

# **A Social Property Ethics for the Corporation**

## **In Light of Catholic Social Thought**

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Throughout most of this century, practitioners and scholars have grappled with the apparent dilemma which pits the obligations of the corporation to shareholders against the corporation's responsibilities to its stakeholders--that is, to non-shareholders whose legitimate interests are significantly affected by corporate action. We propose to address this issue by examining the relationship between the person and property and, in that light, the shareholder's property interest. We argue that the property relationship between the shareholder and the corporation determines the purpose of the corporation. Furthermore, since the corporation exists as deliberate, organized human action, the purpose (or end) of corporate life determines at once the nature of the organization and its obligations to shareholders and stakeholders.

So long as the corporation is seen *essentially* as a vehicle for maximizing the wealth of shareholders, the corporation's understanding of its purpose, and, in turn, of its relationships with shareholders and to stakeholders, will be distorted. When the corporation is perceived as a mere engine for maximum financial return to shareholders, consideration of the legitimate interests

of stakeholders is reduced to an exercise in the strategy of the chessboard: interests are checked and balanced in order to channel the single-mindedly pecuniary interests of the corporation in those directions at once least objectionable to outside interests and most rewarding for shareholders. Faced with parochial wealth maximization as the animating spirit of the corporation, the larger community will, of course, respond with equally parochial laws and regulations designed to protect its interests. Those who advocate the view that corporations simply are, and are nothing more than, vehicles of shareholders' financial gain -- what we may call the "financial shareholder model, -- must also be content, in principle, to resign the corporation's relations with stakeholders to the stylized, chess-like realm of regulatory conflict and a sophisticated form of public relations.

As an alternative to the financial shareholder model, some advocate a stakeholder model, a multi-fiduciary approach placing stakeholders on the level of "quasi-shareholders." This approach challenges the primacy of shareholders, expressed as the maximization of their financial interests, by interjecting an egalitarian criterion: all corporate shareholders' and "quasi-shareholders, 11 -interests are to be maximized. While perhaps more appealing than the shareholder model, this version of a stakeholder model fails to deal adequately with -- in fact, arbitrarily discounts -- the property relationship between shareholder and corporation.

This brief review of "moves" native to the shareholder/stakeholder conversation begs an important question: Can the *can be shared in common -- a corporate act that in its essence is an act for the common good that serves both the shareholders and the community at large?* The question does not yield a transparent answer. The contours of the shareholder/stakeholder analysis to date are compelling testimony to the multifaceted difficulty of the issue. Yet, no matter the particular weave of a regulatory web that is proposed -- no matter how the chess pieces are arrayed -- , the heart of the problem remains untouched as long as the person's relationship to property is understood as the maximization of private interests. If the management of the corporation for the benefit of the property interests of shareholders cannot be seen as an act for a good that can be shared in common -- for the common good -- then the corporation is unable to bring people together in any meaningful and intelligible form of interdependence.

We do not propose a detailed overview of the rich shareholder/stakeholder analysis. Rather, we will attempt to descry the present in the beginning. Berle's and Means' seminal work, *The Modern Corporation and Private Property*, established the accepted parameters of shareholder-stakeholder analysis; their understanding of the shareholder's property relationship to the corporation is embedded to a cultural understanding of property predicated on a liberal view of the person. Identifying and analyzing the philosophical and theological roots of these issues will provide a more luminous understanding of how the corporations role in society is to be advanced.

### **The Shareholder/Stakeholder Conversation is embedded in the Liberal Vision of the Person**

Influenced substantially by Enlightenment notions carried in an increasingly pervasive cultural liberalism, American culture accomplished a "moral redrawing" of the relationship between political society and civil society. Among the benchmarks of the change: civil society came increasingly to be identified with economic activity, and economic activity with certain prerogatives of private -- individually held -- property. By focusing narrowly on the private dimension of property, liberal culture has created the conditions under which financial markets and corporations make decisions that maximize the property of, - that is do good for, shareholders under color of doing, that is realizing, the good of civil society. Thus the common good becomes the *cumulative* good. on this account, the common good no longer regulates the activities of individuals in the form of goods, that is ends or purposes, which can be achieved only so far as they are shared.

Rather, the understanding of common good is transformed into an accumulation of individual preferences.

