

Catholic Social Thought and the Amorality of Large Corporations: Time to Abolish Corporate Personhood

by William Quigley
Loyola University New Orleans School of Law
quigley@loyno.edu¹

Abstract of Paper

Large corporations rule the world. Because of their growing size and power they have overwhelmed the ability of civil governments to regulate them. In a world where 3 billion people live on less than \$2 a day, current economic arrangements are not just. Catholic social thought has been critical of corporations since the 1930s and stresses the need for government regulation for the common good, subsidiarity and a preferential option for the poor. Law has bestowed on corporations the legal status of a person and has given corporations many constitutional rights and protections. Ethics, morality and Catholic social thought suggest it is time to abolish corporate personhood as a step towards returning people to the center of economic activity.

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Introduction

The worst injustices and frauds take place beneath the obscurity of the common name of a corporative firm...

Quadragesimo Anno, After Forty Years (1931)²

This paper suggests that the modern large corporations are by size and power and by operation of law either amoral or immoral and so powerful that they cannot be made to act in accordance with Catholic social thought under current legal regulations. Since other arrangements are making little progress, legal corporation personhood should be abolished.³

Large corporations can never be ethical entities unless they comply with the call of Catholic social thought and other systems of ethical conduct to become socially responsible. Though there has been much discussion about making corporations moral or socially responsible, their legal DNA prevents them from acting like humans and having the chance to act in moral ways. Therefore, the legal personhood of corporations should be abolished and those doing business will be obliged to assume personal and social responsibility for their business actions.

Corporations are more powerful than any institution other than government, and in many cases, more powerful than governments. Corporations are huge amoral behemoths, acting amorally to expand market share, to hire fewer and fewer people, and to accumulate capital.

Catholic social thought suggests some themes of corporate purpose and responsibility, essentially morality. Traditional corporate law does not adequately address the themes of Catholic social thought the ethical role of corporations in society. Corporate social responsibility does address some of the same themes, but is widely ignored in the actual regulation, internal and external, of corporations.

Since corporations continue to grow in size and power they can only be lightly regulated if at all, they are at least amoral and probably immoral. Corporations should be regulated by law based on the themes of Catholic social thought, but because such laws do not appear on the horizon, the institution of legal corporation personhood should be abolished.

Economic enterprise should once again return to personal responsibility. By eliminating the corporate fiction of personhood, people will be responsible for the decisions and these decisions will have at least the chance of being moral.

The Power and Problems of Large Corporations

Large corporations are the most powerful non-governmental institutions in a few economically strong countries, and are much more powerful than government in the rest. Large corporations exert tremendous power internationally, nationally, and in the daily lives of most of the world's citizens.

For example, look at the following chart showing the revenues of the world's ten largest corporations:

World's Ten Largest Corporations by Revenues⁴

Walmart	\$219 billion in revenues
Exxon Mobil	191
General Motors	177
BP	174
Ford	162
Enron	138
Daimler Chrysler	136
General Electric	125
Toyota	120

Compare the size of these corporations with the governments which are hypothetically supposed to be in a position to regulate them. These corporations have such vast power that they pose serious practical challenges to any attempt of national or international government regulation. To illustrate, look at the gross domestic product of the ten largest country economies:

Top ten countries in Gross Domestic Product⁵

USA	\$9,837 billion
Japan	4,841
Germany	1,873
UK	1,414
France	1,294
China	1,080
Italy	1,070
Canada	687
Brazil	595
Mexico	574

As the reader can see, even towards the bottom of the top ten countries in the world, the relative size of the largest corporations starts to look pretty imposing. As anyone in the USA who has tried to regulate any large corporation already knows very well, their power is substantial.

But most indicative of the relative power of the large corporation is to look outside the USA at the list of countries whose gross domestic product is less than the annual revenues any of the top ten corporations. These 135 countries all have GDP's smaller than the revenue streams of the smallest of the top ten corporations:

This is the list of the 135 countries in the world with smaller GDPs than the annual revenues of *any* of the top ten corporations:

Albania, Algeria, Angola, Antigua, Armenia, Azerbaijan, Bangladesh, Bahamas, Barbados, Bahrain, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei, Bulgaria, Burkina Fasso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Ireland, Iran, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Kuwait, Lao PDR, Latvia, Lebanon, Lesotho, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Moldava, Mongolia, Morocco, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philipines, Portugal, Qatar, Romania, Rwanda, Saint Kitts, Saint Lucia, Saint Vincent, Samoa, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, Sri Lanka, Sudan, Suriname, Swaiziland, Syria, Tajikstan, Tanzania, Trinidad and Tobago, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Venezula, Vanuatu, Viet Nam, Yemen, Zambia, and Zimbabwe.⁶

From this one can understand why people in these countries fear the influence of large corporations.

But it is also important to recognize that people in the US also think that large corporations are too powerful and do not have moral interests at heart.

For example, in three polls taken over the period between 1996 and 2000, Business Week found that between 71% and 82% of those polled agreed with the statement that "Business has gained too much power over too many aspects of American life."⁷ In the same poll, people were asked "Which of the

following statements do you agree with most strongly? U.S. corporations should have only one purpose - to make the most profit for their shareholders - and their pursuit of that goal will be best for America in the long run. (4% chose that statement). U.S. corporations should have more than one purpose. They owe something to their workers and the communities in which they operate, and they should sometimes sacrifice some profit for the sake of making things better for their workers and communities. (95% agreed with that statement).⁸

The case supporting large corporations is made even more difficult in light of the three billion people in the world who, according to the World Bank, live on less than \$2 a day.⁹ While large corporations have certainly benefitted some, there is something definitely wrong when the top one percent of the world receive as much income as the poorest fifty-seven percent.¹⁰ From the perspective of those two billion people, it is difficult to suggest that current economic arrangements, dependent as they are on large international corporations, are working for the common good.

The pervasive problems of large corporations are not really debatable and will therefore not be repeated here. Review of recent events show numerous and widespread examples of corporate abuses, self-dealing by corporate insiders, criminal activities, abandonment of communities, downsizing of workers, environmental and economic disasters.¹¹

Development of the law and regulation of corporations

Corporations have been criticized as immoral or amoral since they have been in existence.

Corporations as we know them were relatively uncommon before 1800. Prior to that time, organizations were only granted the legal status of corporations with the permission of the legislature and for specified public purposes and often for limited time. These public purposes were usually the creation of a local unit of government, a church, or a charity. There were a few bridges, banks and manufacturing companies, but very few. The state legislature created corporations one by one, each an individual matter.¹²

Between 1800 and the end of that century, however, corporations flourished and developed a commanding presence on the economic and legal scene that they have never surrendered. Incorporations changed from individual legislative acts to general state incorporation laws setting out simple uniform minimal ministerial requirements for incorporating. Restrictions on the purposes and operations of corporations were released and they grew and multiplied. Corporations became legal persons by action of the U.S. Supreme Court. As the number and size and power of corporations grew, individual states competed to see which could be more accommodating to the needs of corporations.¹³

The U.S. Supreme Court helped protect corporations from regulation by government in the 1819 decision in *Trustees of Dartmouth College v Woodward*.¹⁴ The case involved an effort by the New Hampshire legislature to require changes at the college, which had been created by royal charter in 1769. The college resisted the changes by saying that the state action unconstitutionally impaired the contractual rights of the institution. Justice Marshall decided that the college as a corporation was like a natural person and the royal charter was essentially a contract. Because there was a contract forming the corporation, it could not "be impaired without violating the constitution of the United States."¹⁵ This was the first time that the protection of the contract clause had been extended to a corporation charter, thus protecting corporate charters from state intervention, and, as one commentator noted:

“Marshall thus encouraged, through constitutional sanction, the emergence of the relatively unregulated private, autonomous economic actor as the major participant in a liberal political economy that served the commonwealth by promoting enlightened self-interest.”¹⁶

This is not to say there was not serious criticism. Concerns were raised in these times that corporations were “soul-less” entities that never died and had no limit to their concentration and size triggered fears that the “corporation would not be tempered by the mentality of any one person, or by considerations of family or morality.”¹⁷

Corporations were challenged on several grounds, as exemplified by the 1833 criticisms of William Gouge:

Against corporations of every kind, the objection may be brought that whatever power is given to them is so much taken from either the government or the people.

