

NOTE

**STAKEHOLDER UNREST,
DENOMINATIONAL THEOLOGY, AND
ECONOMIC VERACITY:
WHY THE SHAREHOLDER VALUE
MAXIMIZATION NORM SHOULD
REMAIN UNCHANGED**

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*Business is a noble Christian vocation, a work of social justice,
and the single greatest institutional hope of the poor of the
world, if the poor are to move up out of poverty.*¹

I. POTHoles ON WALL STREET

In the early twenty-first century, a few significant scandals rocked Wall Street and rattled the cages of American investors, calling into question the integrity of some publicly traded companies.² At the forefront of these scandals was the notorious Enron debacle, which has come to exemplify an unpleasant juncture that investors hope will never repeat. The examination of Enron's fall and other similar scandals has brought renewed relevancy to certain fields of discussion, including law, economics, ethics, and religion.³ Of specific interest to this Note

[†] J.D. Candidate, June 2007, St. John's University School of Law; B.S., 2004, DePaul University. With sincere gratitude, I dedicate this Note to those who have strongly influenced my seven years at Vincentian universities by teaching me that an authentic desire to understand life's wondrous complexities is the greatest tool for addressing complicated problems. Your names are too numerous to count and your impact, immeasurable.

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

² See Susan J. Stabile, *Using Religion To Promote Corporate Responsibility*, 39 WAKE FOREST L. REV. 839, 845 n.16 (2004) (citing major corporations that lost significant market value due to financial misstatements or questionable business practices).

³ See generally Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH & LEE L. REV. 1423 (responding to Professor Green's belief that a new corporate legal framework is

are questions that implicate more than one of these categories. For instance, is the current directorial and managerial obligation to maximize shareholder value the correct legal approach? Are the pertinent teachings of the Christian religion compatible with this value maximization norm?

This Note will present various stances with regard to these questions, and ultimately opine that the shareholder value maximization norm should remain unchanged. Part II will demonstrate the problem of “corporate unrest” through the eyes of shareholders and stakeholders by using the notorious Enron collapse.⁴ Part III will discuss one perspective of Christian teaching as it applies to the topics of humanity and wealth, two of the elements implicated in this discussion of shareholder value maximization principles.⁵ Next, Part IV will enumerate the value maximization norm itself, as set forth in the famous case, *Dodge v. Ford Motor Co.*⁶ Part V will present some contrasting denominational analyses of Christianity’s compatibility with the norm.⁷ Finally, Part VI will conclude with the assertion that, regardless of the denominational viewpoint adopted, the law as it exists today is compatible with the Christian doctrinal analysis presented in this Note and is the best approach for preserving the integrity of the market and benefiting society as a whole.⁸

This Note takes for granted that corporations are generally beneficial to society and contribute tremendously to economic growth, efficiency, and prosperity. It does not allege problems or propose solutions to specific issues associated with corporate unrest, nor does it directly critique decision-making from a management perspective. Instead, this Note asserts that the shareholder value maximization norm is compatible with Christian teaching from a theological perspective and opines that

required, and advocating preservation of the traditional shareholder value maximization norm); Ronald M. Green, *Shareholders as Stakeholders: Changing Metaphors of Corporate Governance*, 50 WASH. & LEE L. REV. 1409 (1993) (arguing to set aside the current corporate duty to maximize shareholder value in favor of a new duty that advocates decision-making through a framework that involves interplay between legal duties and moral considerations); Stabile, *supra* note 2, at 839 (making a case for involving religion in the discussion of corporate ethics and reform as an alternative to purely isolated rationalism).

⁴ See discussion *infra* Part II.

⁵ See discussion *infra* Part III.

⁶ 170 N.W. 668 (Mich. 1919); see also discussion *infra* Part IV.

⁷ See discussion *infra* Part V.

⁸ See discussion *infra* Part VI.

the norm remains the best way to ensure both shareholder and stakeholder well-being. The Enron story that unfolds in the following pages is by no means representative or encompassing of the many issues corporations, directors, officers, shareholders, or stakeholders face; it is intended to show why everyone should care about this policy discussion in a major way.

II. THE FALL FROM GRACE: ENRON IMPLODES

In October of 2001, just one month after the world watched the symbols of capitalism fall from the sky over Lower Manhattan, Wall Street took a major hit when Enron publicly announced a \$544 million after-tax charge against its earnings and a \$1.2 billion reduction in shareholders' equity.⁹ This was the beginning of the end for the company. Over the next several months, investors and creditors would learn that the energy giant was a "house of cards." The shell game was soon exposed: special purpose entities and phantom hedges had allowed one of America's most prominent companies to conceal massive fraud.

A. *Illegitimate Special Purpose Entities*

Corporations have employed "special purpose entities" to achieve many ends. Among the more common purposes is the securitization of income-generating assets.¹⁰ From an accounting perspective, many special purpose entities are significant because they can be removed from the consolidated financial statements.¹¹ This structure can be advantageous to companies because public financial statements, which influence investor decisions, are unaffected by financial fluctuations within the special purpose entity. The trade-off is that the corporation employing the entity must transfer a material amount of risk and control from the company to independent outsiders—those who do not have a financial interest in the overall company—in order to prevent abuse of the structure.¹² To ensure risk transfer,

⁹ David Millon, *Who "Caused" the Enron Debacle?*, 60 WASH. & LEE L. REV. 309, 317 (2003).

¹⁰ *See id.* at 316.

¹¹ *See id.* at 316–17. A financial statement is a "written record of the financial status of an individual, association, or business organization. The financial statement includes a balance sheet and an income statement . . . and may also include a statement of changes in working capital and net worth." JACK P. FRIEDMAN, *DICTIONARY OF BUSINESS TERMS* 258 (3d ed. 2000).

¹² Millon, *supra* note 9, at 316.

accounting rules require that independent outsiders foot at least three percent of the entity's capital.¹³ Failure to observe this imperative requirement results in the automatic collapse of "special purpose" status, denial of transaction recognition between the corporation and the special purpose entity, and forced consolidation¹⁴ of the entity into the corporation's public financial statements.¹⁵

Enron created hundreds of special purpose entities in order to accomplish a range of questionable objectives.¹⁶ For example, the company engaged in transfers with entities that disguised loans as prepaid commodities trades.¹⁷ This accounting maneuver allowed Enron to conceal liabilities from its balance sheet and maintain its investment-grade credit rating.¹⁸ Additionally, Enron failed to meet the three percent outside capital requirement on some of the entities.¹⁹ Public disclosure of these facts began a downward spiral that led the company to file for bankruptcy on December 2, 2001.²⁰ The investigation report revealed, "the transactions lacked genuine economic substance and instead 'apparently were designed to accomplish favorable financial statement results, not to achieve *bona fide* economic objectives or transfer risk.'" ²¹

B. Phantom Hedges

Hedging contracts serve as a method for eliminating risk. In

¹³ *Id.*

¹⁴ Consolidation is the effect achieved by consolidated financial statements, which are "financial statement[s] that bring[] together all assets, liabilities, and other operating accounts of a parent company and its subsidiaries." FRIEDMAN, *supra* note 11, at 134. Special purpose entities, if maintained properly, serve the purpose of avoiding some of this effect.

