

Is There a Vatican School for Competition Policy?

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This Article examines whether the Catholic Church’s social teaching has something to tell antitrust scholars and masters of competition policy. Although papal encyclical letters and other documents are not meant to provide an analytical framework giving clear answers to complex competition questions, this does not mean that these thoughts cannot benefit businessmen, scholars, and policy makers. The Vatican teaching helps us remember that business and morality do not belong to two different worlds, and that markets should serve the whole Man. It acknowledges the positive role of free markets, that is, the exercise of economic freedom as being an important part of human dignity, yet warns that competition can be preserved only if it is curbed both by moral and statutory rules. It is certainly not easy to find a balance between the commandments to “love your neighbor” and “not collect treasure on earth.” I argue that either antitrust law or other forms of self- or government regulation should prohibit market conduct that undermines business virtues.

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INTRODUCTION

I usually spend a significant amount of time with my students discussing what constitutes competition. Despite teaching competition law, applying competition law, and explaining to business people how to best comply with competition rules, we have no universal definition for this overarching social and economic phenomenon. We may say that competition is a state of play where two or more players seek to achieve more or less the same objectives. Usually, only one player succeeds, resulting in a win-lose situation. That is true for our love affairs, provided that neither party cheats, and for some sport competitions, although draws are possible in some team games.¹ Competing players or teams of players are rivals. Rivalry has its written and non-written rules. We have these rules so that the best participant should get the first prize or gold medal and so the stakeholders—the audience—should enjoy the game. The same holds true for competition in the marketplace. Companies can gain market shares by competing fairly, but may secure even more profit if they engage in secret conspiracies or abuse their market power. The most important rules of

1. Another important difference between market competition and sports is that sport teams do not benefit from the exclusion of competing teams. To the contrary, a sufficient and stable number of teams is required to organize sport competitions.

the game are competition rules—or at least, this is what most competition lawyers believe.² Moral rules, according to the Vatican School of thought, in the form of laws or other mandatory obligations, should also have a decisive influence on the actions of market players.

Antitrust, or as we Europeans call it, competition law, is a body of law designed to protect competition. We assume that competition benefits both business and consumers. In contrast to sport competitions, consumers are interested in a never-ending process of economic competition where none of the winners is a monopolist. Less expensive prices, better quality, and a wider range of products top the wish list of competition advocates. Innovation is a more delicate issue in the relationship between the intensity of competition and product development, deeply dividing theorists, and to a lesser extent, practitioners.³

Competition schools, theorists, and scholars can influence competition policy, law enforcement, and law by formulating concepts and ideas about the notion of competition and the disadvantages of monopolies.⁴ Competition schools are connected, almost by definition, to universities or academics. For example, economists and lawyers teaching and researching at the Vienna, Freiburg, Harvard, and Chicago Schools of economics shaped these institutions.⁵

2. Actually, there are far more important rules that go beyond the scope of competition law, like tax, labor, environmental, and other rules governing the actions of the market players.

3. Generally speaking, I would side with those who say that a competitive environment leads to more innovation. This is because I believe monopolies or dominant companies disincentivize spending on risky development projects, even if they have more resources than undertakings facing fierce competition, and even if the projects would create more resources.

4. *E.g.*, Edward D. Cavanagh, *Antitrust Law and Theory: Finding a Balance*, 45 LOY. U. CHI. L.J. 123, 123 (2014) (“[C]ourts need to restore the balance between facts and economic theory in undertaking antitrust analysis”); Einer Elhauge, *Harvard, Not Chicago: Which Antitrust School Drives Recent U.S. Supreme Court Decisions?*, 3 COMPETITION POL’Y INT’L 59, 59–77 (2007) (recognizing that although the Supreme Court decided fourteen antitrust cases in a row in favor of the defendant, the Court sided with the Harvard School on every issue where the two schools conflicted); William E. Kovacic, *The Intellectual DNA of Modern U.S. Competition Law for Dominant Firm Conduct: The Chicago/Harvard Double Helix*, 2007 COLUM. BUS. L. REV. 1, 67 (2007) (analyzing the Supreme Court’s *Trinko* judgment as the result of Chicago/Harvard collaboration); Spencer W. Waller, *Microsoft and Trinko: A Tale of Two Courts*, 2006 UTAH L. REV. 741, 756–57 (2006) (interpreting the U.S. Supreme Court’s *Trinko* opinion as demonstrating the impact of modern Harvard School scholars).

5. The creation of the Ordoliberal Freiburger Schule between the two World Wars was the outcome of fruitful collaboration between economist Walter Eucken and lawyers like Franz Böhm and Hans Grossman-Doerth. Ordoliberals had a decisive influence on German post-war economic policies, leading to the “Wirtschaftswunder” and the formation of the European economic integration. The Harvard School of competition was established by economists Bain and Kaysen, and developed later by lawyers Areeda, Turner, and Breyer. The Chicago School of

Unlike these schools, the Vatican is obviously not the place where academics study competition law or perform economics research. However, the social teachings of the church, communicated through the encyclical letters, among other documents, have always benefited from discussions among catholic academics and practitioners. These teachings are more than dogmatic declarations heralded by the reigning pope. We know that scholars of various competition schools differ in their views about the role of free-market forces, the ideal role of the State, and whether market power is an evil or unavoidable component of market economies. This Article shows that the Catholic Church's social teaching has its own view about these issues and may thereby contribute to the intellectual development of competition schools.

This Article is not focused on the morality of anticompetitive behavior.⁶ Indirectly, however, I acknowledge that there should be some moral content behind the prohibitions of cartels and the abuse of dominance/monopolization. An important statement of the Vatican School is that although economics and morality are different sciences with different rules, it is nevertheless important for business activities to be conscientious of moral rules. Conduct that is economically rational but also immoral will not benefit mankind in the long run.

In this Article, I discuss the extent to which competition policy issues are raised directly or indirectly in the series of encyclical letters and what sort of orientation they may provide for businessmen and persons shaping competition law and policy.⁷ One interesting issue deriving from this discussion is how far increasing efficiencies promoted by mainstream economic schools can be reconciled with the Vatican's approach of focusing on not only the material, but also the spiritual needs of the whole Man. I endeavor to show that the aims of competition policy to use resources efficiently as well as to contribute to the process of creation through research and development are not

the 1960s featured lawyer, director, and economist Bork, and its thoughts were applied in practice later by scholars and judges Posner and Easterbrook. Kovacic, *supra* note 4, at 33 n.101.

6. Maurice E. Stucke gives a thorough overview of the morality issue with special regard to cartels in a 2006 article. Maurice E. Stucke, *Morality and Antitrust*, 2006 COLUM. BUS. L. REV. 443, 546 (2006) ("Although antitrust scholars, policymakers, enforcers and courts have divorced morality from antitrust, given the escalation of criminal penalties for antitrust offenses, it is time to bring morality into the debate.").

7. One of the challenges is that, just like ordinary competition schools of thoughts, the Vatican School's position reflected in papal encyclical letters has been evolving over time. John Paul II's letters represent a much more market-oriented attitude than Pope Francis's more recent public addresses. See *infra* Part III (discussing the market-focused discussions and philosophies that can be applied from the pope commentary).

necessarily contradictory and incompatible with the Catholic social teaching.

I. THE SOURCES OF THE VATICAN COMPETITION SCHOOL

It is not easy to identify the complete list of documents to use as a basis of our search for competition-related statements of the Catholic Church. Even before encyclical letters reflecting social issues became fashionable, catholic philosophers had their view about what is right or wrong in business related activities. Late scholastics in Spain (Salamanca School) and Italy (Coimbra School) between the tenth and fifteenth centuries, as well as Saint Thomas of Aquinas, understood the basic rules of microeconomics, the functions of supply and demand, and the role of money.⁸

My research could have also started with the textual analysis of the New Testament. These are the books where the fundamental rules of the Vatican School of thought can be found.⁹ Papal encyclicals simply apply these principles to the challenges of the present.¹⁰ I will thus inevitably have to rely on some quotes from the Old and the New Testaments. However, this Article will focus primarily on the more recent documents issued by Pope John Paul II, Pope Benedict, and Pope Francis.

Modern catholic social teaching began with the encyclical *Rerum Novarum*, “Of New Things,” in 1891.¹¹ It continued until the present

8. See 1 MURRAY N. ROTHBARD, *ECONOMIC THOUGHT BEFORE ADAM SMITH* 81 (1995) (“San Bernardino of Siena (1380–1444) was the first theologian after [Pierre de Jean] Olivi to write an entire work systematically devoted to scholastic economics.”); see also JOSEPH SCHUMPETER, *HISTORY OF ECONOMIC ANALYSIS* 70, 161 n.6 (Elizabeth B. Schumpeter ed., 1954) (rediscovering scholastic philosophers’ concepts on economics).

