A CATHOLIC DEFENSE OF CORPORATE LAW AND PRACTICE

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INTRODUCTION

This year is my twenty-fifth year as a law professor. For all those years, I have taught a variety of corporate law courses. For almost all of those years, I have taught them at a Catholic university.

The goal of every Catholic university is to integrate faith and reason.[1] At the Notre Dame Law School in particular, we often say that we strive to educate a different kind of lawyer.[2] We hope not only to teach legal doctrine and skills, but to build character. We seek to cultivate not simply ethical lawyers who pursue justice—all law schools do that—but lawyers who seek to advance the common good,[3] promote human flourishing,[4] and build up the Kingdom of God on Earth.[5]

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1. *See* POPE JOHN PAUL II, APOSTOLIC CONSTITUTION *EX CORDE ECCLESIAE* para 1 (1990) [hereinafter *EX CORDE ECCLESIAE*] ("A Catholic University's privileged task is 'to unite existentially by intellectual effort two orders of reality that too frequently tend to be placed in opposition as though they were antithetical: the search for truth [i.e., reason], and the certainty of already knowing the fount of truth [i.e., faith].'"); *id.* para. 17 ("[A] specific part of a Catholic University's task is to promote dialogue between faith and reason, so that it can be seen more profoundly how faith and reason bear harmonious witness to the unity of all truth.") (emphasis omitted).

2. *See* NOTRE DAME L. SCH., https://law.nd.edu (last visited July 12, 2023); *see also* NOTRE DAME L. SCH., https://law.nd.edu/about (last visited July 12, 2023).

3. "By common good is to be understood 'the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.' The common good concerns the life of all." VATICAN PUBL'G HOUSE, CATECHISM OF THE CATH. CHURCH para. 1906 (2000) (footnote omitted) [hereinafter CCC].

4. *See id*. para. 1912 ("The common good is always oriented towards the progress of persons . . . .").

5. *See* Hugh Pope, *Kingdom of God*, *in* 8 CATHOLIC ENCYCLOPEDIA (1910), https://www.newadvent.org/cathen/08646a.htm ("The kingdom of God means . . . the ruling of God in our hearts; it means those principles which separate us off from the kingdom of the world and the devil; it means the benign sway of grace; it means the Church as that Divine institution whereby we may make sure of attaining the spirit of Christ and so win that ultimate kingdom of God Where He

How does corporate law fit into this picture? How does a director or a corporate attorney do those things? Can a devout Catholic pursue such a career in good faith? These are the sorts of questions that I have often received from students and others. Many people seem to assume that Catholicism and corporate law cannot be reconciled.

I disagree. I am Catholic and I have wrestled with these issues throughout my life. I settled upon a career in corporate law because I believe that it is perfectly compatible with my religious beliefs. I do not believe that I have compromised my faith in the process, and I believe that I can in good conscience recommend such a career to other Catholics.

In this article, I will explain myself. I will provide a defense of corporate law and of pursuing careers connected to it. I will explain why they are consistent with Catholic teaching. I hope to show that pursuing such a career is by no means selling out, but rather a reasonable way for people to live out their faith. Although my arguments are grounded in Catholic teaching, my conclusions are not necessarily limited to Catholics. I suspect and hope that people of other religious traditions—especially other Christians, but also Jews and Muslims, and perhaps people of other faiths—may find this article helpful.

I will proceed as follows. In Part II, I will set out my assumptions regarding corporate law and Catholicism. In brief, I intend to consider corporate law as it is, and will not argue about how it should be; I will do the same with Catholicism, relying on authentic Catholic teaching. In addition, I will provide a novel but orthodox framework for assessing the morality of a questionable course of action. In Part III, I will address whether Catholicism allows for the pursuit of careers in business. This question confronts the overarching problem: can Catholicism be reconciled with the pursuit of wealth? In Part IV, I will defend corporate law itself, especially its preference for enabling law rather than mandatory law and its fundamental commitment to shareholder primacy. In Part V, I will defend the fiduciary law aspects of corporate law and the role of directors, officers, and corporate attorneys. Finally, I will conclude with a defense of my current role as a corporate law professor.

To be clear, I will not be arguing that a career in corporate law offers the most noble of career options. I will simply argue that it offers viable options for Catholics to pursue. Careers in corporate law are no better or worse than many other careers. There is no duty in Catholic teaching to pursue certain careers over others. For example, Saint Joseph was a carpenter, and presumably, Jesus Christ himself pursued such a career for a significant portion of his life.[6] Thus, Catholics should not be hesitant to pursue careers in corporate law, nor pushed away from them, if they are so inclined. Rather, they should

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reigns without end in 'the holy city, the New Jerusalem, coming down out of heaven from God.'") (quoting *Revelation* 21:2).

6. I will be quoting from the New American Bible. CONFRATERNITY OF CHRISTIAN DOCTRINE, INC., NEW AMERICAN BIBLE (1970) [hereinafter NAB]. *See Matthew* 13:55 (NAB) ("Is he not the carpenter's son?"); POPE JOHN PAUL II, ENCYCLICAL LETTER *LABOREM EXERCENS* para. 6 (1981) [hereinafter *LABOREM EXERCENS*] (noting that Jesus "devoted most of the years of his life on earth to *manual work* at the carpenter's bench").

embark on such a career with the same attitude of service to God and neighbor as they would any other career.

I. BACKGROUND AND ASSUMPTIONS

In this Part, I will lay the foundation for the remainder of the article. In Section A, I will set forth one major assumption: what I mean by corporate law. In Section B, I will set forth a second major assumption: what I mean by Catholicism. Finally, in Section C, I will set forth a novel but orthodox test that I will use when evaluating the morality of corporate law from the Catholic perspective.

A. Corporate Law

In this article, I intend to defend corporate law. But what exactly do I mean by corporate law? I intend to defend corporate law as it exists, not as I would have it. Therefore, I will not take up the issue of how corporate law should be, and I will not propose any reforms. That may be a work for another day. In this article, I will take corporate law as a given.

But what is the content of corporate law that is given? The traditional view is basically the one set forth by Milton Friedman:

> I[n] a free-enterprise, private-property system, a corporate executive is an employe[e] of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.[7]

This view embodies shareholder primacy: the principle that shareholders own the corporation and therefore the corporation should be run in their interests. I will defend the traditional view for two reasons: first, because I think it is descriptively accurate, at least under Delaware law; second, because it is the starkest view, and therefore the one most in need of defense.

The leading case on shareholder primacy is over a century old. In *Dodge v. Ford Motor Co.*,[8] the Michigan Supreme Court set forth the law as follows:

> 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 nondistribution of profits among stockholders in order to devote them to other purposes.[9]

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7. Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES 1, 2 (Sept. 13, 1970), https://graphics8.nytimes.com/packages/pdf/business/miltonfriedman1970.pdf.

8. 170 N.W. 668 (Mich. 1919).

9. *Id.* at 684.

Delaware case law reflects a similar position. Particularly worth noting is the case between eBay and craigslist.[10] In that case, the Delaware Court of Chancery was presented with an interesting challenge to the concept of shareholder primacy. The following passage from the court's opinion both explains the issue and gives the court's resolution:

> Jim and Craig [the founders of craigslist] did prove that they personally believe craigslist should not be about the business of stockholder wealth maximization, now or in the future. As an abstract matter, there is nothing inappropriate about an organization seeking to aid local, national, and global communities by providing a website for online classifieds that is largely devoid of monetized elements. Indeed, I personally appreciate and admire Jim's and Craig's desire to be of service to communities. The corporate form in which craigslist operates, however, is not an appropriate vehicle for purely philanthropic ends, at least not when there are other stockholders interested in realizing a return on their investment. Jim and Craig opted to form craigslist, Inc. as a for-profit Delaware corporation and voluntarily accepted millions of dollars from eBay as part of a transaction whereby eBay became a stockholder. Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders—no matter whether those stockholders are individuals of modest means or a corporate titan of online commerce. If Jim and Craig were the only stockholders affected by their decisions, then there would be no one to object. eBay, however, holds a significant stake in craigslist, and Jim and Craig's actions affect others besides themselves.[11]

The Delaware Supreme Court has often referred to shareholders as owners. For example, in *North American Catholic Education Programming Foundation, Inc. v. Gheewalla*,[12] the court stated that "Delaware corporate law provides for a separation of control and ownership. The directors of Delaware corporations have 'the legal responsibility to manage the business of a corporation for the benefit of its shareholders [sic] owners.'"[13] Moreover, that

10. eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1 (Del. Ch. 2010).

11. *Id.* at 34 (emphasis omitted) (footnote omitted).

12. 930 A.2d 92 (Del. 2007).

13. *Id.* at 101 (footnote omitted) (quoting Malone v. Brincat, 722 A.2d 5, 9 (Del. 1988)); *see also* Seinfeld v. Verizon Commc'ns, Inc., 909 A.2d 117, 119 (Del. 2006) ("Delaware corporate law provides for a separation of legal control and ownership. The legal responsibility to manage the business of the corporation for the benefit of the stockholder owners is conferred on the board of directors by statute. The common law imposes fiduciary duties upon the directors of Delaware corporations to constrain their conduct when discharging that statutory responsibility.") (footnotes

court has often stated that directors owe their fiduciary duties to "the corporation and its shareholders."[14] These two beneficiaries are used interchangeably: sometimes the court says duties are owed to the corporation and sometimes to the shareholders—even in the same opinion.[15] This strongly suggests that the court considers the two terms to be functionally equivalent.[16]

Nevertheless, not all scholars agree that shareholder primacy represents an accurate description of corporate law. Many scholars insist that shareholders do not own corporations, but even some of these nevertheless believe that the corporation must be run in their interests.[17] Some scholars insist that corporate law directors have nearly unlimited discretion in making business decisions that allows them to consider and even prefer the interests of constituents other than shareholders.[18] In particular, such scholars often point to the deference afforded

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omitted). In that case, the court upheld shareholder primacy even "in the zone of insolvency," insisting that only when the corporation is actually insolvent can directors act in the interest of creditors. *See Gheewalla,* 930 A.2d at 101. The reason for that is because in insolvency, creditors theoretically replace shareholders as the beneficial owners. *Id.* Thus, the decision is fundamentally compatible with, rather than an exception to, shareholder primacy. *See* Julian Velasco, *Shareholder Ownership and Primacy*, 2010 U. ILL. L. REV. 897, 933 (2010) ("This is entirely consistent with the traditional view.").

14. *See, e.g.*, Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985).

15. *Compare id.* at 955 ("[The] corporate directors have a fiduciary duty to act in the best interests of the corporation's stockholders."), *with id.* at 952 (discussing "the best interests of the corporation" and "the directors' duty of care . . . to . . . the corporation").

16. *See* A. A. Sommer, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later*, 16 DEL. J. CORP. L. 33, 48–49 (1991) ("[T]he equivalence of 'corporation' and 'shareholders' . . . is most clearly seen in the manner in which courts and writers have used these terms, and that usage tends to show that they use them as equivalents. In *Unocal*, the Delaware Supreme Court, in the course of two pages, described the directors' 'fundamental duty and obligation' as running first to 'the corporate enterprise, which includes stockholders,' later to 'the corporation and its shareholders,' and finally, to just 'the corporation's stockholders.'") (footnotes omitted); *see also Gheewalla*, 930 A.2d at 101 ("to the corporation" and to "the corporation for the benefit of its shareholder owners").

17. *See* FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *The Corporate Contract*, *in* THE ECONOMIC STRUCTURE OF CORPORATE LAW 1, 4 (1991) ("Managers may do their best to take advantage of their investors, but they find that the dynamics of the market drive them to act as if they had [their] investors' interests at heart. It is almost as if there were an invisible hand."); Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547, 547–48 (2003) ([The] "'contractarian' model . . . denies that shareholders own the corporation. . . . Contractarian theory nevertheless continues to treat directors and officers as contractual agents of the shareholders, with fiduciary obligations to maximize shareholder wealth.").

