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**“TRUE HUMAN COMMUNITY”: CATHOLIC SOCIAL THOUGHT,  
ARISTOTELEAN ETHICS, AND THE MORAL ORDER OF THE  
BUSINESS COMPANY**

SCOTT FITZGIBBON\*

“A business cannot be considered only as a ‘society of capital goods’; it is also a ‘society of persons’ . . . .”

Pope John Paul II, *Centesimus Annus*<sup>1</sup>

“Every effort must be made to ensure that the enterprise is indeed a true human community . . . .”

Pope John XXIII, *Mater et Magistra*<sup>2</sup>

“A great business is really too big to be human.”

Henry Ford, *My Life and Work*<sup>3</sup>

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1. Encyclical of May 1, 1991, 43.2, AAS 83, 793. An English translation (provided by the Vatican Secretariat of State) is contained in THE ENCYCLICALS OF JOHN PAUL II 587, 633 (J. Michael Miller, C.S.B. ed., 1996).

2. Encyclical of May 15, 1961, 53 AAS 401, 91, *reprinted in* 5 THE PAPAL ENCYCLICALS 1958-81, 69 (Claudia Carlen, ed., 1990) (“Every effort must be made to ensure that the enterprise is indeed a true human community, concerned about the needs, the activities and the standing of each of its members.”).

3. HENRY FORD, MY LIFE AND WORK 263 (1923).

## INTRODUCTION

What obligations do people have to one another as a result of their membership in a business company? To what extent, if any, ought management to be loyal to its workers; or workers to one another or to the company; or stockholders to one another? What is the basic moral order of the company?

Obligations within a business company are usually discussed at what might be called the systemic or “organic” level: Should workers be represented on the board of directors? Do the fiduciary duties of directors run to stakeholders other than stockholders? Instead, this Article asks much more basic questions, ones located at what might be called the “cellular” level. Have participants in a business company an important commitment to foster one another’s goods and the good of the enterprise as a whole—in somewhat the way that citizens of a country may, or members of a family? Or have they no more duties to one another than to unaffiliated strangers, bound to do little more than avoid harm and of course to keep their promises?

Catholic social thought—encyclicals and treatises of moral theology—often seems to recommend this “cellular” approach. What such authorities have to say ought to be of general interest because they discuss goods, such as those of community and freedom of association, which apply for all people and not just Catholics. This Article considers these authorities, whereas most writings on business ignore them completely. But some of the general precepts in these works seem on casual examination to be impractical and even contradictory. Sometimes they compare the business organization to a family; at other points they describe it as contractual in nature.

Moral philosophy provides some answers. Aristotle, especially in his discussion of the kinds of friendship in the *Nicomachean Ethics*, proves to be extremely helpful.

From the Aristotelean texts, this Article derives an account of two morally commendable types of bonding for business organizations. One type of company is bonded through “affiliations of utility.” The other is a nexus of “political friendship.” A satisfactory business company, it is here proposed, will be bonded in one of these two ways. The way it should treat its constituents, and the way they should treat one another, depends on which type of company it is. Structural and legal issues will be looked at in different lights according to which sort of company is involved.

People forming up a business company ought to consider which kind of company to develop. Neither kind is illicit; either kind may be appropriate; which type is best may depend on the exigencies of business, the nature of the product and the culture and wider social fabric in which the company is embedded. One approach is appropriate for frontiersmen building steamboats

in pioneer St. Louis; another for Shakers crafting furniture in a nineteenth century New England village.

Managers and owners should proceed, in establishing the company's systemic ("organic") structure and in managing the business, according to which form of enterprise is involved. One type may involve readily transferable shares with buyback provisions, a changing ownership group, a strictly top-down supervisory structure and frequent dismissals of underperforming employees. The other type may involve restrictions on the transfer of shares, employee participation in major decisions and long-term loyalty between company and worker.

Company pathologies often arise through confusion or deceit as to which form of bonding is constitutive: as for example when a chilly, "affiliation-of-utility" sort of entity presents itself to its employees as loyal and caring.

#### I. QUENTIN PETERS (AND OTHERS) CONSIDER SOME DIFFICULT QUESTIONS

Quentin Peters is a successful businessman. He was baptized and confirmed at St. Joseph's Catholic Church in Belmont, Massachusetts, and attended parochial school in that parish through sixth grade. He graduated from Boston College High School in 1962 and from Boston College (B.A. 1966, M.B.A. 1968), where he majored in the classics, with a special concentration on the ethical and political thought of Aristotle.

After many years in middle and upper management at a major New England manufacturing company, Peters started his own firm, which produces footwear. This firm—QP Corporation, organized under the business corporation law of the Commonwealth of Massachusetts—now has \$150 million of sales and 125 employees. Peters owns 45% of the common stock and is the president and one of the three directors.

In the course of managing the business Peters often encounters problems and issues that seem to him to have important ethical dimensions. For example, he is concerned about:

1. Jud the custodian who cannot earn enough money to live on decently, if by "earn" an amount we mean "produce value" of that amount. The company can get independent-contractor cleaning services to do Jud's work cheaper.

The company's choices are: (1) Keep Jud on and pay him more than his work is worth. (2) Fire him. (3) Put him to work part time at spot cleanup jobs when the independent-contractor people are not around and pay him on a per-hour basis: this will not give Jud enough to live on. It is doubtful that Jud can obtain any other work.

2. Darlene, a dedicated employee who has recently become a single parent and who has started leaving work early, especially when her baby is sick. Peters has considered terminating her employment. Darlene has said that with

a substantial raise she could afford to hire top-quality child-care and perhaps a nurse, and that this would enable her to stay on the job during regular hours.

3. Ajax International, Incorporated, a conglomerate which has displayed an interest in acquiring QP, shutting down one of its two plants, and integrating management teams.

4. His own—Quentin Peters' own—outside business interests. He has recently purchased some real estate that might instead have been purchased by QP Corporation.

Beyond specific issues, Peters realizes that by starting and running QP Corporation he has developed a little political system, governed by rules and principles almost as extensive as those that govern a country. Peters further observes that he has helped develop a little culture—a small society—shaped by the personalities of QP's managers, by the architecture of QP's facilities, and even by the decor of its rooms. Peters recurrently doubts that this moral and cultural system is what it should be. Is it helpful, wise and beneficial? Is it merciful, charitable or even just?

Peters notes that none of the participants in QP Corporation, other than those at the very top, have any real say in the company's activities or any real power to shape their own roles, and that they are largely uninformed about what goes on outside their own departments. A realistic portrayal would depict the QP employee, even most of the highly educated and intelligent employees, as differing little, other than in their freedom to resign, from apparatniks in the bureaucracy of a totalitarian regime.

Donna and Jake are members of management of QP Corporation (Donna is a Vice President; Jake is the Treasurer, a Director and together with Quentin a co-founder of the business). Donna and Jake have some concerns as well:

1. Donna is in charge of QP's custom-made footwear division, which tailor-makes footwear to customer specifications. It is a small division, but its twelve employees have served it for an average of fourteen years each and have an especially high level of devotion to their craft and to the company. In a crunch, most of them are willing to work extra hours without extra pay, and several of them have made a study of improving the quality of the product. The division is a QP flagship; each year, as a public service, it crafts a special pair of sports shoes for the captain of the basketball team at a prominent high school in a poor (and largely black and Hispanic) part of Boston. It operates at a loss: demand is low because the custom-made shoes are priced at an average of \$650 per pair. Donna's concerns include the following:

a. A recent hire into the division, Hayes, is ambitious for advancement in the business world and has begun taking courses at night towards the M.B.A. degree. He is reluctant to work overtime and has pressed for extra pay. Donna doubts that he plans to stay at QP very long.

b. One of the workers in the department, Ned, is a member of a religious cult. (This seems to have had no bearing on his job performance.)

2. Jake holds forty percent of the common stock of QP and has received an attractive offer for his shares from Venture Investors, Inc., a venture-capital firm that specializes in taking positions in under-performing companies and launching vigorous programs aimed at making them more profitable. Jake is tempted: one of his sons is thinking of starting a business and has asked for financial participation. On the other hand, Jake suspects that Venture Investors would attempt gain control or substantial power at QP, press for QP to manufacture a higher-volume, lower-quality type of product, and try to shut down a QP plant that employs many disadvantaged persons.

## II. QUENTIN PETERS FINDS FEW EASY ANSWERS IN TREATISES ON MORAL THEOLOGY OR IN PAPAL ENCYCLICALS

Looking through manuals of moral theology, Peters encounters passages such as the following:

### THE FOURTH COMMANDMENT

The Fourth Commandment is: "Honour thy father and thy mother . . ." The mutual obligations of parent and child may be extended to all who hold an analogous position towards each other, and so under this heading theologians commonly treat the mutual obligations of other relations, and of superiors and subjects . . . .

### THE DUTIES OF MASTERS AND SERVANTS

Servant is here understood . . . as to comprise both domestic servants and workmen who work for a master. The relation in modern times arises out of a contract freely entered into by the parties, and it is less intimate than that which in ancient times subsisted between the lord and the slave or serf. In spite of this, however, the nexus of cash payment is not the only bond between master and servant. By the very fact that one enters into the service of another, the latter becomes his superior, assumes the duty of caring for him and in fitting proportion he acquires a claim to those marks of honour and reverence which are due to all who exercise authority over us. . . . [Servants] are bound to show their masters due honour and respect . . . .

. . . .

"The following duties bind the wealthy owner and the employer: not to look upon their work people as their bondsmen, but to respect in every man his dignity as a person ennobled by Christian character . . . . [T]he employer is bound to see that the worker has time for his religious duties; that he be not

exposed to corrupting influences and dangerous occasions; and that he be not led away to neglect his home and family, or to squander his earnings.”

. . . .

“[W]orking man and the employer should make free agreements, and in particular let them agree freely as to the wages; nevertheless, there underlies a dictate of natural justice more imperious and more ancient than any bargain between man and man, namely, that the wages ought not to be insufficient to support the frugal and well-behaved wage earner . . . .”

The contract of hiring may be terminated by mutual consent of the parties concerned, or for just cause by one of the parties, provided that the laws and customs which regulate the matter be duly observed. . . . If, however, the servant is incompetent to do what he undertook, is habitually disobedient, or is guilty of immorality, or unlawfully absents himself from his work, he may be dismissed without notice.<sup>4</sup>

Inspecting these passages, Peters concludes that they address only the employment relationship. Even in that regard he finds them unhelpful. What light do they shed on the problems of Jud and Darlene? If Peters puts Jud into a part-time slot and pays him reduced wages for his reduced work, is Peters guilty of violating his obligation to compensate workers sufficiently to maintain them in “frugal comfort”? If he terminates Jud, is he violating the prohibition against firing without “just cause”? Or can he conclude that Jud is “incompetent to do what he undertook” (even though Jud is pushing the broom no slower than when he was hired)? As to Darlene, can Peters fire her because she has “absented herself from work”? The passage quoted applies the limitation “unlawfully” (“*unlawfully* absents himself from work”) but surely, Peters reasons, you can fire workers for walking off the job even lawfully. At least one can fire them for walking off the job *unjustifiably*—perhaps that is what the text really means. But then, Darlene has a justification in the form of a sick baby. Does Peters have an obligation to accommodate her, either by letting her leave work early or by raising her pay to the point where she can afford more childcare, even a nurse? A just wage, from the encyclical cited, includes enough to support one’s children.<sup>5</sup> If he gives her a raise, should he also raise the salaries of other workers of similar seniority and rank? If he gives such raises, will he commit an act of injustice to the stockholders?

4. 1 THOMAS SLATER, A MANUAL OF MORAL THEOLOGY FOR ENGLISH-SPEAKING COUNTRIES 176, 186-89 (5th ed. 1907) (Slater’s letters and numbers identifying paragraphs have been omitted, as have his footnotes). The long subquotes are from Leo XIII, *Rerum Novarum*, May 15, 1891, 20, 45, 23 AAS 641. A full translation—not identical to that in Slater—is in 2 THE PAPAL ENCYCLICALS 1878-1903, 241, 246 (Claudia Carlen, ed., 1990).

