Virtue Ethics and Natural Law Responses to Human Rights Quandaries in Business

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Abstract

This article is motivated by certain issues for which, in current Business and Human Rights (BHR) discourse, largely framed in terms of the Ruggie reports, no satisfactory solutions have been found to date. These quandaries refer to (a) foundational matters: the link between human rights law and ethics; (b) normative force: the obligatoriness of human rights claims on corporations; and (c) scope and content of human rights claims on corporations. Turning to the virtue ethics and natural law (VENL) tradition, we encounter the following possible responses: (a) positive laws, such as those concerning human rights, ultimately require a basis in natural law; (b) although the public use of the coercive force of law belongs to the state alone, its private use by non-state actors such as individuals and corporations may be legitimate in some cases; and (c) practical wisdom is necessary in the proper interpretation and implementation of human rights claims on corporations, taking into account relevant contingencies. The blending of BHR discourse with the VENL tradition is best captured in modern Catholic Social Teaching (CST). Although historically CST has adopted the VENL language, engagement with social issues in the modern world has enabled it to reach an understanding with rights theory as well, particularly in connection with business and the economy.

Keywords: virtue ethics in business, natural law in business, law of the peoples (ius gentium), Catholic Social Teaching in business

I. Introduction

A major tension underlying both past and current Business and Human Rights (BHR) literature concerns how corporations, as non-state actors, could be legally coerced to respond to human rights violations and to human rights claims made by individuals.[1] According to the conventional view, only states are bound by human rights norms; and when they do, states are bound by the full force of law, not just moral suasion. How, then, could this be applied to corporations?

In attempting to resolve this basic tension, further quandaries arise in BHR discussions. One is the foundational issue or the link, if any, between human rights law, on the one

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[1] See Andrew Clapham, *Human Rights in the Private Sphere* (Oxford: Clarendon Press, 1993); Olivier De Schutter, 'Towards a New Treaty on Business and Human Rights' (2016) 1:1 *Business and Human Rights Journal*.

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hand, and ethical or moral duties and obligations, on the other.[2] A widespread idea is that human rights law cannot be a 'purely positive law' based on convention and agreement, like traffic rules governing circulation on the right- or left-hand side of roads. There ought to be substantive moral principles behind it. However, efforts to articulate and structure those principles have been unsuccessful so far in garnering universal consensus. The fundamental question, then, is whether there is a moral basis (and if so, what?) or not for human rights law.

A second problem relates to the normative force or mandatoriness of human rights claims on corporations.[3] This refers to the strength with which human rights law (not moral principles) binds states and private actors, such as corporations and individuals. States have legally actionable duties enforceable through domestic and international accountability mechanisms. But what about corporations? Although many human rights violations are also violations of domestic law for which corporations can be held accountable, there are serious difficulties in the accountability process due to the legal and international nature of multi-national corporations (MNCs). There is a whole range of responses from BHR scholars. Some defend that corporations have duties equivalent to states,[4] others speak only of obligations,[5] and still others, mere responsibilities.[6]

A third point in question revolves around the scope of human rights claims staked against corporations, whether they involve 'respecting', 'protecting', or 'remedying', as established by the United Nations (UN) standards formulated under Ruggie.[7] Once more, depending on the particular claim, BHR advocates proffer a variety of conflicting responses.

The purpose of this article is to frame these issues from the lens of virtue ethics and natural law (VENL) theory applied to business, in the belief that it could provide helpful insights towards their resolution. Ruggie himself takes ethics into account as part of 'social expectations'[8] and most business ethics scholars examine BHR from the

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[2] Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22:4 *Business Ethics Quarterly*; Florian Wettstein, 'Normativity, Ethics, and the UN Guiding Principles on Business and Human Rights: A Critical Assessment' (2015) 14:2 *Journal of Human Rights*; Denis G Arnold, 'Corporations and Human Rights Obligations' (2016) 1:2 *Business and Human Rights Journal*.

[3] Wettstein (2012), note 2; Wettstein (2015), note 2; Nien-hê Hsieh, 'Business Responsibilities for Human Rights: A Commentary on Arnold' (2017) 2:2 *Business and Human Rights Journal*.

[4] David J Karp, *Responsibility for Human Rights. Transnational Corporations in Imperfect States* (Cambridge: Cambridge University Press, 2014).

[5] Florian Wettstein, *Multinational Corporations and Global Justice. Human Rights Obligations of a Quasi-Governmental Institution* (Stanford: Stanford University Press, 2009).

[6] Hsieh, note 3; Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework', HR/PUB/11/04 (2011).

[7] Wettstein (2012), note 2; Wettstein (2015), note 2; Florian Wettstein, 'From Side Show to Main Act: Can Business and Human Rights Save Corporate Responsibility?' in Dorothée Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights. From Principles to Practice* (London and New York: Routledge, 2016); Michael A Santoro, 'Sullivan Principles or Ruggie Principles? Applying the Fair Share Theory to Determine the Extent and Limits of Business Responsibility for Human Rights' (2012) XXVIII/3 *Notizie di Politeia*; George G Brenkert, 'Business Ethics and Human Rights: An Overview' (2016) 1:2 *Business and Human Rights Journal*.

[8] Human Rights Council, 'Protect, Respect, and Remedy: A Framework for Business and Human Rights', Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, A/HRC/8/5 (7 April 2008); Santoro, note 7.

deontological and contractualist perspective;[9] yet to our knowledge, hardly anything has been published from the VENL framework. The intention is not to replace BHR discourse – meaning first, the Ruggie reports as the 'focal point' of the debate, and second, the contributions of business ethics to BHR – but to seek meaningful engagement for the benefit of business ethics theory and practice. For instance, BHR may be the best approach in laying down and enforcing the minimum conditions individuals, corporations and states should respect in business. VENL could then provide a complement, indicating the path leading to excellence or 'virtue' (*arete*) and flourishing (*eudaimonia*).[10] Furthermore, with its robust background in developmental psychology, VENL could also contribute to matters pertaining to individual agency, such as excellence in leadership and how this shapes ethical business cultures,[11] while BHR focuses on its strengths in corporate legal structure and management instruments, such as human rights due diligence mechanisms, grievance mechanisms, reporting, and so forth. As we shall later see, VENL engagement with BHR can be greatly facilitated with recourse to the Catholic Social Teaching (CST) tradition, which straddles the two languages of 'virtues' and 'rights'.[12]

Indeed, even a cursory look at BHR and VENL reveals important similarities. Both approaches are strongly normative: BHR establishes corresponding duties to rights claims, and VENL teaches that virtue and natural law compliance are *sine qua non* conditions for flourishing, which it considers the supreme good and final end of human beings. They also assert themselves as universally valid for all humans without exception, and BHR, like VENL, presents objective or independent standards by which agency could be morally judged. At the same time, there are some undeniable differences between BHR and VENL. One refers to dependence (or not) on a social contract and state or international legislation, and another, to the understanding of freedom in relation to law. VENL asserts that human beings are by nature social creatures, necessarily belonging to natural communities such as families and political communities wherein they achieve flourishing, while for BHR, they are individuals who voluntarily enter into social contracts to ensure rights, allowing each of them to pursue their own life goals. While the proposed moral foundation for BHR is dependent on consensus and social contracts, this is not the case with VENL. VENL understands laws as rational guides to achieve common goals such as flourishing, whereas BHR perceives them largely as necessary obstacles or brakes imposed by society on individual wills, purportedly for some general interest.

