EDUCATING CHRISTIAN BUSINESS MANAGERS ABOUT CORPORATE PURPOSE: A ROLE FOR LAW (AND LAWYERS)*

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I. Introduction

A company's ultimate goal(s) can serve to expand – or narrow – a business manager's moral horizon.[1] Managers believing they are obligated to singularly pursue goal X will think they have discretion over the means by which to attain that end but not over the end itself. Correspondingly, such managers should not be held accountable for refraining from the pursuit of "non-X" goals, however laudable those goals may be. By way of contrast, managers thinking they possess at least some degree of freedom to pursue goal X *or* goal Y (or Z, etc., or some combination of goals) will understand that they have latitude over both the means and end(s) of company conduct. Such managers may rightly be held to account with respect to a far broader range of issues.

The actions taken by business managers necessarily depend, then, on what they regard as available and permissible corporate objectives. For example, managers not pursuing particular goals thought to be socially or morally commendable may refrain from doing so not because they disagree with those goals or consider them unworthy, but because they believe their pursuit is foreclosed. Even faulty beliefs about what is or is not allowable in the business world, therefore, can powerfully influence how managers shape corporate behavior.

These observations apply not only to decisions about operational matters and business strategy, they pertain as well to the very basic and critical question of corporate purpose. Managers believing that they must advance the singular goal of shareholder wealth maximization probably regard themselves as having fewer, more bounded choices than managers who believe they can pursue other (or a variety of) goals. The validity of managerial beliefs on the permissible aim(s) of corporate endeavor, therefore, is critical, given the vast influence wielded by senior managers in a private enterprise economy.

Beliefs on this baseline issue likely stem from several sources. These include managerial understandings of legal mandates, market constraints, professional education, business lore, social customs and norms, and personal beliefs. Of special interest for this paper, given that the

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1 Throughout this paper the term "manager" will be used to refer to both directors and officers. Where the need arises to distinguish "directors" and "officers," those more precise terms will be used.

author is both a lawyer and an educator, are the influences of legal mandates and formal training. These factors are related.

It will be argued that there may be widespread misunderstanding in the business world – and in the business education field (as in legal education) – with respect to what the law does (and does not) require on the question of corporate purpose. In short, outside unusual circumstances, no law requires that businesses pursue only the goal of corporate profit or the goal of investor wealth maximization. Rather, although various markets certainly constrain managerial discretion to varying degrees in the relevant industry, the widespread pursuit of shareholder wealth maximization as a corporate objective largely stems from social norms and business lore that, although not legally "binding," nonetheless powerfully influence managerial belief and conduct. There are normative and policy arguments supporting – and disfavoring – this convention, but there is no legal obligation to follow it. Nor is there a historically or culturally immutable or "fixed" position on this basic matter. Beliefs as to appropriate corporate goals may change over time and vary from country to country and from company to company. There is, consequently, no *a priori* reason for rejecting heterogeneity out of hand and insisting on a corporate monism in which all companies pursue the same ultimate goal.

Appreciating this overlooked feature of the legal landscape can dramatically alter how business schools, perhaps especially Christian business schools, educate future business leaders. Those faculty members at business programs with a religious mission who believe the goal of investor wealth maximization is legally mandated can, of course, engage students in fruitful moral and religious reflection about the choice of appropriate means to achieve that end, but, except at a religious and philosophical level, the end itself is, practically, presupposed. On the other hand, those faculty members who fully appreciate the rather loose constraints of positive law on the overall purpose of corporate activity, can, within limits, meaningfully engage students at both a principled and pragmatic level on the more basic issue of assessing the appropriate end(s) of corporate activity itself. A stronger claim yet is that they must so engage their students. This, in turn, will enable religious schools to instill in future managers a richer understanding of their full freedom, and corresponding responsibility, for the direction they will chart on behalf of the companies they will someday lead.

Appreciating the scope of managerial freedom to act is thus the necessary first step, but by itself it is not a sufficient step, for attaining managerial conduct congruent with religious tenets. To be given proper expression in the business-legal world, religious convictions require a vocabulary that can mediate the discourse of spiritual-religious insight, on the one hand, and compliance with business and legal duties in the secular world, on the other hand. That vocabulary, it will be argued, is the language of fiduciary duties, especially the managerial duty of "faithfulness."

The argument of the paper proceeds as follows. Only a correct view of the law governing corporate purpose opens up a genuine opportunity for bringing religious convictions to bear on business education and corporate conduct in a way yielding tangible benefits. Part II of this paper therefore begins by demonstrating that, contrary to widely held belief, no U. S. law requires a business corporation to maximize shareholder wealth except in one unusual setting. Instead, the law is ambivalent as to, and therefore remarkably permissive on, the question of corporate purpose, according senior managers significant discretion on a matter of signal importance. This basic point remains oddly obscured in both business and legal discourse, and in the formative professional training of managers and lawyers. Part III then identifies other, non-legal influences on thinking about corporate purpose. It argues that while various factors certainly constrain management's range of options, in certain settings managers likely still retain sufficient latitude to pursue morally and socially responsible conduct even when doing so is at odds with maximizing investor wealth. Moreover, societal and even managerial expectations may be shifting on this issue, thereby both weakening social norms and business lore as traditional supports for a purely pro-investor vision of corporateness, and opening the possibility for fresh thinking about more pluralistic approaches to corporate purpose.

Part IV argues that one – but not the only – avenue for expressing religious beliefs on the issue of corporate purpose, and corporate conduct more generally, is through a manager's fiduciary duties. Managers and business students can draw on the duty of faithfulness to bridge religious convictions and business conduct. In Christian business schools, understandings of what it means to be a faithful manager in the business-legal realm can be conveyed by drawing on religious teachings about faithfulness to others. The duty/command of faithfulness – a concept with currency in both the spiritual and business realms – can equip managers themselves, and those who educate them, for the truly important (and daunting) challenge of exploring how religious belief can usefully shape business conduct in real world contexts. This also serves as one means to draw religious voice more naturally into the hyper-secular discourse of contemporary business.

The overall aim of this paper is to serve as a useful cross-disciplinary resource for Christian business school professors and other business school professors interested in the ongoing debate about corporate purpose. It addresses how an understanding of law can facilitate a school's mission to educate for the vocation of managing a business. Toward this end, it seeks both to debunk common understandings of what the law *requires* and to show what the law makes *possible* through the example of faithfulness. In this way, the discourses of law and business can work compatibly in the education of managers.