5. Leo XIII, *Rerum Novarum*, May 15, 1891, *supra* note 4, at 46.

What light do the above-quoted passages shed on the possibility of closing one of the QP plants or its custom shoe department? Could the workers in those departments then be laid off? What light is shed on Peters' concerns that his employees are becoming mindless apparatniks?

Off the subject of worker relations, the above-quoted treatise lapses into silence. Peters finds no help on the question of Jake's prospective sale of his stock to a venture capital firm. Is there a close bond of loyalty between one stockholder and another; between a stockholder and his firm? American judicial decisions discuss this issue,<sup>6</sup> but treatises on moral theology do not.

Nor can Peters easily resolve his problems by probing for underlying principles. Beneath the surface of the text, he will encounter the elements of two very different approaches. One might be called the "close affiliational." It is reflected by the use of terms such as "honor," "reverence," and "faith," by the conclusion that the employer "has the duty of caring for" the employee, and by the organization of the entire subject under the Fourth Commandment, among chapters on the relationship of parent and child, guardian and ward, husband and wife, and ruler and subject. Another approach can be called the "contractual." It is reflected in the statement near the beginning of the above-quoted passage that "[t]he [employment] relation in modern times arises out of a contract freely entered into by the parties." Elsewhere in the treatise there is a passage on contracts (Book VII—not organized under any commandment and not clearly related to the rest of the treatise). That passage gives a modern, "chilly" account of contract and bases the parties' relationship on rights and duties they have jointly willed to undertake.<sup>7</sup>

If Peters looks at other treatises on moral theology he will find a similar bifurcation,<sup>8</sup> and if he is diligent enough to examine primary Magisterial

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6. See, e.g., *Donahue v. Rodd Electrotype Co.*, 328 N.E.2d 505 (Mass. 1975) (recognizing a fiduciary duty among shareholders in closely held corporations), *limited in Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657 (Mass. 1976); *Citron v. Steego Corp.*, No. 10171, 1988 Del. Ch. LEXIS 119 (Del. Ch. Sept. 9, 1988) (refusing to impose fiduciary duties on a 48% stockholder). See generally 2 F. O'NEAL & R. THOMPSON, *OPPRESSION OF MINORITY SHAREHOLDERS* §10.04 (2d ed. 1985); Lawrence Mitchell, *Death of Fiduciary Duty in Close Corporations*, 138 U. PA. L. REV. 1675 (1990); AMERICAN LEGAL INSTITUTE, *PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS* Part V, Introductory Note b (1994) ("A controlling shareholder . . . is . . . subject to a duty of fair dealing.").

7. SLATER, *supra* note 4, at 300, 305 ("[A] contract imposes a perfect and serious obligation on the parties, an obligation which they voluntarily take upon themselves, and which is not imposed from without. . . . [A contract] is an agreement of wills; one renounces a right in favour of the other who accepts it. . . . The matter must be determinate or capable at least of being determined, otherwise the terms of the contract will be too vague, and no agreement of wills on the same matter is possible.").

8. An exception is GERMAIN GRISEZ, *THE WAY OF THE LORD JESUS* (1983-97), especially Volume Three: *DIFFICULT MORAL QUESTIONS* (1997), which, for example, discusses the case of a stockholder in a closely held company who is thinking of dumping his stock, *see id.* at 500-02,

authorities he will encounter them yet again. The encyclical *Rerum Novarum* displays the same tension. It states, at one point, that the workman and employer should, as a rule, make free agreements, but it shortly thereafter alludes to “a dictate of natural justice more imperious and ancient than any bargain . . . namely, that wages ought not to be insufficient to support a . . . wage-earner . . . .”<sup>9</sup>

Some authorities seem to suggest that Catholic thought mandates intimacy among participants in all business organizations. The Catechism, referring to a “principle of solidarity” which is “a direct demand of human and Christian brotherhood,” states that “[s]ocio-economic problems can be resolved only with the help of all the forms of solidarity: solidarity of the poor among themselves, between rich and poor, of workers among themselves, between employers and employees in a business . . . .”<sup>10</sup> Pius XI stated in the encyclical *Quadragesimo Anno*: “We consider it advisable . . . in the present condition of human society that, so far as is possible, the work-contract be somewhat modified by a partnership-contract . . . . Workers and other employees thus become sharers in ownership or management or participate in some fashion in the profits received.”<sup>11</sup> One of the teachings of the Second Vatican Council is that, “[i]n business enterprises . . . the active participation of everybody in

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and the cases of managers who are considering whether to dismiss employees, *see id.* at 481-85, 524-27.

9. Leo XIII, *Rerum Novarum*, May 15, 1891, *supra* note 4. *See* Second Council of the Vatican, *Gaudium et spes* 67 (Dec. 7, 1965), translated into English as “Pastoral Constitution on the Church in the Modern World,” in VATICAN COUNCIL II: THE CONCILIAL AND POST CONCILIAL DOCUMENTS 903, 973 (Austin Flannery, O.P., ed., Roman Lennon, O. Carm., trans., 1975) (“remuneration for work should guarantee man the opportunity to provide a dignified livelihood for himself and his family . . . to correspond to the role and the productivity of each.”). For a discussion of the influence of Enlightenment doctrines on this *Rerum novarum*, see Ernest Fortin, “*Sacred and Inviolable*”: *Rerum Novarum and Natural Rights*, 53 THEOLOGICAL STUDIES 203 (1992). *See also* MATTHEW HABIGER, O.S.B., PAPAL TEACHING ON PRIVATE PROPERTY 1891-1981, 343 *et seq.* (1990).

10. CATECHISM OF THE CATHOLIC CHURCH ¶¶1939, 1941 (1994).

11. Paragraph 65, AAS 23, 177-228 (1931), translated as ON RECONSTRUCTING THE SOCIAL ORDER (Francis J. Haas & Martin R.P. McGuire, trans., 1942), reprinted in THE PAPAL ENCYCLICALS 1903-39, 415, 426 (Claudia Carlen, ed., 1990) and in THE COMPANION TO THE CATECHISM OF THE CATHOLIC CHURCH: A COMPENDIUM OF TEXTS REFERRED TO IN THE CATECHISM OF THE CATHOLIC CHURCH 641, 654 (1994). Another passage of interest from *Quadragesimo Anno* is the following:

It is obvious that, as in the case of ownership, so in the case of work, especially work hired out to others, there is a social aspect also to be considered in addition to the personal or individual aspect. For man’s productive effort cannot yield its fruits unless a truly social and organic body exists, unless a social and juridical order watches over the exercise of work, unless the various occupations, being interdependent, cooperate with and mutually complete one another, and, what is still more important, unless mind, material things and work combine and form as it were a single whole.

*Id.* ¶69; THE PAPAL ENCYCLICALS 1903-39, *supra* note 4, at 426.

administration is to be encouraged."<sup>12</sup> On the other hand, Pius XII described the supposed right of economic co-management as "outside the field of possibilities."<sup>13</sup>

Are these approaches reconcilable? Peters seems to be led towards treating Jud and Darlene one way if he regards them as close affiliates like members of a family, but towards quite a different approach if he regards them as mere holders of contract rights. Jake seems to have stronger duties to Peters and to QP Corporation under one approach than under the other. Under one approach, it seems Peters must bear with Jud and Darlene and keep them on as employees and that Jake must bear with QP Corporation and not sell his stock to Venture Investors. Under the other approach, it seems that terminations of the relationships are fully justified.<sup>14</sup>

Peters' dissatisfaction with the treatises of moral theology is aggravated when he reflects on what they do *not* contain: notably, discussions of efficiency and the desiderata of producing a good product and selling it cheap and of making the business grow larger and more profitable. Peters is not an altar boy any longer, and he is as much impressed with profit and growth as is the average businessman and almost as much as the average business school professor. The treatises on moral theology seem to ignore those goals. They seem to present a primitive, household-based model for the business which may accurately reflect the familial origin of many companies, ancient and modern,<sup>15</sup> but to ignore a fundamental distinction: businesses aim at producing

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12. Second Council of the Vatican, *Gaudium et spes* 67 (Dec. 7, 1965), translated into English as "Pastoral Constitution on the Church in the Modern World," in VATICAN COUNCIL II: THE CONCILIAR AND POST CONCILIAR DOCUMENTS 903, 973 (Austin Flannery, O.P., ed., Roman Lennon, O. Carm., trans., 1975) ("while taking into account the role of every person concerned—owners, employers, management, and employees—and without weakening the necessary executive unity").

13. Pius XII, Speech to the International Congress of Social Studies (June 3, 1950), AAS 42, 487. Another statement by Pius XII of interest is the following: "They would be wrong who affirmed that every particular enterprise is by its nature a society, so that relations between those who have parts to play in it should be regulated by distributive justice and all without distinction—be they owners or not of the means of production—have a right to their part of the property or, at least, of the profits of the enterprise." Pius XII, Speech to U.N.I.A.P.A.C. (May 7, 1949), AAS 41, 285. For a discussion of Pius XII's views on such matters, see JEAN-YVES CALVEZ & JACQUES PERRIN, *THE CHURCH AND SOCIAL JUSTICE: THE SOCIAL TEACHING OF THE POPES FROM LEO XII TO PIUS XII* 279 *et seq.* (J.R. Kirwin, trans., 1961).

14. American contract law usually regards an employment contract as terminable at will without cause. E. ALLAN FARNSWORTH, *CONTRACTS* § 7.17, 513-15 (3d ed. 1999); Richard Epstein, *In Defense of the Contract at Will*, 51 U. CHI. L. REV. 947 (1984).

15. See, e.g., BLANCHE HAZARD, *THE ORGANIZATION OF THE BOOT AND SHOE INDUSTRY IN MASSACHUSETTS BEFORE 1875* (1921) (thoroughly describing the evolution of the footwear industry from its origins in the household); IRIS ORIGO, *THE MERCHANT OF PRATO* (1957) (describing in amazing detail the Fourteenth Century life of Francesco Datini and his trading companies which, though large and far-flung, maintained many characteristics of familiarity

and selling a product and at making profit, families do not. Businesses seem to have an external intentionality; families seem to aim inwards at the good of their members.

### III. MAINSTREAM THEORY ENDORSES A CONTRACTUALIST APPROACH BUT IS BUILT ON A SHAKY ETHICAL FOUNDATION

#### A. *A Leading Mainstream View*

If Peters turns, dissatisfied, from the moral theology treatises to current mainstream thought about the business organization, he will encounter an emphatic endorsement of a contractual approach. A business organization, Judge Easterbrook and Professor Fischel tell us, is a “nexus of contracts” among equity holders, lenders, managers and workers:

*Everything* to do with the relation between the firm and the suppliers of labor (employees), goods and services (suppliers and contractors) is contractual . . . . Just so with the rules in force when the firm raises money—whether by issuing debt, the terms of which are often negotiated at great length over a table, or by issuing equity, the terms of which affect the price of the issue.<sup>16</sup>

#### B. *Theoretical Foundations of this Leading View*

This view rests on two pillars. One, anthropological in nature, depicts the person as an “economic man,” consistently (“rationally”) seeking to maximize his utility<sup>17</sup> or his preferences.<sup>18</sup> The second, ethical in nature—the utilitarian

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among their members); JOSEPH FRAZIER WALL, *ALFRED I. DUPONT: THE MAN AND HIS FAMILY* (1990) (describing the DuPont company which, during many generations, remained a family concern). See generally ALLAN C. CARLSON, *FROM COTTAGE TO WORK STATION: THE FAMILY'S SEARCH FOR SOCIAL HARMONY IN THE INDUSTRIAL AGE I* (1993) (“For over a millennium, householding had been the dominant economic pattern . . . . Household production, ranging from tool making and weaving to the keeping of livestock and the garden patch, bound each family together as a basic economic unit, a ‘community of work.’”).