9. I refer to these important rules of Christianity later, i.e., the fundamental rule of love. See *infra* note 100 and accompanying text. In addition to the New Testament, the Old Testament—especially the Torah and five books of Moses—also includes important behavioral rules that can have an implication on business conducts.

10. See, e.g., POPE FRANCIS, *EVANGELII GAUDIUM* (JOY OF THE GOSPEL) 43 (2013) (quoting one of the Commandments, “Thou shalt not kill”); POPE JOHN PAUL II, *CENTESIMUS ANNUS* (ON THE HUNDRETH ANNIVERSARY OF *RERUM NOVARUM*) (1991), reprinted in *HUMAN DIGNITY & THE COMMON GOOD* 175, 463 (Richard W. Rousseau, S.J. ed., 2002) [hereinafter POPE JOHN PAUL II, *CENTESIMUS ANNUS*] (“[W]e need to repeat that there can be *no genuine solution of the ‘social question’ apart from the Gospel*, and that the “new things” can find in the Gospel the context for their correct understanding and the proper moral perspective for judgment on them.” (emphasis added)); POPE PAUL VI, *GAUDIUM ET SPES* (PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD) (1965), reprinted in *VATICAN COUNCIL II* 163, 185 (Austin Flannery ed., 1996) (“[T]he image of the invisible God” when human dignity is considered (quoting *Colossians* 1:15 (ESV))).

11. POPE LEO XIII, *RERUM NOVARUM* (ON CAPITAL & LABOR) (1891), reprinted in *THE*

with *Caritas in Veritate*, “Charity in Truth,” in 2009¹² and the pastoral program of Pope Francis that made him a well-known proponent of social justice in 2013.¹³ Drawing inspiration from the Bible, its traditions, and its experience with social problems around the world, the Church produced a set of principles by which business activity can be judged, the Compendium of the Social Doctrine of the Church.¹⁴ This Compendium is a helpful resource, because it summarizes the main aspects of Catholic social teaching by arranging them by theme, rather than by document.¹⁵

II. THE ISSUE OF COMPETENCE

When pontiffs issue documents elaborating on social problems going beyond the safe territory of theology, they often feel compelled to explain the premise on which they base their thoughts. Are popes right to object to certain forms of violent or crony competition? Do they have the competence to enter the terrain of economics? To answer these questions, I quote from the encyclical letter celebrating the fortieth anniversary of *Rerum novarum*, explaining:

Even though economics and moral science employs each its own principles in its own sphere, it is, nevertheless, an error to say that the economic and moral orders are so distinct from and alien to each other that the former depends in no way on the latter. Certainly the laws of economics . . . determine the limits of what productive human effort cannot, and of what it can attain in the economic field and by what means. But it is only the moral law which . . . commands us to seek directly in each kind of activity those purposes which . . . God the Author of nature, established for that kind of action, and in orderly relationship to subordinate such immediate purposes to our supreme and last end.¹⁶

PAPAL ENCYCLICALS 1878–1903, at 241 (Claudia Carlen Ihm ed., 1981).

12. POPE BENEDICT XVI, *CARITAS IN VERITATE* (CHARITY IN TRUTH) (2009).

13. See, e.g., POPE BENEDICT XVI, *supra* note 12; POPE JOHN XXIII, *MATER ET MAGISTRA* (CHRISTIANITY & SOCIAL PROGRESS) (1961); POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* (1987); POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10; POPE PAUL VI, *POPULORUM PROGRESSIO* (ON THE DEVELOPMENT OF PEOPLES) (1967); POPE LEO XIII, *supra* note 11; POPE PAUL IV, *supra* note 10; POPE PAUL VI, *OCTOGESIMA ADVENIENS* (1971), *reprinted in* PROMOTION OF SOCIAL JUSTICE 26 (1981); POPE PIUS XI, *QUADRAGESIMO ANNO* (ON RECONSTRUCTION OF THE SOCIAL ORDER) (1931), *reprinted in* THE PAPAL ENCYCLICALS 1903–1939, at 415 (Claudia Carlen Ihm ed., 1981). Each of these is among the main sources of the “modern social teaching.”

14. PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH* (2004) [hereinafter *COMPENDIUM*].

15. The Pontifical Council for Justice and Peace prepared this document in 2004.

16. POPE PIUS XI, *supra* note 13, at 421.

Another example is a more recent argument from John Paul II:

The Church has no models to present; models that are real and truly effective can only arise within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems in all their social, economic, political and cultural aspects, as these interact with one another. For such a task the Church offers her social teaching as an indispensable and ideal orientation, a teaching which . . . recognizes the positive value of the market and of enterprise, but which at the same time points out that these need to be oriented towards the common good.¹⁷

This wise statement makes it clear that the Church's mission includes commenting on economic matters. Even though it is not the task of the Church, or at least of the popes to draw up economic models, the contours of a Vatican model of competition do emerge from Vatican texts. Models create concrete solutions to concrete problems that one may not expect to get from encyclical letters. The letters nevertheless call our attention to some principles that lay the foundation for more concrete actions to be taken by businessmen, politicians, and other stakeholders of competition.

The last sentence of the Pope John Paul II quote emphasizes that enterprises and markets have positive values. Were the Catholic Church to represent an anti-market, socialist idea, this Article about Vatican and competition policy would end somewhere here.

III. VATICAN AND FREE MARKETS

A. *The Holistic Christian Lifestyle*

In order to understand the Vatican's position on competition, it is essential to give an insight into how Christianity looks at the man. The Catholic social doctrine applicable to markets and competition has a holistic approach:

The ultimate and basic purpose of economic production does not consist merely in producing more goods, nor in profit or prestige; economic production is meant to be at the service of humanity in its totality, taking into account people's material needs and the requirements of their intellectual, moral, spiritual, and religious life Therefore, economic activity is to be carried out in accordance with techniques and methods belonging to the moral order, so that God's design for humanity may be carried out.¹⁸

17. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 494.

18. POPE PAUL VI, *supra* note 10, at 243.

For those who are not entirely familiar with the essence of the Christian teaching, it is worth summarizing a concept that is often mentioned in papal encyclicals:

It is not wrong to want to live better; what is wrong is a style of life which is presumed to be better when it is directed towards “having” rather than “being,” and which wants to have more, not in order to be more but in order to spend life in enjoyment as an end in itself.¹⁹

Pope John Paul II calls for the creation of lifestyles with the quest for truth, beauty, goodness, and communion with others for the sake of common growth.²⁰ One may even argue that this position comes close to the emerging happiness economics literature.²¹

The best way for capitalists to contribute to social progress is to create new options for their workers:

In this regard, it is not a matter of the duty of charity alone . . . in order to provide what is essential for the life of a poor person . . . even the decision to invest in one place rather than another, in one productive sector rather than another, is always a *moral and cultural* choice.²²

Christian lifestyles can help guide not only companies’ decisions, but also consumer choices. In other words, competition, “a violent energy,”²³ should not only be controlled by the State, but also by consumers, who have an important role to play. For example, if consumers were to decline to buy products that were produced in abusive working environments, this moral and cultural choice would cause companies to lose business. Therefore it is in companies’ best interests to provide better conditions for their workers. Similarly, if consumers were to not buy goods that were produced in a way harmful to the environment, environment-damaging profit-seeking companies would be compelled to change their production technologies.²⁴

Recently, Pope Francis warned that our lifestyle should not exclude others. This sort of exclusion does cover anti-competitive exclusions like boycotts or certain unilateral abuses, but it certainly goes beyond these.

19. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 489.

20. *Id.* at 488–89.

21. See generally Maurice E. Stucke, *Should Competition Policy Promote Happiness?*, 81 *FORDHAM L. REV.* 2575 (2013) (surveying the potential implications of the happiness economics literature on competition policy).

22. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 489.

23. POPE PIUS XI, *supra* note 13, at 429.

24. The same result can be achieved more directly by state regulation that bans certain types of activities or ingredients used, or that lays down detailed rules on employment.

Almost without being aware of it, we end up being incapable of feeling compassion at the outcry of the poor, weeping for other people's pain, and feeling a need to help them, as though all this were someone else's responsibility and not our own. The culture of prosperity deadens us; we are thrilled if the market offers us something new to purchase. In the meantime all those lives stunted for lack of opportunity seem a mere spectacle; they fail to move us.²⁵

To conclude this short Part, Christian human anthropology is a cornerstone to the Vatican School of thought. This school of thought stresses that mankind has not only material but also spiritual needs, that we should care also for others beyond just ourselves, and that our market-related actions should stand the probe of moral rules.

B. The Liberal Philosophy of John Paul II

The Papal encyclical letters usually condemn socialism and state-controlled economies, but their approach to capitalism is more complex. This is no surprise though, because capitalism itself changes periodically from country to country. As Pope John Paul II famously stated in 1992:

If by "capitalism" is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a "business economy," "market economy," or simply "free economy" But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative.²⁶

This same text stresses that the Vatican does not advocate for the *laissez faire* model of capitalism.²⁷ Instead, free-market control should be exercised both by society and by the State to guarantee that the basic needs of the whole of society are satisfied.²⁸

Pius XI's strong words recognize the "dark side" of unregulated

25. POPE FRANCIS, *supra* note 10, at 44.

26. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 493.

