder wealth maximization.¹⁵⁶

Scholars who have applied Catholic Social Thought to the debate have disagreed about what Catholic Social Thought requires of corporate governance.¹⁵⁷ Some scholars argue that Catholic Social Thought supports

149. George E. Garvey, *The Theory of the Firm, Managerial Responsibility, and Catholic Social Teaching*, 6 J. MARKETS & MORALITY 525, 528 (2003).

150. *Id.*

151. *See id.* (noting that proponents of the wealth maximization theory claim that it results in the "most efficient outcome for the firm and society").

152. *Id.*

153. *Id.*

154. *See id.* at 529 (noting that one model of corporate governance "requires managers to consider the interests of . . . employees, customers, and even the community in which the firm is located").

155. *See id.*

156. *See* Garvey, *supra* note 149, at 529 (stating that the cost of limited liability and perpetual existence is a responsibility beyond maximizing investor wealth).

157. *See* Sargent, *supra* note 11, at 563 (suggesting that there is a "wide diversity of opinion about what [Catholic Social Thought] means or requires"). Mark A. Sargent's *Competing Visions of the Corporation in Catholic Social Thought* provides an excellent description of contrasting interpretations of Catholic Social Thought. *See generally id.* The framework used in this Article to describe the contrasting interpretations largely relies on the framework Sargent uses.

shareholder wealth-maximization.¹⁵⁸ Those scholars tend to focus on the importance of human liberty in Catholic Social Thought.¹⁵⁹ Other scholars have found common ground with those who support a stakeholder approach.¹⁶⁰ Those scholars emphasize the communitarian aspects of Catholic Social Thought.¹⁶¹

A. LIBERTY-BASED INTERPRETATION

Michael Novak contends that the core principles of Catholic Social Thought support shareholder wealth maximization. He starts with the view that the corporation is a mediating institution critical to the preservation of democratic capitalism.¹⁶²

Democratic capitalism, [Novak] argues, is what lifted humanity out of immemorial poverty, recurrent famine and stasis by replacing traditional societies with a differentiation of society into three systems: a political system, an economic system and a moral-cultural system, each essentially independent of the other. This differentiation was critical because it created the conditions of individual liberty essential to creativity, change and development.¹⁶³

According to Novak, democratic capitalism is necessary for the protection of human rights,¹⁶⁴ and without the corporation, neither democracy nor capitalism would be possible.¹⁶⁵

158. See Sargent, *supra* note 11, at 574-75, 580, 582 (observing that Michael Novak supports economic liberty and the wealth maximization theory and that Stephen Bainbridge concludes that wealth maximization is consistent with Christian norms); see generally MICHAEL NOVAK, ON CORPORATE GOVERNANCE: THE CORPORATION AS IT OUGHT TO BE (1997) [hereinafter NOVAK, ON CORPORATE GOVERNANCE]; MICHAEL NOVAK, TOWARD A THEOLOGY OF THE CORPORATION (rev. ed. 1990) [hereinafter NOVAK, TOWARD A THEOLOGY]; Bainbridge, *supra* note 5; Stephen M. Bainbridge, *Catholic Social Thought and the Corporation*, 1 J. CATH. SOC. THOUGHT 595 (2004).

159. See Sargent, *supra* note 11, at 564 (noting that one interpretation of Catholic Social Thought focuses on human liberty).

160. See generally Helen Alford & Michael J. Naughton, *Beyond the Shareholder Model of the Firm: Working Toward the Common Good for Business*, in RETHINKING THE PURPOSE OF BUSINESS: INTERDISCIPLINARY ESSAYS FROM THE CATHOLIC SOCIAL TRADITION 27 (S.A. Cortright & Michael J. Naughton eds. 2002); Garvey, *supra* note 149; Robert G. Kennedy, *Business and the Common Good in the Catholic Social Tradition*, 4 VILL. J.L. & INVESTMENT MGMT. 29 (2002); Stabile, *supra* note 8.

161. See Sargent, *supra* note 11, at 564 (recognizing that Catholic Social Thought generally is considered communitarian).

162. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 7.

163. Sargent, *supra* note 11, at 575.

164. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 31.

165. *Id.* at 7.

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Novak argues that, for political liberty to exist in a society, the political system, the economic system, and the moral-cultural system each must be relatively free.¹⁶⁶ Each system must be accountable to and appropriately may attempt to persuade and influence the others, but no system may be subordinate to any other.¹⁶⁷ For Novak, it is important for the economic system to be robust to protect against tyranny of the political system.¹⁶⁸ The political system, he asserts, poses a much greater threat to liberty than the economic system.¹⁶⁹ If the political system is held in check, the moral-cultural system (which includes, for example, churches) retains the ability to influence the economic system.¹⁷⁰ It is this influence that can cause the economic order to conform to God's plan.¹⁷¹ Novak claims that, if the economic system becomes subordinate to the political system, the moral-cultural system will lose its influence.¹⁷²

According to Novak, corporations provide a strong economic base on which liberty relies.¹⁷³ More than that, Novak considers the corporation to be a moral institution, an instrument of God's grace,¹⁷⁴ "a crucial locus for the playing out of God-given human liberty."¹⁷⁵ The corporation, Novak claims, has been extremely successful in mining the riches of the world to serve humanity.¹⁷⁶ He asserts that the economic effects brought about through the corporation have been substantial and beneficial to society.

The productivity of the new economics has freed much human time for questions other than those of mere subsistence and survival. The workday has shrunk, and 'weekends' have been invented. After work,

166. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 31.

167. *Id.* at 32.

168. *Id.* at 34. Consistent with this idea, Pope Paul VI in *Populorum Progressio* stresses the importance of having private individuals and intermediaries involved in pursuing ends set out by government for the common good; otherwise, the dignity of the human person may be threatened by collectivization. POPULORUM PROGRESSIO, *supra* note 35, ¶ 33.

169. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 34. Novak notes that "Max Weber argued that democratic capitalism is distinct from other commercial systems in the world *because of the religious and moral value it attaches to commerce.*" *Id.* at 35.

170. *See id.* at 33 (suggesting that, in a balanced regime, executives can make decisions that are consistent with moral-cultural norms).

171. *See id.* at 35 (noting that commerce can be regarded "as the fulfillment of a vocation from God and a way of cooperating in the completion of Creation as God intended it").

172. *See id.* at 34 (asserting that abuses of the political system pose threats to the health of the moral-cultural system).

173. *Id.* at 33.

174. *See* Sargent, *supra* note 11, at 576 (indicating that Novak believes the corporation to be "intrinsically good").