16. FRANK H. EASTERBROOK & DANIEL FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 16 (1991). This work uses the term “nexus of contracts” at page 12 and portrays the company that way passim and especially at pages 9-12 and 16-17. *But see* Victor Brudney, *Contract and Fiduciary Duty in Corporate Law*, 38 B.C. L. REV. 595 (1997); Victor Brudney, *Corporate Governance, Agency Costs and the Rhetoric of Contract*, 85 COLUM. L. REV. 1403 (1985). For objections to the contractarian model as applied to the relationship between firm and workers, see Kent Greenfield, *The Place of Workers in Corporate Law*, 39 B.C. L. REV. 293 (1998) and works cited.

17. AMARTYA SEN, *ON ETHICS AND ECONOMICS* 80 (1987) (“In the usual economic literature a person is seen as maximizing his utility function, which determines all his choices.”). See George Stigler, *Economics or Ethics?*, in 2 TANNER LECTURES ON HUMAN VALUES 143, 190

ethic—identifies the good as the maximization of pleasure<sup>19</sup> or the satisfaction of preferences.<sup>20</sup>

The anthropology compels the conclusion that normally people affiliate each for their own benefit, conferring goods on the other only as a *quid pro quo*, only as a means to getting something better back.<sup>21</sup> So it must also be with contracts. The market, Judge Easterbrook and Professor Fischel tell us, is an “extended conflict among selfish people”;<sup>22</sup> *contracts* in the marketplace, the conclusion seems clear, are encounters in this conflict. The ethics suggest that exchanges of this sort are usually a good thing: each person is usually the

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(Sterling M. MacMurrin ed., 1981) (“[W]e live in a world of reasonably well-informed people acting intelligently in pursuit of their self-interests.”).

18. The preference-based account is described in Martin Hollis & Robert Sugden, *Rationality in Action*, 102 MIND 1, 5-7 (1993) and in Amartya Sen, *The Formulation of Rational Choice*, 84 AM. EC. REV. 385 (1994).

19. Pleasure-based utilitarianism “holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure.” JOHN STUART MILL, UTILITARIANISM 18 (Samuel Gorovitz, ed., 1971).

20. See John Harsanyi, *Rule Utilitarianism and Decision Theory*, 11 ERKENNTNIS 25 (1977).

21. An exception is the situation in which the parties’ utilities are “interdependent.” See Richard A. Posner, *Gratuitous Promises in Economics and Law*, 6 J. LEGAL STUD. 411 (1977). Recent studies have been expanding the understanding of interdependent utilities and reporting a preference for fair or equal outcomes in many situations. See, e.g., Giuseppe Lopomo & Efe Oke, *Bargaining, Interdependence, and the Rationality of Fair Division*, 32 RAND J. ECON. (forthcoming). The literature is discussed in Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1489-97 (1998). A response by Judge Posner concedes much of the criticism: Richard A. Posner, *Rational Choice, Behavioral Economics, and the Law*, 50 STAN. L. REV. 1551, 1558-59 (1998). Posner states:

The picture that JST paint . . . is of a person who has trouble thinking straight or taking care for the future but who at the same time is actuated by a concern with being fair to other people, including complete strangers. This may be a psychologically realistic picture of the average person, and it responds to the familiar complaint that ‘economic man’ is unrecognizable in real life. But in theory-making, descriptive accuracy is purchased at a price, the price being loss of predictive power . . . .

See also *id.* at 1561-62, where Posner notes that

our instincts are easily fooled when confronted with conditions to which human beings never had a chance to adapt biologically. That is why . . . people can love an adopted infant as much as they would their own biological child . . . . Voting, giving to charities, and refraining from littering, in circumstances in which there is neither visible reward for these cooperative behaviors nor visible sanctions for defection, may illustrate an instinctual, and as it were biologically mistaken, generalization of cooperation from small-group interactions, in which altruism is rewarded . . . and failures to reciprocate punished, to large-group interactions in which the prospects of reward and punishment are so slight that cooperation ceases to be rational . . . .

22. EASTERBROOK & FISCHEL, *supra* note 16, at 8.

best judge of his own utility<sup>23</sup> and therefore when two people decide on an exchange it is usually good, as best as we can judge, for each.<sup>24</sup>

Business companies can be analyzed this way: perhaps so should *all* organizations and relationships,<sup>25</sup> even the household<sup>26</sup> and the state; even fiduciary relationships like those of trusts;<sup>27</sup> anyway certainly business organizations. People who form business companies give money, goods or services in exchanges each judges to be good for himself; they are the best judges of that; we should concur.

### C. *Implications for the Structure and Purposes of the Company*

At the company-formation bargaining table, the participants, each seeking his own utility, hammer out a bargain that creates a firm optimally designed to maximize profit.<sup>28</sup> The various participant-firm relationships will be fixed with this goal dominant: sharp-in, sharp-out contracts (like for suppliers), long-term contracts involving ongoing direction and control (for employees), contracts for fixed compensation (for creditors and employees), and

23. According to the preference utilitarian view each *defines* his own utility.

24. RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 14 (4th ed. 1992) (hereinafter POSNER, *ECONOMIC ANALYSIS*) (“Where resources are shifted pursuant to [a voluntary transaction], we can be reasonably sure that the shift involves an increase in efficiency.”). See EASTERBROOK & FISCHEL, *supra* note 16, at 38 (“In a market economy, each party to a transaction is better off.”). Similar views appear in JOHN STUART MILL, *ELEMENTS OF POLITICAL ECONOMY* 125-26 (3d ed. 1844), and JEREMY BENTHAM, *GENERAL VIEW OF A COMPLETE CODE OF LAWS*, CH. XVI, in 3 *THE WORKS OF JEREMY BENTHAM* 155, 190 (John Bowring, ed., 1962).

25. See John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 *YALE L.J.* 625, 630 (1995) (“Contract has become the dominant doctrinal current in modern American law. In fields ranging from corporations and partnership, to landlord and tenant, to servitudes, to the law of marriage, scholars have come to understand our legal rules as resting mainly on imputed bargains that are susceptible to alteration by actual bargains.”).

26. See, e.g., RICHARD A. POSNER, *SEX AND REASON* (1992); POSNER, *ECONOMIC ANALYSIS*, *supra* note 24, at 5.

27. Frank H. Easterbrook & Daniel R. Fischel, *Contract and Fiduciary Duty*, 36 *J. L. & ECON.* 425, 427 (1993) (“Fiduciary duties are not special duties; they have no moral footing; they are the same sort of obligations, derived and enforced in the same way, as other contractual undertakings.”); Frank H. Easterbrook & Daniel Fischel, *Corporate Control Transactions*, 91 *YALE L.J.* 698, 702 (1982) (“[T]he fiduciary principal is fundamentally a standard term in a contract.”). See also Scott FitzGibbon, *Fiduciary Relationships Are Not Contracts*, 82 *MARQ. L. REV.* 303 (1999).

28. EASTERBROOK & FISCHEL, *supra* note 16, at 6 (“[S]elf-interested entrepreneurs and managers, just like other investors, are driven to find the devices most likely to maximize net profits. If they do not, they pay for their mistakes because they receive lower prices for corporate paper.”).

arrangements for *residual* remuneration—what's left over (for equity holders).<sup>29</sup>

The implications of this mainstream view for the issues that concern Quentin, Donna, and Jake seem clear: it suggests, for example, ready termination of relationships not firmly established in contractual specifications.<sup>30</sup> Mainstream ethics and anthropology imply relational minimalism.

#### D. *Shortcomings of Utilitarian Ethics and Anthropology*

If Peters pursues these theories assiduously, he will discover that their theoretical bases are shaky: widely rejected, and deservedly so, in much modern scholarship.<sup>31</sup> Another thing Peters will quickly notice is that these views are incompatible with the fundamentals of Aristotelean ethics and Catholic moral theology:

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29. *Id.* at 36 (the normal outcome will involve "employees and debt investors holding rights to fixed payoffs and equity investors holding a residual claim to profits, which other investors promise to maximize").

30. See Epstein, *supra* note 14. See also *Jordan v. Duff Phelps, Inc.*, 815 F.2d 429 (7th Cir. 1987), in which Judges Easterbrook and Posner disagreed bitterly over the extent to which a company had disclosure obligations to an employee who was considering cashing in his stock options and resigning.

31. As to the anthropology: critical literature is identified in Bruno S. Frey & Alois Stutzer, *What Can Economists Learn from Happiness Research?*, [http://papers.ssrn.com/paper.taf?abstract\\_id=271816](http://papers.ssrn.com/paper.taf?abstract_id=271816) (Center for Economic Studies & Ifo Institute for Economic Research Working Paper No. 503, University of Zurich Working Paper No. 80, June 2001) (criticizing the preference-based approach), in Jolls et al., *supra* note 21, at 1489-97, and in Donald C. Langevoort, *Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499, 1499-1508 (1998); for another important authority see Sen, *supra* note 18, at 386 ("A divergence between choice and well-being can easily arise when behavior is influenced by some motivation other than the pursuit of one's own interest or welfare (*e.g.*, through a sense of commitment, or respect for duty)."). As to the ethics: among many telling criticisms see JOHN FINNIS, *MORAL ABSOLUTES* 17-24 (1991) (the incommensurability objection); Philippa Foot, *Utilitarianism and the Virtues*, in CONSEQUENTIALISM AND ITS CRITICS 224, 237 (Samuel Scheffler, ed., 1988) (discussing the unacceptable implications for harming the innocent argument). As to ethics applied to economics, see POSNER, *supra* note 24, at 13, 27 (conceding, probably, the insufficiency of utilitarianism and utilitarian-based economics); Martha C. Nussbaum, *Flawed Foundations: The Philosophical Critique of a Particular Type of Economics*, 64 U. CHI. L. REV. 1197 (1997). As to the ethics and anthropology as applied to corporate law, see Kent Greenfield, *Using Behavioral Economics to Show the Power and Efficiency of Corporate Law as a Regulatory Tool*, Boston College of Law and Economics Working Paper No. 01-02 (draft of July 8, 2001), available online at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=276168](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=276168).

### 1. Utilitarian Ethics

Pleasure is a good, according to Aristotle and according to the Catholic tradition, only in a secondary way. Pleasure often constitutes an incentive to good action: for example the pleasure of eating leads a person to nourish himself and the pleasure of running well attracts people to track. Further, Aquinas tells us, *delectatio* adds a completion or perfection to a good action;<sup>32</sup> in Aristotle's charming phrase, "as the bloom of youth does on those in the flower of their age."<sup>33</sup> But pleasure is not the basic point; rather, the basic good for man is *eudaemonia* or *beatitudo*; knowing, loving and serving God; good action is a part of this,<sup>34</sup> and preeminently good action done for the best reasons. An athlete who competed well for pleasure alone, not apprehending the excellence of a strong and well-trained body or a fast and well-run race, would miss the point. An athlete who prepared and competed *badly*, seduced by the pleasures of overeating and undertraining, would not be acting well or participating, to that extent, in *eudaemonia* or *beatitudo*.<sup>35</sup> The economic man (the type who exclusively pursues "utility" in the Benthamist understanding) is not a fully good person—he is often a bad person—according to Aristotelean ethics and Catholic moral theology.

Similar conclusions apply to preference utilitarianism. Getting what you prefer has a certain element of good in it, connected to the good of freedom. Freedom can be instrumental to goods just as the freedom to run is instrumental to the athletic life. Furthermore, getting beyond instrumentalism,

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32. Thomas Aquinas, *Summa Theologica* I-II q. 34 ad. 3 in I ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* 739 (Fathers of the English Dominican Province, trans., 1947) ("an operation cannot be perfectly good, unless there be also pleasure in the good"). See generally JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1998), which at several points, e.g. at 72-78, provides a thorough discussion. See also CATECHISM OF THE CATHOLIC CHURCH ¶1770 (1994) ("Moral perfection consists in man's being moved to the good not by his will alone, but also by his sensitive appetite, as in the words of the psalm: 'My heart and flesh sing for joy to the living God.'") (quoting Psalm 84:2).

