DIACRONÌA

Rivista di storia della filosofia del diritto

2 | 2022

PISA
UNIVERSITY
PRESS

Diacronia : rivista di storia della filosofia del diritto. - 1 (2019)- . - Pisa : Pisa university press, 2019- . - Semestrale.

340.1 (22.)
1. Filosofia del diritto - Periodici
CIP a cura del Sistema bibliotecario dell'Università di Pisa

Opera sottoposta a peer review secondo il protocollo UPI

Pisa University Press
Polo editoriale - Centro per l'innovazione e la diffusione della cultura
Università di Pisa
Piazza Torricelli 4 · 56126 Pisa
P. IVA 00286820501 · Codice Fiscale 80003670504
Tel. +39 050 2212056 · Fax +39 050 2212945
E-mail press@unipi.it · PEC cidic@pec.unipi.it
www.pisauniversitypress.it

ISSN 2704-7334
ISBN 978-88-3339-805-1

layout grafico: 360grafica.it

Condizioni di acquisto
Fascicolo singolo: € 25,00
Abbonamento annuale Italia: € 40,00
Abbonamento annuale estero: € 50,00

Per ordini e sottoscrizioni abbonamento Pisa University Press
Lungarno Pacinotti 44
56126 PISA
Tel. 050.2212056
Fax 050.2212945
press@unipi.it
www.pisauniversitypress.it

Indice

SAGGI

 DOI: 10.12871/97888333980517

PERPETUAL BY NATURE: THE MORAL CORE OF CORPORATE FORM

Giancarlo Anello

Abstract

In the present day, the enduring nature of corporations is taken for granted. However, this characteristic is not organic but a creation of western legal culture. This paper highlights the relevance of perpetual nature in the history of corporations in order to define the moral implications that perpetuity – as encapsulated in incorporation – maintains in corporate law today. After the introduction, the second section analyzes the origins of the corporate form, which is the theory of Pope Innocent IV in his *Commentaria*. The third section is dedicated to a review of the applications of perpetuity in the economic sector by monks and monasteries. The fourth section shows the potential and concrete applications that the principle of perpetuity had going forwards in the field of politics and in public and colonial law. The fifth and final section draws the conclusions on the moral potential of corporate form.

Keywords

Ecclesiastical Law; Monastic Law; Legal Personhood; Perpetuity; Future Generations.

1. Introduction: eternity and perpetuity in corporate law

Time, along with space, is one of the measures that scientists use to analyze physical and social reality. Time – especially – is the specific criterion that permits historians to evaluate situations after a certain length

(of time) has passed since a given phenomenon occurred so that it may be fully analyzed and understood. Accordingly, legal scholars have considered time as a factor of the legal experience and studied this concept through philosophical[1] and historical lens[2] in order to understand its effects on facts, norms, and institutions. In the past, to delimit time objectively was a fundamental cognitive problem and time measurability – by means of instruments, calendars, and other standards – was the way to relate this concept to the social and existential dimension of persons[3]. In Europe, the expansion of Christianity brought with it the conception of linear time, entailing that time derives simply from the geometric connection between two endpoints. According to the teaching of St. Augustine, the origin of time is in Creation, and the end of time in a Day of Judgment. The linearity of time derives simply from the geometric connection between these two endpoints[4]. In such a temporal landscape, subjects or institutions live their existence between temporal poles that, in turn, are measured by means of a form of abstract or objective time,

---

[1] G. Husserl, *Recht und Zeit. Fünf rechtphilosophische Essays*, Vittorio Klostermann, Frankfurt am Main 1955 (It. translation, *Diritto e tempo. Saggi di filosofia del diritto*, Giuffrè, Milano 1998, pp. 24-25); G. Capozzi, *Temporalità e norma nella critica della ragione giuridica*, Edizioni scientifiche italiane, Napoli 1968; L. Bagolini, *Tempo obiettivato, tempo coscienziale e durata nell'esperienza giuridica*, in «Rivista internazionale di filosofia del diritto», IV serie, LVIII (1981), p. 83 ff.; S. Cotta, *Diritto e tempo. Linee di una interpretazione fenomenologica*, in «Rivista internazionale di filosofia del diritto», IV serie, LVIII (1981), p. 119 ff.; L. Del Santo (ed.), *ll diritto nel tempo, il tempo nel diritto: per una ermeneutica della temporalità giuridica*, Wolters Kluwer Padova 2016, p. XXIII ff.

[2] M. Bretone, *Diritto e tempo nella tradizione europea*, Laterza, Bari 2004; M. D'Orta, *Diritto e tempo. L'idea di progresso del diritto dall'antichità alla modernità, Giappichelli*, Torino 2012.

[3] E. Zerubavel, *The Standardization of Time: A Sociohistorical Perspective*, in «American Journal of Sociology», LXXXVIII (1982), 1 (Jul. 1982), pp. 1-23.

[4] C. J. Greenhouse, *Just in Time: Temporality and the Cultural Legitimation of Law*, in «The Yale Law Journal», XCVIII (1989), 8, Symposium: Popular Legal Culture (Jun., 1989), pp. 1631-1651.

which is a kind of empty time not filled with historical events[5]. When time limits were not strictly defined, the words "perpetual" or "eternal" were used, thereby expressing the idea of the everlasting existence of someone or something. Even though these adjectives can be used as synonyms, they have different meanings, respect to the different effects time produces: "perpetual" means having a long duration – one longer than the ordinary life span of human beings but eventually modified or conditioned by the passage of time. By contrast, entities that are not at all modified by time are characterized as "eternal". Obviously, this adjective does not regard human beings, and it is commonly reserved for God. In theological terms eternity is a God attribute and has some theorical and practical consequences. Among them, eternity of God is a clear sign of the incompleteness of men, who are mortal beings and could aspire to completion only in salvation. In other words, linear time is a constant marker of the contingent and incomplete nature of human society and of every individual's life[6], quantifies the durability of a legal phenomenon, and is a tool to qualify the secular or divine nature of a legal subject or institution.

However, as said before, in legal language, "eternity" or "perpetuity" often overlap when they are referred to a specific type of subject, the one which is the matter of this investigation: the corporate person. *Eternity* of corporations – originally dependent on theological reasoning – became *perpetuity* and was extended to secular uses and the formation of

---

[5] See for example J. C. Riofrio Martinez Villalba, *Prospettiva metafisica del tempo giuridico*, in L. Del Santo (ed.), *ll diritto nel tempo, il tempo nel diritto: per una ermeneutica della temporalità giuridica*, Wolters Kluwer Padova 2016, p. 275 ff.; P. Arciprete, *La concezione "apocalittica" del tempo (e alcuni suoi riflessi sul diritto)*, in L. Del Santo (ed.), *ll diritto nel tempo, il tempo nel diritto: per una ermeneutica della temporalità giuridica*, Wolters Kluwer Padova 2016, p. 293 ff.; see also S. Quinzio, *La sconfitta di Dio*, Adelphi, Milano 1992.

[6] Greenhouse, cit., p. 1635.

businesses. This paper aims at highlighting the difference between the two qualities and relate this difference to the present corporate law.

