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Symposium Panel Three: Viable Models: Shareholder Resolutions

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SYMPOSIUM

RELIGIOUS VALUES AND CORPORATE DECISION MAKING: AN INTERDISCIPLINARY INTERFAITH CONFERENCE FOR CORPORATE EXECUTIVES AND LEGAL COUNSEL[1]

WELCOME AND INTRODUCTION

MS. UELMEN:[2] At this point we will get started. I am Amy Uelmen, the Director of Fordham Law School's Institute on Religion, Law and Lawyer's Work. Welcome. I will be your emcee for the day.

Just a few words to get us started and to express our hopes for today's program. As we were putting together today's program, at a certain point I envisioned our agenda as something of a response to the recent corporate scandals and the search for resources to retrieve a sense of orientation and professional integrity. Talking this over with Joe Geoghan,[3] he mused, and this is not an exact quote, "I think the issues here stand on their own. They are bigger and much more important than that." I think with that he really captured the heart of our work today and the Institute's work as a whole.

True, for many, religious values can serve as an important source of orientation in the midst of a crisis. But the deeper challenge is more

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1. The symposium was hosted at Fordham University School of Law on February 23, 2004. It has been edited to remove minor cadences of speech that appear awkward in writing and to identify significant sources when referred to by the speakers.

2. Amy Uelmen is the Director of the Fordham University School of Law Institute on Religion, Law and Lawyer's Work. Recently Professor Uelmen was named the recipient of the Charles Carroll Award by the Guild of Catholic Lawyers of the Archdiocese of New York. Under Uelmen's direction, and in conjunction with founder Professor Russell G. Pearce, the Institute on Religion, Law, and Lawyer's Work has gained a national profile and become a standard for other law schools that are seeking to promote dialogue on religious values and the practice of law.

3. Joseph E. Geoghan, Esq., is Retired Vice-President and General Counsel, and Member of the Board of Directors, of Union Carbide Corporation.

constructive and more positive, and perhaps in many ways more ordinary. This challenge is to articulate what religious values capture and express at the heart of human experience, and then how this can inform all aspects of life, including the law, including business life.

Today's program is also designed to acknowledge and take very seriously the important questions which arise in the course of this endeavor. For example, in our increasingly complex and pluralistic business environments, might drawing on religious beliefs generate otherwise avoidable conflicts and misunderstandings?

My deepest hope is that today might be both an opportunity to openly discuss the obstacles we see, and also to discover in the context of inter-disciplinary and inter-faith conversation a vast terrain of common ground.

So thank you to all of you who have worked hard to enrich the panels and spread the word, and also to Fordham's Center for Corporate Securities and Financial Law, which is co-sponsoring the program, the Economics Department and the Business School, and to the enthusiastic help from our students on the *Journal of Corporate and Financial Law.*

I would also like to thank Dean William Michael Treanor[4] for his unflagging support for this ongoing conversation. And now he would like to say a few words of welcome as well.

DEAN TREANOR: Thanks very much, Amy.

On behalf of Fordham Law School, I am very pleased to welcome all of you to this conference, which I am sure will be a fabulous day of discussion. Thanks to all who have worked so hard to put it together, and special thanks to our two speakers who traveled from Italy especially for this occasion and who bring to our conversation the breadth and depth of international perspectives.

I am especially proud that this conference is part of the University's *Sapientia et Doctrina* (Wisdom and Learning) Lecture Series, which, in the founding spirit and continuing mission of Fordham, is designed to emphasize rigorous scholarship, lively intellectual exchange, and values-based education. What better model for our students than to see lawyers, economists, and business experts all engaged in a serious conversation that takes to heart the important question of how religious

4. William Michael Treanor is the Dean of the Fordham University School of Law.

values might intersect with corporate decision making.

And finally, I would like to acknowledge the terrific work of Russell Pearce[5] of our faculty, who is the Director of the Institute on Law, Religion, and Lawyer's Work, and Amy Uelmen, who is the Director for the program, who have done not just enormous work in putting together this program but have really changed, I think, American legal education by bringing these questions, the questions of the intersection of religious values and lawyering, onto the table, bringing them into the discussion. It is really fabulous and important work and I want to acknowledge them both for the fabulous work for the program and their great work in putting together this day's discussions.

So welcome all. Thank you so very much for coming. At this point I would like to turn matters over to Professor Pearce.

5. Russell G. Pearce has taught at Fordham University School of Law since 1990. He is a co-Director of the Louis Stein Center for Law and Ethics. Professor Pearce teaches Professional Responsibility, Ethics in Public Interest Law and the Housing Rights Clinic.

PANEL ONE: DOES CORPORATE DECISION MAKING ALLOW ROOM FOR RELIGIOUS VALUES?

MODERATOR:

Russell G. Pearce
Professor, Fordham University School of Law

PANELISTS:

Steven H. Resnicoff
Professor, DePaul University College of Law

Mark A. Sargent
Dean, Villanova University School of Law

W. Bradley Wendel
Professor, Washington & Lee University School of Law

PROF. PEARCE: Thank you, Dean Treanor.

I will just briefly add my welcome as well, and my thanks to my colleague Amy Uelmen, who really has done an amazing job in putting together this program, which I believe is the first of many where we will be exploring the questions that we are going to start with today on religious values and corporate decision-making.

For our first panel, "Does Corporate Decision-Making Allow Room for Religious Values?," which is in many ways going to set the tone and lay the table for conversations that will continue throughout the day, we are privileged to have three really excellent speakers: Mark Sargent, the Dean of Villanova University School of Law; Brad Wendel, Professor at Washington & Lee School of Law; and Steve Resnicoff, Professor at DePaul College of Law.

The way we are going to proceed — we have about fifty minutes allotted for this panel — is we have asked each of the panelists to speak for no more than ten minutes. In that way, we hope to open up the last

twenty minutes for interaction with you and interaction among the panelists themselves.

We would like to start with Dean Sargent.

DEAN SARGENT: With ten minutes, this is going to be kind of breathless.

The focus of this conversation is going to be: should religious values play a role in corporate decision-making or in the way individuals within corporations make their decisions? But it also asks: is there a place, as a practical, empirical matter, for religious values in corporate decision-making?

I am on the side of the argument which maintains that there should be a place for people to incorporate their religious values into the way they make decisions in corporations. But I would argue that as an empirical matter, there is very little room for religious values in the way corporate managers or corporate lawyers make their decisions.

I have approached this question through some work I have been doing on the moral complicity of corporate lawyers in the corporate scandals of the last few years. I am trying to figure out why is it that lawyers demonstrated so many different kinds of complicity in activity that was both illegal and immoral?

This led me to a focus on the moral origins of corporate wrongdoing itself; that is, the wrongdoing by the managers who are the clients of lawyers. In studying the behavior of both the lawyers and their managerial clients in the recent scandals, I found that there is something that links them all: an apparent indifference to the morality of their actions.

Most of the lawyers involved presumably possessed some form of personal moral code, whether based on religious or secular premises, as well as a professional moral code that should have been as stringent in its proper sphere as any personal morality.

At a minimum, these personal and professional moral codes, whether religious or not, would have insisted upon truth-telling, integrity, concern about the consequences of one's actions for others, recognition of the limitations on one's obligations to a client, and an understanding that the legal is not coextensive with the moral. These moral priorities, however, often seemed to disappear into a smog of expediency, rationalization, willful blindness, and slavish obedience to the wishes of self-interested managers who purported to speak for the

corporate client.

Of course, we cannot read the hearts of these lawyers, and our knowledge of the facts is incomplete, and hindsight judgment of others can be self-indulgent, but the facts speak for themselves. Many lawyers in these cases, whether actively or passively, helped corporate managers act illegally, immorally, or both.

Well, why? Perhaps something useful can be found by looking at the social situations in which these lawyers lived and acted. What was it about their roots in specific social contexts that influenced the way they thought about what is permissible and what is not, and which seems to have caused them to sideline or bracket the sense of limits they brought with them to the workplace from their personal religious or professional moral formations?

Extraordinary insight into this question can be found in a book by the sociologist Robert Jackall, published in 1988, called *Moral Mazes: The World of Corporate Managers*.[1] This book is an in-depth sociological analysis based on extensive field work among corporate managers in several corporations in the chemical and textile industries in the early 1980s.[2]

Jackall's goal was to examine how corporate bureaucracy shapes moral consciousness.[3] His premise was that the moral consciousness of corporate managers has to be understood not in terms of abstract philosophical, religious, or professional moral systems, but sociologically, that is as an empirical objective reality to be investigated.[4] In *Moral Mazes,* Jackall identifies the actual moral rules in use that governed the way his corporate managers behaved in their social setting.[5] This highly concrete, empirical approach enabled Jackall to avoid the abstractness of most discussions of business or professional ethics and to explain why managers bracket the moralities, particularly

1. ROBERT JACKALL, MORAL MAZES: THE WORLD OF CORPORATE MANAGERS, (Oxford Univ. Press 1988).

2. Mark A. Sargent, *Lawyers in the Moral Maze*, 49 VILL. L. REV. 867, 872 (2004) (applying Jackall's analytical framework to the large law firm).

3. *See* JACKALL, *supra* note 1, at 3 (stating purpose of author's study).

4. *Id.* at 4.

5. *Id.*

the religious moralities, that they might hold outside the workplace or that they might adhere to privately, and to follow instead the prevailing morality of their particular organizational situation.

He argues, in essence, that managers tend to adhere to an occupational morality determined by the social structure of their workplace.[6] If one wants to understand why managers and lawyers choose to act one way and not the other, including acting morally and illegally, one needs to understand that occupational morality, and to understand that occupational morality one must understand the social context in which it emerges.

In the large business corporation, Jackall argues, the social context is bureaucratic.[7] That word is important. Bureaucratic work shapes people's consciousness in decisive ways. Many of those ways are familiar. When we hear the word "bureaucratic," for example, we think of its rational and hierarchical characteristics.

But other ways are less familiar. We tend not to think of apparently impersonal bureaucracies as crucibles of intense personal competition, in which people are subjected to subtle measures of prestige and an elaborate status hierarchy. This scenario fosters an intense competition for status, and makes the rules, procedures, social context, and protocol of an organization into paramount psychological and behavioral guides that become far more important than religious or other personal moralities. It is in the context of deeply personal competition for status in a hierarchical system of power and domination that people learn to be guided by the rules that will promote their success.

A foundational rule within managerial circles is the imperative to bracket conventional morality, including religious morality, because such norms are widely recognized to be inapplicable except as public relations stances.[8] Once those norms are bracketed, the organization's rules in use determine the decisions that individual managers make.