33. NICOMACHEAN ETHICS 1174b. Here and throughout this Article the translation of the Nicomachean ethics is that by W.D. Ross, as revised by J.O. Urmson, in II THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 1729 (Jonathan Barnes, ed., 1984) (hereinafter NICOMACHEAN ETHICS).

34. In Aquinas, *beatitudo perfecta* is constituted by the life of contemplation; but *beatitudo imperfecta* involves the active life; and good action in such a life is not just a means of attaining to contemplation nor is the active life a failed contemplative life. An intense and learned discussion of the various Thomist texts to these effects is located in FINNIS, *supra* note 31, at 104-10.

35. Thomas Aquinas, *Summa Theologica* I-II q. 34 a. 1 c., in I ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* 736-37 (Fathers of the English Dominican Province, trans., 1947) ("[S]ome pleasures are good, and . . . some are evil. For pleasure is a repose of the appetitive power in some loved good . . . [T]here is a good pleasure, whereby the higher or lower appetite rests in that which is in accord with reason; and an evil pleasure, whereby the appetite rests in that which is discordant from reason and the law of God.").

freedom is a sort of component of the good (athletic competition under compulsion is not so *eudaemonic* as is athletic competition through free choice). The free man, unlike the man under compulsion, acts because of goods he understands and intends; and by doing so he brings them into himself and develops his character for the better.<sup>36</sup> This account indicates that the good of freedom is wrapped up in the good of the intentions of the person who exercises it. Someone who acts frivolously, without important intentions or purposes—someone who acts just “to do it *my way*”—does not participate in the good of freedom.<sup>37</sup> For example, someone whose understanding of the good is limited to “my preferences” does not participate in the good of freedom. Worse yet, someone whose intentions are thoroughly bad does not realize the goods of freedom. The athlete who exercises a preference for too much fatty food before a race is not a *eudaemonic* runner at all.<sup>38</sup> The economic man of the preference-utilitarian variety is not fully a good person according to the Aristotelean and Catholic traditions.

Both Benthamite and preference utilitarianism are forms of consequentialism or proportionalism, and so fall under the guns of the condemnations of such theories contained in the encyclical *Veritatis Splendor*.<sup>39</sup> Catholic moral theology condemns some actions even when desirable results accrue from them.<sup>40</sup>

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36. A fuller account of the good of freedom is in Scott FitzGibbon, *The Failure of the Freedom-Based and Utilitarian Arguments for Assisted Suicide*, 42 AM. J. JURIS. 211, 212-19 (1997), relying in part on KAROL WOJTYLA, *THE ACTING PERSON* (Andrzej Potocki, trans., Anna-Teresa Tymieniecka, collaborator, 1979).

37. This view is derived from Harry Frankfurt, *Freedom of the Will and the Concept of a Person*, 68 J. PHIL. 5 (1971).

38. The thesis that bad actions do not involve the good of freedom or autonomy is ably stated and defended in ROBERT P. GEORGE, *MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY* 173-82 (1993), and in JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986). See CATECHISM OF THE CATHOLIC CHURCH ¶1733 (1994) (“There is no true freedom except in the service of what is good and just.”). A similar argument about constitutional and other juridical issues is advanced in JOHN H. GARVEY, *WHAT ARE FREEDOMS FOR?* (1996).

A more complex problem about freedom arises if one asks, not “what actions instantiate the good of freedom for the actor,” but “what options, extended to people by others, are likely to enhance their participation in the good of freedom.” (This latter question is directly relevant for people like lawmakers and builders of social groups). Perhaps leaving someone the choice to do something bad enhances the good for him (if he freely refrains and does good instead).

39. John Paul II, Encyclical Letter of August 6, 1993, 85 AAS 1133, *translated in* THE ENCYCLICALS OF JOHN PAUL II 674 (J. Michael Miller, C.S.B., ed., 1996).

40. FINNIS, *supra* note 31; GRISEZ, *supra* note 8, Volume One; Germain Grisez, *Moral Absolutes: A Critique of the View of Josef Fuchs, S.J.*, 1985 ANTHROPOS 176; Germain Grisez et al., *Practical Principles, Moral Truth, and Ultimate Ends*, 32 AM. J. JURIS. 99 (1987).

## 2. Utilitarian Anthropology

Man often seeks pleasure, but the Aristotelean and Catholic traditions insist that he aspires to more than that and shapes his life under the guidance of other influences as well. For example:

*Passions and appetites.* These cannot be described as though they were simply constructs of pleasures and pains. Consider the appetite of hunger and the passion of anger: in moderation each may be somewhat pleasant; in excess each can be very painful; each presses on towards resolution in its own characteristic way, hunger urging us to eat, anger to acts of retribution or reprisal.

*The promptings of conscience.* *Gaudium et Spes* states:

Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and avoid evil, tells him inwardly at the right moment: do this, shun that. For man has in his heart a law inscribed by God . . . His conscience is man's most secret core, and his sanctuary. There he is alone with God whose voice echoes in his depths.<sup>41</sup>

*The desire for happiness (and the related appetency to develop and to deploy one's capacities to the fullest).*<sup>42</sup> The Olympic runner would likely choose to carry on with the race and with his career as a runner even in the face of pain or the deprivation of pleasure; Beethoven continued caring about music even after he became deaf. The development of Aristotelean *eudaemonia* is a human *telos*. As Aristotle says: "[T]here are many things we should be keen about even if they brought no pleasure. If pleasures necessarily do accompany these, that makes no odds; we should choose these even if no pleasure resulted."<sup>43</sup>

The development of one's capacities in a full and integrated way and the deployment of one's capacities consistently in a complete and mature life is a good which all to some extent seek. Few would choose to spend their lives in Robert Nozick's "experience machine" how ever much pleasure it afforded them, if it meant the sacrifice of maturity and integrity.<sup>44</sup> And as Aristotle says, "no one would choose to live with the intellect of a child throughout his

41. Second Council of the Vatican, *Gaudium et spes* 16 (Dec. 7, 1965), translated into English as "Pastoral Constitution on the Church in the Modern World," in VATICAN COUNCIL II: THE CONCILIAR AND POST CONCILIAR DOCUMENTS 903, 916 (Austin Flannery, O.P., ed., Roman Lennon, O. Carm., trans., 1975).

42. See CATECHISM OF THE CATHOLIC CHURCH ¶1718 (1994) (referring to "the natural desire for happiness. God has placed it in the human heart in order to draw man to the One who alone can fulfill it.").

43. *Id.*

44. See ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 42-43 (1974).

life, however much he were to be pleased at the things that children are pleased at . . . ."<sup>45</sup>

*The natural appetency to form friendships, families, and other groups (and to participate in them in a way that makes them succeed as components of the eudaemonia or beatitudo of the members). Happiness for a person includes his possessing and exercising the social virtues of justice and friendship.*

#### E. Some Conclusions

Peters cannot reasonably base his governance of QP Corporation on the maximization of pleasure, the satisfaction of preferences, or an anthropology which caricatures as "economic men" persons such as Donna, Jake, Jud, and Darlene. He really cannot make of it the "extended conflict among selfish people" which underlies this mainstream approach. He is left looking for other bases for approaching the problem of making QP Corporation a "true human community."

#### IV. AFFILIATION AND COMMUNITY ACCORDING TO ARISTOTLE.

Peters therefore turns to Aristotle—the greatest classical source for Catholic ethics and Western philosophy generally.

The basic unit of human bonding in Aristotle is identified with the word *philos*. The term is usually translated "friend," but might be more cautiously translated "affiliate," since to call someone *philos* identifies him as in some way one's own (as belonging to oneself and as not being a stranger) but does not establish that the relationship is really close or that it involves strong feelings.<sup>46</sup> Man needs affiliates and finds it hard to live well without them. "For without *philov* no one would choose to live, though he had all other

45. Other translators use the term "mind of a child", e.g. H. Rackham (1934) and J.E.C. Welldon (undated); Terence Irwin (1985) uses the phrase "child's [level of] thought" (bracketed material from Irwin).

46. In the *POETICS* (1453b 14-15), Aristotle "divides all human relationships into only three categories—that of *philo*i, enemies, and neutrals." ELIZABETH S. BELFIORE, *MURDER AMONG FRIENDS: VIOLATION OF PHILIA IN GREEK TRAGEDY* 5 (2000). See also PAUL MILLET, *LENDING AND BORROWING IN ANCIENT ATHENS* 109-26 (1991) (concurring in the view that Aristotle in general uses the words related to *philos* in a comprehensive way). See generally P. CHANTRAINE, *ETUDES SUR LE VOCABULAIRE GREC* 15 (1956), quoted in I CESLAS SPICQ, O.P., *THEOLOGICAL LEXICON OF THE NEW TESTAMENT* 10 n.15 (James D. Ernest, trans., 1994) (The term "*philos*" in general [that is not with specific reference to Aristotle's usage] "literally expresses not an emotional attachment, but belonging to a social group."). But see DAVID KONSTAN, *FRIENDSHIP IN THE CLASSICAL WORLD* 55-56, 68 (1997) (identifying a big difference between *philos* on the one hand and *philein* and *philia* on the other). Authorities on Homeric *philos* and its connections to the Aristotelean version are described in SUZANNE STERN-GILLET, *ARISTOTLE'S PHILOSOPHY OF FRIENDSHIP* 6-7 (1995).

goods.”<sup>47</sup> Man is an affiliating animal. He is, furthermore, a *politikon* animal,<sup>48</sup> and “not only a political but also a house-holding animal” and a partnership-forming one.<sup>49</sup>

In Books VIII and IX of the *Nicomachean Ethics* and Book VII of the *Eudemian Ethics*, Aristotle discusses affiliation (*philia*). *Philia* involves virtue<sup>50</sup> and so is a basic aspect of the human good.

Aristotle identifies several elements of *philia*. One is *eunoia*—prominently translated “goodwill”;<sup>51</sup> and another element is found in *boulontai tagatha*—prominently translated “wishing well.”<sup>52</sup> Further elements are those of mutual knowledge<sup>53</sup>—mutual recognition—and reciprocity: “a mutual and recognized love.”<sup>54</sup> “To be friends, [people] must be mutually recognized as bearing good will and wishing well to each other.”<sup>55</sup> And furthermore friendship, at least in its higher form, involves “reciprocal choice of the absolutely good and pleasant,”<sup>56</sup> (and therefore, as part of choosing, reciprocal reasoning and judging)<sup>57</sup> and “sharing in discussion and thought.”<sup>58</sup>

47. NICOMACHEAN ETHICS, *supra* note 33, at 1155a 5-6.

48. POLITICS 1253a 2-9. (Here and throughout this Article the translation of the POLITICS quoted is the Jowett translation in II THE COMPLETE WORKS OF ARISTOTLE 1986 (Jonathan Barnes, ed., 1984)). The point here is not just that man tends to join a polis, it is that he tends to affiliate in groups of various sorts: *politikon* man is here contrasted not with tribal man or family man but with entirely isolated man: the “[t]ribeless, lawless, heartless one.” *Id.* at 4-5 (quoting ILIAD, at 9). Man is also identified as *politikon* in POLITICS 1278b 19-21, in NICOMACHEAN ETHICS, *supra* note 33, at 1097b 12, 1162a 17-19, and 1169b 17-19, and in HISTORY OF ANIMALS 488a 8-10.