¹⁵ Millon, *supra* note 9, at 316–17.

¹⁶ *Id.* at 316.

¹⁷ *Id.*

¹⁸ *Id.* A major factor in credit rating is the degree of liabilities assumed by an entity. KENNETH M. MORRIS & VIRGINIA B. MORRIS, *THE WALL STREET JOURNAL GUIDE TO UNDERSTANDING MONEY & INVESTING* 89 (1999). Therefore, a lower level of liability is preferable to a company trying to achieve a high-level credit rating. *Id.* Excessive liabilities or financial losses resulting from deteriorating financial condition may lead to a bond rating downgrade, which will force the company to pay higher interest rates on new issues. *Id.*

¹⁹ Millon, *supra* note 9, at 317.

²⁰ *Id.*

²¹ *Id.* (quoting WILLIAM C. POWERS JR. ET AL., REPORT OF INVESTIGATION BY THE SPECIAL INVESTIGATIVE COMMITTEE OF THE BOARD OF DIRECTORS OF ENRON CORP. 4 (2002), available at 2002 WL 198018).

one ideal example, a company will purchase put options from an independent hedger. Often, these put options are associated with corporation holdings of stocks in other companies. The put options give the corporation the right to sell the investment stocks at a specified price if they lose value, thereby minimizing losses for the seller.²² Hedging contracts typically involve full transfer of risk to an independent and financially self-sufficient third party.²³

Enron created special purpose entities to act as hedgers against its own “merchant equity portfolio,” which contained stocks in other companies.²⁴ Enron then funded the hedging contracts with its own stock, so there was no real transfer of risk to the hedger.²⁵ Essentially, “Enron was hedging risk with itself.”²⁶ It appears that Enron ideally intended the following scenario: if investments in other companies fell in value, the special purpose entity would purchase the stock with capital raised by Enron holdings. This would prevent Enron from having to recognize substantial losses in its merchant equity portfolio on its own consolidated financial statements. Enron did not prepare for the possibility that its own share value might decline, which would undermine the hedger’s ability to raise capital to honor the put options. Therefore, when Enron’s stock value did fall, the special purpose entity was unable to execute its hedging contracts, forcing Enron to recognize the loss of some of its merchant equity portfolio on its own consolidated financial statements.²⁷

C. *Deferred Compensation Bank Run*

Enron utilized a deferred compensation plan that allowed employees to place up to thirty percent of salaries and one-hundred percent of bonuses in a “trust” held by the corporation.²⁸ The tax advantage of this arrangement was a payout at retirement, when employees would be in a lower tax bracket.²⁹

²² See FRIEDMAN, *supra* note 11, at 553.

²³ Millon, *supra* note 9, at 318.

²⁴ *Id.* at 317.

²⁵ *Id.*

²⁶ *Id.* at 318 (citing POWERS, *supra* note 21, at 97).

²⁷ *Id.*; see also *supra* note 18 (explaining the relationship between financial loss and bond rating).

²⁸ Eric Berger, *The Fall of Enron*, HOUSTON CHRON., Aug. 4, 2002, at A1.

²⁹ *Id.* The United States utilizes a progressive tax scheme in which the “rate

In October 1997, Enron modified a rule such that members of some of its deferred compensation plans could, in exchange for a ten percent penalty, cash-in early.³⁰ According to one source, “Many retirees didn’t know about this opt-out clause”³¹ A few dozen individuals used this clause to cash-in prior to the bankruptcy proceedings and retrieve at least \$32 million.³² The *Houston Chronicle* reported the age of nearly three-quarters of the 180 members in the deferred compensation plan was sixty and over.³³ Most of these employees’ requests for early withdrawal were denied. Consequently, they assumed the status of unsecured creditors in the bankruptcy proceedings, meaning that they are likely to be paid “cents on the dollar, if anything.”³⁴

D. The Greater Issue: Everyone is Affected

The Enron story adds flesh to the issue of stakeholder unrest and vividly demonstrates the two concerned classes in the shareholder value maximization debate: shareholders and stakeholders. Shareholders own stock in a corporation, while stakeholders represent a broader group comprised of everyone who is affected by the company, including employees, suppliers, customers, and communities.³⁵ Although the decisions of managers influence all stakeholders, management owes its primary legal duty to the shareholders. Any argument for or against the shareholder value maximization norm must be made with the full realization that such policy decisions will affect the vast majority of Americans—and many citizens of the world—because the number of stakeholders in American corporations is immeasurable. This begs the question: Is shareholder value maximization sufficient, or should the law introduce a duty to stakeholders? Adding a religious component to the discussion further complicates an already difficult inquiry.

increases as the amount subject to tax increases, thereby taxing the wealthy at a higher rate than the poor or middle class.” FRIEDMAN, *supra* note 11, at 543. Therefore, most retirees with fixed income are subject to a lower tax rate than when they were receiving income from employment.

³⁰ Berger, *supra* note 28.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Stephen M. Bainbridge, *The Bishops and the Corporate Stakeholder Debate*, 4 VILL. J. L. & INV. MGMT. 3, 3 (2002).

III. THE FAITH: CHRISTIAN TEACHINGS ON HUMANITY AND WEALTH

In order to examine the shareholder value maximization norm and its compatibility with the Christian religion, it is necessary to highlight some pertinent Christian teachings that might contribute to the discussion. Specifically, this Note will focus on teachings about humanity and wealth and will assert that Christianity endorses (1) a concern for all of humanity, and (2) a fiduciary “stewardship” attitude toward wealth, which can include the pursuit of profits.

A. *Humanity*

Christianity advocates a love for humankind. The type of care that characterizes the religion is one that goes beyond basic concern about others. It entails actively helping others in need to the same degree that people help themselves.³⁶ This concept is summarized in the “Golden Rule,” when Jesus says, “Do to others whatever you would have them do to you. This is the law and the prophets.”³⁷ While, for Christians, there is a clear distinction between God and humanity,³⁸ loving God is inseparable from

³⁶ C.S. LEWIS, *MERE CHRISTIANITY* 129 (1952) (“[L]ove, in the Christian sense, does not mean an emotion. It is a state not of the feelings but of the will; that state of the will which we have naturally about ourselves, and must learn to have about other people.”).

³⁷ *Matthew* 7:12 (New American); LEWIS, *supra* note 36, at 131 (“But whenever we do good to another self, just because it is a self, made (like us) by God, and desiring its own happiness as we desire ours, we shall have learned to love it a little more . . .”).

