

## Maximizing Shareholder Value in the Good Company

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A persistent tension exists in Catholic Social Doctrine (CSD) concerning the proper ends of business organizations and thus the purposes that corporate managers ought pursue in acting on behalf of the company. On the one hand, “[a] business’ objective must be met in economic terms and according to economic criteria,”<sup>2</sup> which seems to mean that managers should maximize shareholder value. On the other hand, “[b]usiness owners and management must not limit themselves to taking into account only the economic objectives of the company [and] the criteria of economic efficiency.... It is also their precise duty to respect concretely the human dignity of those who work within the company”<sup>3</sup> and, presumably, of those who are customers, vendors, creditors, and persons who live in communities in which the business operates. This seems to mean that managers should sometimes promote the interests of such persons at the expense of shareholders. The question is thus how the ends of maximizing shareholder value and benefiting other corporate constituencies interrelate, i.e., how managers ought to balance the interests of one group against those of others.

In attempting to answer this question, I begin from the working assumption that, in a good company, managers balance properly the maximization of shareholder value and the interests of other corporate constituencies. As I explain below, this assumption is actually more complex than it may seem and involves adopting a virtue-theoretic meta-ethics. I next consider, in light of the moral philosophy of St. Thomas, what precisely it means to say that a company is good, that is, that it is good *qua* company or a good company. With that analysis in hand, I return to the issue of how maximizing shareholder value ought be balanced against other corporate ends, and I argue that managers may pursue such ends only to the extent that actions undertaken for such ends are ultimately ordered to maximizing shareholder value. I further argue that, despite its seeming limitation on actions directed to the benefit of other corporate constituencies, this principle in fact allows wide scope for such actions. Finally, I conclude that this view establishes an intelligible relation among the various corporate ends, gives a due primacy to the end of maximizing shareholder value, and still allows managers wide latitude to treat employees and other corporate constituencies generously.

### I. Conceptual Presuppositions of the Working Assumption

As noted above, I begin from the assumption that, in a good company, corporate managers appropriately balance the competing goals of maximizing shareholder value and promoting the interests of other corporate constituencies. Innocuous as this assumption may seem, it in fact includes some significant conceptual presuppositions, even some very

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<sup>2</sup> Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (2004) at §338.

<sup>3</sup> *Id.* at §344.

fundamental ideas in meta-ethics. In order to make clear the structure of the argument I want to develop about good companies and how they balance various corporate goals, I want to articulate some of these conceptual presuppositions, for especially nowadays, when even in Catholic moral theology we find a diversity of foundational assumptions and a variety of moral concepts, it is particularly easy to lose sight of the very abstract, fundamental premises in an argument, to tacitly and unwittingly substitute others that may be more familiar, and thus to essentially misunderstand the argument being made.

#### A. Conceptual Presuppositions of the Working Assumption

The most important presupposition implicit in the approach to the good company that I am here adopting is the conceptual priority of the good over other moral concepts. That is, implicit in my working assumption is that we can know what it means to say that a company is a good company and so recognize a company as being a good company, *prior to and independent of*, knowing how maximizing shareholder value ought rightly be balanced against other corporate purposes. Knowing what a good company is, we can examine good companies in order to learn how they balance the various corporate goals, and once we discover this, we will have discovered the right way for these goals to be balanced. We do not determine, beforehand, how the goals ought rightly be balanced, inquire whether a particular company so balances them, and, if it does, pronounce the company good on such basis. Rather, we know that a good company balances these goals rightly *because* we know that the company is a good company and however good companies balance these goals is *ipso facto* the right way. There is thus a *epistemological* priority of the good over the right here.

Similarly, the fact that good companies balance the competing goals in one particular way is why this way is the right way for the goals to be balanced. That is, because good companies balance the goals thusly, such is the right way for them to be balanced. It is not that, on the basis of other normative considerations, the goals ought be balanced in a particular way, and so, in order to be good, a company has an obligation to balance them thus. On the contrary, there is a *justificatory* priority of the good over the right. In both the order of knowledge and the order of justification, therefore, we begin with good companies and proceed towards the right balancing of the competing corporate goals.

An illustration will make clearer the differences between the presuppositions embodied in my working assumption and the conceptual alternatives. Imagine that, in connection with the development of the Joint Strike Fighter, engineers working for the United States Department of Defense determine that currently available composite materials used in the windshields and canopies of fighter aircraft are not suitable for use in the aircraft under design. Another material is thus needed, one that will allow the aircraft to perform as the engineers intend, successfully resisting certain levels of stress, deflecting or absorbing energies from enemy radars to preserve the aircraft's intended stealth capacities, allowing the pilot unobstructed vision, and so on. To obtain such a material, the Department of Defense decides to solicit proposals from firms involved in producing composite materials of the kind needed, but, for reasons of military secrecy, the department does not want firms supplying the material to know the purpose for which the material will be used. Accordingly, the request for proposals that the department circulates includes very detailed specifications for the material to be supplied, including measures of its opacity to light, density in grams per cubic centimeter, its tensile

strength, its reactions with radio waves of various wavelengths, and so on, but the request for proposals does not describe the purpose to which the material will be put.