49. “*oikonomikōv zōon*” and “*koinonikōn anthrōpos*.” EUDEMIAN ETHICS 1242a 22-24. Here and throughout this Article the translation of the EUDEMIAN ETHICS is that by J. Solomon in II THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 1922 (Jonathan Barnes, ed., 1984) (hereinafter EUDAEMONIAN ETHICS). In context: “[M]an is not merely a political but also a household-maintaining animal, and his unions are not, like those of the other animals, confined to certain times, and formed with any chance partner, whether male or female, but . . . man has a tendency to partnership with those to whom he is by nature akin.” *Id.*

50. NICOMACHEAN ETHICS, *supra* note 33, at 1155a 4.

51. “[G]oodwill when it is reciprocal being friendship.” *Id.* at 1155b 33. The term “goodwill” is prominent in the definition of *eunoia* in A GREEK-ENGLISH LEXICON compiled by HENRY GEORGE LIDDELL & ROBERT SCOTT 723 (Henry Stuart Jones, rev., 9th ed., 1940) and authorities cited.

52. NICOMACHEAN ETHICS, *supra* note 33, at 1156a 10.

53. “For many people have goodwill to those whom they have not seen but judge to be good or useful . . . but how could one call them friends when they do not know their mutual feelings?” *Id.* at 1156a 1-3; *see id.* at 1167a 23-24.

54. *Id.* at 1156a 8.

55. *Id.* at 1156a 3-4.

56. EUDEMIAN ETHICS, *supra* note 49, at 1237a 31-32.

57. Since choice involves “consideration and deliberation.” EUDEMIAN ETHICS, *supra* note 49, at 1226b 8 “Choice arises out of deliberate opinion.” *Id.* at 1226a 8-9. “[C]hoice is

Another element is expressed by *philein* (a verb with the same root as *philos*; it can mean "to love" but it can mean much less intense attitudes).<sup>59</sup>

The inclusion, in the account of affiliation, of the element of reasoning and judging reflects the Aristotelean understanding of virtuous conduct generally. Fullness in Aristotelean virtue is never a matter of just *doing* good things; *eudaemonia* involves activity for the right reasons, with the participation of the mind and a correct disposition of will:

[S]ome people who do just acts are not necessarily just, i.e. those who do the acts ordained by the laws either unwillingly or owing to ignorance or for some other reason and not for the sake of the acts themselves . . . so is it, it seems, that in order to be good one must be in a certain state when one does the several acts, i.e. one must do them as a result of choice and for the sake of the acts themselves.<sup>60</sup>

#### A. *Types of Affiliation*

Aristotle identifies three principal types of affiliation. One is the affiliation of utility, in which each party affiliates with the other not "for" the other but "in virtue of some good which [he] gets from [the] other."<sup>61</sup> Examples of affiliations of utility include alliances between cities,<sup>62</sup> relationships between a powerful man and those who are useful to him,<sup>63</sup> and relations in commerce.<sup>64</sup>

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deliberate desire . . . I call it deliberate when deliberation is the source and cause of the desire . . ." *Id.* at 1226b 18-20.

58. NICOMACHEAN ETHICS, *supra* note 33, at 1170b 11-12.

59. It is translated with forms of the verb "to love" in the Ross translation of the ETHICS. But it can mean something different from *eros* and from *agape*, and can be found, according to Greek usage, not only between parent and child and husband and wife but also between host and guest. *See* the definition in LIDDELL & SCOTT, *supra* note 51. A discussion of Greek words for love and related matters, with extensive references, is contained in I CESLAS SPICQ, O.P., THEOLOGICAL LEXICON OF THE NEW TESTAMENT 8-22 (James D. Ernest, trans., 1994). *Philein* is discussed at some length in the RHETORIC, where Aristotle states: "We may describe friendly feeling [*philein*] towards anyone as wishing for him what you believe to be good things, not for your own sake but for his, and being inclined, so far as you can, to bring those things about." (Here and throughout this Article the translation of the RHETORIC is that by W. Rhys Roberts in II THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 2152 (Jonathan Barnes, ed., 1984) (hereinafter RHETORIC)). NICOMACHEAN ETHICS, *supra* note 33, at 1380b 34 - 1381a 1. This seems to be a "high" account of the word, requiring complete unselfishness. But in the ensuing passage Aristotle extends it to cases inconsistent with this demanding interpretation: for example we have this disposition towards the enemies of our enemies, *id.* at 1381a 16-17, and "to those who are willing to treat us well where money is concerned," *id.* at 1381a 20-21.

60. NICOMACHEAN ETHICS, *supra* note 33, at 1144a 14-20.

61. *Id.* at 1156a 11-12.

62. *Id.* at 1157a 27.

63. *Id.* at 1158a 28-29. Or those who are "clever at doing what they are told." *Id.* at 1158a 33-34.

A second type of affiliation is that of pleasure: each affiliates with the other owing to the pleasure he receives and confers. Affiliations between “ready-witted” people is Aristotle’s example.<sup>65</sup> A third type is the “perfect” or “full” (*teleios*) affiliation: “Perfect friendship is the friendship of men who are good, and alike in excellence; for these wish well to the other *qua* good, and they are good in themselves. Now those who wish well to their friends for their sake are most truly friends . . . .”<sup>66</sup> Let us take a closer look at the first and the third types.

### 1. The Affiliation of Utility

One kind of connection might be composed of entirely selfish people who care only about what they take out of the relationship, each doing good for the other—perhaps paying a fair price—but motivated only by the desire to obtain good things for himself. Bad men and animals can relate like this,<sup>67</sup> and so can creditors and debtors, as Aristotle observed.<sup>68</sup> But an affiliation of utility may be composed (why not?) of parties who are just persons in the full sense, not only *doing* what is just but also seeing and embracing the good of justice. Furthermore, the affiliation of utility involves reciprocity. The parties are not complete strangers: they mutually recognize and know one another. Each to some extent wills the other’s good. Each wills the other’s good in doing justice and being just. Each will the other’s good in affiliating.

The connection of purely selfish people does not, except in a very limited way, involve *eunoia*, *boulontai tagatha*, mutuality, reciprocity, sharing in reason and thought or *philein*. Its participants are not fully just: they “do just acts [but] are not necessarily just [in that they] . . . do the acts ordained by the laws either unwillingly or owing to ignorance or for some other reason and not for the sake of the acts themselves.”<sup>69</sup> A utility affiliation, on the other hand, can involve *eunoia*, *boulontai*, *tagatha* and the exercise of virtues such as justice and benevolence.<sup>70</sup> To illustrate the difference: the job is done; the

64. “Commercially minded” people are likely to form affiliations of utility. *Id.* at 1157b 21-22.

65. NICOMACHEAN ETHICS, *supra* note 33, at 1156a 12-17.

66. *Id.* at 1156b 7 *et seq.*

67. EUDEMIAN ETHICS, *supra* note 55, at 1236b 6-11.

68. NICOMACHEAN ETHICS, *supra* note 33, at 1167b 29-30 (creditors “have no friendly feeling for their debtors, but only a wish that they may be kept safe with a view to what is to be got from them.”) The context here is not a discussion of the friendship of utility but rather a distinction between creditors and benefactors. Note that the creditor is normally someone who has already done all that is required of him for his part of the affiliation of utility; perhaps it is therefore appropriate for him to set aside the limited *philein* which is appropriate to this kind of relationship.

69. NICOMACHEAN ETHICS, *supra* note 33, at 1144a 14-20.

70. “[W]ith respect to each [of the types of friendship] there is a mutual and recognized love, and those who love each other wish well to each other.” *Id.* at 1156a 8. An important article to

employee departs without his paycheck: the employer of the first type hopes never to see him again; the employer of the second type tries to find the employee to pay him what he has earned.

How, then, is the affiliate of utility different from the "perfect" friend, the affiliate of the third type? It seems that the good intended by an affiliate of utility has limits that do not apply in a "perfect" friendship. These limits are in part ones of quantity, in that each may help the other only to the extent that the other helps him; perhaps also ones of type, in that each may give only what is similar to what he gets back (allies offer military assistance in wartime but not economic sustenance during peacetime, traders exchange goods or money but not support in a fight).<sup>71</sup> No doubt the limits also relate to motive; the affiliate of utility, although not thoroughly selfish, is not a thoroughly generous character either. He aims at the good of the other because he sees that balance and evenhandedness is good rather than because he embraces the other's welfare in general. A further limit relates to consequences: the affiliate of utility intends to deliver the widgets but may not concern himself with their effects on the recipient's life as a whole. This illustrates a fundamental trait of the affiliation of utility: the affiliates are joined together superficially, not intimately. Affiliates of utility may not care much about one another's

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this effect is John M. Cooper, *Aristotle on the Forms of Friendship*, 30 REVIEW OF METAPHYSICS 619 (1977), which defends the view that "in every friendship, of whichever of the three types, the friend will wish his friend whatever is good, for his own sake." *Id.* at 631. To similar effect: BERNARD YACK, THE PROBLEMS OF A POLITICAL ANIMAL 37-39 (1993) (understanding Aristotle to allude to a disposition of people in an exchange relationship to favor the other party's obtaining some (lesser) advantage). See generally DOUGLAS B. RASMUSSEN & DOUGLAS J. DEN UYL, LIBERTY AND NATURE: AN ARISTOTELIAN DEFENSE OF LIBERAL ORDER 174-83 (1991) (defending the view that commercial relationships are affiliations of utility against the assertion that the parties lack good will and so cannot be *philoî*). For further literature on this controversial subject, see Richard Mulgan, *The Role of Friendship in Aristotle's Political Theory*, in 2 CRITICAL REVIEW OF INTERNATIONAL SOCIAL AND POLITICAL PHILOSOPHY NO. 4, at 15, 19-24 (1999).

How do good will and benevolence fit in with the exchange? Professors Cooper and Yack sometimes imply that they arise in a sort of psychological penumbra. See Cooper, *supra*, at 633-34 (Aristotle is making "the psychological claim that those who have enjoyed one another's company or have been mutually benefited through their common association will, as a result of the benefits or pleasures they receive, tend to wish for and be willing to act in the interest of the other person's good."). The good will, Cooper thinks, is secondary: "The overriding concern of the advantage-friend is for his own profit," *id.* at 639, and his beneficent actions are only "small ones" which do not "cost him too much," *id.* at 640.

But the better view is that good will and benevolence occupy a prominent and central position: they repose in the participants' disposition each to do justice, each to act reciprocally and each to foster the good of justice and reciprocity in the other. When the affiliate of utility is a just man, his commitments along these lines are not overridden by the desire for profit and his actions—paying what is owed, notably—may be big ones which do cost him much.

71. "[T]hose who love each other wish well to each other in that respect in which they love one another." NICOMACHEAN ETHICS, *supra* note 33, at 1156a 9-10.

characters,<sup>72</sup> long-term projects and aspirations; they may not know much about them; they may not know one another more than superficially; they may exercise only to a very limited extent that mutual reasoning, judging and sharing in discussion and thought” which comes to its fullest in “perfect” friendship.

## 2. The “Perfect” Friendship

As to “perfect” friends: a simple view might be that each is entirely self-abnegating, caring only for the good of the other and not at all for his own good. But this would present a distorted picture. Of course to participate in a friendship *is* a good; a part of happiness; an exercise of virtue; the “perfect” friend sees and appreciates this happy condition and enjoys it—why not?

How, then, is the “perfect” friend different from the affiliate of utility? It seems that what he gives is not limited the way it would be in an affiliation of utility: he does not limit what he gives to the amount or kind of thing he gets. He aims not only at the good of balance in the affiliation but also at the general good of the friend. In determining what to give, he looks deeper than at what has been requested<sup>73</sup> and considers the consequences—the “true good” of the friend. In this way a “perfect” friendship involves knowing and caring about the other person in a way that an affiliation of utility need not.