Historically, the idea of the corporation was, clearly and for the first time, established by the medieval canon lawyers for theological and practical reasons. Shortly thereafter it was progressively extended to many branches of the Church, and, afterwards, it was applied beyond the boundaries of ecclesiastical law, to be referred to secular authorities, political bodies, cultural institutions, and, finally, businesses. Not being present in other religious laws[7], corporate theory was one of the most groundbreaking innovations of a flourishing European culture, one whose implications would have been striking in the public law and commercial law of the medieval and modern West. The practical advantages originating from these characteristics were the reason for the success of the corporate form that was progressively applied to secular entities like cities, universities, kingdoms, and even bridges. Today, the theory of incorporation is the legal reasoning that adopts all the extreme analogies with an "organism" into a corporate unit. It applies to groups, communities, and collectivities and establishes the possibility of creating perpetual entities in the field of law, obliterating the limits beyond the time frame of a normal, human life span. As mentioned before, usually, in contemporary corporate law, eternity and perpetuity are used as synonyms, even though historically a difference can be drawn according to the theological or secular context of its use. For example, since the time of the Romans, corporations have been considered to be immortal, but today their "immortality" relies on different legislation: it most often means that there is continuous or perpetual succession for an indefinite and unlimited time unless the corporation is dissolved in one of the

[7] T. Kuran, *The Absence of the Corporation in Islamic Law: Origins and Persistence,* in «American Journal of Comparative Law», LIII (2005), pp. 785-834; see also, M.J. Broyde, S.H. Resnicoff, *Jewish Law and Modern Business Structures: The Corporate Paradigm*, in «The Wayne Law Review», XLIII (1997), Wayne L. Rev. 1685.

ways codified by the law. In American legislation, the proposed duration of a legal entity must be stated in the incorporation charter. Moreover, in nearly every state, the limit of duration is usually 20 to 50 years, with possible renewal for a similar period[8]. In other legislation, there are no specific limits, and the duration can be effectively indefinite, thus, so to speak, eternal. The *Codex Iuris Canonici* of 1983 (canons 113 and 120, which reiterates principles also contained in the Codex of 1917[9]) states that the legal *person* is perpetual by its nature ("natura sua, perpetua est")[10] and ceases to exist if lawfully suppressed by the competent authority, or if inactive for a hundred years. This provision still refers to the theological grounding of the corporate form, whose origin can be found in the theorization of the legal personhood of the Church, when ecclesiastical bodies had to serve an idea of divine justice that was not only universal, but also eternal.

Yet, it should be remarked that the first idea of corporate form was not created for business purposes or, at the very least, the theory of incorporation did not aim to directly serve economic purposes. Traces of the primordial nature remains in some elements of the corporate form, specifically perpetuity and purposes, and continues to dictate the suc-

---

[8] H.L. Wilgus, *Corporations and Express Trusts as Business Organizations*, part II, in «Michigan Law Review», XIII (1915), 3, p. 219.

[9] Codex Juris Canonici of 1917, canon 102 that reads: §1. Persona moralis, natura sua, perpetua est; exstinguitur tamen si a legitima auctoritate supprimatur, vel si per centum annorum spatium esse desierit. § 2. Si vel unun ex personae moralis collegialis membris supersit, ius omnium in illud recidit.

[10] In addition to physical persons, the 1983 Codex recognizes two other categories of persons, moral and juridical persons (see Canon 113): "Moral persons" are those who come into existence without the intervention of any outside authority, as is the case of the Catholic Church itself and the College of Bishops. Moral persons, however, usually operate through juridical persons, as recognized by the law and, as such, are subject of their respective rights and obligations. "Juridical persons" are created by the law and are aggregates of persons or things (see Canon 114). Juridical persons are perpetual by nature (Canon 120, § 1).

cess of this idea. For example, as far as duration is concerned, originally the eternal nature of the ecclesiastical corporation has justified the autonomous jurisdiction of the Church before other authorities. "Eschatologically" the Church was both end and means in terms of God's worship. As a consequence, while what was "good" for the faithful could not be identified in a specific moment of time, it would have been discoverable as a continuing process of reification/embodiment of the social and collective interests as interpreted by the Church itself[11]. At the same time, the eschatological approach justified the centrality and the independence of the hierarchy in furthering its institutional purpose. Moreover, the combination of long duration and centrality of interests justified the corporation as a whole, as it is the perfect instrument for going beyond the limits of the human life span and achieving far-reaching goals. It is not an accident that, according to this logic, the "modern" corporate form was defined as a self-standing legal entity with its own interests, one not determined by the interests of others, even those of its shareholders.

In the present day, the perpetual aspect of the original corporate form still appears to be secularized or neglected. The corporate form has been adopted in trade and commercial law quite uncritically, without any insightful review of its peculiar eschatological origins and its consequences on legal agency and its powers. Even though corporations have been considered efficient, self-renewing, deathless entities since their origins, there are only a few articles concerning implications for the business corporation to act with a long-term[12] view, and there are

---

[11] M. T. Black, *The Theology of the Corporation: Sources and History of the Corporate Relation in Christian Tradition*, PhD thesis presented to the Faculty of Theology of the University of Oxford, October 2009, p. 39.

[12] A. A. Schwartz, *The Perpetual Corporation*, in «80 George Washington Law Review», 764 (2012). Schwarts explains that modern corporation is obliged to act with a long-term view because it has "perpetual existence" under the law. See also L.A. Stout, *The Corporation as a Time Machine: Intergenerational Equity, Intergen-*

only a few studies about the moral and legal implications of perpetual range of action of business legal persons[13]. Surely, Anglo-American law, judges, and lawyers have reiterated the doctrine that a corporation is an everlasting entity[14], but in spite of the enormous effect that perpetuity has had in the history of law, its implications in the business sector of today are largely under examined.

For this reason, this paper contends that the perpetual nature of business corporations should be investigated further. Perpetuity is a fundamental characteristic that is encapsuled in the corporate form that brings with it prosocial and moral consequences that are overly underrated. In order to reach this goal, this paper tries to highlight the ontological connection between perpetuity and corporate form since the origin of this concept, then evaluate the consequences of perpetuity for the success of this legal technology and, finally, outline what are the moral implications of perpetuity of the corporate form, at present day.

Given that time and perpetuity are objects of interest, a historical method should be applied. A historical survey on this topic may offer

---

erational Efficiency, and the Corporate Form, in «38 Seattle University Law Review», (2015), p. 685 ff.

[13] R. Hardack, *Bad Company: The Corporate Appropriation of Nature, Divinity, and Personhood in U.S. Culture*, in «British Journal of American Legal Studies», 8 (2019), 2, p. 255.

[14] A. W. Machen Jr., *Corporate Personality*, in «Harvard Law Review», XXIV (1911), 4, p. 257 states: «The orthodox American lawyer would be apt to say, 'A corporation is a fictitious, artificial person, composed of natural persons, created by the state, existing only in contemplation of law, invisible, soulless, immortal'». Moreover, M. Welters, *Towards a Singular Concept of Legal Personality*, in «Canadian Bar Review», XCII (2013), 2: p. 418 openly declares that «based on the historical development of the corporation, […] the essential attributes of a corporation are name, perpetual succession and state sanction. Perpetual succession means that there is no change in the ownership of property of the corporation when the members change, while state sanction means that mere association cannot lead to the creation of a corporation; the state must approve of its corporate existence. If those attributes are present, then there is a corporation – a separate legal person».

deeper and more specific insight on the social and long-term implications of corporation theory in the present day[15]. A historical review can also be useful for practical reasons: at present, a number of issues concerning the theory of incorporation depend on the moral premises of the behavior of legal actors involved in corporate activity: the long and short-term debate, agency problems, the separation and the holding of property, shareholders' primacy, and the like. In turn, these profiles are partially dependent on a traditional notion of corporation as a "virtuous fellowship". Very few business and incorporation professionals, and only those profoundly aware of the importance and the uniqueness of a forward-looking perspective for historical, moral, and scientific reasoning, are qualified to correctly understand the implications and power of perpetuity in the incorporation process.

To best carry out the investigation, this paper has been divided into sections: following this introduction, the second section analyzes the origins of the corporate form, which is the theory of Pope Innocent IV, who was the author of the Commentaries that definitively defined the form of incorporation of the Church. The third section is dedicated to a review of the rudimentary applications of perpetuity in the economic sector by medieval legal actors and institutions, such as monks and monasteries. The fourth section shows the potential and concrete applications that the principle of perpetuity had going forwards in the field of politics and in public and colonial law. The fifth and conclusive section describes the contributions of other scholars to this discussion in an attempt to define the moral implications that perpetuity, as encapsulated in the incorporation, maintains in corporate law today.

---

[15] Needless to say, this relationship involves the connection between the goals of the corporation and the activities (both cognitive and material) necessary to achieve them. In other words, the relationship between goals and activities aligns with the traditional attitude of corporations to perpetuity. This issue is strictly dependent on the historical development that recognized the corporation as a privilege conveyed to groups with a purpose which could create a public benefit.