I cannot do justice in these brief comments to Jackall's thick description of the world of his corporate managers or the intricacies of its moral system, but some of its key characteristics can be summarized:

- Their world is characterized by intense competition for status and

6. *Id.* at 6; *see also* Sargent, *supra* note 2, at 873.

7. Sargent, *supra* note 2, at 873.

8. JACKALL, *supra* note 1, at 6.

power, with people continually pitted against each other.[9]

• A disconnection between hard work and success based on the reality that hard work alone cannot produce success; the ability to play the corporate game is crucial.[10]

• A disconnection between appearance and reality derived from the realization that the important decisions are made in back rooms, that the public reasons for decisions are often not the real reasons, and that a willingness to sustain that disconnection is crucial to personal advancement.[11]

• An almost feudal system of personal loyalty and fealty between supervisors and inferiors in which personal fates are interconnected and group loyalties are of paramount importance.[12]

• An enormous premium on flexibility and willingness to adapt to expediency rapidly.[13]

• An optimistic belief that problems of questionable legality or morality can be outrun before the consequences come to roost and,

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9. Sargent, *supra* note 2, at 874; *see* JACKALL, *supra* note 1, at 36 (describing the situation as one where "rewards are always scarce, bureaucracies . . . pit people against each other and inevitably thwart the ambitions of some."). Jackall sees the competitive dynamic as both a competition for resources and also as a type of psychological competition: "Even more important on a day-to-day basis is the ongoing competition between talented and aggressive people to see whose will prevails, who can get things done their way." *Id.* Jackall notes that the two types of competition are complementary, insofar as the ability to impose one's will creates a credibility that facilitates competition for resources. *See id.* (describing relationship between two types of competition).

10. "Managers see success depending principally on meeting social criteria established by the authority and political alignments — that is, by the fealty and alliance structure — and by the ethos and style of the corporation." JACKALL, *supra* note 1, at 45.

11. *See id.* at 88 (explaining why discrepancies exist with respect to reasons given for making decisions). *See also* Sargent, *supra* note 2, at n.23.

12. *See* JACKALL, *supra* note 1, at 25 (discussing sharing of credit for success within hierarchical subgroups in corporations). Jackall emphasizes the importance of group loyalty by comparing managerial circles, in sociological terms, to gangs. *See id.* at 39 (discussing social contexts which breed alliances).

13. *See id.* at 128-33 (discussing importance of flexibility and adaptability to expedience in order to maintain solidarity with managerial colleagues).

hence, need not be confronted.[14]

• A pervasive sense of social uncertainty in which one is constantly aware of being evaluated, but in a system that is capricious and in which all status arrangements are contingent and fluid.[15]

In such a world, a distinctive set of moral rules in use emerge, one adapted to the social intricacies of the organization, and those rules can be characterized as follows:

• The prevailing ethos is remarkable for its lack of fixedness. Decisions are governed by essential, pervasive, and thoroughgoing pragmatism in which alertness to expediency is of paramount importance.[16]

• Questions of right or wrong should not be confronted as such. An insistence on the moral dimensions of an issue is regarded as, at best, embarrassing, and, at worst, fatally disloyal.[17]

• A willingness to keep silent about problems that may prove embarrassing to superiors or the organization is highly prized.[18]

• Fealty to superiors within the organization trumps other moral obligations.[19]

• Individual responsibility for problems or mistakes should be avoided. Responsibility should be diffused as much as possible.[20]

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14. *See id.* at 96-100 (describing attitude exemplified by game of "milking the plant" to generate short-term profits that elicit a positive image for the plant managers, and long-term losses that are not realized until after managers leave, whose blame may be cast upon their successors).

15. *Id.* at 33 ("Because of the interlocking ties between people, they know that a shake-up at or near the top of a hierarchy can trigger a widespread upheaval, bringing in its wake startling reversals of fortune, good and bad, throughout the structure.").

16. *Id.* at 105 ("[A] principal managerial virtue and, in fact, managers' most striking actual characteristic is an essential, pervasive, and thoroughgoing pragmatism").

17. *See id.* at 101-05 (discussing how "White," a specialized manager hired by a textile company to deal with the problem of damage to employees' hearing resulting from long-term exposure to the company's machinery, failed in his efforts to focus managers' attention to the problem, precisely because of his insistence on framing the problem as a moral one).

18. *See id.* at 31 (regarding secrecy as a pervasive corporate phenomenon).

19. *See id.* at 109 (discussing how a manager, who was troubled by blatant illegal manipulation of a pension fund by his supervisors, was fired because he "could not just go along with things even if he did not agree").

20. *See id.* at 85-90 (describing various aspects of corporate scapegoating, use of

• Legal and regulatory requirements should be regarded cynically, and compliance should be conducted in a manner that serves the interests of the individual manager.[21]

• Truth-telling is essentially optional because "'truth' is socially defined, not absolute, [so] . . . that . . . compromise, about anything and everything, is not moral defeat . . . , but simply an inevitable fact of organizational life."[22]

It should be no surprise that Jackall identified several instances in which these rules in use prevented his corporate managers from coping honestly with instances of even blatant illegality, such as financial fraud perpetrated by the CEO.

Much of what Jackall describes, which took place in the 1980s, is eerily prophetic of the widespread financial fraud at the highest levels of major corporations that surfaced so dramatically in recent years. While Jackall's conclusions about corporate America are, almost by definition, limited by his ethnological methodology to a particular set of companies in two specific and highly troubled industries during one time period, the scale and breadth of the recent corporate scandals suggest that the dynamic he describes, or something like it, was widespread in corporate America in the years since *Moral Mazes* was published in 1988. The highly particularized, socially conditioned moral world he analyzes so minutely may indeed be a large part of our world.

So, that is the context in which one should discuss the question of whether religious values should play a role in corporate decision-making.

PROF. PEARCE: Thank you very much.

PROF. WENDEL: We were talking before the panel began, and Russ was joking about the allocation of labor among all of us as "values yes," "values no," and "values maybe." I think I have been designated "values no."

I want to make sure that joke is not misunderstood, because what I

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blame, and diffusion of responsibility by big corporations when things go wrong).

21. *See id.* at 147-48, 155-61 (summarizing managers' attitudes toward regulation and regulators, and of managers' need to overcome their challenges).

22. *See id.* (analyzing ideological mind sets that impede managers' capacity to deal with regulatory requirements in chemical and textile industries).

am arguing for is the most sympathetic case that I can come up with for the kind of resistance that we may expect from the standpoint of liberal political theory. What I want to do is clear up some misunderstandings about the kind of preclusion or filtering or screening that is imposed by liberal political theory and bracket some concerns. Let's figure out what exactly this theory has to say to the religious lawyering or corporate decision-making movement, and whether it really is a threat or not to this project.

I come at this from the point of view of someone who studies the legal profession, and so for me the law has a distinctive role to play in decision-making. When the law is invoked, you have the state acting coercively to restrict the autonomy of citizens.

The central question for liberal political theory is: When is the state justified in doing this? When is the state justified in saying to someone, "You must not do this" or "you must do this"? What possible basis can it have for doing so other than the happenstance that it has power?

And so the standard question that is often raised about state authority is: How is this justified? What is the reason why the state can exercise coercive power over its citizens?

The kind of standard answer to this, given by John Rawls and others, is that to the extent that the state functions coercively, its actions must be based on reasons that the affected citizen could, in principle, endorse if that citizen were fully informed and rational on the matter.[23]

Now, in a pluralistic society, there is a challenge created by the diversity of value systems or comprehensive doctrines that citizens may have. People disagree — that is an observed fact — about pluralism, and people do not always share reasons. And so as a consequence, the justification for state authority is generally not given in terms of something thick and comprehensive, but rather on the basis of something fairly thin which is something that can be shared among all citizens no matter what comprehensive view they subscribe to.[24]

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23. JOHN RAWLS, THEORY OF JUSTICE (rev. ed. 1999); *see also* Russell Korobkin, *Symposium: Determining Health Care Rights From Behind a Veil of Ignorance,* 1998 U. ILL. L. REV. 801 (discussing the Rawlsian theory that individuals operate behind a veil of ignorance).

24. *See* JOHN RAWLS, POLITICAL LIBERALISM (2005) (discussing "reasonable pluralism" as the existence of a variety of comprehensive religious and philosophical conceptions of the good).

The result of this thinning out of values is the screening or preclusion that Dean Sargent was alluding to. Most pejoratively, Sandy Levinson has a piece on Jewish lawyering where he talks about "bleaching out contingent characteristics of our personalities," and that is one pejorative way to describe this.[25]

But the liberal preclusion requires people, to the extent they act coercively, to screen out certain aspects of their belief systems because they are not widely shared. Now, it is important to be clear on what exactly this means and what the consequence is for religious decision-making.

One of the more moderate stances toward this, by a political philosopher named Robert Audi, requires not that religious people bleach out anything about themselves that is not widely shared, but rather that they act in such a way that they could, in principle, advance a shared reason, even though that may not in fact be their motivation.[26] Audi requires only that people, in principle, potentially have "justificatorily adequate and motivationally adequate reason," in the sense that there is some reason that could explain and justify one's actions, even in the absence of theological considerations.[27]

It is also important to recognize that this kind of constraint, this kind of screening, would apply to a wide variety of secular doctrines as well as religious doctrines. This is not a point of view that is motivated by some stigma imposed on religious beliefs. No one is suggesting that religious beliefs are uniquely irrational or dangerous. The problem is only that they are not widely shared. And the same is true of a number of secular value systems as well.

The concern here is coercion based on the happenstance that some group has power and some other group does not have power. There is no fear of religion; it is a fear of not-widely-shared values.

A further clarification that is important to make is that it is often assumed that liberal political theory is based on value relativism or a

25. Sandy Levinson, Note, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1578 (1993).

26. ROBERT AUDI, THE ARCHITECTURE OF REASON 135-70 (Oxford Univ. Press 2001).

27. *Id.*

lack of belief in objective values. But I think a different way to put it might be that even if there are objective values, they may not always be accessible to our discernment.

My own faith tradition emphasizes the realization that all humans are fallen and sinful and this affects our ability to discern and act on true moral beliefs. In Lutheran doctrine, the soul is never fully transformed and we remain sinful even as we are justified before God.[28] And so as a consequence, we should be humble in our attempt to discern and act on true moral values, although we do believe there are objective moral truths.

So it is not necessarily the case that value relativism is in the driver's seat when liberal political theory tries to screen out values. It is not a disbelief in values necessarily; it is simply a certain amount of humility about claims of objective moral truth.