And what about the “return” or the goods the friend expects for himself? The practical benefits are less important to him than the virtue and intentions behind them;<sup>74</sup> it is a good actually to have been befriended and to be the object of love.<sup>75</sup> It is a greater thing still to be a *bestower* of love<sup>76</sup> and a bestower of benefits<sup>77</sup> and beneficence “is exercised chiefly and in its more

72. See POLITICS, *supra* note 48, at 1280b 2-4 (stating that as between cities who have commercial treaties with one another—affiliates of utility, it seems, by analogy to military allies, see NICOMACHEAN ETHICS, *supra* note 33, at 1157a 27, one city does not “take care that the citizens of the other are such as they ought to be, nor see that those who come under the terms of the treaty do no wickedness at all, but only that they do no injustice to one another.”).

73. See NICOMACHEAN ETHICS, *supra* note 33, at 1172b 20-22 (“[I]t is fitting to go unasked and readily to the aid of those in adversity for it is characteristic of a friend to render services, and especially to those who are in need and have not demanded them . . .”).

74. See *id.* at 1172b 23 (“[W]hen our friends are prosperous we should . . . be tardy in coming forward to be the objects of their kindness, for it is not noble to be keen to receive benefits.”).

75. *Id.* at 1158a 25 (“In being loved . . . people delight for its own sake”).

76. See *id.* at 1168a 19-20 (“loving is like activity, being loved like passivity”); *id.* at 1159a 33-34 (“loving seems to be the characteristic excellence of friends”).

77. To bestow a benefit is noble and pleasant and engenders a love for the person benefited, who is a sort of “handiwork” of the benefactor. The same is not true in reverse: to receive a benefit does not necessarily have those characteristics and effects. *Id.* at 1167a 16 *et seq.*

laudable form towards friends."<sup>78</sup> And among benefits, the greatest are those which confer excellence of character or assist in its development.

Further, a friend develops a "consciousness of the existence of his friend" which is "realized in their living together and sharing in discussion and thought."<sup>79</sup> Each participates in the other's decisions<sup>80</sup> and actions<sup>81</sup> and sees how the other participates in his own. Through this "doubling" or "mirroring" each achieves an enhanced and more objective self-knowledge (since "[t]o perceive a friend must be in a way to perceive one's self. And to know a friend to know one's self . . .").<sup>82</sup>

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78. NICOMACHEAN ETHICS, *supra* note 33, at 1155a 7-9 ("[W]hat is the use of . . . prosperity without the opportunity of beneficence, which is exercised chiefly and in its more laudable form towards friends?").

79. *Id.* at 1170b 11-12.

80. First, by perceiving them. See EUDEMIAN ETHICS, *supra* note 49, at 1136b 5-6 (friendship of the good "is peculiar to man, for he alone perceives another's choices"). Further, often by discussing those decisions and hashing them out together. Further, it seems we are deeply involved in our friend's choices even when we do not help formulate them. An interesting account of various ways in which friends may choose together is contained in A.W. PRICE, LOVE AND FRIENDSHIP IN PLATO AND ARISTOTLE 119 (1989).

81. NICOMACHEAN ETHICS, *supra* note 33, at 1170a 1-3 ("[T]he blessed man will need friends of this sort [virtuous men], since he chooses to contemplate worthy actions and actions that are his own, and the actions of a good man who is his friend have both these qualities."). See *id.* at 1112b 27-28 ("[T]hings that might be brought about by our own efforts . . . in a sense include things that can be brought about by the efforts of our friends.").

82. Self-perception through the mirror of friendship has a unique character, since it is "from the outside." When you act directly, you focus on the object of your action—your goal and the things that lead to it. When your friend acts, you can also focus on him, the actor. You always see other people that way; and when you see a friend that way you are enabled (since a friend is "another self") to take the important step of seeing yourself that way as well. See PRICE, *supra* note 80, AT 121-22:

[I]n perception we become transparent to what we are perceiving, so that perceiving it and perceiving ourselves are the same mental act (something like seeing outside and seeing through a window). . . . [But if] I see a friend looking into my eyes, his looking is to me not transparent (as it is to him) but opaque, so that I see him looking into my eyes without thereby seeing them myself. . . . It is from him that I can learn most easily to distinguish the perceiver from the perceived; I then generalize to my own case. . . . [The] analogue with choice and action shared with a friend of similar character yields a richer self-awareness: in my own person, my projects are (to extend the metaphor) transparent on to their objects, so that my focus is upon the objects, not my pursuit of them; but joining in those projects with a friend I become conscious of his pursuing them, and so conscious in a new way of pursuing them myself (for we are pursuing them together). I thus become explicitly aware of myself not just abstractly as an agent, but as an agent with a certain character, thereby achieving not a bare self-consciousness but a real self-knowledge.

All of this allows us to see in a fuller way how beneficence is involved in friendship: you benefit a friend by conferring enhanced consciousness and augmented self-knowledge on him.

### 3. Choosing Between Types of Affiliation

Either affiliation can be worthy of choice: the affiliation of utility or the “perfect” friendship.

Circumstances often dictate which one to choose. Usually conditions preclude “perfect” friendship since it “requires time and familiarity; as the proverb says, men cannot know each other till they have ‘eaten salt together’: nor can they admit each other to friendship or be friends till each has been found lovable and been trusted by each.”<sup>83</sup> Further, since “perfect” friendship requires excellence of character (“only good men can be friends” of this type),<sup>84</sup> it may also require equality of rank<sup>85</sup> and similarity of character, tastes and ways of life. Moreover, “perfect” friendship with one person may diminish your opportunities to be close friends with others: “[o]ne cannot be a friend to many people in the sense of having a friendship of the complete type with them.”<sup>86</sup> Thus as a practical matter you cannot expect to develop more than an affiliation of utility with most of those—the butcher, the brewer and the baker—from whom you procure your dinner.

How should one choose on those infrequent occasions when circumstances permit either form? Some might argue that one ought always to aim at “perfect” friendship, in the view that the affiliation of utility is nothing more than an underdeveloped friendship and ought to be brought to full flower when possible. But the affiliation of utility seems to have its own special goods. For example, efficiency under certain circumstances:<sup>87</sup> architects or builders asked to get some structures in place in a wartime emergency might reasonably minimize the personal side of their affiliations, choosing a fast-paced, non-discursive decision-making structure; and they might abruptly terminate colleagues when appropriate in order to enhance output, choosing as replacements people who were good at the work but cold, taciturn, hard bargainers, fair to others but not interested in more than a superficial involvement.

Another special good relates to self-knowledge and the “mirroring” or “doubling” described above (“[t]o perceive a friend must be in a way to perceive one’s self”). It seems that an affiliate of utility also holds up a mirror; in it, his affiliate sees himself from a different angle than would a close friend:

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83. NICOMACHEAN ETHICS, *supra* note 33, at 1156b 26.

84. *Id.* at 1157a 18.

85. *Id.* at 1158b 12. That said, “even unequals can be friends; they can be equalized.” *Id.* at 1159a 2-3.

86. *Id.* at 1158a 11-12. *See id.* at 1171a 1 (“[F]or [good] friends too there is a fixed number—perhaps the largest number with which once can live together.”); *Id.* at 1171a 18-20. Perhaps the impediment is that the changes you go through to become a true friend of one person may be unhelpful to the possibility of your becoming friends with another.

87. This is not to say that the affiliation of utility is always more efficient. Closer bonds produce efficiencies through loyalty.

from a further distance and therefore in a wider perspective, and no doubt in a less attractive light. The unflattering mirror is also a source of self-knowledge. The virtues of good will and beneficence have a special character within the affiliation of utility. The affiliate has good will in that he aims to foster his fellow affiliate's efficiency and enhance his critically oriented self-knowledge.

It seems, then, that in many circumstances affiliates might choose either form without being guilty of preferring lesser to greater goods. It seems that the optimal social world would locate each of us in affiliations of various types.

### B. *Types of Community; Affiliations Within Communities*

Associations comprised not only of two, but of several, people involve affiliations. "For in every community there is thought to be some form of justice, and *philia* too; at least men address as *philous* their fellow-voyagers and fellow-soldiers, and so too those associated with them in any other kind of community."<sup>88</sup>

Communities, like affiliations between two people, each aim at some good.<sup>89</sup> Can they, then, be arranged by purpose just like affiliations: some aiming at utility, some at pleasure and some at the good of their members "*qua* good," "for their sakes"? Aristotle explicitly invites such an arrangement or something "akin" to it,<sup>90</sup> but also recognizes an additional category, called "political friendship."

#### 1. Communities Devoted to Utility and Comprised of Utility Affiliations

Groups aimed at utility seem easy to identify; Aristotle mentions trading associations and alliances among cities.<sup>91</sup>

Utility groups, like two-party utility associations, seem to fall into two types: one a lower kind which even animals (like hives of bees) and bad men might form, the other a somewhat higher kind where each intends the others' good, although in a limited way. A business association, for example, might

88. NICOMACHEAN ETHICS, *supra* note 33, at 1159b 27. I have altered the Ross-Urmson translation by substituting *philia* for "friendship" and *philous* for "friends." The term here translated "community" is *koinonia*.

89. POLITICS, *supra* note 48, at 1252a 1-2 ("[E]very community is established with a view to some good.").

90. See EUDEMIAN ETHICS, *supra* note 49, at 1241b 15-17 ("[W]hatever be the number of species of friendship, there are the same of justice and partnership [*koinonias*]; these all border on one another, and the species of one have differences akin to those of the other."); NICOMACHEAN ETHICS, *supra* note 33, at 1160a 29-30 ("[T]he particular kinds of friendship will correspond to the particular kinds of community.").

91. As to alliances between cities, see NICOMACHEAN ETHICS, *supra* note 33, at 1157a 27-28 ("For men apply the name of friends even to those whose motive is utility, in which sense states are said to be friendly (for alliances of states seem to aim at advantage).").

be of the former type (an “extended conflict among selfish people”);<sup>92</sup> on the other hand it might involve the higher kind of affiliation—a true utility affiliation—in which each member wishes a degree of good to the other, aiming for him to participate in the goods of doing justice and receiving fair treatment, efficiently producing a product and advancing in critical self-knowledge.<sup>93</sup>

Utility groups that are long-lived and involve complex projects may enhance and deepen utility affiliations. In a business company that manufactures complex products, for example, each member may know quite a bit about how the business functions and how the product is produced and can intend the good of the other members in a thoroughly knowledgeable way; each member can perceive and in a way even experience the work of other members of the firm. Continuous discours—planning—strengthens their bonds.

## 2. Communities of “Perfect” Friendship?

What about groups comprised of “perfect” friends? They must be very difficult to establish and maintain. It is hard enough to establish the conducive conditions for “perfect” friendship between only two people, and with groups the difficulties are multiplied:

[F]or friends . . . there is a fixed number—perhaps the largest number with whom one can live together . . . one cannot live with many people and divide oneself up among them . . . . Further, they too must be friends of one another, if they are all to spend their days together; and it is a hard business for this condition to be fulfilled with a large number. It is found difficult, too, to rejoice and to grieve in an intimate way with many people, for it may likely happen that one has at once to be merry with one friend and to mourn with another.<sup>94</sup>

Further, it seems that large groups with complex goals need hierarchy; but inequality is an impediment to “perfect” friendship.

92. EASTERBROOK & FISCHER, *supra* note 16, at 8.

93. See GRISEZ, *supra* note 8, at 336, Volume Two.

The community can be limited to cooperation in a specified act or set of acts for the sake of their specified purpose or set of purposes . . . . [I]nterpersonal relationship between or among the community members is not sought for its own sake. Still, the common action of the agents constitutes community insofar as they seek to benefit one another not out of pure self-interest but out of willingness to join a fair and otherwise just relationship. For example . . . a group of men form an equitable business partnership.

