

A Personal Reflection on Catholic Corporate Governance

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1. Fore Thoughts

For me, being a director of a Catholic ministry in health care, and before that an advisory board member for a ministry in family support and child protection, is a complex endeavor requiring lots, and sometimes even too much, thought. Over the good number of years I have applied myself to these tasks I have often become preoccupied thinking on how to execute my duties diligently with faith. That most frequently has involved sometimes thinking about good corporate directorship and at others thinking about faithful Catholic governance. In the early years these two dimensions of Catholic directorship seldom came together, but now I wonder if they are not so completely and utterly enmeshed they are actually indivisible, meaning that good practice in either always requires good practice in both.

While thinking on these matters and discussing with others, I have promised to collect my thoughts in writing to share. I am loath to do that in the form of an academic quality paper as that is clearly not a claim I could sustain, but am willing to share thoughts as part of my own extended thinking. What follows is just that, thoughts on my own developing sense of how I might continue trying to do this job so that I can reconcile faithful Catholic governance and diligent corporate governance to a point of sufficient integration that I can feel a sense of practicing well in both, concurrently.

I note that my thinking has been on integrating the knowledge and practices necessary for authentic Catholic governance with an effective corporate governance discipline. I come to the problem with a greater level of Catholic naivety than corporate so have this starting point. I know through discussion that others struggle with similar issues but in reverse order of naivety. I hope these thoughts of mine are still useful for those thinkers and note also that Catholic Health Australia is offering a corporate governance program in partnership with the Australian Institute of Company Directors, a course that might be helpful for some.

I do feel a sense of urgency and compulsion to address my own Catholic naivety. In *Evangelii Gaudium* His Holiness encourages us all to not settle for what he calls mere administration – the doing of service in ways that are excellent but secular. His call is for all ministries to be overtly Catholic ministry, which includes the requirement of excellence but is more than that, and in fact must be more than that if it is to avoid mere administration.

In the course of ruminating on these issues I have come across a range of other people's thoughts that I have found helpful. I have included these here and acknowledged accordingly. There will be thoughts from others of which I am not yet aware but hopefully will become so if these notes lead on to subsequent discussions. I hope that can occur.

2. Corporate Governance

There is abundant advice available on the practice of good corporate governance. The Australian Institute of Company Directors, the Australian Charities and Non-Profits Commission, Standards Australia and many others all offer quality guidance including 'how to' guides in corporate governance.

For my present purposes I have filtered this expert guidance to identify those summative dimensions of corporate directorship that might provide the connection across to Catholic governance. My question has been; where within a Catholic corporation does the conduct of diligent corporate directorship join with the practice of diligent Catholic governance? After much searching and discussion I have arrived back

at first principles with the thought that, for me in a Catholic ministry, corporate directorship and Catholic governance are joined at the point of definition of *proper purpose*.

The Corporations Act 2001¹ S181 states as a matter of first principle:

181(1) A director or other officer of a corporation must exercise their powers and discharge their duties:

- a. in good faith in what they believe to be the best interests of the corporation;*
and
- b. for a proper purpose.*

Apparently there is debate in corporate law circles² as to whether the proper purpose part of directors' duties is separate from the in the best interests of the corporation part - is the proper purpose actually just another way of saying in the best interests. Fortunately for me, in my experience of Catholic ministry this debate is moot. The grounds stated for the doctrine of proper purpose being distinct from that of best interests are:

In order for it to be applied sensibly and as an independent doctrine, the proper purpose rule requires some evidence that the power in question (i.e. for a proper purpose) has been restricted in a manner that goes beyond the general requirement that it be exercised in the best interests of the corporation (Fridman, S: 1998).

My experience of Catholic ministry suggests to me that this is us. My task is to act in the best interests of the Catholic corporations I might serve and inevitably what constitutes proper purpose for those corporations is defined in part as that which is Catholic. I cringe a bit at the notion of Catholic being a limiter but for the present purpose can accept that if I take it to mean all things that fit within the full bloom of catholicity, and not those that don't. In that sense, to be Catholic is a positive construct – it is about things that fit – but also about those things that don't. And then, if I reflect again on His Holiness's call for avoidance of mere administration, I must acknowledge that my definition of proper purpose includes matters Catholic and without those matters, I am at risk of working for other than proper purpose, perhaps even for mere administration.