[9] See Wesley Cragg, 'Human Rights and Business Ethics: Fashioning a New Social Contract' (2000) 27:1,2 *Journal of Business Ethics*; Denis G Arnold, 'Transnational Corporations and the Duty to Respect Basic Human Rights' (2010) 20:3 *Business Ethics Quarterly*.

[10] Ignacio Ferrero and Alejo JG Sison, 'A Quantitative Analysis of Authors, Schools and Themes in Virtue Ethics Articles in Business Ethics and Management Journals (1980–2011)' (2014) 23:4 *Business Ethics: A European Review*; Alejo JG Sison, *Happiness and Virtue Ethics in Business. The Ultimate Value Proposition* (Cambridge: Cambridge University Press, 2015).

[11] Alejo JG Sison and Ignacio Ferrero, 'How Different is Neo-Aristotelian Virtue from Positive Organizational Virtuousness?' (2015) 24:2 *Business Ethics: A European Review*.

[12] Alejo JG Sison, Ignacio Ferrero and Gregorio Guitián, 'Human Dignity and the Dignity of Work: Insights from Catholic Social Teaching' (2016) 26:4 *Business Ethics Quarterly*.

The rest of the article proceeds as follows. First, we shall provide a general overview of the VENL perspective (section II). We will then discuss each of the above-mentioned BHR quandaries in light of VENL insights (section III): whether or not there is a moral foundation for human rights law (and if so, which?), the normative force or binding strength of human rights law on public (states) and private actors (corporations and individuals), and the 'scope' of human rights law in terms of negative ('respect') and positive ('protect' and 'remedy') duties or obligations. Afterwards, we shall turn to VENL inputs that may be adopted by BHR, and the benefits we can expect to obtain, not only for the theory, but also for the practice of business ethics (section IV). We shall show how CST, which uses the language of both virtues and of rights, can help in melding VENL with BHR. The final section concludes (section V).

II. An Overview of the VENL Perspective

Before immersing ourselves in the discussion of BHR issues and how they could be addressed from the VENL perspective, we need to say a few words about the latter. Although virtue ethics and natural law are separate theories, they are not only compatible but also highly complementary. Virtue ethics takes its name from *arete* or 'excellence' in Greek, meaning the best achievable by human beings, from the viewpoint of their supreme good or final end, that is flourishing (*eudaimonia*).[13] Virtue is a 'multi-track disposition', found in different operational levels of human nature, such as character, habits, actions and so forth, among which a feedback mechanism exists.[14] Hence, the repetition of acts of courage creates an eponymous habit which, in turn, strengthens this same character trait, for instance. Natural law presupposes an order in nature that could be discovered through the exercise of reason.[15] This order, in the form of inclinations or tendencies towards proper functioning, indicates the path to excellence or virtue. Reflecting on flourishing (*eudaimonia*) as the optimum functioning of human nature (natural law), we could ascertain which dispositions to action we need to cultivate (virtue ethics) in order to reach it.

A final preliminary step consists of connecting the VENL tradition as it applies to business and BHR. BHR descends from the deontological school in business ethics, according to which the ethical choice (what is right or just) is what conforms to the relevant set of laws or rules. While VENL is agent-centred, pre-occupied with the kind of person we become by performing certain actions, BHR is action-centred, dwelling more on compliance with whatever has been agreed upon to be a just set of rules. This is not to say that VENL lacks rules; it is just that these are often too general or framed as

[13] Ferrero and Sison, note 10; Sison and Ferrero, note 11; Sison, note 10.

[14] Rosalind Hursthouse, 'Virtue Ethics' in Edward N Zalta (ed.), *The Stanford Encyclopedia of Philosophy* Fall, 2013 edn., http://plato.stanford.edu/archives/fall2013/entries/ethics-virtue/ (accessed 23 September 2017).

[15] Kevin T Jackson, 'Cosmopolitan New Natural Law: Discerning Virtue and Responsibilities in Global Economic Governance' in Alejo JG Sison, Gregory R Beabout and Ignacio Ferrero (eds.), *Handbook of Virtue Ethics in Business and Management*, vol. 1 (Dordrecht: Springer, 2017); Samuel Gregg, 'New Classical Natural Law Theory, Virtue, and the Economy' in Alejo JG Sison, Gregory R Beabout and Ignacio Ferrero (eds.), *Handbook of Virtue Ethics in Business and Management*, vol. 1 (Dordrecht: Springer, 2017); Michele Mangini, 'What Virtue for Business Ethics?' in Alejo JG Sison, Gregory R Beabout and Ignacio Ferrero (eds.), *Handbook of Virtue Ethics in Business and Management*, vol. 1 (Dordrecht: Springer, 2017).

prohibitions, such that they are of limited help in decision-making. Neither is BHR oblivious of subjective states in behaviour; only these are considered less relevant and much more difficult to determine for neutral third-party observers than rule-following. In any case, while VENL is perfectivist in its goal of flourishing, BHR gives more latitude and may even be agnostic, so long as actors do not infringe on each other's rights and are equally guaranteed as much freedom as possible.

At the bottom of the differences between BHR and VENL in framing and responding to the quandaries to be explored, are rival conceptions of what human beings are. For BHR, as for most Enlightenment thought, human beings are essentially individuals who enter into social contracts in pursuit of purely individual interests in terms of utilities and satisfactions.[16] Ideally, there should be no limits to these pursuits, but the world being what it is, we need laws as concessions to a second-best option, because otherwise, 'life would be nasty, brutish and short'.[17] Laws are, above all, agreed upon procedures in adjudicating competing claims, without an ulterior basis in nature. They are as good as the documents on which they are printed and the signatures they gather. Deep down, they represent a check or opposing force to individual wills and inclinations. Natural rights are our dearly-held powers or capabilities for action which we have not surrendered to states upon 'signing up' to the constitutive social contracts. In fact, we expect states to protect and stand up for our natural rights as their primary role and function.

VENL, on the other hand, digs its roots in a pre-modern era, spanning Aristotle, Aquinas and current CST, among others.[18] For this tradition, human beings are always and in equal respects individual and relational or social beings. 'By nature' or necessarily, they live in groups such as families, villages and political communities, not only for survival, but also for flourishing. The final end or ultimate good of human beings, therefore, is a common good. It cannot be achieved by individuals alone and isolatedly, but only in concert with other individuals from the same political community or state. Key to achieving this good life for human beings, besides sufficient material resources, are the proper laws based on nature which enable the practice of the virtues. Laws, therefore, are guides that can be discovered rationally and which show the general direction towards which virtues can be developed. Based on nature, laws exert a normative force even if they have not been written or positively spelled out. Rights are claims human beings can lodge against each other and against other social actors such as states and corporations (who in turn have corresponding duties), in accordance with the laws and justice. There are no 'natural rights' previous to a 'social contract', and states are not mere instruments to further individual interests in the most effective and efficient way. Human nature is social, human beings naturally belong to political communities (roughly, the equivalent of states), and nature-based laws are guides to human virtues and flourishing. Natural law is discovered through the rational examination of human inclinations and tendencies.

[16] Alasdair MacIntyre, *After Virtue*, 3rd edn. (London: Duckworth, 2007).

[17] Thomas Hobbes, *Leviathan or the Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil* (1651) part 1, ch. 13.

