

CATHOLIC SOCIAL THOUGHT AND THE LARGE MULTINATIONAL CORPORATION

GERALD J. RUSSELLO[†]

Over the past several years, scholars have employed the principles of Catholic Social Thought (“CST”) to examine corporate behavior and organization.¹ According to its exponents, CST espouses an ethic that is “rooted in human nature rather than either corporate power or national identity” and may provide an alternative vision of the person and economic activity different from underlying contemporary global capitalism.² In particular, CST offers a critique of classical liberal economics and its conception of persons as autonomous consumers or shareholders seeking to maximize their preferences.³ CST places economic concerns within the larger framework of the Catholic Church’s teaching about the meaning and purpose of human life. Developing such an approach is important because “a Christian social theology that lacks a theology of the large corporation will have no effective means of inspiring those Christians who do work within large corporations to meet the highest practicable Christian standards.”⁴

The recent *Compendium of the Social Doctrine of the Church* and other Church documents are replete with references to the

[†] Fellow, Chesterton Institute at Seton Hall University; Adjunct Professor, Cardozo School of Law; J.D., New York University School of Law. An earlier version of this paper was presented at a conference on the “Principles and Practice of Subsidiarity: The Meanings of Subsidiarity for the Law,” at Villanova University School of Law. Thanks to Mark Sargent, Michael Lower, Amy Uelmen, William Gould, and Michael Moreland for commenting on an earlier draft.

¹ See generally Mark Sargent, *Competing Visions of the Corporation in Catholic Social Thought*, 1 J. CATH. SOC. THOUGHT 561 (2004).

² Kenneth E. Goodpaster, *Foreword* to RETHINKING THE PURPOSE OF BUSINESS: INTERDISCIPLINARY ESSAYS FROM THE CATHOLIC SOCIAL TRADITION xi (S.A. Cortright & Michael J. Naughton eds., 2002) [hereinafter RETHINKING THE PURPOSE OF BUSINESS].

³ See Mark Sargent, *Utility, the Good and Civic Happiness: A Catholic Critique of Law and Economics*, 44 J. CATH. L. STUD. 35 (2005).

⁴ MICHAEL NOVAK, TOWARD A THEOLOGY OF THE CORPORATION 60 (rev. ed. 1990).

corporation and the boundaries of economic conduct.⁵ They are, however, only one aspect of the engagement between Catholic thought and the multinational corporation.⁶ CST has spoken with more than one voice on the question of appropriate corporate structure and conduct; even the practitioners of CST acknowledge that the working out of the implications of CST for corporations is in the beginning stages.⁷ On the one hand, CST principles do not propose any one type of economic structure. Yet on the other hand, they clearly pose limits to economic activity, by state action if necessary, to further other commitments, such as defending the poor.⁸ This paper will outline three major components of the Catholic understanding of economic life, as set out in the recent *Compendium of the Social Doctrine of the Church* and other documents: the common good, solidarity, and “subsidiarity.”⁹ Next, the paper will examine whether subsidiarity offers a way for CST to address the challenges of the multinational form. In particular, the paper will break down subsidiarity into three characteristics—size, structure, and purpose—as the analytic framework to see whether CST can offer any guidelines for the multinational.

CST’s serious engagement with the social and moral issues raised by corporate and multinational conduct can be traced to the American theologian Michael Novak whose 1990 book, *Toward a Theology of the Corporation*, sets out a case for understanding corporations in general, and the large corporation in particular, in the light of Catholic teaching.¹⁰ Novak’s argument is twofold.¹¹ First, he argues that the corporation is a private institution that can protect individuals from the corrosive powers of the state. “Corporations . . . are a useful instrument of social justice, a mediating institution between isolated

⁵ See generally COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (2004) [hereinafter CSD].

⁶ See Diarmuid Martin, *Globalisation in the Social Teaching of the Church*, in THE SOCIAL DIMENSIONS OF GLOBALIZATION 82 (Louis Sabourin ed., 2000) [hereinafter SOCIAL DIMENSIONS] (noting that, until recently, globalization, including economic globalization, was not a theme of Church teaching).

⁷ RETHINKING THE PURPOSE OF BUSINESS, *supra* note 2, at xv (noting “relative silen[ce]” from Catholic universities on questions of business practice).

⁸ See, e.g., CSD, *supra* note 5, ¶ 351.

⁹ See generally *id.*

¹⁰ See generally NOVAK, *supra* note 4.

¹¹ Sargent, *supra* note 3, at 43–44.

individuals and the omnipotent state.”¹² Novak first wrote this in 1981, and his analysis is in part a defense of capitalism against the “anticapitalist bias” he saw in many Western intellectuals during the Cold War.¹³ He proposed “for the consideration of theologians the notion that the prevailing moral threat in our era may not be the power of the corporations but the growing power and irresponsibility of the state.”¹⁴ The large corporation, in other words, is a barrier to socialism. Others have taken up Novak’s argument, and today represent what Mark Sargent has called the “right wing” of CST scholars.¹⁵ They have argued that the principle of subsidiarity is the CST principle that clearly expresses this anti-state bias. Legal scholar Stephen Bainbridge has written that subsidiarity is the means of protecting individual liberty from the power of the state by carving out a private sphere beyond the government’s reach.¹⁶ Corporations also provide an environment for people to exercise virtues such as industriousness, thrift, and creativity.¹⁷ In particular, some scholars have argued that the history of the corporation provides evidence that it was envisioned as a tool to encourage the growth of small businesses.¹⁸ For example, beginning with New York in 1822, states concluded that limited liability should be adopted as policy because this structure serves “democratic goals” by acting “as a means of encouraging the small-scale entrepreneur, and of keeping entry into business markets competitive and democratic.”¹⁹ Father Robert Sirico has written that subsidiarity is a necessary bulwark of the entrepreneurial economy, and its primary purpose is to “set[] limits for state intervention” in order to allow for more voluntary

¹² NOVAK, *supra* note 4, at 3.

¹³ *Id.* at 15.

¹⁴ *Id.* at 34.

¹⁵ Sargent, *supra* note 3, at 4.

¹⁶ See Stephen M. Bainbridge, *Catholic Social Thought and the Corporation* 3 (UCLA Sch. of Law Research Paper Series, Paper No. 03-20, 2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=461100.

¹⁷ *Id.* (“Put another way, subsidiarity logically implies that subordination of economic institutions to the state poses a grave threat to both communal and personal liberty”); see also Stephen M. Bainbridge, *Law and Economics: An Apologia*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Michael W. McConnell et al. eds., 2001).

¹⁸ Bainbridge, *supra* note 16, at 3.

¹⁹ Stephen B. Presser, *Thwarting the Killing of the Corporation: Limited Liability, Democracy, and Economics*, 87 NW. U. L. REV. 148, 153–56 (1992).

business and social action.²⁰ This argument has support in official Church documents. For example, the recent *Compendium* provides that “subsidiarity is opposed to all forms of collectivism [and it] sets limits for state intervention.”²¹ If left unchecked, the state “tends to absorb within itself” other institutions, such as the family and religious bodies.²²

Novak’s second argument is theological. He argues that corporations can be “instruments of redemption . . . [and] of God’s grace.”²³ As the corporation is where many people spend their working lives, a religious critique should consider the possibility that there are “signs of grace in the corporation,” such as creativity and the protection of liberty.²⁴ Indeed, in a later article Novak writes that “[b]usiness is a noble Christian vocation, a work of social justice, and the single greatest institutional hope of the poor of the world.”²⁵ Accordingly, theologians should not reject the corporation, but should instead embrace its possibility as a channel of grace for those working within it. In *Theology*, Novak discusses the multinational only briefly, primarily noting that most American corporations are in fact *not* multinationals, and identifying four contributions multinationals make to their host countries: capital facilities, technological innovations, easing the host country’s balance of payments, and wages paid to the host country’s workers which remain in that country and are available for saving or investment.²⁶ He deals with general arguments against the potential dangers that corporations pose, but not specifically with those of multinationals.