II. Continuing Confusion on Law and Corporate Purpose

The idea that corporations in the United States are legally obligated to maximize shareholder wealth often is assumed rather than established.[2] Yet, no state has enacted any legislation imposing on business managers a duty to maximize investor wealth or business profits.[3] In fact, approximately thirty states have adopted statutes that expressly permit corporate directors to consider the interests of various non-shareholder constituencies, such as employees, customers, suppliers, and local communities, when making business decisions.[4] One state – Connecticut –

2 Henry Hu, *New Financial Products, The Modern Process of Financial Innovation, and the Puzzle of Shareholder Welfare,* 69 TEXAS L. REV. 1273, 1282-83 (1991) ("Most academics now believe that shareholder wealth maximization is the basic pecuniary objective of the modern publicly held corporation.").

3 Einer Elhauge, *Sacrificing Profits in the Public Interest,* 80 N.Y. U. L. REV. 733, 738 (2005).

4 *Id.* at 763. Guhan Subramanian, *The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching,* 150 U. PA. L. REV. 1795, 1828 (2004) (collecting citations to constituency statutes). Five states make their statutes applicable to officers as well as directors.

goes farther and requires directors to consider various stakeholder interests.[5] These so-called constituency statutes were first enacted in the mid-1980s in response to the upsurge in corporate takeover activity, such high levels of takeovers being thought – rightly or wrongly – to be antithetical to the interests of various non-shareholder interests.[6] All states but one, however, have retained these statutes even though hostile takeover levels have significantly declined over the past twenty years.[7] Even strong proponents of investor wealth maximization as the proper aim of corporate endeavor begrudgingly concede that such constituency statutes "qualify" the goal of wealth maximization.[8]

When one moves from legislation to judge-made law, the picture does not dramatically change. In Delaware, the leading corporate law state, the Delaware Supreme Court has made clear that "a board of directors … is not under any *per se* duty to maximize shareholder value in the short term."[9] That same court, moreover, has differentiated the interests of the business enterprise itself (the "corporation") from the narrower interests of its shareholders,[10] and, with respect to the former, has expressly permitted directors to consider the impact of their decisions on non-shareholder interests.[11]

Jonathan D. Springer, *Corporate Constituency Statutes: Hollow Hopes and False Fears,* 1999 ANN. SURVEY AM. L. 85, 97, n. 56 (1999).

5 CONN. GEN. STAT. § 33-756 (d) (Lexis 2007).

6 Lyman Johnson and David Millon, *Missing The Point About State Takeover Statutes,* 87 MICH. L. REV. 846, 848 (1989) (chief purpose of statutes is not investor protection but safeguarding noninvestor interests).

7 Nebraska repealed its constituency statute in 1995. Springer, *supra* note 4 at 95, n. 47.

8 Stephen M. Bainbridge, *Unocal at 20: Director Primacy in Corporate Takeovers,* 31 DEL. J. CORP. L. 769, 778 & n. 43 (2006). Gordon Smith similarly acknowledges that "corporate law endows directors with tremendous discretion to serve the interests of all corporate stakeholders." D. Gordon Smith, *The Dystopian Potential of Corporate Law*, 57 EMORY L. J. 985, 1000 (2008).

9 *Paramount Communications, Inc. v. Time, Inc.,* 571 A. 2d 1140, 1150 (Del. 1989).

10 *Unocal Corp. v. Mesa Petroleum Co.,* 493 A. 2d 946, 955 (Del. 1985). For a very thoughtful Catholic social tradition critique of both shareholder and stakeholder theories of corporateness, *see* Helen J. Alford and Michael J. Naughton, MANAGING AS IF FAITH MATTERED: CHRISTIAN SOCIAL PRINCIPLES IN THE MODERN ORGANIZATION 46-60 (2001). Both theoretical conceptions, they argue, ignore the overall "common good." That a manager's duties are customarily said to run to the "corporation," rather than directly and only to the shareholder, may, however, be the law's effort to direct managerial attention to the common good of all persons associated with the business enterprise rather than just the good of capital providers. Emphasis on the common good nicely builds on Pope John Paul II's conception of Christian enterprise: "I invite you to reflect on the Christian concept of enterprise…. Work is actually for people, not people for work. Likewise, enterprise is for people and not people for enterprise…. An enterprise is not just…a production structure. It should also transform itself into a life-giving community,… Is not the main enemy of a Christian sense of enterprise perhaps a certain functionalism that makes efficiency the one and only and the immediate requirement for production and work?" Pope John Paul II, Talk in Barcelona Spain, November 1982, reprinted in Pope John Paul II's GOSPEL OF WORK 27 (William Droell, ed. 2008).

11 493 A. 2d at 955.

The strongest judicial support for a shareholder-centered conception of corporate purpose derives from two sources. The first involves the special situation where a corporation's board of directors has acknowledged that a company will be broken up or sold in a transaction involving a shift of control. In this setting, which does not extend to a merger of equals not involving a change of control, directors in Delaware must act reasonably to maximize the sales price for the holders of the common stock and may not advance other non-investor interests that impede that goal.[12] Outside this narrow context, however, directors of Delaware corporations may factor in noninvestors in assessing the "corporation's" best interests.

The second supposed source for a shareholder-oriented vision of corporate purpose is the iconic case of *Dodge v. Ford Motor Co.*[13] This case, decided in 1919 by a court – the Michigan Supreme Court – not especially known for expertise in corporate law matters, is widely read in law school corporate law classes.[14] Of course, what is taught in law school likely shapes the mindset and outlook of future lawyers, lawyers who will counsel business managers as to their own responsibilities. Lawyers who wrongly understand legal doctrine will, unless otherwise corrected, provide faulty counsel. Consequently, a proper understanding of what the law has to say (or not say) about corporate purpose should be taught in both law schools and business schools, in the former so that sound advice is offered to others and in the latter as an independent basis for management's understanding of their own obligations.

In ruling that Henry Ford's decision to withhold additional dividends in order to sell automobiles at a lower price and to employ more workers was a breach of his fiduciary duty to minority shareholders, the *Dodge* court famously stated:

> A business corporation is organized and carried on primarily for the profit of its stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.[15]

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12 *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.,* 506 A. 2d 173, 182 (Del. 1986); *Paramount Communications, Inc. v. QVC Network, Inc.,* 637 A. 2d 34, 43 (Del. 1994). *Revlon* also stated that, even outside the sale of control setting, under *Unocal* the board's regard for various constituencies must be accompanied by "rationally related benefits accruing to stockholders." *Revlon,* 506 A. 2d at 182. That is not a very demanding requirement, as elaborated below. Moreover, certain states, for example, Virginia, have rejected the *Revlon* decision even though lacking a constituency statute. *Willard ex rel. Moneta Building Supply, Inc. v. Moneta Building Supply, Inc.,* 515 S. E. 2d 277 (Va. 1999) (no duty to maximize share price in sale context).

13 170 N. W. 668 (Mich. 1919).

14 Lynn A. Stout, *Why We Should Stop Teaching* Dodge v. Ford, in THE ICONIC CASES IN CORPORATE LAW (ed. Jonathan R. Macey, 2008) (arguing that *Dodge v. Ford* is widely studied in law schools and that it is a doctrinal oddity).