Now consider how differently two groups of engineers—those working for the Department of Defense, on the one hand, and those working for firms considering making proposals to supply materials in accordance with the specifications, on the other—will evaluate various materials. Engineers at the Department of Defense know for what purpose the material will be used, and they will think that a material is *good* or *bad* depending on how well it fulfills the intended purpose in various respects. Since materials might fulfill the intended purpose to a greater or lesser degree, such engineers will also be able to rank potential materials, at least in some cases, as *better* or *worse*. Knowing what the intended purpose for the material is, these engineers are able to draft the specifications included in the request for proposals, specifying what characteristics the material needs to have in order to fulfill the intended purpose. Engineers at firms considering the request for proposals, however, do not know the purpose for which the material is to be used;<sup>4</sup> all they know is that the material must conform to the elaborate set of specifications the Department of Defense has supplied. For them, any material that conforms to the specifications will be a good one, and all that conform will be equally good.<sup>5</sup> For such engineers, materials will not be evaluated in degrees, as *better* or *worse*; they will be simply either conforming or non-conforming, and in this sense either good or bad. In other words, the engineers who wrote the specifications were able to recognize, before writing the specifications, which materials were good or bad in the context of their project, and on the basis of this knowledge were able to articulate the specifications; but the engineers at the firms supplying the materials will look first to the specifications to determine if a given material conforms to the specifications, and if it does, they will conclude it is a good one on which to base a proposal to the Department of Defense. In short, for the engineers inside the project, the good is primary and understood in relation to the purpose to which the material is to be put, while compliance with the specifications is secondary and defined in terms of the good; but for the engineers outside the project, who know nothing about it except what is contained in the specifications, it is conformance to the specifications that is primary, and the good is defined in terms of such conformance.

The assumption underlying my treatment of the good company is that, with respect to good companies, our position is analogous to that of the engineers inside the project, not those outside the project. Philosophers will recognize that what I am assuming is that the right is defined in terms of the good, not the good in terms of the right. I am assuming, in other words, that we recognize good companies first and, by examining them more closely, we see how they balance the various corporate purposes, thus learning how such purposes ought be

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<sup>4</sup> In fact, they may be able to puzzle this out in a mode of reasoning that becomes very important in virtue-theoretic systems and to which I return to below.

<sup>5</sup> In practice, specifications like those in the example often include provisions that state that the material must have, e.g., density of *not greater than* a specified number of grams per cubic centimeter. If so, engineers reading the specifications would probably conclude that the lighter a material is, the better it is, everything else being equal. Such complications do not vitiate the main point for which I am using the example. At the very least, we can imagine that the specifications contain statements only of the form that, e.g., the density of the material ought be within a specified range, for, from the point of view the engineers at the Department of Defense, above such range it is too heavy, increasing the overall weight of the aircraft beyond acceptable limits, and below such range it is too light, introducing changes in density between the external skeleton of the aircraft and the canopy that would create unacceptable structural stresses, etc.

balanced. It is not that, on the basis of some other kinds of normative considerations, we can determine how the various corporate goals ought be balanced and then hold companies to that standard, commending as good the ones that do and deploring as bad the ones that do not.

## B. Relation to Virtue-Theoretic Moral Conceptual Schemes

In adopting this working assumption with respect to business organizations, I am implicitly adopting a virtue-theoretic moral conceptual scheme of the kind found in Greek moral philosophy and the Catholic moral tradition. Indeed, I am proceeding in close analogy to the procedure generally adopted in such conceptual schemes with respect to human beings. In Aristotle, for example, the good man is the measure of morality, meaning that Aristotle begins his moral inquiry by investigating human goodness, generally under the rubric of the “virtuous man,” and from the results of this inquiry moves on to consider the norms which characterize the good man, i.e., the catalogue of the virtues.<sup>6</sup> The alternative approach, perhaps best typified by Kant, proceeds in the opposite direction. It begins with the norms—usually understood to be rules—that a person ought obey, gives some justification for such rules, and then characterizes a person as good or bad, from a moral point of view, depending on the extent to which the person in fact obeys the norms or rules. For Kant, for example, morality is about acting in accordance with maxims identified and justified by his categorical imperative, that is, justified on the basis of what a rational person can consistently will; a person then has a “good will” precisely because, and precisely insofar as, that will is informed by such maxims, that is, wills in accordance with them.<sup>7</sup>

The difference between the virtue-theoretic and Kantian approaches may be brought out clearly by reverting to the example of the specifications for the composite material to be used in building the Joint Strike Fighter. Just as, for the engineers inside the project, the purpose to which the material is to be put is conceptually primary and gives content to the statements that some materials are good and others bad, the characteristics demanded in the specifications being elaborated and justified on the basis of an understanding of what it means for a material to be good, so too for Aristotle and other virtue theorists, there is a final end to which human beings are ordered, and this end is conceptually primary and gives content to the statements that some human beings are good and others bad, the characteristics contained in catalogues of virtues being elaborated and justified on the basis of an understanding of what it means for a human being to be good. By contrast, just as, for engineers outside the Joint Strike Fighter Project and working at firms considering submitting proposals to supply the desired composite material, the specifications are primary and give content to statements that some materials are good and others bad, the purpose to which the material might be put not being in consideration, so too for Kant the maxims of morality identified as being such and justified by the categorical imperative are primary and give content to statements that some human beings are good and others bad, any purpose or end of human beings *qua* human beings not being in consideration.

The Catholic moral tradition has always been virtue-theoretic. In the ancient world, the virtue-theoretic way was generally the only known way of understanding morality,

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<sup>6</sup> See *Nicomachean Ethics*, especially Book I and passim.

<sup>7</sup> See *Groundwork for the Metaphysics of Morals*, passim.

and so it continued in Christianity, throughout the patristic and medieval periods, including in Augustine and Aquinas.<sup>8</sup> Moreover, this approach has continued in most of the Catholic tradition even until the present.<sup>9</sup> It was also the approach, although less clearly articulated, of John Paul II in *Veritatis Splendor*, as well as many of his other writings on morals. He says, for example, that human beings “live by means of things, always preserving their own purpose.... There is no way to acknowledge the dignity of the human being without taking this purpose and its thoroughly spiritual character into account.”<sup>10</sup> This is to define the dignity of the human person in terms of the purpose or function of the person, and thus to make that purpose or function primary from a conceptual point of view.