As the object of charters is to give members of companies powers which they would not possess in their individual capacity, the very existence of monied corporations is incompatible with equality of rights...

Such are the inherent defects of corporations that they can never succeed, except when the laws or circumstances give them a monopoly or advantages partaking of the nature of a monopoly. Sometimes they are protected by direct inhibitions to individuals to engage in the same business. Sometimes they are protected by an exemption from liabilities to which individuals are subjected. Sometimes the extent of their capital or their credit gives them control of the market. They cannot, even then, work as cheap as the individual trader, but they can afford to throw away enough money in the contest to ruin the individual trader, and then have the market to themselves.

...Corporations are so powerful, as frequently to bid defiance to Government.

If a man is unjust, or an extortioner, society is, sooner or later, relieved from the burden, by his death. But corporations never die.

What is worst of all, (if worse than what has already been stated be possible), is that want of moral feeling and responsibility which characterizes corporations. A celebrated English writer expressed the truth, with some roughness, but with great force, when he declared that “corporations have neither bodies to be kicked, nor souls to be damned.”¹⁸

The story of how corporations achieved the full rights of legal persons is one of the great perverse tragedies in legal history.

The Fourteenth Amendment was passed in 1868 to make sure that all citizens, particularly people of color, in the U.S. had full rights. No mention was ever made of granting such rights to corporations.

But in 1886 the U.S. Supreme Court granted corporations legal personhood in an interpretation of the Fourteenth Amendment that was not even subject to argument before the court.¹⁹ The case was *Santa Clara County v Southern Pacific Railroad Co.*²⁰

Ten years after granting corporations rights in the Santa Clara case, the Supreme Court, in *Plessy v Ferguson*, approved “separate but equal” racial segregation.²¹

Thus the court interpreted the Fourteenth Amendment, which was explicitly passed to assist former slaves and not corporations, to give rights to corporations while denying full rights to the exact people who were supposed to be granted full legal protection. As two commentators note:

“In less than 30 years, African Americans had effectively lost their legal personhood rights while corporations had acquired them.”²²

As an aside, it is noteworthy that once gaining constitutional personhood, the corporations relentlessly sought more. Fifty years after the Santa Clara decision Justice Hugo Black observed that in cases in which the Court applied the Fourteenth Amendment during the first 50 years after Santa Clara “less than one half of 1 percent invoked it in protection of the Negro race, and more than 50 percent asked that its benefits be extended to corporations.”²³ And the Supreme Court went on to give corporations numerous additional powers and rights under the First, Fourth, and Fifth amendments as well.²⁴

By the end of the 1800s, the process of forming a corporation was simple and widely available and thanks to the Supreme Court and lax state legislatures attempts at public regulation were minimal. As Professor Hurst has noted, “These readings of the Fourteenth Amendment materially extended the legitimacy which law conferred on private corporate power and at the same time substantially curbed the legitimacy of government regulation of corporate behavior.”²⁵

The effect of these changes was that the regulation of business and corporate activity was no longer a proper function of corporate law.²⁶

Corporations proliferated in number and in size as state laws, particularly in the most generous states of Delaware and New Jersey, were repeatedly expanded and liberalized to allow bigger and bigger businesses more freedom to operate as they wished. In the last century, corporations have flourished with few social responsibilities at all. States allow people to form corporations for any lawful purpose. Delaware alone has incorporated about 300,000 corporations.²⁷

The contours of modern debate about corporate social responsibility were shaped in the 1930s.

One side was articulated by Adolf A. Berle who argued in 1931 that the primary duty of corporate boards and managers was to benefit corporate shareholders. This argument was articulated in the 1930s in response to instances where corporate managers seemed to direct outsized results to themselves at the expense of the stockholders.²⁸

The opposing argument was that of E. Merrick Dodd who in 1932 advanced the view that the holders of shares, as owners of the corporations, were only one of many constituencies, like employees and the local community, to which the corporation was responsible.²⁹

Debates about corporate responsibility that arose out of the excesses of the roaring 1920s were quieted by the Depression of the 1930s when corporations lost their dominant economic and social power but rose again in the 1950s when large corporations again blossomed and thrived.³⁰ As Professor Wells observed:

“Despite its reputation as strait-laced, the 1950s witnessed an outpouring of critical writings on the large corporation. Journalists like Vance Packard in *The Hidden Persuaders* (1957), David Riesman, in *The Lonely Crowd* (1950), and William H. Whyte, in *The Organization Man* (1956), argued that corporations had produced cultural and

social conformity, while social scientists like John Kenneth Galbraith, in...The Affluent Society (1958), and C. Wright Mills, in The Power Elite (1959), agreed that corporations' economic dominance had also given them disproportionate political power...these authors agreed that large corporations had been fantastically successful in economic terms, that they had come to wield significant economic, political, and social power, and that their power posed a dilemma for America's democratic society."³¹

Interestingly, one of the leading proponents in the 1950s that corporations had community responsibilities, was Adolf A. Berle, who had twenty years before argued the other side - that the primary and overarching duty of corporations was to shareholders.³²

Another prominent advocate of the social responsibility of corporations was the management consultant Peter Drucker, author of Concept of the Corporation (1946) and The New Society (1950). Like Berle, Drucker thought that the power of large corporations "over workers and consumers gave it a social and political , as well as an economic, dimension" and it should be run "for the benefit of its shareholders, workers and the wider community."³³

The leading opponent was Eugene V. Rostow who in 1961 questioned the serious practical and economic problems of a quest for corporate social responsibility. Rostow described social responsibility proposals to turn corporate managers from profit-maximizers into agents for the public welfare "bewildering balderdash" which could distort and possibly even destroy the market which created goods and services.³⁴

In the 1960s and 1970s, Ralph Nader and others tried to move large corporations towards greater account of their social responsibility by engaging in campaigns of public interest shareholder proposals and proposals that corporate boards be transformed to include public interest directors.³⁵

Shareholder proposals were campaigns from within for corporate change raised by people outside the regular corporate power structure who were concerned about the social dimensions of corporate conduct. People who wanted corporate change became shareholders and used their small ownership interests to get into corporate meetings and raise shareholder proposals for corporate change. Two prominent campaigns were the challenge to Eastman Kodak by Saul Alinsky, which had modest success, and the challenge to General Motors by Ralph Nader, which did not. While these actions dramatically illustrated the need for corporate social responsibility, they did not result in significant corporate change because they were overwhelmingly voted down by the rest of the shareholders, who, it is assumed, were less interested in corporate social responsibility and more interested in the profit-maximizing principles inherent in traditional corporate allegiance to shareholder interests.³⁶

The other major, but less successful, attempt to move corporations towards social responsibility was the effort in the 1970s to get federal and state governments to require that large corporate boards seat representatives whose primary concerns were for the environment, for the employees, for consumers, and for the local community.³⁷

The most powerful and politically enduring argument against corporate social responsibility was articulated in 1970 by Milton Friedman.³⁸ Friedman forcefully argued that using corporate profits for anything other than maximum profit to shareholders was both inefficient and immoral. It was inefficient because it was political interference with the market. It was theft because it was a diversion of profits, effectively a community or social tax, from the rightly earned returns of shareholders. Thus, the

argument for corporate social responsibility, that is was moral and right to make the large corporation be accountable to others in addition to shareholders, was completely and utterly challenged as immoral and ineffective.