175. Sargent, *supra* note 11, at 577.

176. *See id.* (suggesting that Novak views the corporation as extremely successful at realizing the treasures of God's creation for the "benefit of humanity").

millions now take part in voluntary activities that fill, in effect, another forty hour week (associations, sports, travel, politics, religion, and the like). Personal and social mobility have increased. Schooling has become not only common but mandatory. Teenagerhood has been invented. The 'stages of human life' have drawn attention with the emergence of the private self.¹⁷⁷

For Novak, the ability of corporations to foster international development is an example of how they serve as instruments for good. He observes that multinational corporations contribute capital facilities and technology to less developed countries, reduce those countries' reliance on imports and, through paying wages to local citizens, allow local capital in those countries to increase.¹⁷⁸ Novak asserts that American businesses are emissaries not only in an economic sense, but also in a political and moral-cultural sense.¹⁷⁹ They are not primarily responsible for fostering human rights, but they certainly influence host countries by employing values of democratic capitalism in their operations.¹⁸⁰ By bringing the values of democratic capitalism to less developed countries, multinational corporations give those countries the opportunity to escape poverty.¹⁸¹

Novak defends profit as an appropriate corporate purpose, indicating that it is critical to attracting new investment.¹⁸² He distinguishes the goal of profit maximization from profit optimization, favoring the latter.¹⁸³ Novak explains that profit maximization consists of efforts to "obtain the greatest profit possible out of every opportunity[; it] is to be greedy in the present at the expense of the future."¹⁸⁴ Profit maximization, he observes, ultimately is destructive because it takes advantage of others to the detriment of the business.¹⁸⁵ Profit optimization, on the other hand, consists of efforts that "take many other factors besides profit into account, including long-term investment, consumer loyalty, and the sense of a fair service for a fair price."¹⁸⁶ According to Novak, profit optimization is

177. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 56-57.

178. *Id.* at 40.

179. *Id.* at 36.

180. *See id.* at 36-37 (indicating that corporations, if they wish to survive, must act in a manner consistent with their home political and moral cultural systems even when engaged in foreign countries).

181. *Id.* at 37. According to Novak, "[t]here are today no democratic-capitalist nations that cannot feed themselves[.]" yet socialist and traditionalist societies remain in hunger. *Id.*

182. *Id.* at 51.

183. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 51-52 (suggesting that profit maximization ultimately is destructive).

184. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 51.

185. *Id.*

186. *Id.* at 52.

beneficial to society, allowing for creativity and development.¹⁸⁷

Novak views the communal nature of the corporation as a sign of its grace.¹⁸⁸ He acknowledges that corporations depend upon communal organization and collaboration.¹⁸⁹ He asserts that “[f]or many, the workplace is a kind of second family.”¹⁹⁰ Nevertheless, unlike a family, the corporation is only a “part-time” community; it is not a “total” community.¹⁹¹ It exists only to serve a particular purpose.¹⁹²

To Novak, a corporation is a structure for delivering goods or services.¹⁹³ It is a nexus of contracts,¹⁹⁴ or a construct created with the expectation that its investors will profit and designed to avoid the inefficiency of negotiating a series of contracts with the various parties necessary to deliver goods or services.¹⁹⁵ Novak argues that efforts to impose social responsibility on the corporation—including “the philosophy of ‘stakeholders’”—merely are attempts to socialize the corporation, to make it something it is not.¹⁹⁶

Like Novak, Stephen Bainbridge’s interpretation of how Catholic Social Thought applies to corporate governance hinges on the fundamental importance of human freedom.¹⁹⁷ Bainbridge argues that state intervention

187. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 51 (stating that “[w]ithout profit no new capital is made available for research, development, and new investment” and indicating that, while profit *maximization* is damaging, profit *optimization* is beneficial).

188. *See id.* at 43, 46 (asserting that a corporation’s social character is a sign of its grace).

189. *Id.* at 47.

190. NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 47.

191. NOVAK, ON CORPORATE GOVERNANCE, *supra* note 158, at 3.

192. *Id.* at 5.

193. *Id.* at 10.

194. *See* Stabile, *supra* note 8, at 188 n.48 (noting that “[t]he law and economics view . . . sees the corporation as a nexus of contracts”). Stabile states,

The [nexus of contracts model] 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. The corporation is simply an aggregate of independent contractors, each pursuing 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.

Id. at 188 (citations omitted).

195. NOVAK, ON CORPORATE GOVERNANCE, *supra* note 158, at 12-13.

196. NOVAK, ON CORPORATE GOVERNANCE, *supra* note 158, at 9.

197. *See* Bainbridge, *supra* note 158, at 595 (indicating that human freedom is at the center or near the center of Catholic Social Thought). Mark Sargent questions whether Bainbridge is critical of a communitarian *application* of Catholic Social Thought or critical of the communitarian *nature* of Catholic Social Thought. *See* Sargent, *supra* note 11, at 565 (questioning whether Bainbridge is “a critical voice *within* . . . or *against*” Catholic social

in corporate governance should be limited and that leaving corporations with the economic freedom to pursue wealth is critical to human freedom.¹⁹⁸ According to Bainbridge, the corporation acts as a mediating institution, protecting communities from governmental intervention that would violate the subsidiarity principle and would curtail person liberty.¹⁹⁹

Although agreeing with Novak regarding the mediating qualities of the corporation, Bainbridge is skeptical of Novak's view of the corporation as a community in which virtue is cultivated.²⁰⁰ According to Bainbridge, private institutions such as churches, schools, and fraternal organizations are communities in which virtue is fostered.²⁰¹ "Communitarian models of the corporation," Bainbridge asserts, "strain credulity past the breaking point."²⁰² Instead of viewing the corporation as a large community, Bainbridge agrees with Novak that "corporations harbor within them subgroups that evolve into communities of shared values."²⁰³ It is these communities that require protection from the state.²⁰⁴

Bainbridge argues that the shareholder wealth maximization norm is consistent with Catholic Social Thought and that a stakeholder approach is

tradition).

198. See Bainbridge, *supra* note 158, at 599, 601 (asserting that "the state must provide a coercive backstop," but must "leave[] the catcher lots of room within to work" and that "preserving the economic freedom of corporations to pursue wealth is an essential part of effective means for achieving human freedom"); Bainbridge, *supra* note 5, at 24 (claiming that, where there is economic liberty, there also is personal liberty); Stephen M. Bainbridge, *Law and Economics: An Apologia*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 208, 211 (Michael W. McConnell et al. eds., 2001) (same).

199. See Bainbridge, *supra* note 158, at 598 (contending that the Church's subsidiarity principle recognizes that the state and the community are not compatible and that "subordination of economic institutions to the state poses a grave threat to both communal and personal liberty"). Bainbridge insists:

Those whose livelihood depends on corporate enterprise cannot be neutral about political systems. Only democratic capitalist societies permit voluntary formation of private corporations and allot them a sphere of economic liberty within which to function, which gives those who value such enterprises a powerful incentive to resist both statism and socialism. Because tyranny is far more likely to come from the public sector than the private, those who for selfish reasons strive to maintain both a democratic capitalist society and, of particular relevance to the present argument, a substantial sphere of economic liberty therein serve the public interest.

Id. (citing MICHAEL NOVAK, TOWARD A THEOLOGY, *supra* note 158, at 45); Bainbridge, *supra* note 5, at 25 (same).

200. See Bainbridge, *supra* note 158, at 597 (asserting that Novak's claim that corporations act as communities developing citizens with shared values "deserves to be treated with a healthy dose of skepticism").

201. See Bainbridge, *supra* note 158, at 597 (suggesting that "communal values are inculcated" in "entities like churches, schools, and fraternal organizations").