15 170 N. W. at 684.

Professors Lynn Stout and Einer Elhauge, and others, have noted significant problems in relying on *Dodge* as supporting shareholder wealth maximization as the mandatory sole end of corporate endeavor.[16] First, the court itself does not say the "sole" purpose of corporate endeavor is investor wealth, only that such is the "primary" purpose.[17] Second, the court cited no authority for its own assertion on corporate purpose. Given that up until the early 19th century corporations in the U. S. often were chartered to serve, in concept, some quasi-public purpose, maximizing investor wealth is not a historically or inherently preordained corporate goal. Even today, it is not regarded as the preeminent goal in countries such as Japan or Germany. Third, the court's language may be regarded as nonbinding dicta, rather than a holding, given Henry Ford's arguable effort to oppress the minority shareholders (the Dodge brothers) by withholding dividends at a time when they were planning to start a rival automobile company.[18] Fourth, of course the *Dodge* decision has no binding effect outside Michigan. Differences in law from state to state are legion in our system of federalism.

Fifth, the *Dodge* decision must be understood in historical context. In 1919, there was a widespread view that shareholders "owned" the corporation.[19] Under today's theories of corporateness, shareholders are more accurately regarded as neither "owning" the company's assets nor directly controlling them. Rather, they own equity interests *in* the company (which they can transfer), along with important but limited voting, information and distribution rights accorded them under modern corporate statutes.[20] Finally, as a common law decision, *Dodge,* like other judge-made doctrine, must be congruent with underlying, widely-shared social norms from which such decisions derive their legitimacy.[21] As with other such bodies of law, "corporation law exists, not as an isolated body of rules and principles, but rather in a historical setting and as part of a larger body of law premised on shared values."[22] Just as there are other legal principles from 1919 we would reject today – *de jure* racial segregation and the absence of zoning laws spring to mind as examples of how property could be used in 1919 – we cannot be

[16] Stout, *supra* note 14; Elhauge, *supra* note 3 at 773..

[17] Elhauge, *supra* note 3 at 773.

[18] Stout, *supra* note 14.

[19] *See* Ronald J. Colombo, *Ownership, Limited: Reconciling Traditional and Progressive Corporate Law via an Aristotelian Understanding of Ownership* at 8-11, (2008 Working Paper), http://ssrn.com/abstract = 1103219.

[20] For a specification of shareholder rights under modern law, *see* Julian Velasco, *The Fundamental Rights of the Shareholder,* 40 U. C. DAVIS L. REV. 407, 413-24 (2007).

[21] Melvin Eisenberg, THE NATURE OF THE COMMON LAW 1, 14-16 (1988); Lyman Johnson, *The Delaware Judiciary and The Meaning of Corporate Life and Corporate Law,* 68 TEXAS L. REV. 865, 890 (1990).

[22] *City Capital Associates Limited Partnership v. Interco, Inc.,* 551 A. 2d 787, 800 (Del. Ch. 1988*), appeal dismissed as moot*, 556 A. 2d 1070 (Del. 1988). *Interco* on its facts was a pro-shareholder decision that represented the high water mark for shareholder rights in hostile takeovers, as management's ability to thwart high premium bids was later judicially underscored. *See* Johnson, *supra* note 21. In this author's view, the holding in *Interco* did not align with the Chancellor's recognition that corporate law must be congruent with underlying shared social values.

unwilling to reexamine the continuing soundness of common law pronouncements from almost ninety years ago.

Perhaps what is most striking about the *Dodge* decision is that it stands virtually alone, like a one-of-a kind species, which is no doubt one reason it is so widely (if uncritically) cited in professional education – there simply is little other positive law authority to which one can point in support of a robust investor-centered conception of corporate purpose. To be sure, a Delaware court itself has spoken of an obligation to "maximize the long-run interests of the corporation's stockholders."[23] But, critically, exhorting "long run" wealth maximization behavior is, for two reasons, quite different than demanding a flinty allegiance to more immediate investor welfare.

First, in reviewing director conduct, courts do not evaluate the substantive merits of what was decided.[24] This reflects both that the duty of care deals only with process, not substance,[25] and that the business judgment rule precludes substantive evaluation of director decisions except for irrationality.[26] Moreover, although little commented on, courts do not regularly review *ex post* the myriad actions *not* taken by managers that, arguably, may have increased investor wealth more than the path actually chosen. There is no periodic legal "audit" process in which managers must retrospectively account for, on wealth maximization grounds, what they chose not to do. The lack of a legal mechanism for recourse on this point further demonstrates the inability of law to pervasively enforce a maximization standard. Second, courts are exceedingly generous in finding some plausible connection between director conduct aimed at helping nonshareholders and the supposed advancement of shareholder wealth over the vague and unknowable "long run."[27] This generalized judicial reluctance to overturn managerial conduct appearing not to be in investor interests – except, allegedly, in the "long run" − mirrors a longstanding judicial pattern of upholding charitable donations as supposedly consistent with "long run" investor interests.[28]

A recent analysis of 167 studies conducted over thirty-five years on the linkage between corporate social responsibility and corporate financial performance found no correlation between "doing well" and "doing good."[29] In other words, deliberately seeking to be socially responsible

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[23] *Katz v. Oak Indus.,* 508 A. 2d 873, 879 (Del. Ch. 1986).

[24] *Brehm v. Eisner*, 746 A. 2d 244, 264 (Del. 2000) ("Courts do not measure, weigh or quantify directors' judgments. We do not even decide if they are reasonable in this context.").

[25] *Id.* ("Due care in the decisionmaking context is *process* due care only.").

[26] *Id.* at 264 nn. 65 & 66. *See generally,* Lyman Johnson, *The Modest Business Judgment Rule,* 55 BUS. LAW. 625 (2000) (business judgment rule forecloses substantive review).

[27] *See, e.g., Shlensky v. Wrigley,* 237 N. E. 2d 776 (Ill. App. 1968) (decision of directors not to install lights at Wrigley field out of consideration for the neighborhood might be in the long term interests of the corporation). Margaret M. Blair and Lynn A. Stout, *Director Accountability and the Mediating Role of the Corporate Board*, 79 WASH. U. L. Q. 403, 429 (2003).

[28] *A. P. Smith Manufacturing Co. v. Barlow,* 98 A. 2d 581, 584-86 (N. J. 1953).

[29] Joshua D. Margolis and Hillary Anger Elfenbein, *Do Well by Doing Good? Don't Count on It,* HARVARD BUSINESS REVIEW 19 (January 2008).

did not enhance profitability. On the other hand, dedicating company resources to social considerations does not appear to hurt investors. This leads the authors to conclude that companies "can do good *and* do well even if they don't do well *by* doing good."[30]

Current legal doctrine need not be altered in light of these findings. They suggest that factoring noninvestor interests into business decisions is consistent with investor interests – or at least it is not inconsistent with investor interests – even if doing so does not affirmatively advance investor wealth. In the aggregate – and it will be hard to show otherwise even in individual cases – current judicial reluctance to overturn decisions motivated by social considerations is likely to be buttressed by the findings of this study.