27. This economic policy of the nineteenth century was based on the superiority of market forces and accepted only a rather limited regulatory role for the State. This can be seen as an extreme to the State planned communist economic policy.

28. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 487–88.

competition in the era between the two World Wars:

Just as the unity of human society cannot be founded on an opposition of classes, so also the right ordering of economic life cannot be left to a free competition of forces. . . . But free competition, while justified and certainly useful provided it is kept within certain limits, clearly cannot direct economic life. . . . [C]ompetition can still less perform, since it is a headstrong power and a violent energy that, to benefit people, needs to be strongly curbed and wisely ruled. But it cannot curb and rule itself.²⁹

Though opponents of free markets may also rely on these sentences, I prefer to interpret them as a call for the need for competition law and other types of regulation aiming to correct human and market failures. Competition is regarded neither as an evil nor divine energy. The process of rivalry is justified and useful if the limits, the rules of the game, are set before. Competition can indeed be seen as a source of energy that fuels the economy. Just like energy, competition can be dangerous. The encyclical letters do not elaborate on these dangers of competition. They do not expressly refer to the downsides of competition in economic terms, i.e., that less-efficient firms are forced to leave the market. Rather, it can be seen as a statement that markets may destroy human values if market players and competitors act without regard for moral rules.

The cautious pro-market approach can be witnessed in the pro and con observations of Pope John Paul II's encyclical letter.³⁰ First, a free market *is* regarded as the most efficient instrument for utilizing resources and effectively responding to human needs. But the text adds that this is only true for the needs that are "solvent" and for resources that are "marketable."³¹ Yet, humans have other needs as well that find no place on the market.³² The economy is only one dimension of the whole of human activity; therefore, its significance should not be overemphasized. Economics and also competition should be placed in a wider context. They should both serve the whole human, not only humankind's material needs.

Free markets and free competition are praised as constituting one element of human freedom.³³ Without competition there is no real

29. POPE PIUS XI, *supra* note 13, at 429. When reading encyclical letters one should always bear in mind the actual economic and political circumstances.

30. See *supra* note 28 and accompanying text (discussing the *laissez faire* market theory).

31. Our most important human needs are not satisfied in a market context. There is no genuine market for charity, love, friendship, etc.

32. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 486.

33. Freedom is a basic concept in Christian anthropology: the freedom to be charitable, to give

economic freedom and that in turn threatens human freedom and humanity as such. As a reminder, *Centessimus Annus* was written during historically significant years, when many Central and Eastern European countries left the communist block and strove to establish Western-like market economies and create wealth for all.³⁴ In the encyclical, the Pope warns not only these post-communist countries searching for new values, but also Western countries, that:

When [economic freedom] becomes autonomous, when man is seen more as a producer or consumer of goods than as a subject who produces and consumes in order to live, then economic freedom loses its necessary relationship to the human person and ends up by alienating and oppressing him.³⁵

The balancing-of-interests analysis by the Pope can also be observed in his writings on the role of profit. The Church acknowledges the legitimate role of profit serving as an indication that a business is functioning well. When a firm makes a profit, this means that productive factors have been properly employed and corresponding human material needs have been duly satisfied.³⁶ Yet, the Church also reminds us that profit is not the sole regulator of the life of a business, rather, other human and moral factors must also be considered.³⁷ Companies are more than the collection of capital and other economic resources; they form a central part of society:

In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who

away one's wealth to support the *poor*, or the freedom to sin, to refuse the love of God. In the market context, the freedom to enterprise, the freedom to own property, the freedom to set prices, or the freedom of consumers to choose among suppliers and products are essential. Christian teaching emphasizes the obligation that we should use these freedoms for the benefit of our neighbors, ultimately to the whole society. POPE BENEDICT XVI, *supra* note 12, at 79 (“[B]usiness management cannot concern itself only with the interests of the proprietors, but must also assume responsibility for all the other stakeholders who contribute to the life of the business: the workers, the clients, the suppliers of various elements of production, the community of reference.”).

34. Central and Eastern European countries, benefiting from the collapse of the Soviet economic system and the liberal political changes in Moscow, got rid of Soviet troops, outvoted ex-communist parties, and reintroduced democratic and market institutions. This change had been continuous, gradual, and peaceful in most countries, like in Hungary, starting in the late 1970s. In other places, like in Romania or the Czech Republic, there were more abrupt and even bloody events leading to the collapse of the communist systems.

35. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 491.

36. *Id.* at 487–88.

37. *COMPENDIUM*, *supra* note 14, at 148.

in various ways are endeavoring to satisfy their basic needs, and who form a particular group at the service of the whole of society.³⁸

This is further emphasized by a quote from a seminal document of the mid-sixties, highlighting the relationship between economics and morality:

The ultimate and basic purpose of economic production does not consist merely in producing more goods, nor in profit or prestige; economic production is meant to be at the service of humanity in its totality, taking into account people's material needs and the requirements of their intellectual, moral, spiritual, and religious life Therefore, economic activity is to be carried out in accordance with techniques and methods belonging to the moral order, so that God's design for humanity may be carried out.³⁹

Pope Benedict XVI welcomed the emergence of a broad intermediate area between the for-profit and non-profit enterprise.⁴⁰ His writing describes traditional companies subscribing to social-aid agreements in support of underdeveloped countries, charitable foundations associated with individual companies, groups of companies oriented towards social welfare, and the diversified world of the so-called "civil economy" and the "economy of communion." These formations, bridging the private and public spheres, do not exclude profit, but instead consider it a means for achieving human and social ends.⁴¹

The Catholic Church's social teaching is aware that competition is a dynamic process that leads to development.⁴² There is, however, a level of development that is not necessarily desirable, given its by-products:

This super-development, which consists in an *excessive* availability of every kind of material goods for the benefit of certain social groups, easily makes people slaves of "possession" and of immediate gratification, with no other horizon than the multiplication or continual replacement of the things already owned with others still better. This is the so-called civilization of "consumption" or "consumerism" which involves so much "throwing-away" and "waste".⁴³

Again, the Church emphasizes that the pursuit of development should

38. POPE JOHN PAUL II, *CENTESIMUS ANNUS*, *supra* note 10, at 487.

39. POPE PAUL VI, *supra* note 10, at 243.

40. See LUIGINO BRUNI & STEFANO ZAMAGNI, *CIVIL ECONOMY: EFFICIENCY, EQUITY, PUBLIC HAPPINESS* 119 (2007) (claiming that market and solidarity should not be isolated).

41. POPE BENEDICT XVI, *supra* note 12, at 96.

42. See *id.* (challenging the traditional distinction between profit-based companies and the non-profit sector).

43. POPE JOHN PAUL II, *supra* note 13, at 49.

be put in the wider context of human dignity.

*C. Post-Crisis Encyclical Letters and the
Market: A Changing Attitude?*

The great financial crisis and subsequent economic crisis that began in 2008 did not increase the amount of free-market supporters in the Vatican. It is certainly true that economic crises provide an ample opportunity to reconsider the role of free markets, the society, and the State. Pope Benedict XVI's *Caritas in Veritate* calls for a market where charity also plays an organic role, urging the civilization of the economy.⁴⁴ Pope Francis uses even stronger criticism highlighting social injustice in our global village.⁴⁵

Benedict explains that in a bipolar world of free markets corrected by interventions and regulations of state institutions, much is lost, including solidarity in relations between citizens and actions of gratuitousness, "all of which stand in contrast with *giving in order to acquire* (the logic of exchange) and *giving through duty* (the logic of public obligation, imposed by state law)."⁴⁶ Benedict calls upon business managers to not concern themselves solely with the interests of the proprietors, but to also assume responsibility for all the other stakeholders who contribute to the life of the business including the workers, the clients, the suppliers of various elements of production, and the community of reference.⁴⁷

What is needed, therefore, is a market that permits the free operation, in conditions of equal opportunity, of enterprises in pursuit of different institutional ends. Alongside profit-oriented private enterprise and the various types of public enterprise, there must be room for commercial entities based on mutualist principles and pursuing social ends to take root and express themselves. It is from their reciprocal encounter in the marketplace that one may expect hybrid forms of commercial behavior to emerge, and hence an attentiveness to ways of *civilizing the economy*. Charity in truth, in this case, requires that shape and structure be given to those types of economic initiative which, without rejecting profit, aim at a higher goal than the mere logic of the exchange of equivalents, of profit as an end in itself.⁴⁸

44. POPE BENEDICT XVI, *supra* note 12, at 76.

45. POPE FRANCIS, *supra* note 10, at 144 ("The dignity of each human person and the pursuit of the common good are concerns which ought to shape all economic policies. . . . Casual indifference in the face of such . . . empties our lives and our words of all meaning.").