The analysis I intend to give of good companies and their behavior, therefore, is modeled on the virtue-theoretic moral doctrine of the Catholic tradition, and so it is a natural approach for someone working within that tradition to adopt. In any event, it imports into CSD no foreign moral concepts. Since the Catholic moral tradition is virtue-theoretic, we can be confident that a virtue-theoretic explanation of CSD will cohere with that tradition. Since the most important concept in a virtue-theoretic conceptual scheme is, as I have been making clear, that of the good, it is to the good, as understood in the Catholic tradition and as I intend to use it in connection with companies, to which I next turn.

## II. Philosophical Analysis of the “Good”

St. Thomas gives general accounts of the good in the *Summa Theologiae* and in the *De Veritate* and discusses goodness in less systematic ways in other works as well.<sup>11</sup> Below I set out the general outlines of his position. I then move on to a more contemporary treatment, as developed in analytic philosophy, of the same basic view, which treatment will form the basis of my analysis of the good company.

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<sup>8</sup> See generally, Alasdair MacIntyre, *A Short History of Ethics* (1966). Similarly, “Ancient and medieval ethical theory centers on the problem of how man in general is to achieve well-being. Before the Renaissance it was generally assumed that all men are by nature ordered toward the attainment of one ultimate end. In different writers this over-all goal is described diversely but the orientation of all premodern ethical thought is teleological. This means that the focal point of nearly all ethics covered in the first two parts of this history [i.e., “Part One: Greco-Roman Theories” and “Part Two: Patristic and Medieval Theories”] is the question: How may man best live and act, so that he will reach his final objective as man? On the other hand, modern and contemporary ethical theories focus on the problem of practical judgment: How can one explain and justify the ‘oughtness’ in human experience?” Vernon J. Bourke, *History of Ethics* (1968) at 7-8. Also see generally, Servais Pinckaers, O.P., *The Sources of Christian Ethics* (trans. Sr. Mary Thomas Noble, O.P., 1995).

<sup>9</sup> See generally, Ad. Tanquerey et al., *Synopsis Theologiae Moralis et Pastoralis* (9<sup>th</sup> ed., 1931); Antonio M. Arregui, *Summarium Theologiae Moralis ad Recentem Codicem Iuris Canonici Accommodatum* (1944).

<sup>10</sup> “The Dignity of the Human Person” in Karol Wojtyła, *Person and Community: Selected Essays* (Theresa Sandok, OFM, trans., 1993) at 177, 179. John Paul’s views on this matter are difficult to characterize. Despite the strong emphasis on the final end for human beings in *Veritatis Splendor*, he nevertheless takes an emphatically Kantian approach in *Love and Responsibility*, *The Theology of the Body*, and *Crossing the Threshold of Hope*, in which last he expressly says that he himself relies on a formulation of the Categorical Imperative: “Love for a person excludes the possibility of treating him as an object of pleasure. This is a principle of Kantian ethics and constitutes his so-called second imperative.” *Crossing the Threshold of Hope* (1994) at 201 (emphasis deleted). Assuming, however, that what John Paul says when discussing fundamental moral theology in a magisterial mode ought be given greater weight than what he says in other contexts in non-magisterial writings, then the virtue-theoretic account in *Veritatis Splendor* ought govern.

<sup>11</sup> *Summa Theologiae* Ia.5.1-6; *De Veritate* xxi. See also the *Expositio Sententiarum* I.1; I.8.3; I.19.5 and passim, and the *Expositio in X Libros Ethicorum Nicomacheorum*, especially Lib. I.

## A. The “Good” in St. Thomas

St. Thomas inherited an understanding of the good from St. Augustine, who had borrowed from the Neo-Platonists the doctrine that all things, insofar as they exist, are good. Evil is not a positive reality but a privation, the absence of something that ought be present, as blindness is the absence of the power of sight in the eye. Augustine had adopted this doctrine as a partial solution of the problem of evil, the problem of explaining how an omnipotent and omnibenevolent God had created a world in which there is so much evil. Regardless of the merits of this position in dealing with that problem,<sup>12</sup> however, the doctrine had the clear implication that, as Aquinas would say, “being” and “good” are convertible terms, or, as we might say today, “being” and “good” are coextensional. The philosophical problem thus created for Aquinas was to explain how being and goodness are related.

Recognizing that the terms “being” and “good” are clearly not mere synonyms, Aquinas held that predicating “good” of a being adds something, as he would say, “of reason.”<sup>13</sup> In more contemporary language, although the terms are co-extensional, they have different meanings, and so calling a being good describes that being in a certain way that calling it a being does not. In particular, predicating “good” of a being calls our attention to the relation the being has to something that it tends to, in Aquinas’ technical language, perfect or conserve. He means that, in calling something good, I am indicating that it tends to effect, or cause to remain the case, a certain state of affairs viewed as an end to be achieved.<sup>14</sup> The paradigm cases for Aquinas arise in connection with his metaphysics, in which every entity, every positive reality, has by its essence a natural end associated with it, its *final cause*, which is the full realization in actuality of its natural potential. When such an entity is attaining this natural end, it is *perfected* and so called *good*, because tending to attain this end. Thus the fully developed, healthy animal specimen is a good one of its kind for Aquinas.<sup>15</sup> More generally, Aquinas appeals to Aristotle’s definition of the good, given at the beginning of the *Nicomachean Ethics*, according to which the good is that at which all things aim,<sup>16</sup> saying that things are good insofar as they are desirable (*appetibile*), that is, desired for an end, desired in order that some state of affairs may be the case. A thing is then called *good* insofar as it tends to effect or conserve that state of affairs.<sup>17</sup> For example, if we are operating a university, then we will call hiring talented professors, securing large gifts from

<sup>12</sup> Augustine and Aquinas both fully realized that this doctrine dealt only with what might be called the *metaphysical* problem of evil, i.e., with blocking the inference that God acts to create or conserve in being evil as a positive reality. They both fully realized that the *moral* problem of evil, i.e., an explanation as to how a good God permits such privations to occur, required a further treatment. In Aquinas, see *Summa Theologiae* Ia.19.9 and Ia.48-49; *De Malo* i, ii and iii; *De Potentia* i.6.