It is important also to realize that this liberal screen or filter applies only when coercive action is implicated. For me that is a fairly wide field, because I study the law and the legal profession, but Rawls and Audi and Greenawalt and others who write about religion in the public domain do not attempt to screen out religious values in non-coercive settings. They permit people to exhort, attempt to persuade, advance reasons that others may find persuasive, and use religious values as a backstop for motivation.

So Dean Sargent was talking about why it is that lawyers fall into this pervasive culture of bureaucratic complicity. Religious values can serve as an additional source of motivation for religious corporate managers or lawyers, even though they may not be necessarily advanced as the sole reason in public discourse for an action.

So the screen here is not such a broad screen that it requires what Levinson fears, a bleaching-out of contingent aspects of one's self.[29] Nothing has to be bleached out. But insofar as one acts coercively, there must be a non-religious shared reason available to justify one's actions.

Now, even this, what I think is a fairly modest filter, is too strong for many believers. From the standpoint of a religious believer, the question is not what justification does the state have for acting; the

28. EVANGELICAL LUTHERAN CHURCH OF AMERICA, THE JOINT DECLARATION ON THE DOCTRINE OF JUSTIFICATION, http://www.elca.org/ecumenical/ecumenicaldialogue/romancatholic/jddj/declaration.html (last visited Jan. 23, 2006).

29. Levinson, *supra* note 25.

question is: What justification do I have for playing anything else above my duty to obey God? What possible reason could I have for deferring to something that is merely a human construct?

Christianity is a radical and subversive religion, and a believer might justifiably ask: Why on earth should I give that up? What justifies me in deferring to this interest the state has in functioning non-coercively?

One thing that emerges from looking at the religious lawyering literature is that one's attitude toward the law and other institutions of the secular state depends to a great extent on one's sense that the world is either irredeemably evil or not and one's feeling of alienation from the world. What I find interesting is that the extent of one's alienation from the world can itself be a theological question and can itself be something on which faith traditions disagree both among themselves and internally.

There is a well-known book, called *Christ and Culture,* by Richard Niebuhr, which talks about a variety of stances that Christians can take toward the world. Christian doctrines vary quite a bit between them and also among themselves.[30] I was looking at a number of papers on Catholic social thought, which is not something I am an expert on, but there is quite a lot of internal disagreement within Catholic social thought about the stance that a believer ought to take toward the state.[31]

So this suggests two possible responses to the problem of one's own duty to obey God and this secular preclusion principle that we have been talking about. There may be some specific response within a faith tradition for handling this tension. And again, within the Lutheran tradition, which is the one with which I am familiar, there are specific doctrines, such as the concept of a calling or vocation and this two kingdoms idea, which is often misunderstood and often used by Lutherans as a reason to not challenge injustice, but nevertheless, understood properly, this might provide a resource within a faith for

30. RICHARD NIEBUHR, CHRIST AND CULTURE 22 (Harper 1951).

31. *See* Thomas T. Love, *The Two Principles of Roman Catholic Church-State Relations,* ETHICS, Vol. 76 No. 1, at 57-61 (Oct. 1965) (discussing opposing views among Catholics on harmony between and obedience to church law and to civil law); *see also* HEINRICH A. ROMMENN, THE STATE IN CATHOLIC THOUGHT: A TREATISE IN POLITICAL PHILOSOPHY (St. Louis B. Herder Book Co. 1945).

accommodating oneself to the duty to support institutions of the state while also obeying God.

But to the extent that there is widespread disagreement either within a faith tradition or among faith traditions, or between religious people and secular people, there is still an argument for the authority of the state. I only have about a minute, so I will do my one-minute, nutshell version of this.

To the extent that we recognize the need for cooperative action in the face of disagreement, we perceive a reason to support institutions that facilitate this kind of coordinated action, even though they may not be based on something that we take to be a substantive, objective moral truth. There might be only a procedural reason, a very thin reason, for supporting a legal institution, but that thin reason is one that we all share, even from within a faith tradition, and that reason is the desire to engage in coordinated action with people with whom we disagree.

I take it that a corporation is a paradigmatic example of an institution composed of people who perceive the need for coordinated action in the face of disagreement, coordinated action within the corporation and also with the rest of the world, with banks and customers and shareholders and people from a wide variety of substantive value orientations.

Because the law facilitates coordinated action, notwithstanding deep and persistent disagreement, it has authority for all people on the basis of this shared reason. Again, this does not preclude people from bearing witness, serving as prophets, challenging the law, trying to persuade, appealing to religious values, in non-coercive settings. This is not a complete bleaching-out, but it nevertheless does require at least a limited extent of cooperation and obedience to secular institutions despite one's religious motivation.

Thanks.

PROF. PEARCE: Thank you. I really want to, as the self-interested moderator, thank the speakers for being so respectful of our time constraints.

PROF. RESNICOFF: Good morning.

Dean Sargent asked, first, whether there should be a way for people to incorporate their religious values into their decision-making? Second, he asked whether, in fact, there is such a way. I had some other remarks prepared, but I would like to address those two questions briefly.

First, should there be a place for people to incorporate their religious values into their corporate or professional decision-making? As a society, we embrace multiculturalism in many different ways. We take account of and we accommodate for people's different views and practices. I think that religious views and approaches ought also to be accommodated, at the very least through stakeholder statutes that allow corporate decision-makers to take into consideration the interests of a variety of different constituencies, not just the profit-maximization motive.

Although some stakeholder statutes are deficient, the critical point is that many states throughout the country already have acknowledged that it is permissible statutorily to allow decision-makers to consider a variety of factors. Certainly religious factors ought to be equally respected.

You are probably all familiar with Festinger's theory of cognitive dissonance.[32] Basically, he argues that if you are forced to do something that you feel is morally repugnant, you build up emotional dissonance; you become emotionally distressed. It is difficult to deal with doing something you think is wrong.[33] Consequently, you try to find a way to escape, a way to avoid the unsavory conduct. But if as a practical matter you are unable to change your conduct, then you seek refuge from your cognitive dissonance by changing your opinions.[34] What once seemed immoral now seems quite acceptable, perhaps even laudatory. Your views change because you have to cope with this emotional stress.[35]

Jewish law long ago recognized this psychological phenomenon. Jewish law declares that a person is the product of his actions (*nifal lifie pe'ulotov).*[36] A person's moral choices and deeds shape the person's character and, thereby, importantly inform his or her future exercise of moral judgment. As a consequence, a system of role-differentiated

32. LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (Stanford Univ. Press 1957); *see also* Leon Festinger & J.M. Carlsmith, *Cognitive Consequences of Forced Compliance*, J. ABNORM. PSYCHOL. 58, 203-10 (1959).

33. *See id.*

34. *See id.*

35. *See id.*

36. *See Sefer HaChinuch.*

morality which calls for one set of rules when you are wearing your business suit (or acting as an accountant or as an attorney), and another set of rules when you are acting as a "private" human being is inconsistent with Judaism in two ways. First, Judaism rejects the notion that one's profession fundamentally alters one's moral responsibilities in any particular case. Second, Judaism believes that a system that allows a person to act less ethically in his or her corporate or professional life would deleteriously impact that person's overall moral make-up.

At one point in his remarks, Dean Sargent assumed that many people are privately moral, and his question was: why is it that that private morality gets bracketed in the corporate setting? I tend to disagree with his basic assumption. I tend to think that a lot of people are not privately moral when it comes to civil matters, business matters, and that this is the problem. Even when they interact with people outside of a corporate setting, they are too often insensitive to those people's financial interests and rights. As a consequence, I think that the problem is the need both for moral education and for statutes that would provide flexibility for those people who have developed moral sensitivities and would enable them to comport themselves in a manner consistent with those sensibilities in the workplace and in the corporate setting.

Let me now tell you a little bit about what I had planned to speak about, which was about Judaism's approach to business ethics in general and how that general approach applies to the corporate setting, specifically as to corporate governance and governmental intervention.

I have co-authored several publications that you will see in your conference materials regarding Jewish law's perspective of a corporation. In addition, I think there are two articles in the package about the moral problems that confront a Jewish attorney.[37] In this presentation, I will only mention a few fundamental issues.

Judaism's general approach is a communitarian one. We believe there is God, there are individuals, and there is community, and there are relationships among and between these three. Each individual has duties to God, to other individuals, and to the community. What are these duties and how do they apply to the corporate setting?

37. Michael J. Broyde & Steven H. Resnicoff, *Jewish Law and Modern Business Structures: The Corporate Paradigm*, 43 WAYNE L. REV. 1685 (1997).

For example, we are enjoined to emulate God;[38] we must walk in His ways.[39] Therefore, we must give charity,[40] and we must do other good deeds.[41] We have to also help create a community.[42] One of the responsibilities that Judaism recognizes as applicable to all people, whether Jewish or not, is the requirement to establish a system of justice.[43] Everybody has to have a system of justice, all peoples. It is a divine decree, one the seven Noachide Laws, the laws given to Noah after the Flood and is applicable to everyone.[44]

But more than that, we have affirmative duties to save people from harm: *lo ta'amod al dam re'ekhah* (do not stand idly by your fellow's blood).[45] This applies not just to physical injury, but to financial loss as well.

Suppose there is a corporation that is selling defective dialysis machines, as was true in an Illinois case,[46] and you are its attorney. You

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38. *See Sifri* 49. According to *Sifri*, "your G-d, to walk in all His ways and to cleave to Him" (*Leviticus* 11:22) is the source for the commandment to emulate God. In his *Guide for the Perplexed* (I:54), Rambam teaches that the commandment to emulate Hashem entails the duty to contemplate His 13 Attributes (*Shemot* 34:6-7, *Rosh Hashanah* 17b); which do not describe His Essence, but rather the ways in which He interacts with the world.

39. *See Babylonian Talmud, Tractate Sotah* 14a: R. Hama son of R. Hanina said: "After the Lord your God shall you walk" (*Deuteronomy* 13:5).

40. *See Babylonian Talmud, Tractate Sukkah* 49b: R. Eleazar stated, "Greater is he who performs tzedakah than [he who offers] all the sacrifices, for it is said, To do tzedek (justice), and justice is more acceptable to the Lord than sacrifice."

41. *Id.* R. Eleazar further stated, Gemilut Chasadim (deeds of loving kindness) is greater than tzedakah, for it is said, "Sow to yourselves according to your tzedakah, but reap according to your chesed. If a man sows, it is doubtful whether he will eat [the harvest] or not, but when a man reaps, he will certainly eat."

42. *See Exodus* 23:5; *see also* CHOFETZ CHAIM, THE CONCISE BOOK OF MITZVOTH: THE COMMANDMENTS WHICH CAN BE OBSERVED TODAY (Feldheim 1990) (compilation of the 613 commandments of Judaism, of which many are focused on community relations).