While influential, these arguments have not completely carried the day. Some CST scholars—Sargent’s “left wing”—have given up hope in the corporate form, considering it a mere shell for human greed that lacks the moral compass that should

²⁰ Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Application*, 11 NOTRE DAME J.L. ETHICS & PUB. POL’Y 549, 551 (1997).

²¹ COMPENDIUM OF THE CATECHISM OF THE CATHOLIC CHURCH ¶ 1885 (2d ed. 1997) [hereinafter CATECHISM OF THE CATHOLIC CHURCH].

²² JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 45 (2002) [hereinafter *CENTESIMUS ANNUS*].

²³ NOVAK, *supra* note 4, at 60; *see also id.* at 7 (stating that corporation is also a metaphor for “the ecclesial community”).

²⁴ *Id.* at 43–49.

²⁵ Michael Novak, *A Philosophy of Economics*, 1 U. ST. THOMAS L.J. 791, 791 (2004).

²⁶ NOVAK, *supra* note 4, at 40–42.

guide a human decision maker.²⁷ As Quigley has argued, “[t]hough there has been much discussion about making corporations moral or socially responsible, their legal DNA prevents them from acting like humans and having the chance to act in moral ways.”²⁸ Therefore, the argument goes, the corporate form should be abolished to allow “the full panoply of ethical and social responsibility” embodied in CST to act directly upon the individuals who engage in business conduct, rather than indirectly through the corporate form.²⁹ Others have disputed Novak’s claims that corporations, considered as themselves, have any theological status.³⁰

This pessimistic view of the corporation in general, and the multinational in particular, has also found occasional expression in official Catholic teaching. The 1981 Papal Encyclical *Laborem Exercens*, for example, attributed the exploitation of poorer nations to “the companies referred to as multinational or transnational [that] fix the highest possible prices for their products, while trying at the same time to fix the lowest possible prices for raw materials or semi-manufactured goods.”³¹ A second encyclical, *Sollicitudo Rei Socialis*, which appeared in 1987, echoed this criticism. In it, the Pope asserted that

The international trade system today frequently discriminates against the products of the young industries of the developing countries and discourages the producers of raw materials. There exists, too, a kind of international division of labor, whereby the low-cost products of certain countries which lack effective labor laws or which are too weak to apply them are sold in other parts of the world at considerable profit for the companies engaged in this form of production, which knows no frontiers.³²

²⁷ See, e.g., William Quigley, *Catholic Social Thought and the Amoralism of Large Corporations: Time to Abolish Corporate Personhood*, 5 LOY. J. PUB. INT. L. 109, 125–28 (2004) (noting that there is no realistic proposal that would remedy the lack of social responsibility that has characterized corporations).

²⁸ *Id.* at 109.

²⁹ *Id.* at 128.

³⁰ See Sargent, *supra* note 3, at 22 (“At times, such is his enthusiasm that his ‘theology of the corporation’ verges on an idolatry of the corporation that does not even admit the possibility of critique.”).

³¹ JOHN PAUL II, ENCYCLICAL LETTER *LABOREM EXERCENS* ¶ 17 (1981) [hereinafter *LABOREM EXERCENS*].

³² JOHN PAUL II, ENCYCLICAL LETTER *SOLLICITUDO REI SOCIALIS* ¶ 43 (1987) [hereinafter *SOLLICITUDO REI SOCIALIS*].

I. THE MULTINATIONAL TODAY

As Micklethwait and Wooldridge recount in their history of the corporation, the multinational is now perhaps the largest force in the world economy; in 2001 there were approximately 65,000 “transnational corporations” employing fifty-four million people, with nineteen trillion dollars in revenues.³³ The largest of them dwarf, by some estimates, the GDP of some nations.³⁴ While international economic concerns have existed in Europe since the early Middle Ages,³⁵ developments in technology, information processing, and political decentralization have all contributed to the growth of a new kind of multinational firm: flexible, powerful, and quickly able to move its workforce, production, and managerial assets from one geographic region to another.³⁶ The growth of the multinational relative to state power is especially noteworthy now, when the power and autonomy of individual states have arguably been diminished by the ease of movement possessed by capital and labor; “nation-states can no longer avoid coming to terms with the expectations of the international capital markets.”³⁷ Indeed, the globalization of markets would not be possible without them: “Multinational firms form the institutional structure through which most of the global economic integration takes place,” especially in the finance sector.³⁸ This paper will define the multinational as a corporate entity with its legal existence and significant shareholders located primarily within one country, but that has operations, either directly or in the form of subsidiaries, in other countries.

³³ JOHN MICKELTHWAIT & ADRIAN WOOLDRIDGE, *THE COMPANY: A SHORT HISTORY OF A REVOLUTIONARY IDEA* 173 (2003).

³⁴ See Sakiko Fulcoda-Parr, HUMAN DEVELOPMENT REPORT: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD 149 tbl.1 (2002), available at <http://hdr.undp.org/reports/global/2002/en/>.

³⁵ A.W. Clausen, *The International Corporation: An Executive's View*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 13–14 (1972).

³⁶ *Id.* at 14.

³⁷ Stefano Zamagni, *Globalisation and Local Particularities: Globalisation Processes and Transnational Civil Society Between Universality and Particularism*, in SOCIAL DIMENSIONS, *supra* note 6, at 72, 74.

³⁸ Lee Tavis, *Corporate Governance and the Global Social Void*, 35 VAND. J. TRANSNAT'L LAW 487, 492 (2002). For an excellent study of the rise of American multinational firms, see MIRA WILKINS, *THE EMERGENCE OF MULTINATIONAL ENTERPRISE* ix (1970) (examining the rise of American multinational manufacturing corporations with “direct investments in more than just sales abroad” prior to 1914).

Yet, perhaps not surprisingly, the growth of the multinational has coincided with an increasing sensitivity toward its potential dangers. These entities possess great economic and legal power through means such as lobbying, high-quality legal and other professional support, as well as other means.³⁹ Developing countries especially may not have countervailing political or economic force sufficient to counter this power.⁴⁰ The intense competition among multinationals for relative advantage in wages, taxes, and government subsidies makes the location of any particular facility precarious, and increases the pressure these companies can place on governments for favorable terms. This in turn can lead to a breakdown of community norms and exposure of the workforce (especially in less developed nations) to economic hardship if a particular company were to relocate.⁴¹ The Papal Encyclical *Quadragesimo Anno* speaks to the damage wrought by unscrupulous corporate activity as a result of “the individualist spirit in economic life”: a “deadly and accursed internationalism of finance or international imperialism whose country is where profit is.”⁴²

There is also the question of accountability. Numerous instances of multinational misconduct, such as Nestlé’s disastrous marketing of baby formula in developing countries in the late 1970s and early 1980s⁴³ or the Union Carbide Bhopal disaster in 1984 to Royal Shell’s political conduct in Nigeria and the environmental damage its operations caused in the North Sea,⁴⁴ have highlighted the dangers posed by improper multinational conduct in developing nations. Disasters like these have resulted in calls to reform and rein in the multinationals

³⁹ See Martha T. McCluskey, *The Substantive Politics of Formal Corporate Power*, 53 *BUFF. L. REV.* 1453, 1453–54 (2006) (discussing the increasingly privileged position that corporations have in the American legal system).

⁴⁰ Sergio Bernal Restrepo, *The Social and Cultural Dimensions of Globalisation*, in *SOCIAL DIMENSIONS*, *supra* note 6, at 56, 61.

⁴¹ See Giuseppe C. Ruggieri, *The Catholic Social Tradition and Business in the Age of the Worker-Capitalist* 14 (2003), <http://www.stthomas.edu/cathstudies/cst/mgmt/Bilbao/papers/Ruggieri.pdf>.

⁴² PIUS XI, *ENCYCLICAL LETTER QUADRAGESIMO ANNO* ¶ 109 (1931) [hereinafter *QUADRAGESIMO ANNO*].