<sup>13</sup> “Illud nomen vel sit synonymum enti: quod de bono dici non potest, cum non nugatorie dicatur ens bonum; vel addat aliquid ad minus secundum rationem; et sic oportet quod bonum, ex quo non contrahit ens, addat aliquid super ens, quod sit rationis tantum.” *De Veritate* xxi.1. See also, *Summa Theologiae* Ia.5.1-2.

<sup>14</sup> “In quantum autem unum ens est secundum esse suum perfectivum alterius et conservativum, habet rationem finis respectu illius quod ab eo perficitur; et inde est quod omnes recte definientes bonum ponunt in ratione eius aliquid quod pertineat ad habitudinem finis.” *De Veritate* xxi.1. See also, *Summa Theologiae* Ia.5.4.

<sup>15</sup> “Ratio enim boni in hoc consistit, quod aliquid sit appetibile: unde Philosophus, in I ‘Ethic.,’ dicit quod bonum est ‘quod omnia appetunt.’ Manifestum est autem quod unumquodque est appetibile secundum quod est perfectum: nam omnia appetunt suam perfectionem. Intantum est autem perfectum unumquodque, in quantum est actu: unde manifestum est quod intantum est aliquid bonum, in quantum est ens.” *Summa Theologiae* Ia.5.1.

<sup>16</sup> *Nicomachean Ethics* I.1, at 1094a3.

<sup>17</sup> “Cum bonum sit quod omnia appetunt, hoc autem habet rationem finis; manifestum est quod bonum rationem finis importat.” *Summa Theologiae* Ia.5.4.

alumni, and receiving increased numbers of student applications *good*, because each of these tends to advance or preserve the state of affairs we are aiming at, i.e., the efficient operation of the university.

### B. Geach's Contemporary Interpretation

Following this account from St. Thomas but refocusing it through the more careful consideration of language typical of contemporary analytic philosophy, Peter Geach<sup>18</sup> has argued, and Alasdair MacIntyre has subsequently agreed,<sup>19</sup> that one important use of the predicate "good" is as an attributive adjective in phrases such as "a good lawyer," "a good clock," or, in general, "a good *F*," where *F* stands for some noun.<sup>20</sup> In attributive uses of "good," a precondition for the proper use of the adjective is that there be associated with the noun in question, either generally or in the specific context at issue, some end that the things of which the noun is predicated are expected to fulfill. For example, if the noun is one that, like "lawyer," names a social role, then the end will be the end for which such role exists within a larger social context, e.g., to provide advice about the law, to litigate on behalf of clients, etc. If the noun is one that, like "clock," names an artifact, the end will be the purpose that people characteristically have in mind in wanting artifacts of the relevant kind, e.g., to tell the time. In such a case, a *good* thing of its kind is one that fulfills well the end associated with the noun; that is, a *good F* is an *F* that fulfills well the purpose associated with *F*s. When there is no end commonly associated with a noun *F*, the phrase "a good *F*" is meaningless, e.g., "a good fork in the road," "a good rotation of the earth," or "a good prime number."

Two qualifications are in order here. First, note that, as the end varies, so too does the meaning of "good" as an attributive adjective. A beach good for enjoying sand and surf might not be good for landing amphibious assault troops on, and one and the same person might be a good accountant, a bad golfer, and a merely so-so bridge player. Second, note that such uses of "good" are generally non-moral. That is, in saying that something is a good one of its kind, we make no specifically moral judgments about it or anything else. It makes perfect sense, for example, to say that someone is a "good assassin," meaning someone who always kills those whom he is hired to kill and does so without being caught, for such, presumably, is the end that people characteristically have in mind when they want an assassin; in saying this, we do not express moral approval for assassins or assassinations.

### III. Virtue-Theoretic Presuppositions and Good Companies

This account explains the semantics of the predicate "good"; it does not explain a moral theory based on a notion of goodness. To do that, I explain some of the major presuppositions of virtue theory, and then, using the modes of specifically moral thinking about the good they embody, I turn to the question of good companies.

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<sup>18</sup> Peter T. Geach, *Good and Evil*, 17 *Analysis* 33 (1956), reprinted in Philippa Foot, *Theories of Ethics* (1967) at 74.

<sup>19</sup> Alasdair MacIntyre, *A Short History of Ethics*, 5-13, and *After Virtue* (1982), *passim*.

<sup>20</sup> Geach actually says that all intelligible uses of "good" reduce to this attributive use, but I need not defend that stronger claim here. It suffices for my purposes that the attributive use of "good" is one intelligible use of the word and that the use of "good" in "good company" is attributive.

### A. Virtue-Theoretic Presuppositions

In a virtue-theoretic moral system, morality is founded on one special application of the attributive adjective “good”—its use in describing human beings. In such systems, a “good human being” is one who fulfills the final end for human beings, which is the end or purpose uniquely associated with human nature. The characteristic claims of virtue theory, therefore, are that there is such an end, that the end is objective and not the product of human choice, and that we can know what this end is with specificity sufficient to determine, at least generally, which actions are ordered to it and which are not.

Now with words naming social roles or artifacts, it is clear that, in the background, we have actual human beings who create such roles or make such artifacts and thus have in mind purposes for such things. Hence, in considering social roles or artifacts, there is a socially determined purpose at hand to which we can appeal when judging such persons or things good or bad. Although it would be possible, in a virtue-theoretic system, to take God as standing behind human nature and having in mind for it a purpose just as we human beings stand behind our artifacts and have purposes in mind for them, nevertheless most virtue-theoretic accounts do not proceed in this way. Indeed, many virtue theories, such as Aristotle’s, make no mention of God at all. If a virtue theory were based on the divine will in the way indicated, then the virtue theorist would need to ascertain directly the will of God for human beings, and while this might be possible in a revealed moral theology, philosophers have not generally thought it possible in natural moral philosophy.