202. Bainbridge, *supra* note 5, at 15.

203. Bainbridge, *supra* note 158, at 597.

204. *Id.*

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not.²⁰⁵ He acknowledges that, at first glance, the wealth maximization norm seems inconsistent with the biblical admonition that one “cannot serve both God and money.”²⁰⁶ He claims, however, that the more appropriate lesson for the corporate governance debate derives from the phrase that “No servant can serve two masters.”²⁰⁷

Bainbridge turns to the Parable of the Talents to support his position. That parable teaches that a servant is to be a faithful and obedient steward of his master.²⁰⁸ Bainbridge argues that directors, as those faithful stewards, must be loyal and obedient to the shareholders, the “masters” of the directors.²⁰⁹ Citing Pope John Paul II’s *Centesimus Annus*, Bainbridge contends that Catholic Social Thought’s concept of faithful stewardship requires directors of a corporation to “vigorously” pursue profits for the shareholders.²¹⁰

Bainbridge uses two models of the corporation to argue that requiring or allowing directors to consider the interests of stakeholders other than shareholders is inconsistent with Catholic Social Thought. His first argument is based on the traditional notion that a corporation is private property.²¹¹ If a corporation is private property, directors are stewards who have been entrusted with resources that they do not own.²¹² If directors use those resources other than for the shareholders’ benefit—if they redirect resources for the benefit of other stakeholders to the detriment of shareholders—it is tantamount to stealing from their masters.²¹³ Directors, therefore, cannot legitimately prefer the interests of other stakeholders to those of the shareholders.²¹⁴

205. See generally Bainbridge, *supra* note 5. Bainbridge acknowledges, however, that the Catechism states that “[t]hose responsible for business enterprises are responsible to society for the economic and ecological effects of their operations” and that “they have an obligation to consider the good of persons and not only the increase of profits.” *Id.* at 11 (quoting UNITED STATES CATHOLIC CONFERENCE, CATECHISM OF THE CATHOLIC CHURCH ¶ 2432 (2nd ed. 1997)).

206. *Id.* at 9 (quoting *Luke* 16:13 (New Int’l Version)). See *Luke* 16:13 (Revised Standard Version, Second Catholic Edition) (“You cannot serve God and mammon.”); *Matthew* 6:24 (Revised Standard Version, Second Catholic Edition) (same).

207. Bainbridge, *supra* note 5, at 13 (quoting *Matthew* 6:24 (New American Bible)). See *Matthew* 6:24 (Revised Standard Version, Second Catholic Edition) (“No one can serve two masters.”).

208. Bainbridge, *supra* note 5, at 10.

209. *Id.* at 12 (“Directors are fiduciaries employed by the shareholders to conduct the business on their behalf.”).

210. *Id.* at 10 (noting that “*Centesimus Annus* . . . recognized a legitimate ‘role of profit,’ albeit merely ‘as an indicator that a business is functioning well.’”).

211. Bainbridge, *supra* note 5, at 12.

212. *Id.* at 13.

213. See *id.* at 12.

214. See *id.*

Bainbridge's second argument is premised on the principle that, from an economic perspective, a corporation is a nexus of contracts, not a community.²¹⁵ In particular, a large corporation more resembles the "nanny state" than a "community of shared values."²¹⁶ Because a corporation is not a community, communitarian notions cannot justify a stakeholder approach to corporate governance.

Abuses within the corporation, Bainbridge asserts, derive not from the profit maximization norm, but from the disdain by corporate directors and managers of faith.²¹⁷ In this respect, governmental intervention is part of the problem, not the answer.²¹⁸ Governmental intervention, according to Bainbridge, has tended to impose on corporations a principles-based system of ethics that poses threats to the "private ordering of economic relationships [and] personal virtue" and is inconsistent with the Catholic tradition.²¹⁹ Instead, Bainbridge considers virtue ethics—"context-based judgment" and "the habitual private exercise of truthfulness, courage, justice, mercy, and other virtues"—as consistent with Catholic Social Thought.²²⁰

B. *CARITAS IN VERITATE* AND THE LIBERTY-BASED INTERPRETATION

Although popes from Pope Leo XIII to Pope Benedict XVI have gone to great lengths to articulate a comprehensive world view that incorporates principles that speak to the corporate governance debate,²²¹ they have given little guidance as to how to translate that world view into practical solutions for structuring corporate law. Instead, consistent with the principle of

215. Bainbridge, *supra* note 5, at 13.

216. *Id.* at 15.

217. *See* Bainbridge, *supra* note 158, at 599-600 (observing a hostility to faith by directors and managers).

218. *See id.* at 599 (arguing that the state can destroy virtue).

219. *See id.* at 600. (citing Sarbanes-Oxley § 307, which requires minimum standards for attorneys appearing before the Securities and Exchange Commission, as an example of government promotion of principles-based ethics).

220. *Id.* at 601. Bainbridge aligns his view with that of Russell Kirk, who blamed the focus on profits without consideration of negative consequences as the source of economic ills. *See id.* at 598-99 (citing RUSSELL KIRK, *THE POLITICS OF PRUDENCE* 123 (1993)). Kirk, Bainbridge asserts, had a "remarkable ability 'consistently to favor free markets, private property, competition, and at the same time to champion virtue.'" *Id.* at 599 (quoting William F. Campbell, *An Economist's Tribute to Russell Kirk*, 30 *INTERCOLLEGIATE REV.* No. 1, Fall 1994, at 68, 69). According to Bainbridge, this balance aligns Kirk's thought with that of Pope John Paul II. *Id.*

221. *See* Sargent, *supra* note 11, at 562 (stating that Catholic Social Thought "embod[ies] a coherent world view centered on the core principles of human dignity, the common good, the reciprocity of rights and obligations, the contingency of property rights, solidarity, subsidiarity, and the preferential option for the poor").

subsidiarity, they have left that task to the laity.²²² Similar to previous encyclicals, *Caritas in Veritate* states that “[t]he Church does not have technical solutions to offer.”²²³ In evaluating the models proposed by scholars who have applied Catholic Social Thought in the corporate governance debate, then, it is important to recognize that Catholic Social Thought, in general, and *Caritas in Veritate*, in particular, leave lots of room to move.²²⁴

Catholic Social Thought requires, at a minimum, that corporate law allow managers to act in a moral manner. A legal norm, therefore, that would *require* a manager to take an action that is immoral is inconsistent with Catholic Social Thought. For this reason, a *pure* profit maximization norm cannot meet the requirements of Catholic Social Thought. *Caritas in Veritate* supports this conclusion. Like his predecessors,²²⁵ Pope Benedict XVI indicates many times that profit cannot be the exclusive goal.²²⁶ He also states that “the canons of justice must be respected from the outset, as the economic process unfolds, and not just afterwards or incidentally,”²²⁷ and that “[t]he Church’s social doctrine has always maintained that justice must be applied to every phase of economic activity.”²²⁸ In light of these statements, it is hard to see how one could justify a pure profit maximization norm. If profit maximization cannot be the exclusive goal and justice must be applied as the “economic process unfolds” and to “*every phase* of economy activity,” profit maximization cannot be the sole guiding principle for making a decision.²²⁹

222. See Sargent, *supra* note 11, at 562-63 (noting that papal documents and bishops’ statements do not make specific policy recommendations, but leave that task to the laity).

223. CARITAS IN VERITATE, *supra* note 1, ¶ 9; see CENTESIMUS ANNUS, *supra* note 16, ¶ 43 (“The church has no models to present; models that are real and truly effective can only arise . . . through the efforts of all those who responsibly confront concrete problems . . .”); see also OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 4 (“It is up to the Christian communities . . . to draw principles of reflection, norms of judgment and directives for action from the social teaching of the Church.”).

224. See *supra* Part III.B.2 (noting that *Caritas in Veritate* leaves a lot of room for managers to work in making decisions).