18. *See, e.g.*, LYNN STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 32 (2012) ("As far as the law is concerned, maximizing shareholder value is not a requirement; it is just one possible corporate objective out of many. Directors and executives can run corporations to maximize shareholder value, but unless the corporate charter provides otherwise, they are free to pursue any other lawful purpose as well. Maximizing shareholder value is not a managerial obligation, it is a managerial choice."); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 320–21 (1999) ("Corporate law . . . leaves boards of directors largely free

to directors under the business judgment rule as evidence that they are not bound by principles of shareholder primacy.[19] These scholars are correct that the deference is quite broad: directors' decisions will not be questioned if they can be "attributed to any rational business purpose."[20] However, the business judgment rule itself is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."[21] It is clear that the presumption can be rebutted, and if it is the directors are subject to much more rigorous scrutiny under the entire fairness test.[22] In other words, directors are not actually permitted to ignore the interests of shareholders; at most, judicial deference allows them to get away with doing so. But "even if directors are able to get away with doing as they please, they are

to pursue whatever projects and directions they choose, subject only to the limitation that they not use their positions for their own personal enrichment."); Christopher M. Bruner, *The Enduring Ambivalence of Corporate Law*, 59 ALA. L. REV. 1385, 1424 (2008) ("Corporate law likewise remains deeply ambivalent regarding the intended beneficiaries of corporate production, and their relative priority under varying circumstances."); Lyman Johnson & David Millon, *Corporate Law After* Hobby Lobby, 70 BUS. LAW. 1, 10 (2014) ("State corporate law does not require corporations to prioritize profits over competing considerations. . . . [C]orporate law confers on them broad discretion to determine the extent to which they choose to temper the pursuit of profit by regard for other values."); Jonathan Macey, *Sublime Myths: An Essay in Honor of the Shareholder Value Myth and the Tooth Fairy*, 91 TEX. L. REV. 911, 920 (2013) ("Managers are virtually free to ignore shareholder value in what they do (though perhaps not in what they say).").

19. *See, e.g.*, Blair & Stout, *supra* note 18, at 299–300 ("[I]n practice the duty of care is all but eviscerated by a legal doctrine known as the 'business judgment rule.' Because this doctrine seriously undermines directors' accountability to shareholders by virtually insulating directors from claims of lack of care, it seems inconsistent with the view that directors are shareholders' agents.") (footnote omitted); Bruner, *supra* note 18, at 1418 ("As many have argued, the business judgment rule functions every day to insulate countless decisions from second-guessing of any sort, permitting corporate decision[]makers to deviate from the path of shareholder wealth maximization without fear of judicial intervention or negative consequences—so long as they can come up with some form of rationalization phrased in terms of 'long-term' shareholder interests.") (footnote omitted); Johnson & Millon, *supra* note 18, at 13 ("Delaware's lack of commitment to shareholder wealth maximization is also evident in various doctrines that insulate management from accountability to the corporation's shareholders. As a practical matter, the demand requirement in derivative litigation, the business judgment rule, and the statutory provision for exculpation from monetary liability for breach of the duty of care insulate management from liability to shareholders except in cases involving severe conflict of interest or bad faith.") (footnote omitted); Macey, *supra* note 18, at 920–21 ("Managers are virtually free to ignore shareholder value in what they do (though perhaps not in what they say). . . . The business judgment rule, which protects most business decisions from judicial second-guessing, means that top executives and directors are free to do virtually anything they want with and to shareholders' money and never have to say they are sorry to shareholders, courts, workers, or anybody else.") (footnote omitted).

20. Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971).

21. Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984).

22. *See* Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 361 (Del. 1993).

not legally 'free' to do so."[23] The law does, in fact, require directors to pursue the interests of shareholders even if it doesn't police that duty very closely.[24]

Scholars sometimes point to the fact that the Delaware Supreme Court has held that directors may consider "the impact [of their decisions] on 'constituencies' other than shareholders (i.e., creditors, customers, employees, and perhaps even the community generally) . . . ."[25] This may seem to be inconsistent with shareholder primacy, but it is not. The same court has also made it clear that "[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders."[26] In other words, other constituencies may not be considered altruistically, but only out of enlightened self-interest.[27] The interests of the shareholder remain primary.

Ultimately, this is not the appropriate venue to take on all the arguments raised against shareholder primacy. I will therefore end this section by noting that former Delaware Chief Justice Leo Strine agrees with the traditional view of shareholder primacy as a descriptive matter:

> Despite attempts to muddy the doctrinal waters, a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare.[28]

Strine continued,"*Dodge v. Ford* and *eBay* are hornbook law because they make clear that if a fiduciary admits that he is treating an interest other than stockholder wealth as an end in itself, rather than an instrument to stockholder wealth, he is committing a breach of fiduciary duty."[29]

I believe that this is the nature of corporate law. But even if I am mistaken, it is nevertheless the assumption that I am making for purposes of this article. When I say that I will defend corporate law, I mean that I will defend the traditional view—a robust shareholder primacy version of corporate law. Anyone who disagrees may interpret my argument as suggesting that *even if*

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23. *See* Velasco, *supra* note 13, at 955.

24. *See generally* Julian Velasco, *The Role of Aspiration in Corporate Fiduciary Duties*, 54 WM. & MARY L. REV. 519 (2012) (describing fiduciary duty standards of conduct as deliberately "underenforced").

25. Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955 (Del. 1985).

26. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986).

27. Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 771 (2015) ("The understanding in Delaware is that *Revlon* could not have been more clear that directors of a for-profit corporation must at all times pursue the best interests of the corporation's stockholders, and that the decision highlighted the instrumental nature of other constituencies and interests. Non-stockholder constituencies and interests can be considered, but only instrumentally, in other words, when giving consideration to them can be justified as benefiting the stockholders.").

28. *Id.* at 768.

29. *Id.* at 776–77.

corporate law were to mandate shareholder primacy, Catholics would need not reject it.

B. Catholicism

In this article, I will defend corporate law from a Catholic perspective. But what exactly do I mean by Catholicism? Simply put, I mean the teachings of the Roman Catholic Church. These teachings include, but are not limited to, the Bible.[30] Other magisterial documents, such as Conciliar documents and Papal encyclicals, are also authoritative. A good summary of the teachings of the Catholic Church can be found in the Catechism of the Catholic Church[31] and the Compendium of the Social Doctrine of the Church.[32] In short, I will accept the Church's view of Church teaching, and not seek to revise it.[33]

Nevertheless, an important distinction must be drawn between two different types of Church teaching on morality: specific rules and general principles.[34] Specific rules can take the form of positive or negative commands, but they are clear directives.[35] They are precise and universal and leave little room for discretion on the part of the actor. Most of the Ten Commandments are perfect examples: thou shalt not lie, kill, or steal.[36] General principles represent virtues that must be implemented in the context of a person's life, but without clear directives. They are vague and extremely difficult, if not

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30. NAB.

31. *See generally* CCC, *supra* note 3.

32. *See generally* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (2004) [hereinafter COMPENDIUM].

33. The Catholic Encyclopedia also offers good summaries of Catholic teaching. Although it is not authoritative, it is generally reliable.

34. I intentionally eschew referring to the distinction as involving "rules" and "standards." This is because "[a]rguments about and definitions of rules and standards commonly emphasize the distinction between whether the law is given content *ex ante* or *ex post*." Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 559 (1992). This is not at all what I mean. "A standard may entail leaving . . . specification of what conduct is permissible . . . for the adjudicator." *Id.* at 560. The same is not true for the general principle. Both specific rules and general principles are given content *ex ante*.

The distinction that I am making corresponds to the Kantian distinction between perfect duties and imperfect duties. The specific rule corresponds to the perfect duty: it is expected to be obeyed perfectly, and any shortcoming in doing so is at least objectively a sin. By contrast, the general principle corresponds to the imperfect duty: it is impossible to live such general principles perfectly, and failure to do so cannot automatically be considered sinful. *See generally* IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS (1785) *reprinted in* PRACTICAL PHILOSOPHY 37 (Mary J. Gregor ed. & trans., 1996).

35. Specific duties tend to be negative commands: for example, the prohibitions against lying, stealing, and killing. *See Exodus* 20:1–17 (NAB); *Deuteronomy* 5:6–21 (NAB). However, specific duties are sometimes positive commands: for example, the requirements to attend Mass on Sundays and to receive Communion during the Easter season. *See* CCC, s*upra* note 3*,* para. 2042. What is constitutive of a specific duty is that it is relatively easy to ascertain compliance with the command.

36. *See Exodus* 20:1–17 (NAB); *Deuteronomy* 5:6–21 (NAB).

impossible, to satisfy perfectly. One might even say that they are aspirational.[37] Although these commands are not optional, individuals have considerable discretion in implementing them in their lives. Many of the teachings of Jesus's sermon on the mount are of this sort: for example, do not be angry, give to anyone who asks, and love your enemy.[38]

When applying Church teaching, it is important not to treat a general principle as a specific rule. The translation of a general principle into a rule of action is not a straightforward matter. It requires a prudential evaluation of all the circumstances as well as an examination of conscience. Often, it also involves weighing multiple principles that may in certain respects compete against one another. Generally, there is not a single right course of action that follows from a general principle, but rather a range of acceptable actions. Sometimes, a general principle is not truly addressed to the individual at all, but rather to those in power or society as a whole. Thus, one must be cautious when attempting to criticize a particular course of action based on a general principle. People are required to implement the general principles in their lives but have the liberty and responsibility of doing so in accordance with the dictates of their consciences.

I submit that most of Catholic teaching takes the form of general principles. As the Catechism puts it, "The Church's social teaching proposes principles for reflection; it provides criteria for judgment; it gives guidelines for action . . . ."[39] The Compendium adds: "With her social doctrine the Church does not attempt to structure or organize society, but to appeal to, guide and form consciences."[40] This lack of specific rules does not imply that "anything goes." But it does mean that Catholic social teaching cannot be applied mechanically or legalistically; rather, it depends upon the good faith of actors.

Thus, in my analysis, I will not demand perfection from corporate law or its actors any more than I would from anyone else. I will look to see whether corporate law requires immoral conduct. If not, corporate law will be deemed acceptable. This is not because Catholicism requires only a bare minimum of moral consideration, but rather because it would mean that corporate law is compatible with Catholicism. It would remain incumbent upon corporate actors (including those who counsel them) to live out their faith within the context of their corporate law careers.

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37. I am uncomfortable with applying the term "aspirational" to general principles. I have previously argued that "[a]spirational ideals are those that go above and beyond the call of duty," Velasco, *supra* note 24, at 586, and that "whatever else 'aspirational' may mean, it does not mean obligatory or mandatory," *id.* at 522. General principles, by contrast, are obligatory. However, because general principles cannot be satisfied perfectly, they could be considered aspirational in a more colloquial sense of setting an ambitious goal.

38. *See Matthew* 5–7 (NAB).

39. CCC, *supra* note 3, para. 2423.

40. COMPENDIUM, *supra* note 32, para. 81.

C. My Framework for Moral Evaluation

In this section, I will propose a framework for evaluating the morality of a questionable course of action. This framework is novel in the sense that I am not merely copying it from another source but instead, I have distilled it from Church teaching and the writings of the saints. It is, to the best of my knowledge, entirely orthodox.

The framework comprises a hierarchy of three moral imperatives. The first and most urgent imperative is to avoid sin. This is because, "[t]o the eyes of faith[,] no evil is graver than sin and nothing has worse consequences for sinners themselves, for the Church, and for the whole world."[41] What is sin? "Sin is an offense against God[] . . . it is disobedience, a revolt against God through the will to become 'like gods,' knowing and determining good and evil."[42] The most fundamental command of any monotheistic religion must be to avoid offending God.

But what counts as sin? "Sin is an offense against reason, truth, and right conscience . . . . It has been defined as 'an utterance, a deed, or a desire contrary to the eternal law.'"[43] In other words, the first imperative prohibits, at the very least, the violation of any specific moral rules of a universal nature. This includes rules like those contained in the Ten Commandments but is not limited to them. The first imperative prohibits conduct that the Church considers to be objectively sinful.[44]

The second imperative is to fulfill other legitimate duties. Here, I mean duties that arise from one's circumstances. For example, everyone has a duty to comply with all applicable laws.[45] Although one might be tempted to think

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41. CCC, *supra* note 3, para. 1488.

42. *Id.* para. 1850.

43. *Id.* para. 1849.

44. The evaluation of sins, like crimes, involves both objective (*actus reus*) and subjective (*mens rea*) components. A person may not be fully culpable for an objectively sinful act because of her subjective state of mind. *Cf. id.*, para. 1857. Nevertheless, my framework requires the avoidance of objectively sinful acts without regard to subjective culpability. This is because of the concept of "venial sin." According to the Catechism, "Sins are rightly evaluated according to their gravity," and there is a "distinction between mortal and venial sin . . . ." *Id*. para. 1854. Venial sins are less serious than mortal sins, *see id*. para. 1855, but they are still sins and must be avoided, *see id*. paras. 1863, 1875. "For a sin to be mortal, three conditions must together be met: 'Mortal sin is sin whose object is grave matter and which is also committed with full knowledge and deliberate consent.'" *Id*. para. 1857. Venial sins, on the other hand, do not necessarily require the subjective component: "One commits venial sin when, in a less serious matter, he does not observe the standard prescribed by the moral law, or when he disobeys the moral law in a grave matter, but without full knowledge or without complete consent." *Id*. para. 1862. Thus, in order to avoid venial sin, a person must avoid objectively sinful acts without regard to considerations of subjective culpability.