The views of the prestigious American Law Institute reflect the ambivalence of corporate law toward the goal of maximizing shareholder wealth.[31] Addressing the objective of the corporation, the first comment to § 2.01 of the Principles of Corporate Governance states: "Present law on the matters within the scope of § 2.01 cannot be stated with precision, because the case law is evolving and not entirely harmonious."[32] Section 2.01 itself provides as follows:

> **§ 2.01 The Objective and Conduct of the Corporation**
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> (a) Subject to the provisions of Subsection (b) and § 6.02 (Action of Directors That Has the Foreseeable Effect of Blocking Unsolicited Tender Offers), a corporation [§ 1.12] should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain.
>
> (b) Even if corporate profit and shareholder gain are not thereby enhanced, the corporation, in the conduct of its business:
>
> (1) Is obliged, to the same extent as a natural person, to act within the boundaries set by law;
>
> (2) May take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business; and
>
> (3) May devote a reasonable amount of resources to public welfare, humanitarian, educational, and philanthropic purposes.

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30 *Id.* at 20 (emphasis in original).

31 AMERICAN LAW INSTITUTE PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01, cmt a (1994). For a good, recent treatment on the continuing ambivalence of corporate purpose, *see* Christopher M. Bruner, *The Enduring Ambivalence of Corporate Law*, 59 ALABAMA L. REV. _____(2008).

32 PRINCIPLES, *supra* note 31, § 2.01, cmt. a.

Subsection (a) states that a corporation "should" – not that it "must" – conduct business "with a view to enhancing" – not "maximizing" – corporate profit and shareholder gain. This general proposition is then qualified in three important ways in subsection (b), which pointedly states that the conduct therein described may be engaged in even if company profit and shareholder gain are not thereby enhanced. Most striking is (b)(2), which permits a company to take into account ethical considerations "reasonably regarded as appropriate to the responsible conduct of business." An explanatory comment observes that this encompasses "emerging" ethical principles that have "significant support although less-than-universal acceptance."[33] These phrases suggest room for business decisions growing out of principles rooted in religious convictions having significant support. [34]

The key conceptual underpinning to § 2.01(b) is the recognition that, although businesses generally do seek to enhance profit and shareholder well-being, the "corporation is a social as well as an economic institution, and accordingly … its pursuit of the economic objective must be constrained by social imperatives and may be qualified by special needs."[35] From this social conception of corporateness, it follows that "[c]orporate officials are not less morally obliged than any other citizens to take ethical considerations into account, and it would be unwise social policy to preclude them from doing so."[36] Specifically, the commentary to § 2.01 acknowledges that a modern corporation "by its very nature creates interdependencies with a variety of groups with whom the corporation has a legitimate concern, such as employees, customers, suppliers, and members of the communities in which the corporation operates … Short-term profits may properly be subordinated to recognition that responsible maintenance of these interdependencies is likely to contribute to long-term corporate profit and shareholder gain."[37] The comment's recognition of stakeholder interests as legitimately influencing managerial decisions comports with the thrust of constituency statutes adopted by thirty states.[38] At the same time, the comment seeks to dissipate any conflict between investor and non-investor interests by invoking the usual

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33 *Id.* at cmt h.

34 Pope John Paul II stated that: "The purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a *community of persons* who in various ways are endeavoring to satisfy their basic needs and who form a particular group at the service of the whole society." Pope John Paul II, Encyclical *Centesimus Annus,* May 1991, reprinted in GOSPEL OF WORK, *supra* note 10 at 28. This view, at least among Catholics and probably far more broadly, likely has "significant support," in the words of the ALI comment. *See supra* note 33.

35 *Id.* at cmt e. Vice-Chancellor Leo Strine also has noted that a corporation is a social institution. *See* Leo E. Strine, Jr., *Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance*, 33 J. CORP. L. 1, 2 (2007) (a business corporation is a "social institution that, albeit having the ultimate goal of producing profits for stockholders, also durably serves and exemplifies other societal values.").

36 *Id.* at cmt h.

37 *Id.* at cmt e.

38 *See supra* note 4 and accompanying text.

solvent of the "long run,"[39] even though subsection (b) of § 2.01 – apparently like the constituency statutes[40] – permits noninvestor interests to take precedence.

The state of contemporary U. S. law on corporate purpose can now be summarized. Despite an enduring mythology about the point, managers are under no overarching obligation to maximize company profit or shareholder wealth. Likewise, there is no obligation to maximize any other interest, nor (except in Connecticut) is there any obligation to consider the interests of non-shareholders, though such consideration appears to be permissible in every state excepting only the special situation involving a company break-up or sale of control under Delaware law. Beliefs that corporations should adhere to a monoculture and only maximize shareholder wealth must originate from sources other than a correct understanding of positive law.

III. Sources of Influence on Beliefs About Corporate Purpose

Several influences might shape contemporary managerial beliefs about corporate purpose. Certain of these will be briefly addressed in this Part III.

A. Shareholder Voting Rights

Corporate law itself accords shareholders – and no other group – the right to elect and remove directors, who in turn elect and remove officers. If directors depart too far from the wishes of investors, as by being too solicitous of noninvestor interests or "too socially responsible," shareholders could replace them with persons who focus more sharply on investor well being. Certainly, many private equity funds with three to five year investment horizons might fall into this camp. Shareholder voting power therefore is a legal reality that somewhat uneasily co-exists with the law's ambivalence about corporate purpose. Nonetheless, the impact of shareholder suffrage on corporate purpose should not be overestimated.

First, as Professor Elhauge has noted, shareholders themselves – or at least, many of them – may desire a certain level of socially responsible conduct from the companies in which they invest, even at the cost of some profitability.[41] This seems plausible given that shareholders, like other citizens, likely subscribe to widely held social norms about proper corporate conduct. Such norms, as elaborated in subpart "D" below, are much like positive law in not mandating an unfettered emphasis on investor wealth. Moreover, certain institutional investors may adhere to developing principles of responsible investment,[42] which, even if tepid now, may strengthen as consensus forms around various social considerations. In addition, investors in different societies may hold diverse views. For example, institutional investors in the UK "have acted,

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39 *See supra* notes 23-28 and accompanying text.

40 Although several constituency statutes state expressly that investor interests are not determinative in director decisionmaking, *see* Velasco *supra* note 20 at 464, many constituency statutes do not state how various noninvestor and investor interests are to be weighed. Presumably, that accords directors at least some reasonable degree of discretion in how they factor in noninvestor interests and probably accords them a great deal of discretion on this subject. § 2.01(b) is clearer on this point.