2. Incorporation theory in the reasoning of Innocent IV: the eternal dimension of corporate form

The eternal nature of corporations had its origins in the medieval theory of personhood and in the fictional design of a legal person as a legal body, which had obliterated its mortal nature for theological and practical reasons. The origins of corporate reasoning are generally connected to the theory of Pope Innocent IV, Sinibaldo de Fieschi[16] (1195-1254). In the XIII century, it was common for the Pope to decide certain practical questions in a casuistic way while including general observations in order to rationalize the decision[17]. Sinibaldo, who had analyzed the types of legal bodies of his day in depth in his scholarship[18], was fully aware of the variety of forms that moral persons could assume (hospitals, *ecclesiae*, cities, universities, and monastic orders). At that time, the Church, as well as its different particular emanations, was the living proof of the durability of communities that had enjoyed preliminary versions of the corporate form. However, in the mind of Sinibaldo, for theological reasons, the Church was a unique type of legal body. It was not founded by the free will of its members but by God himself, and, therefore, it had to be universal and immortal (*ecclesia numquam moritur*).

Pope Innocent IV drew up the incorporation theory in two passages, which outlined two key determinations and rationales that informed the understanding of his fiction theory.

---

[16] A. Melloni, *Innocenzo IV. La concezione e l'esperienza della cristianità come* regimen unius personae, Marietti, Genova 1990.

[17] M. Koessler, *The Person in Imagination or Persona Ficta of the Corporation*, in «9(4) *Louisiana Law Review*», (1949), p. 437.

[18] Innocentius IV, *Commentaria in quinque libros decretalium*, Venezia 1570 annotated extensively by F. Ruffini, *La classificazione delle persone giuridiche in Sinibaldo dei Fieschi (Innocenzo IV) ed in Federico Carlo di Savigny*, Fratelli Bocca, Città di Castello 1898.

1. The first key passage referred to the announcement of the rule that ecclesiastical corporations (*collegia*) could deliver an oath sworn by a single person representing the college, rather than oaths respectively sworn by several members. Pope Innocent's rationale for this decision being, "since the college is in corporate matters figured as a person"[19]. This passage suggests that a *collegium* should have been imagined as a human individual, but, far from establishing a total identity, the Pope was ultimately recommending that a legal technique/device be employed to solve conveniently practical problems – and this innovation was "the treatment of a corporation as a separate legal entity".
2. Furthermore, Pope Innocent IV determined that an *universitas* could not be sanctioned by excommunication. The rationale given was the following: "since corporation as well as Chapter, Tribe, and so on, are legal terms rather than names of persons"[20]. In other words, Pope Innocent IV was aware of the reasonable limits of the legal fiction conveyed by the aforementioned passage. That is to say, while the corporation could have been treated *as if* it were human, it was actually not a human and, therefore, the law could not have been extended to matters where the legal measure was based on the assumption of the existence of a human soul in the subject (as with excommunication).

Much better than in the past and for the first time expressly, these determinations and rationales shaped the legal personality of the Church. Firstly, the corporation was considered as a separate legal entity to its members. Secondly, being considered a separate legal entity, it had inherent limitations as a legal fiction and could not have been treated as though it were a natural human being. It should be noted that Sinibaldo

19 Koessler, cit., p. 437.
20 Ivi, p. 438.

focused on the twofold problem of the nature and the effects of the corporate idea. More exactly, Sinibaldo strived to solve a double-barrelled issue: on one side, distinguishing the legal and eternal institution of the Church from the physical bodies of the faithful; on the other side, establishing a legal entity to carry out and achieve the economic goals of charity, solidarity, and public assistance of the religious community. In order to do so, Sinibaldo applied the widely cited St. Paul's metaphor of the Church as a body (*corpus mysticum*) in an "organic" and systematic way. According to the Pope, under certain circumstances, the community was a totality giving meaning and values to its single parts. The analogy with the physical person led Sinibaldo to reason about the body as well as about the agency profile. Furthermore, he was the author of a specific rationale about what moral implications the passing of time might have on the application of the corporate form. To this point, his words were as follows:

> Universitas non potest excommunicari; quia impossibile est, quod universitas delinquat; quia universitas sicut est capitulum, populus, gens, et huiusmodi, nomina sunt iuris, et non personarum; ideo non cadit in causa excommunicatio[21].

The underlying legal motive for such reasoning was that a corporation was the same after the commission of a crime as it was at the time of a given crime. The consequences of a criminal condemnation would also stay with those who would be born long after the commission of the crime, but – Sinibaldo asked – how could such individuals ever consent to the delictal action? In his view, such a result would have been supremely unfair[22]:

---

[21] Innocentius IV, cit., caput LII, X, De Sent. Exc., p. 557.

[22] M. J. Rodriguez, *Innocent IV and the Element of Fiction in Juristic Personalities*, in «Jurist», XXII (1962), 3, p. 300.

> eadem est universitas, quae est tempore delicti, et quae futuro tempore, quae nullo modo delinquunt; esset autem multum iniquum, quod huiusmodi, qui nullo modo delinquunt, excommunicarentur[23].

Eventually, the juristic implications of the corporate form of the Church were also investigated from the point of view of property rights. In the earlier discussions on the ownership of the property, it was generally assumed that property remained with the local community in some way. Innocent IV definitely held that the *dominium* was vested in the whole *aggregatio fidelium*, given that the Pope was the head of the body (*corpus Christi*):

> non praelatus sed Christus dominium et possessionem rerum eccleasiae habet… vel ecclesia habet possessionem et proprietatem… id est agregatio fidelium quae est Corpus Christi capitis[24].

A remarkable effect of the diffusion of the standardized, corporate form must be highlighted: as the corporate status of churches, monasteries, and charitable bodies proliferated, the subsequent legal rights bestowed on individuals through corporate membership became more precisely defined and legally effective. For example, memberships in a cathedral chapter gave canons the right to a prebend that could be defended in ecclesiastical courts against any counterclaim or in the case of misrecognition of duties[25].

Therefore, Sinibaldo not only received the credit for outlining the perpetual nature of the corporation, but also for defining its moral and legal consequences and, in so doing, established an original and inde-

---

[23] Innocentius IV, ivi.

[24] B. Tierney, *Foundations of the Conciliar Theory. The Contribution of the Medieval Canonists from Gratian to the Great Schism*, Cambridge at the University Press, Cambridge 1955, p. 140.

[25] J. Gaudemet, *Storia del diritto canonico. Ecclesia et Civitas*, San Paolo, Cinisello Balsamo 1998, p. 494 ss.

pendent paradigm of legal subjectivity. The completeness and functionality of this model, in the following centuries, came to be known as the reason for the success of the theory in medieval public law.

In summary, in Sinibaldo's day, the range of the legal entities (*universitates*) was extensive and varied, in that it included not only ecclesiastical entities but political bodies, as well. Some aspects of the theory were already applied to monastic orders, universities, hospitals, kingdoms, cities, and even to bridges[26], but the benefits of the application of an organic corporate form to the different entities of the universal Church were enormous.

The theory served both abstract and practical purposes. Pre-existing but primitive forms of corporate personhood were specified and unified under the universal organization and legitimation of the Roman Church. The advantages of the corporate form for proprietary interests and the effectiveness of a perpetual agency of hierarchy was immediate. Lord Bracton, writing in the XIII century, noted:

> If an abbot, or prior claim land in the name of their church upon the seisin of their predecessors the declaration should not be from abbot to abbot, or prior

[26] In medieval times, the building and maintenance of a pons (bridge) was often considered a pious act that could deliver one from sin. To accomplish these tasks, congregations with a moral personality were founded. After its construction, the bridge could become an autonomous institution bearing legal personality. In such cases, its rights were administered by a community whose members would maintain the structure and give some kind of assistance to travellers and pilgrims crossing it. A famous example of such a corporation is the Avignon bridge. See M. Nice Boyer, *The Bridgebuilding Brotherhoods*, in «Speculum», XXXIX (1964), 4 (Oct., 1964), p. 639 and 641-642. See also, *https://www.catholic.com/encyclopedia/bridge-building-brotherhood*. In the same vein, guilds and other lay congregations were also interested in religious activities to obtain recognition of their personhood. For example, guilds sponsored masses, prayers for the dead, church building, religious art, plays and parade floats based on the Bible or the lives of saints, see A. Porterfield, *Corporate Spirit. Religion and the Rise of the Modern Corporation*, Oxford University Press, Oxford-New York 2018, pp. 44-45.

> to prior, nor should there be mention of the intermediate abbots or priors, because in colleges and in chapters the same corporation always remains, although they all die successively and others are substituted in their place, as may be said of flocks of sheep, where there is always the same flock, although all the sheep or heads successively depart, nor does any individual of them succeed to another by right of succession in such manner that the right descends by inheritance from one to another, because the right always pertains to the church, and remains with the church. And accordingly if the abbot or the prior, the monks or canons successively die, the house remains to eternity[27].