45. *See Romans* 13:1–2 (NAB) ("Let every person be subordinate to the higher authorities, for there is no authority except from God, and those that exist have been established by God. Therefore, whoever resists authority opposes what God has appointed, and those who oppose it will bring judgment upon themselves."); COMPENDIUM, *supra* note 32, para. 398 ("Whoever refuses to obey an authority that is acting in accordance with the moral order 'resists what God has appointed.'") (citation omitted).

that obedience to the law is a universal general principle, I would say that it is actually contextual. The laws that a person must obey depend upon her circumstances, especially her citizenship and where she is located. Similarly, most people have what are known as duties of state: obligations that arise from one's state in life.[46] For example, spouses have responsibilities to their families, employees have responsibilities to their employers, the ordained have responsibilities to the Church, and the religious have responsibilities to their communities. Some duties are more determinate than others, but as a general matter, all must be satisfied unless a higher obligation would be breached thereby. For example, if a duty would require one to commit a sin, she cannot satisfy that duty because the first imperative takes precedence.[47] Similarly, it is possible that two duties will conflict, and it may be necessary to resolve the conflict by ranking the duties and sacrificing the lower duty for the higher duty. This is not the place to elaborate on how this would be done. It is sufficient for our purposes to say that the duty to comply with applicable laws is a fairly high-order duty.[48]

The third imperative is to do discretionary good. In other words, people must attempt to foster virtue and implement general moral principles in their lives. However, an act that might otherwise be considered good is nevertheless impermissible if it would involve violating either of the two higher imperatives.[49] For example, one may not rob the rich in order to give to the poor. Although giving to the poor is generally a good thing, the first imperative forbids stealing. Likewise, one may not ignore his family and job in order to engage in more extensive prayer. Although prayer is good, the second imperative forbids shirking on duties of state. In other words, although discretionary good is important, it must yield to other duties.

Moreover, because the third imperative involves discretion, a person cannot easily be told exactly how to satisfy it. Each person must pursue virtue, but she has the freedom and responsibility to decide, in accordance with her conscience, exactly how to do so. One person may choose to prioritize certain virtues in her life, or to focus her beneficence on certain parties; a second may prioritize other virtues or focus her beneficence on others; a third may decide not to specialize but rather to spread her efforts more broadly. Such decisions

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46. *See generally* THE CATHOLIC FAITH: A COMPENDIUM AUTHORIZED BY H. H. POPE PIUS X 63–64 (Benziger Bros. 1911).

47. *See* CCC, *supra* note 3, para. 2242 ("The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel.").

48. Although the duty to comply with applicable law is a fairly high order duty, it is not absolute. *See id*. In fact, Catholic teaching suggests that "a law that is not just, seems to be no law at all." *See* ST. THOMAS AQUINAS, SUMMA THEOLOGIAE I-II Q. 96, art. 4 (Fathers of the Eng. Dominican Province trans., 2d rev. ed. 1920) (c. 1270), https://www.newadvent.org/summa. Thus, "[i]f rulers were to enact unjust laws or take measures contrary to the moral order, such arrangements would not be binding in conscience," CCC, *supra* note 3, para 1903—St. Thomas Aquinas adds "except perhaps in order to avoid scandal or disturbance," SUMMA THEOLOGIAE, *supra*, I-II Q. 96, art. 4.

49. Because the three imperatives are hierarchical, the third must yield to the first two.

are between each individual and God. Again, this does not mean that "anything goes," or that all choices are equal. It only means that such decisions are complicated. On any virtue, one person may seem more advanced than another; but God may be calling the two to different paths, so the one who seems more advanced actually may be less so. Moreover, on other virtues, the second may be more advanced. Thus, we shouldn't be in the practice of judging each other.[50] Although it may sometimes be possible to identify clear abuses of discretion, it is inappropriate to attempt to micromanage the discretionary decisions of others.

So, when we are assessing whether a course of action or even a career choice is compatible with Church teaching, my framework suggests that we should ask whether it involves objective sin, whether duties of state are involved, and what the appropriate range of moral discretion is. If we can avoid sin, satisfy our duties, and reasonably pursue virtue in the corporate world, then a career in corporate law is a perfectly viable option for a Catholic.

II. ENTREPRENEURIALISM: BUSINESS AS PRINCIPAL

At the heart of the issue is the problem of wealth from the Catholic perspective. It is often said that money is the root of all evil,[51] and the Catholic Church is known to have a "preferential option for the poor."[52] The question naturally arises whether a career that puts the pursuit of wealth at its center is compatible with Catholicism.

This Part will address that question. Section A will consider whether Catholicism requires poverty and prohibits wealth. Section B will consider the Catholic attitude towards work and business. Section C will directly confront the most challenging teaching of the Catholic Church on wealth: the principle of the universal destination of goods.

A. Poverty and Wealth

Does Catholicism require poverty and prohibit the pursuit of wealth? If so, then business and corporate law are inherently problematic. Fortunately,

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50. *Matthew* 7:1–2 (NAB) ("Stop judging, that you may not be judged. For as you judge, so will you be judged, and the measure with which you measure will be measured out to you.").

51. The actual Biblical quote is more nuanced: "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." 1 *Timothy* 6:10 (NAB) (emphasis added).

52. *See* CCC, *supra* note 3, para. 2448 ("[T]hose who are oppressed by poverty are the object of a preferential love on the part of the Church which, since her origin and in spite of the failings of many of her members, has not ceased to work for their relief, defense, and liberation through numerous works of charity which remain indispensable always and everywhere.") (emphasis omitted); COMPENDIUM, *supra* note 32, para. 182 ("[T]he preferential option for the poor should be reaffirmed in all its force. 'This is an option, or a *special form* of primacy in the exercise of Christian charity, to which the whole tradition of the Church bears witness. . . . [T]his love of preference for the poor, and the decisions which it inspires in us, cannot but embrace the immense multitudes of the hungry, the needy, the homeless, those without health care[,] and, above all, those without hope of a better future.'") (first emphasis omitted) (citation omitted).

Catholicism does no such thing. But it is worthwhile to briefly consider the arguments. There are many biblical passages that could be raised in defense of this position, but I will limit myself to a few representative examples.

For example, "Jesus said to [the rich young man], 'If you wish to be perfect, go, sell what you have and give to (the) poor, and you will have treasure in heaven. Then come, follow me.'"[53] One could be forgiven for interpreting such a passage to require poverty and forbid wealth.

However, the Catholic Church considers poverty to be an evangelical counsel rather than a command. The Catholic Encyclopedia provides a good description of the distinction:

> Christ in the Gospels laid down certain rules of life and conduct which must be practiced by every one of His followers as the necessary condition for attaining to everlasting life. These precepts of the Gospel practically consist of the Decalogue, or Ten Commandments, of the Old Law, interpreted in the sense of the New. Besides these precepts [or commands] which must be observed by all under pain of eternal damnation, He also taught certain principles which He expressly stated were not to be considered as binding upon all, or as necessary conditions without which heaven could not be attained, but rather as [evangelical] counsels for those who desired to do more than the minimum and to aim at Christian perfection, so far as that can be obtained here upon earth.[54]

In other words, Jesus and the Church teach that poverty is not mandatory, but optional—if you wish to be perfect.[55]

Although poverty is not required, perhaps wealth is forbidden. For example, Jesus taught: "Blessed are you who are poor, for the kingdom of God is yours. . . . But woe to you who are rich, for you have received your consolation."[56] However, the Catholic Church does not interpret these passages to denigrate wealth but rather avarice: "it is not those who possess riches, but those who know not how to use them that are condemned . . . ."[57]

Even if wealth is not strictly forbidden, it nevertheless might be in serious tension with Catholicism. For example, Jesus taught that "You cannot serve God and [money]."[58] Thus, if one is to serve God, perhaps she ought to eschew

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53. *Matthew* 19:21 (NAB) (citation omitted).

54. Arthur Barnes, *Evangelical Counsels*, *in* 4 CATHOLIC ENCYCLOPEDIA (1908), https://www.newadvent.org/cathen/04435a.htm. Evangelical counsels should not be mistaken for general principles. Evangelical counsels are more in the nature of specific rules, although they are optional rather than mandatory.

55. Sometimes poverty may be inappropriate. Single people have greater freedom to choose poverty than married people do because the latter have the moral responsibility to provide for their families. *See infra* note 63 and accompanying text.

56. *Luke* 6:20, 24 (NAB).

57. I THOMAS AQUINAS, CATENA AUREA: COMMENTARY ON THE FOUR GOSPELS: COLLECTED OUT OF THE WORKS OF THE FATHERS 212–13 (1841).

58. *Matthew* 6:24 (NAB). The Bible uses the term "mammon" rather than "money." However, "mammon" is understood to mean money. *See Mammon*, BRITANNICA, https://www.britannica.com/topic/mammon (last visited Dec. 2, 2023).

wealth. However, the Church distinguishes between making money and serving money.[59] A person can only serve one master: either God comes first or money comes first—the two cannot be equals. Catholics are prohibited from putting money above God, but not from making money.

Finally, perhaps it could be argued that the pursuit of wealth is at least morally dangerous. After all, Jesus warned that it will be hard "for one who is rich to enter the kingdom of heaven."[60] However, the Catholic Church interprets this passage to warn about attachment to wealth rather than wealth itself,[61] and to suggest only that people should be more concerned about spiritual matters than material ones.

The fact is that Catholicism does not forbid the pursuit of wealth.[62] To the contrary, pursuit of at least some wealth is practically unavoidable because people have a moral duty to provide for themselves and their families.[63] Rather, the Catholic Church's position is more nuanced: "economic goods and riches are not in themselves condemned so much as their misuse."[64] In other words, there is a positive role for wealth:

> Riches fulfill their function of service to man when they are destined to produce benefits for others and for society. . . . Wealth is a good that comes from God and is to be used by its owner and made to

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59. I AQUINAS, *supra* note 57, at 248 ("Yet He said *not*, he who has riches, but, he who is the servant of riches.") (citing St. Jerome) (emphasis added).

60. *Matthew* 19:23 (NAB).

61. I AQUINAS, *supra* note 57, at 669 ("What He spoke was not condemning riches in themselves, but those who were enslaved by them . . . .") (citing St. John Chrysostom).

62. POPE JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* 36 (1991) [hereinafter *CENTESIMUS ANNUS*] ("It is not wrong to want to live better . . . ."); COMPENDIUM, *supra* note 32, para. 334 ("The economy has as its object the development of wealth and its progressive increase, not only in quantity but also in quality; this is morally correct if it is directed to man's overall development in solidarity and to that of the society in which people live and work.") (emphasis omitted).

63. *See* 1 *Timothy* 5:8 (NAB) ("[W]hoever does not provide for relatives and especially family members has denied the faith and is worse than an unbeliever."); CCC, *supra* note 3, paras. 2427–28 ("Human work . . . is a duty . . . Everyone should be able to draw from work the means of providing for his life and that of his family . . . .") (emphasis omitted); COMPENDIUM, *supra* note 32, para. 265 ("Christians are called to work . . . to provide themselves with bread . . . ."); *id.* para. 274 ("Work is presented as a moral obligation with respect to one's neighbor, which in the first place is one's own family . . . ."); *CENTESIMUS ANNUS, supra* note 62, para. 43 ("Man works in order to provide for the needs of his family . . . ."); POPE LEO XIII, ENCYCLICAL LETTER *RERUM NOVARUM* para. 13 (1891) [hereinafter *RERUM NOVARUM*] ("It is a most sacred law of nature that a father should provide food and all necessaries for those whom he has begotten; and, similarly, it is natural that he should wish that his children, who carry on, so to speak, and continue his personality, should be by him provided with all that is needful to enable them to keep themselves decently from want and misery amid the uncertainties of this mortal life."); *LABOREM EXERCENS*, *supra* note 6, para. 10 ("Work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to. . . . In a way, work is a condition for making it possible to found a family, since the family requires the means of subsistence which man normally gains through work.") (emphasis omitted).

64. COMPENDIUM, *supra* note 32, para. 323 (emphasis omitted).

> circulate so that even the needy may enjoy it. Evil is seen in the immoderate attachment to riches and the desire to hoard.[65]

Thus, Catholicism neither requires poverty nor forbids wealth. Although wealth may not be a Catholic's main concern, she may nevertheless pursue wealth. What matters morally is how she does so and what she does with her wealth. Especially noteworthy in this regard is the virtue of generosity. The Catholic Church teaches that "men are obliged to come to the relief of the poor and to do so not merely out of their superfluous goods."[66] Generosity is a very serious responsibility, especially for those who are wealthy. But the general principle of generosity does not translate into a specific rule mandating poverty or prohibiting wealth.[67]

In fact, there have been many wealthy people who have been considered saints by the Catholic Church. Many of them have given away all their wealth. Among the most popular is Saint Francis of Assisi.[68] However, many remained wealthy, especially those who were royalty. Among my favorite saints who were wealthy was Saint Thomas More, the patron saint of lawyers.[69] While it is true that wealthy saints were invariably generous with their wealth, it is also true they were not poor and did not eschew wealth altogether.