James Booth explains that the transition from pre-modern (Christian/Classical) to a modern (Enlightenment/liberal) culture yields

a new form of moral embeddedness for the economy. The attributes claimed for it are familiar: an economy whose actors are considered equals and a system indifferent to their non-economic attributes, a contractarian, voluntaristic institutional context for exchanges; and the view that the public authority should not decide among preferences--that one is entitled to live one's life "from the inside," selecting and ordering one's prefer-

ences according to the good as one understands it and seeking to engage the voluntary cooperation of others in one's pursuit of them.

By 1932, this moral redrawing had so far advanced that Berle and Means could accept -- with minimal analysis and criticism -- the "Adam Smith" or classical liberal understanding of property as the "traditional logic" of property and profits. The question "In whose interest should the great quasi-public corporations be operated?" arose for Berle and Means because, in their view, this traditional logic of property and profits could not account for the ownership and management of the large, publicly held corporations that had already come to dominate the American economy in their day.

The "traditional logic of property" began with the premise that "the *owner of property has been entitled [scil., by the very fact of ownership] to the full use and disposal of his property.*" From this premise, the logic deduced that the use of industrial property is primarily for the acquisition of profit for the owner. The owner, therefore, is entitled to "all the profits it could be made to earn" after "deductions" for the "services of men and other property." thus, the traditional logic of property dictated a clear answer to the shareholder-stakeholder question: the corporation is to be operated solely in the interests of the shareholders. The corporation's management should serve the stockholders as an agent in the same way a ship's captain should serve its owners. The interests of the wider public should be protected only "where property interests conflict with some very obvious public policy" or if it serves the interests of shareholders. Managers are not responsible to customers or employees in the sense they are responsible to shareholders. They may respect employees or customers as one of their goals, not because of their dignity as human persons, but rather because respecting employees and customers generate more shareholder wealth than not respecting them. The law of property focussed on protecting the prerogatives of the individual owner. According to Berle and Means, "its primary design was protecting individual attributes of individual men, --their right to property, to free motion and locomotion, to protection of individual relationships entered into between them."

Berle and Means pointed out that economics confirmed this view. Its traditional logic of profits held that all profits should go to the owner of property both as the reward for

placing capital at risk and as encouraging its efficient use in the production of goods and services for the society as a whole. Still, they recognized that the structure of large corporations -which separated ownership of corporate property (the shareholders) from active control over (or, use) of it (management) -- challenged both the traditional logic of property and the traditional logic of profits. Indeed, that structure called into question whether one could even say that a corporation is, properly speaking, owned. According to the premises of the traditional logic, the law no longer had a compelling basis for protecting the shareholders, interest in all the profits of a corporation, but only in those necessary to reward -- and so encourage placing capital at risk. The separation of ownership from use i.e., from control -opened the issue of whether the corporation should really be operated exclusively for the benefit of shareholders.

Although Berle and Means did re-examine some of the underlying premises of the traditional logic of property and profit, they uncritically, perhaps automatically, accepted the anthropological and moral premises supposed by the traditional logic, premises which cut the person and private property off from any organic relationship to community. For example, in their re-analysis of property, Berle and Means denominated corporate stock "passive property," as distinguished from "active property." Active property retains the dual aspects of ownership and owner control and management. Thus, corporate stock qualifies as passive property, because "it gives its possessor no control over it and involves no responsibility.", Passive property consists of "a set of relationships between the individual [scil. owner-shareholder] and the enterprise." But such a "set" of relationships, comprising (as it does) a mere modification of the deliverances of the "traditional logic," quickly resolves itself into only one, controlling "relationship" between the shareholder and the corporation: maximization of the return on the shareholder's investment.

As for the profit motive, Berle and Means no longer saw in it the principal motivation of "control," i.e., of professional upper management.

Just what motives are effective today, in so far as control is concerned, must be a matter of conjecture. But it is probable that more could be learned concerning them by studying the motives of an Alexander the Great, seeking new worlds to conquer, than considering the motives of the petty tradesman of the days of Adam Smith.

The resolution of property into "active" and "passive" opens up an understanding of the corporation as an enterprise led by persons bent on conquest for the benefit of passive owners whose only recognizable, common and legitimate interest is profit. On this view, there certainly is a need for the assertion, by legislative or litigious means, of countervailing stakeholder interests, as the only restraint available to the larger community. However, given Berle's and Means' understanding of the persons who are shareholders and managers, can the larger community itself, and the stakeholders who inhabit it, signal anything more than collections of individuals motivated by the maximization of their own financial interests?