This excerpt shows the extent to which Sinibaldo's conceptualization was ready to intercept the needs already present in the different branches of the Church, contemporaneously satisfying exigences of independence, self-regulation, and economic power. Even the most distant monasteries scattered throughout Europe would have been able to claim their autonomy on the basis of belonging to the body of the Church. This autonomy would have implied some legal privileges toward political authority (and ecclesiastical authority, as well) regarding property rights, the right to sue and be sued, as a unitary entity, a centralized system of management of properties, and the power of jurisdiction on the members. These conditions made the religious orders, then spreading across Europe, a force that marked the social and economic development of the region for centuries. Needless to say that the perpetuity of their legal nature contributed to this far-reaching achievement.

3. Perpetuity in monastic corporations

By the XI-XII century, a great number of monasteries spread across Europe. These institutions represented a big variety of religious orders that were animating the religious life of that time. For such institutions to survive, the growing ranks of monks needed to develop methods to fi-

[27] Henry of Bracton, *Treatise on Laws of England*, (c. 1264), Vol. 5, Twiss's Ed., p. 447.

nance their religious activities. In spite of the preconceptions and stereotypes about the anti-materialistic style of life at that time, monasteries and monks were among the most prevalent and creative sources of economic activities, loan capital, and investment practices. Of course, monasteries were institutions in which the cenobitic style of life stimulated the long-term aspects of communal life[28]. Clearly, the perpetual nature of monasteries was grounded on a sound symbolic field: the body and the name of the saintly founder was preserved in the dedicated church or in the cemetery to carry his memory through generations and into eternity[29]. Moreover, monasteries made their perpetual nature an element of their legal structure while trying to achieve economic goals in a similar way to that of modern and contemporary corporations, thus their charters and statutes are the place to find information about the implications of perpetuity in early corporate reasoning.

Among the variety of legal entities that inhabited Medieval society, monasteries were very similar to contemporary sophisticated and multinational corporations in many respects[30]: first of all, they were an extraordinary example of legal persons who shared the eschatological

---

[28] According to Emile Durkheim, there were two circuits of social life: the first, the everyday, is the short-term, individuated and materialistic one; the other, the social, is the long-term, collective and idealized one – even spiritual, as cited in C. Hann, K. Hart, *Economic Anthropology. History, Ethnography, Critique*, Polity Press, Malden MA 2011, p. 94. To the minds of many, the topic of economics falls under the first circuit, whereas most societies attempt to subordinate this to their own cultural or religious conditions, i.e., the second circuit, cf., B. Jansen, *The Monastery Rules. Buddhist Monastic Organization in Pre-Modern Tibet*, University of California Press, Oakland-CA 2018, p. 85.

[29] R. Bartlett, *Why Can the Dead Do Such Great Things? Saints and Worshippers from the Martyrs to the Reformation*, Princeton University Press, Princeton 2013.

[30] R. Roehl, *Plan and Reality in a Medieval Monastic Economy: The Cistercians*, in «The Journal of Economic History», XXIX, No. 1, The Tasks of Economic History (Mar., 1969), pp. 180-182. The Cistercian economic program might be categorized as a "firm" rather than a "national" plan (to employ somewhat anachronistic terminology); that is to say, it was related to the economy of an individual monastery but it

nature of ecclesiastical corporations but were also interested in carrying on economic activities to maintain their properties, self-government, and, sometimes, autonomous wealth. The constitution of the monastic community would have depended on a charter that organized the legal structure of the monasteries, their representatives, their religious and secular purposes, as well as their internal organization. Needless to say, this model resembles the process of incorporation by law which was later adopted and utilized by the modern English and American law practice[31]. To put it simply, religious communities established themselves through their own constitutions (*constitutiones*), their self-governing norms. Even though from the fifth century onwards an increase in the number of Latin *regulae* occurred, the principle according to which the *regula* was considered the foundational legal category was never challenged. In spite of the different names that these deeds may have, like *charismata, decreta, praecepta, leges, normae, institutiones, instituta, ordines*, they were the legal charter of the monastery[32].

---

was capable of indefinite reiteration, in as many abbeys as might be desired. Thus, the provision was made for the growth and expansion of the Order, p. 180.

[31] L.P.Q. Johnson, *Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood*, in «35 Seattle University Law Review», (2012) 1135.

[32] A. Diem, P. Rousseau, *Monastic Rules (Fourth to Ninth Century)*, in A. Beach, I. Cochelin (eds), *The Cambridge History of Medieval Monasticism in the Latin West*, Cambridge University Press, Cambridge 2020, p. 181. In summary, until the end of the sixth century we must approach the development of monasticism under three premises. First, there was no one monasticism but rather an infinite variety of more or less "regulated" monasticisms. Second, the textual basis of monastic life – its *regula*, if we want to call it that – could manifest itself in yet another confusing variety of different texts and genres. A *regula* can hide in a story, in an ascetic admonition, in a theological treatise, in a letter, in a charter, in a law, or in the acta of councils of concerned bishops. Third, there was, however, a slow development toward a "regulated" way of life that did use *regulae* as we know them in the way that we expect them to be used. Benedict, the Master, and, to a certain extent, Caesarius could already make the claim that there was no alternative to a regulated communal life: you either live *sub regula vel abbat*e or you are a *monachus gyrovagus* or *sarabaita*.

A second pillar of the monastery that resonates similar to contemporary board of directors was the authority and role of the abbot as a representative of Christ and as supreme judge[33]. Given that the abbot was elected for life, there could be no separation between the law and the abbot, therefore, the nature of the monastery was based on an enduring perspective or, at least, on the long-lived perspective of the abbot. Other legal principles were expressed in other minor rules, such as oblation, vows, internal hierarchy, elections, and the rules concerning the personal *status* of monks.

As far as the members of the corporation were concerned – the monks –, the long-durée perspective regarded them, too. Monastic *Regulae* were usually considered as *regulae totius vitae* and were intended to regulate the individuals' existences (*tota vita*), including daily business activities. In the *regulae vitae*, moral and legal regulation had to cover every aspect of the life of the monks. This characteristic was clearly expressed in the formula, often repeated in different charters, according to which monks had to obey *usque ad mortem*. As Bernardo of Chiaravalle wrote, bring obedience "up to death" means making the limits of obedience (*oboedientiae limes*) coincide with the limits themselves of the time (*ipsa extremitas temporis*) in which existence takes place. The duration of obedience is life-long, and the end of obedience coincides with the very end of life[34].

---

[33] G.D. Guyon, *Un grand juriste européen: Saint Benoît de Nursie*, in «Cuadernos de Historia del Derecho», (2003), 10, pp. 49 ff. G. D. Guyon, *Le temps et le droit dans la Règle bénédictine (Il tempo ed il diritto nella Regola benedettina)*, in "Le temps et le droit, Actes des journées Internationales de la Société d'Histoire du Droit" (Il tempo ed il diritto, Atti delle giornate Internazionali della Società di Storia del Diritto), Nizza 2000, Università di Nizza "Sophia Antipolis", Centro di Storia del diritto, Nizza 2002, pp. 37-50.

[34] Bernardo da Chiaravalle, *De praecepto et dispensatione*, in Opere di San Bernardo, I, Fondazione di studi Cistercensi, Milano 1984, p. 516 ff.

Another similarity to the contemporary business corporation regarded the objective of the legal entity, called the *propositum*. The *propositum* had to uphold both the individual and the communal purpose[35] of the monastery and represented the core ideal that permeated the institution and, in a broader sense, monastic law. More practically, it was the institutional goal and served to regulate present and future aspects of the life of the monastery and the monks. For example, the *Carta Caritatis Prior*, which was drafted before the 1119 by Stephan Harding, the second abbot of Citeaux, pointed to a future that had to be regulated. This objective foresaw further steps and activities, like the formation of an organization of common life, and was universally respected in spite of the great distances; finally, it was upheld by the mutual responsibility of all its adherents.