[18] Alejo JG Sison and Joan Fontrodona, 'The Common Good of the Firm in the Aristotelian-Thomistic Tradition' (2012) 22:2 *Business Ethics Quarterly*.

III. Business and Human Rights Quandaries and Insights from the Virtue Ethics and Natural Law Tradition

A. Foundation: What is the Link between Human Rights (Law) and Ethics or Morals (Moral Law)?

As the UN Secretary General's Special Representative on business and human rights, John Ruggie delivered a series of reports[19] between 2008 and 2011 that have become the basic texts in the BHR discussion. Like the UN Universal Declaration of Human Rights 60 years before, he chose to omit references to ethical foundations. This does not mean the reports did not have them; he only thought it was better not to make such ethical foundations explicit.

Wettstein offers two closely related reasons for this omission: one pragmatic, the other, sceptical.[20] According to the pragmatic view, the documents were meant, above all, to be an instrument in moving forward in the debate, a 'quick fix' to the BHR problems of the time. Thus, they took hold of whatever 'works best', 'maximizes results' and gets a 'buy-in' from corporations, which is an appeal to their 'interests' in not having their social licence revoked or being shamed in the court of public opinion. The reports were written with effectiveness and efficiency in mind. The sceptical view arises from lingering doubts whether an agreement could in fact be reached regarding a suitable ethical foundation, in case there were indeed any. Uncertainties were further compounded by the fear of 'moral imperialism', imposing an ethics that was 'too western' in what was a multi-cultural, global context. Insofar as searching for an adequate ethical foundation would have entailed unending controversies among incommensurable positions, it would have also caused the process to stall, or worse, encourage participants to walk away.

In light of the above, the reports were put forward as ethically free-standing texts. Such an understanding of human rights, devoid of any specific moral grounding[21], could indeed prove useful in private initiatives like the UN Global Compact or the UN Guiding Principles on Business and Human Rights (UNGPs), establishing corporate obligations towards harm-avoidance and non-interference. States remained as the sole bearers of positive duties to protect and remedy human rights claims; only they were bound by international instruments establishing human rights obligations. Nevertheless, as Ruggie suggested, the 'social license' to operate included the obligation of corporations to respect or not to infringe human rights, however enforceable this may be, before domestic courts and in the absence of appropriate legislation.[22]

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[19] Human Rights Council, 'Clarifying the Concepts of "Sphere of Influence" and "Complicity"', Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, A/HRC/8/16 (15 May 2008); Human Rights Council, note 8; Human Rights Council, note 6.

[20] Wettstein (2015), note 2, 174–177.

[21] Arnold, note 9, 378–379.

[22] Human Rights Council, 'Business and Human Rights: Towards Operationalizing the "Protect, Respect, and Remedy" Framework', Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/11/13 (22 April 2009).

Hardly anyone was satisfied with this minimalist, purely political formulation of corporate human rights obligations, without a clear moral grounding.[23] The fundamental moral question of why corporations, as private actors, should bear human rights obligations[24] did not disappear. No rule or law by itself can respond to this query since it undergirds that rule or law's very motivation, enactment and application. Without it, the rule or law would be an exercise of pure force bereft of reason. Furthermore, encouraging corporations to honour human rights obligations because otherwise, it could hurt their profits or bottom-line ('business case'), as the reports suggest, could be self-defeating. This approach only serves to reinforce the instrumentalist, utilitarian thinking which gave rise to the problems in the first place.

Hence, despite efforts to produce documents which were useful or pragmatic and acceptable to all because they did not reference any particular moral foundation, the contrary effect could have been achieved. It was feared that they entrenched the business logic of profit maximization even more.

We began with a simple query: based on the Ruggie reports, is there a moral foundation for human rights obligations on the part of corporations?; and if so, what? Instead of a straightforward response, what we have is a quandary: although it would be better if the reports had a moral foundation, there is none due to a lack of agreement. The problem is not so much the moral foundation – even a sceptic's silence could be interpreted to advocate a kind of utilitarian instrumentalism – but the lack of agreement. Consensus, then, is the determining factor in the moral justification of corporate human rights obligations.

Even from within the realm of BHR discourse[25] and boundaries[26], we find an incessant demand for articulating a moral foundation for corporate human rights obligations. For some, moral rights are 'pre-positive and pre-political'[27], claims 'prior' or 'independent' of codified rules and institutions[28]. Moral justifications for BHR, then, are like the proverbial elephant in the room. Everyone knows it is there, but people are wary to acknowledge its presence, because of the controversy it is bound to stir.

1. Law and Virtue in VENL

In this section we will show how the VENL tradition articulates a coherent normative position that includes both laws and ethics. Laws are understood as rational imperatives which safeguard minimum necessary conditions for a just social order. By so doing, laws also enable the development and exercise of the virtues as moral excellences, indispensable to achieve flourishing within political communities. Among the fundamental laws are those establishing and protecting basic human rights. Unlike in BHR, however, these rights are not 'pre-social' or mere objects of consensus, but

[23] David Bilchitz, 'A Chasm between "Is" and "Ought"?: A Critique of the Normative Foundations of the SRSG's Framework and the Guiding Principles' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge: Cambridge University Press, 2013) 109.

[24] Wettstein (2015), note 2, 175.

[25] Arnold, note 9.

[26] Amartya Sen, 'Elements of a Theory of Human Rights' (2004) 32:4 *Philosophy and Public Affairs*.

[27] Wettstein (2012), note 2, 740.

[28] Joel Feinberg, *Social Philosophy* (Englewood Cliffs: Prentice Hall, 1973) 84.

grounded in human nature itself. Thus, even in the case of individuals belonging to different political communities or states, human rights in social interactions including business can be upheld through recourse to the so-called 'law of the peoples' (*ius gentium*). First, we have to clarify, however, that despite the emphasis on habits and character, VENL likewise consists of behavioural rules and norms.

A common mistake in modern moral philosophy is to differentiate virtue ethics from deontology on the basis of a purported absence in the former of rules and norms. Aristotle, in explaining his version of virtue ethics, certainly spoke of rules of action, albeit generally formulated in the negative: 'there are some things we cannot be compelled to do, and rather than do them we should suffer the most terrible consequences and accept death' (such as Alcmeon killing his own mother in one of Euripides' tragedies).[29] Insofar as we should rather choose death than perform the action, it is proposed as a moral absolute, and granted its negative formulation, we call it a prohibition. Hence, Aristotelian virtue ethics considers not only the development of excellences in character, but also the observance of rules. Some of these rules are proposed as moral absolutes or exceptionless prohibitions, as in the above-mentioned case of parricide.

Perhaps the most developed version of virtue ethics to date is found in the medieval scholar Thomas Aquinas' *Summa Theologiae*.[30] Despite being, above all, a theological treatise, nevertheless, it also contains valuable philosophical insights, in the sense of rational arguments and conclusions that do not depend on faith or supernatural belief for validity. The *pars Ia-IIae* of the *Summa* deals with general moral principles, outlining the manner in which human beings may reach their perfection or final end, which is none other than God, from the theological perspective, or flourishing, from the philosophical one. In this work, Aquinas mostly follows Aristotle, in establishing the fulfilment or perfection of human life from the point of view of its final end (God and *beatitudo* or *eudaimonia*) and in exploring the various operational levels – acts, passions, habits, and so forth – in which the virtues as human excellences present themselves. The *Ia-IIae* likewise includes Aquinas' treatise of law, from *quaestiones* 80 to 108. Laws as norms of conduct form an integral part of virtue ethics, therefore.