³⁸ Christians do not accept Pantheism, which asserts that divinity is present in nature. *THE OXFORD AMERICAN DICTIONARY OF CURRENT ENGLISH* 567 (1999). Instead, they draw a sharp distinction between God, who is perfect actualization, and nature, which is deprived and therefore imperfect. St. Thomas Aquinas explained God’s distinct perfection in terms of infinity:

[T]he infinity predicated of God indicates supreme perfection in Him. . . . Imperfection occurs in a thing for the reason that matter is found in a state of privation. On the other hand, perfection comes exclusively from form. Consequently, since God is infinite because He is exclusively form or act and has no admixture of matter or potentiality, His infinity pertains to His supreme perfection.

ST. THOMAS AQUINAS, *AQUINAS’S SHORTER SUMMA* 22–23 (1993). Aquinas also spoke of God’s perfection in terms of his “simple” attribution. Adopting Aristotelian logic, God’s pure actualization, lacking any withheld potentiality, is what makes Divinity the uncorrupted “first mover,” which is not a complex composite of potential and act, but the composing element itself, a pure element of form. *See id.* at 14–15.

loving humanity.³⁹ Jesus's account of the Judgment best demonstrates this concept:

Then he will say to those on his left, "Depart from me . . . [f]or I was hungry and you gave me no food, I was thirsty and you gave me no drink, a stranger and you gave me no welcome, naked and you gave me no clothing, ill and in prison, and you did not care for me." Then they will answer and say, "Lord, when did we see you hungry or thirsty or a stranger or naked or ill or in prison, and not minister to your needs?" He will answer them, "Amen, I say to you, what you did not do for one of these least ones, you did not do for me."⁴⁰

Christianity values concern for others because of God's unique relationship with humankind. The Christian professes that human beings are made in God's image.⁴¹ This likeness includes the ability to reason on a level exceeding that of the rest of creation.⁴² Indeed, human beings can even contemplate mysterious concepts, such as death and eternity.

Christianity also professes that sin, or imperfection, has led to a separation between God and humanity that creation alone cannot bridge.⁴³ This rift is a result of the interplay between human imperfection and God's perfectly just nature; human beings, in their unholy form, cannot subsist in communion with a

³⁹ See Stabile, *supra* note 2, at 850 ("It is for this reason that, from a Christian perspective, there is no distinction between loving God and loving others.").

⁴⁰ *Matthew* 25:41–45.

⁴¹ *GENESIS* 1:26–27 ("Then God said: 'Let us make man in our image, after our likeness. . . .' God created man in his image; in the divine image he created him; male and female he created them.").

⁴² SAINT AUGUSTINE, *THE CITY OF GOD* 407 (1950) ("God, then, made man in His own image. For He created for him a soul endowed with reason and intelligence, so that he might excel all the creatures of earth, air, and sea, which were not so gifted.").

⁴³ This state of degeneration is commonly referred to as "original sin," enumerated by St. Augustine. See *id.* at 413–14.

Wherefore we must say that the first men were indeed so created, that if they had not sinned, they would not have experienced any kind of death; but that, having become sinners, they were so punished with death, that whatsoever sprang from their stock should also be punished with the same death. For nothing else could be born of them than that which they themselves had been. Their nature was deteriorated in proportion to the greatness of the condemnation of their sin, so that what existed as punishment in those who first sinned, became a natural consequence in their children.

Id.; see also JOHN CALVIN, *THE INSTITUTES OF CHRISTIAN RELIGION* 85 (1986) (asserting that it was through the fall of the first man that the entire human race has "degenerated from its original state").

perfect God.⁴⁴ The Trinity, however, is simultaneously just and merciful.⁴⁵ Christians believe humanity is incapable of self-perfection, and that God sent the Son, the second person of the Trinity, to reveal ultimate truth to creation and be the supreme redemption—so that divine justice could be satisfied and humankind may enjoy communion with God.⁴⁶

This basic depiction of the relationship between God and humankind has a very important implication for the Christian's view of humanity: all of humanity was separated from God, so all people are subject to God's justice.⁴⁷ Christians are called to care for others, adherents and non-adherents alike, out of a belief that all of humankind needs God's mercy, and such mercy manifests itself in both the spiritual and physical realms.⁴⁸ In other words, the default state of all humankind is one which lacks entitlement to God's providence. Despite this, God gave

⁴⁴ In terms of Aquinas' Aristotelian approach, the perfectly simple cannot coexist beside the corrupted composite. The simple is perfect because it is the composer. See *supra* note 38.

⁴⁵ *Psalm* 94:22–23 (“No, the Lord is my secure height, my God, the rock where I find refuge, Who will turn back their evil upon them and destroy them for their wickedness. Surely the Lord our God will destroy them!”); 1 *John* 4:16 (“God is love, and whoever remains in love remains in God and God in him.”).

⁴⁶ *John* 3:16 (“For God so loved the world that he gave his only Son, so that everyone who believes in him might not perish but might have eternal life.”). The Christian confesses not that God's judging character was taken away by Christ, but that God's judgment is satisfied by the work of Christ; in other words, for a Christian, Christ provided a way for humankind to survive God's still-present judgment.

⁴⁷ *Romans* 3:23 (“[A]ll have sinned and are deprived of the glory of God.”). Because everyone who sins lacks some level of righteousness, and “[j]udgment will . . . be founded on righteousness . . .,” *Psalm* 94:15, Christians hold that God's judgment applies to everyone.

⁴⁸ While grace certainly includes the spiritual, it is far more encompassing. For an individual to understand grace, it must manifest itself in the physical and spiritual realms.

Knowing God involves knowing His world for several reasons. . . . [W]e know God by means of the world. All of God's revelation comes through creaturely means, whether events, prophets, Scripture, or merely the human eye or ear. Thus we cannot know anything about God without knowing something about the world at the same time.

JOHN M. FRAME, *THE DOCTRINE OF THE KNOWLEDGE OF GOD* 64 (1987). Indeed, Christianity makes it clear that those who have received God's grace are to perform “good works.” J.I. PACKER, *KNOWING GOD* 137 (1973) (Americanized ed. 1993); *Ephesians* 2:10 (“For we are his handiwork, created in Christ Jesus for the good works that God has prepared in advance, that we should live in them.”); *Titus* 2:11–12 (“For the grace of God has appeared, saving all and training us to reject godless ways and worldly desires and to live temperately, justly, and devoutly in this age . . .”).

humanity grace.⁴⁹ Therefore, the only proper Christian response is to view all people as equally in need of grace and goodness.⁵⁰ Consequently, there is no Christian excuse for neglecting humanity, because doing so would assert that it is acceptable to withhold some aspect of undeserved, yet actual righteousness from humankind, and this view is incompatible with Christian scriptures.⁵¹ As a result of this general concern for humankind, many Christians will argue that policymakers should consider the impact of policies on all people. To be clear, however, this perspective on policymaking is not unique to Christianity.