For these reasons, the moral and legal legacy of perpetuity became a general characteristic of the monastic communities, and therefore, practical activities were also affected. In summary, a perpetual[36] written text,

---

[35] This idea is not so far from the contemporary conception of the social economic function of corporations. For example, the American Law Institute provided a regulation to balance the economic function of the corporation and the social function, Principles of Corporate Governance: Analysis and Recommendations § 2.01 (1994):
2.01 The Object and Conduct of the Corporation
(a) Subject to the provisions of subsection (b)… a corporation should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain.
(b) Even if corporate profit and shareholder gain are not thereby enhanced, the corporation in the conduct of its business:
(1) Is obliged, to the same extent as a natural person, to act within the boundaries of law;
(2) May take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business; and
(3) May devote a reasonable amount of resources to public welfare, humanitarian, educational, and philanthropic purposes.

[36] As mentioned, in religious literature, the notion of everlasting existence is sometimes expressed by the word 'sempiternal', whereas 'eternal' may be ascribed to a secondary metaphysical sense, one not conditioned by time and reserved for God.

a person elected for life, and organizational *regulae totius vitae* were the pillars of the corporate organization of the monastery, and its legal basics were regulated on "long-durée" normative purposes. Unlike the common people who were used to living in secular time (*saeculum*), the monks lived in eternal time, that is to say that every moment of the monk's life was sacralized by its submission to the *Regula* (the monastic law). As a result, the specific quality of the temporal dimension of monastic life was so crucial that it influenced many other aspects of life, even economic activities. Yet, in spite of this philosophical and religious mindset regarding the practical administration of property and the relationship between the community and the outside world, long lasting goals and contingent conditions were regulated to balance perpetuity and flexibility. The institutionalization of a religious community, and, even more so, that of a congregation of monasteries, did not come to an end with the first acts of foundation. Thus, one of the greatest achievements of a future-oriented stance was the development of an awareness that the validity of the perpetual principles of the monastic organization was dependent on a certain flexibility when it came to their enforcement. Above all, an organization that at the beginning may have seemed suited to a particular goal had to be constituted in a way that made change possible. This was the only way that allowed for the possibility of reacting both to internal decline and to changing outward circumstances, to correct mistakes and to adapt anew – essentially, to regenerate itself. The Cistercians precociously institutionalized perpetual reform as the duty of their periodical *capitulum generale*. The other orders then followed. The Premonstratensians, for example spoke of a "repairing of the order" that was to happen every year at this gathering. Of the highest importance, in this regard, was the need to distinguish precisely between that which was to be upheld as unchanging and that which could be changed. For example, Peter the Venerable, as leader of the Cluniac order, brought the point home compellingly for monastic affairs in the first half of the XII century. As he explained in the prologue of his statutes, what was immutably prescribed by God as an eternal law was not to be changed by man. By contrast, that which had mere-

ly been commended to humanity as useful, however, could very well be changed. Thus, all that concerned (monastic) virtue was to remain unchanged, whereas the means of assistance that led to virtue could certainly be modified – not the principles of faith, hope, and love, but rather the regulations governing fasting, vigils, manual labor, and so on. All orders adopted similar conceptions[37].

The perpetuity of monasteries was a motivating factor for investment in many ways. Actually, the corporate shield of monasteries was a motivating factor for wealthy lay families seeking protection for their properties and estates. During the Carolingian era, the Archbishop Boniface criticized the practice of religious charters being granted to noblemen by the king, given that by utilizing charters of incorporations monasteries could become economic assets that elites could invest. For example, lands to protect could have been donated by wealthy families to the king. Utilizing a charter of incorporation to legalize these properties, such as monasteries or churches, the king, in turn, might bestow that monastery on a favored subject (such as an abbot), with the result that the latter may be afforded the possibility to live a lay (or religious wealthy) life and have churches and monasteries granted to him. More broadly, noble and wealthy families were interested in the regime of the property of such institutions that shielded them from expropriations and taxes. By founding monasteries, such families received spiritual benefit and kept lands and wealth from being divided through inheritance and under their control. In fact, monastic properties might be managed by sons, daughters, or widows who acted as proprietors in their role as abbots or abbesses[38].

---

[37] G. Melville, *The Institutionalization of Religious Orders (Twelfth and Thirteenth Centuries)*, in A. Beach, I. Cochelin (eds), cit., p. 797.

[38] See for this example, Porterfield, cit., pp. 32-33. A similar system of lay ownership was present in the Buddhist tradition, see G. Schopen, *Lay Ownership of Monasteries and the Role of the Monk in Mulasarvastivadin Monasticism*, in «Journal of the International Association of Buddhist Studies», XIX (1996), 1, p. 84.

This brief review of the practical applications of perpetuity to the organization of monasteries demonstrates the extent to which the corporate form had advantages not only in the ideological but also in the economic sector. At a later date, similar advantages would be extended to secular trade companies and commercial societies. In the meantime, incorporation theory was applied in the political and public sphere, and the perpetual nature of corporate forms widely discussed and emphasized. An understanding of those transformations is necessary for comprehending the implications of perpetuity on the structure and the potential of the "what-it-perpetually does" notion of incorporation today.

4. Perpetual corporations in medieval and modern public law

During the Middle Ages, the theory of incorporation influenced not only the notions of legal reasoning but also those of legal imagination[39]. Generally speaking, the word "corpus mysticum" was part of the political jargon and referred both to the ecclesiastical and the secular collective entities[40]. The metaphor of the body was part of the political medieval aesthetic[41] and was used to discuss the relationship between the head and the body itself. Through understanding both *ecclesia et regnum* as *corpora*, there was also considerable space for reflection on the relationship between the head and the body. Moreover, the question of whether the church was a *persona ficta* seemed to imply the legal possibility that

[39] A.W. Machen Jr., *Corporate Personality (continued)*, in «Harvard Law Review», XXIV (1911), 5, p. 361.

[40] C.J. Nederman, *Body Politics: The Diversification of Organic Metaphors in the Later Middle Ages*, in «Pensiero politico medievale», II (2004), pp. 59-87.

[41] E. Steiner, *Piers Plowman, Diversity, and the Medieval Political Aesthetic*, in «Representations», Vol. 91, No. 1 (Summer 2005), p. 4 ff.

it did not exist in the way a physical person did[42]. The perspective that clung to the transience of the body and its decay was obliterated by analogical reasoning. On the contrary, the metaphor fostered the eternity of the legal persons. This misrepresentation of reality had a political motivation which was that of supporting the stability of the ecclesiastical authority, a quality that was taken for granted because the *ecclesia universalis* was founded by God himself, and, therefore, it could not be a mortal entity, – as said before, *ecclesia numquam moritur*[43].

To achieve the same goal, the stability of secular entities, the theory of the corporation as an artificial person was powerful in shaping subsequent medieval theories concerning political power. Alongside ecclesiastical entities, cities began to assume the organization of corporate entities in order to achieve some degree of independence from the imperial power, as well as from the papacy[44]. The famous scholar Baldus De Ubaldis was the jurist that most developed this topic, applying the same theory to the collective as that which the different city-states were experiencing. According to Baldus, the *populus* as an abstract entity was, legally speaking, one person. In order to describe the dual nature of the *populus* as a corporeal unity composed of its members, he designated it as a *persona universalis*[45] – one person composed of many. A corporate body of this sort still had an attribute denied to its members: a *persona*

---

[42] P. J. Stern, *The Corporation in History*, in G. Baars & A. Spicer (eds), *The Corporation: A Critical, Multi-Disciplinary Handbook*, Cambridge University Press, Cambridge 2017, p. 22.

[43] L. Ribarevic, *Leviathan and Medieval Universitas: Hobbes's Debt to Canon Law*, in «History of Political Thought», XXXVIII (2017), 1, p. 100.

[44] A. Porterfield, *Religious Roots of Corporate Organization*, in «Settle University Law Review», XLIV (2021), p. 476.

[45] The use of the concept of "universal" in political medieval language can be misleading. It becomes clearer if one considers that the Latin etymology derives from the expression "ad unum vertere" which roughly means to convert many things into a unity. It should be noted that a general rule of Roman law contended that what was publicly done by the majority applied to everyone, "Refertur ad universos, quod pub-

universalis was also a *persona perpetua* and, therefore, immortal[46]. This specific point requires an excursus: many of Baldus' interpreters made reference to the Roman jurist Alfenus Varo, a previous source for the notion of the immortality of the *populus*. In the Digestus (D.5.1.76)[47], Alfenus considered the people as a "thing" that did not modify itself because of a change in its elements. This statement from Alfenus had no direct connection to corporation theory and contended only that the concept of *people* is constant; that is to say, whether they are alive today or died over a hundred years ago is inconsequential. This excerpt was mentioned by the Glossators to indicate the principle of perpetuity of the people. Baldus, commenting on this passage, linked this principle to the corporate form of cities. According to Baldus, the city-community

---

lice fit per maiorem partem", see D. 50, 17, 160, 1, thus the principle of majority easily turned into a principle of universality.