Friedman, the defender of the morality of the market, prevailed politically once Ronald Reagan was elected in 1980.³⁹ Corporate social responsibility was replaced by the business of business is business.

Though there were other creative legislative ideas for corporate constituency and academics continued to write about new ways to conceive of and reform the corporation, corporate social responsibility as an idea, much less as law, has made little recent progress.⁴⁰

Development of Catholic social thought on corporations

Although the ability of corporations to plan, operate, and communicate across national borders without concern for domestic considerations makes it harder for governments to direct their activities toward the common good, the effort should be made; the Christian ethic is incompatible with a primary or exclusive focus on maximization of profit. We strongly urge U.S. and international support of efforts to develop a code of conduct for foreign corporations that recognizes their quasi-public character and encourages both development and equitable distribution of their benefits. Transnational corporations should be required to adopt such a code, and to conform their behavior to its provisions.

Economic Justice for All (1986) para 280.⁴¹

Given the legal history and criticism and development of corporations, what has been the special critique of Catholic social thought?

For decades Catholic social thought has looked critically on the corporation, especially the large corporation, and has pointed out that larger does not equal better in all social organization.

Pius XI, writing in 1931, a time of serious world economic disorder, directly challenged the inadequate legal constraints on corporate power and the consequent abuses. In words that could have come recently out of the pages of most newspapers in this country, he pointed out that corporations have created abominable abuses and were subject to little accountability or governmental oversight.⁴² In the same encyclical, the principle of subsidiarity was made explicitly a part of Catholic social thought.⁴³ While usually considered as a direction to the size and level of intervention by government, subsidiarity affirms the principle that if something can be done as well by a smaller or more local organization then it is wrong to shift it to a higher or larger organization.⁴⁴

In 1961, Pope Paul XXIII, in the encyclical *Mater et Magistra*, explicitly underscored the duty of the juridical order to regulate public and private economic institutions towards the common good.⁴⁵

The Second Vatican Council in 1965 in *Gaudium et Spes* pointed out that business enterprises like corporations are really, at base, groups of people who should have duties that transcend strictly construed ideas of ownership and mere accumulation of profit.⁴⁶

In the 1967 encyclical *Populorum Progressio*, On the Development of Peoples, Paul VI, restated the importance of subordinating rights to property and free commerce to the need for creating ways that all people can possess the necessities for basic human dignity.⁴⁷

In 1971, Paul VI, refined the critique of current arrangements and concentrations of economic power by private organizations.

Under the driving force of new systems of production, national frontiers are breaking down, and we can see new economic powers emerging, the multinational enterprises, which by the concentration and flexibility of their means can conduct autonomous strategies which are largely independent of the national political powers and therefore not subject to control from the point of view of the common good. By extending their activities, these private organizations can lead to a new and abusive form of economic domination on the social, cultural, and even political level. The excessive concentration of means and powers that Pope Pius XI already condemned on the fortieth anniversary of *Rerum Novarum* is taking on a new and very real image.⁴⁸

In the 1981 encyclical *Laborem Exercens*, John Paul II specifically criticized multinational corporations for their relentless focus on maximizing profits by their direct and indirect exploitation of workers and countries. The document criticized the chief economic priority of maximizing profit and called on local, state, and world level institutions to exercise their influence to change these relationships.⁴⁹

In 1986, the U.S. Catholic Bishops gave more detailed suggestions about instituting corporate moral responsibility and institutional accountability.⁵⁰ They called for government intervention to bring the economy and its institutions to work for the common good.⁵¹ And they specifically challenged the idea that return on investment should be the over-riding priority of corporations.⁵²

In 1988, John Paul II, in an address to managers and workers in Verona, Italy, pointed out:

Indeed, a business firm is not merely an instrument at the service of the well-being of its management; rather, it is itself a common good both of management and labor, at the service of the common good of society.⁵³

Catholic social thought also embraces a preferential option for the poor which permeates all critiques of social, economic and political action and organization.⁵⁴ When over three billion people in the world live on less than \$2 a day and when the income of the world's richest 5% is 114 times that of the poorest 5%, basic concepts of economic justice are challenged.⁵⁵

Finally, in the 1991 encyclical *Centesimus Annus*, John Paul II again underlined the communal purpose of all economic activity, challenged current forms of capitalism, including corporations, and called on the state to provide more regulation for the protection of the common good.⁵⁶

The sum of the critique of Catholic social thought is that corporations should be subject to the same ethical considerations as the people who participate in them and should serve not only to maximize shareholder profit but are also equally called to serve the common good. Corporations are growing in size and power and efficiency in their ability to maximize shareholder profit but they are not developing in their ability to serve the common good. Government must intervene to hold corporations accountable,

but are not doing so. Finally, the failure of socialism does not mean that current forms of capitalism are the only acceptable models of economic organization.

The Myth of Corporate Social Responsibility

“What law permits or accepts, what it enforces or compels, *should* be socially useful and socially responsible.”⁵⁷

The question is not whether corporations act in moral ways, for current and past history shows that corporations generally do not act in ways other than those to maximize shareholder profit, as indeed their legal genesis and direction pushes them to do exactly that. No, the question is whether corporations can be moral and accept social responsibility.

Put yet another way, are the abuses highlighted by corporate critics since the 1800s and by Catholic social thought from the early 20th century dysfunctional results of the growth of corporations or are they actually functional?

Aggravating the stark international power imbalances in any attempt to regulate corporations is the fact that corporations are set up not for the good of any community, nation, society or the world, but with a single minded focus on maximizing profit.

The first commandment of corporate existence is the maximization of stockholder profit. The American Law Institute states that the primary purpose of the corporation should be “corporate profit and shareholder gain.”⁵⁸

This is, according to corporate lawyer and law professor Lawrence E. Mitchell, “an ethic that will destroy us in the long term,” and “an imperative that is as destructive as it is simple.”⁵⁹ This first commandment keeps the focus of corporate life on the short term stock price and profit with devastating consequences:

“...layoffs, plant closings, alienated workers, unsafe products, and a polluted environment, all in the name of today’s profit; it leads to under-investment in worker training and research and development; it has dangerously increased stock market volatility and turned our capital markets into unstable casinos of unimaginable proportions which threaten the long-term economic well-being of our society.”⁶⁰

Mitchell notes that corporations, as legal creations, have no moral compass. They are legal paper creations that live to maximize profit. As legal creations they are given the benefits and freedoms and protections that humans have, but are not given the same responsibilities as humans. Society and law encourage large corporations to become increasingly and aggressively skilled in pursuing one goal alone, maximizing profit. So too the people who work in corporations. They might be nice co-workers, on the outside they might go to church and be good neighbors and moral family members. But as employees of the corporation, people “are straight jacketed by the legal structure of the corporation in the goals they direct it to pursue and the manner in which they pursue them.” At work, their job is to act like corporate people and maximize profit. Period. As he says:

“Corporate misbehavior is not especially the fault of corporate managers, stockholders, and employees...it is the result we should expect from the legal structure and rules we establish to create the corporation...The corporations’ legal structure and rules result in the dictum to maximize stockholder profit within the confines of limited liability, a dictum which not only gives managers, stockholders, and workers the excuse to behave badly, but also encourages them to do so.”⁶¹

One suggested way to introduce concern for the common good into corporations is to focus on “corporate social responsibility,” which posits that corporations can and should self-regulate through voluntary codes of conduct. Another approach is called “corporate accountability” and is founded on a belief that what is needed is substantially increased and comprehensive governmental regulation.⁶² For example, Professor Mitchell sees many of the problems created by corporations and makes a number of suggestions to free the corporate managers from the requirements of maximizing short term profit and thus might remedy the situation including longer terms for corporate directors and more time between mandated disclosure of financial reports.⁶³

But if large corporations are created by law to maximize profits, are given by law immortality and constitutional rights and protections unavailable to individuals, and have grown by operation of law to be larger than many countries in the world, what entity is supposed to regulate them and how would that entity propose to rein them in?