Of course, this does not settle the matter. Even if poverty is not required, every individual must nevertheless give it serious consideration. And even if the pursuit of wealth is not forbidden, each individual must consider whether there are better pursuits. Thus, there is no easy out for attorneys or law students seeking to live a Catholic life—they must decide for themselves how to respond to Jesus's invitation to virtue. It is a very personal decision, and people ought to respect each other's decisions on such matters.

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65. *Id.* para. 329.

66. SECOND VATICAN COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD *GAUDIUM ET SPES* para. 69 (1965) [hereinafter *GAUDIUM ET SPES*]. *See also CENTESIMUS ANNUS, supra* note 62, para. 36 ("[T]he duty of charity . . . [is] the duty to give from one's 'abundance,' and sometimes even out of one's needs, in order to provide what is essential for the life of a poor person.").

67. Is almsgiving a duty or a virtue? There is some debate. *See* Joseph Delany, *Use of Wealth*, *in* 15 CATHOLIC ENCYCLOPEDIA (1912), https://www.newadvent.org/cathen/15571a.htm. ("The judgment of theologians is . . . not unanimous in this matter."). *Compare Luke* 3:11 (NAB) ("Whoever has two cloaks should share with the person who has none.") *with RERUM NOVARUM*, *supra* note 63, para. 22 ("'Of that which remaineth, give alms.' It is a duty, not of justice (save in extreme cases), but of Christian charity—a duty not enforced by human law.") (citation omitted). I think that almsgiving is a general principle, or an imperfect duty. Some almsgiving is required, but the amount is discretionary with the actor. This is consistent with St. Paul's statement in the Second Letter to the Corinthians: "Consider this: whoever sows sparingly will also reap sparingly, and whoever sows bountifully will also reap bountifully. Each must do as [he has] already determined, without sadness or compulsion, for God loves a cheerful giver." 2 *Corinthians* 9:6–7 (NAB). In any event, the distinction doesn't matter at this point because the question is about what to do with wealth rather than whether wealth is permitted.

68. *See* IV HERBERT J. THURSTON, S.J. & DONALD ATTWATER, BUTLER'S LIVES OF THE SAINTS 22–32 (Complete Edition 1956).

69. *Id.* at 49–55.

B. Work and Business

Because Catholicism does not require poverty or forbid wealth, it seems obvious that it would allow people to engage in business. However, in order to understand how business fits in with Catholicism, we must first consider the Catholic perspective on work.

Catholicism holds work in high esteem: "[w]ork has a place of honor because it is a source of riches, or at least the conditions for a decent life, and is, in principle, an effective instrument against poverty."[70] Despite popular misconception, the Catholic Church does not consider work to be a punishment for sin.[71] Rather, it views work as part of the vocation of man.[72] Even before the fall of man, God told man to subdue the earth and have dominion over it (first story of creation)[73] and to cultivate and care for the garden (second story of creation).[74] Thus, man was always supposed to share in God's creativity through work. The punishment for the fall was that the ground was cursed and work would be burdensome.[75] But work itself was intended.

And what are people supposed to do for work? Romantically speaking, one can imagine a world in which every individual, or at least every family, works for self-sufficiency. But this would be extremely inefficient and is not required by Catholic teaching. People are allowed to specialize and trade with each other; and they can trade for goods and services or for money, which represents the ability to purchase goods and services. Thus, to provide for themselves and their families, people are allowed to work for money. This does not diminish the value or dignity of work.

Catholic teaching does not place any emphasis on any particular secular careers. Catholicism recognizes that there are many societal needs that need to be filled, and people are generally free to choose from among them according to their talents and preferences. In his *First Letter to the Corinthians*, Saint Paul discusses how diversity of functions is part of God's plan.[76] There is no duty to choose the most noble line of business. Consider the example of Jesus Christ himself, and his foster father Saint Joseph. They were simply carpenters.[77]

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70. COMPENDIUM, *supra* note 32, para. 257 (emphasis omitted).

71. *See id.* para. 256 ("Work is part of the original state of man and precedes his fall; it is therefore not a punishment or curse.") (emphasis omitted).

72. CCC, *supra* note 3, para. 2427 ("Human work proceeds directly from persons created in the image of God and called to prolong the work of creation by subduing the earth, both with and for one another. Hence work is a duty[.]") (emphasis omitted); COMPENDIUM, *supra* note 32, para. 263 ("Work represents a fundamental dimension of human existence as participation not only in the act of creation but also in that of redemption. . . . [W]ork is an expression of man's full humanity.") (emphasis omitted); *id.* para. 264 ("[W]ork . . . is an integral part of the human condition . . . . No Christian . . . should feel that he has the right not to work . . . .") (emphasis omitted) (citation omitted).

73. *See Genesis* 1:28–30 (NAB).

74. *Id.* at 2:15.

75. *Id.* at 3:17–19.

76. *See* 1 *Corinthians* 12 (NAB) (discussing diversity of function in God's plan).

77. *See supra* note 6 and accompanying text.

There is nothing wrong with carpentry, but also nothing special about it. It is just another business among many.

Of course, some lines of work necessarily involve sin and therefore cannot be pursued. Drug dealing[78] and pornography[79] immediately come to mind. Other lines of work may involve special occasions of sin that must be avoided. For example, people involved in marketing must avoid lying,[80] and bankers must avoid usury.[81] Generally speaking, however, most lines of work are perfectly acceptable under Catholic teaching. What is important is that, whatever work you choose, you do your work well and comport yourself well. The former means doing a good job: providing a good product or service to the customer. The latter means being a good human being: avoiding sin, satisfying your duties, and pursuing virtue in all your endeavors.

Now, people who run their own businesses have a great deal of legal freedom to do as they please. Of course, they must comply with all applicable laws. Beyond that, however, the law allows them to be greedy or generous, virtuous or vicious as they please. Nevertheless, Catholicism teaches that people are expected to be generous and virtuous in all aspects of their lives—including the management of their businesses.[82] Virtue and generosity, however, do not require foregoing profitability. Catholicism recognizes that

78. CCC, *supra* note 3, para. 2291 ("Clandestine production of and trafficking in drugs are scandalous practices. They constitute direct co-operation in evil, since they encourage people to practices gravely contrary to the moral law.").

79. *Id.* para. 2354 ("*Pornography* consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of its participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illusion of a fantasy world. It is a grave offense.").

80. *See generally id.* para. 2485 ("By its very nature, lying is to be condemned. It is a profanation of speech, whereas the purpose of speech is to communicate known truth to others. The deliberate intention of leading a neighbor into error by saying things contrary to the truth constitutes a failure in justice and charity.").

81. Usury is a complicated issue. "Historically," the term generally meant "the lending of money with interest;" "[t]oday," however, the term refers to the "charging of an illegal [or excessive] rate of interest." *Usury*, BLACK'S LAW DICTIONARY (11th ed. 2019). The moral status of usury in the Catholic Church is complicated. *See* Arthur Vermeersch, *Usury*, 15 CATHOLIC ENCYCLOPEDIA, https://www.newadvent.org/cathen/15235c.htm. Nevertheless, it can be asserted safely that "[e]ven today one can still sin against justice by demanding too high an interest . . . ." Arthur Vermeersch, *Interest*, 8 CATHOLIC ENCYCLOPEDIA, https://www.newadvent.org/cathen/08077a.htm.

82. *See* COMPENDIUM, *supra* note 32, para. 344 ("Business owners and management must not limit themselves to taking into account only the economic objectives of the company, the criteria for economic efficiency and the proper care of 'capital' as the sum of the means of production. It is also their precise duty to respect concretely the human dignity of those who work within the company.") (emphasis omitted).

businesses must be permitted to seek efficiency[83] and profit.[84] What is required is that an entrepreneur temper economic concerns with moral and personal concerns.[85] She need not pay her employees the least amount possible nor charge his customers the highest amount possible. To the contrary, she has a moral obligation to pay a just wage[86] and to charge a fair price.[87] A business owner has the power and the right to set her policies. Because she gets to decide, she bears the moral responsibility for her decisions. Thus, business can be conducted more or less virtuously. It is the moral obligation of the owner to choose the former rather than the latter.

That said, there are at least two important considerations that must be kept in mind when evaluating any such decisions. First, market forces play a significant role in constraining an entrepreneur's decisions, and this is true on both a practical and moral level.[88] On a practical level, entrepreneurs will be

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83. *Id.* para. 332 ("The production of goods is a duty to be undertaken in an efficient manner, otherwise resources are wasted. On the other hand, it would not be acceptable to achieve economic growth at the expense of human beings, entire populations or social groups, condemning them to indigence.").

84. *See* CENTESIMUS ANNUS, *supra* note 62, para. 35 ("The Church acknowledges the legitimate role of profit as an indication that a business is functioning well.") (emphasis omitted); COMPENDIUM, *supra* note 32, para. 341 ("[T]he quest for equitable profit is acceptable in economic and financial activity . . . .") (emphasis omitted).

85. CCC, *supra* note 3, para. 2432 ("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. Profits are necessary, however. They make possible the investments that ensure the future of a business and they guarantee employment.") (emphasis omitted).

86. *See id.* para 2434 ("A just wage is the legitimate fruit of work. To refuse or withhold it can be a grave injustice." (emphasis omitted); CENTESIMUS ANNUS, *supra* note 62, para. 8 ("[A]nother right which the worker has as a person . . . is the right to a 'just wage,' which cannot be left to the 'free consent of the parties, so that the employer, having paid what was agreed upon, has done his part and seemingly is not called upon to do anything beyond.'") (emphasis omitted); *id.*, para. 8 ("A workman's wages should be sufficient to enable him to support himself, his wife and his children."); GAUDIUM ET SPES, *supra* note 66, para. 67 ("[R]emuneration for labor is to be such that man may be furnished the means to cultivate worthily his own material, social, cultural, and spiritual life and that of his dependents . . . .").

87. *See* CCC, *supra* note 3, para. 2409 ("Even if it does not contradict the provisions of civil law, any form of unjustly taking and keeping the property of others is against the seventh commandment . . . [including] forcing up prices by taking advantage of the ignorance or hardship of another."); CENTESIMUS ANNUS, *supra* note 62, para. 32 ("A person who produces something other than for his own use generally does so in order that others may use it after they have paid a just price, mutually agreed upon through free bargaining."). *Cf.* POPE PIUS XI, QUADRAGESIMO ANNO para. 72 (1931) [hereinafter *QUADRAGESIMO ANNO*] ("But if the business in question is not making enough money to pay the workers an equitable wage because it is being crushed by unjust burdens or forced to sell its product at less than a just price, those who are thus the cause of the injury are guilty of grave wrong, for they deprive workers of their just wage and force them under the pinch of necessity to accept a wage less than fair.").

88. COMPENDIUM, *supra* note 32, para. 338 ("A business' objective must be met in economic terms and according to economic criteria, but the authentic values that bring about the concrete development of the person and society must not be neglected.") (emphasis omitted);

ruined or at least unable to provide for their families if they don't make profits.[89] So there are limits to generosity. This is not an excuse for immoral behavior, but it does circumscribe the realm of available options. On a moral level, there are always tradeoffs as to how to direct potential profits. For example, the owner can decide whether potential profits go to his family (in the form of higher profits), to the employees (in the form of higher wages), to the customers (in the form of lower prices), or to the poor (in the form of almsgiving)—or whether they should be split among some or all of those parties. In a world of scarcity, tough decisions have to be made; the owner can't do everything for everyone.

Second, and relatedly, it is not so easy to judge an owner's decisions. Individual actions may appear to be immoral when considered in isolation but quite moral when considered in context. For example, an owner's lack of generosity to his employees in the form of high wages might enable her to be more generous to the poor. Or it might enable her to expand the business, thereby hiring even more employees. Or it might enable her to spend more on research and development to offer better products and services to her customers. As long as she is not doing something affirmatively wrong, the owner has discretion to decide how to pursue virtue—as well as how much to do so. To be clear, virtue is discretionary but not optional. The owner bears full moral responsibility for her actions. But it is not always easy to judge—nor should we be in the business of doing so.[90] The fact is that business is compatible with Catholicism, and it is the responsibility of the Catholic owner to put her faith into practice.

C. Universal Destination of Goods

One of the key principles of Catholic social teaching is the universal destination of goods: "God destined the earth and all it contains for all men and all peoples so that all created things would be shared fairly by all mankind under the guidance of justice tempered by charity."[91] How can business and wealth be reconciled with such a principle?

First of all, it should be noted that the principle of the universal destination of goods is, in a sense, aspirational:[92]

> [It] is an invitation to develop an economic vision inspired by moral values that permit people not to lose sight of the origin or purpose of

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GAUDIUM ET SPES, *supra* note 66, para. 64 ("[E]conomic activity is to be carried on according to its own methods and laws within the limits of the moral order, so that God's plan for mankind may be realized.") (footnote omitted).