*Id.*

94. NICOMACHEAN ETHICS, *supra* note 33, at 1171a 1-9.

### 3. The Political Community; Political Friendship

The *polis* is not, according to Aristotle, similar to a trading association or a military alliance:

[A] state exists for the sake of a good life, and not for the sake of life only . . . . Nor does a state exist for the sake of alliance and security from injustice nor yet for the sake of exchange and mutual intercourse; for then the Tyrrhenians and the Carthaginians, and all who have commercial treaties with one another, would be the citizens of one state. . . . [But in those arrangements each state does not] take care that the citizens of the other are such as they ought to be, nor see that those who come under the terms of the treaty do no wrong or wickedness at all, but only that they do no injustice to one another. Whereas, those who care for good government take into consideration political excellence and defect. Whence it may be further inferred that excellence must be the care of a state which is truly so called, and not merely enjoys the name: for without this end the community becomes a mere alliance which differs only in place from alliances of which the members live apart; and law is only a convention, "a surety to one another of justice" . . . and has no real power to make the citizens good and just.

. . . .

Let us suppose that one man is a carpenter, another a farmer, another a shoemaker, and so on, and that their number is ten thousand: nevertheless, if they have nothing in common but exchange, alliance, and the like, that would not constitute a state. . . . [E]ven supposing that such a community were to meet in one place . . . and that they made alliance with one another, but only against evil-doers; still an accurate thinker would not deem this to be a state, if their intercourse with one another was of the same character after as before their union. It is clear then that a state is not a mere society, having a common place, established for the prevention of mutual crime and for the sake of exchange. These are conditions without which a state cannot exist; but all of them together do not constitute a state, which is a community of families and aggregations of families in well-being, for the sake of a perfect and self-sufficing life.<sup>95</sup>

A properly formed *polis* is not a utility affiliation.<sup>96</sup> One can adduce further reasons for this conclusion: The *polis* aims at stability and permanence,

95. POLITICS, *supra* note 48, at 1280a 31 - 1280b 35. For other relevant passages, see ROBERT GEORGE, MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY 21-28 (1993). See EUDEMIAN ETHICS, *supra* note 49, at 1242b 6 ("Civic friendship has been established mainly in accordance with utility; for men seem to have come together because each is not sufficient for himself . . .").

96. *But cf.* RASMUSSEN & DEN UYL, *supra* note 70, at 184 *et seq.* (1991) (maintaining that civic friendships in Aristotle are affiliations of advantage); YACK, *supra* note 70, at 114, *passim* (stating that political friendship is a "shared advantage friendship"). Yack also writes:

but affiliations of utility are unstable and often a source of complaints. In order to defend itself in war, the *polis* needs to be able to call upon its citizens for heroic sacrifices; ones which a man would not make for a trading partner. The *polis* aims not just at one instance of human flourishing but at many and it engages not in one project but a vast range of activities; it therefore needs to call upon its citizens for contributions which go beyond anything which could be agreed to at a formation-stage bargaining table. It requires trust of a type seldom elicited by the utility affiliation. It develops a range of goods many of which cannot be “taken away” and enjoyed separately by a citizen the way a business associate can take away his profit or an athlete can quit his training group and compete elsewhere. Breaking away from his city, the citizen loses a part of himself and terminates forever the exercise of a range of excellences. Furthermore, citizenship in a worthwhile polity involves a development of the consciousness, a “sharing in discussion and thought”—political discourse—and a sharing by each in the actions and thought of the others.

Another possibility, then, is that all citizens are “perfect friends,” as might at first seem to be implied by Aristotle’s statements that the *polis* aims at the promotion of virtue,<sup>97</sup> but this is preposterous. A day’s visit to any polity, however distinguished, will reveal that many citizens are not loyal friends; most cannot be owing to the arduous conditions required for “perfect” friendship described above. Perhaps indeed they *should not* work that way, since the arms’-length aspect of human interaction seems to have its own distinctive goods, as argued above. When everyone is close friends with everyone no one is truly a close friend of anyone.<sup>98</sup> “Unity there should be, both of the family and of the state, but in some respects only.”<sup>99</sup>

A third possibility is that citizenship involves its own special kind of friendship.<sup>100</sup> This is suggested by Aristotle’s reference to the friendship

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Aristotle insists that it is contrary to nature (or is self-deceiving) to treat activities established for the sake of mutual advantage as if they were being performed for their own sake. Those who share in citizenship, just like those who share in an economic association or voyage, share in an attempt to promote an end that will be to their mutual advantage. When they treat each other as ‘ethical’ friends, they are merely fooling themselves . . . .

*Id.* at 116.

97. In the lengthy quote from the *POLITICS* shortly *supra* and perhaps by implication in *NICOMACHEAN ETHICS*, *supra* note 33, at 1129b 12-26 (indicating that the law aims at all the virtues).

98. *Cf.* *POLITICS*, *supra* note 48, at 1263b 16-17 (rejecting the argument that if communism in property is introduced “in some wonderful manner everybody will become everybody’s friend”; this implies that in a well-ordered constitution everybody is not everybody’s friend).

99. *Id.* at 1263b 31-32.

100. *See generally* A.W. Price, *Friendship and Politics*, 61 *TIJDSCHRIFT VOOR FILOSOFIE* 525 (1999).

"proper to fellow-citizens"<sup>101</sup> and his use of the term "political friendship." Here is a crucial passage:

Unanimity also seems to be a friendly relation. . . . [W]e . . . say that a city is unanimous when men have the same opinion about what is to their interest, and choose the same actions, and do what they have resolved in common. It is about things to be done, therefore, that people are said to be unanimous, and, among these, about matters of consequence and in which it is possible for both or all parties to get what they want; e.g. a city is unanimous when all its citizens think that the offices in it should be elective . . . . Unanimity seems, then, to be political friendship, as indeed it is commonly said to be; for it is concerned with things that are to our interest and have an influence on our life.<sup>102</sup>

The third possibility seems to be correct: citizens are affiliated in a way which can be located between the utility affiliation and "perfect" friendship, involving, as utility affiliation does not, a high degree of commitment among its participants but focused, as "perfect" friendship is not, on the public sector of life: on public actions and civic goods.<sup>103</sup> It would be anachronistic to understand Aristotle to delineate a private sphere immune from the concerns of the *polis*, but neither did he commend a communism in which everything is equally public, others far less so. Political friendship pertains principally to the public order, and focuses on the promotion especially of those virtues which relate to citizenship ("political excellence and defect") and which promote peace, harmony and the common endeavors of citizens. Experience supports this view: fellow citizens praise and blame one another for character traits and courses of conduct—courage or cowardice in wartime, for example, or honesty or corruption in office—which bear on the common projects of the *polis*; whereas for traits which are off to the side of public life—tastes and skills in art; lines of thought about metaphysics; fidelity in love—they prefer to mind their own business.

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[W]ithin the phrase "civic friendship", the term "civic" is, to a degree, *alienans*. Aristotle is tempted . . . to classify such friendship as a form of utility-friendship; but . . . a more deeply Aristotelean view . . . makes friendship an extended form of perfect . . . or real . . . friendship, retaining the goodwill, etiolating the intimacy, and largely aspiring to the similarity.

*Id.* at 542.

101. POLITICS, *supra* note 48, at 1171a 16-18. "In the way proper to fellow-citizens . . . it is possible to be the friend of many and yet not be obsequious but a genuinely good man; but one cannot have with many people the friendship based on excellence and on the character of our friends themselves . . ." *Id.* at 1171a 16-21.

102. NICOMACHEAN ETHICS, *supra* note 33, at 1167a 21-1167b 4.

103. Cf. SUZANNE STERN-GILLET, ARISTOTLE'S PHILOSOPHY OF FRIENDSHIP 159 (1995) ("civic friendship . . . involves [people] *qua* citizens only").

The basic elements of *philia* take on a public focus within the political affiliation. Citizens in a well-formed polity have political goodwill towards one another and wish one another well as regards public goods. They are outraged when a neighbor's freedom is threatened, or his franchise; not so when his solvency is in jeopardy. Citizens develop their reciprocity in the area of political goods: public support earns public support in return, not money or private affection. They are self-sacrificing in defense of political goods, as in wartime. They reason and judge together about political things. Political friends share political knowledge, and a sort of public consciousness, founded on a common public culture. Perhaps citizens even share a sort of public or political love.<sup>104</sup>

Furthermore, political friendship involves agreement (*homonoia*): actually accepting the same beliefs about political things (such as "that the offices . . . should be elective"). In this regard the conditions for political friendship are actually more demanding than those for "perfect" friendship. It seems that a monarchist and a republican might well be "perfect" friends; but they could not be members of the same political party or fully consenting and agreeing citizens in the same polity.

#### 4. Affiliations of Various Sorts Within the Polis

Because of political friendship's subject-matter specificity, and because of its intermediation through the *polis*, political friendship can be enjoyed compatibly with other forms of affiliation; citizens can at the same time be affiliates of utility; others can be "perfect" friends. Similarly, they can form groups aimed at utility or pleasure or to perform specific projects like manning a ship. A *polis* contains many groups, each with its own kind and degree of affiliation; each "seem[s] to be [a] part of the political community"<sup>105</sup> and is shaped by the *polis* without being dissolved in political affiliation.

#### C. Justice Within Communities

Aristotle seems to tell us that justice works differently according to the type of community:

For in every community there is thought to be some form of justice, and friendship too; at least men address as friends their fellow-voyagers and fellow-soldiers, and so too those associated with them in any other kind of community. And the extent of their association is the extent of their

104. See generally Terence Irwin, *The Good of Political Activity*, in ARISTOTLE'S 'POLITEK': AKTEN DES XI. SYMPOSIUM ARISDTOTELICUM 1987, 73, 94 (Herausgegeben Patzig, ed., 1990) ("If I know another person is a virtuous fellow-citizen I know . . . that I have reason to regard him as another self; for I know that I share with him the virtuous aim of maintaining the comprehensive association of the city.").

105. NICOMACHEAN ETHICS, *supra* note 33, at 1160a 29.

friendship, as it is the extent to which justice exists between them. . . . Now brothers and comrades have all things in common, but the others have definite things in common—some more things, others fewer; for of friendships, too, some are more and others less truly friendships. And the claims of justice differ too; the duties of parents to children and those of brothers to each other are not the same, nor those of comrades and those of fellow-citizens, and so, too, with the other kinds of friendship.<sup>106</sup>

#### V. ARISTOTELEAN THOUGHT APPLIED TO BUSINESS COMPANIES

These insights from Aristotle suggest two approaches to structuring business companies.

##### A. *Affiliations of Utility: The Nexus-of-Contracts Company*

One kind of company could reasonably be formed as a nexus of utility affiliations: as a utility group, pursuant to the discussion in Section IV.B.1 of this Article, *supra*.

In the company of this type, relationships among the participants can be compared to the relations between strangers who make contracts with one another for purchases and sales. The rights and duties of the participants are few and most are clearly specified. Relationships may be short term and easily terminated. No one is bonded “for better or for worse ‘til death do them part””; no special value is placed on stability. Products and production techniques may be quickly altered as market trends suggest; so also may company structures and goals.

The involvement of the parties with one another is limited; the purposes of one party overlap only to a limited extent with the purposes of another. Each wishes a just outcome for the others—for example the employer intends to pay a fair wage and will seek out a departed employee to give him his final paycheck; the worker intends to give a fair day’s work and will do his work up to standard even when he might shirk undetected. Each intends a just and well-ordered participation by the others: for example the employer will want each employee to contribute, and to understand that he is contributing, fair value for his pay. On the other hand, the concern of the participants for one another has its limits. The employer may take no interest in what the employee is doing with his wages nor in how well he is progressing towards his career goals. The employee, for his part, may have little concern about the company’s long-term success or about the customers’ use of the product.

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106. *Id.* at 1159b 27-1160a 3. The term here translated “community” is *koinonia*.

B. *“Company Friendship”: The Closely Bonded Company*<sup>107</sup>

Another kind of company is formed, not of “perfect” friendships, but of bonds analogous to those among citizens. Aristotle used the term “political friendship” for that; we can invent the term “company friendship” for this context.