Can such regulation be internal and voluntary as corporate social responsibility suggest? Can an employee, a manager, a board member, or some combination marshal enough power within a corporation to turn it towards the common good equally as much as it seeks to maximize profit and shareholder value?

Can a government be expected to systemically change the lives of the corporations that now have perpetual life and constitutional rights and more resources and power than any government? Governments may be able to isolate one or two at a time and match their power and cut them off from support from other corporations. But can the government be expected to enact significant substantial changes to the laws which will affect all corporations and change the relentless drive of corporations for profit? Can the regulators of any government match the economic power and abilities of the corporate world?

So far at least, the answer to the question of whether social responsibility can be brought about by internal or external regulation of corporations is no.

Are there any new ideas out there for dramatically changing the economic scene increasingly dominated by large corporations?

While there is no realistic proposal that might bring about internal or external reform of corporations, some people are starting to discuss a more radical idea of creating opportunities for business morality, the idea of ending corporate personhood. By ending the legal personhood of corporations, corporations would cease. If corporations were ended, what would remain? People would remain and these people are subject to the full panoply of ethical and social responsibility in Catholic social teaching and other criteria.

Abolition of corporate personhood

The law has granted corporations the same rights as people. But, unlike the rest of the real people on this earth, corporations were created by laws and legislatures and are made of paper. Unlike other persons, they owe their allegiances not to their mothers and fathers and sisters and brothers and the people they went to school with or their churches or neighborhood communities in which they grew up or reside and not to making the world a better place, but to their legal DNA which pushes them to maximize stock price and profit. And, as law created the corporate person, law can end the corporate person.

Since corporations continue to grow in power and might they are only lightly regulated. Because of their growth they may be impossible to seriously regulate. Corporations thus are at least amoral and probably immoral. Corporations should be regulated by law based on the themes of Catholic social teaching, but because such laws or the ability to enforce them do not appear on the horizon, the institution of legal corporation personhood should be abolished.

Once the legal personhood of corporations is abolished those doing business will be obliged to assume personal and social responsibility for their business actions. People can be and often are moral. Those who do not act morally, government can regulate. Government regulation will certainly be imperfect, but it is necessary to promote and protect the common good.

There is a small but growing movement in the United States to fundamentally change the law of corporations and deny corporations legal personhood.⁶⁴ One example of the call to abolish corporate personhood can be found in the 1998 resolution of the National Lawyers Guild calling for the end of corporate personhood.⁶⁵ Another can be found in the 2002 demand made by the Green Party which made repeal of corporate personhood part of their candidate campaign pledge.⁶⁶ The Women's International League for Peace and Freedom has also called for the abolition of corporate personhood.⁶⁷

The proponents of this approach do not believe reform or regulation of corporations has shown any real promise, thus they seek fundamental change. They seek to make all corporations legally subordinate to the people who authorized them and thus to revoke corporate personhood and citizenship.⁶⁸

There are numerous unanswered questions with this approach as with any other, but it deserves serious exploration given the lack of progress seen with any of the oft-discussed alternatives.⁶⁹

For Catholic social teaching, repealing the corporate personhood could offer opportunities for business to evolve in ways that are more accountable to the common good. Current legal and economic corporate arrangements have not proven to be capable of morality. People have. Eliminating the legal fiction of corporate personhood would free economic interests from the constant unrelenting demand to maximize profit and allow the interests of the common good to be equally as important.

There are proposals to repealing corporate personhood on the local, state and national level.

On the local level, several townships in Pennsylvania have enacted ordinances to prohibit corporations from owning farms in their local communities.⁷⁰ In December 2002, Porter Township of Clarion County Pennsylvania adopted a local ordinance to block the exercise of claims by toxic sludge corporations to constitutional or civil rights.⁷¹

Model city ordinances to rescind corporate personhood have been drafted.⁷²

On the state level, amendments to state constitutions are also being contemplated. Model legislation has also been drafted which would change the definitions of the persons protected by the laws and restrict that protection to “natural persons.”⁷³ There have also been efforts to revoke corporate charters for not acting in the common good.⁷⁴

The goal of these ordinances is to provoke litigation to give the U.S. Supreme Court an opportunity to overturn prior decisions giving corporations the same legal rights as people.⁷⁵

As noted earlier, the decisions of the U.S. Supreme Court to give corporations constitutional rights and personhood have been severely criticized by, among others, Justice Hugo Black of the U.S. Supreme Court, who said “I do not believe the word ‘person’ in the Fourteenth Amendment includes corporations...Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection.”⁷⁶ Justice Black pointed out that the protections of the Fourteenth Amendment, which was set up to protect black citizens, had instead been used mostly to protect corporations: “of the cases in this Court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of 1 per cent invoked it in protection of the Negro race, and more than 50 per cent asked that its benefits be extended to corporations.”⁷⁷

If the U.S. Supreme Court refuses to reverse its prior decisions, as Justice Black suggested, and rules that state and local governments cannot revoke corporate personhood under this constitution, then it will take an amendment to the constitution of the United States to change that situation.

Critics have recognized that a constitutional amendment may well be necessary and have drafted such an amendment which restricts the protection of the constitution to “natural persons.”⁷⁸

Eliminating corporate personhood could bring economic enterprises back to human scale. As one commentator notes:

From the point of view of sustainability and democracy, there is no reason why giant transnational corporations are needed to run hamburger stands, produce clothing and toys, publish books and magazines, grow and process and distribute food, make the goods we need, or provide most of the things that contribute to a satisfying existence.⁷⁹

Eliminating corporate personhood could provide an opportunity to bring personal responsibility back into the enterprise. That will also lead to opportunities to bring morality back into the enterprise. In that way, there is at least the chance that Catholic social teaching will have an opportunity to have an impact on economic behaviors.

Conclusion

“We have seen that it is unacceptable to say that the defeat of the so-called “real socialism” leaves capitalism as the only model of economic organization.

Centesimus Annus (1991)⁸⁰

“Conservative scholars have trouble even imagining corporate law in other than the privatized, share-holder-centered framework in which it has been thought of for much of

this century. They note correctly that assimilation into corporate law of non-shareholder interests and a public law perspective would radically alter existing theory and doctrine. Yet history should remind us that there is nothing inevitable about orthodoxy. Ideas about what corporations are, and the normative implications that follow from those ideas, have radically changed over time. Likewise, basic assumptions about the purposes and appropriate content of corporate law have differed in the past....Confronted with important political challenges, theories of the corporation have always been fundamentally indeterminate. Critics of orthodox corporate law must avoid the conservatives' false equation of convention and necessity.”⁸¹

Corporations now rule the earth. But, in the grand scheme, they are recent arrivals on the earth and can and should be dispatched. The fact that they are so prevalent now should not keep thoughtful people from considering fundamentally different alternatives.