46. POPE BENEDICT XVI, *supra* note 12, at 77–78.

47. *Id.* at 78–80.

48. *Id.* at 76.

One of Pope Francis's priorities is to speak and work for the poor.⁴⁹ He thus proclaims "no to an economy of exclusion and inequality."⁵⁰ He further notes that:

[T]oday everything comes under the laws of competition and the survival of the fittest, where the powerful feed upon the powerless. As a consequence, masses of people find themselves excluded and marginalized: without work, without possibilities, without any means of escape.⁵¹

I agree that markets function best if they are open and if no one is excluded.⁵² Equality is a more complicated phenomenon. Ensuring equality of opportunity and protecting free entry into markets is a central aim of competition policy. Due to our different skills, capabilities, backgrounds, and motivations, however, the success of our actions will be different. There will always be people who are richer and who are poorer than the average. In business, the "survival of the fittest" is an optimal source of motivation to perform better. If there are many unemployed people facing marginalization, however, who will provide work and opportunities for them on a lasting basis? The State financed by our taxes, or the businesses?

Pope Francis does not emphasize the positive side of free markets, but uses harsh words condemning the inequalities resulting from market forces, stating that:

[S]ome people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Meanwhile, the excluded are still waiting.⁵³

These sentences may easily be interpreted as an anti-market, pro-state credo. Let me try to construe these differently. Free, unregulated

49. See, e.g., *The Pope to the United Nations Executive Board: Challenge All Forms of Injustice*, NEWS.VA (May 9, 2014), <http://www.news.va/en/news/the-pope-to-the-united-nations-executive-board-cha> (highlighting Pope Francis's speech that urged world leaders to commit to building a more level playing field between the wealthy and the poor by challenging "all forms of injustice" and resisting the "economy of exclusion," the "throwaway culture," and the "culture of death," which "sadly risk becoming passively accepted").

50. *Id.*

51. *Id.*

52. See Eleanor M. Fox, *Economic Development, Poverty, and Antitrust: The Other Path*, 13 SW. J.L. & TRADE AMERICAS 211, 221–23 (2007) (discussing how "freeing up the market" and tearing down of entry barriers may "hold great economic benefits for developing countries").

53. POPE FRANCIS, *supra* note 10, at 44.

markets will never operate perfectly.⁵⁴ Justice requires conscious human action, both on the entrepreneurial and the consumer sides. Most competition lawyers and policy makers, especially in Europe, also subscribe to the statement that economic power needs public control. The Pope thus repeats the statements of his predecessors that unregulated markets will not solve the problems of mankind. Poorly regulated markets corrupted with rent-seeking monopolies⁵⁵ and public officials seeking individual aims over the public good produce unjust outcomes. However this is not the failure of the free market as such. As Pope Benedict carefully observed:

It must be remembered that the market does not exist in the pure state. It is shaped by the cultural configurations which define it and give it direction. Economy and finance, as instruments, can be used badly when those at the helm are motivated by purely selfish ends. Instruments that are good in themselves can thereby be transformed into harmful ones. But it is man's darkened reason that produces these consequences, not the instrument *per se*. Therefore, it is not the instrument that must be called to account, but individuals, their moral conscience and their personal and social responsibility.⁵⁶

To conclude, imperfect human action, both in the sense of economic irrationality and moral selfishness, will not yield an optimal outcome. As long as market players—or at least the majority of them—do not reach perfection, a correction mechanism is necessary. The more difficult issue is deciding the targets and methods of regulation.

D. A Moderate Role for the State

The role of the State in a free market system is an important question for competition schools. *Rerum Novarum* is opposed to state control of the means of production, which would reduce every citizen to being a “cog” in the wheel of a state machine.⁵⁷ According to Pope John Paul II, there is certainly a legitimate sphere of autonomy in economic life

54. South American countries, where the Pope may have significant and valuable personal experience, have never achieved the kind of market economy that could have delivered the material and human values. Economists could challenge Pope Francis's factual figures that market systems have performed better insofar as the number of the poor is concerned. Also, the poor in a market economy are usually richer than the poor in a state-planned economy.

55. Rent seeking involves lobbying to increase a company's share of wealth without creating wealth.

56. POPE BENEDICT XVI, *supra* note 12, at 72.

57. See COMPENDIUM, *supra* note 14, at 160 (“A sense of alienation and loss of their own humanity has made people feel reduced to the role of cogs in the machinery of production and consumption and they find no way to affirm their own dignity as persons made in the image and likeness of God.”).

that the State should not enter.⁵⁸ The German Ordoliberal School also relies on the concept of “economic constitutionalism.”⁵⁹ Free markets were the starting point, but the economy needed to be embedded in a firm constitution-like rule of law, in contrast to making ad hoc, discretionary economic policy decisions.

On the other hand, the State has to maintain a juridical framework for economic affairs:

Economic activity, especially the activity of a market economy, cannot be conducted in an institutional, juridical or political vacuum. On the contrary, it presupposes sure guarantees of individual freedom and private property, as well as a stable currency and efficient public services. Hence the principle task of the State is to guarantee this security. . . . Another task of the State is that of overseeing and directing the exercise of human rights in the economic sector. . . . [T]he State has a duty to sustain business activities by creating conditions which will ensure job opportunities, by stimulating those activities where they are lacking or by supporting them in moments of crisis.⁶⁰

It is only in exceptional circumstances that the State can also exercise a substitute function. This should be justified by urgent reasons of the common good and must be for a limited period of time, “so as to avoid removing permanently from society and business systems the functions which are properly theirs, and so as to avoid enlarging excessively the sphere of state intervention to the detriment of both economic and civil freedom.”⁶¹

The Catholic social teaching navigates between urging against too much market and too much state:

[F]ollowing upon the overthrow and near extinction of that rich social life which was once highly developed through associations of various kinds, there remain virtually only individuals and the State. This is to the great harm of the State itself; for, with a structure of social governance lost, and with the taking over of all the burdens which the wrecked associations once bore, the State has been overwhelmed and crushed by almost infinite tasks and duties.⁶²

To sum up this point, the Church is not in favor of an overly

58. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 498–99.

59. See, e.g., David J. Gerber, *Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe*, 42 AM. J. COMP. L. 25, 25–84 (1994) (discussing constitutionalizing the economy and neo-liberalism).

60. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 498.

61. *Id.* at 499.

62. POPE PIUS XI, *supra* note 13, at 427.

interventionist welfare state. Solidarity without subsidiarity,⁶³ in fact, can easily degenerate into this type of malfunction. Pope Benedict XVI emphasized that “subsidiarity is the most effective antidote against any form of all-encompassing welfare state.”⁶⁴ Pope John Paul II also gave a central role to subsidiarity:

A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.⁶⁵

A key concept in Pope Benedict XVI’s *Caritas in Veritate* is a break with the binary model of “market-plus-state.”⁶⁶ A more human economy should not simply rely on free markets functioning in accordance with their selfish motives and corrected by more state intervention. The traditional approach would be to allow markets to function according to the logic of selfishness and then intervene to realize social justice, relying on concepts like solidarity and redistribution.

IV. CHRISTIAN LIFESTYLE AND DOING BUSINESS

A. *The Model for Perfection*

Christian religion in its extreme, or rather “pure,” version would prefer a company/consumer attitude anachronistic to the traditional logic of the market. This is not to say that it would be an impossible mission to lead a life like that. We have had several known, and even more unknown, persons in history who understood Jesus’s message and surrendered their lives in the world we know for the world that we hope to be a part of.⁶⁷

63. COMPENDIUM, *supra* note 14, at 81–82 (noting that the concept of subsidiarity was developed by the Catholic Church’s social teaching, meaning that a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good); *see* POPE BENEDICT XVI, *supra* note 12, at 119 (“[S]ubsidiarity is the most effective antidote against any form of all-encompassing welfare state.”).

64. POPE BENEDICT XVI, *supra* note 12, at 119.

65. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 499.

66. POPE BENEDICT XVI, *supra* note 12, at 78.

67. I do not praise extremist medieval approaches that treated every earthly possession evil. Neither do I say that wealth on Earth is the obvious sign of a God-pleasing life. One of the many good examples is St. Francesco d’Assisi (1182–1226), who was the son of a fairly rich trader in medieval Italy, but chose a different path, establishing one of the most influential and popular

The parable of the young rich man presents a model for discussing the proper role of wealth that is ultimately created by well-functioning free markets.⁶⁸ As Jesus started on his way, a man ran up to him and fell on his knees before him.⁶⁹ “Good teacher,” he asked, “what must I do to inherit eternal life?”⁷⁰ The right question in the business context would be to rephrase the honest question of the rich young man and ask, “Good teacher, how shall I compete to inherit eternal life?” In business, however, what we usually look for is not the eternal life, but more profit, wealth, and power. Should we pose the right question, we may be much closer to getting the right answer.