Rather, virtue-theoretic moral systems in natural philosophy begin from the concept of the human being (i.e., that understanding of human nature derived from biology, psychology, sociology, and the other empirical sciences that study human beings) and then ask for what end human nature thus understood is a well-adapted means. This question is intelligible regardless of the origin of man, i.e., regardless of whether or not human beings are the product of an intelligent Creator, because the question is answered by an unusual kind of means-ends reasoning. For, while means-ends reasoning usually proceeds by taking the end as given and understanding the problem as devising means that will serve this end, the reasoning at the foundation of virtue theory proceeds in the opposite direction, taking the means as given (i.e., human nature, as understood in our empirical knowledge of human beings) and viewing the problem as determining what end such a means best serves. Although not the most common form of means-ends reasoning, we are familiar with this kind of reasoning in various contexts, e.g., when an archeologist ponders what use ancient people may have had for a stone implement that the archeologist has discovered at a dig.

Nor is there any presupposition in such reasoning that the object to which such reasoning be applied in fact be the product of intelligent design. For example, George Washington Carver, in an attempt to aid African-American peanut farmers in American South, devised many uses for peanuts, including peanut-butter. In so doing, he asked himself for what ends peanuts may be a good means; no part was played in this inquiry by a supposition that God made the peanut for such ends. Similarly, a Neo-Darwinist biologist may ponder what function a newly-discovered enzyme may serve in the cell, and he will often be able to work out a theory of this function based on the enzyme’s properties, all the while asserting that the cell is the product of random mutation and natural selection. As Neo-Darwinist Richard Dawkins says, “any

engineer can recognize an object that has been designed, even poorly designed, for a purpose, and he can usually work out what that purpose is just by looking at the structure of the object.”<sup>21</sup>

The premise of virtue theory is that human nature—the concept of human beings derived from the natural sciences—can be treated in just this way, i.e., that we can intelligibly ask and answer the question for what end is human nature a well-adapted means. Virtue theorists answering this question have come to different answers, of course, as demonstrated most clearly in their differing catalogues of virtues. To the extent relevant, I here assume without argument that the final end of human nature is essentially what St. Thomas said that it was. In particular, we can consider the final end using only natural human reason in moral philosophy, and thus consider it to the extent that it can be achieved in this life, without the aid of divine grace; in this case, the final end is something like rational activity (especially the contemplation of divine things to the extent possible by unaided human reason) in a community of friends. We can also consider the final end in light of the Gospel in revealed moral theology, and thus consider it to the extent that it can be achieved in the life to come with the aid of divine grace; in this case the final end is the beatific vision of God in the communion of saints.<sup>22</sup> As will appear below, however, the precise nature of the final end for human beings does not generally affect my argument or the conclusions I reach. In particular, it does not matter whether we view CSD as being part of natural moral philosophy, appealing to the natural final end for man, or as being part of supernatural moral theology, appealing to the supernatural final end for man.

## B. Good Companies

The problem of good companies is, at least initially, considerably easier than that of good human beings. For a company, unlike a human being, is not a natural thing, and so a company has no natural end arising independent of human purposes. A company, in fact, is a kind of artifact—an abstract artifact, but an artifact all the same. “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law,” Chief Justice Marshall famously said. “Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created.”<sup>23</sup> Like any other artifact, a company can have no end apart from the purposes of actual human beings. The end of companies, like the ends of artifacts and social roles, is socially determined.

A good company is thus one that fulfills the end that people characteristically have in mind in forming companies. As Leo XIII said in *Rerum Novarum*, “[T]he purpose and perfection of an association is to aim at and to attain that for which it is formed, and its efforts should be put in motion and inspired by the end and object which originally gave it being.”<sup>24</sup> In the case of companies, therefore, we must thus consider the purposes typically had in mind by those responsible for forming such companies. Naturally, the identity and legal status of such persons will vary with the nature of the business organization in question: we will have to look at the intentions of partners for a partnership, of incorporators and shareholders for a corporation,

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<sup>21</sup> Richard Dawkins, *The Blind Watchmaker* (1986) at 21.

<sup>22</sup> *Summa Theologiae* Ia-IIae.1-6.

<sup>23</sup> *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819).

<sup>24</sup> *Rerum Novarum* at no. 27.

of founding members of limited liability companies, and so on. A company will be good *qua* company, therefore, if it fulfills the purposes such people typically have in mind.

Now although people may form companies for any number of idiosyncratic reasons, the issue is what purposes people *typically* have in mind, not the purpose any particular person may have had in mind. As a matter of empirical fact, the vast majority of companies are founded, regardless of the legal form adopted by the founders, in order to increase the wealth of the founders. Taking the corporate form as representative, we may say that companies are founded to maximize shareholder value. Certainly, with publicly traded corporations, the only purpose that can reasonably be attributed to the ever-changing mass of individuals who invest in such companies is the maximization of shareholder value. Since a company is good to the extent that it fulfills the purpose that founders of companies typically have in founding companies, a good company is one that maximizes shareholder value. When CSD “recognizes the proper role of profit as the first indicator that a business is functioning well,”<sup>25</sup> it ought be understood in this sense, because for a thing to function well and for it to be a good one of its kind, are, in the semantic analysis of the attributive use of “good” given above, synonymous.

Nor can it be said that the proper functioning of, or goodness of, a company as understood in CSD may be limited to *making a profit* as opposed to *maximizing shareholder value*, i.e., making the largest profit possible. For one thing, the empirical fact is that those forming or investing in companies surely want not just a profit but the largest profit available. Since the purpose of the company is determined by what people characteristically want in forming companies, this consideration is dispositive.