B. *Wealth*

From an economic viewpoint, money is nothing more than a highly alienable store of value.⁵² One can exchange this medium to fulfill needs and wants.⁵³ Money is not inherently good or bad, but Christian teaching warns adherents to guard their hearts against greed.⁵⁴

Greed is essentially “the love of money.”⁵⁵ The Christian religion’s aversion to greed is a result of the view of humanity explicated above.⁵⁶ Since all of humanity is undeserving of God’s goodness, then goodness received, including personal financial fortune, is only to be viewed as a blessing.⁵⁷ Therefore,

⁴⁹ See *John* 3:16.

⁵⁰ See *Romans* 3:23.

⁵¹ See *supra* note 48. Christians are taught that the standard for personal conduct is not human goodness, but God’s perfection. WARREN MATTHEWS, *WORLD RELIGIONS* 332 (3d ed. 1999).

⁵² Money was adopted as the primary method of trade to overcome the double coincidence of wants. For example, under the barter system, a person with extra animal skins but not enough grain could exchange his surplus skins with another person who had plenty of food but no skins. MORRIS & MORRIS, *supra* note 18, at 4. Searching for someone who has what one wants and wants what one has is both time-consuming and costly. This double coincidence of wants was largely eliminated with the introduction of currency, which created a method to store value in a more alienable and divisible medium.

⁵³ See *id.*

⁵⁴ 1 *Timothy* 6:10 (“For the love of money is the root of all evils, and some people in their desire for it have strayed from the faith and have pierced themselves with many pains.”).

⁵⁵ See *id.*

⁵⁶ See discussion *supra* Part III.A.

⁵⁷ The Christian view of blessing and wealth is demonstrated in a warning in Deuteronomy:

Be careful not to forget the Lord, your God, by neglecting his commandments and decrees and statutes which I enjoin on you today: lest,

Christianity teaches that individual personal wealth is a blessing from God that is “held in trust.”⁵⁸ The Christian understanding of personal wealth is more akin to a trustee’s fiduciary relationship than proprietary ownership.⁵⁹ The idea that Christians hold God’s wealth in trust is called “stewardship” and is viewed as a faithful responsibility.⁶⁰

The concept of financial accountability to a master also applies where an individual is entrusted with the money of another person. If an investor entrusts funds to a steward for the purpose of earning profits, that steward is vigorously to pursue profits on the master’s behalf.⁶¹ Greed, not profit, is what receives condemnation under Christian teaching. Profits are good because they “make possible the investments that ensure the future of a business and they guarantee employment.”⁶²

The “Parable of the Talents” has been used to demonstrate the positive attribution of profits.⁶³ In this parable, three servants are given assets from their master. Two of these servants use the assets productively causing the values to increase. The third servant digs a hole and buries the assets, earning nothing—not even interest.⁶⁴ The master praises the first two servants, but punishes the third when he returns with no additional value, calling him “wicked” and “lazy.”⁶⁵ The master additionally asks, “Should you not then have put my

when you have eaten your fill, and have built fine houses and lived in them, and have increased your herds and flocks, your silver and gold, and all your property, you then become haughty of heart and unmindful of the Lord, your God, who brought you out of the land of Egypt, that place of slavery Otherwise, you might say to yourselves, “It is my own power and the strength of my own hand that has obtained for me this wealth.” Remember then, it is the Lord, your God, who gives you the power to acquire wealth

Deuteronomy 8:11–14, 17–18.

⁵⁸ See *Psalms* 50:10–12 (“For every animal of the forest is mine, beasts by the thousands on my mountains. I know every bird of the heavens; the creatures of the field belong to me. Were I hungry, I would not tell you, for mine is the world and all that fills it.”).

⁵⁹ See *id.*

⁶⁰ *1 Corinthians* 4:2 (“Now it is of course required of stewards that they be found trustworthy.”).

⁶¹ See Bainbridge, *supra* note 35, at 12.

⁶² *Id.* (citing UNITED STATES CATHOLIC CONFERENCE, CATECHISM OF THE CATHOLIC CHURCH ¶ 2432 (2d ed. 1997)).

⁶³ See, e.g., *id.* at 11–12.

⁶⁴ *Matthew* 25:14–27.

⁶⁵ *Matthew* 25:20–26.

money in the bank so that I could have got it back with interest on my return?"⁶⁶ Due to the demonstrable inefficiency of the third servant, the master takes the stagnant assets away from him and gives them to one of the productive servants.⁶⁷

This parable has a major implication: a valid Christian position on money must comport with the scripture's assertion that those entrusted with the property of others have an obligation to manage in the best interests of the owner. In this specific scriptural example, managing for the best interests of the owner meant earning profits. Furthermore, profit-seeking stewardship is not intrinsically "greedy," because Christian scripture simultaneously endorses accountability to owners and speaks against greed.

Having touched upon the concepts of humanity and money, some important doctrinal aspects implicated in discussing the shareholder value maximization norm, this Note will now explore the norm itself, as set forth in the benchmark case *Dodge v. Ford Motor Co.*⁶⁸

IV. THE LAW: A SINGLE EMINENT OBLIGATION

In *Dodge v. Ford Motor Co.*, brothers John and Horace Dodge brought a shareholder suit claiming that the directors of Henry Ford's extraordinarily successful Ford Motor Company neglected to fulfill their legal duty to maximize shareholder value.⁶⁹ The holding of this case left nothing to the imagination: the liability of corporate directors hinges upon whether they make business decisions in the best interests of shareholders.⁷⁰

The Ford Motor Company was an industrial giant, an extreme example of commercial success, and not necessarily the predictable target of a corporate value maximization suit.⁷¹ As a

⁶⁶ *Matthew* 25:27.

⁶⁷ See *Matthew* 25:28 ("Now then! Take the talent from him and give it to the one with ten.").

⁶⁸ 170 N.W. 668 (Mich. 1919).

⁶⁹ Specifically, the Dodge brothers claimed that Henry Ford, who effectively controlled the board, had decided not to declare any more special dividends on shares held by the plaintiffs, and instead reinvest some of the profits back into the company while holding the rest indefinitely. *Id.* at 671.

⁷⁰ See *infra* text accompanying note 99.