41 Elhauge, *supra* note 3 at 783, 793-96.

42 Daniel Franklin, *Just Good Business,* THE ECONOMIST, January 19, 2008, at 10 (Special Report).

and reacted, to bring stakeholder concerns and issues of social responsibility into the financial mainstream in a way that has not happened in the United States."[43] The proliferation of socially responsible funds that screen investments on various bases also suggests that capital providers themselves value non-economic considerations as part of their overall investment strategy.

Second, the likelihood that some investors have an appetite for companies pursuing purely economic goals, while other investors may prefer companies that in various ways factor in other considerations, suggests that different companies can take different approaches to corporate purpose. Perhaps the current typology of "for profit" and "not for profit" organizations is too dichotomous if the former means only a focus on maximizing returns to capital. Possibly, to a degree at least, it is more accurate to say companies fall along more of a continuum in their pursuit of goals than that they fall in only one of two rigid categories. To be sure, business corporations will and must make profits, but companies may vary in the degree to which they pursue that goal or balance it with other pursuits. There need not be, in a market system, a monistic model on the question of corporate purpose as opposed to a more pluralistic approach. Companies may deliberately self identify and "brand" themselves as falling along a spectrum of emphasizing or deemphasizing, to varying degrees, share price maximization or other considerations. A review of company literature suggests that many businesses already do this, or at least say they do.

Third, the vast bulk of businesses are not "publicly held" and thus management may not need to worry about being ousted by irate investors who object to "excessively" responsible conduct. Presumably, in a closely held business there is a greater likelihood that management will reflect the views of the controlling shareholders in the first place. Privately held businesses thus accord management significant latitude from public investor pressure on this issue. Also, investors themselves may simply choose not to buy stock in companies thought by them – for whatever reason – to be "too" socially responsible. For example, although it is privately held, the Chick Fil A chain of restaurants is not open for business on Sunday.[44] If the company were publicly held, investors could elect not to buy stock in the company if they thought being closed on Sunday reduced profits in a way that they found undesirable. Conversely, some investors may be drawn to invest in particular businesses precisely because of their record of responsible behavior. The fact that some public companies make charitable contributions far in excess of the corporate mean, and yet have a broad shareholder base, suggests that many investors will not avoid or disinvest in such companies because of donative practices, assuming prior full disclosure is made to the capital markets as to a company's philosophy.[45]

B. Market Constraints

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[43] Cynthia A. Williams & John M. Conley, *An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct,* 38 CORNELL INT'L. L. J. 493, 500 (2005).

[44] This reveals an interesting philosophical parallel with the *Wrigley* case, *supra* note 27, where the Chicago Cubs management thought baseball should only be played during the day, not at night.

[45] Joe Nocera, *Emerald City of Giving Does Exist*, N. Y. TIMES, December 22, 2007 (describing the Keystone Club where 134 of 214 corporate members donate at least 5 percent of pre-tax income and the other members donate at least 2 percent).

Various markets will constrain managerial discretion to engage in morally and socially responsible conduct. The need to access capital markets means management must convince investors – who, as noted above may be more heterogeneous in outlook than commonly posited – that a satisfactory return through dividends or stock price appreciation will result from an investment. With respect to an already public company, a decline in share price can lead to accumulation of the stock by investors seeking a sharper focus on boosting the share price. The exercise of shareholder voting rights can then lead to a change of management and a shift to a more investor-centered business strategy.

The need to compete effectively in product and service markets also can constrain. Cost structures that raise prices beyond that of competitors may lead price-sensitive consumers to change brands. Of course, other consumers will pay more to do business with companies thought to be socially responsible actors. This seems most evident in the burgeoning movement to buy "green" products and services by many consumers.[46]

Labor markets also may constrain. Those managers wishing to advance their careers by being associated with companies whose share price appreciation exceeds the industry average may stay away from what they regard as an overly "responsible" company. On the other hand, especially among today's educated young adults, a company's commitment to certain non-economic objectives may result in a competitive advantage in attracting talented workers.[47] Their peer group may highly value a strong commitment to environmental/climate change concerns, responsible global supply chain assurances, and a life-enhancing work atmosphere affording flexible schedules to accommodate family and personal needs, to mention a few considerations.

In short, market pressures will undoubtedly constrain particular companies in particular industries in different ways and to varying degrees. It seems unlikely, however, except in the most competitive industries, that there is no financial "slack" whatsoever to engage in responsible conduct. Thus, market pressures may limit managerial freedom but seem unlikely to eliminate it.

C. Business Lore

Probably the most famous assertion as to the proper purpose of business activity came from renowned economist Milton Friedman. He stated:

> "In a free enterprise, private property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while

46 Remi Trudel and June Cotte, *Does Being Ethical Pay?* WALL ST. J., May 12, 1008 at R4 (reporting results of experiment showing that consumers were willing to pay a slight premium for ethically made goods (as defined) and significantly discounted unethically made products).

47 Phyllis Korkii, *M. B. A. Students: They're Not All Business,* N. Y. TIMES, April 27, 2008 at BU 2 (reporting results of recent survey of MBA students that compensation was the second most important factor in choosing a job, after challenging responsibilities, and just ahead of work-life balance and potential to make a contribution to society).

> conforming to the basic rules of society, both those embodied in law and those embodied in ethical custom."[48]

This statement, widely known and quoted, both reflects, and serves to strengthen, a strong norm of advancing self-interest in U. S. culture, a norm central to neo-classical economic theory. Such a position, uncritically repeated and passed on to succeeding generations of business and economics students, can become established lore in the world of business and thereby become self-fulfilling.[49] Business leaders act in that way because they think they are supposed to. In turn, observing widespread adherence to a share price maximization norm leads others to prescribe that behavior as "natural," leading to more such conduct. And so on.

Notwithstanding its prominence, there are certain basic defects in Friedman's position and in its conventional interpretation, which will briefly be noted. First, given that Friedman addresses the duty of a "corporate executive," he must presuppose a corporation as the employer. Yet, he is flatly wrong, as a legal matter, that an executive is an "employee" of anybody but the company itself. An executive certainly is not, as Friedman suggests, the employee of the shareholders; they have no right to hire or fire, or otherwise control, employees. Even current efforts by some shareholder groups to have a "say on pay" vote with respect to public company executive compensation typically seek only a nonbinding vote, and such efforts do not seek the direct right to control or discharge officers. Moreover, Friedman is wrong that shareholders are the "owners" of the business. That conception of shareholders, as noted earlier,[50] is legally erroneous and quite dated; shareholders only own (and can sell) an equity interest (called common stock) in the business and they have rather limited voting rights.