225. See *supra* Part II.B.3 (discussing how prior popes viewed the role of profit).

226. See CARITAS IN VERITATE, *supra* note 1, ¶ 21 (“Once profit becomes the exclusive goal, if it is produced by improper means and without the common good as its ultimate end, it risks destroying wealth and creating poverty.”); *id.* ¶ 38 (“Charity in truth . . . requires that shape and structure be given to those types of economic initiative which . . . aim at a higher goal than . . . profit as an end in itself.”); *id.* ¶ 46 (favoring a “broad new composite reality . . . which does not exclude profit, but instead considers it a means for achieving human and social ends”); *id.* ¶ 71 (indicating that it is inappropriate to view profit maximization as “the sole criterion for action in business”).

227. CARITAS IN VERITATE, *supra* note 1, ¶ 37.

228. *Id.* (emphasis omitted).

229. *Id.*

A singular focus on shareholder wealth maximization creates the dangers that *Caritas in Veritate* identifies with advances in technology. Pope Benedict suggests that technological advances have led to thinking that investment is “merely a technical act.”²³⁰ Such thinking ignores Pope John Paul II’s admonition that “investment always has moral, as well as economic significance.”²³¹ Pope Benedict does not by any means denounce technological advances; he merely contends that technology alone cannot dictate decisions and that moral considerations must be taken into account. If corporate decision-making focuses solely on shareholder profit maximization, managers will be tempted to use technology to maximize profits regardless of the moral implications. *Caritas in Veritate* clearly indicates that this type of thinking must be avoided.²³²

For Pope Benedict, as for Pope John Paul II, profit remains a legitimate criterion for corporate decision-making; it just can’t be the only one.²³³ The closest legal norm to *pure* profit maximization that *Caritas in Veritate* seems to allow, then, is what one might call “profit optimization with a social responsibility out.”²³⁴ Under this norm, management would be required to focus on maximizing shareholder wealth in the long-term, but in doing so, would be free to make decisions that respect the dignity of each human person involved and seek the common good, even when doing so would not maximize shareholder wealth.²³⁵ Furthermore, in seeking to maximize shareholder wealth in the long-term, management would have the freedom to make decisions based on a system of ethics grounded in truth, one that takes into account the interconnectedness and humanity of all stakeholders involved and their long-term best interests. “Profit

230. *CARITAS IN VERITATE*, *supra* note 1, ¶ 40.

231. *Id.* (citing *CENTESIMUS ANNUS*, *supra* note 16, ¶ 36) (emphasis omitted).

232. *Id.*

233. Breen, *supra* note 133, at 1012 (noting that, like Pope John Paul II, “Pope Benedict does not denigrate the important role that profit plays in the market economy”).

234. The “social responsibility out” concept is similar to a “fiduciary out,” which often is used in the merger and acquisition context. “[F]iduciary outs are contract provisions that typically allow a target corporation to renege on the performance of contractual obligations when the board determines that such performance would violate the board’s duties to shareholders.” Christopher Fawal, Note, *Protecting Shareholder Access to Director Elections: A Response to CA, Inc. v. AFSCME Urging the Adoption of a Blasius Standard of Review for the Exercise of a Fiduciary-Out Clause*, 59 DUKE L.J. 1457, 1480 (2010).

235. See Ronald J. Colombo, *Ownership, Limited: Reconciling Traditional and Progressive Corporate Law Via an Aristotelian Understanding of Ownership*, 34 J. CORP. L. 247, 269-70 (2008) (describing a tempered version of the profit maximization norm). Such a norm, in most cases, may not be inconsistent with current law. See Lyman Johnson, *Re-Enchanting the Corporation*, 1 WM. & MARY BUS. L. REV. 83, 99 (2010) (noting that “[o]utside one specific context (under Delaware law but not the law of many other states), the law simply does not mandate maximization of shareholder wealth or corporate profits.”).

optimization with a social responsibility out” would require managers to seek long-term profits, but give them the freedom to act in a manner consistent with their, and the corporation’s, moral obligations to others—even if profits would suffer as a result.

To the extent that the liberty-based interpretation allows for a *pure* profit maximization legal norm, it is inconsistent with *Caritas in Veritate*. If instead the interpretation justifies something more akin to “profit optimization with a social responsibility out,” it may find support in *Caritas in Veritate*. Pope Benedict undoubtedly agrees with the initial premise of the liberty-based interpretation that democracy is necessary for the protection of human rights and freedom,²³⁶ and that freedom is critical to human development.²³⁷ He seems to be at odds, though, with the measures the liberty-based interpretation might justify for preserving democracy to allow for such development.

Novak claims that strict independence of the political, economic, and moral-cultural systems is necessary to preserve human rights and freedom. Pope Benedict, on the other hand, contends that such independence is corrosive.²³⁸ In *Caritas in Veritate*, Pope Benedict indicates that, if the pursuit of wealth in the economic sector is separated from governmental action capable of seeking a just distribution of that wealth, “grave imbalances are produced.”²³⁹ Pope Benedict, therefore, almost certainly would allow more governmental intervention than would Novak.²⁴⁰

Caritas in Veritate seems to undercut a fundamental premise of Novak’s liberty-based approach. Novak argues that it is important to have a strong economic system to hold the political system in check and thereby allow the moral-cultural system to influence the economic system. He does not seem concerned, however, with ensuring a strong political system capable of holding the economic system in check for similar reasons. Yet, it is critical to Novak’s liberty-based interpretation that none of the three spheres—political, economic and moral-cultural—be subordinate to either

236. See *CARITAS IN VERITATE*, *supra* note 1, ¶¶ 21, 41 (noting that democracy is “capable of ensuring freedom and peace” and indicating that care needs to be taken to avoid undermining democracy).

237. See *id.* ¶ 17 (“Integral human development presupposes responsible freedom of the individual and of peoples . . .”) (emphasis omitted).

238. See *id.* ¶ 39 (noting that “[t]he exclusive binary model of market-plus-State is corrosive of society”).

239. *CARITAS IN VERITATE*, *supra* note 1, ¶ 36.

240. Although likely to be more open to governmental intervention than Novak, John Breen observes that Pope Benedict XVI “has long expressed a healthy skepticism of the capacity of juridical structures and institutions to bring about substantial change in social life.” Breen, *supra* note 133, at 1021.

of the others. *Caritas in Veritate* observes that globalization has made the political system subordinate to the economic system. Pope Benedict points out that, as the world has become more and more interconnected, government has become impotent with respect to many economic activities.²⁴¹ Because of territorial limitations, governments do not have the necessary authority to place appropriate limits on unjust economic activities.

Novak and Pope Benedict find common ground in stressing the importance of managing a corporation with its long-term health in mind. As discussed above, Novak advocates profit *optimization*—maximizing profits over the long-term. He asserts that pure profit maximization, seeking to maximize profits in the short term, is destructive. Pope Benedict likewise observes the danger in using resources to achieve short-term profits at the expense of the long-term interests of a business. On the other hand, *Caritas in Veritate* cannot be read to support profit optimization as the sole basis for corporate decision-making. Admittedly, the pope seems to suggest that such an exclusive focus on profit optimization in corporate decision-making may have been justified in the past, when economic activity was confined within national boundaries.²⁴² Now, with the advent of globalization and the concomitant decrease in governmental influence, justice must be evaluated at all levels of economic activity.²⁴³ Therefore, even if Novak previously might have found support in Catholic Social Thought for profit optimization as the sole basis for corporate decision-making, globalization has caused that support to dissipate.