Aquinas defines the law as 'an ordinance of reason for the common good, made and promulgated by him who has care over the community'.[31] We can break it down to its fundamental elements. Firstly, an 'ordinance of reason' or rational imperative, a command or prohibition with a view to an end. Second, the end or purpose of the law is the 'common good': something to which a group tends or is inclined, at the same that it perfects the group as such and the individuals who belong to it. It cannot be a merely 'private interest', no matter how widespread the agreement or consensus. Third, laws need to be established and made known or 'promulgated' to take effect. Finally, the promulgator cannot be any private individual, but someone constituted in authority and who has responsibility over the community.

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[29] Aristotle, *Nicomachean Ethics*, trans. Terence H. Irwin (Indianapolis: Hackett Publishing, 1985) 1110a.

[30] Thomas Aquinas, *Summa Theologiae*, English Province of the Order of Preachers (ed.) (Cambridge: Cambridge University Press, 2006); John Finnis, 'Aquinas' Moral, Political, and Legal Philosophy' in Edward N Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Spring 2017 edn., https://plato.stanford.edu/archives/spr2017/entries/aquinas-moral-political (accessed 23 September 2017).

[31] Aquinas, note 30, I-II q 90, a 4.

Depending on the promulgator (God or human beings) and the manner in which it is made known (written or unwritten), we can have different kinds of laws.[32] For instance, the 'eternal law' comes from God and dictates the manner in which the whole universe is drawn unto Himself; 'natural law' is the participation of free and rational creatures such as human beings in this divine 'eternal law'. Both God and human beings, however, can issue written or 'positive' laws; in the first case, through the Decalogue, and in the second, through civil laws, for example. Inevitably, there are overlaps among these different kinds of laws. The prohibitions in the Decalogue regarding murder, adultery, theft and false witness are parts of the eternal law, of natural law, of divine positive law, and in most cases, of civil laws as well. To the extent these moral truths or principles can be known through reason alone, they belong essentially or *per se* to the divine eternal law and to natural law. However, they also belong *per accidens* (in a limited way) to divine positive law and to civil laws, to facilitate knowledge, understanding and observance. By dint of reason exclusively and reflecting upon their nature, human beings could know that murder is morally deplorable, without need of consulting civil laws, for instance. Yet its prohibition is included both in the divine positive law and in the penal code precisely as a help and reminder, given the gravity of the offence.

Laws, together with the virtues, form part of the moral life of human beings. The justification for both laws and the virtues lies in the final end, purpose, or perfection of human life, which is union with God, in the theological plane, or flourishing, on the philosophical level. Laws establish the lower boundaries or minimum conditions for morality, while the virtues provide the orientation to pursue moral excellence. Compliance with divine positive laws and civil laws in a well-ordered society ensures justice in social relations. However, to achieve perfection or flourishing, that is not enough, and the exercise of other virtues such as courage, temperance, prudence and so forth are necessary. Thus the virtues are based on laws, and both virtues and laws are grounded on a teleological understanding of nature.

2. *Rights in VENL*

Having explained laws and virtues in the VENL tradition, we now turn to rights. There is no equivalent in VENL to the notion of a 'natural' right – in the sense of a 'pre-political', 'pre-social' and 'inalienable' claim – found in the predominantly deontologically rooted BHR discourse. That is because for VENL, human beings are necessarily or by nature social and political animals.[33] To be human means to belong to a political community or *polis*, which at the same time represents the locus or context of flourishing. Justice is the virtue of a well-ordered political community and, analogously, of individual citizens in the measure that they render unto each other their due or 'what is just', that to which they have a right. The law for Aristotle is not an abstract idea, but what is in accordance with justice in the properly ordered political community. In VENL, therefore, a right is a just claim between individual citizens or against the political community as a whole. As explained earlier in Aquinas, a right or just claim in accordance with the law need not

[32] William S Brewbaker, 'Thomas Aquinas and the Metaphysics of Law' (2006) 58:3 *Alabama Law Review*.

[33] Aristotle, *The Politics*, Stephen Everson (ed.) (Cambridge: Cambridge University Press, 1988) 1253a; Aristotle, note 29, 1095a.

even be written. It is sufficient that it be discernible through rational reflection on what ought to be the proper state of affairs.

How would VENL defend human dignity as a right, for instance, in business?[34] Human dignity is a just claim all human beings could make against each other and against all other social actors in the political community. It is attributed universally to all individual members of the human species. Human dignity involves recognition and respect for the intrinsic worth of all human beings based on their capacity for rational self-determination through free choices and actions. Human beings are ends in themselves. Because of this, laws prohibit violations of human dignity through the instrumentalization or use of human beings as mere means to ulterior ends. Consider, for instance, depriving workers of a just compensation for their labours, which in the short term, may even have an economic justification. Such actions ought to be sanctioned or punished. Beyond the safeguards and minimum guarantees of law, however, VENL also encourages the practice of the virtues. This means fostering attitudes and behaviours which help human beings develop their sense of self-worth by aiming at excellence or virtue in different fields of endeavour. Thus, the community honours and celebrates human achievements, motivating individuals to constantly try to surpass themselves in fair and honest competitions.

But what if individuals do not belong to the same political community, as often occurs in BHR cases? Aquinas' classification of laws makes provisions for a *ius gentium* or 'law of peoples' in such circumstances, although it was developed much later in the 16th century by his followers in the University of Salamanca, in particular, Francisco de Vitoria.[35] The 'law of peoples' was originally related to the rights of conquest in the American continent; however, since then, it has been proposed as a basis for a universally applicable international law. Among others, the 'law of peoples' establishes adherence to the principles of natural law, the equality of all political communities based on a common humanity (without need of a common temporal sovereign or global state as enforcer), and the primacy of international solidarity. Human rights claims such as respect for human dignity, therefore, can be lodged against states other than one's own by virtue of an appeal to the 'law of peoples'. This was the case of American natives who felt their human rights were violated by the Spanish conquerors during the early modern period.

Hence, unlike in the BHR framework, in VENL we have an explicit moral foundation behind the legal, minimum conditions of social justice defined by rights. Furthermore, we also have the complement of the virtues which seek excellence in all social relations and constitute a requirement for flourishing. Both laws and virtues are founded on an objective, teleological notion of human nature that can be rationally explained. However, their validity does not depend exclusively on an almost impossible consensus among all social actors. Instead, VENL bears in mind the variances in the capacity of human beings to acknowledge such an objective and universal standard, having recourse to positive laws to explicitate the content of natural law. Curbs against the abuse of power or

[34] Sison, Ferrero and Guitián, note 12.

[35] Francisco de Vitoria, *Francisco de Vitoria: Political Writings*, trans. Jeremy Lawrance, Anthony Pagden and Jeremy Lawrance (eds.) (Cambridge: Cambridge University Press, 1991); Victor M Salas, 'Francisco de Vitoria on the Ius Gentium and the American Indios' (2012) 10:2 *Ave Maria Law Review*.

knowledge are built into the VENL standard itself. For instance, exceptionless prohibitions regarding murder and theft (moral absolutes) lead individuals to respect and states to protect human life and property in all social relations including business (legal injunctions), as something constitutive of human rights and dignity. Last but not least, VENL includes provisions for a 'law of peoples' across different political communities, founded on human nature and valid even in the absence of a supranational state.