43. *See Babylonian Talmud, Tractate Sanhedrin* 56a; *see also* Maimonides, *Hilchos Melachim* 9:1.

44. *See Babylonian Talmud, Tractate Sanhedrin* 58b.

45. *Leviticus* 19:16.

46. Loverling Jr. v. Baxter International, Inc., No. 01L-014627 (Ill. Cir. Ct., Cook Cty.).

remonstrate with corporate management and you tell them, "You cannot sell these machines; people's lives are at stake." If they do not listen, then you have a duty to disclose. In some states secular rules would compel you to disclose. In others, secular rules might not require disclosure. But Jewish law would mandate disclosure.

Even if the professional ethics rules in your jurisdiction would say that you *may not* disclose, Jewish law would require disclosure. You have the duty to save the lives of the prospective users of these machines. You cannot shirk your ethical responsibilities to these people by virtue of the profession you have chosen for yourself.

Another example of a basic Jewish dictate that applies in the business setting is the rule against placing a stumbling block in front of the blind.[47] The Talmudic sages explain that this injunction forbids two distinct things.[48] On the one hand,, it prohibits a person from enabling another to commit a wrongdoing. In addition, it forbids a person from intentionally giving bad advice to somebody because such advice will also cause a person to stumble and sustain a loss. Thus, if you are a salesperson, you may not convince people to buy something that is not what they need, not what they want, or not what is good for them.

Jewish law also forbids a person from misleading another.[49] Therefore, you must be careful with your advertisements.[50] You may not defame someone, so you may not unduly disparage someone else's products.[51] You may not enable other people to commit sins, so you may not bribe someone to breach fiduciary duties owed to others.[52] You may not provide support to people who do evil and you may not encourage them. Therefore, for instance, you may not buy stolen goods.[53] You have a duty to respect people's privacy;[54] as a

47. *Leviticus* 19:14; *see also* Maimonides, *Sefer HaMitzvos — Negative Mitzvah* 299.

48. *See* Toras Kohanim on *Leviticus* 19:14; *see also* Rashi's commentary on *Leviticus* 19:14.

49. *Leviticus* 19:14 ("Before the blind do not put a stumbling block").

50. RABBI YAIR HOFFMAN, MISGUIDING THE PERPLEXED: THE LAWS OF LIFNEI IVER 212 (2004) (citing the ruling of Rabbi Yisroel Belksy on *Tammuz* 8, 5764).

51. *Exodus* 23:1 ("You shall not utter a false report").

52. *See Exodus* 23:8 (prohibiting bribes generally).

53. *Shulchan Aruch, Choshen Mishpat* 369:1; Rambam Hilchos Gnaivah and Avaida 5:1.

54. *See* Rabbi Aaron Tendler — Business Halacha, http://www.torah.org/advanced/

consequence, you may not engage in industrial espionage.[55]

How do these prohibitions or obligations affect corporate conduct? As I have said, each individual is responsible for his or her conduct, and it does not matter if the individual is an employee or a fiduciary in a business or profession.

And a person cannot escape accountability by contending that he or she is merely somebody else's agent. There is no agency in Jewish law regarding the commission of a wrong.[56] If you commit a wrong, you are morally culpable; it does not matter who sent you.[57] Of course, whoever encouraged or directed you to commit the wrong also bears guilt, but that guilt does not absolve you.

Basically, how does Jewish law perceive corporations? The conference materials contain at least part of an extensive law review article that I co-authored on this subject, and I cannot even attempt to summarize that analysis here. Nevertheless, for our immediate purposes, suffice it to say that individuals who are shareholders are either perceived as "owners" of the corporation, and, as such, are treated under Jewish law as partners in a partnership, or they are not.

If a shareholder is an owner, then he or she is responsible for damage caused by corporate property. As a result, shareholders would be morally responsible for ensuring that the corporation does not sell dangerously defective goods and that the corporate workplace does not expose employees to health risks. Whether owners or not, however, shareholders, as individuals, are responsible to intervene, when possible, to protect prospective victims of wrongdoing and to encourage wrongdoers (whether corporate officers or employees) to change their ways.

Corporate officers and employees, of course, personally bear responsibility under Jewish law for the actions they take — toward other

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business-halacha/5757/vol2no17.html (last visited Jan. 23, 2006) (for an interesting discussion on contemporary issues regarding right to privacy).

55. *See* The Jewish Ethicist, http://www.besr.org/ethicist/privateeye.html (last visited Jan. 23, 2006) (relating Rabbi Yaakov Chagiz's analogy between the *Leviticus* 19:16 prohibition on talebearing to industrial espionage).

56. *Babylonian Talmud, Tractate Kiddushin* 42b ("ain shliach l'davar aveirah").

57. *See id.*

officers and employees, suppliers and others — throughout the daily discharge of their corporate duties.

At this point in history, Judaism has no centralized human or institutional hierarchy now. The Sanhedrin ha-Gadol, which was Jewish law's highest judicial and legislative authority, has been in desuetude for approximately 2,000 years. The Israeli Chief Rabbi is a political position — held, of course, by outstanding individuals — but still a political position. Consequently, there is no extant authoritative institutional mechanism for resolving many of the particularized disputes that arise in Jewish law.

Nevertheless, there is a consensus among Jewish law authorities as to the following basic options. One: under Jewish law, corporate actors and professionals all have many, many ethical duties to fulfill as individuals, which secular law does not impose. One reason why secular law may not prescribe more duties is its attitude of "moral relativism." Secular law often avoids taking positions as to what is right or wrong. As a result, it imposes minimalist duties on corporate and professional actors. Although Judaism believes that a corporation has a legitimate interest in maximizing profit, it has strong notions as to the types of conduct that are ethical. A corporation may only pursue profit maximization by means that do not offend Judaism's ethical requirements.[58] Moreover, Judaism has always recognized the community's obligation and authority to impose decrees, to require that one act "beyond the letter of law."[59]

What we need is for secular society to recognize the importance of encouraging more ethical conduct. Secular law needs to enact statutes that impose those specific standards on which we, as a community, can agree (and it is my belief that such agreement can and should be reached on a number of items), as well as to statutes to allow individuals the flexibility to follow their religious scruples in their professional lives and to protect them when they do so.

I am almost out of time. I want to mention just one more point regarding the desirability for secular protection for those who, in their professional lives, choose to act morally. Remember the Illinois case I mentioned about defective dialysis machines. In that case the lawyer

58. *See generally Shulchan Aruch, Choshen Mishpat.*

59. This concept is called *lifnim mishuras hadin* in the *Talmud.*

was fired. He then sued for wrongful discharge. The Illinois Supreme Court took what I think was a very, very unreasonable approach and demonstrated a poor ability to judge human nature. It said, first of all, that the attorney was required by Illinois law to disclose the corporation's misconduct. Then it said that, since the attorney was required to disclose, the court did not need to provide him protection in the form of a cause of action for wrongful discharge.[60] Essentially the court said that protection is only given to encourage people to disclose. Protection is not provided simply to shield people who have acted correctly. While we obligate you to do what is good, if you, in fact, do it, you are on your own.[61]

I am afraid that this type of approach will not effectively induce ethically correct conduct. We need a different kind of rule; one that will encourage people to act properly and protect them a bit when they do.

PROF. PEARCE: Thank you.

Our speakers have given us a lot to think about, and there is certainly some difference of opinion on a variety of issues.

What I would like to do, even though we only have about ten or fifteen minutes left in this session, is first see if there are folks who are sitting here who would like to ask questions or comment to the speakers.

Yes, Bob?

QUESTION: A question for Brad. It would seem that the arguments of Rawls and others are more persuasive when you are talking about a state course of action because there is no ability to opt-out. In the corporate context, isn't there always an ability to opt-out, in the sense that you, if you are a corporate lawyer, as long as you make transparent the process by which your values are coming into your decision-making, the client can walk away and say, "I am not interested in that. I am going to get another lawyer." If you are a corporate decision-maker, if you are the principal, and you are transparent, the investors can pull their money out and say, "Hey, we want a money-making company, not a religious values company." So doesn't that take the bite out of their arguments?

60. *See supra* note 46.

61. *See id.*

PROF. WENDEL: Absolutely, and I think it is really important to focus on the emphasis on coercion. Once you get outside of coercion, you no longer have this liberal problem where you are imposing your will on others and limiting their autonomy. I think that is exactly right.

You know, in the lawyer-client relationship, what I worry about is lawyers acting covertly. So the fact that you said lawyers act transparently, sure, I have no problem with that at all. The lawyering rules — those of you who are lawyers know this — provide permission and authority for lawyers to counsel their clients based on non-legal considerations, and it specifically says social, political, and moral considerations. So there is absolutely nothing wrong in an attorney-client relationship of a lawyer seeking to persuade the client on the basis of religious values, nothing wrong with that at all.

And there is nothing wrong with the corporate manager saying, "This corporation shall henceforth be guided by the principles of Catholic social thought as understood by the writings of So-and-So." That is fine. And if the investors want to pull their money, that is their business; and if people want to leave the corporation, that is fine; or if investors want to invest, that is fine. There is no coercion.

Without coercion, this whole Rawlsian problem just does not get started. So that is one of the things that are important to keep in mind. This is a fairly limited argument. I think sometimes the liberal political argument is taken as a sweeping preclusion of religious values from the public space, but it is not. It is only a preclusion insofar as one acts coercively to limit the autonomy of others.

DEAN SARGENT: Well, there is Rawls and there are Rawlsians. The coercion distinction certainly reflects an accurate reading of Rawls. The broader version of it one hears, however, is not limited to the coercion problem but incorporates the notion that faith-based discourse and the invocation of religious principles in support of a position are somehow always illegitimate in the public debate, in the public conversation. As a practical matter, there are many religious voices which in fact are heard in public debate.

But for those espousing a crude or vulgar Rawlsianism there is a tendency to exclude faith-based discourse not because it is unconvincing, but because of its inherent truth claims.

PROF. PEARCE: Okay. Other questions from the floor? Yes?

QUESTION: You spoke of the need at the end of your excellent

comments for incentives and protection, and implicitly for the lawyers. How would you feel about increasing the requirement? What I mean by that stems from my supposition and my earlier practice, that the lawyer is very often the architect, the innovator, the inventor, the entrepreneur, of particularly some of our most sophisticated and unlawful financial dealings, but the lawyer seldom gets drawn into the indictment and the penalty for that. Query: how would you feel about increasing the obligations or the penalties imposed on the legal profession for straying into those practices?