Novak's concept of profit optimization takes into account many factors other than profit, but only to the extent that they further long-term profitability, and he seems to reject the idea that managers should consider social responsibility and the effect of decisions on stakeholders other than shareholders, except to the extent those factors affect long-term profitability. He clearly opposes legally requiring consideration of social responsibility and stakeholders, viewing it as inconsistent with the nexus of contracts model of the corporation.

Although Pope Benedict's explanation of Catholic social doctrine in *Caritas in Veritate* does not necessarily reject the view that a corporation is a nexus of contracts, it imposes greater responsibilities on parties to contracts than Novak would seem to require. Pope Benedict indicates that

241. See *CARITAS IN VERITATE*, *supra* note 1, ¶ 24 (noting that globalization has resulted in limitations on sovereignty); see also *id.* ¶ 39 (suggesting that globalization has threatened the ability of government to ensure distributive justice).

242. See *supra* notes 124, 126 and accompanying text.

243. See *supra* note 127 and accompanying text.

the principles of commutative justice—equivalence in contractual exchange—alone do not meet the requirements of Catholic social doctrine. Distributive justice must be considered in order to create solidarity and mutual trust, both of which are essential to the proper functioning of the market.²⁴⁴ Moreover, Pope Benedict views the awareness of social responsibility within the economy to be a positive development and considers it necessary for management to consider the interests of stakeholders other than shareholders. In making decisions, corporate management must consider, in addition to “the traditional principles of social ethics like transparency, honesty and responsibility[,] . . . the principle of gratuitousness and the logic of gift.”²⁴⁵ Pope Benedict states very explicitly, however, that “attitudes of gratuitousness cannot be established by law.”²⁴⁶ Novak almost certainly would agree with this point and would suggest that, therefore, the law should not attempt to *impose* such obligations.

What is not clear is whether Novak would accept a legal norm that would *allow*, but not require, managers freely to make decisions based on the principle of gratuitousness when the decisions would be inconsistent with long-term profitability. To the extent that Novak’s conception of profit optimization would make such an allowance, it would essentially mirror what this Article calls “profit optimization with a social responsibility out” and therefore likely would be consistent with Pope Benedict’s explanation of Catholic Social Thought in *Caritas in Veritate*.

Novak and Bainbridge both argue that the profit maximization (optimization, in Novak’s case) norm is, in and of itself, oriented to the common good because it is necessary for the preservation of human dignity. They view human freedom (which is necessary for human dignity) as the positive end that comes when corporate managers are required to maximize shareholder wealth. *Caritas in Veritate*, on the other hand, views the preservation of human dignity as a prerequisite to maximizing shareholder wealth. Shareholder wealth cannot be maximized—and the law, therefore, cannot require shareholder wealth to be maximized—in a manner that fails to respect human dignity, nor for a purpose other than the common good. It is possible to reconcile Novak and Bainbridge’s interpretation with the latter limitation, but not the former. Certainly, human freedom and human dignity are part and parcel of the common good, but Novak’s and Bainbridge’s profit maximization norm might require corporate managers to ignore human dignity in pursuing shareholder wealth. This approach

244. *CARITAS IN VERITATE*, *supra* note 1, ¶ 35.

245. *Id.* ¶ 36 (emphasis omitted).

246. *Id.* ¶ 39.

risks treating human beings as “assets” or “things,” which Catholic Social Thought never permits.²⁴⁷

Caritas in Veritate even seems to suggest that wealth maximization, without limits, ultimately can undermine the very good that Novak and Bainbridge claim is achieved by the profit maximization norm. Pope Benedict observes that, if wealth is sought in a manner that results in social inequality, critical elements in the economic system—“relationships of trust, dependability and respect for rules”—suffer.²⁴⁸ In addition, he notes that seeking wealth in such a manner negatively affects social cohesion and places “democracy at risk.”²⁴⁹ Therefore, according to *Caritas in Veritate*, unfettered wealth maximization threatens democracy, which Novak and Bainbridge argue is a foundation for the protection of human rights and freedom.

Although Pope Benedict does not discuss private property explicitly in *Caritas in Veritate*, his discussion of rights and duties contradicts Bainbridge’s private property argument for the shareholder wealth maximization norm. Pope Benedict very clearly indicates that rights are accompanied by duties and that duties are necessary for the preservation of rights.²⁵⁰ Consistent with previous encyclicals, then, the right to private property must be subject to the obligation of owners to use it for the common good.²⁵¹ If property owners have a duty to use their property for the common good, one cannot interpret *Caritas in Veritate* to support a legal norm that would require agent-directors to use corporate resources to maximize profits without concern for the obligations of their shareholder-masters with respect to the common good.

Pope Benedict’s support for the proposition that managers have a moral obligation to consider the interests of all of a corporation’s stakeholders does not depend on a communitarian view of the corporation that Bainbridge considers erroneous. Instead, the moral obligation derives from the fact that the participants in economic transactions are human beings.²⁵² For Pope Benedict, whether one views the corporation as a nexus of contracts or as a community is irrelevant. All decisions must take into

247. Pope Benedict in *Caritas in Veritate* “remind[s] everyone . . . that the primary capital to be safeguarded and valued is . . . the human person in his or her integrity.” *CARITAS IN VERITATE*, *supra* note 1, ¶ 25 (emphasis omitted).

248. *Id.* ¶ 32.

249. *Id.*

250. *Id.* ¶ 43.

251. *See supra* notes 57-63 and accompanying text (discussing the limits on the right to private property).

252. *CARITAS IN VERITATE*, *supra* note 1, ¶ 37 (“[J]ustice must be applied to every phase of economy activity, because this is always concerned with [humans] and [their] needs.”).

account the human dignity of the individuals involved.

Bainbridge can find common ground with Pope Benedict with respect to corporate ethics. Bainbridge highlights the disdain of corporate directors and managers of matters of faith as the source of corporate abuses. Likewise, *Caritas in Veritate* states that “the conviction that the economy . . . must be shielded from ‘influences’ of a moral character, has led [humans] to abuse the economic process in a thoroughly destructive way.”²⁵³ Bainbridge claims that principles-based ethics imposed by government are part of the problem and that virtue ethics—“the habitual private exercise of truthfulness, courage, justice, mercy, and other virtues”—are needed.²⁵⁴ The principles-based ethics that Bainbridge decries run the risk identified in *Caritas in Veritate* of being slaves of the economic system rather than remedying its problems.²⁵⁵ Like Bainbridge, Pope Benedict suggests that ethics must be grounded in virtue.²⁵⁶ When not people-centered and grounded in the dignity of the human person and the natural law, a system of ethics itself can result in abuses.

It is hard to reconcile Bainbridge’s position that shareholder wealth maximization is the appropriate legal norm for corporate governance with his notion that a focus of virtue ethics would help to curb corporate abuses. A legal norm that requires shareholder wealth maximization might require managers to act contrary to virtue. If Bainbridge’s advocacy for virtue represents a modest retreat from a legal norm that requires pure wealth maximization, his liberty-based interpretation might be considered consistent with Catholic Social Thought as explained in *Caritas in Veritate*.

C. COMMUNITARIAN INTERPRETATION

Most scholars applying Catholic Social Thought to the corporation—among them Susan Stabile, Helen Alford, Michael Naughton, Robert Kennedy, and George Garvey²⁵⁷—take a communitarian approach²⁵⁸ and contend that a legal norm requiring shareholder wealth maximization is inconsistent with Catholic Social Thought or, at best, insufficient to meet its demands.