If my understanding of these first principle corporate thoughts on proper purpose intermingling with Catholicity is close ish to correct, then diligent practice of my corporate duty requires that I understand and am articulate in describing how my Catholic ministries define and engage with a proper Catholic purpose. Just as in everyday corporate practice every director must exercise a level of knowledge and diligence befitting the role – for example, there is no defense for the director who professes ignorance of matters financial – in Catholic directorship that principle must extend to me possessing a level of knowledge sufficient to formulate and execute diligent Catholic judgments. If Catholic is essential to my proper purpose then I must have a sufficient understanding of what that is if I am to properly acquit my corps law duties; a sufficient understanding to know what it is that I should do, how to do those things and to check that I am doing them.

The good faith and the best interests doctrines come into my thinking from here. As I understand the good faith principle, it would for example be an act of bad faith to present myself as knowledgeable in car repairs when actually knowing nothing of substance about that subject. If I am correct in this understanding, and if I reframe from

¹ Corporations Act 2001, Australian Government.

² Fridman, S (1998), An Analysis of the Proper Purpose Rule, Bond Law Review 164.

a negative to a positive definition, good faith in governance practice in a Catholic corporation requires as a prerequisite a level of knowledge of matters Catholic sufficient to enable the practitioner to participate in the making of sound Catholic decisions and to check that the organization being governed is conducting its affairs in an appropriate manner. Participating without satisfying that knowledge prerequisite would be akin to putting myself forward as capable of making decisions about fixing cars without knowledge of the workings of cars.

Summary:

My highly summarized understanding of my corporate duty as a director is to act in good faith in what I believe to be the best interests of the corporation, and for a proper purpose. That proper purpose is Catholic by definition meaning my corps law duty to act in good faith in the best interests of the Catholic corporation requires that I must know what being Catholic means and how to make decisions and govern within that Catholic meaning.

3. Catholic Governance

Fortunately again, there is a body of advice for Catholic ministry directors on the practice of Catholic governance.

Catholic Health Australia has published *Continuing the Mission: Expectations of Trustees, Board Directors and Executives*³ as an aid to understanding what's expected to maintain an authentic catholicity. The following table comes from this document and is a good summary of the document's encouragements.

Continuing the Mission:		Expectations of Trustees, Board Directors and Executives <small>Elements to be integrated with the relevant corporate governance and managerial capabilities</small>	
DOMAIN	DESCRIPTION	DOMAIN	DESCRIPTION
Personal Commitment DISPOSITION	You evidence commitment to <i>personal spiritual development</i>	Governance & Stewardship RELATIONSHIPS	You are familiar with the application of canon law to governance of Catholic ministries
	You demonstrate a sense of personal vocation and call in your contribution to the healing ministry		You shape and influence the <i>pastoral dimension</i> of Catholic ministry recognising "community" and "whole person approach" as foundational principles
	You demonstrate self-awareness, humility, integrity and commitment to <i>developing personal giftedness</i>		You approach planning, decision-making and service delivery through the lens of the key principles of <i>human dignity, the common good and social justice</i>
	You model a servant leadership style characterised by empathy, solidarity and service		You <i>steward resources</i> with concern for the interests of all, especially the mission of the Church as a whole
	You foster a contemporary expression of the system/service <i>founding vision and/or charism</i> and its witness to the Gospel		You demonstrate commitment to <i>collaboration</i> with the range of Church stakeholders
	You treat challenges and setbacks as <i>opportunities for growth</i>		You foster <i>mutual relationships</i> with Church leadership
	You model <i>reflective practice</i> and facilitate prayer and reflection as part of your leadership responsibilities	Authentic Integration ACTION	You integrate core elements of Catholic theology, tradition and ethics with <i>health care governance, financial and corporate obligations</i>
	You exercise and enable a visionary voice in response to the challenges of the times		You sustain and influence <i>people management, organisational development and workplace relationships</i> consistent with Catholic Social Tradition
DOMAIN	DESCRIPTION		You actively support the selection and <i>development of current and future leaders</i> for the Catholic ministry
Catholic Theology & Tradition KNOWLEDGE	You are knowledgeable in the <i>history, theology and tradition</i> of the Catholic Church		You think strategically and facilitate consultative decision-making in planning and evaluating the system/service direction, <i>ensuring that the reserved powers and mission interests</i> are guaranteed for current and future ministry
	You understand the <i>theological foundations</i> of the health and aged care ministry		You embrace diversity and sustainability and serve as an agent of <i>systemic transformation</i> within the healing ministry of the Church
	You use the <i>Catholic Social Tradition</i> as a key lens for the healing ministry		You take a " <i>preferential option for people who are poor and marginalised</i> "
	You are familiar with the <i>structure, key relationships and current concerns</i> of the Catholic Church		
	You foster Catholic identity through <i>symbol, ritual and culture</i>		
	You are familiar with the principles and processes articulated in key CHA resources: Shared Purpose Statement and Mission Discernment Resource		
	You are familiar with and apply the principles of the CHA Code of Ethical Standards		