PROF. RESNICOFF: I would be in favor of such changes. Let me explain why. I would favor them because I think a lot of the problems occur from the education that people have gotten through the system; an education that encourages them to ignore the real ethical circumstances in which they practice and to focus solely on employing their intellectual powers to promote their clients' interests. For example, in law school we teach people all the time to be creative; to be creative about the arguments they may raise and, about the analytical frameworks they may propound. Unfortunately, too many students think they can be creative about the facts as well. For example, consider a case in which a corporate resolution does not bear the actual date on which it was in fact acted upon. Instead, for "strategic" reasons, it bears an earlier date. A student (or attorney) might question whether there is anything wrong with this practice. They might suggest that perhaps the person who dated the document meant only to say that the resolution was enacted "as of" the earlier date, as if such an intention would made a difference. While we must continue to encourage creative and imaginative argument and analysis, we should require corporate actors and professionals to evaluate objectively what they and their clients are actually doing and impose specific ethical duties in response to such assessments.

And although I favor discretionary rules to provide flexibility and protection for those who want to do more than the minimum, I think it is important to have mandatory rules for those whose natural inclination may be to shut their eyes to the wrongdoing surrounding them. And such mandatory rules certainly must be backed by meaningful sanctions.

PROF. PEARCE: Do either of you want to address that? Go ahead,

Brad.

PROF. WENDEL: I was just going to raise the point that with respect to a lot of the corporate scandals we are talking about now, the law is as stringent as it needs to be. It just was not followed. And so the question is: how do you motivate people to pay attention to the law?

I am writing a paper about the *Enron* case and I am trying to find one of the transactions in which there is a plausible judgment call that a lawyer could have gone either way on, and I am running out of ideas. Every one that I look at is an out-and-out fraud when you actually look at it carefully. And so there is no question about exercising moral judgment to preclude one of these transactions. It is just a matter of if the lawyers had been motivated to actually comply with existing rules, they would have done so.

The law is fairly stringent, and I think we will see that as these shareholder suits get worked out, the suits against the secondary actors, and also the malpractice claims against the lawyers that the Bankruptcy Trustee is going to bring. The Fourth Report of the Bankruptcy Examiner is really outstanding on that. It shows that the law is already plenty tight; the question is just what motivation do professionals have to comply with it, as opposed to trying to throw up an obfuscating smokescreen to prevent the transactions from actually being examined with any kind of scrutiny?

PROF. PEARCE: Mark?

DEAN SARGENT: I would agree with that. When you do look at the transactions in a lot of these cases, Enron in particular, you are not usually finding a situation in which there was a good-faith determination that this could go one way or the other. Instead, it was an indifference to what was probably an illegal transaction.

You do get the kind of problem where the advice was entirely legitimate but the transaction had bad consequences, though. For example, look at the concentration of Enron's stock in the 401(k) plans. The ERISA lawyers who gave advice on that were, I think, giving correct advice about something that was perfectly legal. The rules did permit that kind of concentration of Enron's stock.

That turned out to be a disaster when Enron cratered. Also, the Enron managers were probably deceptive in the way that they marketed their own stock to their employees. But the lawyers who authorized that level of concentration were not doing anything wrong.

But when you get to the SPE transactions and the disclosures associated with them, the lawyers involved either knew or should have known that those transactions involved unjustifiable conflicts of interest. That I think will come out in the wash in the cases involving secondary liability.

A closer question is the various tax shelter transactions around the country, not just in Enron, involving the aggressive use of SPEs in which the lawyers, accounting firms, and investment bankers all acted collectively to promote these deals, with the lawyers actually giving the tax opinions on them, asserting their validity, even though they obviously had a promotional interest in making sure that the deals got done.

There you are really on the bleeding edge of what was legitimate for a lawyer to be doing. Whether that is going to turn into a question of liability is not clear. So that might be a closer case than what turned out to be actual fraud that Brad mentioned.

PROF. PEARCE: Mark, I wanted to follow up as well and ask you a question that came out of what I think I heard Steve saying. I apologize, Steve, if I am going to paraphrase you incorrectly. But I think Steve was suggesting that the lawyers in your moral maze, or the persons in your moral maze, who allowed the corporate culture to shape their morality, were folks who did not have a strong sense of morality in the first place. I wonder what your response to that would be.

DEAN SARGENT: Well, to a certain extent I was giving them the benefit of the doubt, assuming at least for the sake of argument that they did have a personal morality, whether religious or secular. So I am not sure I entirely agree or entirely disagree with Steve.

Let's put it this way. Obviously, there were people involved, are people involved, in these situations who are moral ciphers, who really do not possess anything that could be defined as a deeply-thought-out and lived morality based on religious premises or secular premises of any kind whatsoever. If you are that kind of person, the moral rules in use prevailing in the occupational setting are going to govern what you say, what you do, and there is no cognitive dissonance whatsoever.

However, I like to believe that most people, or at least a fair number of people, really do try to do "the right thing." They may not have a

very sophisticated moral formation — although some may — but they at least have a sense of decency which, at least at some level, may lead them to experience cognitive dissonance, but which is overcome by the enormous force of the occupational rules in use.

So I guess one thing we can say, to the extent that we have both kinds of people in a situation — that is, people not bringing a personal morality to the table and people who do — they are both vulnerable, although to differing degrees, to the overpowering force of the social context, rules in use.

PROF. PEARCE: Okay. A question?

QUESTION: I had a reaction to Dean Sargent's remarks in which he cited this author who apparently characterizes the corporation as sort of a pit in which these broad human weaknesses and worst possible motivations and so on are displayed. I am here to plead the corporate case.

First of all, corporations have personalities and characteristics. All of them then have a style and, increasingly in this period of corporate scandals that we are seeing, a code of conduct, and that is set by the leadership at the top. I have been fortunate to have interviewed any number of major corporate CEOs and chairmen and we discussed the morality, the best sense of values, and so on, that each individual attempts to bring to the entity which he leads.

I particularly want to talk about Sy Sternberg, who is the Chairman and CEO of a 250-year-old company called New York Life, an insurance company. He talked about his childhood, growing up in Brooklyn, in which his mother told him that if he ever lied she would kill him. He said to this day he is literally unable to lie. That mentality, that point of view, which is imbued in this man, he brings to this corporation.

So we have to think that there are literally thousands of corporations in this country that are run in a manner which is with a sense of values and a sense of goodness. We must not forget that in all of these discussions.

DEAN SARGENT: Well, I do not disagree with that. One possible response to Jackall must be "they can not all be that bad." The companies that he studied in the textile and the chemical industries were extremely troubled, in tremendous conflict with the environmental and regulatory authorities, and seemed to have developed particularly malign

cultures. As everybody is not a saint, not everybody is a sinner, at least to that degree.

On the other hand, the CEO of Global Crossing was a devout Christian, who after all of this came out, went to his congregation down in Mississippi and made a sort of Nixonian "I am not a crook" speech. And Mr. Kozlowski at Tyco gave a lot of money to Catholic institutions and was thought to be personally devout.

So it is difficult to know what to make of the way CEOs describe themselves when one looks at the pervasive fraud that we experienced at the very highest levels of elite corporations throughout the United States in the last few years.

I think what we can say is that, as I mentioned a moment ago, most people do try to do the right thing, and they do not always succumb, and sometimes that sense of decency is in fact institutionalized in corporations. But what I think Jackall points out is that the organizational setting of a corporation, what he describes as its bureaucratic character, produces almost inevitably pressures towards certain kinds of behavior that tend to force people who were raised decently and who think of themselves as decent people to act in ways that are profoundly antisocial.

I should add that this sort of thing happens inside universities as well, so I do not want to describe corporations as uniquely malign in that regard.

So I agree with the reservation. I do not want to paint everybody with the same brush. But I think it is important to recognize how the social structure itself produces problems that are very difficult for decent people to overcome.

PROF. PEARCE: On that note, we are going to take a ten-minute break. We will convene at 10:15 for our keynote lecture. See you then.

Thank you again so much to the panelists.

[Break: 10:00 to 10:21.]

KEYNOTE ADDRESS

RELIGIOUS VALUES AND CORPORATE DECISION MAKING: AN ECONOMIST'S PERSPECTIVE

KEYNOTE SPEAKER:

Stefano Zamagni[*]
Professor, University of Bologna
Department of Economics

RESPONSE:

Henry Schwalbenberg[**]
Chair, Fordham University Department of Economics

INTRODUCTION

MS. UELMEN: I think we will get started for our second session here. We are very privileged and appreciative to have with us two international guests, one of whom is our Keynote Speaker, Stefano Zamagni.

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[*] Professor Stefano Zamagni is Professor of Economics at the University of Bologna, Italy, and visiting professor at several universities in Italy and the United States. Since 1990, Professor Zamagni has been a consultant to the Pontifical Council on Justice and Peace. From 1996 to 2001, he has been the representative of the Italian Bishops' Conference to the Commission of the Bishops' Conferences of the European Community in Brussels. In 1980, Professor Zamagni became Adjunct Professor of Public Economics at the Bologna Center of the Johns Hopkins University, and remains in this post.

[**] Dr. Henry Schwalbenberg, PhD, Columbia, who is an Assistant Professor of Economics at Fordham University, is also Director of the Masters Program in International Political Economy and Development at Fordham University.

I have already teased him about a mistake in his biographical information contained in the materials. It says he has been teaching since 980 rather than 1980. We all know that the universities in Europe are old, but I'm sure some of you didn't realize that the professors also can teach for over a millennium.

Professor Zamagni has been also associated with the Bologna Center of the Johns Hopkins University. He is in the Department of Economics at the University of Bologna. He has published extensively, written hundreds of articles and books, most recently, *Civil Economy*,[1] with another of our panelists today, Luigino Bruni.[2] He is also the co-editor of a number of very important journals and on editorial boards. Since 1991, he has been a member of the Pontifical Council for Justice and Peace, and then from 1994 to 1996 a member of the Steering Committee for the Pontifical Academy of Social Sciences in Vatican City.

One of my friends corrected me for stating that this portion of the conference is from an economist's perspective; it should be noted that Professor Zamagni can provide a theologian's and a philosopher's perspective as well.

Professor Zamagni is also the President of the International Catholic Migration Commission, a Fellow of the New York Academy of Sciences, and has been asked to put forward candidates for the Nobel Prize in Economics. His economics degree is from the University of Milan and his graduate study was at Oxford University.

We are very privileged to have Professor Zamagni with us today.

His address will be followed by a response by Professor Henry Schwalbenberg, who is an Associate Professor of Economics here at Fordham and also the Director of the Graduate Program in International Political Economy and Development. Professor Schwalbenberg has been honored for his skills as a teacher. His research interests focus on North-South capital flows, political economy and trade development. He has traveled extensively and has done extensive work in the international field.