Jesus tells the rich young man the basics: “You know the commandments: You shall not murder, you shall not commit adultery, you shall not steal, you shall not give false testimony, you shall not defraud, honor your father and mother.”⁷¹

Most of these commandments are relevant in business as well. Antitrust rules prohibit cartels from charging high prices thereby stealing money from consumers. Competition rules on advertising prohibit false product claims. Other rules prohibit defrauding individuals. One may even argue that purposefully eliminating a competitor with unfair methods comes close to murder, but it is certainly at least an obvious appearance of selfishness and greed for power.

If we continue with the rephrasing, we might find ourselves in dangerous territory. “Teacher,” the rich young man declared, “all these I have kept since I started my business.”⁷² Jesus looked at him and loved him.⁷³ “One thing you lack,” he said.⁷⁴ “Go, sell everything you have and give to the poor, and you will have treasure in heaven. Then come, follow me.”⁷⁵ At this, the man’s face fell.⁷⁶ He went away sad,

Catholic orders. A more recent example, Mother Theresa (1910–1997), born of a fairly wealthy family in Albania, decided to serve the poorest of the poor in India (her sculpture can also be admired in the lobby of Loyola University Chicago School of Law’s Philip H. Corboy Law Center in Chicago).

68. *Mark* 10:17–22 (ESV).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

because he had great wealth.⁷⁷

One interpretation may be that this is the highest standard of business conduct to which Pope Benedict XVI's and Pope Francis's recent documents refer. They advocate going beyond the normal rules of doing business and obeying man-made law. These are, after all, the product of the State and a kind of coercion. Our conduct should rather be determined by noble internal motives. We should strive to act in a way consistent with virtues. Not only should we follow the letters of the law, but we should also act in the spirit of the law.

Another interpretation would suggest that Christian teaching does not have much to offer when we delve into the details of economic or competition policy. Jesus never condemned monopolies or cartels among traders. At the end of the day, competition is about the generation of more wealth, while Jesus's teaching is about eternal life. These are two very different dimensions. According to traditional Jewish wisdom of that time, wealth was a sign that one lives a life in accordance with the rules of God.⁷⁸ Jesus made drastic adjustments to this thinking. To lead an easy life on earth and yet earn eternal life are contradictory objectives, as Jesus warned his disciples following the short meeting with the rich young man.⁷⁹ It is not impossible for wealthy people to receive the heavenly prize, yet it is very difficult for them to lead a life in accordance with Christian values.

Jesus's response seems to be irrational, demanding of super-human capabilities. We should recognize that this is at the core of Christian religion. Most of the rules challenge ordinary human rationale. How can we ever love our enemies? How can God be present in the Eucharist? Jesus offers an explanation to this unique logic to his followers:

If anyone would come after me, let him deny himself and take up his cross daily and follow me. For whoever would save his life will lose it, but whoever loses his life for my sake will save it. For what does it profit a man if he gains the whole world and loses or forfeits himself?⁸⁰

Pope Francis invites us all to ask the Lord to "help us understand the

77. *Id.*

78. See, e.g., COSIMA PERROTTA, CONSUMPTION AS AN INVESTMENT: THE FEAR OF GOODS FROM HESIOD TO ADAM SMITH 44 (2004).

79. See *Mark* 11:23–27 (ESV) ("Children, how difficult it is to enter the kingdom of God! It is easier for a camel to go through the eye of a needle than for a rich person to enter the kingdom of God. . . . With man it is impossible, but not with God. For all things are possible with God.").

80. *Luke* 9:22–25 (ESV).

law of love How much good it does us to love one another, in spite of everything.”⁸¹ This should also be true for our business relations. Behind company structures there are humans on both sides. Business relations should be subject to normal moral rules that govern human-to-human relations.⁸²

*B. The Model for Us Who Are Not Perfect:
Virtuous Competition*

Most of us cannot follow the path suggested to the rich young man. From an economic point of view, it would not work as a rule organizing production and consumption for a society.⁸³ We can hardly imagine a world based on such a rule. Perhaps that is why Jesus did not demand this as a *rule*. It was something *extra*, offered to a young man who expressly asked for something more, not just simply obeying the rules. Giving your wealth to the poor is thus not like an Eleventh Commandment for Christians, so I would not translate it into the rulebook for Christian businessmen either. It is an option one may prefer to choose if she or he desires to become perfect in this world. The point of the discussion is nevertheless obvious: one should not confuse eternal goods with earthly wealth, “[f]or where your treasure is, there your heart will be also.”⁸⁴

This second best and more realistic approach that better suits our imperfect human nature advocates a Christian lifestyle correcting the fierce nature of competition. My view is that this way of doing business should be based on the Ten Commandments (the first part of Jesus’s answer to the rich young man) and the bourgeois virtues. That is essentially a compromise between collecting treasure in heaven and doing so on earth. There is nothing wrong with the latter, as long as it does not undermine our wealth in heaven. Some economists might say that this thinking can be described as focusing on the long-term benefits instead of the short-term effects.

To find solid grounds for this interpretation, we may recall that

81. See POPE FRANCIS, *supra* note 10, at 75 (“[T]o pray for a person with whom I am irritated is a beautiful step forward in love, and an act of evangelization. Let us do it today! Let us not allow ourselves to be robbed of the ideal of fraternal love.”).

82. One more note as to the perfect Christian way of life: even if we did our utmost to follow Jesus and live a life like he did, we cannot earn or buy eternal happiness and peace. However saintly one believes oneself to be, one always needs the Holy Spirit’s grace.

83. Logically, if everyone who is above average in terms of wealth decided to give his or her wealth to the poor, the poor would no longer be poor. The poor would become the rich and would then be obliged to share their recently gained wealth with others.

84. *Luke* 12:34 (ESV).

several parables rely on trade and business examples to explain the essence of Jesus's teaching to the Jewish audience.⁸⁵ Were profit-based business something evil, Jesus would not have used examples like this. This is not to say he was entirely satisfied with the business life of that age, but he suggested reforms instead of deleting this market order to replace it with some community-based system. We can also recall the earlier quote on Christian lifestyle acknowledging that there is nothing wrong if one wants to live better.⁸⁶

This more realistic way of life and way of doing business lies in the foundations of the Ten Commandments. As such, it goes well beyond the territory of the Catholic Church's social teaching. These common roots bundle all Christians and Jews. Going even further, the respect of the Ten Commandments governing human-to-human relations have universal validity. Still, at least our European and American cultures are based on these principles. These rules that were the *law* for Jews, and which became the basis of the *moral rules* for Christians, are commercial virtues that formed the basis of the success of capitalism. Business and competition policy following the minimum required by Jesus, and thus also by the Catholic Church, should therefore build upon the Ten Commandments: "Do not steal. Do not lie. Do not deceive one another. Do not swear falsely. . . . Do not defraud or rob your neighbor."⁸⁷ Also the subsequent rules of the Torah should be respected by an honest businessman: "Do not hold back the wages of a hired worker overnight. . . . Do not use dishonest standards when measuring length, weight or quantity."⁸⁸

It is also essential to recollect and emphasize the importance of virtues that make a businessman both successful and a useful member of a society based on the free market. Taken in its widest sense, virtue means the excellence or perfection of a thing, while vice, its contrary, denotes a defect or absence of perfection due to a thing.⁸⁹ Saint Thomas defined virtue as "*habitus operativus bonus*." Moral virtues regulate man in his dealings with others and also with regard to his inner passions. The Catholic Church lists seven virtues, three

85. See, e.g., *Matthew* 20:1–16 (ESV) (addressing just payment); *Matthew* 25:14–30 (ESV) (addressing investing, using talent as measurement of money); *Luke* 19:11–28 (ESV) (investing, thriving, using mina as measurement of money).

86. See POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 489.

87. *Mark* 10:17–22 (ESV).

88. *Leviticus* 19:1–2, 17–18 (ESV).

89. See CATECHISM OF THE CATHOLIC CHURCH 443 (2d ed. 1997).

theological and four cardinal.⁹⁰ Cardinal virtues are temperance, courage, prudence, and justice. Temperance and courage make one act bravely in the face of difficulties (i.e., in a global economic crisis). Justice regulates man in relations with his fellow men. Its essence is to give each man his due. There are also so-called theological virtues that help us achieve happiness: faith, hope, and charity. Charity is a key principle invoked by Pope Benedict XVI in his encyclical letter, *Caritas in Veritate*, there also applied to economic problems.

Wells and Graafland rediscovered Adam Smith's moral philosophy and argued forcefully that process of competition is compatible with the development of bourgeois virtues, although it can also undermine them.⁹¹ Competition supports virtues like prudence, temperance, civility, industriousness, punctuality, and honesty.⁹² On the other hand, unregulated competition can have deleterious effects on these institutions. Wilhelm Röpke, a key figure of the German Ordoliberal School, also observed that markets and competition do not generate their moral prerequisites.⁹³ These must be furnished from outside.⁹⁴ He lists self-discipline, sense of justice, honesty, fairness, chivalry, moderation, public spirit, respect for human dignity, and ethical norms as those virtues that a successful businessman should possess even before he goes into the market to compete with others.⁹⁵

I believe that the social teaching of the Church echoes these statements. Consequently, market conduct that undermines these business virtues should be avoided and prohibited, not necessarily by the State but by business associations and chambers in line with the idea of subsidiarity.