While this summary points usefully to expectations for maintaining catholicity, it does it at a reasonably high level and, for my needs, not at a sufficiently detailed level to satisfy corporate proper purpose or good faith standards.

³ Continuing the Mission: Expectations of Trustees, Board Directors and Executives, Catholic Health Australia.

Catholic Health Australia also publishes the *Guide for Understanding the Governance of Catholic Health and Aged Care Services*⁴, which for my purpose of developing a sufficient director's understanding, is a usefully detailed resource upon which I happily rely.

That Guide explains how an entity such as a health ministry is created as a Catholic entity within the wider church. I will leave the full explanation to the Guide but for my own operational understanding I take out the following. A Catholic ministry in health care:

- Is governed by Catholic canon law and the civil law of the jurisdiction in which it is established.
- Operates in a manner consistent with the Code of Ethical Standards for Catholic Health and Aged Care Ministries in Australia.
- Adopts processes and practices consistent with Catholic Social Teaching.

To take these three bodies of enabling regulation in turn and noting that I will not elaborate further on the substance of applicable civil law other than that contained above, my naïve working summary of this enabling framework for Catholic governance is:

1. Catholic Canon Law: The prominent elements of canon law that strike me as being particularly pertinent to my directorship include:
 - a. Those aspects of canon law and tradition that result in powers being reserved to the ministry's canonical sponsor and the specifics of what are those reserved powers. For someone accustomed to ordinary corporate governance, some of these powers that are reserved to the sponsor will look like powers ordinarily exercised by a governing board. It's my task to understand and work with this idiosyncrasy of the religious corporate environment.
 - b. Those relating to dealing in the property (real patrimony) of the ministry. There is an extended body of regulation included here but those that occur most regularly in my practice and which I therefore feel bound to try to understand are:
 - i. Matters involving the sale (alienation) of real patrimony and the reserve powers of the ministry's canonical sponsor;
 - ii. Use of ministry real patrimony only for the purposes of the ministry;
 - iii. Distinctions between property that is held as real patrimony and that which is held as investment, and why these distinctions matter; and
 - iv. How disputed are some of these matters – is a mortgage alienation, and even if the answer is yes or no, why do we have different answers in operation within one Catholic system?
 - c. Avoidance of scandal, for which I have detected two definitions, one more formal than the other but with the other being quite common as an apparent working concern.
 - i. That working concern relates to my director's duty to not enable creation of unnecessary scandal in the conventional meaning of that word; not to bring the ministry into disrepute or not to create

⁴ Guide for Understanding the Governance of Catholic Health and Aged Care Services, Catholic Health Australia 2012.