B. Normative Force: How Obligatory are Human Rights for Corporations?

1. The Obligatoriness of Human Rights Claims on Corporations in the Ruggie Reports

A second quandary concerns the normative force or obligatoriness of human rights claims on corporations as private, non-state actors. At the outset, people tend to favour an interpretation of human rights obligations as 'something … imposed upon our inclinations, something we must do whether we want or not'[36]. They refer to matters not merely 'advisory and defeasible', but 'imperative and overriding'.[37] Their status as contained in the Ruggie reports, however, is completely different. There is no treaty concerning BHR. At best, guidelines and principles comprise a soft law, mere expectations or 'imperfect obligations' (in the Kantian sense).

The Ruggie reports are not the object of a treaty among states. This is despite the widespread belief and desire that human rights responsibilities belong to all actors, states or otherwise, whether they like it or not. Particularly, in the case of corporations, these obligations are not supposed to depend on their consent or even on the will of their home states. However, given the absence of formal accountability structures, the enforcement of such responsibilities on corporations is in fact left to the discretion of governments. International human rights obligations of states sometimes include obligations to legislate and act internally against human rights violations by private individuals and legal entities within their jurisdiction. Although there is a push from states having exclusive duties toward human rights claims to a scenario in which states still play a central role, yet share such obligations with other agents such as corporations, this move has not been consummated. A post-Westphalian global regime has not been established. At best, the Ruggie reports and guidelines on BHR represent what is euphemistically called 'soft law', a ruling neither enforced nor enforceable by states. Nevertheless, the Ruggie principles are valuable as a 'restatement' of accepted practices and principles, acted upon by the international business community.

There is no treaty covering BHR not because of the lack of popular demand, but because no suitable basis has yet been found in international law acceptable to all or even most states. It is not enough to reach a consensus that human rights have a moral basis; human rights violations ought to be accompanied potentially by legal sanctions as well, not only against states, but also against private actors such as corporations. Progressive interpretations of this aspect of international law have tried to gain ground in this

[36] Joel Feinberg, *Rights, Justice, and the Bounds of Liberty. Essays in Social Philosophy* (Princeton: Princeton University Press, 1980) 136.

[37] Tom Campbell, 'A Human Rights Approach to Developing Voluntary Codes of Conduct for Multinational Corporations' (2006) 16:2 *Business Ethics Quarterly* 263.

direction, but so far without success. There are even discordant voices for whom putting corporations in equal standing with states on human rights matters is neither possible nor desirable.[38]

What, then, is the actual normative force or mandatoriness of corporate human rights responsibilities or obligations in the Ruggie documents? Despite serious qualms held by many, they are merely 'voluntary' because they are not mandated by law; corporations cannot be coerced by states to fulfil them exclusively on the basis of the Ruggie documents. They are optional or supererogatory because they go beyond enforceable corporate duties. At most, they can be considered as 'imperfect obligations' in the Kantian sense, insofar as there are no correlative duties and their satisfaction can only be perceived as a sign of excellence, virtue, or beneficence. It would be nice if they were honoured, as expected conduct in accord with the standard of decency, with immense latitude in their actual performance. In other words, they are precisely everything human rights duties held by states are not, at least from a moral perspective. As Wettstein succinctly explains, 'Moral voluntarism of this sort does not sit well with a focus on human rights issues. The language of rights is also the language of obligations'.[39] While human rights duties held by states have corresponding sanctions for non-fulfilment, human rights obligations held by corporations are 'voluntary' and not legally actionable. In BHR the obligatoriness of claims depends exclusively on what is stipulated in positive laws.

2. *The Obligatoriness of Human Rights Claims on Corporations in VENL*

The differences with the VENL position are as follows. First, the normative force of both human rights duties on states and human rights obligations on corporations derives ultimately from natural law, not from positive laws alone. Second, laws are understood mainly as guides to free agency and the exercise of virtues (directive force), rather than obstacles or limits through the sanctions or punishments they impose on violations (coercive force). Third, although all social actors, including private ones such as corporations and individuals, are obliged by natural law to observe human rights, the public use of coercive force (or enforcement) of human rights is reserved exclusively for states.

The normative force of natural law: for the VENL tradition, laws governing fundamental human rights are based, in the final analysis, on natural law from which they draw normative force. They have a moral foundation which holds independently of whether they have been enshrined or not in positive human law (domestic laws or international treaties), with corresponding sanctions or punishments for non-fulfilment. Often, positive laws are mere reminders or aids regarding responsibilities one should already be aware of through proper reasoning and reflection.

Laws as guides to free agency and the virtues: there seems to be a different relation, however, between legal obligation and freedom in VENL compared with BHR. In BHR, legal obligation, identified with the coercive force of law, is almost always contrary to

[38] Hsieh, note 3.

[39] Wettstein, note 7, 80.

free agency. Law is essentially punitive of non-conforming behaviours, but in VENL, legal obligation does not necessarily supress free agency; rather, legal obligation presupposes and enhances free agency. Laws are made for free and rational agents as guides for action; it does not make sense to enact laws for non-living things or brutes. Mostly, they are a reminder or help towards the proper use of freedom, enabling agents to achieve perfection and the good of their nature, virtue and flourishing. Laws empower rather than limit rational agency by fostering the development of moral excellences or virtues.

The public and private uses of the coercive force of law: how are the directive and coercive dimensions of law related in VENL, and who could make legitimate use of them for human rights purposes? For Aquinas, besides the 'directive force' (*vis directiva*) which belongs to the essence of law,[40] there is a 'coercive force' (*vis coactiva*) as well.[41] Not all uses of the coercive force of law are legitimate, however. Aquinas distinguishes between the public use of coercive force, which corresponds exclusively to states, and its private use, which belongs to individuals and corporations, among others. Hence, states do not have a monopoly on the legitimate use of coercive force. States may legitimately make use of coercive force to defend themselves and to recover property against the will of other actors, for instance, thereby restoring public order and justice. Another limit to the states' use of legitimate coercive force is that it can only be applied to external actions mandated by justice. For example, although states can oblige individuals to return property unjustly taken from its owners under threat of punishment, they cannot require internal adherence to restitution. In consequence, neither can states enforce or legislate virtue, which depends partly on the internal adherence of agents to freely chosen actions.

Individuals and corporations may resort to legitimate, private use of coercive force in self-defence, for instance, without need of any authorization from states. However, they cannot legitimately make use of coercive force in a public way, usurping such power from states. As a result, we cannot expect corporations or private individuals to mandate the observance of human rights as we could from states as public actors. It is not the competence of private actors to publicly enforce human rights under threat of punishment, for instance, without counting on states. That would be tantamount to the states' externalizing or outsourcing the administration of justice to other agents.

This does not mean corporations are exempt from honouring human rights, however. In VENL, they are obliged to do so like all social actors, regardless of whether such provisions exist in a particular state's civil laws or not. That is because corporations, as social entities created by human beings, are bound by deeper moral obligations contained in natural law. One thing is to honour and observe human rights to which individuals and the corporations are obliged by natural law, and another is to publicly enforce the observance of human rights obligations on others, which is the sole competence of states. In VENL, the obligation of states to publicly enforce human rights derives from its role as ultimate guardian of the political community, not from the contingent enactment of positive laws.

[40] Aquinas, note 30, I–II q 90, a 3.