253. *CARITAS IN VERITATE*, *supra* note 1, ¶ 34.

254. Bainbridge, *supra* note 158, at 601.

255. *CARITAS IN VERITATE*, *supra* note 1, ¶ 45.

256. *See id.* (noting that the effectiveness of ethics “depends on the underlying system of morality”).

257. *See generally* Alford & Naughton, *supra* note 160; Garvey, *supra* note 149; Kennedy, *supra* note 160; Stabile, *supra* note 8.

258. *See* Sargent, *supra* note 11, at 565 (noting that “[t]he mainstream [Catholic Social Thought] vision of the corporation is communitarian”).

The communitarian interpretation starts with the premise that the corporation is a community of persons—consisting of employees, customers, suppliers, the local community, and perhaps others—in which the common good must be sought.²⁵⁹ In seeking the common good, corporate management must respect and promote the dignity of the human person.²⁶⁰ According to Stabile, “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.’”²⁶¹

Stabile asserts that participants in the corporation have duties far beyond their contractual obligations to one another and that the common good requires decisions about corporate policy to take into account the interests of all stakeholders.²⁶² Kennedy likewise observes that shareholders are not the only ones who contribute to an enterprise’s success.²⁶³ Employees, for example, through their time, talent, energy and knowledge, make an investment as well.²⁶⁴ Kennedy claims that a corporation owes its employees more than employment compensation.²⁶⁵ A corporation must also be loyal to its employees and thus concerned about their job security.²⁶⁶

According to Kennedy, managers cannot be viewed merely as agents

259. See Alford & Naughton, *supra* note 160, at 38 (“The firm is a community of persons who spend many hours working together and who are part of a wider community of customers, suppliers, and local residents, not to mention their own families.”); Garvey, *supra* note 149, at 536 (noting that Catholic Social Thought requires the firm to seek the common good and to recognize the dignity of every human person involved in the firm); Kennedy, *supra* note 15, at 25-26 (recognizing the corporation as a community); Stabile, *supra* note 8, at 184 (asserting that the corporation must be viewed as a community formed so its members can do together what they could not accomplish individually) (quoting MICHAEL NOVAK, *BUSINESS AS A CALLING: WORK AND THE EXAMINED LIFE* 24-25 (1996)); see generally Alford & Naughton, *supra* note 159 (arguing for a “common good model of the firm”).

260. See Garvey, *supra* note 149, at 532 (“If the ends of an enterprise promotes the common good, and if the means employed do not violate the dignity of any person, the firm would surely survive the scrutiny of Catholic social teaching.”); see also Stabile, *supra* note 8, at 184 (noting that Catholic Social Thought requires all institutions to be concerned with the common good).

261. Stabile, *supra* note 8, at 185 (quoting U.S. Catholic Bishops, *Economic Justice for All* ¶ 14 (1986), reprinted in *CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE*, *supra* note 14, at 574).

262. Stabile, *supra* note 8, at 185, 192.

263. Kennedy, *supra* note 160, at 49.

264. *Id.*

265. *Id.*

266. *Id.*

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of the shareholders.²⁶⁷ Instead, they are stewards of a corporation's goods for the benefit of the shareholders, but not to the exclusion of the interests of others in the community.²⁶⁸ Managers must "be concerned that opportunities for work be fairly distributed, and that the company make prudent investments to ensure that it remains competitive and viable."²⁶⁹ In addition, managers must make sure that the company acts consistently with the good of society, even when acting otherwise would not be prohibited by law.²⁷⁰ "In sum," Kennedy contends, "[Catholic Social Thought] respects the fact that . . . managers have a duty to attend to the rightful interests of shareholders, but it does not maintain that they have a duty to put shareholder interests ahead of the interests of other members of the community of work."²⁷¹

Garvey adds that the principles of subsidiarity and solidarity impose responsibilities on all participants in a corporation *Rerum Novarum*—not just management—and require each person to consider how the decisions he or she makes will affect other members of the corporate "community" and the common good in general.²⁷² Subsidiarity requires that decision-making authority be given to the lowest appropriate level within the corporation, thereby making those who understand the possible outcomes of decisions responsible for making the decisions.²⁷³ Solidarity requires that every decision be made to further the common good, always bearing in mind the personhood, dignity, and interconnectedness of those affected by decisions.²⁷⁴

At first blush, Garvey appears to claim that the communitarian interpretation of Catholic Social Thought does not necessarily conflict with the profit maximization norm. He asserts that, if a firm is functioning well, a manager will not run afoul of Catholic Social Thought by seeking to maximize profits.²⁷⁵ Garvey goes on to say, however, that "[s]uch a theoretical firm would be compensating employees appropriately, using the earth's resources wisely and providing customers with quality products at fair prices."²⁷⁶ In Garvey's view, then, "functioning well" means taking

267. Kennedy, *supra* note 160, at 49.

268. *Id.*

269. *Id.* (citations omitted).

270. *Id.* at 50.

271. *Id.*

272. Garvey, *supra* note 149, at 533.

273. *Id.*

274. *See id.* at 534 (quoting Pope John Paul II's explanation of the requirements of solidarity in *SOLLICITUDO REI SOCIALIS*, *supra* note 16, ¶ 36).

275. *Id.* at 534-35.

276. *Id.* at 535.

into account the interests of all stakeholders—all members of the corporate community.²⁷⁷

Alford and Naughton claim that finance has overstepped its bounds in setting up a shareholder wealth maximization norm for the corporation.²⁷⁸ “While maintaining adequate return on capital employed is a crucial management issue for any firm, describing the whole purpose of the business as that of providing maximal return on capital radically impoverishes the idea of what a business is when compared to the reality of business life.”²⁷⁹ Alford and Naughton use the distinction between “foundational” goods and “excellent” goods to make their point. Foundational goods are those that are needed and wanted to obtain other things.²⁸⁰ Excellent goods are those that are needed and desired for themselves and have no other value.²⁸¹ Profits, they assert, are foundational goods.²⁸² They are necessary to a business, but cannot be an end in and of themselves.²⁸³ For a business, the excellent goods are “virtues such as justice, prudence, courage, solidarity, and patience.”²⁸⁴

Under Alford and Naughton’s common good model, all foundational goods must be used in order to further excellent goods.²⁸⁵ The shareholder wealth maximization norm, they claim, makes this impossible.²⁸⁶ If every action is ordered toward profit, managers will treat employees justly only to the extent that it will maximize profit.²⁸⁷ The excellent good of justice

277. In fact, Garvey states affirmatively that “[t]he ‘stakeholder’ model of business management may make more sense” in light of the fact that “business decisions . . . must be informed by a personal, moral, and humanistic sensitivity.” Garvey, *supra* note 149, at 535.

278. Alford & Naughton, *supra* note 160, at 33.

279. *Id.* at 34.

280. *Id.* at 36.

281. *Id.*

282. *Id.*

283. *See id.* (stating that profits are as necessary to a business’s proper functioning “as are air, food, and water to human functioning”).

284. Alford & Naughton, *supra* note 160, at 36.

285. *Id.* at 39.