[46] Quoting Baldus: "[…] populus proprie non est homines, sed hominum collectio in unum corpus misticum et abstractive sumptum, cuius significatio est inventa per intellectum" (ad C.7.53.5: Baldus de Ubaldis, *Lectura in VI-IX libros Codicis*, Johannes Siber, Lyon, 1498, fol. 236r).

[47] Alfenus, libro sexto digestorum. Proponebatur ex his iudicibus, qui in eandem rem dati essent, nonnullos causa audita excusatos esse inque eorum locum alios esse sumptos, et quaerebatur, singulorum iudicum mutatio eandem rem an aliud iudicium fecisset. respondi, non modo si unus aut alter, sed et si omnes iudices mutati essent, tamen et rem eandem et iudicium idem quod antea fuisset permanere: neque in hoc solum evenire, ut partibus commutatis eadem res esse existimaretur, sed et in multis ceteris rebus: nam et legionem eandem haberi, ex qua multi decessissent, quorum in locum alii subiecti essent: et populum eundem hoc tempore putari qui abhinc centum annis fuisset, cum ex illis nemo nunc viveret: itemque navem, si adeo saepe refecta esset, ut nulla tabula eadem permaneret quae non nova fuisset, nihilo minus eandem navem esse existimari. quod si quis putaret partibus commutatis aliam rem fieri, fore ut ex eius ratione nos ipsi non idem essemus qui abhinc anno fuissemus, propterea quod, ut philosophi dicerent, ex quibus particulis minimis consisteremus, hae cottidie ex nostro corpore cederent aliaeque extrinsecus in earum locum accederent. quapropter cuius rei species eadem consisteret, rem quoque eandem esse existimari.

was perpetual because it was universal – a person composed by many – and, thus, was as a corporation[48]:

> The people however never die – as this text says – […] My question is whether a city, continuing to exist through new citizens who are adventitious rather than native ones, is said to be the same city. My answer is that it is […] because a universal cannot die just as mankind cannot die[49].

Here, more exactly, are the Latin words of Baldus on this point:

> Quero nunquid civitas durans in novis civibus non naturalibus sed adventiciis dicatur eadem civitas? Respondeo sic […] quia quod universale est non potest morte perire sicut homo in genere non moritur[50].

What is significant, from the perspective of political theory, is Baldus's acute perception of the abstract and perpetual aspects of the *populus* of a city-republic and, more broadly, the universal nature of the goals of the legal person which was the reason for the perpetuity of the legal person. In turn, the corporate form was the legal instrument to achieve political stability and community goals in perpetuity. Connecting "general" interest to "perpetual" action was the original contribution that secular jurists, like Baldus, gave to the theory of incorporation: the corporation was a self-standing legal entity with its own interests, one that corresponded to the collective interest of the people. Given that the people are a perpetual entity, their interests cannot be identified

---

[48] J. Canning, *Kantorowicz's Interpretation of Baldus' Corporation Theory in the Light of Later Research*, in Thomas Frank, Daniela Rando (eds), *Ernst Kantorowicz (1895-1963). History as Cultural Inquiry*, Pavia University Press, Pavia 2015, p. 116 ff.

[49] J. Canning, *The Political Thought of Baldus De Ubaldis*, Cambridge University Press, Cambridge 1987, p. 189 and J. Canning, *The Corporation in the Political Thought of the Italian Jurists of the Thirteenth and Fourteenth Centuries*, in «History of Political Thought», I (1980), 1, p. 9 ff.

[50] Baldus de Ubaldis, *Commentarium super pace Constantie*, ad v. "Imperialis clementie", Leonardus Gerla, Pavia 1495, fol. 1v.

in a specific moment of time; they can be considered as a continuing process of reification of the collective interest in the long run, which requires the perpetual autonomy of the government of the city.

For the same political objectives, the theory was further developed by another generation of legal scholars, the Commentators, who agreed that because the people were perpetual, they could enact measures which were similarly perpetual, as in the case, for instance, of legislation and banishment. Soon, this logic was implicitly or explicitly extended to any corporate and secular body, such as the University of Bologna[51].

Furthermore, the authority of kingdoms was supported through a variation of the same theory involving, this time, the body of the king[52]. The continuity guaranteed first by the Church and then by law was now ensured by the *corpus* of the king himself, which never died, so to speak, being the eternal body of the State. A similar notion was even elaborated

[51] It is not by chance that William Blackstone, in discussing the difference between mere associations and the "artificial person" of the corporation in his Commentaries on the Laws of England, chose the representation of a college in a university: «If this were a mere voluntary assembly, the individuals which compose it might indeed read, pray, study, and perform scholastic exercises together, so long as they could agree to do so; but they could neither frame, nor receive, any laws or rules of their conduct; none, at least, which would have any binding force, for want of a coercive power to create a sufficient obligation. Neither could they be capable of retaining any privileges or immunities; for, if such privileges be attacked, which of all this unconnected assembly has the right, or ability, to defend them? And, when they are dispersed by death or otherwise, how shall they transfer these advantages to another set of students, equally unconnected as themselves?… But when they are consolidated and united into a corporation, they and their successors are then considered as one person in law: as one person, they have one will, which is collected from the sense of the majority of individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic», see W. Blackstone, *Commentaries on the Laws of England in Four Books*, Edition J.B. Lippincott Co., Philadelphia 1893, Book I, Chapter 18, Of Corporations, pp. 467-468.

[52] E.H. Kantorowicz, *I due corpi del re. L'idea di regalità nella teologia politica medievale*, Einaudi, Torino 2012.

by the "corporation sole" in England[53], where the legal entity entailed a separate personality for an individual position in the church (e.g., the bishop), where all the successors of that role were considered as a single entity. In the same vein, the advantages of applying perpetuity to political powers emerged even more strongly in the modern age, when applied to the public law and to the theory of the national State[54]: State, as defined by Hugo Grotius, was not the fruit of a divine commandment, the very outcome of original sin, but the result of a contract between individuals intended to ensure social peace. The State was now a body of which the king was only the head. To this point, Grotius states:

> nam imperium, quod in Rege est ut in capite, in populo manet ut in toto, cuius pars est caput[55].

Given the caducity of the king's body, in the subsequent modern political imagination, the "corpus" was tacitly supplanted by the metaphor of the machine, and this substitution had several effects on the concrete organization of the State and its activities. Therefore, it is no wonder that, in Hobbes, the images of a mechanism definitely prevailed. It was a reversal of medieval organicism, in which the model was mathematical-mechanistic and transmitted directly by nature. For example, in the introduction of Leviathan, institutions were no longer bodies, but cogs[56].

---

[53] T.F. Bathurst, *The Historical Development of Corporations Law*, in «37 Australian Bar Review» 217 (2013), p. 218.

[54] J. McLean, *Pluralism and the Personality of the State by David Runciman*, in «The University of Toronto Law Journal», XLIX (1999), 1, pp. 123-149.

[55] F. Todescan, *Dalla «persona ficta» alla «persona moralis». Individualismo e matematismo nelle teorie della persona giuridica del sec. XVII*, in «Quaderni fiorentini», XI/XII (1982/83), tomo I, p. 64.

[56] *https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/hobbes/Leviathan.pdf*. Court decisions sometimes referred to corporations as robots, see Wrigley v. Notting-

This set of ideas, concepts, and imaginaries would have increasingly involved the private sector and business schemes: in the context of the modern state, public and private systems take shape, which differ according to whether individuals have come together to pursue their respective purposes or interests, at the initiative of the sovereign or by a private entrepreneur[57]. Thus, the further development of the modern business corporation is often described as a process of migration of the corporate form from a public to a private capacity[58]. Even these private systems operate through the legal imagination and theory of representation but with a basic difference: while, in the first case, the merger with the sovereign was perfect and the submission was absolute, in the second case, it was subject to the sovereign and was, therefore, limited to specific areas. Among the so-called "contract theorists", Grotius – again – understood colonial trade companies as bodies that operated simultaneously within and externally to the sovereignty of the state, especially in the extra-European world[59]. Grotius had the Dutch East India Company in mind along with its vast geographical range of action[60], but he did not address the perpetuity of the legal person or, better put, took for granted the perpetual nature of the corporation and did not individuate the implications this perspective could have on legal personhood and legal agency.