⁷¹ The extraordinary success of the Ford Motor Company is demonstrated in its sales growth over a short period. Car sales by volume were 18,664 cars in 1910, 34,466 cars in 1911, 68,544 cars in 1912, 168,304 cars in 1913, 248,307 cars in 1914, and 264,351 cars in the ten months ending July 31, 1915. *Dodge*, 170 N.W. at 670.

result of its incredible fortune, the company had paid out a total of \$41 million in “special dividends” in addition to its regular monthly dividends of five percent of the total value of its outstanding capital stock.⁷² The company had numerous shareholders and several directors, but the influential parties to the action were John and Horace Dodge, who together owned ten percent of the company, and Henry Ford, who effectively controlled the board with fifty-eight percent of the stock.⁷³

According to the Dodge brothers, Henry Ford declared that “the settled policy of the company [was] not to pay in the future any special dividends, but to put back into the business for the future all of the earnings of the company, other than the regular dividend of five per cent . . . monthly”⁷⁴ The legal problem with this initiative was not necessarily the decision itself, but its underlying considerations. Ford was going to invest part of the retained earnings in plant expansion and other capital improvements.⁷⁵ A great deal more of the retained earnings, however, were to sit within the company indefinitely, as Ford pursued his ambition of employing as many people as possible in order to help them build lives for themselves.⁷⁶ The Dodge brothers took issue with these proposed uses of retained earnings, arguing that the additional social motive was a breach of director duty and the plant expansion was a pretext for furthering this improper motive.⁷⁷

Total profits over this same period were \$4.5 million in 1910, \$6.3 million in 1911, \$13.1 million in 1912, \$25 million in 1913, \$30.3 million in 1914, and \$24.6 million in 1915. *Id.* Furthermore, as of July 31, 1916, the corporation had a low debt-to-equity ratio with approximately \$18 million in liabilities against total equity of about \$114 million. *Id.*

⁷² *Id.* Five percent monthly dividends on \$2 million in capital stock amount to monthly total payments of \$100,000, with \$58,000 going to Henry Ford and \$10,000 going to the Dodge brothers. The total “special dividends” for the period 1911–15 were as follows: December 13, 1911, \$1 million; May 15, 1912, \$2 million; July 11, 1912, \$2 million; June 16, 1913, \$10 million; May 14, 1914, \$2 million; June 12, 1914, \$2 million; July 6, 1914, \$2 million; July 23, 1914, \$2 million; August 23, 1914, \$3 million; May 28, 1915, \$10 million; October 13, 1915, \$5 million. This amounts to a total of \$41 million in special dividends. *Id.*

⁷³ *Id.* at 670–71.

⁷⁴ *Id.* at 671.

⁷⁵ The estimates presented at board meetings summarized the expected costs of capital improvements as approximately \$26.5 million. *See id.* at 674.

⁷⁶ *See id.* at 671.

⁷⁷ *Id.* at 678 (“The proposed scheme of expansion is not for the financial advantage of the corporation, either mediate or immediate, and is not to be prosecuted with that intent, but for the purpose of increasing the number of

The plaintiffs believed that Henry Ford's primary motivation for withholding special dividends was not the maximization of shareholder value.⁷⁸ Instead, they alleged that he intended to use the dividends to satisfy his motivations of hiring more employees and placing automobiles in as many households as possible.⁷⁹ The brothers asserted that, while Henry Ford's proposed ends of employment expansion and purchaser enablement were worthy in themselves, they fell outside the scope of his powers as a corporate director because the purpose of a corporation is to serve the primary end of profits.⁸⁰ The Dodge brothers proposed that philanthropic ends, "if prosecuted, should be by individuals associated for such purposes."⁸¹

The lower court in this case took a different approach than the Michigan Supreme Court would on the subsequent appeal, but the distinction between approaches sheds additional light on how courts analyze director and manager decisions. The lower court enjoined Ford from plant expansion and ordered special dividends paid within thirty days.⁸² It also restricted the company from excessively withholding liquid assets at any time

employes [sic] and of the cars produced, to the end of giving employment and low-priced cars to a greater number of people."). To support their claim further, the plaintiffs attempted to demonstrate that Ford was opposed to policies that would require discharging a substantial number of employees, even where such a strategy would be financially beneficial for the company. *Id.* at 676–77. Ford responded to the allegations by stating that he believed minimizing employee discharges would "ultimately redound to the best financial interests of the company and its stockholders." *Id.* at 677.

⁷⁸ *See id.* at 678 (explaining that the proposed scheme of expansion was not for the "financial advantage" of the corporation, either short-term or otherwise). The plaintiffs argued, "[T]he company has no right to use the company's earnings in the continued extension of the plants and property of the company—indeed, from our point of view, they have already exceeded their authority in this direction." *Id.* at 672.

⁷⁹ *See id.* at 671, 678.

⁸⁰ *See id.* at 678.

⁸¹ *Id.*

⁸² *Id.* at 677 ("[I]t is decreed that within 30 days from the entry [of this decree] the directors of the Ford Motor Company declare a dividend upon all of the shares of stock in an amount equivalent to one-half of, and payable out of, the accumulated cash surplus of said Ford Motor Company . . ."). The lower court took drastic measures to ensure that the smelting plant would never be built. *Id.* ("The owning, holding or operating . . . of, and the using or appropriating or incurring obligations which might require or necessitate the using or appropriating of any funds or other property of said defendant . . . for a smelting plant or blast furnace . . . is without authority of law and is permanently and absolutely restrained and enjoined.").

in the future.⁸³ When the case reached the Michigan Supreme Court, Judge Ostrander used the opportunity to affirm two of the most vital aspects of corporate law: (1) the business-judgment rule and (2) the duty to maximize shareholder value.

A. *The Business-Judgment Rule*

As demonstrated in *Dodge*, courts prefer not to interfere with a company's business decisions, and will only intervene in specific cases.⁸⁴ For the *Dodge* Court, these instances included fraud, misappropriation of corporate funds, or refusal to declare dividends when the corporation has a surplus of net profits which could be distributed without detriment to the business, and failure to distribute would be, at the very least, in bad faith.⁸⁵

The court's overall policy of noninterference in corporate matters manifests itself in a rule of law known as "business-judgment." The business-judgment rule is a judicial presumption that corporate directors make decisions "on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest."⁸⁶ The legal effect of business-judgment shields directors and officers from liability for decisions that adversely affect the company, as long as the "transactions were made in good faith, with due care, and within the directors' or officers' authority."⁸⁷ Judge Ostrander expressed one practical purpose of this rule when he declared, "[J]udges are not business experts."⁸⁸

⁸³ *Id.* at 678 ("The holding of liquid assets . . . in excess of such as may be reasonably required in the proper conduct and carrying on of the business and operations of said corporation . . . is . . . without authority of law and is permanently and absolutely restrained and enjoined . . .").

⁸⁴ *See id.* at 682 (explaining that courts of equity will not interfere with director decisions except under very specific circumstances). The court explains that it is a "well-recognized principle of law" that the power to declare the timing and amount of dividends rests solely with the directors of a corporation. *Id.*

⁸⁵ *Id.* (citing *Hunter v. Roberts, Throp & Co.*, 47 N.W. 131, 134 (Mich. 1890)). A modern court would probably not interfere with decisions regarding dividend payout.

⁸⁶ BLACK'S LAW DICTIONARY 81 (2d pocket ed. 2001).