Economic enterprises, Catholic social thought reminds us, should be operated for profit and for the common good. Corporations have excelled at profit, but failed at working for the common good. Half progress is not enough. Other forms of corporate regulation have failed to reign in the economic engines of corporations and make them, as Catholic social thought requires, accept the same type of ethical and social responsibility as the individual people who work for them. Thus it is time for people to again take control and take responsibility. The legal fiction of corporate personhood and the constitutional rights which are given to corporations must cease. Economic justice is possible if society can restore personal responsibility and morality to economic enterprise. Ending large corporations is the way to return people and their moral and ethical sense to the center of economic enterprise.

¹ Janet Mary Riley Distinguished Professor of Law, Loyola University New Orleans School of Law. Comments welcome quigley@loyno.edu

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² Quadragesimo Anno, After Forty Years (1931) para 132

³ This paper does not address the legal or moral challenges of small corporations.

Those who want to learn more about this area would profit, as I have, from reviewing: Douglas Arner, “Development of the American Law of Corporations to 1832,” 55 SMU law Review 23 (2002); Rethinking the Purpose of Business: Interdisciplinary Essays from the Catholic Social Tradition, edited by S.A. Cortright & Michael J. Naughton (University of Notre Dame Press 2002); Thom Hartmann, UNEQUAL PROTECTION: The Rise of Corporate Dominance and the Theft of Human Rights (Rodale, 2002); James Willard Hurst, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, (University of Virginia Press, 1970); Lawrence E. Mitchell, CORPORATE IRRESPONSIBILITY: America’s Newest Export (Yale University Press 2001); Molly Morgan and Jan Edwards, “Abolish Corporate Personhood,” 59 Guild Practitioner 209 (2002); Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY, (Apex Press 2001); C.A. Harwell Wells, “The Cycles of Corporate Responsibility: An Historical Retrospective for the Twenty-First Century,” 51 U. Kan. L. Rev. 77 (2002).

⁴ “World’s Largest Corporations” Paola Hjelet, Fortune, 7-8-02.

⁵ United Nations Human Development Report 2002. The author understands that gross domestic product and corporate revenues are not the same, but they give an indication of relative size and economic reach.

⁶ Human Development Report 2002. It is worth noting that the following additional countries have a national GDP less than Walmart (\$219b): Austria, Denmark, Finland, Hong Kong, Indonesia, Norway, Poland, Thailand, Saudi Arabia, South Africa, Turkey.

⁷ Aaron Bernstein, "Too Much Corporate Power?" BUSINESS WEEK, September 11, 2000.

⁸ Aaron Bernstein, "Too Much Corporate Power?" BUSINESS WEEK, September 11, 2000.

⁹ James D. Wolfensohn, President of the World Bank, "Remarks at the Second Globalization Conference," May 23, 2003. Complete remarks can be found on the web site of the world bank, <http://web.worldbank.org>

¹⁰ Human Development Report 2002, (2002, UNDP and Oxford University Press) at 19: "The world's richest 1% of people receive as much income as the poorest 57%. The richest 10% of the US population has an income equal to that of the poorest 43% of the world. Put differently, the income of the richest 25 million Americans is equal to that of almost 2 billion people. The income of the world's richest 5% is 114 times that of the poorest 5%."

¹¹ For those who would like details, consider Coca-Cola's decision to lay off 6,000 workers, Unocal's use of slave labor in Burma, GM's conscious corporate decision not to make safer fuel tanks but rather just to pay the damages of people injured and killed by fires, Marriott's restructuring which saddled some stockholders with hundreds of millions of dollars in debt, or how Allied Signal (with the assistance of Merrill Lynch) avoided \$140 million in corporate taxes by moving profits in and out of the USA in paper transactions. All of these are explained in detail in Lawrence E. Mitchell, CORPORATE IRRESPONSIBILITY: America's Newest Export (Yale University Press 2001) 19-29.

Another good compilation of pervasive corporate misbehavior can be found in Scott Klinger and Holly Sklar, "Titans of the Enron Economy: The Ten Habits of the Highly Defective Corporations," (United for Fair Economy, 2002). This book details the exploits and gives numerous examples of excessive CEO pay, layoffs, insider corporate boards, corporate political campaign contributions and corporate tax avoidance. The entire report is available on the website of the organization at <http://www.ufenet.org/>.

¹² Lawrence M. Friedman, A HISTORY OF AMERICAN LAW, 2nd edition, (1985) 188-189, 511.

As with so much else in early American law, American corporate law initially grew out of the English legal experience where royal authorization, the king in parliament, was necessary to create a corporation. But in the colonies there was little demand for corporate charters. James Willard Hurst, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, (University of Virginia Press, 1970) 2-9.

But see Douglas Arner, "Development of the American Law of Corporations to 1832," 55 SMU Law Review 23 (2002) where Arner traces the rich details of corporate law prior to the 1830s.

¹³ Friedman, *supra*, at 188-201, 511-525.

For another perspective, which emphasizes the efforts of states to try to keep corporations in the public interest, and provides a good summary of the development of the law and theory of corporations in the 19th century see David Million, Theories of the Corporation, 1990 Duke Law Journal 201, 205-211.

See also Carl J. Mayer, "Personalizing the Impersonal Corporation and the Bill of Rights," 41 Hastings Law Journal 577 (1990).

A good overview of the development of corporate law from 1780 to 1890 can be found in the essay, "From Special Privilege to General Utility, 1780-1890," by James Willard Hurst, THE LEGITIMACY OF THE

BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, (University of Virginia Press, 1970) 13-57.

¹⁴ Trustees of Dartmouth College v Woodward, 17 US 518 (1819).

¹⁵ At 17 US 518, 650.

Earlier in the decision the court described the legal status of a corporation and its analogy to a natural person. “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. 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...Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual...By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person. It is no more a state instrument, than a natural person exercising the same powers would be.” at 17 US 518, 636.

¹⁶ Alfred S. Konefsky, comment on Dartmouth College v Woodward, in THE OXFORD GUIDE TO UNITED STATES SUPREME COURT DECISIONS, edited by Kermit L. Hall, pp 71-72 (1999).

Professor Hurst describes this decision as blatant judicial law-making. “To rule that a corporation charter enjoyed the protection of a “contract” under the constitutional provision was a clear-cut act of judicial lawmaking. Indeed, the lawmaking is so clear as to indicate that the Court was pursuing an objective that it rated of high importance.” James Willard Hurst, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, (University of Virginia Press, 1970) at 63.

¹⁷ Friedman, *supra*, at 194.

In “From Special Privilege to General Utility, 1780-1890,” by James Willard Hurst, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, (University of Virginia Press, 1970).

¹⁸ William Gouge A SHORT HISTORY OF PAPER MONEY AND BANKING IN THE UNITED STATES TO WHICH IS PREFIXED AN INQUIRY INTO THE PRINCIPLES OF THE SYSTEM (1833) 41-42. Reprints of Economic Classics, Augustus M. Kelley Publishers, New York, 1968.

¹⁹ This grant of power was not even a part of the actual decision of the case but stated in introductory comments. Chief Justice Morrison R. Waite made an announcement without even attempting to justify such a bold interpretation of the Constitution: “The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion it does.” at 118 US 396.

See excellent short history Richard Grossman and Frank T. Adams, “Taking Care of Business: Citizenship and the Charter of Incorporation,” in Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY 59-72 (Apex Press 2001)

²⁰ 118 U.S. 394 (1886).

²¹ 163 U.S. 537 (1896).

²² Morgan and Edwards, *supra*, at 211.

²³ Connecticut Gen. Life Ins. Co. V. Johnson, 303 U.S. 77, 90 (1938) (Black, J., dissenting).

²⁴ For more on the ways that corporations have used and abused the bill of rights see Carl J. Mayer, "Personalizing the Impersonal: Corporations and the Bill of Rights," 41 *Hastings Law Journal* 577 (1990).