Smith argued that “[e]very man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with

90. *Id.*

91. Thomas Wells & Johan Graafland, *Adam Smith's Bourgeois Virtues in Competition*, 22 *BUS. ETHICS Q.* 319, 320 (2012).

92. See A. O. Hirschman, *Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble*, 20 *J. ECON. LIT.* 1463, 1483–84 (1982) (noting that these bourgeois virtues are not only compatible with but also encouraged by modern industrial and commercial society). Albert Hirschmann identified philosophers like Smith, Hume, and Montesquieu as the “*Doux Commerce*” literature.

93. WILHELM RÖPKE, *A HUMANE ECONOMY: THE SOCIAL FRAMEWORK OF THE FREE MARKET* 125–26 (3d ed. 1998).

94. *Id.*

95. *Id.*

those of any other man.”⁹⁶ Therefore,

[T]he interest of the dealers, however, in any particular branch of trade or manufacture, is always in some respects different from, and even opposite to, that of the publick. To widen the market and narrow the competition, is always the interest of the dealers . . . to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow citizens.”⁹⁷

This is what we call “the competition paradox.”

We need to have institutions in place to reconcile the interests of businessmen for high profits with those of consumers for low prices. These instruments need to involve not only legal rules and sanctions, but also paralegal institutions, like strong moral foundations. A respect for the public interest over and above private interests is also essential. Also, favorable market structures are a prerequisite. Smith’s conditions for market competition to be fair and sustaining of social welfare were freedom of entry (i.e., no guilds, no restrictions on labor), a considerable number of rivals (no monopolies), market transparency, and fair and equivalent rules of the game.⁹⁸ These principles are consistent with the Papal encyclical letters, even though they do not refer to Smith’s moral philosophy.

Of the bourgeois or commercial virtues I use prudence as an example of a “must have” element of sustainable and “human” competition. For Smith, the union of superior reason, combined with understanding and self-command, make up the virtue of prudence, which “of all the virtues [is] that which is most useful to the individual.”⁹⁹ As individuals, we have a natural tendency to look only after ourselves.¹⁰⁰ As consumers, we love to spend the least amount possible while doing our weekly shopping in a supermarket. However, we usually do not care that paying a few cents more would make producers (or traders) wealthier, and perhaps happier.

On the other hand, as members of society we also have a natural

96. 2 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 289 (London, 1776).

97. 1 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 316–17 (London, 1776).

98. See Wells & Graafland, *supra* note 91, at 323–24 (discussing Smith’s beliefs on the economy and social welfare).

99. ADAM SMITH, THE THEORY OF MORAL SENTIMENTS 282 (2d ed. 1759).

100. *But see* *Matthew* 22:39 (ESV) (stating the wise rule of the New Testament: “Love your neighbor as yourself”).

empathy for others. Our behavior can thus be constrained by the possible effects it may have on others. No one likes to laugh while others are crying. Why could it not also function this way in the business world? The virtue of prudence is about the command and discipline of one's self-interest. Prudence requires a critical self-reflection. To help its proper understanding, we should consider its vice: selfishness. We may think of examples of how intense competition leads to market players making overly confident decisions that do not have strong support in their talents, capabilities, and feasibility of their goals. Business success can itself replace prudence with arrogance and recklessness.

Wells and Graafland emphasize that “[i]n contrast to economic rationality, self-interest is not limited to one's own welfare; its operation is not restricted to rigorous maximization. . . . This last requires a degree of critical self-reflection about the kind of person one wants to be and the kind of life one wants to lead.”¹⁰¹ This attitude is absent from mainstream economic and competition policy. Comparatively, this may help explain Pope Benedict XVI's “market and solidarity” idea when he criticizes the traditional bipolar model that makes a sharp distinction between the inherently selfish market, corrected by state-enforced solidarity.

The lack of this moral foundation is one of the reasons why free markets and capitalism do and will not perform optimally in some countries. Röpke correctly listed the following fundamental elements of a bourgeois society, contrasting them with mass society or proletarianism: individual effort and responsibility, respect for absolute norms and values with firm moral discipline, independence based on ownership, prudence, daring, calculation, and saving, i.e., the responsibility of planning one's life.¹⁰² The absence of values and virtues like these cannot be corrected by strict competition rules or by other forms of government intervention. We have had this experience in post-communist countries with our peaceful “revolutions” in the early 1990s. The four decades of socialism eroded the traditional moral basis that has been present both among farmers and citizens in Western European democracies for centuries. Post-communist societies will prosper only if moral foundations are reestablished. It takes just a couple of weeks to adopt perfectly worded pieces of legislation. To rebuild the moral foundations of a society, curbing selfish motivations will take decades.

101. Wells & Graafland, *supra* note 91, at 326.

102. RÖPKE, *supra* note 94, at 102.

V. SOME IMPLICATIONS OF THE CATHOLIC SOCIAL TEACHING FOR COMPETITION POLICY

A. *Peaceful v. Predatory Rivalry*

At first sight, Catholic social teaching could weaken the enforcement of competition law by shifting the emphasis from earthly wealth creation to heavenly treasures. A misguided interpretation of love could lead to emphasizing the importance of cooperation and “amicable” rivalry that would come close to the creation of a cartel. Opponents of vicious, “destroying” competition usually advocate a stronger role for industry associations, a sort of modern guild.

The ultimate commandments of love and charity can be useful drivers of the relations among employees and employers, sellers, and customers or consumers. However, competitive relations are more complex. Competitors falling in love with each other may actually come close to creating what we call a cartel. Competition policy is based on the premise that markets function better and consumers benefit if companies compete fiercely and individually. Selling more of your product or sometimes even maintaining your market shares may hurt your competitors. A “win-win game” in markets is often suspicious for competition policy makers. Price-setting or market-allocating cartels may benefit competitors, yet this kind of cooperation is not a true form of charity, because it hurts customers in the form of a deadweight loss¹⁰³ and higher prices.

Encyclical letters do not tell us much about how fierce competition should be to fulfill its allocated effectiveness function and yet preserve its human nature. The bourgeois virtues presented in the previous chapter and the Golden Rule may help find the answer: “So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets.”¹⁰⁴ Human dignity includes the freedom to start a business and compete with others. However, there is no subjective right for anyone to carry on a certain type of business at any rate. Economic progress may require the less efficient to exit the market so that more talented and more efficient subjects can provide better products at a better price. Economic progress can also be painful. If one cannot perform to survive in a market, the best option is to leave and start another activity (or to become an employee instead of an

103. There will be consumers who cannot afford to buy the product at the higher cartel price, thus their demand will be lost and total output will shrink.

104. *Matthew 7:12* (ESV).

entrepreneur). The parable of talents conveys the message that one should utilize his talents and one should do his best not to hide his gold but to gain more so that the Lord can praise him: “His master said to him, ‘[W]ell done, good and faithful servant. You have been faithful over a little; I will set you over much. Enter into the joy of your master.’”¹⁰⁵ One should not fail to advance because others do not perform as well.

Another interesting issue is intent. As a rule, predatory intent is not a requisite of proving abusive market conduct on either side of the Atlantic.¹⁰⁶ According to Catholic morality, intent is a crucial part of what constitutes a sin, and the objective theory does not hold true here.¹⁰⁷

Virtuous competition can be strong and fierce while preserving its human nature. This is the kind of competition that is consistent with the Catholic Church’s social teaching: serving consumers and at the same time not wishing to exclude fellow competitors. Predatory rivalry to exclude others just to gain market power and collect more profit, benefiting the consumer only as an unintended second thought, is unfair and should be prohibited by the law.¹⁰⁸ The expectation to outcompete others at any rate is especially unrealistic in markets characterized by small-sized companies with strong personal relationships among their directors. The virtue of civility—including tolerance—could help avoid such “cut-throat” competition. Finding the right balance between serving customers and not hating fellow competitors is indeed a challenge.

B. *The Need to Control Market Power*

Many representatives of the Late Scholastics studied the problem of the lack of competition in the formation of monopolies.¹⁰⁹ Lessio

105. *Matthew* 25:14-30 (ESV).

106. *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 225 (1993); *Case C-62/86 AKZO Chemie BV v. Comm’n*, 1991 E.C.R. I-3359, ¶ 65. Yet, in the EU, predatory intent can be one of the proofs that is taken into account, although the concept of abuse remains essentially objective.