⁸⁷ *Id.*

⁸⁸ *Dodge*, 170 N.W. at 684. Indeed, subjecting every business decision to judicial review based on results in hindsight could potentially lead to untold director liability extending even to informed decisions with unfortunate outcomes. *See id.* (further explaining the courts reasoning that "plans must often be made for a long future, for expected competition, for a continuing as well as an immediately profitable venture").

The Michigan Supreme Court applied the business-judgment rule to the issue of plant expansion, and reversed the lower court's enjoinder of development.⁸⁹ The court held that the directors of Ford Motor Company had the discretion to pursue whatever they resolved as "necessary or judicious for repairs or improvements, and to meet contingencies both present and prospective. And their determination in respect of these matters, if made in good faith and for honest ends, though the result may show that it was injudicious, is final, and not subject to judicial revision."⁹⁰

Business-judgment shielding is only applied to those decisions that are within the directors' or officers' authority.⁹¹ Because directors are bound by the paramount duty of shareholder value maximization, they do not have the authority to make decisions that fail to comport with this duty. Therefore, the court in *Dodge* believed that plant expansion could potentially contribute to the maximization of shareholder value, but it felt much differently about Ford's indefinite withholding of special dividends.

B. *The Shareholder Value Maximization Norm*

The Supreme Court of Michigan upheld the lower court's decision to force payment of special dividends to all Ford Motor Company shareholders because it saw the accumulation of excessive reserves as a usurpation of the duty to maximize

⁸⁹ *Id.* at 685.

⁹⁰ *Id.* at 682 (quoting *Park v. Grant Locomotive Works*, 3 A. 162, 165 (N.J. Eq. 1885), *aff'd*, 19 A. 621 (N.J. Eq. 1888)). The court endorsed reasonable expansion as a necessary use of income, explaining:

There have been many attempts to sustain such a [shareholder] suit, yet, although the courts do not disclaim jurisdiction, they have quite uniformly refused to interfere. The discretion of the directors will not be interfered with by the courts, unless there has been bad faith, willful neglect, or abuse of discretion.

Accordingly, the directors may, in the fair exercise of their discretion, invest profits to extend and develop the business, and a reasonable use of the profits to provide additional facilities for the business cannot be objected to or enjoined by the stockholders.

Id. (quoting WILLIAM W. COOK, A TREATISE ON THE LAW OF CORPORATIONS HAVING A CAPITAL STOCK § 545 (8th ed. 1923)).

⁹¹ See BLACK'S LAW DICTIONARY 81 (explaining that business-judgment rule shielding only applies in cases where directors and officers are acting within their given authority).

shareholder value.⁹² Judge Ostrander explained, “[In this case,] a refusal to declare and pay further dividends appears to be not an exercise of discretion on the part of the directors, but an arbitrary refusal to do what the circumstances required to be done.”⁹³ The directors’ decision to withhold special dividends did not receive the benefit of the business-judgment rule because their motivation was not the maximization of shareholder value. Henry Ford lost because his ambition was “to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes,” and he intended to accomplish this by “putting the greatest share of . . . profits back in the business.”⁹⁴ The court commented that Henry Ford’s testimony inadvertently gave the impression that he thought Ford Motor Company had made “too much money.”⁹⁵

“These cases . . . turn finally upon the point, the question, whether it appears that the directors were not acting for the best interests of the corporation.”⁹⁶ Counsel for Ford argued that, although the principal business of a manufacturing corporation is not humanitarian works, incidental philanthropic outcomes resulting from the main business of the corporation are not contrary to law.⁹⁷ The court did not dispute this assertion, but found that Ford’s charitable motives were not merely incidental.⁹⁸ The court explained why the business-judgment rule could not apply to Ford’s special dividends decision by

⁹² *Dodge*, 170 N.W. at 685. Note that modern courts would be likely to defer to managerial discretion in almost any decision regarding dividend payout. *See, e.g.*, *Gabelli & Co., Inc. v. Liggett Group Inc.*, 479 A.2d 276, 280 (Del. 1984) (“[Under Delaware law,] the declaration and payment of a dividend rests in the discretion of the corporation’s board of directors in the exercise of its business judgment; . . . before the courts will interfere . . . , fraud or gross abuse of discretion must be shown.”). The underlying analysis of the shareholder value maximization norm, however, remains the same.

⁹³ *Dodge*, 170 N.W. at 683.

⁹⁴ *Id.* The court described the Ford Motor Company as one of the largest and most profitable businesses in the world, one that “employs many men, at good pay.” *Id.*

⁹⁵ *Id.* at 683–84.

⁹⁶ *Id.* at 684.

⁹⁷ *See id.*

⁹⁸ The court gave an example of “incidental” versus “primary” motives of philanthropy, respectively, by distinguishing between an expenditure of corporate funds to build a hospital in order to benefit employees and a more general plan to “benefit mankind at the expense of others.” *Id.*

enumerating the shareholder value maximization norm in the context of this case:

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes.⁹⁹

V. THE DENOMINATIONAL DEBATE: ORIGINAL SIN AND ECONOMIC INTERSECTION

It is clear that the shareholder value maximization norm as the exclusive consideration for business decisions is the best way to safeguard shareholder interests. Abstractly, Enron's phantom hedges and misused special purpose entities were the result of management's failure to comply fully with this norm. Shareholder value cannot maintain or increase over an extended period of time with illusions underlying the shares because the present value of a stock is based upon the expected future gains.¹⁰⁰ The discussion, however, becomes more complicated when additional stakeholders and a Christian analysis are incorporated.

There are two major stances regarding the reconcilability of the Christian religion with the shareholder value maximization norm. The distinction between the two is drawn largely along denominational lines, and is the result of fundamental differences between Protestant and Catholic understandings of original sin.

A. *The Protestant Position*

The Protestant tradition has typically held that maximum efficiency and the common good of society are both naturally achieved through each economic agent's adherence to its own conception of profit maximization.¹⁰¹ Protestant theology posits

⁹⁹ *Id.*

¹⁰⁰ Peter Koslowski, *The Shareholder Value Principle and the Purpose of the Firm*, in *RETHINKING THE PURPOSE OF BUSINESS: INTERDISCIPLINARY ESSAYS FROM THE CATHOLIC SOCIAL TRADITION* 105 (S.A. Cortright & Michael J. Naughton eds., 2002).