⁴³ See James E. Post, *Global Codes of Conduct: Activists, Lawyers, and Managers in Search of a Solution*, in *GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME* 103, 108–09 (Oliver F. Williams ed., 2000).

⁴⁴ See THOMAS DONALDSON & THOMAS W. DUNFEE, *TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS* 1–9 (1999).

through codes of corporate conduct and international regulation.⁴⁵ The activities of ITT in Chile in the 1970s, for example, led the United Nations to condemn the political activity of multinationals in developing nations, and the 2002 OECD Guidelines for Multinational Enterprises prohibited multinationals from “any improper involvement in local political activities.”⁴⁶

II. CST AND ECONOMIC LIFE

The Church’s understanding of economic life is centered on the principle that work is a basic part of the individual human vocation.⁴⁷ Indeed, Catholic teaching accords the existence of work as a confirmation of the “profound identity of men and woman created in the image and likeness of God.”⁴⁸ Economic life is merely this principle writ large: “[M]an is the source, the center, and the purpose of all economic and social life.”⁴⁹ This has been a particularly prominent theme in the social encyclicals of Pope John Paul II, for whom “the principal purpose of work is the shaping and development of the laborer’s humanity.”⁵⁰ Two foundational principles relevant to the organization of work through business forms flow from this conviction: First, businesses should serve the common good,⁵¹ and second, in pursuing its objectives, businesses must not neglect “the authentic values that bring about the . . . development of the person and society.”⁵²

This understanding of the purpose of economic life differs from that offered by contemporary economics. Stefano Zamagni has characterized conventional economic thinking as embodying “a limited conception of personal well-being and the common

⁴⁵ See, e.g., Paolo N. Rogers, *Multinational Corporations: A European View*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 58, 65 (1972). See generally Post, *supra* note 43 (discussing the development of international codes of conduct).

⁴⁶ ORG. FOR ECON. CO-OPERATION AND DEV., THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 19 (2000).

⁴⁷ CSD, *supra* note 5, ¶ 270.

⁴⁸ *Id.* ¶ 275.

⁴⁹ PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 63 (1965) [hereinafter *GAUDIUM ET SPES*].

⁵⁰ Anthony Scaperlanda, *John Paul II's Vision of the Role of Multinational Enterprise Expansion in Building the Social Economy*, 25 INT'L J. SOC. ECON. 1764, 1765 (1998).

⁵¹ CSD, *supra* note 5, ¶ 338.

⁵² *Id.*

good and which takes little account of human capacities for moral sentiments going well beyond the limited accounting of personal and immediate gains.”⁵³ By focusing strictly on market relationships, economics ignores other economically significant transactions, such as altruism or reciprocity.⁵⁴ In short, “economics . . . neglects something important which affects people’s happiness.”⁵⁵ In contrast, CST proposes to integrate economic life into an anthropology that focuses on satisfying the fulfillment of the whole person, who is “the source, the center, and the purpose of all economic and social life.”⁵⁶ That person is necessarily social, that is, defined by relationships that transcend market connections: Solidarity with others should enable persons to

see the “other”—whether a person, people or nation—not just as some kind of instrument, with a work capacity and physical strength to be exploited at low cost and then discarded when no longer useful, but as our “neighbor” . . . to be made a sharer, on a par with ourselves, in the banquet of life to which all are equally invited by God.⁵⁷

In his encyclicals, Pope John Paul II emphasized that business associations, no less than other kinds of associations, represent one aspect of the naturally social nature of the human person. The encyclical *Centesimus Annus*, for example, describes both business and family with the term “community.” A business is a “community” formed for the sake of filling the needs of society; the family is, among other things, a “community of work.”⁵⁸ This term implicitly rejects the model of the business corporation based solely on voluntary contracts or maximizing

⁵³ Stefano Zamagni, *Happiness and Individualism: An Impossible Marriage 1* (2003) (unpublished draft, on file with author). See generally Stefano Zamagni, *Happiness and Individualism: A Very Difficult Union*, in *ECONOMICS AND HAPPINESS: FRAMING THE ANALYSIS* 303 (Luigino Bruni & Pier Luigi Porta eds., 2005).

⁵⁴ See Pier Luigi Sacco et al., *The Economics of Human Relationships*, in 1 *HANDBOOK OF THE ECONOMICS OF GIVING, ALTRUISM, AND RECIPROCITY* 697–98 (Serge-Christophe Kolm & Jean Mercier Ythier eds., 2006); see also Robert G. Kennedy, *The Virtue of Solidarity and the Purpose of the Firm*, in *RETHINKING THE PURPOSE OF BUSINESS*, *supra* note 2, at 51–52 (distinguishing the “economic paradigm” from CST).

⁵⁵ Luigino Bruni, *The ‘Technology of Happiness’ and the Tradition of Economic Science*, 26 *J. HIST. ECON. THOUGHT* 19, 22 (2004).

⁵⁶ *GAUDIUM ET SPES*, *supra* note 49, ¶ 63.

⁵⁷ *SOLLICITUDO REI SOCIALIS*, *supra* note 32, ¶ 39.

⁵⁸ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 49.

profits. A business, though formed with the end of profit, is still a community of persons. Those working within it, therefore, have obligations of solidarity toward those with whom their work brings them into contact. In particular, the new multinational economy rests upon a radical change in the way we understand economic power. This is the “information revolution,” and the recognition that human skill and ingenuity, and not land or even raw materials, is now the moving force in international economics.

Centesimus Annus, though without explicitly referring to multinationals, saw this development as the new basis for economic strength:

Whereas at one time the decisive factor of production was *the land*, and later capital—understood as a total complex of the instruments of production—today the decisive factor is increasingly *man himself*, that is, his knowledge, especially his scientific knowledge, his capacity for interrelated and compact organization, as well as his ability to perceive the needs of others and to satisfy them.⁵⁹

The encyclical goes on, in detail, to describe the risks and problems with this new state of affairs, as well as its potential advantages. In particular, the encyclical points out that the emphasis on human capital places at a disadvantage those societies where education and other resources are inadequately developed, which could lead to exploitative relationships by more advanced societies.⁶⁰ The encyclical goes on to state that among the “new things” in the economy is the appreciation of business as a “society of persons” in which each person “collaborates in the work of his fellow employees, as well as in the work of suppliers and in the customers’ use of goods, in a progressively expanding chain of solidarity.”⁶¹

⁵⁹ *Id.* ¶ 32.

⁶⁰ *Id.* ¶ 33.

⁶¹ *Id.* ¶ 43; see also Giuseppe C. Ruggieri, *The Catholic Social Tradition and Business in the Age of the Worker-Capitalist* 15, 17–18 (July 2003) (unpublished manuscript, prepared for the Fifth International Symposium on Catholic Social Thought and Management Education), <http://www.stthomas.edu/cathstudies/cst/conferences/bilbao/otherpapers.html> (noting increased emphasis on, and opportunities for, the individual in post-capitalist societies).

A. *The Common Good*

The “common good” is one of the “permanent principles of the Church’s social doctrine.”⁶² It is “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.”⁶³ This common good, however, is not a simple utilitarian calculation equaling the sum of all individual goods. It is instead “indivisible,” and such individual good can only be attained together.⁶⁴ Preserving and furthering the common good “is a central principle of Catholic Social Thought and therefore must be the starting point for defining a Catholic vision of the corporation.”⁶⁵

The common good in an economic context speaks to the proper uses of private property, including corporate property. In the Catholic tradition, the principle of private property is not “absolute and untouchable.”⁶⁶ Rather, because individuals achieve their own good in common with others, property itself has a “universal destination”; that is, the earth was given by God to the whole human race “without excluding or favouring anyone.”⁶⁷ Therefore, any one institution or generation is merely a custodian of property that belongs to humanity as a whole. Such an institution or generation remains, in part, an instrument to help others attain and sustain the common good.

For business organizations, profit is a legitimate component of this common good, and a determination to make a profit is not an improper goal for business. Profit, however, is “insufficient” to measure its success.⁶⁸ Multinationals are no less bound than other business organizations by the statement in *Centesimus Annus* that:

⁶² CSD, *supra* note 5, ¶ 160.