89. *See CENTESIMUS ANNUS*, *supra* note 62, para. 35 ("The Church acknowledges the legitimate role of profit as an indication that a business is functioning well. When a firm makes a profit, this means that productive factors have been properly employed and corresponding human needs have been duly satisfied.") (emphasis omitted); COMPENDIUM, *supra* note 32, para. 340.

90. *See supra* note 50 and accompanying text.

91. *GAUDIUM ET SPES*, *supra* note 66, para. 69.

92. For a discussion of the term "aspirational," see *supra* note 37.

> these goods, so as to bring about a world of fairness and solidarity, in which the creation of wealth can take on a positive function.[93]

This is not to suggest that the principle can be ignored or played down by individuals. However, it is important to remember that the universal destination of goods is a general principle; it cannot be considered a specific rule demanding a particular course of action.[94]

Second, it must be noted that Catholic teaching explicitly recognizes that the principle of the universal destination of goods "do[es] not mean that everything is at the disposal of each person or of all people."[95] The right to private property "has always been defended by the Church up to our own day," even if "not [as] an absolute right."[96] It "confers on everyone a sphere wholly necessary for the autonomy of the person and the family, and it should be regarded as an extension of human freedom."[97] Thus, the principle of the universal destination of goods cannot be interpreted to crowd out private property, nor vice versa. They must be read together.

Private property is not an absolute right and is subject to legitimate regulation by the state.[98] However, Catholic social teaching does not endorse socialism.[99] As Pope Leo XIII put it, "[I]t is clear that the main tenet of socialism, community of goods, must be utterly rejected, since it only injures those whom it would seem meant to benefit, is directly contrary to the natural rights of mankind, and would introduce confusion and disorder into the commonweal."[100] In part, this is because of the principle of subsidiarity, which "is among the most constant and characteristic directives of the Church's social doctrine."[101] This principle provides that issues should be dealt with at the

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93. COMPENDIUM, *supra* note 32, para. 174.

94. *See supra* notes 34–40 and accompanying text.

95. COMPENDIUM, *supra* note 32, para. 173.

96. *CENTESIMUS ANNUS*, *supra* note 62, para. 30.

97. *GAUDIUM ET SPES*, *supra* note 66, para. 71.

98. COMPENDIUM, *supra* note 32, para. 173 ("[I]n order to ensure that this right is exercised in an equitable and orderly fashion, regulated interventions are necessary, interventions that are the result of national and international agreements, and a juridical order that adjudicates and specifies the exercise of this right.").

99. *See* POPE JOHN XXIII, *MATER ET MAGISTRA*: ENCYCLICAL ON CHRISTIANITY AND SOCIAL PROGRESS (1961) para. 34 ("Pope Pius XI further emphasized the fundamental opposition between Communism and Christianity, and made it clear that no Catholic could subscribe even to moderate Socialism. The reason is that Socialism is founded on a doctrine of human society which is bounded by time and takes no account of any objective other than that of material well-being. Since, therefore, it proposes a form of social organization which aims solely at production, it places too severe a restraint on human liberty, at the same time flouting the true notion of social authority.").

100. *RERUM NOVARUM*, *supra* note 63, para. 15. Pope Leo XIII continued: "The first and most fundamental principle, therefore, if one would undertake to alleviate the condition of the masses, must be the inviolability of private property." *Id.*

101. COMPENDIUM, *supra* note 32, para. 185 (emphasis omitted).

lowest level that would be effective.[102] Thus, government should not be in charge of the economy; individual actors must have freedom and room for initiative.[103]

On the contrary, Catholic social teaching endorses capitalism,[104] albeit in a measured way. As Pope Saint John Paul II put it,

> If by "capitalism" is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a "business economy," "market economy" or simply "free economy." But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative.[105]

So the benefits of private property and capitalism are recognized by the Catholic Church. What matters is how private property is utilized:

> The universal destination of goods entails obligations on how goods are to be used by their legitimate owners. Individual persons may not use their resources without considering the effects that this use will have, rather they must act in a way that benefits not only themselves and their family but also the common good."[106]

This means that "[i]n using them, . . . man should regard the external things that he legitimately possesses not only as his own but also as common in

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102. CCC, *supra* note 3, para. 1883 ("The teaching of the Church has elaborated the principle of subsidiarity, according to which '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 co-ordinate its activity with the activities of the rest of society, always with a view to the common good.'") (emphasis omitted).

103. *See* COMPENDIUM, *supra* note 32, para. 336 ("The Church's social doctrine considers the freedom of the person in economic matters a fundamental value and an inalienable right to be promoted and defended. . . . Such initiative . . . should be given ample leeway. The State has the moral obligation to enforce strict limitations only in cases of incompatibility between the pursuit of the common good and the type of economic activity proposed or the way it is undertaken.") (emphasis omitted); *CENTESIMUS ANNUS*, *supra* note 62, para. 32 ("Economic activity is indeed but one sector in a great variety of human activities, and like every other sector, it includes the right to freedom, as well as the duty of making responsible use of freedom.").

104. *See* COMPENDIUM, *supra* note 32, para. 347 ("The free market is an institution of social importance because of its capacity to guarantee effective results in the production of goods and services. . . . A truly competitive market is an effective instrument for attaining important objectives of justice . . . .") (emphasis omitted).

105. *CENTESIMUS ANNUS*, *supra* note 62, para. 42.

106. COMPENDIUM, *supra* note 32, para. 178 (emphasis omitted).

the sense that they should be able to benefit not only him but also others as well."[107]

There are many ways in which people can use private property to benefit others. The most obvious way of doing this is by providing for their families.[108] Another way of doing this is by giving a portion of their property to the poor. In fact, the Church teaches that "men are obliged to come to the relief of the poor and to do so not merely out of their superfluous goods."[109] Yet another way to use private property to benefit others is to help others provide for themselves and their families through employment.[110] In fact, economic growth can and should serve the universal destination of goods.[111] And, of course, providing better goods and services at lower prices is an important way of helping consumers.[112]

Thus, even the principle of the universal destination of goods is not inherently opposed to wealth. What matters from its perspective is what a person does with the wealth acquired. In the words of Pope Saint John Paul II,

> [i]t is not wrong to want to live better; what is wrong is a style of life which is presumed to be better when it is directed towards 'having' rather than 'being,' and which wants to have more, not in order to be more but in order to spend life in enjoyment as an end in itself.[113]

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107. *GAUDIUM ET SPES*, *supra* note 66, para. 69.

108. *See* 1 *Timothy* 5:8 (NAB) ("[W]hoever does not provide for relatives and especially family members has denied the faith and is worse than an unbeliever.").

109. *GAUDIUM ET SPES*, *supra* note 66, para. 69. *See also CENTESIMUS ANNUS*, *supra* note 62, para. 36: "[T]he duty of charity . . . [is] the duty to give from one's 'abundance,' and sometimes even out of one's needs, in order to provide what is essential for the life of a poor person." *See also supra* note 66 and accompanying text.

110. *Cf. CENTESIMUS ANNUS, supra* note 62, para. 43 ("Ownership of the means of production . . . is just and legitimate if it serves useful work."); COMPENDIUM, *supra* note 32, para. 178 ("[T]here arises [a] duty on the part of owners not to let the goods in their possession go idle and to channel them to productive activity . . . .").

111. *See* COMPENDIUM, *supra* note 32, para 326 ("Good administration of the gifts received, and of material goods also, is a work of justice towards oneself and towards others. What has been received should be used properly, preserved[,] and increased, as suggested by the parable of the talents . . . . Economic activity and material progress must be placed at the service of man and society. If people dedicate themselves to these with the faith, hope[,] and love of Christ's disciples, even the economy and progress can be transformed into places of salvation and sanctification.") (emphasis omitted); *id.* para. 282 ("It becomes illegitimate to possess [the means of production] when property 'is not utilized or when it serves to impede the work of others, in an effort to gain a profit which is not the result of the overall expansion of work and the wealth of society . . . ."). *Cf. GAUDIUM ET SPES*, *supra* note 66, para. 70 ("Investments, for their part, must be directed toward procuring employment and sufficient income for the people both now and in the future.").

112. *See* COMPENDIUM, *supra* note 32, para. 338 ("Businesses should be characterized by their capacity to serve the common good of society through the production of useful goods and services. In seeking to produce goods and services according to plans aimed at efficiency and at satisfying the interests of the different parties involved, businesses create wealth for all of society, not just for the owners but also for the other subjects involved in their activity.") (emphasis omitted).

113. *CENTESIMUS ANNUS*, *supra* note 62, para. 36.

III. CORPORATE LAW

In the previous part, I defended business at the level of the individual, both as worker and sole proprietor. However, in the modern world, many people conduct business through legally established entities, such as corporations. In this part, I will consider whether corporate law is defensible from a Catholic perspective. I will not attempt to defend the existence of corporations for two reasons. First, it hardly seems necessary because its legitimacy is not seriously in doubt;[114] second, because others have done so better than I can here.[115] Consequently, in this part, I will limit myself to evaluating two aspects of corporate law that might cause some concern for Catholics. In Section A, I will address the legitimacy of law that is enabling rather than mandatory. In Section B, I will address the legitimacy of a law that is so focused on shareholders to the exclusion of others.

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114. The benefits of business organization are obvious and have been recognized by Pope Saint John Paul II: "[M]any goods cannot be adequately produced through the work of an isolated individual; they require the cooperation of many people in working towards a common goal. Organizing such a productive effort, planning its duration in time, making sure that it corresponds in a positive way to the demands which it must satisfy, and taking the necessary risks—all this too is a source of wealth in today's society. In this way, the role of disciplined and creative human work and, as an essential part of that work, initiative and entrepreneurial ability becomes increasingly evident and decisive." *CENTESIMUS ANNUS, supra* note 62, para. 32 (emphasis omitted). Of course, any particular aspect of the corporate form could be questioned, but the idea of transacting business through a legal entity is not in doubt. The Church itself has long used the corporate form, as have many other human endeavors such as government and universities. *See generally* Ronald J. Colombo, *The Naked Private Square*, 51 HOUS. L. REV. 1, 48–51 (2013); Giancarlo Anello et al., *Sacred Corporate Law*, 45 SEATTLE U. L. REV. 413 (2021). The corporate form is nothing more than an efficient way of organizing business.

115. As for the actual benefits that flow from the use of the corporate form, I point the reader to the works of Michael Novak and Stephen Bainbridge in particular. *See, e.g.*, MICHAEL NOVAK, TOWARD A THEOLOGY OF THE CORPORATION (1990); Stephen M. Bainbridge, *Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship*, 82 CORNELL L. REV. 856, 898–99 (1997); Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH. & LEE L. REV. 1423, 1446 (1994) ("That rule [i.e., the shareholder wealth maximization norm] has helped produce an economy that is dominated by public corporations, which in turn has produced the highest standard of living of any society in the history of the world."). They have argued that the corporate form is not only morally acceptable, but positively beneficial. According to them, it has led to unprecedented levels of prosperity and the alleviation of incredible amounts of suffering. Their arguments, which I find generally persuasive, should help to de-stigmatize corporations and corporate law. Even Pope Saint John Paul II believed that "on the level of individual nations and of international relations, the free market is the most efficient instrument for utilizing resources and effectively responding to needs," at least "for those needs which are 'solvent,' . . . and for those resources which are 'marketable' . . . ." *CENTESIMUS ANNUS*, *supra* note 62, para. 34 (emphasis omitted). So there is much to be said for corporations and the markets in which they operate. However, because he recognized that "there are many human needs which find no place on the market," *id.* para. 34, he "proposed as an alternative . . . a society of free work, of enterprise and of participation. Such a society is not directed against the market, but demands that the market be appropriately controlled by the forces of society and by the State, so as to guarantee that the basic needs of the whole of society are satisfied." *Id.* para. 35 (emphasis omitted).

A. Enabling Law

To some people, corporate law may seem like a questionable body of law. There seems to be at least two major structural flaws. First, that the law is enabling rather than mandatory.[116] Second, that corporation law statutes are skeletal and provide very little substantive content, especially in the way of substantive prohibitions. Can such a body of law be reconciled with Catholic teaching?

Catholic teaching states that law is supposed to promote the common good.[117] But it does not say precisely how it must do so.[118] Thus, lawmakers have considerable discretion in fashioning particular laws. Moreover, it is the nation's laws as a whole that are to promote the common good. Any one area of law cannot be evaluated independently, but only in how it contributes to the entire body of law. For example, contract law should not be criticized for not prohibiting murder, nor criminal law for not providing a remedy for breach of contract. Lawmakers have great discretion in creating law, and it is not fair to judge one area of law out of context.