The underlying principle, which must constantly inform judgement in these connections, remains: protection of individual attributes of individual persons, and protection of individual relationships entered into between them. Berle and Means situated the shareholder and stakeholder discussion where, in all essential respects, it remains today: in the moral landscape described by Booth, where the highest good is found in "selecting and ordering one's preferences according to the good as one understands it, and seeking to engage the voluntary cooperation of others in one's pursuit of them."

This state of affairs appears strikingly clear when we look closely at Berle's and Means' analysis of the loss of the shareholder's direct, physical control of corporate property. They asserted:

The spiritual values that formerly went with ownership have been separated from it. Physical property capable of being shaped by its owner could bring to him direct satisfaction apart from the income it yielded in more concrete form. It represented an extension of his own personality. With the corporate revolution, this quality has been lost to the property owner much as it has been to the worker through the industrial revolution.

Under the modern structures of corporate management and financial markets, Berle and Means argued, the shareholder's control of his interest in a public corporation, like its value, is "entirely outside himself and his own efforts," for one of those forces indifferent to the shareholder and his efforts is the influence of "society's appraisal of its own immediate future" on financial markets.

Berle's and Means' judgement, then, is that one's personality becomes divorced from one's ownership of property so far as the value of the property, and the means of controlling it, take on a social character. If property is not immediately available to the owner for emphatically personal and individual purposes, then its spiritual value is lost. The owner of stock in a public corporation has retreated into the only ground left to support a personal relationship with corporate "property": his right to profit for putting capital at risk. This result reflects, of course, a root anthropological understanding deeply embedded in our culture: the person is essentially individual, "atomic," unitary"; social, only accidentally. Property ownership is understood in terms of the person's supposed independent, individualistic nature; interdependence is the antithesis of ownership.

Nevertheless, Berle and Means understood that the value of shares in public corporations is unavoidably dependent on the larger society; specifically, on that society's confidence in itself. One could argue, then, that Berle and Means saw that the large corporation is a locus of interdependence among persons; that it reveals in fact, that all property does have a social character. Indeed, the shareholder-stakeholder conversation turns on that very social character. But in its framework, set out by Berle and Means, the conversation staggers under the attempt to make a deeply embedded, thoroughly individualistic, cultural understanding of the person carry an understanding of the social character of property.

## Person and Property in Catholic Social Thought:

### Resolving of the Opposition Between Shareholders and Stakeholders

Because, for Berle and Means, the private character of property determines the property relation, property's social character reduces to an instrument in support of private (i.e. autonomous) relationships. To acknowledge this merely instrumental role alone testifies to a fundamentally deficient understanding of the property's inherently social character. In its turn that understanding can not help but grasp a person's interdependence in

community as simply one "atomic" fact jostling against another, viz. against the autonomy of the property-relationship. Social interdependence on the one hand, proprietary autonomy on the other: for contemporary shareholder-stakeholder analyses, these are the conflicting poles of a problem whose very terms forecast that it cannot, finally, be resolved.

From the perspective of Catholic social thought, the problem is illusory. For, within the Catholic tradition, interdependence, our social nature as persons, grounds property rights. Accordingly, the understanding of the person and property native to Catholic social thought offers a basis for resolving the apparently intractable opposition between the interests of corporate shareholders and the interests of corporate stakeholders.

At the outset, we promised an essay at describing the present in the beginning. Let us, then, go to the *beginning*, in the form of a reflection on *Genesis*. In *On Human Work*, John Paul II observes:

The expression "subdue the earth" has an immense range. It means all the resources that the earth (and indirectly the visible world) contains and which, through the conscious activity of man, can be discovered and used for his ends. And so these words, placed at the beginning of the Bible, *never cease to be relevant*. They embrace equally the past ages of civilization and economy, as also the whole of modern reality and future phases of development, which are perhaps already to some extent beginning to take shape, though for the most part they are still almost unknown to man and hidden from him.

In the first place, and as a brute fact, the isolated individual is doomed rather to be subdued by the earth than to subdue it. Therefore, the imperative incorporates a call to the deliberate human association in the task of wresting a livelihood from the earth. Of course, association is not yet interdependence, and the difference is enshrined in the ancient reflection that association is for the sake of living, but interdependence -- the social/political bond of community -- is for the sake of flourishing.