⁶³ *Id.* ¶ 164 (quoting *GAUDIUM ET SPES*, *supra* note 49, ¶ 26).

⁶⁴ CSD, *supra* note 5, ¶ 164.

⁶⁵ Susan J. Stabile, *A Catholic Vision of the Corporation*, 4 SEATTLE J. SOC. JUST. 181, 184 (2005).

⁶⁶ CSD, *supra* note 5, ¶ 177.

⁶⁷ *Id.* ¶ 171 (emphasis omitted).

⁶⁸ Jean-Yves Calvez & Michael J. Naughton, *Catholic Social Teaching and the Purpose of the Business Organization: A Developing Tradition*, in *RETHINKING THE PURPOSE OF BUSINESS*, *supra* note 2, at 3, 11 (emphasis omitted); *see also CENTESIMUS ANNUS*, *supra* note 22, ¶ 35.

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 endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society.⁶⁹

This conclusion derives from the teaching that the “subjective” value of work—the value and dignity of those who work—outweighs its “objective” dimension, the resources and production that go into work.⁷⁰ In other words, profit is not the end of the analysis as to whether corporations are serving the common good.

What constitutes a corporation’s common good? Is it “the whole of society,” as *Centesimus Annus* suggests, just those to whom it has clear legal obligations, or some other grouping? Traditional corporate law in the United States is quite explicit in holding that company directors are responsible only to the shareholders, and that their primary duty is to increase shareholder value rather than to some larger “common good.” The classic statement is that of *Dodge v. Ford Motor Co.*, in which the court declared that “[a] business corporation is organized and carried on primarily for the profit of the stockholders.”⁷¹ As Kenneth Davis has written: “The bedrock principle of U.S. corporate law remains that maximization of shareholder value is the polestar for managerial decisionmaking.”⁷² Behind this settled legal doctrine, however, are a number of assumptions about the corporate form, including whether this doctrine is in fact a doctrine.⁷³ Namely, the model

⁶⁹ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 35.

⁷⁰ See CSD, *supra* note 5, ¶¶ 270–71.

⁷¹ *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919).

⁷² Kenneth B. Davis, Jr., *Discretion of Corporate Management to Do Good at the Expense of Shareholder Gain—A Survey of, and Commentary on, the U.S. Corporate Law*, 13 CAN.-U.S. L.J. 7, 8 (1988). Some scholars have questioned whether the stark separation of ownership and control in a publicly-held corporation serves the interest of shareholders. See Lucian A. Bebchuk, *Letting Shareholders Set the Rules*, 119 HARV. L. REV. 1784, 1792–94 (2006) (“Effective centralized management does not require boards to retain absolute power.”).

⁷³ See Leo L. Clarke, Bruce P. Frohnen & Edward C. Lyons, *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, 150–52 (2005) (questioning the dominance of the shareholder maximization theory); see also Stefano Zamagni, *Religious Values and Corporate Decision Making: An Economist’s Perspective*, 11 FORDHAM J. CORP. & FIN. L. 573, 577–78 (2006) (noting that businesses “may be efficient and generate value even if the objectives include, in addition to profit

assumes that the corporation is designed to increase shareholder value, which as a consequence increases efficiency and lowers social costs for all. Accordingly, there need be no distinct obligation on the corporation or its managers to serve other interests or the society as a whole. As scholars such as Martha McClusky have argued, however, these conclusions need not go together. There is no precise “scientific economic measure” that can “separate a necessary cost in a transaction (i.e., a price) . . . from the peripheral, unnecessary, ‘transaction costs’—like moral hazard—that get in the way of efficient market transactions.”⁷⁴ The question of costs and benefits is inseparable from a consideration of what level of benefit can be accepted at what level of cost, and to whom.⁷⁵

The 1986 United States Bishops’ Pastoral Letter, *Economic Justice for All*, explicitly supported a so-called “stakeholder” model of corporate governance as an alternative to shareholder maximization.⁷⁶ The usual definition of stakeholders is “those groups without whose support the organization would cease to exist.”⁷⁷ The bishops stated that “[e]very business, from the smallest to the largest, . . . depends on many different persons and groups for its success: . . . customers, creditors, the local community, and the wider society. Each makes a contribution to the enterprise, and each has a stake in its growth or decline.”⁷⁸ The bishops implied that it was the obligation of the business

maximization, other variables which take into consideration broader collective interests”).

⁷⁴ Martha T. McClusky, *The Substantive Politics of Formal Corporate Power*, 53 BUFF. L. REV. 1453, 1471–72 (2006).

⁷⁵ See *id.* at 1472–73.

⁷⁶ See NAT’L CONFERENCE OF CATH. BISHOPS, PASTORAL LETTER *ECONOMIC JUSTICE FOR ALL: CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* ¶¶ 298, 305–06 (Washington, D.C., Nov. 18, 1986) [hereinafter *ECONOMIC JUSTICE*]. But see Lynda J. Oswald, *Shareholders v. Stakeholders: Evaluating Corporate Constituency Statutes Under the Takings Clause*, 24 J. CORP. L. 1, 4, 7 (1998) (noting that the effectiveness of stakeholder statutes has been mixed); A.A. Sommer, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later*, 16 DEL. J. CORP. L. 33, 54–55 (1991) (concluding that it “is difficult to predict” whether stakeholder statutes will withstand the traditional emphasis on the duty to shareholders).

⁷⁷ R. Edward Freeman & David L. Reed, *Stockholders and Stakeholders: A New Perspective on Corporate Governance*, 25 CAL. MGMT. REV. 88, 89 (1983).

⁷⁸ *ECONOMIC JUSTICE*, *supra* note 76, ¶ 298; see also Trevor S. Norwitz, “*The Metaphysics of Time*”: A Radical Corporate Vision, 46 BUS. LAW. 377, 384–86 (1991) (“A company exists to make a profit, but it also exists to provide goods and services, create employment and thereby to promote the social welfare generally.”).

community to develop “new institutional mechanisms for accountability” to take into account the interests of these groups.⁷⁹ In particular, the bishops recommended increased partnerships between labor and management, especially in making significant corporate decisions such as plant closings.⁸⁰

Shareholder primacy presents its own problems for CST. First, as Bruce Frohnen and others have argued, such a position is untenable in light of corporate statements that indicate corporations themselves seek goals other than shareholder-maximized profits, as well as economic realities that the shareholder-maximization model cannot explain.⁸¹ In the modern financial world, the existence of an identifiable group of “shareholders” is almost as difficult as defining a set group of stakeholders. Shareholders always must be defined as shareholders as of a particular time. Given the fluid financial markets, shareholders today may not be shareholders tomorrow. Placing their sometimes-transitory interest, therefore, above others, such as long-term workers or the community in which an office or plant is located, may be problematic for CST. Indeed, sophisticated investors such as hedge funds have developed investment strategies that permit them to obtain the legal benefits of shareholders (such as voting) without the economic risks of ownership. For example, purchasing a block of stock while at the same time “shorting” an equal amount of stock protects the investor from economic loss (because if the stock drops in value, the short position increases in value), but also allows the investor to vote the shares it has purchased.⁸² Under the shareholder primacy model, even nakedly short-term interests must be favored over the accumulated interests of workers, suppliers, and even the localities in which a long-term company may be based.

But also, the stakeholder model is not an exact fit for CST. First, the stakeholder/shareholder discussion is itself rooted in a conception that reduces human relationships to an environment

⁷⁹ *ECONOMIC JUSTICE*, *supra* note 76, ¶ 298.

⁸⁰ *Id.* ¶ 303; *see generally* JEFFREY R. GATES, *DEMOCRACY AT RISK: RESCUING MAIN STREET FROM WALL STREET* 7–10 (2001) (outlining proposals designed to give employees and other stakeholders more involvement in corporate decision-making).

⁸¹ *See* Clarke et al., *supra* note 73, at 151–52.