Supreme Court decisions extended the constitutional rights of corporations not to have their property or liberty denied without due process of law and that they were entitled to the equal protection of the laws. See discussion in *Minneapolis and St. Louis Railroad v Beckwith*, 129 US 26, 28 (1888).

In 1893 corporations were given Fifth Amendment rights; in 1906 Fourth Amendment protections against search and seizure; in 1936 First Amendment rights to freedom of speech; and in 1976, when money became equal to speech, corporation were given expansive rights to contribute to political candidates. *Morgan and Edwards*, supra, at 212. Corporations were given Fifth Amendment rights to due process in *Monogahela Navigation Co. V U.S.* 148 US 326 (1893). They were given Fourth Amendment protection in *Hale v Henkel*, 201 US 43 (1906). First Amendment protection was granted in *Grosjean v American Press Co.*, 297 US 233 (1936). Corporate contributions were unleashed in *Buckley v Valeo*, 424 US 1 (1976).

For more detailed list of rights and the occasional reversal (usually temporary) see Carl J. Mayer, supra.

²⁵ James Willard Hurst, *THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970*, (University of Virginia Press, 1970) at 66.

²⁶ Hurst, supra, at 69-70.

²⁷ Timothy L. Fort, Cindy A. Schipani, *Corporate Governance in a Global Environment: The Search for the Best of All Worlds*," 33 *Vanderbilt Journal of Transnational Law* 829, 843-845 (2000).

See also Hurst, supra, at pp 70-84 outlining the steadily liberalizing expansion of corporate law.

²⁸ Wells, supra, at 86-99, points to Adolf A. Berle, Jr. as the first proponent of this position. Berle had practiced as a corporate lawyer and had seen many of the abuses of stockholders by corporate managers in the 1920s first hand. See A.A. Berle, Jr., "Corporate Powers as Powers in Trust," 44 *Harvard Law Rev.* 1049 (1931) and A.A. Berle, Jr. "For Whom Corporate Managers Are Trustees," 45 *Harvard L. Rev.* 1365 (1932).

²⁹ Wells, supra, at 86-99, points to E. Merrick Dodd, Jr. as the earliest advocate for this point of view and the chief debater with Berle. See E. Merrick Dodd, Jr., "For Whom Are Corporate Managers Trustees?" 45 *Harvard L. Rev.* 1145 (1932).

³⁰ Wells, supra, at 99.

³¹ Wells, supra, at 99. Dates of publications added.

³² Wells, supra, at 101-105. See Adolf A. Berle, Jr., *The 20th Century Capitalist Revolution* (1954) and Adolf A. Berle, Jr., *Power Without Property: A New Development in American Political Economy* (1959)

Wells kindly adds the information that Berle acknowledged his transformation in a tribute to his opponent in a series of lectures at Northwestern University:

Twenty years ago, the writer had a controversy with the late Professor E. Merrick Dodd, of the Harvard Law School, the writer holding that corporate powers were powers in trust for shareholders while Professor Dodd argued that these powers were held in trust for the entire community. The argument has been settled...squarely in favor of Professor Dodd's contention. Berle, *20th Century*, supra, at 169.

³³ Wells, supra, at 105.

³⁴ Wells, supra, at 109-111. Eugene V. Rostow, "To Whom and for What Ends is Corporate Management Responsible?" in *Corporation in Modern Society* (Edward S. Mason, ed, 1961). The beautiful bewildering balderdash quote is at 63.

³⁵ Wells, supra, at 113-123.

³⁶ Donald E. Schwartz, *The Public Interest Proxy Contest: Reflections on Campaign GM*, 69 *Michigan L. Rev.* 419, 422 (1971). Wells, *supra*, at 113-118.

³⁷ Alfred F. Conard, *Reflections on Public Interest Directors*, 75 *Michigan L. Rev.* 941 (1977) and Donald E. Schwartz, *Federal Chartering of Corporations: An Introduction*, 61 *Geo. L. J.* 71 (1972). Wells, *supra*, at 118-123.

³⁸ Milton Friedman, *Social Responsibility of Business*, *N.Y. Times Magazine*, September 13, 1970, reprinted in Milton Friedman, *An Economist's Protest: Columns in Political Economy 177* (1972). Wells, *supra*, at 123-125.

³⁹ Wells, *supra*, at 125.

⁴⁰ Wells, *supra*, at 125-140.

⁴¹ *Economic Justice for All* (1986) para 280.

⁴² “The regulations legally enacted for corporations, with their divided responsibility and limited liability, have given occasion to abominable abuses. The greatly weakened accountability makes little impression, as is evident, upon the conscience. The worst injustices and frauds take place beneath the obscurity of the common name of a corporative firm...A stern insistence on the moral law, enacted with vigor by civil authorities, could have dispelled or perhaps abetted these enormous evils. This however, was too often lamentably wanting.” *Quadragesimo Anno, After Forty Years*, (1931) para 132-133

“Free competition, and especially economic domination, must be kept within definite and proper bounds, and must be brought under effective control of the public authority in matters pertaining to the latter’s competence....QA para 110...

“The regulations legally enacted for corporations, with their divided responsibility and limited liability, have given occasion to abominable abuses. The greatly weakened accountability makes little impression, as is evident, upon the conscience. The worst injustices and frauds take place beneath the obscurity of the common name of a corporative firm...QA para 132.”

⁴³ “It is indeed true, as history clearly shows, that owing to the change in social conditions, much that was formerly done by small bodies can nowadays be accomplished only by large organizations. Nevertheless, it is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community that which they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies.” *Quadragesimo Anno, After Forty Years*, (1931) para 79.

⁴⁴ Michael E. Allsop, “Subsidiarity, Principle Of,” entry in *THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT*, editor, Judth A. Dwyer (1994, Liturgical Press, Collegeville, Minnesota) 927-929.

⁴⁵ “First, one may not take as the ultimate criteria in economic life the interests of individuals or organized groups, nor unregulated competition, nor excessive power on the part of the wealthy, nor the vain honor of the nation or its desire for domination, nor anything of this sort. Rather it is necessary that economic undertakings be governed by justice and charity as the principle laws of social life.

The second point...is that both within individual countries and among nations there be established a juridical order, with appropriate public and private institutions, inspired by social justice, so that those who are involved in economic activities are enabled to carry out their tasks in conformity with the common good.” *Mater et Magistra*, (1961) paras 38-40.

⁴⁶ In economic enterprises it is people who work together, that is, free and independent human beings created in the image of God. Therefore the active participation of everyone in running an enterprise should be promoted. This participation should be exercised in appropriately determined ways. It should take into account each person's function, whether it be one of ownership, hiring, management, or labor. It should provide for the necessary unity of operations. *Gadium et Spes* para 68.

⁴⁷ The recent Council reminded us of this: "God intended the earth and all that it contains for the use of every human being and people. Thus, as all men follow justice and unite in charity, created goods should abound for them on a reasonable basis." All other rights whatsoever, including those of property and of free commerce, are to be subordinated to this principle." Para 22.

⁴⁸ *Octogesima Adeniens, A Call to Action*, (1971) para 44.

⁴⁹ LE, paras 17.1-17.4.

⁵⁰ "Large corporations and large financial institutions have considerable power to help shape economic institutions within the United States and throughout the world. With this power goes responsibility and the need for those who manage it to be held to moral and institutional accountability." *Economic Justice for All*, (1986) para 111.