107. “For a sin to be *mortal*, three conditions must together be met: ‘Mortal sin is sin whose object is grave matter and which is also committed with full knowledge and deliberate consent.’” CATECHISM OF THE CATHOLIC CHURCH, *supra* note 89, at 455. “*Unintentional ignorance* can diminish or even remove the imputability of a grave offense.” *Id.*

108. I do not suggest condemning a company that does not cut prices so as to keep one of its competitors alive.

109. See *supra* note 8 and accompanying text (listing the representatives of the Late Scholastics that studied the problem).

identified and criticized four types of monopolies: market power formed through conspiracy; privileges enacted by the State (“the prince”); those accomplished by cornering the market; and, finally, those that were the result of import restrictions.¹¹⁰

The Vatican teaching is as suspicious of economic power as it is of any other uncontrolled power: “Economic development must remain under man’s determination and must not be left to the judgment of a few men or groups possessing too much economic power or of the political community alone or of certain more powerful nations.”¹¹¹

Harmful monopolies are mentioned when the optimal role of the State is discussed. The government shall make use of its substitute function whenever particular monopolies create delays or obstacles to development.¹¹² Furthermore, *the fundamental task of the State is to determine an appropriate juridical framework for regulating economic affairs* in order to safeguard “the prerequisites of a free economy, which presumes a certain equality between the parties, such that one party would not be so powerful as practically to reduce the other to subservience.”¹¹³

Yet, the encyclical letters do not discuss much with regards to the dangers of monopoly, at least not more than mentioning the downsides of competition as such. These texts do not directly condemn monopoly as an evil thing, but emphasize from another perspective that a certain equality of parties is desired and thus must be protected by the State. This attitude may help understand a tricky issue: whether we should apply different rules for “big” companies dominating a market. The European Union’s approach of putting dominant companies under a special responsibility not to impair the relaxed competition on their markets¹¹⁴ seems to have such an implicit moral element and can be explained with encyclical texts, like those quoted above.

This idea was also a central part of the German Ordoliberal School that, for me at least, lies closest to the Vatican teaching and had a great influence on the evolution of European competition policy. Franz

110. ALEJANDRO A. CHAFUEN, FAITH AND LIBERTY: THE ECONOMIC THOUGHTS OF LATE SCHOLASTICS 93 (2003) (“Lessio distinguished four types of monopoly: those formed through conspiracy, those enacted by the prince, those accomplished by cornering the market, and those resulting from import restrictions.”).

111. POPE PAUL VI, *supra* note 10, at 244.

112. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 498.

113. *Id.* at 470.

114. This concept was first used by the European Court of Justice in *Michelin* in 1983. Case 322/81, NV Nederlandsche Banden Industrie Michelin v. Comm’n, 1983 E.C.R. 3451, Grounds ¶ 57.

Böhm argued in 1955: “[T]he one who has power has no right to be free and the one who wants to be free should have no power.”¹¹⁵ The ultimate goal of competition policy for Ordoliberals is the protection of individual economic freedom of action as a value in itself, through the controlling of economic power, be it in the form of a cartel or a monopoly.¹¹⁶ Economic efficiencies are certainly important, but these are only the result or indirect goal, not the aim itself.¹¹⁷ Ordoliberals protect the freedom of competition also in the short run; they do not trust the long-term, self-healing capability of markets as much as representatives of the Chicago School.¹¹⁸

C. Just Price

It is perhaps surprising that the Catholic Church’s social teaching does not tell us too much about the central instrument of the market economy, the optimal price level. In contrast, this was a subject that was of great interest to medieval scholastics. Some of their explanations sound extremely liberal from a modern perspective, and their thesis was essentially that a price that is the outcome of free interplay between supply and demand is a just price.¹¹⁹

Some of the encyclical letters do deal with labor issues, such as the appropriate level of wages. If we accept that our human activity is a kind of service and the wage is the price paid for that activity, we can glean some insight into the Church’s price theory.

Just wages have always been a central point in social teaching. Wages are usually the result of free negotiations between the employer and the employee. However, this alone does not necessarily result in justice. Pope Leo XIII declared in his *Rerum novarum* that many

115. Wernhard Möschel, *The Proper Scope of Government Viewed from an Ordoliberal Perspective: The Example of Competition Policy*, 157 J. INSTITUTIONAL & THEORETICAL ECON. 3, 4 (2001) (quoting Franz Böhm, *Privatrechtsgesellschaft und Marktwirtschaft* [*Private Law Society and Market Economy*], JAHRBUCH FÜR DIE ORDNUNG VON WIRTSCHAFT UND GESELLSCHAFT [ORDO] 75 (1966) (Ger.), reprinted in FREIHEIT UND ORDNUNG IN DER MARKTWIRTSCHAFT 105 (1980)).

116. *Id.*

117. *Id.*

118. *Id.* at 5.

119. Rothbard recalls that St. Thomas of Aquinas in his *Summa Theologica* explained that “the value of economic goods is that which comes into human use and is measured by a monetary price, for which purpose money was invented” but made no remarks as to cost-of-production view of the just price. Rothbard, *supra* note 8, at 53. Raymond de Roover also notes that one exception is when there is a collusion or emergency when the State retains the right to interfere and impose a fair price. Raymond de Roover, *The Concept of Just Price: Theory and Economic Policy*, 18 J. ECON. HIST. 418, 421 (1958).

factors must be taken into account to judge the just amount of wages.¹²⁰ Pope Pius XI explained this in more detail, mentioning three factors. First, the worker must be paid a wage sufficient to support him and his family.¹²¹ Second, the condition of a business must also be taken into account.¹²² It would be unjust to demand excessive wages that a business cannot handle without its ruin.¹²³ Lastly, the amount of the pay must be adjusted to the public economic good.¹²⁴ An excessive lowering of wages, or an increase beyond due measure, causes “evil” unemployment.¹²⁵ I prefer setting principles like these to make employers pay just wages rather than adopting minimum wages by a state ordinance.¹²⁶

Caritas in Veritate summarizes the kind of work and wages that reflect the dignity of human work:

[W]ork that makes it possible for families to meet their needs and provide schooling for their children, without the children themselves being forced into labour; work that permits the workers to organize themselves freely, and to make their voices heard; work that leaves enough room for rediscovering one’s roots at a personal, familial and spiritual level; work that guarantees those who have retired a decent standard of living.¹²⁷

These principles applied to labor issues may not help understand the usual methods applied by competition agencies in Europe when controlling allegedly high prices. Neither the cost-plus-profit based model, nor the approach comparing prices in other geographic markets find their roots in Catholic social teaching. Yet, there can certainly be a price that is unfairly high, causing more harm to stakeholders than benefits for the company.

We can also draw conclusions from those more general Vatican statements regarding the size of profits and the obligation to manage our property in a way that benefits society as well. The Holy See made it

120. POPE LEO XIII, *supra* note 11, at 249 (“It cannot, however, be doubted that to attain the purpose we are treating of, not only the Church, but all human agencies, must concur.”).

121. *See* POPE PIUS XI, *supra* note 13, at 426 (noting the need for a sufficient wage because “[i]t is an intolerable abuse, and to be abolished at all cost, for mothers on account of the father’s low wage to be forced to engage in gainful occupations outside the home to the neglect of their proper cares and duties, especially the training of children”).

122. *Id.* at 426.

123. *Id.*

124. *Id.* at 427.

125. *Id.*

126. Yet, I realize that it is much easier to adopt a law like this than make companies accountable for meeting general moral principles.

127. POPE BENEDICT XVI, *supra* note 12, at 130.

clear before the General Assembly of the United Nations in 2011 that prices of patented medicines should not be set so high that HIV/AIDS patients could not afford to buy them. Archbishop Javier Lozano Barragan recalled that:

The Pope reminds us that the Church has consistently taught that there is a ‘social mortgage’ on all private property, and that this concept must also be applied to ‘intellectual property’. The law of profit alone cannot be applied to essential elements in the fight against hunger, disease, and poverty.¹²⁸

D. The Common Good and Competition

The common good is a key principle of the Catholic Church’s social teaching. It emphasizes the social aspect of the human person. It is the complete development of all the people of the world. Pope John XXIII describes it as “the sum total of conditions of social living, whereby persons are enabled more fully and readily to achieve their own perfection.”¹²⁹ It is also linked to the ideas of human dignity and authentic and integral human development, making them central aims of all societies. The common good cannot be reconciled with individualism that is too strong.

Competition policy is based on the premise that well-functioning markets increase social welfare. Is this equal to the common good? Can we say that the ideal form of competition is that which maximizes the common good? If so, can it be transformed into an operational principle that can be applied by lawmakers?

Markets work through voluntary exchanges between individuals. Buyers purchase products or services at the most affordable price or for the best price/quality ratio. Sellers try to sell their products and services at a profitable price. How much that profit should be may vary depending upon market characteristics and personal expectations. But one thing is certain: no one is prepared to produce and sell at a loss for a considerable period. The traditional logic of the market is selfish: I give to you, if you give to me. Positive deviations from this rule may occur from time to time, but mutuality remains the basic principle in economics, as for most other human relations.