⁸² *See* Ianthe Jeanne Dugan, *Hedge Funds Draw Scrutiny Over Merger Play*, *WALL ST. J.*, Jan. 11, 2006, at C1 (describing the “hedging strategy” used by a hedge fund seeking to influence a merger vote while eliminating economic risk).

defined solely by satisfaction of preferences and voluntary agreements in order to attain those preferences.⁸³ Even when defining stakeholders more loosely, as any group that contributes to the corporation's existence, it seems difficult to imagine that it would be practicable to define such groups of stakeholders—say, “customers,”—of an entity with far-flung global operations. Simply determining the wishes of such groups might be prohibitively expensive or otherwise impracticable.⁸⁴ Additionally, forcing the corporation to have legally enforceable duties towards these varied groups would place an extreme burden on the entity and its management.⁸⁵

The fluidity of the identity of individual shareholders has led to the increased influence of institutional investors, such as mutual funds or pension plans, in the area of corporate governance and shareholder involvement. By 2002, for example, more than half of publicly available shares were held by institutional investors such as mutual funds or pension plans.⁸⁶ Such entities invest in securities on behalf of a changing class of individual investors, but may themselves remain shareholders of a particular corporation over a period of time. But, the mutual fund investor is “essentially a customer of the fund's management,” and looks at the mutual fund as a means of managing investments rather than as a means of asserting their identity as voting shareholders in an identifiable corporation.⁸⁷ The mutual fund votes on their behalf and the shareholders of the fund are more interested in the returns on the particular portfolios in which they are invested rather than the underlying companies. Even if shareholder maximization is the proper goal, it is not clear whether corporate action that raises the value of

⁸³ See S.A. Cortright, Ernest S. Pierucci & Michael J. Naughton, *A Social Property Ethic for the Corporation in Light of Catholic Social Thought*, 2 LOGOS 138, 144–45 (1999).

⁸⁴ See Timothy L. Fort, *Business as a Mediating Institution*, in RETHINKING THE PURPOSE OF BUSINESS, *supra* note 2, at 237, 247–50 (outlining the three major problems with stakeholder theory).

⁸⁵ See Stephen M. Bainbridge, *The Bishops and the Corporate Stakeholder Debate*, 4 VILL. J. L. & INV. MGMT. 2 (2002).

⁸⁶ See *Institutional Investors as a Force for Change*, Nov. 6, 2002, <http://www.upenn.edu/pennnews/researchatpenn/articleprint.php?506&bus>; cf. Presser, *supra* note 19, at 152–53 (criticizing contemporary theories of corporate law for focusing on current dominance of institutional investors and neglecting history).

⁸⁷ David J. Carter, *Mutual Fund Boards and Shareholder Action*, 3 VILL. J. L. & INV. MGMT. 6, 10 (2001).

the mutual fund company's shares always directly translates to the value of the shareholder's shares.

The problems with either the shareholder or stakeholder model are simply magnified in the multinational context. Their shares are held either directly or, in the case of a foreign corporation whose stock trades on an American exchange, in the form of (on the New York Stock Exchange, for example) American Depositary Receipts.⁸⁸ Determining the common good is therefore particularly difficult for multinational managers, who face a series of conflicting loyalties: that of guest, citizen, employee, and foreign and domestic shareholders, among others.⁸⁹ A multinational comprises many communities:

Many of the business units can be located in different and often disparate societies. As communities overlap and nest within one another, societies are formed . . . with institutions that reflect the particular values of that society. . . . The issue is which cultural characteristics of which society should be established as the standard for the multinational network and which should be a part of local managerial discretion for the local business unit.⁹⁰

A different way to analyze the corporation is to combine a view of the corporation as a network or a corporate enterprise group⁹¹ with a notion of the firm's "common good." Corporate enterprise groups differ from the usual understanding of corporate personality in that the concept recognizes that, although there may be many different legal entities within a corporate organization, they are all working for the end of the organization as a whole. Therefore, they should be treated as coordinate parts of one entity, even if the various subsidiaries or

⁸⁸ "An American Depositary Receipt (ADR) is a share of stock of an investment in shares of a non-US corporation." The Investment FAQ, Subject: Stocks-American Depositary Receipts (ADRs), <http://invest-faq.com/articles/stock-adrs.html> (last visited Feb. 13, 2007).

⁸⁹ See Bernard Mennis & Karl P. Sauvart, *Multinational Corporations, Managers, and the Development of Regional Identification in Western Europe*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 22, 23 (1972).

⁹⁰ Timothy M. Tavis & Lee A. Tavis, *Managing the Corporation as Community* 12 (July 2003) (unpublished manuscript, prepared for the Fifth International Symposium on Catholic Social Thought and Management Education), <http://www.stthomas.edu/cathstudies/cst/conferences/bilbao/papers/Tavis.pdf> [hereinafter Tavis & Tavis].

⁹¹ See PHILLIP I. BLUMBERG, *THE MULTINATIONAL CHALLENGE TO CORPORATION LAW* 231–32 (1993).

affiliates are organized as legally separate entities. The multinational has been characterized itself as a community, as a network of related entities, and as a “mediating institution” that enables individuals to develop themselves as human beings.⁹² Further, CST recognizes the multinational’s public dimension, in which “corporate activity has broad social and political ramifications that justify a body of corporate law that is deliberately responsive to public interest concerns.”⁹³

Utilizing a notion of “the common good” of the firm allows consideration of the interests of other groups in management decision-making in the light of extra-economic or religious values, and changes the calculus of decision making to include factors other than maximizing profits.⁹⁴ Like a politician who has responsibility not just for those who voted for him, but for all the voters, “the manager of a large firm is not only the agent of those who employed him . . . but also the fiduciary of those who work under his leadership”⁹⁵ Indeed, the manager has a “precise duty” to care for and promote the human dignity of those working for the manager.⁹⁶ As Calvez and Naughton have argued, this requires “employers and entrepreneurs to create workplace conditions that allow employees to develop.”⁹⁷ While, significantly, American managerial theory and practice have incorporated what Eugene McCarragher has called “a sacralized ideal of the corporation” in its reflections on human personhood, too often the results of that incorporation has been a shallow vision of the human person and has not placed corporate activity in the service of human dignity.⁹⁸

⁹² See Tavis & Tavis, *supra* note 90, at 12.

⁹³ David Millon, *Theories of the Corporation*, 1990 DUKE L.J. 201, 201 (1990).

⁹⁴ See, e.g., Luigino Bruni & Amelia J. Uelmen, *Religious Values and Corporate Decision Making: The Economy of Communion Project*, 11 FORDHAM J. CORP. & FIN. L. 645, 652 (2006).

⁹⁵ Peter Koslowski, *The Common Good of the Firm as the Fiduciary Duty of the Manager*, in BUSINESS AND RELIGION: A CLASH OF CIVILIZATIONS? 301, 306 (Nicholas Capaldi ed., 2005) [hereinafter BUSINESS AND RELIGION].

⁹⁶ CSD, *supra* note 5, ¶ 344.

⁹⁷ Jean-Yves Calvez & Michael J. Naughton, *Catholic Social Teaching and the Purpose of Business Organization: A Developing Tradition*, in RETHINKING THE PURPOSE OF BUSINESS, *supra* note 2, at 7.

⁹⁸ Eugene McCarragher, *Me, Myself, and Inc.: “Social Selfhood,” Corporate Humanism, and Religious Longing in American Management Theory, 1908-1956*, in FIGURES IN THE CARPET: FINDING THE HUMAN PERSON IN THE AMERICAN PAST 185, 189 (Wilfred M. McClay ed., 2007).