- controversies when there is available a better, less contentious way. As I understand it, this isn't a call to conservatism, just caution and respect both for the reputation of the ministry and for the feelings of those on the other sides of any disagreement.
- ii. I understand the more formal theological duty to avoid scandal to refer to a duty to not facilitate the false beliefs of other Catholics. Boards and directors are bodies and people of influence whom others will be inclined to believe, meaning there is a risk that when a Board acts in error, others may follow and that should be avoided in all matters but especially in matters of belief.
- d. And finally, those elements of Catholic canon law that are identified as having specific application to governance of a ministry in health care. In my reading in this area I have found the work of Father Francis G. Morrissey of Saint Paul University, Ottawa⁵ to be particularly accessible and helpful. Fr. Morrissey lists the following as qualities to be found in Catholic ministries in health care and for which there is a source in canon law:
- i. The ministry must have a spiritual purpose. For me as a director I conclude that it's then my task to understand what that spiritual purpose is, be able to articulate that purpose to others and know the systems and processes for governing the continuance of that spiritual purpose.
 - ii. The ministry must answer a need that is present today. This means that an originating need that has since been satisfied or superseded is not a sufficient basis for a ministry today. As a director I am obliged to know what that need is, be able to articulate that need to others and know the mechanisms for checking that the need remains current.
 - iii. The ministry must have sufficient means to meet its purpose. It's important to note here that financial means are not seen as the only form of means. A spirit of faith, a willingness to work diligently and sufficient qualified personnel are also seen as examples necessary means. My job as a director is to work to ensure the sufficiency and appropriate use of those means.
 - iv. Catholic works are expected to demonstrate the qualities of stability and perhaps perpetuity. A ministry of service asks those who use that service to trust it and in return must have a suitable stability and longevity to still be there when needed. That said and as noted above, this is tempered by an acknowledgement that if the originating need has been satisfied or can be better met by others, the principles of sound administration would call for closure of the work.
 - v. Those entrusted with responsibility for the conduct of Catholic works are to carry out their duties with a spirit of responsible stewardship. As a director I am entrusted with the works of my health ministry and so have a responsibility to ensure the good stewardship of the temporal goods of the ministry and must be subject to an appropriate accountability for my directorship practice.
 - vi. When the name of the Church is attached to a ministry, the ministry must be a work of quality. As I understand it, this is

⁵ Morrissey, F. (2013), Towards a New Dialogue in Catholic Health, Catholic Health Australia Conference papers 2013.

essentially a benchmarking measure, the ministry must operate services that are at least the equal of others in the same area and so must have in place sensible means for setting, measuring and monitoring performance expectations.

2. Code of Ethical Standards: Catholic Health Australia also publishes the Code of Ethical Standards for Catholic Health and Aged Care Services in Australia (the Code)⁶. In the preface to the Code the following is noted:

This Code has been developed to assist those responsible for leading, managing and delivering healing ministry to promote a culture of life. It applies across all Catholic health and aged and community care services. It sets the standards in which ethical health care practice can be pursued. (p. ix)

A little later when explaining basic principles of the Code, it is noted:

The Church recognizes that it does not have a ready answer to every question that may arise, and it respects the competence and experienced judgment of professionals in their fields of expertise. In their turn, staff at all levels in Catholic health and aged care organisations should exhibit the professionalism expected of them, and should abide by the Code. (p. 7)

In both instances the underlining is mine and included for emphasis. These two introductory statements are important as they make plain to me the Code applies to all of us in Catholic health and aged care ministries, and we must abide by the Code, even when abiding by the Code sometimes means trying to find answers where no answer has yet been developed. The intent is unequivocal and from a director's diligence perspective, this matters a lot.

- Fortunately, much of what happens in Catholic Health and Aged care that is of ethical consequence occurs in the clinical practice domain and so is or should be caught in an established process of clinical ethics review. In this clinical domain I would conclude that I best serve my director's duty to abide by the Code by ensuring the ministry I serve operates a properly constituted clinical ethics committee which is appointed by the ministry Board and which supplies summative reports to the Board at defined intervals. I could augment my governance oversight of the work of the clinical ethics committee by developing a high level understanding of the core principles of Catholic ethics in health and aged care. This is not overly difficult with access to the Code and a little time to digest its main statements of principle (see pp. 2 to 9 of the Code).
- For non-clinical matters or all those other matters encountered in the organizational and relational life of ministry, my working understanding of the major touch points for ethical concern covers three (3) points, these being:
 - The previously mentioned obligation to not enable scandal. I understand this to mean I have a director's duty to ensure the ministry is conducted with the benefit of sound theological and ethical advice as the primary means of ensuring the positions

⁶ CHA (2001), Code of Ethical Standards for Catholic Health and Aged Care Services in Australia.

and practices adopted by the ministry are theologically authentic and so limit the risk of creating scandal.