But, if more is needed, a distinction between making a profit and making the largest profit available would confuse accounting profits with economic profits. What those forming a company want is not merely the former, for a business can show an accounting profit (i.e., have positive net income), but in fact entail an economic loss for equityholders unless the return on equity is the competitive return, given the riskiness of the business and other market conditions. For example, if market conditions allow investors to make a twelve percentage return on other investments of equal risk, then a company that returns ten percent, although it will show an accounting profit, in fact occasions an economic loss for its equityholders. Hence, to be functioning well, a business must return not only a profit, but the economically competitive return for an investment of comparable risk.<sup>26</sup>

#### IV. Moral Concerns of CSD and Other Constituencies

Of course, it is not immediately clear that a company good in the attributive sense explained above is morally good. That is, it is not immediately clear that, by maximizing shareholder value, the company’s actions are properly directed to the final end of human nature. For, although a company may fulfill the purpose typical of those who form and invest in companies, since human purposes are good or bad depending on their relation to the final end for

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<sup>25</sup> *Compendium* §340.

<sup>26</sup> As an empirical matter, it seems very likely that people forming or investing in companies are seeking not just the competitive return but a super-competitive return, i.e., economic rents. Just how this relates to the end we should assign to companies is complex, but one thing is clear: this consideration strongly reinforces the conclusion that those forming or investing in companies want not just an accounting profit but the largest profit available.

human nature, a company's fulfilling its purpose does not guarantee the moral goodness of its doing so. As noted above, the attributive use of "good," except as predicated of human beings *qua* human beings, is non-moral. If maximizing shareholder value is an end incompatible with the final end for human beings in the way that, say, the genocidal extermination of racial minorities is, then a company could be a good company, even though its actions were uniformly morally bad. It remains to be seen, therefore, how the end associated with companies relates to the final end of human nature.

In fact, however, maximizing shareholder value is an end compatible with the final end of human nature. For, since human beings are not only rational beings but also animals, their well-being requires the continuing physical well-being of their animal nature, and this requires an abundance of goods and services, i.e., wealth. Hence, actions seeking to produce and acquire wealth are capable of being ordered to the final end. "On this very account—that man alone among the animal creation is endowed with reason—it must be within his right to possess things not merely for temporary and momentary use, as other living things do, but to have and to hold them in stable and permanent possession."<sup>27</sup> Since wealth can be produced and acquired much more efficiently when human beings band together, the formation of organizations to deliver to their founders increased wealth is likewise an action capable of being ordered to the final end. In fact, maximizing value is even a constitutive part (albeit a small such part) of the final end of human nature. This is what CSD means in teaching, "Businesses should be characterized by their capacity to serve the common good of society through the production of useful goods and services."<sup>28</sup>

But although human beings' banding together to produce and acquire wealth is an end compatible with the final end of human nature, it does not follow that any action whatsoever that is ordered to the end of maximizing value is moral; that would be to treat the end of the company as the final end of human nature. Rather, an action may serve one end but be destructive of a more comprehensive end of which the subordinate end served is constitutive. Hence, not every action that maximizes shareholder value is licit. In particular, a human organization formed for a morally licit purpose—whether playing chess, advancing human knowledge, or, as in this case, increasing the wealth of its members—will act licitly in fulfilling that purpose only if its actions are otherwise moral, i.e., otherwise appropriately ordered to the final end of human nature. Therefore, in pursuing the end of the organization, those in control of a company may do so only in ways compatible with the final end of human nature.

Now, there are many ways of explaining, in a virtue-theoretic moral system, how human actions ought be ordered to the final end of human nature. Here, I am assuming, without argument, that St. Thomas's account of this matter is essentially correct.<sup>29</sup> In that account, human actions are objectively moral if two conditions are met.<sup>30</sup> First, the action must be the kind of

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<sup>27</sup> *Rerum Novarum* at no. 6.

<sup>28</sup> *Compendium* at §338.

<sup>29</sup> See *Summa Theologiae* Ia-IIae.18.

<sup>30</sup> The two conditions in the text make the action objectively moral. There is a third condition that must be fulfilled for the action to be *subjectively* moral as well, viz., the agent must choose the action as ordered to the final end and not for some other reason. Important as this condition is for judging the agent's particular merit or demerit, it is not relevant to identifying which actions, in general, human beings ought to perform or not perform, and so is not relevant to our inquiry here.

action that is capable of being ordered to the final end. Some actions are not capable of being ordered to some ends, as, for example, poisoning the patients cannot be ordered to the end of a hospital, which involves curing the sick and not killing them. This first condition requires, therefore, that the actions in question be capable of being ordered to the final end, and, as we have already seen, the actions of forming a company for the purpose of maximizing shareholder value are capable of being ordered to the final end of human nature. Nevertheless, this condition excludes further actions that, although perhaps ordered to the end of maximizing shareholder value, are nevertheless incapable of being ordered to the final end, such as lying, fraud, and theft. In some circumstances, these actions would indeed maximize shareholder value, but since these actions cannot be ordered to the final end of human nature, corporate managers may not engage in them. Notice, incidentally, that this condition is negative in the sense that it prohibits to companies and their managers certain actions (i.e., ones similarly forbidden to everyone else), but it does not positively require any particular actions.

Second, in order to be moral, the action in question must, in the circumstances in which it is chosen, *in fact* be ordered to the final end. That is, actions that are capable of serving an end will in fact serve that end in some circumstances but not in others. For example, searching out the enemy to give battle when one enjoys a superiority of force is an action capable of being ordered to the end of military victory and very often is in fact so ordered, but not, as at Leyte Gulf, when Admiral Halsey took large elements of the American fleet in search of the Japanese fleet and left behind, dangerously exposed to attack, allied forces landing on Leyte. Similarly, giving alms is an action that can be ordered to the final end of human nature, but one ought not be giving arms while a man lies in the street bleeding to death; one should render first-aid first and give alms later. The moral correctness of an action, therefore, requires not only that the action be capable of being ordered to the final end but also that it is in fact so ordered in the totality of the circumstances.