B. Solidarity and Human Flourishing

At root, solidarity is a “firm and persevering determination to commit oneself to the common good.”⁹⁹ Solidarity recognizes that all people are united by virtue of their basic humanity, that by nature man is a social being, and that people express the fullness of personality only in and through communities that recognize this social dimension.¹⁰⁰ Those conclusions derive from the recognition of “the intrinsic social nature of the human person, the equality of all in dignity and rights and the common path of individuals . . . towards an ever more committed unity.”¹⁰¹ This sociality is even more pronounced in a globalized age, where the ability to form relationships with others who live at great distances has been made extremely easy due to new technology and where the “interdependence between individuals and peoples” is growing.¹⁰² Due to this recognition of interdependence, solidarity demands action to “determine[] the order of institutions” to correct the imbalances of equality.¹⁰³ The *Compendium* identifies two particular areas of solidarity that must be safeguarded in the globalized economy—that between generations and respect for other cultures.¹⁰⁴ Private property or some ownership of external goods affords each person the scope needed for personal and family autonomy, and should be regarded as an extension of human freedom. “By its very nature private property also has a social quality which is based on the law of the common destination of earthly goods.”¹⁰⁵

Solidarity, therefore, affects economics, including corporate structures and governance. Solidarity and economic efficiency must be examined together, for efficiency at the cost of human flourishing is not acceptable.¹⁰⁶ Corporations are institutions that must be ordered according to recognition of this interdependence. “[A] business cannot be considered only as a ‘society of capital goods’; it is also a ‘society of persons’ in which people participate in different ways and with specific

⁹⁹ CSD, *supra* note 5, ¶ 193.

¹⁰⁰ See Lee A. Tavis, *Modern Contract Theory and the Purpose of the Firm*, in *RETHINKING THE PURPOSE OF BUSINESS*, *supra* note 2, at 224.

¹⁰¹ CSD, *supra* note 5, ¶ 192.

¹⁰² *Id.*

¹⁰³ *Id.* ¶ 193.

¹⁰⁴ See *id.* ¶¶ 366–67.

¹⁰⁵ *GAUDIUM ET SPES*, *supra* note 49, ¶ 71.

¹⁰⁶ See CSD, *supra* note 5, ¶ 332.

responsibilities”¹⁰⁷ Therefore, a corporation cannot be content with seeking only the intermediate goods of, for example, efficiency or wealth creation alone. Because it is composed of individuals whose flourishing is dependent upon everyone working together towards achieving the good of each, a company must also “contribute[] to the genuine development of the persons who participate in its activities.”¹⁰⁸ Individuals have an affirmative duty to recognize their interdependence in their working lives:

Therefore political leaders, and citizens of rich countries . . . have the moral obligation, according to the degree of each one’s responsibility, to take into consideration, in personal decisions and decisions of government, this relationship of universality, this interdependence which exists between their conduct and the poverty and underdevelopment of so many millions of people.¹⁰⁹

C. *Subsidiarity*

Subsidiarity is primarily a principle of governance and organization that has received much attention from CST scholars across a range of issues.¹¹⁰ As Robert Vischer notes, subsidiarity represents a longstanding Catholic social vision rooted in a “complex web of family, social, religious, and governmental ties” that serves to support the exercise of the individual’s responsibility in society.¹¹¹ Making its first explicit appearance in *Quadragesimo Anno*, as summarized in *Centesimus Annus*, subsidiarity posits that:

¹⁰⁷ *Id.* ¶ 338.

¹⁰⁸ Kennedy, *supra* note 54, at 59.

¹⁰⁹ *SOLLICITUDO REI SOCIALIS*, *supra* note 32, ¶ 9. One aspect of this solidarity is a devotion to truth-telling in language and not “selling dreams” that provide a distorted view of the human person. See Raymond N. MacKenzie, *Selling Dreams: Catholicism and the Business Communicator*, 2 LOGOS 118, 136–37 (1999).

¹¹⁰ Cf. Scott Fitzgibbon, “True Human Community”: *Catholic Social Thought, Aristotelean Ethics, and the Moral Order of the Business Community*, 45 ST. LOUIS U. L.J. 1243, 1244 (2001) (discussing Catholic social thought, Aristotle, and the corporations); Susan J. Stabile, *Using Religion to Promote Corporate Responsibility*, 39 WAKE FOREST L. REV. 839, 846 (2004) (proposing “an alternative view of the person and her relation to the world, one rooted in religion, in an effort to influence how academics and others think and talk about the social obligations of corporations”); Amelia J. Uelmen, *Toward a Trinitarian Theory of Products Liability*, 1 J. CATH. SOC. THOUGHT 603 (2004).

¹¹¹ See Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 109 (2001).

A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.¹¹²

The principle is still most often used to describe decentralized government authority. The European Union, for example, has explicitly adopted a form of subsidiarity for its political arrangements.¹¹³

As a political concept, and as Paolo Carozza has pointed out, subsidiarity envisions both a positive and negative role for the state.¹¹⁴ Pope John Paul II has written that the state

has the task of determining the juridical framework within which economic affairs are to be conducted, and thus of safeguarding the prerequisites of a free economy, which presumes a certain equality between the parties, such that one party would not be so powerful as practically to reduce the other to subservience.¹¹⁵

Indeed, as corporations are themselves traditionally understood as creatures of corporate charter, their early existence in American law may be seen as an example of subsidiarity in action because governments permitted the existence of private actors to accomplish functions that were not appropriate for the government to do itself. But, subsidiarity also has a negative or protective aspect. Robert Vischer describes this as subsidiarity's "radical edge," based in a "substantive anthropological vision of

¹¹² *CENTESIMUS ANNUS*, *supra* note 22, ¶ 48.

¹¹³ See Paul D. Marquardt, *Subsidiarity and Sovereignty in the European Union*, 18 *FORDHAM INT'L L.J.* 616, 617–18 (1994). It also posits a role for multinational institutions and cooperation among nations in those situations where the resources of a single nation are insufficient. *Pacem in Terris* explicitly endorsed cooperation among nation-states through international organizations to solve problems that may be beyond the scope of any one nation to solve. See JOHN XXIII, *ENCYCLICAL LETTER PACEM IN TERRIS* ¶ 140 (1963). The encyclical cites to

[t]he same principle of subsidiarity which governs the relations between public authorities and individuals, families and intermediate societies in a single State, must also apply to the relations between the public authority of the world community and the public authorities of each political community. The special function of this universal authority must be to evaluate and find a solution to economic, social, political and cultural problems which affect the universal common good.

Id.

¹¹⁴ See Paolo G. Carozza, *Subsidiarity as a Structural Principle of International Human Rights Law*, 97 *AM. J. INT'L L.* 38, 44 (2003).

¹¹⁵ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 15.

solidarity.”¹¹⁶ This vision is opposed not simply to state power as such, because subsidiarity supports “the prudent devolution of government authority.”¹¹⁷ Rather, on this view, subsidiarity opposes the use of state power to enforce norms that are hostile to Catholic notions of the common good or solidarity, such as collectivism or liberal individualistic norms.¹¹⁸

A kind of subsidiarity has been adopted by a number of companies and is now becoming a dominant mode of organizing multinationals. “Today’s multinational organization consists of multiple business units—subsidiaries and affiliates—with greater authority and responsibility, tightly linked through computerized information networks,” with success measured by the subsidiary’s ability to meet production goals and not its ability to take direction from a far-off, centralized headquarters.¹¹⁹ Many corporations have become “heterarchical,” where “resources, managerial capabilities, and decision-making are dispersed throughout the organization rather than concentrated at the top.”¹²⁰ This new kind of multinational makes a proper understanding of subsidiarity even more important.

Subsidiarity can be understood as comprising three (at least) characteristics that can be applied to corporate governance and organization: size, structure, and purpose.¹²¹ Structure means how to understand the nature of the corporate *person* in a way that maximizes the flourishing of those who work with and in it. Scope is concerned with how to consider whether a corporation or business association is the *right size* for the task it is organized to perform. Finally, purpose is concerned with what the corporation

¹¹⁶ Robert K. Vischer, *Subsidiarity as Subversion: Local Power, Legal Norms, and the Liberal State*, 2 J. CATH. SOC. THOUGHT 277, 278 (2005); see also Simona Beretta, *Wealth Creation in the Global Economy*, in REDISCOVERING ABUNDANCE: INTERDISCIPLINARY ESSAYS ON WEALTH, INCOME, AND THEIR DISTRIBUTION IN THE CATHOLIC SOCIAL TRADITION 129, 149–50 (Helen Alford et al. eds., 2006) [hereinafter REDISCOVERING ABUNDANCE] (referring to subsidiarity as an “ontological” principle).