Participants in a closely bonded company aspire to a degree of solidarity: their commitments to one another are extensive and go beyond what may have been specified in any agreement. People are expected to stick with the company through thick and thin and the company stands by its people in bad times too. Products, production techniques and company structures are stable. People have important common purposes and goals, perhaps a common company culture. Participants embrace the good of producing a good product for reasons that look beyond profit. The company, in determining how to mold its business and how to treat its employees, takes account of their careers and work situations to a greater extent than contract or simple, chilly justice would require. The participants make the company’s projects a fundamental concern of their own. Participants share a certain moral identity: not to the same extent as can members of a close family or citizens of a country, but in a fashion that goes well beyond the commonality of those who are merely affiliates of utility.

On the other hand, people in the firm are seldom “perfect” friends. Outside the firm, and in affairs not connected with the business, as when one sells another his car, their relations may be conducted on an entirely arms’-length basis.

C. *The Two Types of Company Compared*

The difference is not between product-oriented organizations versus inward-directed ones. Utility-affiliation companies do not aim exclusively at extrinsic goals, like selling widgets or shoes, and closely bonded companies do not strive mainly to cultivate good relationships among their participants, putting that ahead of making a good product. A utility-affiliation company may aim largely at profit whereas a closely bonded association may aim principally at the accomplishment of the mission and construct its understanding of the good of participants by reference to that end. A fishing crew whose village is short of food may operate this way, for example, or a medical team assisting soldiers in combat. Deep commitment to success in such cases produces the solidarity among the participants.

The difference is not between tough organizations and nice ones. Each type should be tough in its own way. A utility-affiliation company might reasonably demand big changes from Darlene (the single parent) whereas a closely bonded one might demand big changes from Hayes (the careerist).

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107. “Closely bonded” is not intended as a synonym for “closely held.”

Firmness, determination, and even in a certain sense ruthlessness, provided they are deployed in support of appropriate goods, under the right circumstances, and towards the right people, are also truly human.

*D. Choosing Between Types of Business Company*

Quentin Peters and people in his position therefore should consider carefully which type of company is optimal for their situation. (They may tend too readily to prefer the utility-affiliation type of company owing to impatience or an itch for exclusive control.)<sup>108</sup>

Each type of company has its own merits. Utility-affiliation companies instantiate the robust virtues of fortitude and self-reliance. They respect the independence of their members. They isolate and highlight a certain kind of justice: square dealing. They are amenable to regulation and stand up well in the courthouse: judges and juries do a good job with arms'-length relationships whose guiding principles are clearly specified in contract-like documents.<sup>109</sup> Closely bonded companies can involve a more deeply personal set of goods: those of solidarity, comradeship, and a kind of friendship. They tend to promote the special sort of justice—"intimate reciprocity"—that applies between friends and other close affiliates. They can develop the stability and self-discipline that makes litigation unnecessary.

Which best to choose may depend on circumstances. One important variable concerns the type of people involved and the type of culture from which they are drawn. A river freight operation in a robust frontier society—where people habitually treat one another in a fair but arms'-length way and have a knack for that approach and no other<sup>110</sup> and a moral culture to back it up, often move on, need their returns fast and develop their deeper social and political affiliations through family ties and democratic institutions—calls for the utility-affiliation mode of bonding. A furniture manufacturer in a Shaker village or a publishing company in a European cultural center is likely to evolve as a closely bonded company.

Which form is most efficient seems also to depend on the situation. A business which makes Waterford crystal or Shaker furniture and which uses

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108. Cf. GRISEZ, *supra* note 8, at 206, Volume One ("One should not be pressed by enthusiasm or impatience to act individually. . . . Unnecessary individualism is not consistent with a will toward integral human fulfillment, which requires a fellowship of persons sharing in goods.") (emphasis omitted).

109. A telling argument along these lines, in support of the traditional view that the purpose of the business corporation is to maximize profits, is advanced in ROBERT CHARLES CLARK, *CORPORATE LAW* §1.2 at 20-21 & ch. 16 (1986).

110. See generally Stephen M. Bainbridge, *Corporate Decisionmaking and the Moral Rights of Employees: Participatory Management and Natural Law*, 43 VILL. L. REV. 741, 767 (1998) (describing studies which reveal that many workers do not like and are ill suited for participatory work structures).

worker skills that take years to develop, relies on a carefully nurtured reputation and employs a very long-term market strategy, seems likely to be best in a closely bonded form. Close bonds of loyalty to younger members and future owners give management an incentive to protect the long-term profitability of the business.<sup>111</sup>

#### E. *Avoiding Distorted Forms*

##### 1. Distorted Versions of the Utility-Affiliation Company are to be Avoided

An organization can fall into a pattern in which it is not robust but rapacious. It can neglect the obligations of justice among its participants. Much in mainstream ideology leads to this sort of distortion: classic Benthamite utilitarianism, for example, leaves little place for any principle of equality in exchanges.

Participants in such a company may eschew even a limited commitment to the quality of its product. Minimalism in reciprocity among members may lead to inefficiencies, as the web of communication and mutual support grows too attenuated even to support productive work.<sup>112</sup>

##### 2. Distorted Versions of the Closely Bonded Company are to be Avoided

An organization can fall into a pattern in which it is not closely bonded but totalitarian.<sup>113</sup> A closely bonded business must involve the deeper goods of the participants in a way that does not misunderstand or distort human flourishing.

##### 3. Structures Involving Both Kinds of Distortions are to be Avoided

They are not uncommon. In some companies, utility-affiliation is the official ideology but close bonding emerges unofficially as participants are pressed together in an intense way over long periods of time. In other companies, close bonding is the illusion: management emphasizes group loyalty but its personnel policies are chilly.<sup>114</sup> Covert affiliational practices are likely also to be distorted ones.

111. See generally James S. Harvey, *Owner as Manager, Extended Horizons and the Family Firm*, 6 INT'L. J. ECONOMICS OF BUSINESS 1 (1999).

112. A company which seems to have suffered from such problems is described in TIMOTHY LEWONTIN, *PARSONS' MILL* (1989).

113. As in the case of the Ford Motor Company during some of its years under Henry Ford. See ROBERT LACEY, *FORD: THE MEN AND THE MACHINE* (1986); FORD, *supra* note 3.

114. Cf. NICOMACHEAN ETHICS, *supra* note 33, at 1165b 4-7 (“[O]ne might complain of another if, when he loved us for our usefulness or pleasantness, he pretended to love us for our character. For . . . most differences arise between friends when they are not friends in the spirit in which they think they are.”). See also EUDEMIAN ETHICS, *supra* note 49, at 1242b 38 - 1243a 2

## VI. BACK TO THE THEOLOGICAL AUTHORITIES AND QUENTIN PETERS' QUESTIONS

### A. *The Theological Authorities*

Some of the apparent contradictions noted above arise from discussing two types of entity in one doctrinal breath. Characterizing the "master-servant" relationship as based on profit-guided contracting makes sense in the context of one kind of entity; mandating special care by the employer and loyalty on the part of the employee make sense for the other sort. Emphasizing proficiency as a guide to pay and employee retention makes sense in one context; emphasizing employee needs such as that of a worker to maintain himself in "frugal comfort" makes more sense in another.

Further distortions may arise from misunderstanding about the ethical structure of each sort of entity. Characterizing the entity as a product of contract and characterizing contract as a product of the wills of the parties<sup>115</sup> leads to a neglect of the "substantive" side: the goods of reciprocity and *philia* which are served even by utility-affiliation firms. Characterizing the entity as a sort of household or family leads to an exaggeration of company intimacy and may imply that company members are "perfect" friends. The approach suggested above—using the analogy of political friendship rather than "perfect" friendship—avoids these potential distortions.

### B. *Quentin Peters' Questions*

If QP Corporation is a utility-affiliation company (reasonably and consistently so), then it can licitly pay Jud and Darlene off and fire them or it can keep them on and pay them less because they contribute less; it can do those things without worrying over how their private lives may be affected; and it can reassign people and demand more or less work (for more or less pay of course) without even worrying too much over how their *working* lives are affected, since affiliations of utility focus on product and exchange and to only a limited extent on the persons behind the exchange. QP Corporation can properly then use its employees as apparatniks and exclude them from company decision-making and does not have to put them in the picture as to company policy nor see to it that they have interesting tasks; and the employees, for their parts, need not extend their loyalty to the company beyond keeping their promises—doing what is in their job descriptions—and giving a fair day's work for a fair day's pay. Employees' lives off the job are their own

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(describing as "unnatural" and susceptible to recrimination those associations which are "really for the sake of utility" but which are represented as "moral, like that of good men").

115. As in I SLATER, *supra* note 4, at 300, 305 ("[A contract] is an agreement of wills; one renounces a right in favour of the other who accepts it.").

business and only theirs: the company normally need not concern itself with how Darlene is coping with her child-care problems. QP Corporation in this form need not and should not object to the attitude of Hayes, the ambitious employee in Donna's department who is taking MBA courses at night and avoiding overtime. Jake the stockholder can sell his shares and does not have to inquire whether his purchaser is planning to change the way the company does business.

All of this is not to suggest, of course, that profit-making and adhering to promises are the whole story. At the heart of the utility-affiliation company is, not the "bad man" form of association but the higher form of affiliation in which fairness plays a central part, as described above. If the especially diligent employees in Donna's department do more work than their contracts require when the company is in a crunch, the company should compensate them extra.

On the other hand, if QP Corporation is a closely bonded company which has—reasonably in accordance with the criteria suggested above—been organized and maintained to work in accordance with "company friendship," then many of these problems will call for the opposite sort of resolution. Jud should be transferred and given different work rather than fired; Darlene's job, similarly, should be reshaped to help her out with her difficult child care situation and the employees, for their part, should display an augmented degree of devotion to the company, learning their jobs thoroughly, figuring out how their work fits into the firm as a whole, making suggestions for improvement and helping out the firm with extra work, perhaps for deferred extra compensation, in periods of crisis. The company should listen to them and give them, if not partner-like status, at least a share in the company's "constitution"—"the active participation of everybody in administration is to be encouraged."<sup>116</sup> Hayes should be prodded to rethink his commitments. Shutting down divisions without compelling reason is contrary to the moral structure of a firm like this and an investor should not sell out to a shark who will.

But there are limits to the appropriate closeness of even a closely bonded company. Its members are bonded by "company friendship" not "perfect" friendship; company friendship focuses on company-related consequences. Compensation policy illustrates the difference. A closely bonded company, looking beyond the "value of the services rendered" measure of pay, sets its compensation with an eye to sustaining its employees as productive members of the firm. It aims to maintain them in at least that condition—"frugal comfort"<sup>117</sup>—consistent with full participating membership in the company; and when an employee incurs especially intense economic or social problems,

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116. *Gaudium et spes*, *supra* note 9, ¶68.

117. As referred to in Leo XIII, *Rerum Novarum*, May 15, 1891, *supra* note 4.

such as those of Darlene the single parent, it reasonably may aim to alleviate those problems as a part of sustaining her participation. But it need not look still further and aim at achieving aspects of employee well-being far removed from company affairs. It need not pay a musically gifted employee enough to enable him to purchase a Steinway. A "perfect" friend would help Darlene meet a suitable young man but the company need not do that. A "perfect" friend would be very concerned to influence Ned in the right way as concerns his interest in religious cults but the company need not do that.

#### VII. CONCLUSION: TRUE HUMAN COMMUNITY

This Article indicates ways of progressing towards the "truly human" companies recommended in the encyclicals.

It warns Quentin Peters and all those who organize and manage business away from affiliative modes founded on illusory or insufficient goods like pleasure and preference-satisfaction. It warns them away from "false human communities": distorted forms where company participants are enemies or where they indulge an illusory or disingenuous intimacy.