The Judeo-Christian tradition transforms this philosophical reflection, through the revelation that the call to subdue the earth is at once God's invitation and command: His invitation, extended to his image and likeness, to participate with Him in His continuing act of creation; God's command that the perfection of His human creation must be

respected as the measure of that participation. The Thomistic insight, which is still the root insight of Catholic social thought, is that the measure of "good" - what transforms mere **things** into **goods** -- is their ordination to the perfection of human creation, to human flourishing in the widest sense. Expressed in the classical terms: the Good is the end; the human Good, the human end (which is also the divine end) calls for humans' cooperation in the achievement of their own flourishing. When, John Paul links the command "subdue the earth" to human ends, he invokes the following understanding: "subdue the earth" does not translate to "wrest from it the means of satisfying 'your every appetite, including maximization of shareholder wealth" but to "order it and its resources to the achievement of human flourishing."

The latter expresses a fundamental principle of Catholic social thought: the things of the earth become good only so far as they are shared, and are thus diminished so far as they are not

shared: among these goods are justice, truth, religion. Others are consumed in the course of their use, and so cannot be shared except by distribution into diminishing allotments: such as economic goods that form property. Still -- and this is what makes Catholic social thought ring so strangely in modern ears -- the principle holds: economic goods' character *as goods* depends on their being ordered to meet the *common* need of human flourishing.

Hence, when Thomas comes to consider the distribution of economic goods, he frames the question in a way which respects the presumption that goods as such are a gift from God for the common benefit: he asks, *i-s* it ever licit *for men to hold private property in the goods of the earth?* thus acknowledging the significant issues raised by the fact that the earth is a gift for the benefit of all. Thomas vindicates the right to private property on the grounds that private possession best conduces to the development of a sufficiency of consumable goods and because a system of private possessions promotes yet higher goods, higher human perfections, in the course of directing the former to the common good: distributive justice, generosity, magnanimity. Modern Catholic social thought emphasizes such higher goods as participation in society, human initiative and the whole ensemble of virtues inherent in the subjective dimension of work. Thus, for Thomas, and for Catholic social thought since *Rerum Novarum*, the right to property is correlative to the duty to use property to meet the common need and the common good.

By starting with the private rather than the social character of property, Berle and Means suffer from precisely what private connotes -- a privation -- of the social meaning that is necessary for the integral development of the person in the modern corporation. When property is defined by exclusive rights to possession, use and alienation, without regard to its inherent social character as a human good, Catholic social thought proposes that the relations which alone make property intelligible are inverted: property and its relations become opaque, "atomic facts", fit only, as we mentioned above, for jostling against one another. The difficulty with the "liberal" concepts of property and property rights is that they stand isolated from the wider range of requirements for human flourishing.

The public business corporation of our age of civilization and economy vividly illustrates the direct, empirical bearing of Catholic social thought's traditional emphasis on human interdependence. From janitor to international financier, from supplier of paper clips to cutting edge software engineer, from small investor to government regulator, the corporation brings together and makes immensely productive a vast, ultimately unchartable web of human relationships. Why do we say human relationships instead "productive functions?" In answer, one need only reflect on the difference between "paper clip supplier" and "reliable paper clip supplier, on the difference between "janitor" and "financier" and "conscientious janitor" and "imaginative financier" or, again, the difference between "investor" and "confident investor," and "government regulator" and "honest government regulator" to see that productive functions are everywhere supported and fructified by what only can be called moral commitments to the enterprise and one's associates in it. Indeed, it is not other than hard-headed empiricism which recognizes that the very viability of financial markets that support corporate enterprise depends fully on moral "intangibles" - public confidence, security in the openness of markets and the presumption that the trader's word is her bond -- as upon economic calculations (whose validity, in any case, is largely secured by those "intangibles").

As we mentioned above, these features of corporate life are acknowledged in, are in fact central to, the shareholder/stakeholder conversation. Catholic social thought proposes that the vital issue is what significance we discern in the fact of interdependence: do we, in light of our original vocation as social beings, understand interdependence as a moral, i.e., normative, category; how do we -- how should we -- respond to that understanding?

If the interdependence of persons in the modern corporation is understood as a moral category, then the analysis of the corporation must move beyond a calculation of its material productivity and market capitalization. The transitive and objective nature of human action within the corporate structure must be subordinate to the immanent and subjective significance of the human act. Therefore, we see the corporation as a realm where persons continue their action as the images and likenesses of God, cooperating in the continuing creation of the earth and of themselves. It is a place for human flourishing. Catholic social thought proposes that our response to this understanding of interdependence is the virtue of solidarity, a firm and persevering commitment to the common good. We can see participation in a corporation as a shareholder as a way to transcend the privation of our finiteness and help to establish that "sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment."