¹¹⁷ Vischer, *supra* note 116, at 290.

¹¹⁸ See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 21, ¶ 1885.

¹¹⁹ Tavis, *supra* note 38, at 494.

¹²⁰ Lee A. Tavis, *Modern Contract Theory and the Purpose of the Firm*, in THINKING THE PURPOSE OF BUSINESS, *supra* note 2, at 230.

¹²¹ Gerald J. Russello, *Subsidiarity as Business Model*, in BUSINESS AND RELIGION, *supra* note 95, at 313, 318–19.

is supposed to be doing; does its size and structure serve a legitimate end?

III. MULTINATIONAL CORPORATE GOVERNANCE AND SUBSIDIARITY

A. *Do the Principles of CST Limit the Size of Multinationals?*

Are multinationals *too big*? Can they be? Size becomes, in the words of *Quadragesimo Anno*, a “disturbance of right order” only when a larger collectivity assumes the functions of lesser entities or, implicitly, when its size becomes a hindrance to its own functions.¹²² Where that dividing line may be is sometimes unclear, and requires the exercise of prudence by managers in making decisions with regard to expansion or growth opportunities. According to *Centesimus Annus*, people jointly pursuing projects share in a “community of work.”¹²³ To be a community of work means treating individuals as persons, and not solely as means to profit for the shareholders or corporate managers. Therefore, there may be stages in an organization’s growth where it can no longer respond, or even recognize, the needs of the members of the overlapping communities that make up its existence. So while CST may not oppose large business associations on the basis of their size alone, the sheer size of an activity poses unique problems from a CST perspective, because solidarity and the common good may become harder to achieve or maintain.

At the one extreme, a multinational may violate subsidiarity in circumstances where it becomes so big it assumes the properties of a state. The clearest examples of this may be the company town, or where a large multinational dominates the politics of a small or underdeveloped host country. In such circumstances, the corporation has assumed responsibilities that do not properly belong to it, such as governing the non-employment aspects of employee lives, assuming traditional governmental functions (such as control over the legitimate use of force or the creation of currency), or interfering with the legitimate government of a nation.¹²⁴ In CST, the State does

¹²² *QUADRAGESIMO ANNO*, *supra* note 42, ¶ 79.

¹²³ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 32.

¹²⁴ This conclusion is complicated in cases in which a multinational’s actions

have a role to play in protecting rights and ordering social life and especially in ensuring that those goods that “are not and cannot be mere commodities . . .” are preserved.¹²⁵ To have an economic institution replace the social functions of the State would violate the subsidiarity principle.

In less extreme cases, however, considering size includes examining whether particular industries or economic sectors are at a greater risk of interfering with the “internal life” of a multinational’s constituent parts or with the communities it serves. High-tech industries or industries where logistics are complex and multifaceted, such as petroleum or automobile production, have been most hospitable to multinational growth.¹²⁶ The ability to transfer technology or expertise, or the ready access to capital markets, enable such multinationals to bring to bear financial resources that are necessary to create the infrastructure and facilities for their operations. In such instances, subsidiarity can foster entrepreneurship as well, not just in the classic economic sense of wealth creation, but also in a context that cultivates the virtues that are “the nexus between effective business activity, including wealth creation, and effective and just forms of wealth distribution.”¹²⁷

Conversely, other industries that have possibly conflicting goals may find inclusion in the same multinational problematic.

increase sensitivity toward disadvantaged groups, for example by influencing a totalitarian state, therefore furthering solidarity or the common good. In the context of international law, subsidiarity “necessarily goes beyond the rigid dualism of states on one side and international community on the other, and includes in its ambit a variety of sub and supranational levels of association and authority in human rights.” Carozza, *supra* note 114, at 67. Indeed, *Centesimus Annus* lays the primary responsibility on preserving human rights in the economic sector “not [on] the state but to individuals and to the various groups and associations which make up society.” *CENTESIMUS ANNUS*, *supra* note 22, ¶ 48. This responsibility bears further scrutiny today, since multinationals in some cases are stronger than the governments of the nations in which they operate. At the same time, as international institutions such as the UN, WTO, and others have increased their roles, multinational corporations have also grown in influence. See Renata Buarque Goulart Coutinho & Hélène Bertrand, *Global . . . Business Ethics? Challenges and Paradoxes* 4–5 (2003) (unpublished manuscript), <http://www.sase.org/oldsite/conf2003/papers/coutinho-bertrand.pdf>.

¹²⁵ CSD, *supra* note 5, ¶ 349.

¹²⁶ John Fayerweather, *The Internationalization of Business*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 5 (1972).

¹²⁷ Francis T. Hannafey, *Entrepreneurship in Papal Thought: Creation of Wealth and the Distribution of Justice*, in REDISCOVERING ABUNDANCE, *supra* note 116, at 102, 119.

Such circumstances require a careful consideration of the details of the relevant businesses that compose the multinational, and whether the businesses conflict in such a way as to hamper their individual flourishing. For example, the ownership of news organizations by an entertainment conglomerate may pose difficulties for the proper functioning of the news organizations. The ability of the latter to carry out its function of gathering and reporting news may be restricted by its inclusion within the larger entity, which may be concerned with the impact of negative news reports about its advertisers or clients. Or one could look to the growth of law firms and accounting firms from small, city-based partnerships to multinational limited liability structures with global clients. There is a growing literature that such growth has harmed not only the practice of those professions, but also the emotional and professional lives of those working within such institutions.¹²⁸

B. Do the Principles of CST Dictate the Structure of the Multinational Corporate Form?

CST does not require any particular form of business organization so long as the organization shapes economic activities by the principles of solidarity, subsidiarity, and the common good. American corporate law in general treats the corporation as a “legal fiction,” that is, as a legal personality separate from its owners and directors, in which the directors act as custodians for shareholder value. The shareholders, in turn, have risked their equity in the corporation in exchange for the possibility of a return on their investment. The corporate entity has all the basic legal rights of owning and disposing of property, suing and being sued, and similar rights that mark it as a legal “person,”¹²⁹ unlike, for example, a partnership or unincorporated association. Changes in law and business practice in the early twentieth century changed the understanding of the corporation from a state-chartered entity towards a view that understood the corporation as a “natural entity” established by the incorporators

¹²⁸ See, e.g., M. Cathleen Kaveny, *Living the Fullness of Ordinary Time: A Theological Critique of the Instrumentalization of Time in Professional Life*, 28 COMMUNIO 771, 773–74 (2001) (discussing the detrimental effects of large law firm life on the meaning and purpose of a lawyer’s life).

¹²⁹ BLUMBERG, *supra* note 91, at 209–10 (1993).

and shareholders, with only minimal state involvement.¹³⁰ This movement permitted early proponents of corporate autonomy to downplay the public nature of the corporate charter, and to assert that its “private” character relieved the corporation of public responsibilities.¹³¹

That conception, however, has been partially displaced by the “nexus-of-contracts” theory,¹³² which provides that “most organizations are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals.”¹³³ On the contractual view, therefore, there is no separate “corporation”: there are only individual contractual relationships that exist for the benefit of the contracting parties. Therefore, we should not expect the corporation to have any duties or responsibilities—public or otherwise—not set out in the relevant contracts and that do not contribute to the increase of shareholder value. Contractarian theory posits autonomous individuals who seek to make the most advantageous bargain. If the corporation is not a separate entity and exists only to serve the profit-maximizing interests of the contracting parties, it cannot have any independent responsibilities to do anything else.¹³⁴ This move to a contractual theory had the same rhetorical effect as the earlier move to the “private entity” theory: to eliminate any obligations of the corporation, other than shareholder profit.¹³⁵

Neither of these conceptions is completely satisfactory from a CST perspective. At the outset, it is unclear whether the model of the corporate person—as either a separate legal person or a nexus of contracts maximizing efficiency—need be accepted as arising from basic economic rules. There has been, for example, a large body of critical legal work on the corporation that bases its success not in economic efficiency, but in political

¹³⁰ Millon, *supra* note 93, at 214–16.