Second, as with the Michigan Supreme Court in the 1919 *Dodge* case discussed earlier,[51] Friedman cites no authority for his position. His is strictly a normative position that, as noted earlier, is nowhere mandated and, in fact, many positive law authorities permit a contrary view. Third, Friedman's position, notwithstanding foundational descriptive error, in fact is quite tolerant of socially responsible conduct under certain conditions. He suggests acting in accordance with shareholder desires. As noted in subpart A above, today different segments of investors appear to have some appetite for responsible conduct, not simply a desire to make as much money as possible. This represents a market solution to the issue of corporate purpose, of the kind Friedman, as a free market advocate, would seem to support. Indeed, he qualifies his admonition to maximize profits by using the word "generally," thereby recognizing that certain investors will have different preferences. In fact, the very next (and little-quoted) sentence following the popular Friedman quotation noted above goes on to capture just this point: "Of

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48 Milton Friedman, *The Social Responsibility of Business is to Increase Its Profits,* N. Y. TIMES, Sept. 13, 1970, § 6 (magazine) at 32.

49 Dale T. Miller, *The Norm of Self-Interest,* 54 AMERICAN PSYCHOLOGIST 1053 (1999). One study found that taking a course in microeconomics actually altered students' conceptions of the appropriateness of acting in a self-interested manner. *Id.* at 1055.

50 *See* Colombo, *supra* note 19.

51 *See supra* notes 17-18 and accompanying text.

course, in some cases his employers may have different objectives."[52] Moreover, Friedman recognizes that executives must also conform not only to law, they must conform to rules embedded in ethical custom. This is precisely the position found in ALI § 2.01(b)(2), described earlier.[53] As ethical principles emerge in a society – whether they be greater attentiveness to environmental concerns, employee job security or benefits, product safety, or other considerations, – executives, in Friedman's view, must conform to them. Business practices in a democracy – like law – eventually must conform to underlying social norms and, as with other customs, may change. Business practices concerning matters of discrimination in serving customers, or in hiring employees, were in flux even before legal mandates on these points. It can be doubted whether these shifts were undertaken solely for economic reasons, as opposed to a growing sense that it was socially and morally wrong to so discriminate. Friedman's position, commonly misunderstood, actually permits (and may require) certain socially responsible conduct by managers.

D. Social Norms

Managerial understandings of corporate purpose may reflect larger societal attitudes about the social role of corporations.[54] Those who regard corporations as purely economic vehicles by which capital providers maximize their return on capital will conceive of companies differently than those with a more institutional or communitarian perspective. The following chart from 2001 depicts different cultural perspectives on some basic corporate issues.[55]

Differences in Perspectives on Corporate Governance:
Preferences of Senior Managers about Corporate Objectives

Survey question	**Possible Answers**	**Japan**	**Germany**	**France**	**USA**	**UK**
(1) Whose Company is it?	All stakeholders The shareholders	97.1 2.9	82.7 17.3	78 22	24.4 75.6	29.5 70.5
(1) No. of respondents:		68	110	50	82	78
(2) Which is more important?	Job Security Dividends	97.1 2.9	59.1 40.9	60.4 39.6	10.8 89.2	10.7 89.3
(2) No. of respondents:		68	105	68	83	75

Pretty clearly, culture plays a role in influencing managerial beliefs about business priorities. A 2000 edition of Korn/Ferry International's director survey confirmed that U.S. directors most

52 Friedman, *supra* note 48.

53 *See supra* notes 30-32 and accompanying text.

54 Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance,* 97 NW. U. L. REV. 547, 582 (2003) ("[T]he shareholder wealth maximization norm is central to director socialization,…").

55 Marco Pagano & Paolo Volpin, *The Polical Economy of Finance,* 17 OXFORD REV. ECON. POLICY, NO. 4 (2001) (containing chart).

frequently ranked shareholder interests as their primary concern.[56] Nonetheless, a substantial number of directors felt a responsibility toward stakeholders.[57] Moreover, these norms may now be in flux. A 2007 survey of CEOs by McKinsey found that 95% believe society now has higher expectations of business taking on public responsibilities than just five years ago.[58]

A 2006 survey of Australian directors likewise revealed a shift in attitude over the last decade.[59] Earlier studies indicated that Australian directors were more inclined to prioritize shareholder interests over those of other constituencies. The 2006 survey, however, shows that while shareholders appear to be regarded as the most important stakeholder – just ahead of the company itself – directors do not see short term returns to shareholders as a priority at all and 73% of directors include employees in the top three in rank order of priority. Moreover, the percentage of directors who considered increasing the share price as a priority (45%) fell far below the percentage who believed other goals to be important, such as ensuring customers are satisfied, ensuring employees are fairly treated and their jobs safeguarded, and that productivity is increased. Finally, the survey found that the shareholder primacy view among directors did not derive from a belief that they were legally obligated to advance such interests. It apparently reflected more of a social norm than a perceived legal obligation.

Social norms are not legally binding but their violation can lead to various non-legal sanctions. Shareholder wealth maximization appears, in the U. S. and U. K. at least, to be a widely-shared norm, historically. Even so, such a norm still presents an opportunity to break ranks and not comply in order to achieve a perceived advantage. And a shift in the strength of the norm – as appears to be underway today – presents even greater opportunity for divergence.

IV. Implications for Christian Business Managers and Those Who Educate Them

Business managers recurrently face decisions with an apparent moral dimension. Some of these, recently framed by Robert Rhee, include the following:

> Should the firm engage in a merger or acquisition transaction that would require massive layoffs? Should it spend more to ensure cleaner environment or better working conditions when positive law would not require it? Should it provide safer products when the cost-benefit analysis suggests that liability would be cheaper? Should it submit to a government's demand to limit privacy or access to information as a condition of market

56 *See* Stephen M. Bainbridge, *Does Dodge v. Ford Motor Co. Remain Canon,* http://businessassociationsblog.com/lawandbusiness/comments/does_dodge_v_ford_co_remain_canon.

57 *Id.*

58 Daniel Franklin, *Just Good Business,* THE ECONOMIST, January 19, 2008, at 4 (Special Report).

59 Malcolm Anderson, et al, *Evaluating The Shareholder Primacy Theory: Evidence From a Survey of Australian Directors,* http://ssrn.com/abstract = 1031301.

> entry? Should it take action that mitigates the tragedy of the commons such as global warming?[60]

Numerous comparable situations also could be described.[61] These settings truly present moral choices, however, only if managers are genuinely free to choose one rather than another course of action. The range of possible courses of action will widen if the goal of investor wealth maximization is not presupposed, and it is less likely to be presupposed when it is understood by students and teachers as not being mandated, whether legally or by means of other influences.

Appreciating that managers have at least some degree of freedom to act is thus a necessary first step to deliberative moral action. Parts II and III have cleared the necessary underbrush for imaginatively exploring how to help business students and managers engage in morally reflective action. The remainder of this Part IV moves beyond removing an impediment to such action and sketches how the language of fiduciary duty may serve as one avenue for more affirmatively facilitating this effort. The aim is to provide a vocabulary – i.e., the duty/command of "faithfulness" – for Catholic business schools to use in exploring with future managers key concepts such as vocation, mission, and stewardship in the business arena.