[41] Ibid, I–II q 96, a 5.

In response to this second quandary of BHR, VENL acknowledges the full normative force of a moral duty on individuals (and the corporations they form) as private actors to observe human rights. This is so regardless of the existence or not of positive state laws to this effect. For VENL, laws are more directive than coercive, whereas for BHR, laws are mainly punitive. Hence, the observance of human rights is not relegated to voluntary, in the sense of optional or supererogatory action for private actors. Compliance with this moral obligation to honour human rights by private actors such as individuals and, by extension, corporations is not an act of virtue in itself, as the fulfilment of imperfect obligations within the Kantian framework and BHR is. Rather, it is merely the completion of a baseline condition normally established by law for virtue. Understood as excellence, virtue requires something more. The nearly universal acceptance of the human rights corpus, especially the 1948 UN Universal Declaration of Human Rights, supports the obligatoriness of human rights as the positivization of universal ethical rules. They are legally binding on states, reflecting universal ethical rules morally binding on individuals, corporations, and society as a whole.

The public enforcement of duties arising from human rights, however, remains the domain of states. Neither individuals nor corporations as private actors can legitimately assume this task. When domestic laws enforcing human rights exist, individuals and corporations are answerable for possible violations to the jurisdiction of the state. States, in turn, are answerable under international law for human rights violations, and if there were no such laws, in theory, appeals could be made to the 'law of peoples' incumbent upon states.

VENL recognizes the full moral obligations of individuals and corporations to observe human rights even if such duties were absent from state legislation. However, it also acknowledges that the public enforcement of such duties are incumbent on states. In case no positive laws exist or states are negligent in their public enforcement, appeals to the 'law of peoples' should be considered.

C. Scope and Content of Human Rights Claims on Corporations: Respect/ Protect/Remedy Based on 'Capabilities'

The tripartite division of duties in the Ruggie reports is reminiscent of the work of rights theorist Henry Shue. According to Shue, for each right to be fully honoured, three corresponding duties have to be fulfilled: the duty to avoid depriving, the duty to protect from deprivation, and the duty to give relief or remedy to the deprived.[42] These duties may be distributed among several agents in varying degrees of obligatoriness. They are reflected in the reports as the states' duty to respect, protect and remedy human rights, on the one hand, and corporate responsibility to respect human rights, on the other. States have duties, while corporations, only responsibilities. Moreover, while state obligations encompass all three duties, to respect, protect and remedy, corporate obligations are limited to respecting human rights, as a negative injunction or a prohibition to violate, infringe, or do harm, both directly and indirectly, through its business activities. Each duty or obligation belongs to a specific agent; there is a clear-cut separation among them.

[42] Henry Shue, *Basic Rights. Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1996) 52.

They are meant to be taken together as a whole, however, and instead of overlaps, we find complementariness among duties and obligations towards each human right. The separation (non-overlapping), distribution (specificity of bearers), and normativity ('duties' *versus* 'responsibilities') of these obligations are strongly contested.[43]

Short of calling them duties, some BHR theorists advocate capability-based remedial obligations for corporations.[44] They rest on two premises. First, human rights provide legal obligations, and hence, their non-violation is imperative; and second, the positive duties to protect and to realize human rights claims rest upon the whole moral community of human beings, of which corporations arguably form part. The obligation to provide remedy and relief to human rights claims on the basis of capabilities is, therefore, a genuine political responsibility, independently of whether corporations played a role in committing or enabling previous human rights violations.

Controversies surrounding the scope of corporate obligations towards human rights likewise extend to their content, whether one takes a 'restrictivist' or an 'expansivist' reading.[45] Both positions agree that human rights are universal claims, but while the 'restrictivist' view limits these to basic or fundamental moral rights which accrue to human beings due to their agency, personhood, rationality and freedom, the 'expansivist' view is broader so as to include socioeconomic rights or entitlements in the form of ideals as well.

A third quandary concerning the scope of BHR reveals that corporations only have, in truth, a responsibility to respect, in a negative, non-infringing way, basic human rights, in a manner separate and complementary to state duties. Again, this is far less than what some would have hoped for: shared or overlapping positive duties, analogous to those of states, which extend to socioeconomic entitlements. Despite their appeal, arguments in favour of capability-based remedial obligations for corporations is significantly weakened by the fact that they are based on moral claims over which there is no consensus and for which there are no legal provisions.

VENL differs from BHR in its treatment of the scope and content of human rights claims on corporations in several ways. Most significantly, it goes beyond the dichotomy between legal duties and purely voluntary actions of BHR by carving out a space for the virtue of practical wisdom, the moral habit of 'doing the right thing the right way' attending to contingencies beyond general rules and laws. As a result, although VENL acknowledges the duty to respect human rights as an exceptionless prohibition to infringe human rights, falling equally on public and private actors always and at all times, protecting and remedying human rights claims on the part of private actors such as corporations pertain to practical wisdom. Practical wisdom distinguishes between the coercive force or obligatoriness of 'precepts' and 'permissions' for corporations to protect human rights claims, on the one hand, and to remedy them, on the other.

I spoke earlier of the 'directive force' (*vis directiva*) of law, besides the 'coercive force' (*vis coactiva*) within the VENL tradition.[46] In a manner similar to Shue, VENL

[43] Wettstein (2015), note 2, 169–174.

[44] Wettstein (2012), note 2, 753–755.

[45] Brenkert, note 7, 280–281.

[46] Aquinas, note 30, I–II q 90, a 3, I–II q 96, a 5.

considers three different ways in which laws oblige, that is, through prohibitions, precepts, and permissions.[47] Prohibitions or negative commands are always obligatory with respect to the prohibited act and at all times, since it is never licit to do what is morally evil. The injunction in the Ruggie reports for corporations (among others) to respect human rights is an example of such an exceptionless and timeless prohibition of violating human rights. Precepts, on the other hand, are positive commands which are always obligatory, but not at all times. They begin to oblige when promulgated and continue to do so while valid or until revoked, but not at each and every moment. For instance, in certain circumstances, the wealthy may be obliged to help the poor or the healthy the sick; but both the wealthy and the healthy are not obliged to help the poor and the sick respectively at each and every moment. They can do other things besides. This applies to the state duty to protect and remedy human rights claims. When needed and called upon, the state should intervene; however, it has many other duties to perform besides protecting and giving relief to human rights claims. A third way in which laws oblige, albeit indirectly, is through permissions. Permissions may be taken for granted unless laws prohibit or command the contrary; they are more the consequence or effect of the absence of laws than of the laws themselves. No obstacles should be placed to permitted actions or omissions. For instance, in the absence of positive laws to the contrary, states should permit corporations to protect human rights and remedy possible injustices in this regard. Although corporations may not have legal duties to provide protection to human rights and relief to abuses, managers may choose to do so by virtue of their moral obligations under the natural law, and states should permit or allow this course of action.