¹³¹ *Id.* at 211–12.

¹³² See Stephen M. Bainbridge, *Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship*, 82 CORNELL L. REV. 856, 859–60 (1997) (“As a matter of intellectual interest, the debate over the contractual nature of the firm is over.”).

¹³³ Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305, 310 (1976). This insight derives from the work of Ronald Coase. See R.H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 387 (1937).

¹³⁴ See Stabile, *supra* note 65, at 188–89 (noting that the contractarian theory represents an “impoverished vision of the human person” at odds with CST).

¹³⁵ See Millon, *supra* note 93, at 230–31.

maneuvering, or self-interest.¹³⁶ As a general matter, arguments in favor of the classic corporate form too often assume arguments that instead should be proven, such as whose efficiency is being maximized, and to what purpose, and what other costs are being ignored or accepted. Some strong versions of the corporation as fully separate from the managers who run it can serve to shield otherwise unethical behavior by corporate managers, who have no personal responsibility for the decisions.¹³⁷

Both conceptions share the same flaw: treating the corporation as an instrument for profit or wealth creation and not—as CST understands it—as a community oriented toward the common good and devoted to the solidarity and flourishing of its members. For its part, the nexus theory treats questions of culture or extra-economic obligations as extrinsic to the life of the business. Corporations do, however, have their own unique histories, cultures, and identities. Indeed, many corporations tout such cultures in their advertising or public relations materials. As John Paul II has emphasized, human activity always occurs within a particular cultural context.¹³⁸ Any analysis of subsidiarity in a multinational, therefore, must also take into account the different cultural circumstances in which the multinational operates. Because multinationals encompass multiple communities across many nations, subsidiarity must be utilized to preserve the autonomy of these communities as centers of human flourishing, within the overall community of the multinational organization. These identities arise from the traditions and customs of the people working within a particular business division or unit. For example, there may be craft traditions at a car company, or ways of solving problems customary at an engineering firm. Corporations, in other words, have “cultures” that are not reflected in any nexus of contracts, and which have weight and exist through time.¹³⁹ A corporation—even when it is formally considered a combination of contracts—does not absolve the individuals who executed the

¹³⁶ See McCluskey, *supra* note 39, at 1456 n.19.

¹³⁷ See Clarke et al., *supra* note 73, at 144.

¹³⁸ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 51.

¹³⁹ See, e.g., Clarke et al., *supra* note 73, at 151 nn.31–32, 152 n.35 (citing corporate statements, including Ford Motor Company, Whole Foods, and Target); Timothy L. Fort, *Business as a Mediating Institution*, in *RETHINKING THE PURPOSE OF BUSINESS*, *supra* note 2, at 237, 242–43 (discussing the “communal” nature of the corporation).

contracts from their social obligations, even though they are acting through the corporate form.

Accordingly, a multinational should strive to combine solidarity with subsidiarity to avoid either a deadening centralization (solidarity without subsidiarity) or a disjointed and unwieldy collection of autonomous unity that has no conception of the common good to be served (subsidiarity without solidarity). Further, a multinational will have to handle these dangers while at the same time being sensitive to the varied local communities in which it operates, each of which may have their own ways of translating solidarity, the common good, and subsidiarity. Any multinational structure should develop a framework for handling inter-cultural issues, as well as a decision-making process for determining which practices or principles should take precedence in which circumstances.¹⁴⁰

C. *What Can CST Say About Multinational Purposes?*

The next aspect of the multinational that subsidiarity impacts is purpose. CST—given its rich view of the human person—“rejects the idea that social welfare is merely a question of giving people what they want without regard to what it is that people want.”¹⁴¹ CST restricts what businesses a corporation may pursue; that is, some purposes may be improper aside from any question of making a legitimate profit.

Understanding a corporation’s purpose has two aspects. First, there is the business purpose of the corporation; at the most general level, the purpose of every corporation is to make a profit for its shareholders or management. But, as Frohnen shows, many corporations have more specific purposes. Forming a corporate purpose is the responsibility of all levels of the organization, especially the senior managers.

Fulfillment comes through service to a cause, an idea, a mission, or others external to ourselves; best a purpose with a transcendent character. Each of us has the right to the dignity that comes from a job with real purpose. The role of the leader is to create this purpose for the unskilled worker as well as for

¹⁴⁰ See, e.g., DONALDSON & DUNFEE, *supra* note 44, at 27, 49 (developing a theory of “hypernorms” to govern corporate decision-making).

¹⁴¹ Stabile, *supra* note 65, at 189.

the highly skilled technical workers or the executives in the organization.¹⁴²

As Goodpaster shows in his study of Medtronic, Inc., it is possible to imbue an organization with purpose that extends not only through, but beyond, the company's products. Goodpaster identifies several features of the corporate environment, including witness, frequent emphasis on the corporate mission of healing, and taking into consideration the firm's mission when considering acquisitions or other corporate action. *Laborem Exercens* is quite clear on the importance of fostering individual initiative and virtue. The encyclical warned that "excessive bureaucratic centralization" can extinguish the meaning that people put into their work.¹⁴³ Such centralization can engender the feeling in employees that they are mere "production instrument[s]" rather than human persons. "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 offended."¹⁴⁴

More generally, corporations have as a purpose serving the common good. Multinationals especially are enjoined to act for the benefit of others. "One of the fundamental tasks of those actively involved in international economic matters is to achieve for mankind an integral development in solidarity . . . [which] requires a vision of the economy that . . . guarantees an equitable distribution of resources . . ." and is responsive to the interdependence of peoples.¹⁴⁵ This vision may take a number of forms, from direct aid to underdeveloped communities in which the multinational operates, to other methods.

CONCLUSION

The influence and power of multinationals in the globalized economy make them prime subjects to consider in light of CST. Even though the "turn to subsidiarity" among some multinationals has occurred primarily because profits today seem to come from decentralization, rather than any awakening

¹⁴² Kenneth E. Goodpaster & Thomas E. Halloran, *Anatomy of Corporate Spiritual and Social Awareness: The Case of Medtronic, Inc.* (1999) (unpublished manuscript, on file with author).

¹⁴³ *LABOREM EXERCENS*, *supra* note 31, ¶ 15.

¹⁴⁴ *CENTESIMUS ANNUS*, *supra* note 22, ¶ 35.

¹⁴⁵ CSD, *supra* note 5, ¶ 373.

interest in CST, multinationals now are in a closer position to being “communities of work” than a generation ago, with the potential for better understanding of their public and internal responsibilities. Accordingly, CST can contribute to explicating what a truly “subsidiarized” multinational might look like, considered along the axes of scope, structure, and purpose. As explained above, on certain questions, such as profit maximization, devotion to shareholders, and sensitivity to local norms, a CST-inflected approach may lead to diverging conclusions from other contemporary theories of corporate conduct. Further, multinationals may now be evolving toward a form in which subsidiarity plays a prominent role. Therefore, there is a possibility that their ability to instantiate solidarity and other principles of CST in other countries, and to exercise their role, in cooperation with the state, of preserving human dignity, may be enhanced.

There is at least one reservation, however, in assessing the multinational role. While the disparities between labor and capital may be disappearing in the developed world, the evils of economic rapacity that Popes Leo XIII and Pius XI warned against are far from vestigial in the developing world. Multinationals too often act like the extractive corporations of old, and the market pressure described above limits significant progress in forming lasting communities of work that would help developing nations lift themselves out of poverty. Just as importantly, the rich social context embedded in the principle of subsidiarity can fit uneasily with the market-driven model based on an individualistic view of the person, either in the form of worker, consumer, or shareholder.