The concept of faithfulness has currency in both the worlds of religious belief and legal duty. It therefore holds potential for mediating these two spheres and their often quite disparate modes of discourse and frames of reference.

In the high profile litigation over the propriety of Disney Company paying former President Michael Ovitz $140 million in severance compensation, the trial judge, Chancellor William Chandler, shed new light on the legal obligation of faithfulness. In the five-page introduction to his 2005 legal opinion, Chandler used the word "faithful" (or "faithfully") five times, once as part of the phrase "faithful servants." In the opinion, he expressly predicated the wide latitude given to corporate managers by corporate law on those actors acting "faithfully." The Chancellor then linked the customary duties of care and loyalty to the idea of faithfulness, stating that care and loyalty are "but constituent elements of the overarching concepts of allegiance, devotion and faithfulness that must guide the conduct of every fiduciary. The good faith required of a corporate fiduciary includes not simply the duties of care and loyalty, in the narrow sense that I have discussed them above, but all actions required by a true faithfulness and devotion to the interests of the corporation and its shareholders."[62]

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60 Robert J. Rhee, *Corporate Ethics, Agency, and the Theory of the Firm,* 3 J. BUS. & TECH. L. 1 (2008).

61 *See, e.g.,* Germain Grisez, THE WAY OF THE LORD JESUS VOL. 3: DIFFICULT MORAL QUESTIONS (FRANCISCAN PRESS 1997).

62 *In re* Walt Disney Co. Deriv. Litig. (*Disney*), 2005 WL 2056651, at *36 (Del. Ch. Aug. 9, 2005), *aff'd,* 2006 WL 1562466 (Del. June 8, 2006). The Delaware Supreme Court prominently quoted this language on faithfulness in its opinion. *In re* Walt Disney Co. Deriv. Litig., 2006 WL 1562466 at *27 (Del. June 8, 2006).

The concept of fidelity to the interests of another (or others) is why business managers do not as such pursue their own conception of justice. Justice and faithfulness are not, to be sure, necessarily at odds, but the fiduciary must be devoted to the other's welfare, not his or her own notion of just outcomes.

Throughout the opinion Chandler illuminates the evocative concept of "faithfulness," understood as devotion and allegiance to the well-being of another, as well as its opposite, the notion of "faithless" conduct. As business managers and those who educate them seek to understand (and comply with) this legal duty, where will they turn for guidance? The legal concept of faithfulness certainly cannot be understood by self-reference. Nor is faithfulness a well-developed idea in other areas of secular law or in finance/economics, to which managers and lawyers – and those who teach them – could look for meaningful guidance. Rather, the richest, most fully formed understandings of "faithfulness" are likely to be drawn from non-legal sources. Upon being advised in business school or in the boardroom that one is under a legal duty to act with faithfulness,[63] directors can bring to these evocative legal terms their own rich and varied recollection of faithfulness, as drawn from religious texts and instruction where that concept is more fully portrayed. By infusing the notion of faithfulness with moral instruction gained from religious faith, for example, business students and managers may more clearly see how the performance of their responsibilities involves a deeper moral as well as a legal obligation. The result may be that they act in a way that exceeds the minimum level needed to avoid legal sanction, striving also to fulfill a higher moral charge. In short, the term "faithfulness" may provide a linguistic entry point for opening fruitful discussion of how business managers can discharge legal duties while drawing on faith-based understandings of what substantive business decisions might comply with those somewhat open-ended duties.

The Christian faith accords faithfulness a prominent place in teachings about moral conduct, and recalling what it says can refresh a manager's understanding of the moral imperative lying behind a secular concept. For example, the Bible describes God himself as being faithful.[64] Moreover, in several places, it commands the quality of human faithfulness toward others. In Jesus' "Parable of the Shrewd Manager,"[65] in his "Parable of the Talents,"[66] as well as in his story of the faithful servant,[67] Christ makes clear that when working for another, or when entrusted with another's property, "faithfulness" is highly valued. Interestingly, the famous teaching on not being able to serve two masters[68] – a passage that undergirds the fiduciary duty of loyalty and which was regularly cited by judges into the early twentieth century – immediately follows a strong teaching on the quality of faithfulness.[69] This provides a fascinating historical

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63 Incoming members of the Board of Trustees at the author's home institution are required to take an oath of office wherein they swear that they "will faithfully discharge the duties of the office to which I have been elected." Board of Trustees Oath of Office, Washington and Lee University (on file with author).

64 *See, e.g., Psalm* 36:5 (New International), *Isaiah 25:1* (New International).

65 *Luke* 16:1-13. Steven Cortright has usefully pointed out to the author that the Greek word translated to faithfulness here is different than the Greek word so translated in footnote 64 and the text.

66 *Matthew* 25:14-30 (New International).

67 *Luke* 12:35-48 (New International).

68 *Luke* 16:13.

69 *Luke* 16: 1-12.

antecedent to Chancellor Chandler's opinion in *Disney* where he subsumed loyalty within the overarching concept of faithfulness. The Apostle Paul also lauds the faithful steward,[70] and describes "faithfulness" as one of the "fruit[s]" of the Holy Spirit.[71] Faithfulness in biblical teaching, therefore, although described as a spiritual quality, is to be manifested in practical allegiance to the interests of another.[72] The stance of faithfulness toward others is to grow out of a more general stance of unselfishness in relating to others, also taught by the Bible.

It would be odd if business managers themselves – and those Catholic business schools who educate them – did not draw on their deepest, most cherished convictions in ascertaining how to think and act in the business sphere. Although there are many benefits of doing this, two in particular will be noted. First, religious language, emphasizing the command to serve others and the duty to be faithful to the interests of others, can counter the *lingua franca* of rampant self-interest now prevalent in the commercial sphere of society. Sacrificial service long has been hallowed in civil society, thanks to religious and moral traditions acclaiming such behavior. A key ingredient for those seeking more other-regarding conduct is to facilitate it via accessible language. The notion of faithfulness, drawn from fiduciary duty discourse as seen in the *Disney* case, permits a person of faith to "map" from the conceptual domain of religion – where faithfulness is lauded – to the domain of business, where it can subdue the natural impulse and prevailing norm of self-interest. Recalling the "Parable of the Good Samaritan" or the "Parable of the Faithful Steward," among others stories or teachings, can powerfully counter the pull of business lore and norms toward an ethic of self-centeredness.