What is corporate law? Corporate law is one form of law of business organization. Among others are the laws of partnership and of limited liability companies. Each of these regulates how business is to be conducted. More precisely, they offer businesspeople options for how to organize their businesses. The corporate form is one option; partnership and limited liability companies are alternatives; other options are also available.

The most basic issue that these laws deal with is the coordination of the rights of multiple owners in a business. When there is only one owner, there is no need for coordination: the owner decides everything. But when there are multiple owners, their rights conflict and their decisions affect each other. There needs to be some way to resolve differences, and the law of business organization steps in. There are many different ways that issues can be resolved, and thus there are multiple different bodies of law in this area. They offer businesspeople different regimes for dispute resolution, so to speak. In

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116. *See* EASTERBROOK & FISCHEL, *supra* note 17, at 2 ("The corporate code in almost every state is an 'enabling' statute. An enabling statute allows managers and investors to write their own tickets, to establish systems of governance without substantive scrutiny from a regulator. The handiwork of managers is final in all but exceptional or trivial instances.").

117. *See* CCC, *supra* note 3, para. 1910 ("It is the role of the state to defend and promote the common good of civil society, its citizens, and intermediate bodies."); COMPENDIUM, *supra* note 32, para. 168 ("The responsibility for attaining the common good, besides falling to individual persons, belongs also to the State, since the common good is the reason that the political authority exists.") (emphasis omitted).

118. *See* CCC, *supra* note 3, para. 1901 ("The diversity of political regimes is morally acceptable, provided they serve the legitimate good of the communities that adopt them."); COMPENDIUM, *supra* note 32, para. 68 ("[T]he Church does not intervene in technical questions with her social doctrine, nor does she propose or establish systems or models of social organization. This is not part of the mission entrusted to her by Christ.") (footnote omitted). *But see* *QUADRAGESIMO ANNO*, *supra* note 87, para. 49 ("That the State is not permitted to discharge its duty arbitrarily is, however, clear.").

partnership, the general idea is that owners are equals.[119] In corporations, the general idea is that the owners are unable to run the business and therefore hire expert managers.[120] In limited liability companies, the general idea is that owners can tailor the structure to meet their particular needs.[121] Individuals are permitted to select the regime of their choice.

With this understanding of the core need that such laws fill, it becomes clear why corporate law would comprise enabling law rather than mandatory law. A businessperson simply does not have to incorporate his business. It could remain a sole proprietorship or become a partnership or limited liability company instead. Corporate law is, by nature, different than many other areas of law—especially criminal law—in that it is essentially optional rather than mandatory.[122] People choose to incorporate their businesses because the corporate form enables them to do things more efficiently than they could in another business form. In and of itself, that is a good thing, even if it could be abused.

Of course, once you choose the corporate form, there could be—and indeed there are—aspects of corporate law that are more or less mandatory.[123] For example, you must have a charter;[124] you may need to have a board of directors;[125] if you choose to effect a merger, you must follow certain procedures.[126] But, given that corporate law itself is optional, it is neither

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119. *See, e.g.*, UNIF. P'SHIP ACT § 202(a) (2023) ("[T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership . . . ."); *id.* § 401(b) ("Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses . . . ."); *id.* § 401(f) ("Each partner has equal rights in the management and conduct of the partnership business.").

120. *See* DEL. CODE ANN. tit. 8, § 141(a) (2023) ("The business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors . . . .").

121. *See* UNIF. LTD. LIAB. ACT § 105(a)-(b) (2023) (providing that "the operating agreement governs" most matters, and that the law only governs "[t]o the extent that the operating agreement does not provide for" such matters).

122. See EASTERBROOK & FISCHEL, *supra* note 17, at 2–3 (describing the breadth of options available under corporate law).

123. *Id.* at 3 ("Some things are off-limits. . . . Determined investors and managers can get 'round many of these rules, but the mechanisms for doing so are sidelights. Any theory of corporate law must account for the mandatory as well as the enabling features . . . . [W]hat is open to free choice is far more important to the daily operation of the firm, and to investors' welfare, than what the law prescribes.").

124. *See* DEL. CODE ANN. tit. 8, § 101 (2023) ("Any person . . . may incorporate or organize a corporation under this chapter by filing with the Division of Corporations in the Department of State a certificate of incorporation . . . .").

125. *See id.* § 141(b) (2023) ("The board of directors of a corporation shall consist of one or more members, each of whom shall be a natural person."). *But see* MODEL BUS. CORP. ACT § 7.32(a) (2023) ("An agreement among the shareholders . . . is effective . . . even though it is inconsistent with one or more other provisions of this Act in that it . . . eliminates the board of directors . . . .").

126. *See* DEL. CODE ANN. tit. 8, §§ 251–258 (2023) (setting forth requirements for different types of mergers).

surprising nor problematic that it would be largely enabling rather than mandatory in nature.

A second complaint that one might raise against corporate law is that it is skeletal and provides very little substantive content, especially in the way of substantive prohibitions. As such, it might seem to be open to the charge that it is an immoral body of law. But that would be unfair.

In the first place, it is not corporate law that is skeletal, but only corporation statutes that are.[127] Corporate law consists of both statutory law and case law. This is important to note because, in corporate law, case law does more than merely interpret the statutes. Case law actually adds a supplemental layer of law—or, to be more precise, it invokes equity. Through case law, corporate law imposes fiduciary law principles upon corporate actors.[128] And it is this layer of law that provides the real regulatory content. Corporation statutes provide a skeletal body of procedural rules. Fiduciary law provides behavioral standards with which corporate actors must comply. It is not enough to comply with the procedural rules; corporate actors must satisfy the substantive behavioral standards.[129]

So, the claim that corporate law is skeletal reflects a fundamental misunderstanding. Nevertheless, even if it were skeletal, that may be all that is needed to serve the main purpose of corporate law, which is to coordinate the rights of the owners. By and large, the coordination function could be accomplished by the skeletal procedural laws that are enabling and formal. Other regulatory needs can easily be addressed by other areas of law.

B. Shareholder Primacy

A very different type of complaint that could be raised against corporate law is that it focuses entirely on the interests of shareholders and fundamentally excludes the consideration of others. How can a Catholic pursue a career that is centered upon such a selfish body of law?

To be clear, it absolutely would be immoral and unacceptable for the law to provide that corporate actors must maximize the wealth of shareholders to the exclusion of all other considerations.[130] No decent person could commit

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127. *See* E. Norman Veasey & Christine T. Di Guglielmo, *What Happened in Delaware Corporate Law and Governance From 1992–2004?*, 153 U. PA. L. REV. 1399, 1411 (2005) ("Enabling acts, such as the Delaware General Corporation Law (DGCL), are part of the corporate law. They create only a skeletal framework, however. The 'flesh and blood' of corporate law is judge-made.").

128. *See* Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, 68 U. CIN. L. REV. 1061, 1074 (2000) ("Although the Delaware statute provides general guidelines about corporate formalities such as the scheduling of annual meetings and the required components of a corporate charter, the statute does not deal with the fiduciary principles that provide the foundation of corporate law and allow, under appropriate circumstances, judicial scrutiny of corporate decisionmaking.") (footnote omitted).

129. *See* Schnell v. Chris-Craft Indus., Inc., 285 A.2d 437, 439 (Del. 1971) ("[I]nequitable action does not become permissible simply because it is legally possible.").

130. CCC, *supra* note 3, para. 2424 ("A theory that makes profit the exclusive norm and ultimate end of economic activity is morally unacceptable."); COMPENDIUM, *supra* note 32,

themselves to such an endeavor. But that is not at all what corporate law requires.

Corporate law does not regulate all the affairs and activities of the corporation. Rather, it generally governs only its internal affairs.[131] "[A] corporation's internal affairs are involved whenever the issue concerns the relations inter se of the corporation, its shareholders, directors, officers[,] or agents."[132] I like to think of all of this as the thought processes of the corporation. This contrasts with the external affairs of the corporation, or its interactions with others, including employees, customers, and society. I like to think of all of this as the physical actions of the corporation. So corporate law governs only the internal affairs, or thought processes, of the company. Other laws govern the external affairs, or physical actions, of the company.

Corporate actors are required to follow all other areas of law in addition to corporate law. For example, they cannot deprive employees of pay because of employment law, they cannot pollute because of environmental law, and they cannot harm customers because of tort law and criminal law. Corporate actors are required to take all others into consideration because they must obey all areas of substantive law with respect to their external actions. Thus, it is entirely unfair to suggest that corporate actors must maximize the wealth of shareholders to the exclusion of all other considerations.

Ultimately, what corporate law requires is that corporate actors consider the ends of the corporation to be the interests of shareholders. The interests of others are factored into the means of corporate action rather than the ends. In a very real sense, then, consideration of everyone else comes first and the shareholders last. In other words, shareholders are the residual claimants. As such, their rights also deserve respect and require protection.[133]

One might wonder what a person is to do if the laws in the aggregate fall short. This can be resolved by reference to my framework. If obedience to the law would require one to sin, then one cannot obey the law because the

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para. 348 ("The individual profit of an economic enterprise, although legitimate, must never become the sole objective.") (emphasis omitted). *See also id.* para. 338–40 ("A business' objective must be met in economic terms and according to economic criteria, but the authentic values that bring about the concrete development of the person and society must not be neglected. . . . It is essential that within a business the legitimate pursuit of profit should be in harmony with the irrenounceable protection of the dignity of the people who work at different levels in the same company.") (emphasis omitted); *MATER ET MAGISTRA*, *supra* note 99, para. 83 ("[I]f the whole structure and organization of an economic system is such as to compromise human dignity, to lessen a man's sense of responsibility or rob him of opportunity for exercising personal initiative, then such a system, We maintain, is altogether unjust—no matter how much wealth it produces, or how justly and equitably such wealth is distributed.").

131. *See* VantagePoint Venture Partners 1996 v. Examen, Inc., 871 A.2d 1108, 1113 (Del. 2005) ("The internal affairs doctrine applies to those matters that pertain to the relationships among or between the corporation and its officers, directors, and shareholders.").

132. RESTATEMENT (SECOND) OF CONFLICT OF LAWS. § 313 cmt. a (AM. L. INST. 1971).

133. *See generally* Julian Velasco, *The Fundamental Rights of the Shareholder*, 40 U.C. DAVIS L. REV. 407, 448–49 (2006) (discussing the basis for the rights of shareholders as residual claimants).

obligation not to sin is of a higher order. Otherwise, one must obey the law and pursue virtue within its boundaries. If the law prevents someone from pursuing discretionary good, then he must comply with the law and forego such virtue. Of course, there is one more thing that a person can do in the face of suboptimal laws, at least in a democracy: he can vote to change the laws, or to elect representatives who will do so. In fact, he has a duty to exercise his right to vote in a morally responsible manner.[134] But, in the meantime, he must comply with the law unless it requires him to sin.

IV. FIDUCIARIES: BUSINESS AS AGENT

As discussed in the previous section, corporate law exists to coordinate the rights and protect the interests of the owners of businesses. As a result, it requires corporate actors to pursue the interests of shareholders to the exclusion of others within the boundaries of all laws. And this is generally interpreted to mean pursuing the wealth of shareholders above other discretionary goals. Nevertheless, we must further ask whether Catholics can or should commit themselves to such careers.

The answer to this lies in the important role of fiduciary law in modern society. I take this up in Section A. In brief, fiduciaries exist in order to allow others to exercise their rights. This is a perfectly noble endeavor that should not cause Catholics any problems. In Section B, I will take up the role of directors. Directors replace owners as decisionmakers in the corporation. Can Catholics take on roles that require them to pursue the interests of shareholders to the exclusion of others? In Section C, I will briefly take up the role of officers and corporate attorneys. These are people who assist and advise directors. Because the defense for officers and attorneys is essentially the same as for directors, the section is very short. In Section D, I take up a related issue: I explain why I found transaction practice fulfilling.

A. Fiduciaries

In order to defend directors and corporate attorneys, we must first discuss what a fiduciary relationship is.

> A fiduciary relationship is a legally recognized relationship in which one is given power over the interests of another, who thereby becomes vulnerable to abuse. Although such relationships are risky, they can also be very beneficial. In order to encourage and police such relationships, the law imposes a duty on the first party—the fiduciary—to act in the interests of the second party—the beneficiary [or principal] . . . . Thus, the raison d'être of fiduciary duties, and of

134. *See* CCC, *supra* note 3, para. 2240 ("Submission to authority and co-responsibility for the common good make it morally obligatory . . . to exercise the right to vote . . . ."); COMPENDIUM, *supra* note 32, para. 570 ("When—concerning areas or realities that involve fundamental ethical duties—legislative or political choices contrary to Christian principles and values are proposed or made, the Magisterium teaches that 'a well-formed Christian conscience does not permit one to vote for a political program or an individual law which contradicts the fundamental contents of faith and morals.'") (emphasis omitted) (citation omitted).