⁵¹ "The primary norm for determining the scope and the limits of governmental intervention is the "principle of subsidiarity"... This principle states that, in order to protect basic justice, government should undertake only those initiatives which exceed the capacity of individuals or private groups acting independently....This does not mean, however, that the government which governs least governs best. Rather it defines good government intervention as that which truly "helps" other social groups contribute to the common good by directing, urging, restraining, and regulating economic activity as "the occasion requires and necessity demands." This calls for cooperation and consensus-building among the diverse agents in our economic life, including government. EJA, para 124.

⁵² In U.S. law, the primary responsibility of managers is to exercise prudent business judgment in the interest of a profitable return to investors. But morally this legal responsibility may be exercised only within the bounds of justice to employees, customers, suppliers and the local community. Corporate mergers and hostile takeovers may bring greater benefits to shareholders, but they often lead to decreased concern for the well-being of local communities and make towns and cities more vulnerable to decisions made from afar...
...Although shareholders can and should vote on the selection of corporate directors and on investment questions and other policy matters, it appears that return on investment is the governing criterion in the relation between them and management. We do not believe this is an adequate rationale for shareholder decisions. The question of how to relate the rights and responsibilities of shareholders to those of the other people and communities affected by corporate decisions is complex and insufficiently understood. We, therefore, urge serious long-term research and experimentation in this area. More effective ways of dealing with these questions are essential to enable firms to serve the common good." *Economic Justice for All* (1986) paras 305-306.

⁵³ This is from an address on April 17, 1988. As quoted in Jean-Yves Calvez and Michael J. Naughton, "Catholic Social Teaching and the Purpose of the Business Organization," in *Rethinking the Purpose of Business: Interdisciplinary Essays from the Catholic Social Tradition*, edited by S.A. Cortright & Michael J. Naughton (University of Notre Dame Press 2002) at 11, quoting Kennedy, et al, *The Dignity of Work*, 128.

⁵⁴ Donal Dorr, *OPTION FOR THE POOR: A Hundred Years of Catholic Social Teaching* (Orbis 1992).

⁵⁵ Three billion on \$2 a day is taken from James D. Wolfensohn, President of the World Bank, “Remarks at the Second Globalization Conference,” May 23, 2003. Complete remarks can be found on the web site of the world bank, <http://web.worldbank.org>.

The facts on inequality are taken from the Human Development Report 2002, (2002, UNDP and Oxford University Press) at 19:

“The world’s richest 1% of people receive as much income as the poorest 57%. The richest 10% of the US population has an income equal to that of the poorest 43% of the world. Put differently, the income of the richest 25 million Americans is equal to that of almost 2 billion people. The income of the world’s richest 5% is 114 times that of the poorest 5%.”

⁵⁶ The Church acknowledges the legitimate role of profit as an indication that a business is functioning well...But profitability is not the only indicator of a firm’s condition...In fact, 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. Profit is a regulator of the life of a business, but it is not the only one; other human and moral factors must be considered which, in the long term, are at least equally important for the life of a business. CA 35.3

We have seen that it is unacceptable to say that the defeat of the so-called “real socialism” leaves capitalism as the only model of economic organization. Centesimus Annus (1991) 35.4

It is the task of the state to provide for the defense and preservation of common goods such as the natural and human environments, which cannot be safeguarded simply by market forces. CA 40.

⁵⁷ James Willard Hurst, *THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970*, (University of Virginia Press, 1970) 58. (Emphasis supplied).

⁵⁸ 1 American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations*, section 2.01(a) (1994).

⁵⁹ Lawrence E. Mitchell, *CORPORATE IRRESPONSIBILITY* 4 (New Haven, Yale University Press 2001).

⁶⁰ Mitchell, *Corporate Irresponsibility*, *supra*, at 5.

⁶¹ Mitchell, *Corporate Irresponsibility*, *supra*, at 13-14, 41-48, 66-83, 97-111. “straight jacket” quote is at 43; “corporate misbehavior” quote is at 97.

⁶² Peter Driscoll, “Catholic Social Thought and Corporate Accountability: an Introduction to the Enron Case,” (unpublished paper) available on the website of the Center of Concern, Corporate Accountability Resources, www.coc.org/resources/articles/print.html?ID=202 (As of 2-23-03)

⁶³ Mitchell, *Corporate Irresponsibility* 94-250. At least one commentator, who otherwise appreciates the information about corporate ills shared by Mitchell in this book, sees Mitchell’s remedies as much like those of Professor Dodd in the 1930s Harvard Law debate about placing emphasis with shareholders (Berle) versus managers (Dodd). William W. Bratton, “Never Trust A Corporation,” 70 *GWLR* 867 (2002).

⁶⁴ For some of the many suggestions and campaigns see: John Cavanagh, Jerry Mander, et al, *ALTERNATIVES TO ECONOMIC GLOBALIZATION: A Better World is Possible* (Berrett-Koehler Publishers, San Francisco 2002) 121-150; Citizen Works proposal for constitutional amendment to define only human beings and not corporations as persons entitled to the privileges and immunities of citizenship, *Recipes for Reform*, www.citizenworks.org; Hartman, *supra*, at 251-285; Charlie Gray, “Chartering a New Course: Revoking Corporation’s Right to Exist,” 23 *Multinational Monitor*, Numbers 10 & 11, October/November 2002, 8-11; David C. Korten, *THE POST-CORPORATE WORLD: LIFE AFTER CAPITALISM* (Kumerian Press 1999) 190-191; William Myers essay “Santa Clara Blues” can be found at

http://reclaimdemocracy.org/pdf/primers/santa_clara_blues.pdf; Perhaps the premier source for the development of these ideas is the influential Program on Corporations Law and Democracy, POCLAD, www.poclad.org; ReclaimDemocracy.org has an active campaign and has posted many resources on their web site on this issue. <http://reclaimdemocracy.org/personhood/>; Redwood Coast Alliance for Democracy advocates and educates on this issue, see materials posted on <http://www.iiipublishing.com/alliance.htm>; Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY, (Apex Press 2001);

⁶⁵ National Lawyer's Guild 2002 Resolution to create Campaign to Dismantle Corporate Power and Reclaim Democracy, www.nlg.org; The entire resolution is reprinted in Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY, 252-253 (Apex Press 2001).

⁶⁶ Green Party USA Platform to repeal corporate personhood, www.gp.org candidate pledge.

⁶⁷ Women's International League for Peace and Freedom, Challenge Corporate Power Campaign, www.wilpf.org. See also the article "An Interview with Jan Edwards, Challenging Corporate Personhood: Corporations, the U.S. Constitution and Democracy," 23 Multinational Monitor, Numbers 10 & 11, October/November 2002, pp 30-32.

⁶⁸ Richard Grossman, "Wresting Governing Authority from the Corporate Class: Driving People into the Constitution," 1 Seattle Journal for Social Justice 147 (2002); Richard Grossman, "Revoking the Corporation," 11 Journal of Environmental Law and Litigation 141 (1996); Hartman, supra, at 251-285. See also the campaign of reclaimdemocracy.org and the many resources they have posted on their web site on this issue. <http://reclaimdemocracy.org/personhood/>

⁶⁹ Some of the questions include the following. If corporations are so powerful why would anyone think that they would allow themselves to be stripped of their legal existence? Wouldn't corporations band together and fight to the end in whatever country tries this and then if they lost just migrate to another country that they can subjugate and operate from there? Even if successful what would a post-corporate world look like, how would businesses be organized and why would the absence of legal personhood make businesses any more moral than corporations?

⁷⁰ Emily Gersema, "Farm Scene: Local Governments Fight Corporate Farms," Kansas City Star, April 3, 2002; Joe Elias, "Another ban put on large farming," Patriot-News Harrisburg, December 17, 2000. Thomas Linzey, "Turning the Tables on Pennsylvania Agri-Business," in Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY 240 (Apex Press 2001).