Beyond the prohibition of engaging in human rights abuses, any responsibility to protect claims or remedy violations is a matter of practical wisdom for corporations and their managers. The prohibition concerning human rights violations obliges always and at all times; it is an exceptionless moral prohibition according to natural law, even if it were not contained in positive human laws. However, the same cannot be said regarding the protection and relief of human rights claims, no matter how desirable they may be in general. Hence, their realization (or not) pertains to practical wisdom, the individual virtue of choosing the suitable means to the proper end[48] or doing the right thing the right way.[49]

Practical wisdom expresses a normativity beyond the scope of rules; it helps interpret and implement rules in the best possible way.[50] While respecting the rules, corporations have to consider what is possible, given the constraints of time, place, and the resources at their disposal. Practical wisdom also allows corporate managers to navigate through duties and obligations at times in conflict with each other. For instance, in case of a

[47] Francisco Suárez, *Extracts on Politics and Government from Defense of the Faith, Laws and God the Lawgiver, Tract on Faith, Tract on Charity*, trans. George A Moore (Chevy Chase: Country Dollar Press, 1950) De Legibus, l.I, c.15, 4–6.

[48] Aristotle, note 29, 1141a.

[49] Ibid, 1126b.

[50] Alejo JG Sison and Matthias P Hühn, 'Practical Wisdom in Corporate Governance' in Alejo JG Sison, Ignacio Ferrero and Gregorio Guitián (eds.), *Business Ethics: A Virtue Ethics and Common Good Approach* (New York: Routledge, 2018).

grave, natural disaster, thanks to practical wisdom, corporations may choose to provide basic assistance to its employees and neighbours first, before others who are not connected or who live far from its facilities. That would not be an injustice. Likewise, corporate managers may decide to postpone operations for a couple of days, allowing employees to take care of their families first before fulfilling work duties, even if this were to entail an economic loss for the organization. This is in keeping with the proper hierarchy of duties and obligations. By behaving in this manner, corporations are effectively doing the best they can to protect and favour the exercise of basic human rights, such as the right to life and the necessary means to sustain it. Such decisions are affected by a degree of contingency that cannot be foreseen or covered by positive human laws. Hence, it would be extremely difficult to make them the object of general precepts or prohibitions. States, on their part, would do best by permitting corporations to engage in such aid and relief activities, despite their not being part of the 'licence to operate', so to speak. It would be foolish, for instance, for the state to prohibit emergency feeding programmes of disaster survivors because the corporation does not have a proper licence to operate as a restaurant.

While BHR speaks of duties to respect, protect and remedy human rights claims, VENL considers, in more general terms, what and how laws may prohibit, command or permit certain actions. Prohibitions are valid always and at all times; commands always but not at all times; and permissions are understood as granted unless a contrary prohibition or command exists. BHR and VENL coincide in that states, corporations and all other corporate agents have duties to respect, that is, are prohibited from violating human rights always. However, whereas in BHR, states have duties to protect and remedy human rights claims, in VENL, such legal duties are understood as commands, with some limitations. That is, states are not duty-bound to be performing such actions 'at each and every moment', but only when called upon and needed. Otherwise, they would have turned into 'surveillance states' constantly keeping an eye on citizens lest they commit violations. Unlike states, corporations may not have legal duties to protect and remedy human rights claims, but individuals working for firms may choose to do so, reflecting upon their moral obligations according to the natural law and derivations. In carrying out actions protective and remedial of human rights claims, corporations and managers are guided, above all, by the virtue or practical wisdom. Compared with capability-based remedial obligations in BHR, practical wisdom has the advantage of having a firm moral foundation within VENL and not having to depend on positive laws for its normative force.

IV. BHR, VENL and Catholic Social Teaching (CST)

Albeit from a different narrative and tradition, virtue ethics can provide unique responses to certain quandaries BHR currently faces. (This does not mean that VENL in business does not have problems of its own.) This could mean a step forward in BHR-VENL engagement, beneficial for both business ethics theory and practice.

Given the diverse backgrounds of BHR and VENL, how can we move forward combining them, so as not to lose the advantages of each? How can we ensure, on the one

hand, the solid moral basis for laws and developed psychological account of VENL, and on the other, the legal structures and instruments facilitated by BHR? The approach of modern CST clearly represents a step in this direction.[51] CST consists of the official teaching of the Catholic Church on work and other social issues, resulting from reflections on the Gospel message. Although historically CST has counted more on VENL for its principles and language, since the Second World War it has increasingly incorporated elements from the idiom that characterizes BHR today in its reasoning. In short, CST integrates rights and virtues, but first we have to justify the inclusion of CST in a secular, rational endeavour such as business ethics.

Despite being part of moral theology, and acknowledging Sacred Scriptures among its sources, all of CST's main principles are, in fact, accessible and defensible rationally.[52] That is why it has always addressed not only Catholics, who constitute almost a fifth of the world's population, but all men and women of goodwill. The ultimate basis of the principles may be theological, but one need not adhere to it for them to take effect. For instance, the principle of human dignity, also known as the personalist principle in CST,[53] is grounded in the belief that human beings are made in God's image and likeness. However, agreement with this scriptural truth is not necessary to acknowledge the intrinsic worth of human beings, treating them as ends in themselves and not as means. It is enough to focus on their species-distinctive capacity to exercise reason and autonomous choice, for example, although this is also contained in CST. In any case, the effectiveness of CST principles in promoting dignity is no different from that of the UN Universal Declaration of Human Rights, where agreement among the framers was reached exclusively on the letter or verbal expression, but not on the moral or metaphysical basis, if any, of those rights. The purpose of CST principles, just like the rights enshrined in the Universal Declaration, is eminently practical: to prevent some behaviours and to promote others. Consensus on their foundations is not necessary. Similarly, one need not be Muslim in order to work in an Islamic financial services firm, by way of example. It is sufficient to follow the rules, and profession of the Islamic faith is largely irrelevant to the task at hand.

Our proposal, then, is for BHR to incorporate CST principles in its reasoning and language as sources of rights and duties, thereby reaping the benefits of the VENL tradition as well. BHR could ground and articulate human rights around the different substantive CST principles. These CST principles, in turn, could provide universally valid (insofar as accessible to reason) moral justifications to those rights, on the basis of which positive laws can be formulated. This last step concerning the enactment of laws, although desirable, is not absolutely necessary. It is sufficient for the time being to have a robust moral grounding that lends direction and obligatoriness for human rights.

CST principles form an organic, tightly connected body, with four major principles and four derived ones. I have already mentioned, in first place, the principle of human dignity, according to which human beings are 'the foundation, the cause, and the end of

[51] Sison, Ferrero and Guitián, note 12.

[52] Ibid.

[53] Pontifical Council for Justice and Peace, *Compendium of the social doctrine of the Church* (Vatican City: Libreria Editrice Vaticana, 2004), http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html, 105, 132.

every social institution'[54] and 'the ultimate end of society'.[55] The personalist principle pertains to the human being as a whole, a substantial unity of body and soul, unique or unrepeatable, and open to Transcendence through reason and will.[56] (Note that all of these features were already known to Aristotle, who lived four centuries before the Christian Era.) As a consequence of the principle of human dignity, business activities, products, and institutions should be placed at the service of human beings and not the other way around. Thus, the exploitation of workers and environmental damage simply for the sake of increasing profits ought to be proscribed.

In second place is the principle of the common good, which 'stems from the dignity, unity, and equality of all people', representing the 'fullest meaning' of 'every aspect of social life'.[57] It can be defined as 'the sum total of the social conditions which allow people, either as groups or as individuals, to reach their fulfilment more easily',[58] or more succinctly, as 'the good of all people and of the whole person'[59] co-constitutively. Because individual flourishing can only be achieved as co-flourishing with other members of the political community, the common good is the end or goal of the integral human development.