> the designation of relationships as fiduciary, is the protection of the beneficiary [or principal] from abuse at the hands of the fiduciary.[135]

The archetypical example of a fiduciary is a trustee. A trustee is "one who, having legal title to property, holds it in trust for the benefit of another . . . ."[136] Another major type of fiduciary is an agent. An agent is "[s]omeone who is authorized to act for or in place of another; a representative."[137] An employee, or servant, is a type of agent that is especially prevalent.[138] But there are other types of fiduciaries as well. Corporate directors are fiduciaries, as are attorneys.

Fiduciary relationships empower people to achieve more than they would be able to do on their own. This is often because fiduciaries are experts who are able to do things for the beneficiaries that they are not able to do for themselves.[139] However, even when fiduciaries are not experts and beneficiaries could do everything for themselves, the fiduciary relationship still enables them to delegate certain responsibilities so that they can concentrate on other matters.[140] By empowering people to achieve more than they could on their own, fiduciary relationships can be extremely beneficial to society. But they demand trust.[141] A beneficiary is only going to be willing to risk the vulnerability that results from a fiduciary relationship if she can be confident that the fiduciary will exercise all of his powers for her benefit. This sort of trust is absolutely crucial for fiduciary relationships. Therefore, the law imposes on fiduciaries a legal duty to pursue the interests of the beneficiary.

In my opinion, the best justification for this duty is Paul Miller's juridical justification: "[F]iduciary power is a form of authority derived from capacities that are constitutive of the legal personality of another individual or group of individuals."[142] "Given that fiduciary power is a means of the beneficiary, the interaction between fiduciary and beneficiary must be presumptively conducted for the sole advantage of the beneficiary."[143]

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135. Julian Velasco, *Fiduciary Duties and Fiduciary Outs*, 21 GEO. MASON L. REV. 157, 159 (2013).

136. *Trustee*, BLACK'S LAW DICTIONARY (11th ed. 2019).

137. *Agent*, BLACK'S LAW DICTIONARY (11th ed. 2019).

138. *Employee*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance."); *Servant*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Someone who is employed by another to do work under the control and direction of the employer. . . . *See employee*.") (emphasis added).

139. *See* TAMAR FRANKEL, FIDUCIARY LAW 6–7 (2011).

140. *See* Tamar Frankel, *Fiduciary Law*, 71 CALIF. L. REV. 795, 803 (1983) ("[I]f A uses B's skills in managing his property, the arrangement enhances the value of the property . . . even if A and B are equally skilled but B has more time to manage the property. The employment arrangement between A and B also enables A to devote more time to tasks he can perform better or to leisure, which he may value.").

141. *See* FRANKEL, *supra* note 139, at 7–12.

142. Paul B. Miller, *Justifying Fiduciary Duties*, 58 MCGILL L.J. 969, 1013 (2013) (emphasis omitted).

143. *Id.* at 1020.

In other words, as a result of the very nature of the relationship, the moral obligation of the fiduciary is to do a good job for the benefit of the beneficiary or principal. It becomes his duty of state.[144] Of course, it is not an unlimited duty. Like all other conduct, a fiduciary's actions can be evaluated under my framework: a fiduciary isn't permitted to sin, nor to violate higher-order duties, such as by breaking the law. However, a fiduciary can generally pursue the interests of the beneficiary without judging her or being judged therefor. As long as his own conduct is moral, a fiduciary is not responsible for the possible subsequent acts of the beneficiary.[145] Fiduciaries need not vet their clients for virtue. Moreover, a fiduciary cannot engage in discretionary good to the extent it would violate his fiduciary duties.[146] A fiduciary can only engage in discretionary good to the extent that it is consistent with the interests of the beneficiary or principal.

It is worth noting that the Bible reflects an appreciation for the importance of fiduciary relationships. As Saint Paul notes, "[I]t is of course required of stewards that they be found trustworthy."[147] Jesus often speaks of servants and stewards and their responsibilities to their masters. For example, in the parable of the talents, Jesus describes the master generously rewarding the servants who put his resources to good use by making him more money, and punishing severely the servant who did not.[148] Similarly, Jesus praises "the faithful and prudent servant" who fulfills his duties and condemns the "wicked servant" who betrays the master's trust.[149] Perhaps most importantly, the fiduciary duty of loyalty finds direct support in Jesus's admonition that "[n]o one can serve two masters. He will either hate one and love the other, or be devoted to one and despise the other."[150] So the fiduciary must subordinate his interests to those of the beneficiary.[151] This is not only permitted but arguably demanded by Catholic teaching.

B. Directors

According to corporate law, "The business and affairs of every corporation [are] . . . managed by or under the direction of a board of

144. *See* POPE PIUS X, *supra* note 46 and accompanying text.

145. There is a concern about cooperation with evil. *See generally* Joseph Delany, *Accomplice*, *in* 1 CATHOLIC ENCYCLOPEDIA (1907), https://www.newadvent.org/cathen/01100a.htm. No one is permitted to "cooperate in [the sins of another] . . . by participating directly and voluntarily in them." CCC, *supra* note 3, para. 1868 (emphasis omitted). But cooperation with evil requires knowledge and intent, which is presumably lacking. Fiduciaries generally are permitted to assume the good faith of their beneficiaries.

146. *See supra* note 48 and accompanying text.

147. 1 *Corinthians* 4:2 (NAB).

148. *Matthew* 25:14–30 (NAB). For a more complete discussion, *see* Stephen M. Bainbridge, *The Parable of the Talents* (UCLA Sch. L., Law-Econ. Research Paper, No. 16-10, 2016), https://ssrn.com/abstract=2787452.

149. *Matthew* 24:45–51 (NAB).

150. *Id.* at 6:24.

151. *Matthew* 10:24 (NAB) ("No disciple is above his teacher, no slave above his master.").

directors."[152] One might be tempted to think of directors as entrepreneurs. After all, directors replace owner-entrepreneurs in the corporate decision-making process. So, in some ways, directors must be entrepreneurial. But in the ways most relevant to our discussion, directors are not entrepreneurs.

Entrepreneurs are principals. They are the owners of the business, pursuing their own interests and making all the decisions. As such, they have complete discretion over both the means and ends of their businesses. Thus, the entire moral responsibility for their actions and the actions of the business falls on their shoulders.

Directors are different. They are not principals, but rather agents.[153] They are not owners, but fiduciaries charged with pursuing the interests of the owners. Although they may make most decisions, fiduciary duties require them to do so not in their own interests, but in the interests of the owners.[154] Thus, although they may have nearly complete discretion over the means, they do not have discretion over the ends of the business.[155] Since the ends are not in their control, they are not morally responsible for it. Their moral responsibility focuses on the means that they select. But their desire to do discretionary good must give way to their duty to pursue the interests of shareholders.

Now, exactly what that means is not always easy to ascertain. Shareholders have many interests, and sometimes their interests conflict.[156] Such conflicts could be resolved in many ways. However, the law has decided that, because we are talking about a for-profit business enterprise, directors are to assume that shareholders are interested in profit.[157] If there is adequate justification, this assumption may be rebutted; but if not, directors are expected to pursue profits.

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152. DEL. CODE ANN. tit. 8, § 141(a) (2023).

153. The term "agent" is here used in a colloquial or economic sense. As a matter of law, directors are not agents. However, they are fiduciaries rather than beneficiaries. *See* Velasco, *supra* note 133, at 438–39 ("Because shareholders are owners who elect directors to run the business for them, it often is said that directors are the agents of the shareholders. Actually, however, directors are not mere agents. . . . Director authority is said to be 'original and undelegated.' Thus, directors may be described essentially as trustees rather than agents. . . . However, directors are not trustees, either. The truth is that they are *sui generis* fiduciaries.") (footnotes omitted) (emphasis added).

154. *See supra* notes 14–29 and accompanying text.

155. *See* Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919) and accompanying text.

156. *See* Daniel J. H. Greenwood, *Fictional Shareholders: For Whom Are Corporate Managers Trustees, Revisited*, 69 S. CAL. L. REV. 1021 (1996) (arguing that "the fictional shareholder is fundamentally different from the human beings who ultimately stand behind the fiction," "filter[ing] out all the complexity of conflicted, committed, particularly situated, deeply embedded[,] and multi-faceted human beings, leaving only simple, one-sided monomaniacs" who seek profit maximization).

157. eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) ("Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The 'Inc.' after the company name has to mean at least that.").

One way that the presumption could be rebutted would be if shareholders give explicit approval. Exactly how this approval is to be obtained is a tricky question. On the one hand, the *eBay* opinion suggests that a simple majority vote of shareholders may be insufficient to forego profitability.[158] On the other hand, an explicit amendment of the charter likely would be considered adequate.[159] Modern legislation often enables business corporations to become "benefit corporations," which explicitly permit directors to balance wealth maximization with other values.[160] This is a way of expressing shareholder will on the matter.[161] But the point to be made is that the decision to forego profitability is one that belongs to the shareholder owners, and not to the directors. Directors are duty-bound to pursue profits for shareholders unless authorized to do otherwise. If they feel that they cannot morally do so, they should not serve as directors.[162]

As a general matter, Catholic directors ought not to have any moral qualms on this front. Although moral obligations are multifaceted, it is reasonable for society to divide responsibilities among different members. Thus, wealth is a good.[163] It is not the ultimate good, but it is a good. And society can decide to give a special responsibility to certain people to pursue wealth. Directors are among those charged with a special duty to pursue wealth. This is not to the exclusion of their other duties, but it is to the exclusion of their right to engage in incompatible discretionary good. They are not responsible for what shareholders do with their wealth. They are only responsible for the legitimate pursuit of wealth.

By way of analogy, let us consider doctors—and surgeons in particular.[164] Health is a good. It is not an ultimate good, but it is a good. And doctors are given special responsibility to pursue the health of their clients. Doctors are not to consider what clients do with their health. They are not to treat moral people or people with greater social value any better than anyone else. They are to pursue health as a good for their client, and the client has the moral responsibility to do good with their health. Doctors are not responsible for the subsequent actions of their clients. Doctors are only responsible for what they do in the legitimate pursuit of health. Moreover, doctors are not permitted to

158. The founders of craigslist had a majority interest in the company, but this was insufficient to overcome the presumption of profit. *See supra* notes 10–11 and accompanying text.

159. DEL. CODE ANN. tit. 8, §§ 101(b), 102(a)(3) (2023).

160. *See, e.g.*, *id.* § 362; *see generally* MODEL BENEFIT CORP. LEGIS. (B Lab Glob. 2017).

161. *See* Julian Velasco, *Shareholder Primacy in Benefit Corporations*, *in* FIDUCIARY OBLIGATIONS IN BUSINESS 318, 319–20 (Arthur B. Laby & Jacob Hale Russell eds., 2021); Ronald J. Colombo, *Taking Stock of the Benefit Corporation*, 7 TEX. A&M L. REV. 73, 102 (2019).

162. *Cf.* Francis v. United Jersey Bank, 432 A.2d 814, 822 (N.J. 1981) ("Because directors are bound to exercise ordinary care, they cannot set up as a defense lack of the knowledge needed to exercise the requisite degree of care. If one 'feels that he has not had sufficient business experience to qualify him to perform the duties of a director, he should either acquire the knowledge by inquiry, or refuse to act.'") (citation omitted).

163. *See supra* note 64 and accompanying text.

164. In many cases, a doctor may be merely an advisor. However, a surgeon is, in a real sense, a trustee, because the patient entrusts his assets—i.e., his body—to the surgeon.

engage in discretionary good against the interests of their clients. If, in the course of a surgery, a surgeon remembers that another patient is in desperate need of a kidney and his current patient has two healthy kidneys, he cannot decide to take a kidney from the healthy patient and give it to the patient in need. While it might be virtuous of the surgeon to give away his own kidney to the patient in need, it would be unacceptable for him to give away the kidney of his patient without permission. In terms of my test, his desire to do discretionary good by helping the patient in need is forbidden by his duty to pursue the health interests of his patient.

In the same way, a director is not free to give away the assets of the shareholders. A director's desire to do discretionary good is limited by his duty to pursue the wealth interests of the shareholder. It is not virtuous for the director to be generous with the shareholders' money. In fact, if done contrary to the wishes of the shareholders, it is a form of theft and therefore violates the first imperative of avoiding sin.