We will proceed with the Keynote and with the Response, but then we will also leave time for discussion and questions.

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1. STEFANO ZAMAGNI & LUIGINO BRUNI, ECONOMIA CIVILE, Il Mulino, Bologna (2004).

2. *See* Essay *infra*.

I am pleased to present Professor Stefano Zamagni.

PROF. ZAMAGNI: Thank you very, very much. I am very pleased to be here with you in this location, so let me express my gratitude to Fordham University and in particular to Amy, who was instrumental for my coming here.

In this presentation — I have also prepared a paper, but I am not going to read it so I will keep to the time allocated to me — in this presentation I will address two basic questions.

The first question is: How can we account for the fact that in the last couple of decades the issue of corporate social responsibility has emerged not only in the policymaking arena but also in the academic arena? In other words, why is it that today we talk so insistently about corporate social responsibility in a way which was unknown until, let's say, fifteen or twenty years ago?

The second question is: What types of responses have been given, or are being given, today to this demand for corporate social responsibility that is emerging in cultural debate as well as in academic debate?

Now, first of all, let me clarify a point on which there is a lot of confusion. People tend to confuse corporate social responsibility with the much older model of corporate philanthropy but the two are completely different things.

Corporate philanthropy is not a novel arrangement. Since the emergence of capitalistic society, corporate philanthropy always existed. The idea behind corporate philanthropy is that of an alliance between for-profit and not-for-profit, such that some capital can be used to benefit the not-for-profit organizations. That said, an enterprise can involve itself in corporate philanthropy and still not be socially responsible. The fact is that, while the logic of a philanthropic enterprise is one of concession or compassion, corporate social responsibility rests on the principle of equal dignity of all subjects involved in a business activity — from the setting of goals to the fulfillment of the entrepreneurial plan.

In other words, one can observe that business leaders have always realized that to assure workers better living conditions means to stimulate in them a sense of loyalty and identification with the goals of the enterprise and in this way to elevate levels of production. The same can be said for attention to other classes of stakeholders. It is enough to think of the entrepreneurial vicissitude of Walter Rathenau, the founder

of AEG,[3] or of Adrian Olivetti.[4] Even Henry Ford declared, in a 1919 interview, that "an enterprise that aims to make nothing more than money is a truly modest enterprise."[5]

The issue of social commitment is not confined to the present historical phase which we can characterize as the age of globalization. On the other hand, the basic difference between social commitment or corporate philanthropy and corporate social responsibility is that the wider philanthropic enterprise is one which has a concession of compassion. Corporate social responsibility rests on the principle of the equal dignity of all the subjects involved in a business activity.

The novelty of corporate social responsibility is not in the degree of altruism or broadmindedness, but in the way in which the business affairs are handled — a way which rejects paternalism, even illuminated paternalism, and above all in the way in which it responds to a call for an accounting of its activities. This last point is really the earth-shattering novelty of the socially responsible enterprise. In a sense, "social commitment" is not a distinctive feature of socially responsible enterprise, because that has always been present, even though more or less practiced. In the same way, social responsibility is to be distinguished from legal responsibility. Always, since their inception, firms have had to be legally responsible.

So the question then is: Why is it that businesses today are looking

3. Walter Rathenau, 1867-1922, was the president of the German company AEG (Allgemeine Elektrizitäts-Gesellschaft). Mr. Rathenau was known for his attempts to find an alternative to laissez-faire capitalism that did not involve state socialism and Marxism. In doing so, he proposed a decentralized, democratic social order, in which the workers would have more control over production and the state would exert more control over the economy. For more information visit http://www.bartleby.com/65/ra/Rathenau.html (last visited March 21, 2005).

4. Adriano Olivetti, 1901-1960, was the Chairman of Ing. C. Olivetti & C., S.p.A., the Italian typewriter and electronics manufacturer. Mr. Olivetti was an entrepreneur, intellectual, publisher and town planner with a keen interest in social problems. He extended his activities well beyond the confines of the industrial world. He commissioned new factories, offices, employee housing, canteens and nurseries and developed a comprehensive system of social services. More information can be found at http://storiaolivetti.telecomitalia.it/uk/cgi-bin/Societa/storia.asp (last visited March 21, 2005).

5. The exact quotation is that "[a] business that makes nothing but money is a poor business," *available at* http://en.wikiquote.org/wiki/Henry_Ford (last visited March 1, 2006).

for social legitimization in a way which was unknown in the past? I can offer three basic reasons to answer this question.

One has to do with the fact that in the last quarter of a century non-profit organizations — which the Fourth International Society for Third-Sector Research Conference in the year 2000 termed "civil society organizations"[6] — have applied in practice not only the idea but the instruments of social corporate responsibility. The practice of socially responsible enterprise as it is understood today is very similar to the ways in which civil society organizations operate, which since their beginning have fulfilled — perhaps without even realizing it — what today is being asked of business. The logic and action of non-profits have penetrated, albeit gradually, into the logic and action of for-profit business. For instance, the so-called "social report" was invented by non-profit organizations.

So here we have a case where the logic and the action of non-profit organizations have penetrated or contaminated — it is an application of the principle of contamination, as moral philosophers say — the logic and the action of for-profit business. This reveals that one may be efficient and generate value even if the objectives include, in addition to profit maximization, other variables which take into consideration broader collective interests.[7] What comes into relief is that the expansion and proliferation of civil society organizations convince — although this is debatable — that efficiency and effectiveness can proceed in equal step; indeed that businesses succeed in as much as they

6. International Society for Third-Sector Research, http://www.istr.org/conferences/dublin/index.htm (last visited Apr. 4, 2006).

7. *See* Thomas W. Dunfee, *Corporate Governance in a Market with Morality*, 62 LAW & CONTEMP. PROBS. 129, 132 (1999) (suggesting that a convergence does exist between these views when properly considered, so that managers will more effectively satisfy their primary duty to shareholders when they respond to signals of significant moral preferences within capital, consumer, and labor markets relevant to the firm). Managers have a further obligation, based on a social contract, to act consistently with mandatory marketplace morality and manifest universal norms. *Id.* at 157. *See also* Cheryl F. Wade, *Racial Discrimination and the Relationship Between the Directorial Duty of Care and Corporate Disclosure*, 63 U. PITT. L. REV. 389 (2002). Wade describes the work of Cyrus Mehri, a discrimination class action lawyer, work from the perspective of corporate governance. *Id.* She discusses corporate disclosures regarding employment discrimination/diversity practices as a policy that is both responsive to market forces and widely held social and ethical norms. *Id.* Wade describes such a policy as "profit-maximizing." *Id.* at 440.

are able to respond to multiple secondary objectives not limited to the profit motive.[8] It shouldn't be surprising that the lexicon for categorizing the philosophy on which social responsibility is based has changed at the same pace as the experience of civil society has matured. As you know, Milton Friedman, in a famous statement which I believe he made to the New York Times in an interview published in 1970, said:

> There is one, and only one, social responsibility of business, to use its resources and engage in activities designed to increase its profit as long as it stays within the rules of the game, which is to say engages in open and free competition without deception or fraud, so as to produce wealth and work for all in the most efficient way possible.[9]

If Friedman were right — and he is not right, as nowadays we can say — it is obvious then a non-profit organization cannot be considered socially responsible, because if the mark of social responsibility is to maximize profit, it is obvious that non-profit organizations — and in this country, most universities, most hospitals, are such — should not be considered enterprises, or better to say entities capable of generating value added. Already at this stage of the argument we notice how the emergence of the non-profit sector has changed the usual way of conceptualizing the role and the identity of an enterprise.

The second reason of the three has to do with the fact that among the various implications of globalization there is one which deserves our attention in this context, namely the demise of Taylorism — of that particular mode to organize the productive process whose basic principles were rigorously formulated in the book published in 1911 by Taylor.[10]

Now, what does imply the end of Taylorism? It implies that most labor relations within organizations are idiosyncratic. That is a novelty of the last quarter of a century or so, which did not exist in the past.

Now, what does it mean that labor relations are idiosyncratic? It means that knowledge is becoming more and more tacit. In other words, the knowledge is inside the brains of the people working in an organization and there is no way to extract the knowledge which is in

8. *Id.*

9. *See* Milton Friedman, *The Social Responsibility of Business Is To Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970.

10. FREDERICK W. TAYLOR, THE PRINCIPLES OF SCIENTIFIC MANAGEMENT (1911).

the minds of the people, unless they are willing to.

Under Taylorism, life was much easier because what the corporation needed to obtain from the workers was essentially a labor force.[11] But in a knowledge society, as we are accustomed to call the present-day society, that is no longer the case. I mean that a firm cannot successfully compete in the globalized market unless it is innovative and creative.

What does that imply? It implies that the coercive methods to extract effort from the employees are not paying nowadays. In the past, they paid. The use of sanctions was, as we know from economic history, a very common affair to penalize those who were not able to respect the time allocated to them, and the other rules.

What has been the remedy offered by economic theory, in particular by agency theory? Incentive mechanisms. If the firm wants to extract from its collaborators the knowledge that they bring with them then the manager has to offer them a proper incentive scheme. That is the argument that we find in most textbooks of microeconomics all over the world in these days.

Now, what is wrong in my opinion with the incentive scheme strategy? That incentive schemes are not sustainable in the long run, and as a consequence they bring corporations to failure, as we are witnessing in these days in many different parts of the world? Why? There are two reasons.

One is that incentives are costly. In other words, they are a component of cost, which is doomed to increase over time. Consider the case with stock options or stock gift to get the point. The second reason is more relevant, namely that incentive schemes — there is nowadays a huge literature proving this — produce what have been called by many scholars, such as Bruno Frey, Ernest Fehr, Robert Frank, and many others, the so-called crowding-out effect: the incentives crowd out the intrinsic motivation of the people working in a firm.[12]

In other words, any incentive scheme generates two effects, the direct effect and the indirect effect. The former one operates via the

11. Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276, 1282 (discussing Taylor's conception of the corporate enterprise as being one that is purely rationalized and mechanical).