⁷¹ Organic Consumers Association, "First Ordinance passes in US that abolishes corporate personhood," December 24, 2002. See www.organicconsumersgroup.org

⁷² See example in Hartman, supra, at 294-314. Also see model ordinance posted on the website of the Pennsylvania based Community Environmental Legal Defense Fund <http://www.celdf.org/scm/ord/ord12.asp>

⁷³ Hartman, supra, at 315-326. Ward Morehouse, "Creating a Model Corporate Code," in Dean Ritz, editor, DEFYING CORPORATIONS, DEFINING DEMOCRACY 261 (Apex Press 2001). Also see model state statutes, briefs and citizen guides posted on the website of the Pennsylvania based Community Environmental Legal Defense Fund <http://www.celdf.org/cdp.asp>

On the state level, there have also been individual efforts to revoke the corporate charters of some particularly outrageous corporations. See description of actions in New York to revoke tobacco industry front groups, in California to revoke Unocal, and in other states to revoke the charters of unethical companies (often for such ministerial problems as failing to file annual reports) in Charlie Gray, "Chartering a New Course: Revoking Corporation's Right to Exist," 23 Multinational Monitor, Numbers 10 & 11, October/November 2002, 8-11.

⁷⁴ Robert W. Benson, "How Many Strikes Do Big Corporations Get? The Petition to Revoke UNOCAL's Corporate Charter," 55 Guild Practitioner 113 (1998) is a reprint of major portions of that petition which was filed for environmental devastation, unfair practices against women and other workers, and violations of international human rights in several countries; Thomas Linzey, "Petition to Attorney General of Delaware to Revoke Corporate Charters of WMX Technologies and Chemical Waste Management Inc.," 52 Guild Practitioner 116 (1995) for environmental crimes.

⁷⁵ Hartman, *supra*, at 294, quoting Daniel Brannen.

⁷⁶ Justice Black's dissent is so powerful that this footnote includes large sections of the text in order to demonstrate how passionate and comprehensive was his critique.

Justice Hugo Black, dissenting in *Connecticut General Life Insurance Co. v Johnson*, 303 US 77, 85-90 (1938). "I do not believe the word 'person' in the Fourteenth Amendment includes corporations. The doctrine of *stare decisis*, however appropriate and even necessary at times, has only a limited application in the field of constitutional law."

This Court has many times changed its interpretations of the Constitution when the conclusion was reached that an improper construction had been adopted...A constitutional interpretation that is wrong should not stand. I believe this Court should now overrule previous decisions which interpreted the Fourteenth Amendment to include corporations.

Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection....Certainly, when the Fourteenth Amendment was submitted for approval, the people were not told that the states of the South were to be denied their normal relationship with the Federal Government unless they ratified an amendment granting new and revolutionary rights to corporations. This Court, when the *Slaughter House Cases* were decided in 1873, had apparently discovered no such purpose. The records of the time can be searched in vain for evidence that this amendment was adopted for the benefit of corporations. It is true that in 1882, twelve years after its adoption, and ten years after the *Slaughter House Cases* an argument was made in this Court that a journal of the joint Congressional Committee which framed the amendment, secret and undisclosed up to that date, indicated the committee's desire to protect corporations by the use of the word 'person.' Four years later, in 1886, this Court in the case of *Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394, 6 S.Ct. 1132, 30 L.Ed. 118, decided for the first time that the word 'person' in the amendment did in some instances include corporations. A secret purpose on the part of the members of the committee, even if such be the fact, however, would not be sufficient to justify any such construction. The history of the amendment proves that the people were told that its purpose was to protect weak and helpless human beings and were not told that it was intended to remove corporations in any fashion from the control of state governments. The Fourteenth Amendment followed the freedom of a race from slavery. Justice Swayne said in the *Slaughter Houses Cases*, *supra*, that: 'By 'any person' was meant all persons within the jurisdiction of the State. No distinction is intimated on account of race or color.' Corporations have neither race nor color. He knew the amendment was intended to protect the life, liberty, and property of human beings.

The language of the amendment itself does not support the theory that it was passed for the benefit of corporations.

The first clause of section 1 of the amendment reads: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' Certainly a corporation cannot be naturalized and 'persons' here is not broad enough to include 'corporations.'

The first clause of the second sentence of section 1 reads: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' While efforts have been made to persuade this Court to allow corporations to claim the protection of his clause, these efforts have not been successful.

The next clause of the second sentence reads: 'Nor shall any State deprive any person of life, liberty, or property, without due process of law.' It has not been decided that this clause prohibits a state from depriving a corporation of 'life.' This Court has expressly held that 'the liberty guaranteed by the 14th Amendment against deprivation without due process of law is the liberty of natural, not artificial persons.' Thus, the words 'life' and 'liberty' do not apply to corporations, and of course they could not have been so intended to apply. However, the decisions of this Court which the majority follow hold that corporations are included in this clause in so far as the

word 'property' is concerned. In other words, this clause is construed to mean as follows: 'Nor shall any State deprive any human being of life, liberty or property without due process of law; nor shall any State deprive any corporation of property without due process of law.' The last clause of this second sentence of section 1 reads: 'Nor deny to any person within its jurisdiction the equal protection of the laws.' As used here, 'person' has been construed to include corporations.

Both Congress and the people were familiar with the meaning of the word 'corporation' at the time the Fourteenth Amendment was submitted and adopted. The judicial inclusion of the word 'corporation' in the Fourteenth Amendment has had a revolutionary effect on our form of government. The states did not adopt the amendment with knowledge of its sweeping meaning under its present construction. No section of the amendment gave notice to the people that, if adopted, it would subject every state law and municipal ordinance, affecting corporations, (and all administrative actions under them) to censorship of the United States courts. No word in all this amendment gave any hint that its adoption would deprive the states of their long-recognized power to regulate corporations.

The second section of the amendment informed the people that representatives would be apportioned among the several states 'according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.' No citizen could gather the impression here that while the word 'persons' in the second section applied to human beings, the word 'persons' in the first section in some instances applied to corporations. Section 3 of the amendment said that 'no person shall be a Senator or Representative in Congress,' (who 'engaged in insurrection'). There was no intimation here that the word 'person' in the first section in some instances included corporations.

This amendment sought to prevent discrimination by the states against classes or races. We are aware of this from words spoken in this Court within five years after its adoption, when the people and the courts were personally familiar with the historical background of the amendment. 'We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. Yet, of the cases in this Court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of 1 per cent. invoked it in protection of the negro race, and more than 50 per cent. asked that its benefits be extended to corporations.

If the people of this nation wish to deprive the states of their sovereign rights to determine what is a fair and just tax upon corporations doing a purely local business within their own state boundaries, there is a way provided by the Constitution to accomplish this purpose. That way does not lie along the course of judicial amendment to that fundamental charter. An amendment having that purpose could be submitted by Congress as provided by the Constitution. I do not believe that the Fourteenth Amendment had that purpose, nor that the people believed it had that purpose, nor that it should be construed as having that purpose.

⁷⁷ 303 US 77, at 90 (1938).

⁷⁸ Citizen Works proposal for constitutional amendment to define only human beings and not corporations as persons entitled to the privileges and immunities of citizenship, Recipes for Reform, www.citizenworks.org; Hartman, supra, at 316, drafted by Daniel Brannen.

⁷⁹ ALTERNATIVES TO ECONOMIC GLOBALIZATION, report drafting committee, John Cavanagh, Jerry Mander, et al, at 145 (Berrett-Koehler Publishers, San Francisco 2002).

⁸⁰ Centesimus Annus (1991) 35.4.

⁸¹ David Million, Theories of the Corporation, 1990 Duke Law Journal 201, 262.