- The Catholic ethical commitment to the inherent dignity of every person and that every person is an end in themselves not ever to be treated as a mere instrument for some other purpose. This is very difficult to maintain in a large, market driven corporation and so is a constant cause for ethical reflection. My own reflection on this principle brings me to the sense that this is a matter of constant tension in the life of a large health or aged care ministry. While for secular business purposes labour efficiency is a must, this sits in permanent tension with the Catholic commitment to the non-utilitarian nature of the human person.
- The ethical principles of cooperation – the process of cooperating with non-Catholic organisations for advancement of the ministry's Catholic purposes - particularly as explained in *Co-operating with Non Catholic Partners in Catholic Health Care Ethics*⁷. The distinctions between formal and material cooperation, and then between mediate and immediate material cooperation, with the exercise of these distinctions being informed by the objective moral order, all adds up to a practical framework for assessing proposals for cooperation, provided as I apply the framework I ensure I am formed in a sound understanding of these matters as Catholic ethical principles. Another example of the case for director formation and for the case for questions of cooperation being put through competent ethical review.

Ethics Summary:

My summary of my understanding of my director's duty to govern in a manner that ensures the ministry operates in accordance with the Code includes:

- To ensure the ministry benefits from the advice and clinical ethics oversight of a properly formed clinical ethics committee; and then
 - That the ministry is properly advised on matters theological and therefore avoids the prospect of enabling scandal;
 - The inherent dignity of the person is maintained, even when in tension with a business driver of labour efficiency; and
 - Questions of cooperation are subjected to proper ethics review and advice to the Board.
3. Catholic Social Teaching: Some of the material captured in my understanding of my director's duty to ensure my ministry adopts processes and practices consistent with Catholic Social Teaching will cross over with canonical and ethics matters already canvassed (e.g. dignity of the person). It is also apparent to me that the principles of Catholic social teaching are more open – intentionally I think - to interpretation than are matters of canon law and Catholic ethics.

Practically, I think this means my director's duty is to work at developing a formed understanding of the principles of Catholic Social Teaching and to work at defining how these principles are put into practice in my ministry. I also would then need to ensure the existence of processes for checking that the

⁷ National Catholic Bioethics Centre (2009), *Catholic Care Ethics: A Manual for Practitioners*. 2nd Ed. Chapter 25: Cooperating with Non-Catholic Partners.

appropriate practices are being implemented and are actually having the effects they are intended to achieve. My developing understanding of these principles has benefited greatly from recent discussions in my current ministry (Mater Misericordiae Ltd) and from recent reading⁸, the outcomes of which are listed here as principles:

- Human dignity and the unity of the human family – the starting point and central concern of Catholic thinking. Each person is created in the image and likeness of God and so has an inalienable God-given dignity.
- The common good – we are concerned with other people. We share connections and relationships with others, creating the obligation to strive for not only our own good, but for others so that all can reach their potential.
- The universal destination of goods and a commitment to stewardship – refers to the fact that God intended the goods of creation for the use of all. We have a duty to manage wisely – to steward – the gifts of creation for the benefit of present and future generations.
- Give preference for the poor, marginalized and vulnerable – calls us to remember that the poor, the marginalized and vulnerable have a special place in the heart of God and so a central feature of the Catholic tradition is a commitment to prioritise the needs of the poor and vulnerable.
- Solidarity and service – means we are responsible for each other, we live relationally with one another, co-responsible and interdependent.
- Subsidiarity – means that decisions should be taken as near as possible to those who are most affected by the decisions. This is a call for participation and consultation with those most affected, not an easy task for a Board but achievable with proper process and soundly developed advice.

Again practically, my sense in practice is that these principles can help form a framework that can facilitate Board discernment and decision making, provided my colleagues and I are sufficiently formed to know their proper meaning and then, where meaning is open to interpretation, able to articulate the specific meanings we apply within the workings of our ministry.