On this account, a person's property right in shares of a corporation should be seen as an opportunity to fulfill her vocation to contribute to the common good. ownership of corporate shares does not constitute the right to extract the maximum financial gain from the interdependent web of human action which constitutes the modern public corporation. The owner of corporate shares, can not expect management to instrumentalize persons for the benefit of his or her wealth maximization. Therefore, Catholic social thought's understanding of the social nature of the person and property eliminates the basis for placing the property interests of shareholders in essential opposition to the interests of

stakeholders. The conversation of how the corporation is to interact with the larger society need not be conducted as moves on a chess board once we progress beyond the atomistic and individualistic vision of the person. **To state the matter positively, corporate management's fiduciary duty to the property interests of the shareholders requires that corporate affairs be managed for the common good and, in that regard, that corporate stakeholders receive fair and just treatment.**

A comprehensive outline of how corporations would conduct business if the social understanding of the person and property becomes operative in society is undoubtedly part of those future phases of development still hidden from us. However, some sketch can be suggested. The corporation would still be seen as a business, influenced by markets and subject to competition. The corporation's principal contribution to the common good would be understood to be the *manner* in which it conducts business. Indeed, the technical abilities of business executives would be even more challenged. Highly accomplished business skills would be necessary to, for example, design jobs based on the subjective dimension of labor and make them sustainable in the global market place. The corporation would not be required to accede to every demand of stakeholders. Following Yves Simon, s distinction between the formal and material common good, the corporation would be required to defend its legitimate interests. The corporation would not be a charitable organization. Profit would still be critical. The corporation would have to survive and flourish in order to fulfill its obligations to the persons, including shareholders, who are dependent on it. Indeed, there is no need to believe that the corporation would, on the whole, be any less profitable. That the person need be instrumentalized for productivity to be sustained and increased is not a physical law of the universe. If the corporation was truly dedicated to the fullest possible growth and development of its employees, productivity and profitability might just reach levels undreamed of heretofore. We can not be certain.

### **The Cultural Dimension and the Catholic University**

Even to begin a serious conversation about the implications of Catholic social thought for our understanding of the corporation requires an engagement, at the level of first principles, with philosophical and theological anthropology. This task is complicated by the fact that our culture for the most part, either consciously or unconsciously, considers those matters as settled and settled against the first principles of Catholic social thought. The individualistic vision of the person, deeply embedded in our culture, is the primary obstacle to full consideration of the possibilities Catholic social thought's understanding of the person and property opens for the analysis of the modern public corporation's relationship with society. Ultimately, the Catholic tradition's understanding of the person and property puts at stake principles far more fundamental than productivity and profitability.

The dominate American cultural view of personal freedom and self-identity form the parameters of the mainstream shareholder/stakeholder conversation. An attempt to reconfigure radically that discussion must begin at a level far deeper than standard Bus Ad 101. Booth' s description of the economy as embedded in a moral landscape where

"one is entitled to live one's life 'from the inside,, selecting and ordering one's preferences according to the good as one understands it" (emphasis added) captures the elements of the contemporary understanding of selfworth and personal dignity. There is no more fundamental challenge to the premises of modernity and post-modernity than to assert the Christian, teleological understanding of the person. Indeed, modernity and post-modernity define themselves as freedom from that very understanding of the person. To admit the Catholic tradition as a legitimate member of the discussion about the nature of the corporation is for many to concede, ipso facto, the rolling back of the most fundamental achievements of Western intellectual history.

We must also acknowledge that Western culture, and American culture in particular, is not a monolith. While the liberal/Enlightenment view of the person clearly dominates, particularly, in the most influential circles, there are other cultural currents still present in America and the West. Across the board there are many individuals willing to engage fruitfully with Catholic social thought. We must ask how well scholars and practitioners of Catholic social thought are prepared for that engagement and whether they appreciate that many people rely on the liberal vision of the person for their self-identity and self-worth.

The theme of this conference brings us to the question of what this discussion of the person and property has to do to do with management education at a Catholic university? Well, everything. As John Paul II reminds us in *Ex Corde Ecclesiae*, what is at stake in higher education is the very meaning of the human person. The atomistic, contractarian vision of the person can not be unsettled absent an excellent liberal arts education that reaches past embedded cultural assumptions and proposes to the student what his own flourishing might mean and how that flourishing is linked to our vocation as social beings. Ultimately, the whole range of spiritual, cultural and academic resources of the Catholic institution of higher education must be engaged and effectively integrated into its business school in order to open students to the possibilities the Christian understanding of the person brings to the study and conduct of business.