12. *See, e.g.*, Bruno S. Frey, *Institutions and Morale: The Crowding-Out Effect*, *in* ECONOMICS, VALUES, AND ORGANIZATION 437-60 (A. Ben-Ner & L. Putterman eds. , 1998) (discussing how incentives can erode intrinsic motivation).

substitution effect — if I give you an incentive, you work harder and better. Most people, even those experts in managerial sciences, limit themselves to the direct effect. It is a mistake however not to consider the indirect effect, which operates through the motivational system of the person. If I give you an incentive, it means that I want to "buy" something from you that you would not have given up otherwise. For example, I buy your loyalty, or your honesty. But the very moment I behave in this way, it is obvious that the employee involved will start bargaining on that and will start blackmailing over time, year after year, in order to increase the payment. Clearly, at that moment the manager could not object by saying: "Oh, you are becoming too commercial-minded," because the employee would say, "You have made me behave that way."

To conclude on that, one can understand why the systematic use of incentives might be detrimental in the long run to the firm: the ultimate reason is that they destroy trust relations among people; and trust is the cement of any organization, corporations included.

Finally, there is a third reason to answer the question I started with, how to account for this new phenomenon of corporate social responsibility. This has to do with a novel fact that consumers in this epoch of globalization are becoming more and more concerned about the moral consequences of their choices.[13] That is a novelty. Until recently, a consumer in choosing how to spend his or her money followed the so-called price/quality ratio. The rational consumer, we keep on teaching to our students, is the one who for the same level of quality buys the good at the lower price or, vice-versa, for the same level of price gets the commodity or the service of higher quality.

The fact is that consumers of today are not happy with that. They pretend to know how the commodity was produced; i.e. they are interested also in the process of production and not only in its outcome. Now, this idea is an old one, goes back to John Stuart Mill, the great economist and philosopher from England. Already in the middle of the 19th century he advanced the concept of consumer sovereignty, but he was writing too much in advance of his times.

13. Jennifer J. Griffin & John F. Mahon, *The Corporate Social Performance and Corporate Financial Performance Debate: Twenty-Five years of Incomparable Research*, 36 BUS. & SOC'Y 5, 6-7 (1997) (discussing studies that reveal a correlation between a corporation's social perception as a moral agent and the corporation's financial performance).

The idea of Mill was exactly that the consumer deciding to buy or to spend his or her income in one way or the other sends messages to the production; hence, ultimately the consumer is sovereign, which means that it can dictate to the production side not only the menu of the commodities to be produced but also the way according to which the consumer wants the commodity to be produced.

Today, the conjecture of John Stuart Mill is becoming vindicated. Consider the phenomena of boycott or protest advocacy, etc., etc. This implies moving from the idea of consumer as customer to the idea of consumer as citizen. The consumer as customer is somebody who utilizes his or her purchasing power to maximize a utility function under constraint. The consumer as citizen is somebody who wants more, wants also to express his or her cultural identity and his or her moral sentiments — that is the point where religious values enter the scene. So if I happen to know that a shoe or a balloon is produced in a country where, for instance, human rights are severely violated, I might object to buying it even though the price and the quality of the commodity are good. These are examples that are becoming more and more frequent in our societies.

To conclude, these are the main reasons helping us to understand the growing interest, among scholars, policy-makers and entrepreneurs, around the themes of corporate social responsibility.

I now move to my second question: why is there still a radical conviction that the goals of business and those of social responsibility are radically irreconcilable? A superficial and not very convincing answer is that of opportunism: the business world should have discovered in modern times that ethical behavior is economically advantageous. Good ethics is good business, as we often hear. The adoption by businesses of deontological codes or various practices of corporate social responsibility — from the social report to various types of certifications — have merely an instrumental, and therefore ephemeral, meaning. Certainly one cannot deny that there is much truth in the more or less radical denunciations of the skeptics. For example, Enron's 2000 social report cited an obligation to work to promote mutual respect with the communities and stakeholders affected by the corporation's operations. Nonetheless, a few examples are not enough to counter the broader theoretical proposition.

At this point the question arises whether in the context of market economies as we know them today, it is possible that organizations

whose modus operandi is founded on the principles of the corporate social responsibility will be able to survive. For those who follow the line of thought of Polanyi, Hirschman, Hirsch, and Hollis, to cite a few, their central thesis is that economic agents, operating in the market based on the principle of the exchange of equivalents are induced to adopt exclusively self-interested ways of deliberation. With time they tend to transfer this approach to other social environments, even to those for which the public interest would require the adoption of virtuous actions. It would demand the adoption of virtuous actions. An act is virtuous not simply because it is in the public interest, but because the public interest was the motivation for the action.

To the same conclusion, albeit from a different perspective, arrives Hirschman. To him virtue is understood as a habitual good action, the values of which increases with the use — or as economists would say, it has an increasing marginal utility, and as Aristotle taught, it depends on the individual's acquired habits. It follows that a society which privileges institutions, economic and not, that they tend to economize on citizens' virtue is a society that will not only lose its patrimony of virtue, but it will also find difficult to rebuild it. Virtue, like muscle, atrophies with the disuse. As Brennan and Hamlin propose with their theory of moral muscle, a society which economizes in the use of virtues sweeps away its possibility to produce virtue.[14] The more that a society entrusts its institutions to the market, the more its cultural features and social norms will be congruent with the principles of the market.

In an analogous, although more sophisticated analysis, Martin Hollis[15] explains the paradox of trust, saying that the stronger the binds of trust are, the more a society progresses; the more it progresses, the more its members become rational and instrumental in their relationships; the more instrumental they are in their relationships, the less they are able to give and receive trust. Therefore the development of the society erodes the ties that made possible that the society continuously needs.[16]

We can understand that if these authors were correct, there would be very little hope for answering positively the question of whether

14. *See* G. Brennan and A.P. Hamlin, *Constitutional Political Economy: The Political Philosophy of Homo Economicus,* 3 J. POL. PHIL. 280, 280-303 (1995).

15. MARTIN HOLLIS, TRUST WITHIN REASON (1998).

16. *Id.* at 23.

socially responsible business can survive in the market. But fortunately the situation is not as desperate as it seems. First, these analyses could stand if they could demonstrate a causal nexus between dispositions and institutions that safeguard virtues, a nexus between the strength with which one may sustain that, operating on the capitalistic market, agents arrive, with time, to acquire an individualistic way of acting, which would consist of self-interest plus instrumental rationality. But the fact is that this has never been demonstrated — in fact, those with virtuous dispositions who act in institutional contexts in which the rules of the game they presuppose only self interested behavior and rationality tend to obtain better results than those moved by egocentric dispositions. For example, think of the prisoner's dilemma played by subjects who are not virtuous — as described above — the solution to which one arrives is suboptimal. The point is that the virtuous agent that operates in a market, based on the exchange of equivalents "blooms," because he does what the market rewards and values, even if the reason for which he acts in this way is not the attainment of such reward. As Brennan and Hamlin[17] write, the reward strengthens the inner disposition, because it renders the exercise of the virtue less costly.

Secondly, for the thesis of Polanyi and other scholars to be valid one would require that virtuous dispositions follow behaviors, while exactly the contrary is true. If this were true, how could one explain the reason why in actual historical conditions dominated by institutions that economize on virtue, we see as never before a flowering of civil society organizations? This happens because the nature of that which induces the actor to behave in a virtuous way is relevant: it makes quite a difference whether it is because of fear of legal or social sanction or because it arises from intrinsic motivations. In these cases, the method of the "revealed preferences," according to which one may infer the subject's preferences, is not applicable. For example, the observation of honest behavior does not mean we can infer a person's preference for honesty — the honest behavior may arise from fear of social disapproval or of being caught. Nonetheless, if in a given context of social interaction the honest behavior may emerge as the better or best strategy, the agents will be induced more easily to behave honestly, and then also those who were initially motivated by purely opportunistic dispositions, after a certain experience, could also chose to adopt virtuous

17. *See supra* note 14.

dispositions.

As Amartya Sen has convincingly argued in "Reason Before Identity,"[18] rational individuals choose their dispositions. The point then is that in our current context, the practice of corporate social responsibility can facilitate the possibility of virtuous behavior — in the sense of civic virtues — which are able to generate optimal results, and can trigger the mechanisms of choice as I have explained.

One may object — why should self interested agents be influenced by virtuous agents, and not vice versa, as many others submit? It's a tough question — but not as difficult as might initially appear. The fact is — as Schlicht argues — that coordination of the internal decisions of an enterprise is not based on price mechanisms. With the exception of the incentives — it is very rare to use price mechanisms within the enterprise in order to coordinate the division of labor. This does not respond to the presumed point of departure of the principal-agent theory — according to which market regulation and internal regulation of the business are identical. The affirmation of Holmstron, that the business is nothing other than a specialized market, is reductive and not plausible. Instead, businesses work with normative structures to assure the internal coordination of decisions. These norms have an impact on the behavior of those who work within the business, and in the long run, on their cognitive map, besides on their character. It would be enough to consider how most social interactions take place not in the market, but within the organizations. Compare, for example, the differences between time spent for acquisitions and that spent in the workplace. And the central norm around which the organization turns is equity.

A last point, especially important for the context of this conference, is worth mentioning. What is the ethical anchor for corporate social responsibility? According to some influential analysis in a recent book by Steinberg,[19] the goal of the business isn't to promote the public good if that nature of the goods or services, or the way in which they are produced has priority over the long term maximization of profits. In that case it's no longer a business activity.[20] He goes on to say that just as prostitution is when sex is for money rather than for love, in that same

18. *See* AMARTYA SEN, REASON BEFORE IDENTITY: THE ROMANES LECTURE FOR 1998 (Oxford Univ. Press 1999).

19. ELAINE STERNBERG, JUST BUSINESS: BUSINESS ETHICS IN ACTION (2d ed., Oxford Univ. Press 2000).

20. *Id.* at 36.

way business prostitutes itself when it pursues love, or social responsibility, rather than money.[21] Clearly, also Steinberg, in the same line as Friedman, admits the necessity for minimum ethics requirements which should be respected in the course of business. For this author it is a matter of distributive justice, to give the concerned parties their due, and ordinary decency, that is to say, to trust one's collaborators until there is evidence to the contrary. But respect for such bonds is acceptable for the business only in as much as it serves for long term profit maximization.

We need not spend much time on the shallowness of such arguments. What I'd like to focus on is the paradox at the heart of these arguments — how is it possible that non cooperative individuals, like those along the lines of Friedman and Steinberg's descriptions, are able to cooperate in order to fix the rules they need to build cooperation within the business? Is such cooperation presumed, or is it the result? If it is presumed, then the anthropology of individualism which underlies the argument fails. If instead it is the result, then one would need to demonstrate just how individualistic agents are able to cooperate as demonstrated — neither by agency theories, nor by the stakeholder theories of Friedman and others. I am of the opinion that at this point our research needs to change its course. The fact is that the various theories of business ethics are unable to provide a reason for being ethical.