As applied to the problem of what actions corporate managers may take in maximizing shareholder value, this second condition presents some complex problems. In general, just as the first condition, which prohibits to companies, as to all others, actions incapable of being ordered to the final end, so too this second condition prohibits to companies, as to all others, actions that, in the circumstances, are not in fact ordered to the final end. Descending from the general to the particular, however, we encounter a special problem, namely, that one of the circumstances that must be taken into account in determining whether a particular action by corporate managers is in fact ordered to the final end of human nature is the very fact that the agent in question is a corporate manager—that is, is a person holding a special kind of office in a particular kind of organization created and governed by the corporation laws, its organizational documents, and perhaps other quasi-legal rules, such as the rules of a securities exchange on which its securities are listed.

This circumstance results, I think, in two general conclusions. The first is that corporate managers, being fiduciary agents of the corporation and its shareholders, are generally required to act exclusively for the benefit of the corporation, that is, to maximize shareholder value. The second is that the circumstance that a company is a company and not an individual does not generally result in the company having an obligation to act where an individual similarly situated would not.

### A. Fiduciary Duties of Corporate Agents at Law

Among the circumstances affecting whether a particular action is in fact ordered to the final end are the pre-existing moral obligations of the agent. Since there is usually a moral obligation to observe legal duties, the agent's legal duties are, at one remove, also relevant. Now corporate managers occupy offices that are created by the corporation laws under which a company exists or, sometimes, by agreement among the shareholders or other equityholders in the company. Practically without exception in Anglo-American law, we find that corporation laws require (and founders of business organizations generally thus expect) that their human agents holding such offices will act solely for the benefit of the corporation and to maximize shareholder value.

Nor is this very surprising. Corporate managers are fiduciaries, i.e., agents authorized by their principals (in this case, the founders and shareholders of the company) to hold in trust property belonging to the principals and to use such property for the ends the principals have authorized. Absent authority from their principals, fiduciary agents are not legally permitted to dispose the principals' property except for the principals' benefit. Such is the case for fiduciaries generally—for employees of employers, partners of partnerships, trustees of trusts, and directors and officers of corporations. In their official capacities, they are under a strict legal duty to act exclusively for the benefit of their principals. In the language of the Restatement (Second) of Agency, “an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency.”<sup>31</sup> And this duty is interpreted in the strictest way. Justice Cardozo, then a judge on the New York Court of Appeals, explained the required standard of conduct in language now taught in the introductory course in corporate law in practically every American law school:

Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the disintegrating erosion of particular exceptions.<sup>32</sup>

Hence, if, while acting as a fiduciary and in possession of a large sum of money belonging to my principal, I meet a worthy man in genuine need of funds, I ought not expend such funds to supply his want. The money belongs to my employer, and I have no right to distribute it, whether in almsgiving or in any other way not authorized by my employer. My principal, perhaps, ought give money to the man in need, and so ought perhaps authorize me to do so on his behalf, and, similarly, perhaps I ought to help the man out of my personal funds, but as a fiduciary of my principal, I have a definite obligation not to divert my principal's funds for such a purpose, except perhaps in the most extraordinary circumstances.

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<sup>31</sup> Restatement (Second) of Agency §387.

<sup>32</sup> *Meinhard v. Salmon*, 164 N.E. 545, 546 (New York 1928) (internal quotation marks and citation omitted).

## B. No Special Obligations of Companies *Qua* Companies

If the special circumstance that corporate managers are fiduciaries tends strongly to support the conclusion that they may not act except to maximize shareholder value, the same circumstance, for independent reasons, tends to support the conclusion that companies *qua* companies, which act only through their human fiduciary agents, have no special moral obligations *qua* companies. They have no special obligations to act.

For St. Thomas, any moral requirement of positive action arises because, in the circumstances, the agent has available to him one action that is uniquely well-ordered to the final end in such circumstances, such as helping the bleeding man in the street when there is no more pressing business at hand. If there be an action uniquely well-ordered to the final end in the given circumstances, then there is a positive obligation to act, and it makes sense to say that the agent ought perform the action in those circumstances; but when there is in the circumstances no action uniquely well-ordered to the final end, then the agent retains a large degree of freedom to choose among an indeterminately large number of actions each capable of being ordered to the final end and each, in the circumstances, in fact ordered to that end.

Therefore, if there are moral obligations of companies *qua* companies, these obligations must arise from the circumstance that the company is an organization formed to maximize shareholder value. That is, such an obligation would arise because this circumstance makes some action available to the company uniquely well-ordered to the final end. Other than obligations that the company and the individuals involved in it may have assumed by agreement or by operation of law in creating the company (such agreements and laws being responsible for calling the company into being as a legal entity), it is very hard to see what these special obligations might be, for it is very hard to see how these circumstances, regardless of all others that might obtain, could support the conclusion that some action is uniquely well-ordered to the final end. On the contrary, it seems very likely that circumstances beyond the company's being a company will be of great concern in determining whether there are any actions available to it that are uniquely well-ordered to the final end. It thus seems that companies do not, *qua* companies, have any special, additional moral obligations, excepting always such as arise by agreement or by operation of law in the formation or governance of the company. If all this is right, then, with the same exception, a company has no moral obligations over and above those that a similarly situated individual would have. That is, the company is bound only by moral norms of general applicability.

## V. Maximizing Shareholder Value and Benefiting Other Constituencies

I began by assuming that a good company would balance the interests of shareholders and other corporate constituencies correctly, and I have argued that a good company is one in which corporate managers act for the purpose and with the effect of maximizing shareholder value, subject only to moral norms of general applicability and to any special obligations arising by agreement or by operation of law in the formation or governance of the company. I return now to the problem of explaining how, from the point of view of CSD, corporate managers ought to balance the shareholders' interest in maximizing shareholder value with the interests of other corporate constituencies.