The common good principle has several corollaries. First is the 'universal destination of goods', according to which 'all created things [i.e., natural resources] would be shared fairly by all mankind under the guidance of justice tempered by charity'.[60] Human dignity and the common good require that each person has the right to the resources necessary for integral development and wellbeing, guaranteed by the 'universal destination of goods'. This does not entail that all things be at the disposal of everyone, however, because rights have to be exercised in an orderly manner.[61] Here a second corollary comes in, the institution of 'private property', through which humans stake claim over parts of nature through work,[62] ensuring a sphere of autonomy and social order. Nevertheless, the right to private property is not absolute and has to be subordinated to the universal destination of goods, thus respecting a 'social function'.[63] As a result, in third place, CST advocates a 'preferential option for the poor',[64] through which the marginalized are given access to the goods and opportunities needed for their

[54] John XXIII, 'Encyclical Letter Mater et Magistra. Città del Vaticano: Tipografi a Poliglotta Vaticana' (1961), http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html, 219-220.

[55] Pontifical Council for Justice and Peace, note 53, 105, 132.

[56] Ibid, 124–148.

[57] Ibid, 164.

[58] Vatican Council II, *Pastoral constitution on the Church in the modern world Gaudium et Spes* (Vatican City: Vatican Polyglot Press, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html, 26.

[59] Pontifical Council for Justice and Peace, note 53, 165.

[60] Vatican Council II, note 58, 69.

[61] Pontifical Council for Justice and Peace, note 53, 173.

[62] John Paul II, 'Encyclical Letter Centesimus Annus' (Washington D.C.: United States Catholic Conference, 1991), http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html, 31.

[63] John XXIII, note 54, 430–431.

[64] John Paul II, 'Address to the third general conference of Latin American bishops' at the Third General Conference of the Latin American Episcopate on 28 January 1979, https://w2.vatican.va/content/john-paul-ii/en/speeches/1979/january/documents/hf_jp-ii_spe_19790128_messico-puebla-episc-latam.html, I/8.

own growth and development. As an offshoot of the principle of the common good and its corollaries, for instance, private property should not be enshrined as the supreme or absolute right. It is justified only in the measure that it guarantees the sustainability of the commons for future generations (universal destination of goods) in the most efficient way. Property rights always come hand in hand with stewardship responsibilities, especially towards the most vulnerable members of society (preferential option for the poor).

Afterwards comes the principle of subsidiarity, according to which 'every social activity ought of its very nature to furnish help [subsidium] to the members of the body social, and never destroy and absorb them'.[65] Higher-order entities such as the state should provide assistance to lower-order entities, such as families and corporations, instead of absorbing or replacing them in their functions. Otherwise, by supplanting their freedom, initiative and responsibility, states would be committing an affront to personal dignity. Related to subsidiarity is the principle of participation, which imposes on individuals the right and duty to contribute to the cultural, economic, political and social life of the community in view of the common good.[66] In the political sphere, this often translates into support of the democratic process against totalitarian or dictatorial regimes.[67] In accordance with the principles of subsidiarity and participation, for example, it can be debated whether the state should be the sole provider of healthcare, education and retirement pensions by default, or should instead intervene only when private initiatives are unable to meet social demands in these services. Obviously, these are public concerns, but that may not be reason enough to say that organizations dedicated to these ends ought to be state-owned and controlled.

Lastly, we have the principle of solidarity, 'interdependence' or 'socialization'.[68] This speaks of 'the intrinsic social nature of the human person, the equality of all in dignity and rights, and the common path of individuals and peoples toward an ever more committed unity'.[69] It does not consist of a 'feeling of vague compassion or shallow distress' at people's misfortune, but a 'firm and persevering determination' to work for the common good.[70] Because of the principle of solidarity, for instance, corporations can collaborate in relief services when their host communities are struck by natural disasters, despite such activities not forming part of their core competencies.

Another defining feature of CST is the prioritization of the subjective dimension of work, 'the activity of the human person as a dynamic being capable of performing a variety of actions that are part of the work process and that correspond to his personal vocation', over the objective dimension, 'the sum of activities, resources, instruments,

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[65] Pius XI, *Encyclical Letter Quadragesimo Anno* (Boston: St. Paul Editions, 1931), http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html, 203.

[66] Vatican Council II, note 58, 75.

[67] Pontifical Council for Justice and Peace, note 53, 190–191.

[68] John XXIII, note 54, 49; Vatican Council II, note 58, 42; John Paul II, *Encyclical Letter Laborem Exercens* (Vatican City: Vatican Polyglot Press, 1981), http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html, 14–15.

[69] Pontifical Council for Justice and Peace, note 53,192.

[70] John Paul II, *Encyclical Letter Sollicitudo Rei Socialis* (Vatican City: Vatican Polyglot Press, 1987). http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html, 38; John Paul II, note 68, 8; John Paul II, note 62, 57.

and technologies used by men and women to produce things'.[71] In other words, the knowledge, skills, habits, virtues, relations and meanings human beings develop through the course of work (subjective dimension) have greater moral importance than the external or material goods and services, including profits (objective dimension) they produce. This is because the subjective dimension accrues to the human beings themselves as part of their persons, while the objective dimension is, in fact, separate from them. Hence, greater value ought to be granted to the former than to the latter: human beings as producers are always worth more than whatever thing they produce. Things should be at the service of people and not the other way around. The prioritization of the subjective dimension of work over the objective dimension can lead corporations to ensure that employees receive constant training in the latest technologies to update their skills, instead of just paying their salaries, for example.

V. Conclusion

This article is motivated by certain issues for which, in current BHR discourse, largely framed in terms of the Ruggie reports, no satisfactory solutions have been found to date. These quandaries refer to (a) foundational matters: the link between human rights law and ethics; (b) normative force: the obligatoriness of human rights claims on corporations; and (c) scope and content of human rights claims on corporations. Turning to the VENL tradition, we encounter the following possible responses: (a) positive laws, such as those concerning human rights, ultimately require a basis in natural law; (b) although the public use of the coercive force of law belongs to the state alone, its private use by non-state actors such as individuals and corporations may be legitimate in some cases; and (c) practical wisdom is necessary in the proper interpretation and implementation of human rights claims on corporations, taking into account relevant contingencies.

The blending of BHR discourse with the VENL tradition is best captured in modern CST. Although historically CST has adopted the VENL language, engagement with social issues in the modern world has enabled it to reach an understanding with rights theory as well, particularly in connection with business and the economy.

We cannot explore the full extent to which these CST principles could be adapted to inform current BHR discourse and development.[72] We know through previous studies that CST principles can have a direct bearing, for instance, on the 'right to work' as linked to the right to form and maintain a family, to acquire and own property, and the right to rest, among others. Also, CST guidelines can shed light on the rights of workers, the notion of 'decent work', the priority of labour over capital, and the rights to participation in ownership, management and profits in productive organizations such as firms. Even within the context of contemporary globalization CST principles may prove relevant, affirming the ethical neutrality of this phenomenon, and alerting to its opportunities and challenges. Another area of future research could be the VENL and CST contributions in designing a corporate culture and a leadership or management style

[71] Pontifical Council for Justice and Peace, note 53, 270.

[72] Sison, Ferrero and Guitián, note 12.

in keeping with integral human development. Due to its legalistic orientation, BHR may have largely neglected this crucial field. Nevertheless, by raising the possibility of engagement between BHR and VENL through CST, we have taken the pivotal first step in the right direction.