¹⁰¹ *Id.* at 123.

that original sin¹⁰² so corrupted humanity, that individuals are incapable of purely intending the common good.¹⁰³ In fact, the most extreme interpretation of the effects of original sin is found in the doctrines of mainstream Protestant denominations and is particularly strong in the Lutheran¹⁰⁴ and Calvinist¹⁰⁵ traditions. Protestants profess that Christian scriptures support this position.¹⁰⁶

A common Protestant interpretation of the interplay between original sin, the shareholder value maximization norm, and common good is as follows: because of humanity's imperfect intentions derived from natural corruption, the common good is best reached by the direction of the "invisible hand," which can accomplish social ends beyond individuals' own selfish intentions.¹⁰⁷ In other words, maximum common good, in the context of this discussion, is achieved as an indirect purpose of the pursuit of profits.¹⁰⁸ Adam Smith, the famed economist, articulated the concept of the "invisible hand" in *The Wealth of Nations*:

He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By preferring the support of domestic to that of foreign industry, he intends

¹⁰² See *supra* note 43 and accompanying text .

¹⁰³ See Koslowski, *supra* note 100, at 123.

¹⁰⁴ Martin Luther proclaimed, "Scripture describes man as corrupted and led captive, and, furthermore, as proudly disdaining to notice, and failing to recognise, his own corruption and captivity . . ." MARTIN LUTHER, *THE BONDAGE OF THE WILL* 153 (1525) (J.I. Packer & O.R. Johnston trans., 1957). The German translation of the Augsburg Confession, a component of the Lutheran Book of Concord, states that from the fall of humankind, all people are born in "sin," which means they are "full of evil lust and inclinations from their mothers' wombs and are unable by nature to have true fear of God and true faith in God." *THE BOOK OF CONCORD: THE CONFESSIONS OF THE EVANGELICAL LUTHERAN CHURCH* 29 (Theodore G. Tappert trans., ed., 1959).

¹⁰⁵ The Westminster Confession of Faith, announcing the doctrine of Calvinist Presbyterianism, states:

From this original corruption, whereby we are utterly indisposed, disabled, and made opposite to all good, and wholly inclined to all evil, do proceed all actual transgressions. This corruption of nature, during this life, doth remain in those that are regenerated . . .

THE WESTMINSTER CONFESSION OF FAITH 7–8 (1990).

¹⁰⁶ See, e.g., *Romans* 8:7 ("For the concern of the flesh is hostility toward God; it does not submit to the law of God, nor can it . . ."); *Ecclesiastes* 7:20 ("[Y]et there is no man on earth so just as to do good and never sin."); *Genesis* 8:21 ("[T]he desires of man's heart are evil from the start.").

¹⁰⁷ See Koslowski, *supra* note 100, at 123.

¹⁰⁸ *Id.*

only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good.¹⁰⁹

Many Protestants will argue that indirect pursuit of social well-being via the shareholder value maximization norm is the best approach because the common good resulting from the pursuit of profits will quantitatively outweigh social benefits intentionally pursued.¹¹⁰ Therefore, even from a perspective that prizes human prosperity as the ultimate end, many Protestants will defend the norm.

C. *The Catholic Position*

The Catholic tradition has historically viewed the “indirect purpose” approach to achieving common good as inferior. Although both Catholics and Protestants hold that humankind is tainted with original sin, the implications are different for the denominations.¹¹¹ The Catholic tradition holds that despite original sin, human beings are nonetheless capable of directly intending and thereby effectuating good through the use of institutional structures.¹¹² Therefore, Catholic social thought, as well as the Catechism itself, endorses a multipurpose motivation in which directors and managers place broader purposes of the firm alongside, or even ahead of, the purpose of shareholder value maximization.¹¹³ Catholic social teaching asserts that directors and officers should consider the interests of all stakeholders when making decisions.¹¹⁴ One goal is internal-

¹⁰⁹ ADAM SMITH, *THE WEALTH OF NATIONS* 351–52 (1991).

¹¹⁰ See Koslowski, *supra* note 100, at 123.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 123–24. The Catechism of the Catholic Church mandates, “those responsible for business enterprises are responsible to society for the economic and ecological effects of their operations. They have an obligation to consider the good of persons and not only the increase of profits.” Bainbridge, *supra* note 35, at 13 (citing UNITED STATES CATHOLIC CONFERENCE, *CATECHISM OF THE CATHOLIC CHURCH* ¶ 2432 (2d ed. 1997)).

¹¹⁴ See Koslowski, *supra* note 100, at 123–24.

ization of negative externalities¹¹⁵ by firms, which means that companies and consumers absorb the full economic charge of corporate actions and avert distribution of these costs to society at large.

For Catholics, the Protestant “indirect purpose” approach is inferior because it accomplishes social good without intending it, whereas the traditional Catholic approach both intends and accomplishes well-being of others.¹¹⁶ As a result, the National Conference of Catholic Bishops called for “economic justice” through which “all corporate constituents participate in firm decisions.”¹¹⁷

Catholic social thinkers recognize that although institutions can better society, human beings still reserve a natural proclivity to value self-interest above all else.¹¹⁸ However, unlike assertions in Protestant thinking, people are not “enslaved” to their self-interest.¹¹⁹ From a traditional Catholic perspective, it is logical for people to intend good and to achieve good directly by acting on these intentions, so the direct approach is the most effective way to benefit society.

VI. WHY THE SHAREHOLDER VALUE MAXIMIZATION NORM SHOULD REMAIN UNCHANGED

Given that shareholder interests are best protected by the value maximization norm, the real debate surrounds the issue of stakeholder well-being, a concern which mandates exploration under a Christian worldview of humanity.¹²⁰ Traditional Protestantism holds that socioeconomic well-being is best achieved through indirect intention because, due to the effects of original sin, the societal good that is a byproduct of the pursuit of profits will be quantitatively superior to the common good

¹¹⁵ See Bainbridge, *supra* note 35, at 8. An externality is “the direct effect of the actions of a person or firm on another person’s well-being or a firm’s production capability rather than an indirect effect through changes in prices.” JEFFREY M. PERLOFF, MICROECONOMICS A-42 (2d ed. 2001).

¹¹⁶ See Koslowski, *supra* note 100, at 123–24.

¹¹⁷ Bainbridge, *supra* note 35, at 11 (citing NATIONAL CONFERENCE OF CATHOLIC BISHOPS, PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY).

¹¹⁸ See Koslowski, *supra* note 100, at 123.

¹¹⁹ See *id.* (describing the Lutheran position that humankind is so fallen that it is enslaved to its own selfishness).

¹²⁰ See discussion *supra* Part III.A.

achieved by the direct pursuit of universal well-being.¹²¹ From a traditional Protestant viewpoint, the shareholder value maximization norm serves as the best mechanism to facilitate this indirect intention.

Reconciling the norm with traditional Catholic thought is difficult, but failure to do so may engender pragmatic obstacles. Some argue that the Catholic position inadequately addresses an empirical history of human behavior—specifically, the human proclivity toward self-interest.