Neoclassicals believe that it is an individual’s entrepreneurial action

128. Archbishop Javier Lozano Barragan, Address to the Twenty-Sixth Special Session of the U.N. General Assembly: Our Vision of Health Must Be Holistic (Aug. 27, 2001), *translation available at* <http://www.ewtn.com/library/CURIA/pchholst.htm>.

129. POPE JOHN XXIII, *supra* note 13, at 65.

in the pursuit of one's own selfish goals that creates wealth.¹³⁰ Driven by their profit expectations, entrepreneurs act to satisfy the needs of other individuals as well and work towards the common good.¹³¹ There is no need for a strong State to care for the common good, because free and competitive markets can do it better.¹³²

The Catholic Church's social teaching does not believe that unregulated market forces would reach just outcomes. Pope Benedict XVI asserts that the market becomes a negative force if selfish ends guide it.¹³³ The logic of the market cannot guarantee wealth for all. Market forces need to be curbed. And not only by the State: intermediate social organs also have a role to play here.¹³⁴ Pope Benedict emphasizes the responsibility of the individual over these institutions and the State: "Without internal forms of solidarity and mutual trust, the market cannot completely fulfill its proper economic function."¹³⁵

The Church's social doctrine holds that authentically human social relationships of friendship, solidarity, and reciprocity can also be conducted within economic activity, not only outside or "after" it.

VI. THE ESSENCE AND LIMITS OF THE VATICAN SCHOOL OF THOUGHT

Anyone reading Papal encyclicals does not expect to find the answers to questions such as: whether total or consumer welfare should be pursued, whether conglomerate mergers could ever be anti-competitive, or whether information exchange among competitors should be treated as a naked cartel or evaluated as such based upon the effects of the

130. DON SLATER & FRAN TONKISS, *MARKET SOCIETY: MARKETS AND MODERN SOCIAL THEORY* 54–55 (2004).

131. *Id.*

132. *E.g.*, Gabriel E. Vidal, *Caritas in Iustitia Distributiva*, MISES DAILY (July 31, 2009), <http://mises.org/daily/3594> (praising Benedict's philosophical arguments about markets but criticizing his vision on the role of a strong world regulator). He argues that motivated by profit, the entrepreneur plans and then acts to satisfy the needs of other individuals. The common good is the unintended but logically necessary byproduct of the entrepreneurial process. There exists no other rational mechanism to achieve the common good.

133. *See* POPE BENEDICT XVI, *supra* note 12, at 71 ("Economic activity cannot solve all social problems through the simple application of *commercial logic*. This needs to be *directed towards the pursuit of the common good*, for which the political community in particular must take full responsibility.").

134. Pope John Paul II drew attention to this question, in *Centesimus Annus*, when he spoke of the need for a system with three subjects: the market, the State, and civil society. POPE BENEDICT XVI, *supra* note 12, at 75–76.

135. *Id.* at 69–71.

exchange. The Vatican School of competition policy is certainly different from other, more traditional schools of competition theorists. The existence of these multiple theories constitutes two different dimensions that have some overlapping interaction with each other.

That is not to say that the Church's social teaching has nothing to do with markets and competition. The aim of this humble Article was to reveal that this teaching does include some principles and broad arguments that can be considered both by businessmen and the masters of competition policy. The principles derived from the Bible and the social teaching include the respect of human dignity, virtues, and the application of a holistic view of the whole man incorporating, but also going beyond market efficiencies. Christian lifestyle involves neither too much individualism nor excessive reliance on active State intervention. Competition is a useful institution, yet markets need some oversight by the State to operate effectively, provided that competitors do not exercise virtuous self-control.

The Catholic Church's social teaching advocates free markets and competition so long as they help fulfill the human mission. Christian human anthropology has an important role to play here, as it stresses that mankind has both material and spiritual needs. Echoing the title of Wilhelm Röpke's book, we need a "Humane Economy."¹³⁶ As Pope Benedict XVI observed: "*The economy needs ethics in order to function correctly*—not any ethics whatsoever, but an ethics which is people-centered."¹³⁷ He further observed that "[t]he economic sphere is neither ethically neutral, nor inherently inhuman and opposed to society. It is part and parcel of human activity and precisely because it is human, it must be governed in an ethical manner."¹³⁸

The Vatican School explains that economic efficiency and the promotion of human development in solidarity are not two separate aims but form one indivisible goal.¹³⁹ Morality is a necessary part of economic life too. The production of goods is a duty to be undertaken in an efficient manner, otherwise resources are wasted. On the other hand, it would not be acceptable to achieve economic growth at the expense of human beings. The practice of business virtues can only help to combat, in a spirit of justice and charity, those "structures of sin"¹⁴⁰ that are the results of acts of human selfishness. Free

136. RÖPKE, *supra* note 94.

137. POPE BENEDICT XVI, *supra* note 12, at 93.

138. *Id.* at 72.

139. See COMPENDIUM, *supra* note 14, at 144–45.

140. POPE JOHN PAUL II, CENTESIMUS ANNUS, *supra* note 10, at 490.

competition within the framework of overall human development and solidarity are key concepts in understanding the message of the Vatican School.

The Vatican's competition policy message is broad enough to accommodate most competition policy approaches. The two extreme theorists, the no-market socialists and the all-market libertarians, are the exceptions. Their followers will often criticize the Vatican thoughts as misunderstanding the rules of the economics. The Vatican message about the role of the markets and the State come close to the Ordoliberal Freiburg School upon which European competition policy was originally based. For the Catholic Church, economic freedom and property rights are regarded and protected as elements of human dignity. Ordoliberals treat individuals as ends in themselves and not as the means of increasing another's welfare. Möschel notes, referring to the "only wealth maximizing" Chicago philosophy, that "soulless economic determinism" is far removed from the Ordoliberal concept of value that can be found "beyond supply and demand."¹⁴¹

CONCLUSION

In sum, I do not think that the Catholic Church's social teaching would require competition rules that are very much different from those existing today. Understanding the message from the Vatican should rather influence the behavior of business in a way that would result in a lesser need for competition-law intervention.

A next step could be to analyze some real-life cases from the Vatican School's perspective and investigate whether legislation in force can lead to results in conformity with the Church's social doctrine. My prediction is that the answer will be in the affirmative in most cases. Another challenge is to create an economic model more in line with the Christian lifestyle, also encompassing solidarity and charity motives, and contrast it with the neo-classical market model based on individual profit maximizing economic actors.

The first message of the Vatican School is that free competition can be preserved and able to fulfill its functions only if it is regulated. Competition laws themselves are therefore not regarded as anti-competitive. Market conduct that runs against the Commandments should be prohibited. These activities could fall either under traditional

141. Möschel, *supra* note 115, at 7 (mentioning also the title of Wilhelm Röpke's famous book, *JENSEITS VON ANGEBOT UND NACHFRAGE*).

antitrust or unfair competition rules that exist in most countries.¹⁴² Business conduct that aims at foreclosing market opportunities for other entrepreneurs and does not directly focus on providing a better service to consumers should be unlawful, regardless of the market power of the company.¹⁴³ Also, setting prices at a just level is a requirement that does not only apply to dominant undertakings or monopolists.¹⁴⁴ On the other hand, the Vatican School is neutral regarding conduct that may harm some sort of efficiency and yet does not have a moral dimension. The dictum of economic freedom as part of human dignity would require business restraints to be justified in terms of their necessity and proportionality.

I believe that the Vatican School can accommodate many different types of competition doctrines. Although the Papal encyclical letters do not provide an analytical framework that helps address each and every specific antitrust issues, the existence of competition laws and other rules regulating market conduct can be seen as justified. Morality can also strengthen antitrust enforcement and even supplement it by widening the scope of forms of undesirable business conduct. Fierce competition that endangers or ruins virtues should be declared unlawful. A kind of Machiavellian rivalry that ignores the impact of business action on others and pays no attention at all to solidarity will cause man to lead a miserable existence. This may not be a primary antitrust issue though, because most jurisdictions have a broad prohibition of unfair market conduct that can better accommodate concerns expressed in Papal encyclicals. Securing just outcomes is an objective that suits other economic policies; yet, the best option would be if market players respected charity considerations in their business conduct, thereby making state interference superfluous. That would be the essence of a kind of business conduct that I call—based on the teaching of the Vatican School—virtuous competition respecting the dignity of all market players, including competitors and consumers.

142. In Hungary unfair competition rules are included in the same competition act that covers antitrust. Civil courts, not the competition authority, are entrusted to enforce these provisions.

143. We know from practice that companies lacking sufficient market power could not behave like that with a reasonable chance of success. So, a change like that would not have substantial effects on law enforcement.

144. Stucke, *supra* note 6, at 486 (quoting the results of a survey where over three quarters of respondents reported a five percent price increase by a supermarket as unfair).