286. *See id.* at 41 (asserting that “the shareholder model . . . inhibit[s] managers from considering the more excellent goods except in instrumental terms”). Stabile likewise concludes that an exclusive focus on shareholder profit maximization is inconsistent with the common good. Stabile, *supra* note 8, at 191. To support her conclusion, she looks to Pope Pius XI’s suggestion in *Quadragesimo Anno* that a single-minded focus on profit will lead to injustice and Pope John Paul II’s admonition in *Laborem Exercens* that greed and materialism result from pure profit maximization. *Id.*

287. Alford & Naughton, *supra* note 160, at 41. Garvey similarly asserts that pursuing profit as the only purpose is inconsistent with the common good and the dignity of the human person because it could degenerate into treating humans as things—either means of production or means of consumption. *See* Garvey, *supra* note 149, at 532-33 (observing that modern corporations act

therefore becomes subservient to the foundational good of profit.²⁸⁸

Alford and Naughton's common good model dovetails with Pope John Paul II's assertion in *Centesimus Annus* that profit acts as a regulator of an organization.²⁸⁹ Profit certainly is important—in fact, it is critical to a business's survival—but only as a means to loftier ends.²⁹⁰ Alford and Naughton acknowledge that profit has a role, but contend that the “real world of business” involves much more than the financial.²⁹¹

Stabile maintains that the communitarian view of the corporation is consistent not only with the principles of the common good and the dignity of the human person, but also with the principles that Pope Leo XIII asserted in *Rerum Novarum* regarding private property.²⁹² She acknowledges that Pope Leo staunchly affirmed the goodness of private property, but notes that he did not espouse a right to private property without limits.²⁹³ Instead, Pope Leo recognized that those with abundance have an obligation to use their abundance for the common good.²⁹⁴ Kennedy similarly suggests that Catholic social doctrine does not allow shareholders to dispose of assets in any manner they wish.²⁹⁵ The right of ownership carries with it obligations.²⁹⁶ Shareholders—and therefore directors seeking shareholder interests—have an obligation to use corporate assets for the common good of the corporation and society at large.²⁹⁷

Although Stabile, Alford, Naughton, Kennedy, and Garvey assert that Catholic Social Thought supports a communitarian view of the corporation, they do not necessarily advocate translating the moral requirements of Catholic Social Thought into legal requirements.²⁹⁸ There are, however,

contrary to Catholic principles when profit is viewed as the sole purpose of business and asserting that treating a person as a thing is always contrary to Catholic principles).

288. Alford & Naughton, *supra* note 160, at 41.

289. Alford & Naughton, *supra* note 160, at 43 (quoting *CENTESIMUS ANNUS*, *supra* note 16, ¶ 35).

290. *Id.* at 37-38, 43; *see* Stabile, *supra* note 8, at 192 (asserting that Catholic Social Thought requires that profit be viewed as a means for serving the common good and not as an end in itself).

291. *See* Alford & Naughton, *supra* note 160, at 34 (“Financial considerations involve no more than one function of the firm, and the whole work of the firm can hardly be reduced to one of its functions.”).

292. Stabile, *supra* note 8, at 193.

293. Stabile, *supra* note 8, at 193; *see also* Alford & Naughton, *supra* note 160, at 40 (noting that Catholic Social Thought requires the use of private property for the common good).

294. Stabile, *supra* note 8, at 193.

295. Kennedy, *supra* note 160, at 48.

296. *Id.*

297. *Id.* at 48-49.

298. Alford & Naughton's “common good” model of the firm is more of a critique of the profit maximization norm than a suggestion that some type of common good norm be imposed by law.

those ascribing to the communitarian interpretation who may. Mark Sargent suggests that the communitarian “version of [Catholic Social Thought] . . . has much in common with those strains of ‘progressive’ corporate law theory that emphasize the need for legal and regulatory structures that would institutionalize a broad sense of corporate social responsibility beyond mere law compliance.”²⁹⁹ While neither disfavoring herself nor finding governmental regulation inconsistent with Catholic Social Thought, Stabile questions the efficacy of legally requiring managers to take nonshareholder interests into account in corporate decision-making.³⁰⁰ She suggests that a legal requirement that managers do so raises difficult questions about matters such as how a corporation is to balance its obligation to pursue the common good when that obligation “conflicts with achieving financial goals or other corporate objectives.”³⁰¹ She also notes the potential difficulties in government’s mandating behavior that it deems “socially responsible” or consistent with the common good.³⁰² As an example of the difficulties involved, Stabile observes:

[O]ver the last twenty years, a number of state legislatures have passed laws of various types requiring employers, including many religious employers, who provide their employees with prescription coverage to also provide coverage of prescription contraceptives. 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.³⁰³

After reflecting on the difficulties posed by direct legal mandates, Stabile suggests that focusing on ethics and requiring disclosure of non-financial corporate performance are more viable reforms.³⁰⁴

See Alford & Naughton, *supra* note 160, at 28 (indicating that their primary purpose is to “examine the ‘shareholder model’ . . . and . . . how the useful insights of finance can be incorporated into a realistic *concept* of business based on the idea of the common good” (emphasis added)). Neither Garvey nor Kennedy suggests policy prescriptions. See *generally* Garvey, *supra* note 149; Kennedy, *supra* note 15; Kennedy, *supra* note 160.

299. Sargent, *supra* note 11, at 573-74 (citations omitted).

300. See Stabile, *supra* note 8, at 196-97 (noting that hard questions would need to be asked before implementing laws that would require managers to take into account nonshareholder interests); see also Julian Velasco, *The Fundamental Rights of the Shareholder*, 40 U.C. DAVIS L. REV. 407, 462-66 (2006) (suggesting that efforts to allow consideration of nonshareholder interests largely have been unsuccessful).

301. See Stabile, *supra* note 8, at 196-97.

302. See Stabile, *supra* note 8, at 197 (noting that one cannot be certain that government mandates “[would] in fact [be] consistent with the common good”).

303. *Id.*

304. *Id.* at 199-200.

D. CARITAS IN VERITATE AND THE COMMUNITARIAN INTERPRETATION

Pope Benedict in *Caritas in Veritate*, without taking an explicitly communitarian approach,³⁰⁵ gives his imprimatur to the core principles underlying the communitarian interpretation. Unlike some of his predecessors, Pope Benedict does not define a business enterprise as a community. For Pope Benedict, it seems, the principles underlying the communitarian interpretation stand on their own. *Caritas in Veritate* suggests that the principles apply merely because the corporation is an economic enterprise that involves encounters between human persons.

Caritas in Veritate clearly is consistent with the communitarian interpretation's conclusion that the profit motive must be subordinated to the common good. Likewise, both Pope Benedict and those subscribing to the communitarian interpretation consider it fundamental that profit be used only as a means and not as an end unto itself.

Pope Benedict further insists that the human person is the primary economic asset. Not surprisingly, the communitarian interpretation also emphasizes this point. Susan Stabile, for example, recognizes that all institutions must be ordered to promote the dignity of the human person, and that profit must always be subordinate to human development. For Stabile, Catholic Social Thought requires corporate decisions to be measured based on their effect on the human person. In their common good model, Helen Alford and Michael Naughton similarly focus on the need for corporations to foster conditions that promote integral human development, which is the very subject of *Caritas in Veritate*.³⁰⁶

Pope Benedict certainly would agree with Stabile and George Garvey that participants in the corporation have a duty beyond their contractual obligations. As discussed above, *Caritas in Veritate* plainly states that economic activity is not only subject to the requirements of commutative justice, but also to the requirements of distributive justice. Moreover, the principles of solidarity and gratuitousness require that all participants in the corporation have "a sense of responsibility" to everyone.³⁰⁷ Pope Benedict's view of the necessity of gratuitousness dovetails with Robert Kennedy's suggestion that corporations owe employees something more than compensation. A spirit of gratuitousness fosters the kind of concern

305. The fact that Pope Benedict does not take a communitarian approach does not necessarily detract from the communitarian interpretation. Its significance lies more in disarming the argument that communitarian principles should not apply to corporate governance because it is erroneous to view the corporation as a community.