Catholic Social Teaching Summary:

My director's duty to understand and apply the principles of Catholic social teaching to the work of my ministry is summarised as:

- To ensure I understand the meaning of the principles of:
 - Human dignity and the unity of the human family;
 - The common good;
 - The universal destination of goods and the commitment to stewardship;
 - Giving preference for the poor, marginalized and vulnerable;
 - Solidarity and service; and
 - Subsidiarity;
- And to then ensure I have in place systems and processes first to define how these principles will be enacted in my ministry and how we will check that this has both occurred and had the desired effects have been achieved. This means some form of audit process is essential.

⁸ Cornish, S. Brief Introduction to Catholic Social Teaching. Australian Catholic Social Justice Council.

I am mindful that my attempt to summarise those elements of canon law, Catholic ethics and Catholic Social Teaching is quite long and detailed. While length has not been my underlying objective, on re-reading and reflection I do think the detail is essential to my proper understanding of these matters and to the knock-on effect of that understanding on my capacity to function as a competent Catholic corporate director.

I have tried below to further summarise this detail as a template assurance table that might be of use for shaping and checking future performance, always with the qualifier that going directly to the summary without a formed understanding of the detail will always have me falling short. I am also cautious of the risk of creating a sense of these dimensions of catholicity being readily defined and then forgotten. That would be an error. The principles of Catholic Social Teaching for example, contain deep roots in faith and are perhaps not ultimately definable in any complete sense. That said though, for effective governance I do need to know what I am required to govern, how and why and to do that I need working definitions that are adequate for the present. I then need to ensure I practice the discipline of returning to these definitions from time to time to check that my “adequate” definition remains relevant with the passage of time.

I note also that this summary captures only the dimensions of catholicity I am seeking to integrate with my corporate practice and my pursuit of proper purpose. Of course proper purpose also must include those secular technical dimensions that go to make a health or aged care service a health or aged care service. My effort is though; to develop my understanding of these Catholic imperatives so that my pursuit of Catholic proper purpose doesn't fall short at the merely technical and, in the process of doing so, submit to the limits of mere administration. This focus is not meant to diminish the role or importance of those technical and/or secular dimensions of purpose, only to recognize that my effort is directed intentionally at trying to understand and document those matters where I think I am weakest in the hope of beginning to address that weakness.

4. After Thoughts

My starting point for this reflection was an attempt to address my naivety on matters Catholic to a sufficient extent for me to feel I can become properly informed to practice as a competent Catholic corporate director. In the course of this exploration it has occurred to me that this search is profound and in that realization my appreciation of His Holiness' call for me to do more than mere administration has deepened. My realization is that the matters of Catholic canon law, ethics and social teaching I have listed are more than a mere list of director's responsibilities. My task is to do much more than be merely responsible; it is to “be” and “do”, as it occurs to me that catholicity is made real in action. I become an authentically Catholic corporate director when I “do” as His Holiness asks, and when I don't “do” I think the risk is existential; I risk ceasing to be authentically Catholic and instead become a mere brand, a secular director governing a health service that is branded Catholic but actually isn't. One of the consequences of that outcome is that I would have failed to achieve my corps law duty to: *discharge their [my] duties*:

- a. *in good faith in what they [I] believe to be the best interests of the corporation;*
and
- b. *for a proper purpose.*

I now really do think my Catholic and Corporate duties are indivisible. I am also encouraged to observe that a less naive understanding of the Catholic elements of Catholic Corporate Governance seems well within reach. With a little more time and

effort I may yet avoid the risk of professing to know about car repairs while actually knowing little.

... Ends/...

Template Assurance Table

Dimensions of Catholic Corporate Governance

Canon Law		Ministry Interpretation	Assurance Activities			
1	Reserve Powers		1	2	3	4
2	Real Patrimony					
	- Sale / Alienation					
	- Ministry purpose					
	- Investment property					
3	Scandal					
4	Spiritual Purpose					
5	Need					
6	Sufficient means					
7	Stability					
8	Stewardship					
9	Quality					
Ethics						
1	Clinical Ethics Committee					
2	Scandal					
3	Dignity					
4	Co-operation					
Catholic Social Teaching						
1	Dignity					
2	Common good					
3	Stewardship					
4	Preferential option for the poor					
5	Solidarity and service					
6	Subsidiarity					