Later, the original canonist paradigm of the perpetual corporation carried through into the Anglo-American law for practical reasons. The

---

ham, 141 S.E. 2d 859, 861 (Ga. App. 1965), rev'd on other grounds, 144 S.E. 2d 749 (Ga. 1965).

57 Todescan, cit., pp. 82-83.

58 D. Ciepley, *Beyond Public and Private: Toward a Political Theory of the Corporation*, in «107(1) American Political Science Review», (2013), p. 141.

59 S. Gialdroni, *East India Company. Una storia giuridica (1600-1708)*, il Mulino, Bologna.

60 P.J. Stern, *The Company-State. Corporate Sovereignty & the Early Modern Foundations of the British Empire in India*, Oxford University Press, Oxford 2011, p. 41 ff.

purpose of the separate holding of property was essential for permitting the aggregation of capital and, indirectly, for achieving the global commercial goals of the new colonial businesses. The charters of incorporation afforded some contractual remedies to merchants' joint stock companies in case of unincorporated ventures[61], and the emergence of early modern nation-state was crucial for the application of this organization to the business law[62]. In modern England, for example, the State used incorporation to control merchants' groups through the concession of privileges and to exploit their enterprises to reach new markets in the colonies of India and America[63]. Because the State held the power to withhold chartering, it was able to demand that such business corporations take the public interest into account. In the American colonies, churches, religious societies, and religious colleges were also quite common, and some already had charters granted by the Parliament or the King. These ecclesiastical models of corporate form permitted lay organizations and businesses to seek a recognition of this same privilege. The benefit was reciprocal: not surprisingly, in colonial America, Roger Williams was able to argue that government should protect religious freedom and access to corporate association by placing churches on the same footing as any other corporation, a body of professionals, or a business[64]. In Anglo-American law, successive landmarks included the

---

61 P.G. Mahoney, *Contract or Concession. An Essay on the History of Corporate Law*, in «Georgia Law Review», XXXIV (2000), p. 884 ff.

62 J.P. Davies, *Corporations. A Study of the Origin and Development of Great Business Combinations and of their Relations to the Authority of the State*, Volume II, Putnam's Sons, New York-London 1905, pp. 66 ff.

63 P. Ireland, *Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality*, in «Legal History», XVII (1996), 1, pp. 40 ff.

64 R. Williams, *The Bloudy Tenent of Persecution, for cause of Conscience, discussed*, London 1644, p. 25.

English decision "Case of Sutton's Hospital"[65] and the American decision "Dartmouth College v Woodward"[66]. In both of them, the profile of perpetual succession was a fundamental step of the rationale. The corporate ontology definitely entailed the creation by charter of an actual entity capable of deploying its powers and activities without limits – like God himself – toward an undefined future[67].

5. Conclusion. The hidden morality of corporations

The perpetual powers and eternal perspectives of corporations are not organic but a creation of western legal culture[68]. Such principles reflect an idea which grew out of a specific religious, cultural and historical environment. The first perpetual corporation was the Church and its associations. The same relationship between "universal" purposes and institutional goals was the reason for which secular and public bodies – cities, kingdoms, states – have progressively adopted this enduring perspective of legal protection. Later, a broader spectrum of the uses of corporations for business was developed. Around the early XVI century,

---

[65] D. Chan Smith, *Earthly Cities: Common Law Corporate Ideas and the Case of Sutton's Hospital*, draft on file with the author. Interestingly enough, the author states that the public purpose of the corporation arose not because incorporation was a concession of the state but rather because a corporation was a form of government that brought order to society, a type of order inspired by theological ideas [and ecclesiastical jurisdiction, even though the author refers rather to the notion of "economic theology"], p. 36 of the draft.

[66] Dartmouth College v Woodward, (1819), 4 Wheat 518 (USSC) at 35, and see its comment, M.M. Blair, *How Trustees of Dartmouth College v. Woodward Clarified Corporate Law*, in «Vanderbilt Law Research Paper», Posted: 20 Apr 2021 *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830603*.

[67] D. Litowitz, *The Corporation as God*, in «Journal of Corporation Law», XXX (2005), 3, p. 504; R. Koselleck, *Futures Past: On the Semantics of Historical Time*, Columbia University Press, 2004.

[68] For a comparative analysis, see G. Anello et al., *Sacred Corporate Law* in «45 Seattle University Law Review», (2021), p. 413 ff.

the corporate form evolved from "a hallmark of religious and political life"[69] to a significant option for the coordination of commercial life that led to joint stock companies and the models of the Dutch VOC and the English East India Company[70]. Eventually, these companies overcame the obsolete and unstable commercial partnerships of the Mediterranean region[71] and inspired the contemporary global competitive forms of enterprise. Many years after its creation, the legal concept of corporation was broad enough and flexible enough to accommodate a wide range of circumstances: ecclesiastical corporations, monasteries, municipalities, brotherhoods, companies, Indian tribes[72], and the Crown[73].

However, ecclesiastical institutions were not business-corporations, or, at least, the organization of the Church did not aim to directly serve material and economic interests. Rather, it sought to guarantee the stability and the long-lasting duration of its political and legal authority. For this reason, at present day, it might look like business corporations have nothing in common with their historical precedents. Nothing but perpetuity.

Coming to the contemporary, many large companies are primarily agents of commerce and serve huge economic interests. Ladell McWhorter observed the following:

---

69 Stern, *The Corporation*, cit., p. 25.

70 D. Ciepley, *Member Corporations, Property Corporations, and Constitutional Rights*, in «Law & Ethics of Human Rights», XI (2017), 1, p. 25.

71 G. Mignone, *Un contratto per i mercanti del Mediterraneo. L'evoluzione del rapporto partecipativo*, Jovene, Napoli 2005; T. Kuran, *Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation*, in «Journal of Economic Perspectives», XVIII (2004), 3, pp. 78 ff.

72 According to Welters, cit., p. 451, Indian tribes also meet the essential requirements for corporate status: they have the sanction of the state, the capacity to own property separate from the members, and perpetual succession.

73 McLean, cit., p. 145.

> Human beings can and do form collective entities with intentions and capacities to act that exceed them as both individuals and aggregates. Such entities can become significant political forces – witness for-profit corporations. Over the past century, we have seen for-profit corporate entities overwhelm the power of many governments – which have at times themselves been understood as corporate entities – and reshape the world. Most governments today cannot effectively withstand corporate forces and, in any case, most are not very responsive to people's material needs. We need entities that can, and those entities will themselves have to be corporate, collectives that surpass in strength and knowledge the aggregated individuals who compose them[74].

Corporations can put future generations' standings in danger and in turn they do across generations of members, shareholders, and directors. Such an interpretation may raise an important moral dilemma, concerning the enduring capabilities of corporations. To put it in question form – do present-day business corporations, which have their roots in the same fictional theory and share the same enduring characteristics, exhibit any benefits from this structure? Does the maximization of profit and wealth depend on the idea of long-durée perspective assessment that seems to be part of the nature of the corporation itself? And, if so, does the long-durée perspective imply a prosocial attitude and future generations' interest encapsulated in the purpose itself of the corporate form?

Actually, these questions seem to resemble a lively debate that divide contemporary experts of corporate law on the nature and purpose of corporations. On one end of the spectrum, a robust group of scholars advocated that business corporations are meant to be run with the exclusive goal of maximizing shareholder financial value. On the opposite end of the spectrum, an equally robust group of scholars advocated that corporations should be run in the interest of its stakeholders, including equity and debt investors, employees, customers, suppliers, communi-

---

[74] L. McWhorter, *The Morality of Corporate Persons*, in «The Southern Journal of Philosophy», LV (2017), Spindel Supplement, p. 146.

ties, but also society at large and the planet. If the present debate seems to have reached a stalemate, by contrast, history's lesson coming from the perpetual corporations seems to tip to one side rather than to the other, due to the fact that stressing the importance of the perpetuity would suggest an altruistic and moral potential of the corporate form[75]. As this research explains, perpetuity was originally a quality that served political goals: first, the stability of the Church; then, the ecclesiastical jurisdiction of different legal entities that were dependent on the Church, such as monasteries, chapters, and charitable bodies. Assuming the corporate form, these entities preserved their properties and freedom of agency for centuries. As a matter of fact, the constitution of a corporation conferred some practical advantages which allowed members of a relevant group to make claims on property and pass these rights and privileges onto future generations for centuries, thereby achieving goals and pursuing purposes that a human being could never accomplish. Later, secular corporations like universities, cities and municipalities, lay brotherhoods, even States benefitted from the advantages of the perpetual nature of the corporate form.