306. See *CARITAS IN VERITATE*, *supra* note 1, ¶ 8 (indicating that the encyclical revisits Pope Paul VI's teachings on integral human development).

307. *Id.* ¶ 38.

for loyalty and job security that Kennedy asserts employees are due.

Although Pope Benedict does not describe the corporation as a community, he indicates that Catholic social doctrine requires managers to consider not only shareholders, but also a corporation's other stakeholders, in making decisions. Pope Benedict objects to the singular consideration of the interests of shareholders, but does not appear to go so far as to require stakeholders to be treated equally with shareholders, which Robert Kennedy suggests is required. To the contrary, Pope Benedict seems to allow shareholders to be preferred over other stakeholders so long as the principles of solidarity, gratuitousness, and dignity of the human person are observed.

Pope Benedict's endorsement of the principles underlying the communitarian interpretation of Catholic Social Thought does not equate to an endorsement of a legal norm that would require consideration of nonshareholder interests, nor does it equate to approval of legally mandated "social responsibility" that purports to protect nonshareholder interests. Rather, Pope Benedict focuses very much on the need for the spirit of gift in economic matters and observes that such gratuitousness cannot be mandated by law. Moreover, he is acutely aware of the danger presented by mistaken notions of social responsibility or charity.³⁰⁸ As Stabile observes, these mistaken notions can find their way into positive law.³⁰⁹ To be sure, Pope Benedict, like his predecessors, is not uncomfortable with governmental intervention in appropriate circumstances. Based on *Caritas in Veritate* (and the other modern social encyclicals), however, such interventions in corporate governance need to be consistent with the requirements of subsidiarity³¹⁰ and must not impose a form of "social responsibility" that fails to preserve the dignity of the human person or that is detached from the natural law.

V. CONCLUSION

Consistent with prior papal encyclicals, *Caritas in Veritate* claims to offer no "technical solutions"³¹¹ for the problems facing the world. This is

308. See *CARITAS IN VERITATE*, *supra* note 1, ¶ 45 (suggesting that, if social responsibility is not grounded in concern for the dignity of the human person and natural law, an action that purports to be socially responsible may not actually be so).

309. See *supra* note 302 and accompanying text (noting that legislation mandating prescription coverage for contraceptives is inconsistent with the requirements of Catholic morality).

310. See *CARITAS IN VERITATE*, *supra* note 1, ¶¶ 36, 57 (noting that government has a share in the responsibility for preserving the common good and "the governance of globalization must be marked by subsidiarity" (emphasis omitted)).

311. *Id.* ¶ 9; see also *POPULORUM PROGRESSIO*, *supra* note 35, ¶ 81 ("[I]t belongs to the laymen . . . to infuse a Christian spirit into the mentality, customs, laws, and structures of the

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true to a large extent, but Pope Benedict certainly gives more direct guidance than his predecessors as to how to apply Catholic Social Thought in the context of corporate governance. The guiding principles for corporate governance explained in *Caritas in Veritate* might be summarized as follows:

- Profit need not be rejected, but must be oriented to the common good and sought with a long-term perspective; and
- Management must direct the corporation so that it is socially responsible, meaning that decisions must:
 - Be consistent with the truth that the primary economic asset of business is the human being;
 - Take into account stakeholder interests; and
 - Incorporate the concepts of solidarity and gratuitousness.

Caritas in Veritate does not offer a roadmap for how to structure corporate law using these principles. In fact, the principles leave much room to work in crafting practical solutions. They don't mandate a communitarian solution or foreclose a liberty-based solution. *Caritas in Veritate* provides important lessons for those on both sides of the corporate governance debate—both within and outside the Catholic tradition. For those supporting shareholder wealth maximization, *Caritas in Veritate* warns against a legal norm that would require *pure* wealth maximization. Management legitimately may be required to focus on maximizing shareholder wealth, but must have the freedom to take actions inconsistent with that focus when necessary to respect the dignity of each human person involved and to seek the common good. Furthermore, a wealth maximization norm must leave management free to make decisions based

community in which they live.”); OCTOGESIMA ADVENIENS, *supra* note 16, ¶ 4 (“[I]t is difficult for [the Church leaders] . . . to put forward a solution which has universal validity. . . . It is up to the Christian communities . . . to draw principles of reflection, norms of judgment and directives for action from the social teaching of the Church.”); SOLLICITUDO REI SOCIALIS, *supra* note 16, ¶ 41 (“The Church does not have *technical solutions* to offer for the problem of underdevelopment” and “does not propose economic and political systems or programs.”). As Pope John Paul II commented in *Centesimus Annus*,

The church has no models to present; models that are real and truly effective can only arise within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems in all their social, economic, political and cultural aspects, as these interact with one another. For such a task the church offers her social teaching as an indispensable and ideal orientation, a teaching which . . . recognizes the positive value of the market and of enterprise, but which at the same time points out that these need to be oriented towards the common good.

CENTESIMUS ANNUS, *supra* note 16, ¶ 43.

on a system of ethics grounded in truth, one that takes into account the interconnectedness and humanity of all stakeholders involved and their long-term best interests.

For those supporting corporate social responsibility, the encyclical teaches that determining what is socially responsible must be grounded in truth founded in the dignity of the human person and the natural law. *Caritas in Veritate* indicates that, without such truth, the efforts of proponents of corporate social responsibility will be fruitless or, worse, will serve private interests and become subject to manipulation in a manner designed to perpetuate the negative externalities of unfettered short-term wealth maximization.³¹² If those supporting corporate social responsibility—both believers and nonbelievers alike—seek truth with sincere hearts, there is hope for true reform, for it is in the ordering of human institutions “towards [humans] as to their centre and summit” that believers and nonbelievers can find common ground in working for justice.³¹³

Consistent with the response of Church councils to fundamental doctrinal questions,³¹⁴ when asked the serious but less weighty question of whether a corporation should be managed to maximize shareholder wealth or in a socially responsible manner, Pope Benedict’s *Caritas in Veritate* answers “yes.” The encyclical supports profit maximization firmly stabilized in charity and corporate social responsibility anchored in truth. Corporate law scholars should now consider whether those lessons call for changes in law or changes in hearts. Once again, “yes” probably is the best answer.

312. See *CARITAS IN VERITATE*, *supra* note 1, ¶¶ 5, 45 (noting that social action can end up serving private interests if not grounded in truth and warning of the risk of exploitation when business ethics are not grounded in the dignity of the human person and the natural law).

313. *CARITAS IN VERITATE*, *supra* note 1, ¶ 57 (quoting *GAUDIUM ET SPES*, *supra* note 25, ¶ 2).

314. See UNITED STATES CATHOLIC CONFERENCE, *CATECHISM OF THE CATHOLIC CHURCH* ¶ 467 (2nd ed. 1997) (indicating that, when the Council of Chalcedon considered whether Jesus Christ was truly God or truly human, the Council determined that He was both).