Professor Stephen M. Bainbridge critiques the Catholic approach of multipurpose motivation as more-or-less specious and provides a Catholic viewpoint that includes a sound degree of economic veracity.¹²² One of his articles includes a discussion of the impracticality of three forms of multi-constituent policy implementation: (1) non-reviewable discretion for directors, (2) reviewable discretion for directors, and (3) judicial or regulatory oversight of directors.¹²³ The first two are “toothless,” according to Bainbridge, because they would permit directors and officers to advance their own self-interests with impunity by citing “nonshareholder interests” to justify their decisions when such actions do not align with the interests of shareholders.¹²⁴ The real problem is that “[d]irectors who are responsible to everyone are accountable to no one.”¹²⁵

Bainbridge believes that the third implementation is unworkable and arguably poses a basic threat to economic liberty. Judges would face too many practical hurdles—including balancing the infinite number of stakeholder interests, maintaining consistency among the judicial collective, providing directors and officers with adequate notice, and acquiring the expertise necessary to become competent to adjudicate these disputes. Bainbridge argues that “economic liberty to pursue

¹²¹ See discussion *supra* Part V.A.

¹²² See Bainbridge, *supra* note 35, at 5. Bainbridge says, “The Church tends to be long on pious exhortations and short on detailed policy prescriptions.” *Id.* at 6. Others have argued that Catholic moral treatises have been unhelpful in dealing with the practical problems of business ethics. See, e.g., *id.* n.17 (citing Scott Fitzgibbon, “True Human Community”: *Catholic Social Thought, Aristotelian Ethics, and the Moral Order of the Business Company*, 45 ST. LOUIS U. L.J. 1243, 1247–52 (2001)).

¹²³ Bainbridge, *supra* note 35, at 16–20.

¹²⁴ *Id.* at 17.

¹²⁵ See *id.* at 23.

wealth is an effective means of achieving a variety of moral ends.”¹²⁶ This Note humbly submits that it would not be wise to chip away at a policy that has historically brought about widespread prosperity and has served as an economic restraint on socialistic governmental intrusion. Bainbridge, utilizing some of Michael Novak’s arguments, explains the connection between economic freedom and personal liberty:

The corporation’s freedom to pursue wealth for its shareholders . . . does more than just expand the economic pie for investors. A legal system that permits the pursuit of wealth maximization necessarily must allow individuals freedom to pursue the accumulation of wealth. Economic liberty, in turn, is a necessary concomitant of personal liberty—the two have almost always marched hand in hand. The pursuit of wealth has been a major factor in destroying arbitrary class distinctions, moreover, by enhancing personal and social mobility 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. Concern for human freedom is wholly consistent with Catholic social teaching.¹²⁷

A Catholic worldview accepts that many people will operate in their own self-interest. “[I]t is consistent with the Christian world view to insist that a realistic social order must be designed around principles that fall short of Christian ideals. In particular, the rules must not be defined in ways that effectively require every citizen to be a practicing Christian.”¹²⁸ Even the Catholic understanding of the effect of original sin acknowledges a human tendency toward self-interest.¹²⁹ Bainbridge emphasizes that Christian ideals of justice are incapable of constructing rules of economic order precisely because Christian presuppositions insist that legal rules and predictions of human behavior assume the fallen state of humankind.¹³⁰

¹²⁶ *Id.* at 25.

¹²⁷ *Id.* at 24–25.

¹²⁸ *Id.* at 22.

¹²⁹ See Koslowski, *supra* note 100, at 123.

¹³⁰ Bainbridge, *supra* note 35, at 22.

Concern for humanity mandates an inquiry into how people benefit or suffer from policy decisions.¹³¹ The “direct intention” approach advocated by the Catholic tradition is engaging, and has much to contribute to this discussion. This Note concludes, however, that the shareholder value maximization norm is more compatible with a Christian worldview because the norm directly addresses the critical Christian position of the human proclivity toward self-interest, a reality held by both the Protestant and Catholic traditions. Bainbridge cites a natural law nonconsequentialist¹³² who acknowledged, “[o]ne must not waste one’s opportunities by using inefficient methods.”¹³³ At times, perhaps even nonconsequentialists find a cost-benefit analysis irresistible, although—suffice it to say—not as the only determining factor.¹³⁴ The potential for confusion, abuse, and problematic legal enforcement associated with multiple constituencies is likely to do more harm than good to business, and derivatively, socioeconomic well-being.

The shareholder value maximization norm satisfies the Christian understanding of financial accountability. Shareholders purchase stock in anticipation of future dividends and stock prices increase; managers have long been employed to facilitate these goals. In many instances, serving the interests of other stakeholders will also increase profits for the shareholder. Shareholders, however, should be given supreme consideration by managers when their interests conflict with those of other stakeholders.

Concededly, Enron showed that even under the tenure of the shareholder value maximization norm, managers sometimes engage in self-dealing. Corporate scandals like the fall of Enron might serve not as an indication of the norm’s inadequacy, but as an example of what happens if the norm is not rigidly adhered to within the constraints of the law. Although managers occasionally fail to follow the norm, it nonetheless serves the purpose of clarity in a chaotic world of conflicting interests. Had

¹³¹ See discussion *supra* Part III.A.

¹³² Nonconsequentialists are a group of moral philosophers that believe moral imperatives are duties that are generally sufficient in themselves to justify action. Hale Chair in Applied Ethics, <http://www.rit.edu/~692awww/resources/manuals/dgae1p10.html> (last visited July 18, 2006).

¹³³ Bainbridge, *supra* note 35, at 8 (citing JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 111 (1980)).

¹³⁴ *Id.*

Enron made proper decisions in the context of shareholder value maximization over an extended period, the scandal might not have occurred. Consequently, the deferred compensation bank run and widespread employee suffering might have been evaded. This Note does not suggest that scandals are completely avoidable through adherence to the norm. It plainly asserts that notwithstanding some degree of inevitable corporate unrest, the shareholder value maximization norm maintains its superior position as the most efficient decision-making framework from which widespread socio-economic prosperity may be derived, and additionally, the norm is consistent with the reality that the Christian religion posits.

CONCLUSION

Directors and managers should continue focusing their efforts on shareholder value maximization. Christian teaching, which mandates inquiry into the well-being of humanity, can be used to reinforce this principle. Differing opinions among Christians regarding the shareholder value maximization norm result from varying interpretations of the effects of original sin. Notwithstanding these differences, both denominations recognize a human proclivity toward self-interest. Therefore, regardless of the denominational perspective adopted, proposed implementations of the multi-constituent approach are likely inadequate or unworkable. The shareholder value maximization norm will result in positive byproducts exceeding those accomplished by a legal mandate to make monitored or unmonitored decisions based upon the competing concerns of multiple stakeholders. Expanding the realm of mandated considerations by directors and officers might potentially lead to confusion or insincere business decisions with shifty allegiances, and oversight could arguably infringe upon economic and personal liberty. Although rigorous adherence to the norm will not eliminate all corporate scandals, the norm continues to maintain its position as the best business mechanism to achieve socioeconomic well-being and it also comports with a Christian worldview.