---

[75] A pro-social vein is present in many episodes of the history of the corporate form. Another example comes from the introduction of the limited liability principle, in the debate before the English Parliament in 1850. Quite interestingly, the limitation of responsibility was a measure to benefit entrepreneurs of modest means, rather than a protection of the industrial class. John Stuart Mill, talking before the committee on investments for the middle and working class, affirmed: «A limitation of the responsibility, so far as relates to the working classes themselves, might not be essential [because if they began a small business they would invest nearly all of their wealth in it]; but still I think that an alteration of the law in regard to the responsibility of partners would be of great importance to those associations, not for the sake of the responsibility of the [entrepreneurs], but in order to induce persons of capital to advance it to them for those purposes. I think that the great value of a limitation of responsibility, as relates to the working classes, would be not so much to facilitate the investment of their savings, not so much to enable the poor to lend to those who are rich, as to enable the rich to lend to those who are poor» as quoted in Mahoney, cit., pp. 891-892.

But – it should be noted – historically, the incorporation was strictly dependent on the purposes of legal entities and on the alignment of public and private interests. Corporations were instruments to achieve longstanding goals in a way that no physical person could ever do. Incorporation was depending on time and distance, notably on the specific capability of the corporation to address far-reaching and long standing goals in the interest of future generations. To a certain extent, the same process qualifies morality. Even morality, in fact, is not an objective dimension of human value and depends on time and distance[76]. Standing apart from fellow philosophers, David Hume focused on the way in which moral attitudes can be affected by time. For example, he clearly stated:

> though distance both in space and time has a considerable effect on the imagination, and by that means on the will and passions, yet the consequence of a removal in space are much inferior to those of a removal in time. Twenty years are certainly but a small distance of time in comparison of what history and even the memory of some may inform them of, and yet I doubt if a thousand leagues, or even the greatest distance of place this globe can admit of, will so remarkably weaken our ideas, and diminish our passions. A West-Indian merchant will tell you, that he is not without concern about what passes in Jamaica; though few extend their views so far into futurity, as to dread very remote accidents[77].

Hume was stating that the more time passes from an event, the more difficult it is to be empathetic with it. On the contrary, a behavior that considers the interests of future generations is surely more moral and altruistic than a behavior focused on the present day. The further – he

---

[76] C. Ginzburg, *Occhiacci di legno. Dieci riflessioni sulla distanza*, Quodlibet, Macerata 2019, especially chapters 7 and 8, particularly pp. 232 ff. mentioning Diderot's and Hume's essays.

[77] David Hume, *Treatise of Human Nature Hume*, Book II, section VII, Of Contiguity and Distance in Space and Time.

remarked – the distance in the future is, the more valuable it is to look ahead in comparison to looking backwards the same distance into the past. In a passage of his *Treatise*, Hume writes:

> There is another phaenomenon of a like nature with the foregoing, viz, the superior effects of the same distance in futurity above that in the past. This difference with respect to the will is easily accounted for. As none of our actions can alter the past, `tic not strange it shou'd never determine the will. But with respect to the passions the question is yet entire, and well worth the examining[78].

Hume suggests that the more an action is far reaching (in the future), the more it must be considered to be a moral action. Therefore, it follows that a "perpetual" perspective must correspond to a "moral" perspective. After all, this statement is not far from the already mentioned principle of Baldus de Ubaldis according to which perpetuity and generality were the different sides of the same coin. Thus, it is not a casualty that similar principles are applied to the present corporate form and to its far-reaching purposes. To this end, a theory of corporate purpose has recently stressed the importance of a far-reaching purpose. More exactly, this theory finds the most interesting and unique feature of corporate entities to be the possibility of perpetual existence and "immortal investing". This unique corporate characteristic implies that the primary economic purpose of the business corporation is to pursue economically beneficial projects likely to succeed only over long or uncertain periods of time (long-term production theory)[79]. A quotation of the original article is useful to underline this remarkable point:

> Among modern business corporations, the public company comes closest to fitting the notion that the primary purpose of corporate entities is to pursue

[78] Ivi.

[79] L.A. Stout, *The Economic Nature of the Corporation*, in F. Parisi (ed.)., *The Oxford Handbook of Law and Economics*, vol. 3: *Private and Commercial Law*, Oxford University Press, Oxford 2017, pp. 353 ff.

> long-term projects. This is because public corporations whose shares are traded in a somewhat efficient stock market (…) provide incentives for the present generation of investors to pursue projects that may not generate profits for decades – as long as those future profits can be captured in today's share price. Public corporations thus help the limits to altruism that might otherwise lead the present generation to underinvest in projects that benefit future generations[80].

In the same vein, other corporate scholars argue that a far reaching or "visionary" corporate governance proved to be more profitable and definitely more successful in the long run for private companies, as well. More specifically, researchers Collins and Porras[81] find that in corporations with the highest profits over the long term, managers and workers viewed the purpose of the company as an end unto itself, catapulting the company to success. In those companies, a collective sense of purpose and a far-reaching vision were deeply intertwined. Moreover, they underline that while avoiding the term "religion", such models of corporate governance stress the importance of a "vision" or a "credo", and the harmonious balance between the opposing demands of an immediate profit and high moral results. Not surprisingly, – it is possible to add here – the reference to a religious vision is not necessary, because the eschatological dimension appears to be encapsulated in the perpetuity of the corporate form[82].

To put it succinctly, the eternal nature of the corporate form has forged its long-durée structure, so that, even today, perpetuity shapes the basic elements of the corporate form. Even though perpetuity was more evident in the past and in religious forms, it is still an intrinsic characteristic of the corporate form. It still originates from the principle of perpetual succession, which is – in turn – the *raison d'être* of the

---

[80] Ivi, p. 353.

[81] J.C. Collins, J.I. Porras, *Built to Last: Successful Habits of Visionary Companies*, Harper Business, New York 1994, especially Chapter 6 "Cult-Like Cultures".

[82] To this point, see also Porterfield, *Corporate Spirit*, cit., pp. 179 ff.

incorporation. Indubitably, corporations are self-standing legal entities with their own interests, ones not determined by the interests of others, even those of shareholders. Moreover, corporations are legal fictions that allow for the realization of interests and goals that a physical person could never accomplish alone. For this reason, these interests are transcendent, ahistorical, and pro-social by nature because they do not depend on the judgment of a few of individuals but on the judgement of generations[83]. Lastly, the benefits of corporations cannot be identified in a specific moment of time but is discoverable as a continuing process of reification/embodiment of corporate interests in the long-term. This process is moral by nature. In spite of the objective of a corporation, which can change, it is the long-durée perspective of a purpose "on its creation" that characterizes the corporation in a moral sense: by involving more people over a longer span of time, it is more altruistic than a short-term objective, embodied in the egoistic – present – interest of a select few.

[83] Even in recent times, the Social Teaching of the Church has justified philosophically the perpetuity of the action of the Church as a process of creating the individual human being. See, P.J. Vaghi, *Meeting God in the Upper Room: Three Moments to Change Your Life*, Servant, Cincinnati 2017, p. 42. In the *Mater et Magistra*, St. John XXIII writes, "The permanent validity of the Catholic Church's social teaching admits of no doubt". He continues, "This teaching rests on one basic principle: individual human beings are the foundation, the cause and the end of every social institution." St. John XXIII concludes by stating that "On this basic principle, which guarantees the sacred dignity of the individual, the Church constructs her social teaching." "'The social order and its development must invariably work to the benefit of the human person, since the order of things is to be subordinate to the order of persons, and not the other way around.' Respect for human dignity can in no way be separated from obedience to this principle" (CSD 132, GS 26).