Does that mean that a director must strictly strive to maximize shareholder wealth? Not exactly. In the first place, directors are allowed to recognize that what seems profit maximizing in the short run may not be profit maximizing in the long run.[165] Certainly they need not artificially persuade themselves that the least virtuous actions are likely to be the most profitable. As long as directors are honestly trying to pursue profits for shareholders, they need not be able to prove that every decision is strictly profit maximizing. In fact, attempting such proofs may be wasteful. What matters morally is the good faith of the director in pursuing the interests of shareholders.[166]

Moreover, it is also reasonable to assume that shareholders would not, in principle, desire strict profit maximization. Shareholders, after all, are people with consciences and moral beliefs. Few if any shareholders would put profit above all other considerations.[167] So it is reasonable for directors to take this

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165. *See* Paramount Commc'ns, Inc. v. Time Inc., 571 A.2d 1140, 1150 (Del. 1989) ("Delaware law imposes on a board of directors the duty to manage the business and affairs of the corporation. This broad mandate includes a conferred authority to set a corporate course of action, including time frame, designed to enhance corporate profitability. Thus, the question of 'long-term' versus 'short-term' values is largely irrelevant because directors, generally, are obliged to chart a course for a corporation which is in its best interests without regard to a fixed investment horizon. . . . [A] board of directors . . . is not under any *per se* duty to maximize shareholder value in the short term. . . .") (citation omitted).

166. The central importance of good faith can be highlighted by the following anecdote:

> [O]ne of the most important Delaware corporate lawyers involved in the last comprehensive revision of the [Delaware General Corporation Law], S. Samuel Arsht, was said to have described the essence of Delaware corporate law as follows: "Directors of Delaware corporations can do anything they want, as long as it is not illegal, and as long as they act in good faith." That statement is only a bit exaggerated. Leo E. Strine, Jr. et al., *Loyalty's Core Demand: The Defining Role of Good Faith in Corporation Law*, 98 GEO. L.J. 629, 640 (2010).

167. *See* Ronald J. Colombo, *Ownership, Limited: Reconciling Traditional and Progressive Corporate Law via an Aristotelian Understanding of Ownership*, 34 J. CORP. L. 247, 269 (2008) ("Many (if not most) individuals subscribe to values and principles that surpass material wealth in order of importance, and routinely factor moral and ethical concerns into their decision-making. To

into consideration. Directors should be allowed to consider and implement the moral interests of their shareholders.[168] However, in a multicultural and pluralist society—and especially in a highly polarized society such as the one we find ourselves in today—respect for the rights of shareholders demands that directors discretionarily implement only the most uncontroversial of moral principles—principles of basic human decency. However, directors ought not to impose their own idiosyncratic notions of morality, especially when they have reason to suspect that a significant portion of shareholders would find them objectionable. If a director feels that he cannot, in good conscience, avoid engaging in discretionary good that is contrary to the interests of the shareholders, then he ought to resign rather than violate his duties to the shareholders.

To summarize, Catholics should not have difficulty becoming directors even though the position denies them the discretion to choose the ends of the business and limits them to the selection of means. This is because wealth is a good and society has ascribed to directors a special duty to generate wealth. Directors are to be morally evaluated based on the means that they choose: they may not sin, and they may not break the law. But they also may not breach their fiduciary duty to pursue the interests of shareholders by seeking discretionary goods contrary to the interests of shareholders. Basic human decency may be presumed to be consistent with the interests of shareholders, but controversial moral stands cannot be.

C. Officers and Attorneys

Once we have concluded that it is acceptable for Catholics to serve as directors, it is fairly easy to conclude that it is also acceptable for them to serve as officers and corporate attorneys. The argument is essentially the same. Corporate officers and attorneys are fiduciaries of the corporation, and if it is legitimate for corporations to exist and for Catholics to serve as directors, then it must also be legitimate for Catholics to serve as officers and for Catholic attorneys to represent corporations. Just like directors, officers and corporate attorneys would also be prohibited from deciding the ends of corporate action and limited to deciding the means. They should be morally evaluated based on their actions, which are limited by their fiduciary duties. Thus, officers and corporate attorneys cannot sin and cannot break the law or assist the corporation

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these individuals, a course of action would only be in their best interest if, regardless of the economic gain it might promise, it does not run afoul of such moral and ethical concerns.").

168. Even Milton Friedman did not insist upon strict profit maximization, but rather the pursuit of shareholder interests:

> Of course, in some cases his employers may have a different objective. A group of persons might establish a corporation for an eleemosynary purpose—for example, a hospital or a school. The manager of such a corporation will not have money profit as his objective but the rendering of certain services. In either case, the key point is that, in his capacity as a corporate executive, the manager is the agent of the individuals who own the corporation or establish the eleemosynary institution, and his primary responsibility is to them.

See Friedman, *supra* note 7.

in doing so. But they also cannot engage in discretionary good contrary to the interests of the corporation and its shareholders.

D. The Appeal of Transaction Practice

At this point, I would like to segue into an issue that has had significant personal relevance in my life: a defense of a career as a transaction attorney. I was a transaction attorney for four years before entering the academy, and I have no regrets about that decision. It has often seemed to me that many people generally assume that transaction attorneys are useless paper pushers who are only interested in making money. This is a gross misconception. In this section, I want to explain why I found my career as a transaction attorney to be not only compatible with Catholicism but actually deeply satisfying.

There are those who enjoy fighting. People could be forgiven for thinking that all lawyers do, but that is not true. I do not enjoy fighting. I may be pretty good at it, but I don't enjoy it. I especially don't like fighting when it gets nasty, as it often does with divorce, or when the stakes are very high, as they are with criminal law. I do not mean to suggest that there is anything morally wrong with fighting—sometimes it is necessary. And I don't mean to suggest that there is anything wrong with someone who enjoys it. On the contrary, it is good that there are people who can happily do the jobs that others would never want to do. But it is simply not for me.

However, the role of the transaction attorney is different. There might be a little bit of fighting involved in the negotiation stage, but transaction work is not primarily about fighting. To the contrary, it is fundamentally collaborative. After the negotiations are over, the attorneys from both sides of the transaction work together to get the deal done. They are, in a very real sense, building rather than destroying. Litigation tends to present a zero-sum game, where one person's gain necessarily comes at the other person's loss. And, to be fair, the same may be true of transaction work at the negotiation stage: setting a price is not unlike dividing a pie. However, after price negotiations, the situation changes, and it becomes a win-win scenario: both sides are working towards the same goal. This, I submit, is a pleasant and rewarding situation.

Moreover, one must consider what it is that the parties are working towards. Fundamentally, they are working towards getting the transaction done legally. That is the role of the attorney: to assure compliance with the law. The transaction attorney looks at the law and all contractual obligations, determines all the legal and technical requirements for the transaction in question, ensures that they occur, and secures appropriate documentation as proof. The whole goal, as I have always understood transaction practice, is to do everything right so that no one can sue you over the transaction—or that, if they do, they will lose. How satisfying it was for me to know that I was ensuring that my large and powerful clients were complying with the law when they might naturally be tempted to skirt it! Surely this is a noble career, and one that anyone could be proud of.

I practiced law for four years at Sullivan & Cromwell in New York City, one of the most prestigious firms in the country. Although one might expect such a firm to bend the law for its clients, I was never once confronted with a

serious moral or ethical dilemma. Nor did I ever see any of the firm's partners that I worked with trying to skirt the law. As far as I could see, they were always interested in ensuring that the client was complying with the law and believed that it was in their clients' interests to do so.

Thus, I found my job as a transaction attorney to be very satisfying. My only complaint was the long hours that were involved. And let me be honest: the hours were very long indeed.[169] This is something that may very well give anyone pause. How much of your time should be devoted to your career as opposed to your family and other pursuits? In my opinion, there is no clear answer.

There is nothing inherently immoral in working (or demanding of workers) long hours.[170] It would be perfectly reasonable for anyone to decide that the long hours required by top metropolitan law firms are not for them. But I would not judge those who are willing to do it. I am not sure that I would be willing to do it forever, but I was willing to do it for a few years. And that experience was instrumental in me obtaining my current position as a law professor. Those who want a better work-life balance should perhaps be willing to forgo the top metropolitan law firms in favor of smaller regional law firms, at least in the long run. They will likely have to accept lower compensation and less exciting work, but they should be willing to do so in order to be happier. On the other hand, those who want to experience law at the highest level make a trade-off of less free time for greater compensation and more exciting work. Some do this for a short time, others for a longer time. I, for one, do not feel the need to judge others for these decisions.

Remember, I am not arguing about how things should be. Just as I accept Delaware corporate law and Catholicism as givens, so also do I accept the legal market as a given. My argument is that Catholics can choose careers in corporate law, even at the highest levels. However, I don't mean to suggest that they should do so. Ultimately, everyone must accept moral responsibility for his own decisions.

V. CONCLUSION

I hope to have shown that Catholicism allows for careers involving corporate law. I first showed that it is acceptable to be an entrepreneur and operate a business for profit. If she is a sole proprietor, then she is fully responsible for all the decisions she makes with respect to her business.

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169. By the time I entered private practice, I knew that I wanted to go into academia. Nevertheless, my work at Sullivan & Cromwell was very rewarding and I could have imagined staying in private practice if the hours were not so bad. I thought that if the hours were—not nine to five, or even eight to six—even 7:00 a.m. to 7:00 p.m. Monday through Friday, I would likely have stayed put. But the hours were significantly more than that, and I was unwilling to commit to such long hours over the long run.

170. *But see* COMPENDIUM, *supra* note 32, para. 257 ("But one must not succumb to the temptation of making an idol of work . . . .") (emphasis omitted); *id.* para. 280 (warning against the dangers of "over-working" and "excessive demands of work that makes family life unstable and sometimes impossible").

However, if there are multiple owners, then she is not as free and must coordinate her actions to respect the rights of others. Corporate law, and other laws of business organization, provide the basic rules for coordinating these rights. I argued that because corporate law does so in a reasonable manner, it should not be considered problematic. I then argued that Catholics should not find it problematic to serve as directors. In doing so, they are advancing legitimate ends—both the creation of wealth, a societal good, and the empowerment of shareholders to pursue their legitimate interests. As fiduciaries, directors do not have the discretion to determine the ends of their actions, but only the means. Thus, they cannot be held responsible for what shareholders do with the wealth generated thereby.[171] For officers and corporate attorneys, it is much the same story. They assist and advise directors, and derivatively shareholders, to pursue wealth legally. There is nothing objectionable in that.

As I have repeatedly tried to emphasize, everyone remains responsible for her own actions. But those actions must be understood in context. My three-level hierarchical test applies as much to a corporate actor as it does to everyone else. Everyone must first avoid objective sins and second comply with all their duties before they are permitted to engage in discretionary good.[172] And because it is the duty of the director and corporate attorney to help the shareholders pursue their interests, especially their interests in wealth creation, these fiduciaries don't have the right to simply do as they please. And if they don't have the right to make a decision, then they can't be held responsible for it. Fiduciary status does not let anyone off the hook entirely. But the fiduciary's morality is assessed by reference to his selection of means, not the imposed ends.

Finally, I would like to end with a word on my current profession, teaching law. Clearly I believe that Catholics can decide upon careers as law professors. But why? It is not for the same reasons as directors or corporate attorneys, because professors are not agents of their students.[173] The justification is more straightforward. If it is legitimate to pursue a career as a corporate attorney, then it must be legitimate to teach people how to be good corporate attorneys. And that is what I see myself doing: preparing my students to be good corporate attorneys.

At Notre Dame Law School, we say that we strive to educate a different kind of lawyer.[174] Many people assume that could only mean a lawyer who enters public service rather than one who enters private practice, especially in

171. *See* Delany, *supra* note 145 and accompanying text.

172. *See supra* note 48 and accompanying text.

173. "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. L. INST. 2006). Professors are not the agents of their students because they neither act on their students' behalf nor are subject to their control. Rather, professors are agents of the institutions where they teach. Nevertheless, professors do have duties of state: obligations both to the institutions and to their students.

174. *See* NOTRE DAME L. SCH., *supra* note 2 and accompanying text.

corporate law. But they are mistaken. Every legitimate career can serve God, and this is as true of corporate lawyering as it is of carpentry. What we try to do at Notre Dame is prepare people to serve God in whatever legal career they choose—including, for some, corporate law.

But how do we do this? Every professor does it in his own way, to the best of his ability, but there are some common themes. For example, we don't teach catechism. Rather, we teach the same substantive law and legal skills that other law schools do. We don't even massage it to our liking. Our graduates have to be just as competent as any others, if not more so. We do, however, allow and even encourage discussion that includes religious considerations. Every good law professor factors morality into classroom discussions, even if only labeled as "public policy." But we allow for and encourage more robust discussions of the ends of the law, and we try to consider how the law advances or suppresses authentic human flourishing, especially with the help of Catholic teaching. This does not lead to easy answers, and students will often walk away with very different opinions on such matters. But we try to awaken in our students an appreciation for such concerns—for a morality that extends beyond mere public policy and extends to the common good and more authentic human flourishing. We try to equip our students to become forces for good in the world, and not just agents of justice. We strive to build up the Kingdom of God on earth.

If I can do this in my own way in my little realm of corporate law, then I have done my part to serve the mission of Notre Dame Law School. And if my colleagues all do likewise, then we will have helped to educate the different kind of lawyer that our employer and our Creator seek.