A faith-based conception of faithfulness can provide a moral footing for managers seeking to fulfill their legal obligation of faithfulness. Many calls for socially responsible conduct, whether merely anti-contractarianism or more fully rendered communitarian visions, lack a compelling moral framework. For religious believers, the notion of faithfulness provides a foundation for constructing, or at least a lens for envisioning, a more ethical corporation. As emphasized before, in a market-oriented, democratic society, there is no reason why business corporations do not exhibit more institutional pluralism in both ends and approaches to business. Those managers motivated by religious conviction can form a subset of companies charting at least somewhat different courses.

Moreover, to alter the prevailing business discourse and norm of self-interest requires a viable alternative vocabulary, and it requires managers brave enough – and faithful enough – to invoke it. Doing so can, over time, especially if instilled by respected teachers during the formative professional education period, alter beliefs and norms about the appropriateness and usefulness of such language. This, in turn, can alter institutional practice and make such language and modes of thought more pervasive. This will not eradicate the deep, self-interested impulses of

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70 *I Corinthians* 4:2 (New International).

71 *Galations* 5:22-23 (New International).

72 For example, the Proverbs, designed to give guidance for practical living, describe the straightforward honesty of a faithful friend. *Proverbs* 27:6 (New International). Also, in his teaching on "The Wise and Foolish Builders," Jesus said that the person "who hears these words of mine and puts them into practice is like a wise man who built his house on the rock." *Matthew* 7:24 (New International).

fallen humanity, but it will allow Christian managers to frame, and argue for, a redemptive counterpoise to those impulses. Managers might then more fully appreciate that, like all humans, even within business contexts they have at least some freedom to choose, and therefore some freedom (and duty) to make moral choices for the common (corporate) good. Their hands are not tied to quite the degree as faulty understandings of corporate purpose might lead them to believe. Educators, for their part, must creatively make room in professional training for legitimizing the presence of the religious voice within the business corporation.

A second benefit of connecting a religious conception of faithfulness to work was highlighted by Professors Alford and Naughton. The failure of Christian thought to attend specifically to the linking of faith and work leads managers themselves, Alford and Naughton observe, to live "a divided life," where matters of spirit and business occupy wholly separate spheres.[73] Pope John Paul II has commented on this sense of division: "There cannot be two parallel lives in [a lay person's] existence: on the one hand, the so-called *spiritual life,* with its values and demands' and on the other, the so-called *secular life* in family, at work… Every activity, every situation, every precise responsibility – as, for example, skill and solidarity in work,… are the occasions ordained by providence for a continuous exercise of faith, hope, and charity…."[74]

Senior corporate decision-makers need a vocabulary appropriate for bridging legal and religious modes of discourse, for linking fiduciary duties and faith. The notion of faithfulness nicely conveys both a legal obligation to advance the interests of others and a moral command grounded in religious belief and tradition. The enormous deference the law accords directors and officers means they have significant latitude in choosing whether and how, in particular business settings addressing specific issues, they give content to the notion of faithfulness. This allows, by habitual exercise, the development of moral conscience and ethical practice in business context. The emphasis here, however, is not simply on how doing so will alter the language, norms, practices and ultimate goals of the corporation itself, but how doing so will transform the outlook of the individual decisionmaker. Directors and senior officers will be freed from the psychological and spiritual burden of keeping two distinct moral frames of reference, one for work and the other for the rest of life. Instead, they will face the formidable challenge of determining how to advance the common corporate good by drawing on understandings of faithfulness derived from deeper sources of authority, including religious conviction. This deliberative, integrative mode of thinking can be demanding, and likely may be resisted and only fumblingly engaged in at first. Indeed, one may be tempted to seek refuge in the less probing "divided life" and in the simplifying pursuit of self-interest! The quest for wholeness in outlook, honestly expressed, however, will bring both personal and corporate gain. Only with practice – and beginning with the relative safety of the classroom – will such reflection become a personal moral habit as well as an institutional norm.

The approach offered here honors the reality of managerial discretion by leaving to corporate decision-makers themselves – not legislators – the task of deciding whether and how to translate legal responsibilities into specific courses of action based on religious belief. This less

[73] Alford & Naughton, *supra* note 10 at 12.

[74] Pope John Paul II, Apostolic Exhortation *Christifideles Laici*, January 1989, reprinted in GOSPEL OF WORK, *supra* note 10 at 32.

hierarchical means for leavening business practice with religious outlook is not only more politically pragmatic at this juncture, it also is more decentralized, pluralistic, and eclectic in approach. At the same time, this approach is fully congruent with the principle of "subsidiarity,"[75] and with what Villanova Law School Dean Mark Sargent has observed about papal documents and bishops' statements: "They also usually avoid making specific policy recommendations, recognizing the hierarchy's limited expertise, leaving questions of application to the prudential judgment and moral discernment of the laity."[76]

Just as Parts II and III demonstrated that the issue of corporate purpose is not legally mandated but reflects other influences, so too the absence of religious language in business discourse reflects a social practice, not a legal requirement. In fact, a business corporation is not, and need not be, inherently secular in nature or orientation. The question of which norms and convictions should play a role in shaping goals and practices in the business setting – and in business education – is one that, in a society both free and religious, may reflect core religious beliefs.

How understandings of faith actually will influence corporate conduct has no predetermined normative endpoint. Some managers and educators may see faith as providing a more secure foundation for pursuing socially responsible conduct of various kinds. Others may conclude that greater faithfulness means that stricter allegiance to investor interests is called for. The outcome of injecting faithfulness into business education and business decisions will depend on how educators and managers interpret the teachings of their faith and on the strength of the various influences identified in Part III. Managers can, but need not, draw on and express themselves in ways influenced by faith. Or, they may do so occasionally but not pervasively. That is precisely the upshot of discretion.

Discourse within the corporation may continue to be secular in nature because senior decision-makers may choose, for the most part, to think and speak in secular terms. It may, on the other hand, under the prodding of those who appreciate the breadth of managerial discretion and recurrently urge the value of faith in guiding its exercise, become a more mixed and bi-vocal discourse, part secular and part religious in nature. This may alter not only the kind of actions taken by corporate managers; it may change how managers talk about these matters.

V. Conclusion

This article seeks to provide a compact resource for business school professors on what the law does – and does not – say about corporate purpose. It argues that market forces, business lore, social norms, and critically, professional training, play a greater role in shaping managerial conduct than weak legal mandates. The article also aims to further cross-disciplinary dialogue on this basic issue between those educating business managers and those educating lawyers, especially those who do so from a Christian vantage point. Finally, the concept of "faithfulness"

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[75] As stated in a 1986 letter by the National Conference of Catholic Bishops: "[G]overnment should undertake only those initiatives which exceed the capacity of individuals or private groups acting independently." NAT'L CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY 62 (1986).

[76] Mark A. Sargent, *Competing Visions of the Corporation in Catholic Social Thought,* 1 J. CATH. SOC. THOUGHT 561, 563 (2004).

is shown to usefully mediate the discourse of religious belief with that of fiduciary obligation, for managers seeking to inform business behavior by religious convictions.