One might say that, when CSD teaches that managers have a “duty to respect concretely the human dignity of those who work within the company”<sup>33</sup> and of those who comprise other corporate constituencies, this teaching refers merely to the obligation to observe moral norms of general applicability. This seems unsatisfactory, however, because, it being obvious that companies are not dispensed from the usual moral norms (the novelty of my position lying in the claim that there are no *additional* moral norms applicable to companies as such), the CSD teaching must mean more than this. Still, given the human tendency to confuse the ends of an organization with the final end, especially when so doing would gratify human greed, a reminder that moral norms of general applicability apply to companies as much as to any other moral agents is still very much to the point.

Nevertheless, the CSD teaching ought mean more than that moral norms of general applicability apply to companies as to all others, and the virtue-theoretic moral analysis I have supplied suggests what more the teaching might mean here. In particular, there is a wide range of actions that a company might take that, in purpose and effect, directly benefit corporate constituencies other than shareholders but that are ultimately ordered to the maximization of shareholder value. For example, generous salaries and benefit programs for employees can attract and retain productive employees, donations to charitable organizations can generate goodwill for the company, and exemplary fair-dealing with customers can build customer loyalty. Corporate managers may and should engage in such actions, if they sincerely believe that these actions will ultimately tend to maximize shareholder value. Thus the CSD teachings is, on one level, a reminder of the empirical fact that the economic good of the company is importantly related to how it treats members of other corporate constituencies. On another level, it is the moral proposition that very often companies ought to act to benefit these constituencies directly, for such benefits ultimately redound to the economic benefit of shareholders.

Such, incidentally, is the law of fiduciary duties under the Delaware General Corporation Law, the corporate law governing most publicly traded American corporations. Directors of a Delaware corporation may act for the benefit of constituencies other than shareholders, but only when such actions are rationally related to maximizing shareholder value. The Delaware Supreme Court has specifically held, “Although such considerations [of corporate constituencies other than shareholders] may be permissible, there are fundamental limitations upon that prerogative. A board [of directors] may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.”<sup>34</sup>

American courts applying this and analogous rules have upheld not only decisions by corporate managers that benefit not only parties with obvious economic relationships to the corporation, such as employees, customers and suppliers, but also decisions to make donations for charitable, educational or scientific purposes.<sup>35</sup> In *A.P. Smith Mfg. Co. v. Barlow*,<sup>36</sup> for example, the New Jersey Supreme Court held that a corporation engaged in manufacturing pipes

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<sup>33</sup> *Compendium* §344.

<sup>34</sup> *Revlon, Inc. v. MacAndrews & Forbes Holdings*, 506 A.2d 173, 182 (1986). See also *Unocal Corporation v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (1985).

<sup>35</sup> The corporation laws of most states grant power to corporations to make such donations, e.g., 8 Del. C. § 122(9) (2006), but the issue, from both a legal and moral point of view, is when this power may rightfully be exercised.

<sup>36</sup> 98 A.2d 581 (NJ 1953), appeal dismissed, 346 U.S. 861 (1953).

and valves for the water and gas industries had authority to make a cash donation to Princeton University. In part, the court based its decision on the view of the corporation's president that "the contribution [was] a sound investment, that the public expects corporations to aid philanthropic and benevolent institutions, that they obtain good will in the community by so doing, and that their charitable donations create a favorable environment for their business operations."<sup>37</sup> Indeed, American courts of virtually all jurisdictions have generally adopted a very deferential standard in accepting explanations from corporate directors and officers as to how actions that directly benefit corporation constituencies other than shareholders are in fact ultimately ordered to the shareholders' benefit.

In this way, from a moral point of view, many corporate actions directly benefiting corporate constituencies other than shareholders become permissible or even obligatory in appropriate circumstances, i.e., when they are rationally ordered to the company's end of maximizing shareholder value. It is true that this conclusion puts some strict limits on what corporate managers may do. They may not, for example, engage in actions that benefit a corporate constituency other than shareholders or persons unrelated to the company (e.g., by distributing corporate assets to the poor), if doing so is not, in any rationally identifiable way, ordered to the benefit of shareholders. But this is as it should be, if there is to be some intelligible limit on such actions and if the role of managers as fiduciaries for shareholders is to be respected. Moreover, the fact that benefiting members of other corporate constituencies, but not usually people wholly unconnected with the company, may often be rationally related to maximizing shareholder value explains why CSD singles out members of such constituencies to the exclusion of others in teaching about the duties of owners and managers.

## VI. Conclusion

Any doctrine that provides that, in making a decision, a decisionmaker should consider various different interests or balance various different ends ought to specify how such interests are related. If it does not, the decisionmaker retains almost complete freedom of action, for by giving more weight, first to one end, then to another, the decisionmaker can justify virtually any decision as being consistent with the doctrine. CSD teaches that corporate managers should act to maximize shareholder value, but it also teaches that such managers should act to benefit members of various other corporate constituencies, such as employees, creditors, customers, vendors, and the persons living in the communities in which the company operates. CSD must, therefore, present an intelligible explanation of how the interests of shareholders and other constituencies interrelate.

I have here argued for such an explanation, beginning from the assumption that in a good company, these interests are pursued in their proper interrelation, and then analyzing, on the basis of the moral theory of St. Thomas, what it means to say a company is good. The result was that a good company is one that acts with the purpose and effect of maximizing shareholder value, subject only to moral norms of general applicability. This entails that corporate managers may act for the benefit of corporate constituencies only when doing so is ultimately ordered to the end of the company, the maximization of shareholder value. This explanation establishes a definite relationship among the various corporate ends CSD mentions and gives a justified

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<sup>37</sup> *Id.* at 583.

primacy in the operations of the company to the creation of value but nevertheless allows managers wide scope to treat members of other corporate constituencies generously and humanely.