According to David Lutz,[22] the difficulty could be framed in this way: if it's not good for myself to behave ethically, why not do what is good for me, instead of doing what is ethically prescribed?[23] On the other hand, if it is good for me to follow the rules of ethics, why do we need business ethics at all? My thesis is that remaining within the horizons of ontological individualism, there is no way to untangle the knot. It is fruitless to look for solutions to the problem of moral motivation when ethics is understood as a set of rules, and therefore to try to persuade management with incentives and sanctions to act in accordance with this set of rules. If ethics becomes a part of the objective function of the agent, this itself will be the automatic

21. *Id.* at 42.

22. *See generally* David W. Lutz, *Beyond Business Ethics* (2003), *available at* http://www.pust.edu/oikonomia/pages/2003/2003_giugno/pdf/studi_2.pdf.

23. *See id.* at 67.

motivation to do what seems to be right. It's a matter of understanding that virtuous behavior — in the sense discussed previously — is the better, not only for the others, but also for oneself.

This is why cultivating civic virtues is the undeniable task not only from the point of view of citizenship — something known for a long time — but also from the point of view of CSR. Since institutions, contrary to what the theorists of market fundamentals think, influence economic performance also in the long-term, the task is to intervene in the institutional set-up of society in order to encourage — and not penalize, as happens stupidly today — the largest possible dissemination of civic virtues through education and actual deeds. The results will then follow, notwithstanding what the skeptic thinks. For the skeptic the managers, under pressure from the movement of ideas that have come about around CSR, will attempt to imitate or mimic behavior inspired by the ethic of virtues, though continuing to not really believe. This way — the skeptic reasons — market competition will select, according to the circumstances those corporate cultures which are founded on those values that will demonstrate to be most profitable. Today we know, both theoretically and empirically, that things do not proceed this way. The "cynical" manager who, without believing it, behaves like a "virtuous" manager, sooner or later will begin to perceive himself/herself as *homo reciprocans* — just as the theory of self-attribution teaches — stopping from behaving in a merely opportunistic way. Therefore, if the market is capable of recompensating in a coherent way what I call the civil culture of the firm, in the long run both the dispositional and the motivational structure of the economic agents — managers included — will adapt as a consequence. This is not an insignificant advantage of the approach of moral evolution according to which the affirmation of the values of CSR ultimately depends on the process through which these values are edified as virtues.

Thank you so much for your attention.

PROF. SCHWALBENBERG: Let me begin with a quick, little summary and then I will pick one point and then develop it.

The theme here was corporate social responsibility, why was this coming about. I guess the example of the non-profits in meeting different social, educational, and welfare needs. The idea of having a mission that will then get your workforce to be more productive and actually replace a cruder incentive system. And that the consumer is demanding it. Therefore, we have the argument that maybe we should

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have a deeper system of reciprocity to replace our cruder market system that we mainstream economists love and cherish.

What I want to do is pick up on the consumer demands it and replace the word "consumer" with "citizen." Then what I want to do is go back to 1776, to Adam Smith, and try to get a sense of what we mean by economics. You know, we have to define what we mean by religious values, and I hope to do that, and define what we mean by economics.

Economics is no more than a division of moral philosophy. That's how it began. That's what it is. It is trying to figure out how should we organize our economic life in a way that we achieve the common good. So that's the problem Smith set before himself.

We now have to define what we mean by the "common good." Smith has his definition. He tends to use the word "prosperity" a lot, he tends to use the word "peace" a lot, so he is actually willing sometimes to make a trade-off between prosperity for national security. And he always comes up with some reference to the working poor or the marginalized or those who are left out of society. So that is his.[24]

I thought at this point this would be the ideal place where an economist would try to insert religious values. Not being a great theologian, I have to rely on the Ten Commandments.

I was taught — well, actually my kids were taught, they went through it last year — so you've got the first three and you've got the next seven. The first three tend to be very focused on items that you have to be a man or a woman of faith to believe. The next seven seem to be things that men and women of all goodwill can take on, so kind of the liberal distinction there.

Well, okay, then we could take those last seven and then put that into our definition of the common good, those things that all men and women could agree on. But I think we are missing something when we leave out the first three.

Now I am going to steal information from John Courtney Murray, who used to be a Jesuit.

Father, are you always a Jesuit even after you die?

VOICE: You are.

PROF. SCHWALBENBERG: He is still a Jesuit up in heaven, okay. I guess he was our leading moral theologian in the 20th century.

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24. *See generally* ADAM SMITH, THE WEALTH OF NATIONS (Random House Modern Library 1937) (1776).

The idea I am going to come up with is the dignity of the human person. Those first three things, how you relate to your faith or your god, for so many people are at the core of who they are. I think as a society we want to defend what people feel is at their core.

There are three ways of going about this. One way, which we have seen so many terrible examples of, is where they are wrong and we are right, so we kill those who are the unbelievers. I think that is the reaction that makes us try to go maybe the French way, where we say this is irrelevant to the public dialogue and we just want to wipe it off from the street.

And so what I like to suggest is the third way, which I think is John Courtney Murray's, or at least my interpretation of him, which is the dignity of the human person. If these things are so important to who we are, then we have to defend people's rights to have them.

I remember a poor kid from college who I think did not get his job with a nice corporation because he was an Orthodox Jew, and I suspect that didn't go over well in his interview. That's all guesswork, but I think those kinds of discriminations happen, and probably still happen.

And so what I would say is we still need some legal or regulatory mechanism, or whatever, because we need to defend tolerance, which I think is a great trait of the United States, as opposed to, say, the French view. At the heart of tolerance is this idea of the dignity of the human person.

But then we still have those other seven things — we don't steal, we don't lie, we don't cheat — which are also very fundamental to economists. Let me explain why.

So Smith back in 1776 is trying to figure out how to organize society so we can achieve a just society. His answer is market, competition. What he is really doing is taking the Western political liberal tradition — I guess that's the 19th century and a little bit before — and translating that into economics. So he is taking the concept of liberty that the French and, I guess, some English political philosophers had and bringing it into economic affairs, the normal work of the day, earning a living.

He is saying what we want to do is allow people to have the most freedom in this pursuit, and if we can break down power — and he was trying to break down the King and the companies getting different monopolies on different things — if we can break that up and make it a competitive field, that will achieve prosperity. He even thinks it will

increase — he goes on and on. It solves all problems of the world.

I think mainstream economists still buy 80 percent, 90 percent, of that. If you are out at the University of Chicago with Milton Friedman, it is 100 percent. If you are here on the east coast, then it is maybe 80 percent.

And then what we throw into that mix is this thing of sometimes we have markets that fail, market failures, and therefore an economist comes to think that there is — I think we feel that there is no inconsistency with religious values. Leave those bottom seven, the ones that all men and women can agree on.

I personally think that maybe we should look at those first three to see if those send something that we have to also defend in the public domain. That gives us an objective as citizens — I think we are more than consumers, we are citizens — and that can, at least in Smith's view, drive the rationale for breaking up corporate power or monopolies and having competition. And in those places where that market fails, then there is a role for us as citizens to come together through the state to regulate.

But the role of honesty, transparency — those of you who studied economics know that markets will not be competitive and achieve the social optimum unless there are all sorts of information flows. It has to be an open, transparent society; otherwise we get all sorts of breakdowns.

The last point before I close my mouth is I think there is some tension between how economists took over the ideas of liberalism and threw them in with Catholic moral or social thinking, in the sense that we tend to see the person as an individual — that's the Western tradition after the Enlightenment — where I think in many traditions — Catholic, Confucian, whatever — the person is a social being. I haven't worked out all the implications of that, but I think that ties in a lot with the Professor's idea of reciprocity. That may be an area where the market breaks down and giving individual incentives breaks down and you really have to be more part of a common group.

I think we see that in the military all the time, right? The incentive to carry out a mission is not that you are going to make a profit on this. And usually when things are going bad, I'm staying here because my buddy or my brother is next to me and I have to help him out.

And so sometimes that social being thing gets missed.

That's it.

PROF. ZAMAGNI: Should we discuss?

Thank you very much, Henry, for your comments. Very, very briefly, I totally agree that economics was born out of a moral philosophy. That is very important and economists should never forget about that.

Second, what you said in the middle of your remarks can perhaps be restated in the following way. If we ask ourselves in which ways the religious values, or even moral values, can be introduced into an economic discourse, we can answer in two different ways. Either they enter as constraint, as a constraint of the objective function, or they enter as an argument of the objective function itself. That is, after all, what makes the difference.

In other words, I could conceptualize a moral value as a constraint — such as "don't do that," "be transparent," "don't cheat," etc., etc. — or I can conceptualize this moral behavior as a preference, as an argument of my preference function.

Now, what is the difference? The difference is that in the first case, as soon as I realize that I could cheat, with the assumption that nobody will pick up me, I will do it. But in the second case, that is not true.

In other words, the real point in my reading is that the real challenge, which is first of all an intellectual challenge, is how to get to the point where people understand that a virtuous life — and I use "virtuous" in the Aristotelian sense — is good not only for the others but also for oneself. If we are able to show that behaving in a virtuous way — honest, all the so-called moral values — not only do I do good things for the other, but also for myself. That is the way in which, in my opinion, we can get rid of what appeared recently.

Everybody knows about Enron, for instance. Enron published their Social Report. Go and read the initial statement of the Social Report of Enron published in the year 2000. I have the quote here somewhere, where they said, "We will behave this way, we will never cheat, we will never" — and so on. That was written. And still everybody knows what happened.

Why is that so? Because at a certain moment the management believed that it was possible for them not to follow what they stated without paying a penalty. Of course they did a mistake.

So that is why it is proper, for instance, to go in the other direction.

Finally, your remarks about Smith, I totally agree.

Marx said: how to organize society? Market, exactly. But market

presupposes division of labor, and the division of labor presupposes the organization. In other words, you cannot have a market unless you have organizations which can work according to a principle of organization. That is the point I wanted to raise.

It is not enough to say in the market there is competition. Of course market economy means competition. But you can do competition in many different ways. In other words, only if one subscribes to a deterministic approach, in the neo-positivistic sense — you can say "to compete you have to follow the one best way" — but there is no one best way as far as the organization of firms, of corporations, is concerned. That is perhaps the most important point.

And it is also the challenge, to find a way to apply reciprocity, which is a principle and also a culture, also inside the corporation, because if I talk about reciprocity within the family or within a non-profit organization, it is obvious. Everybody understands that within the family the relationship between father and mother, sisters and brothers, are relatively based on the principle of reciprocity and not on the exchange of equivalents like the market.

But the real challenge is to prove concretely that it is possible to run a firm which competes in the market and whose internal organization is based on the principle of reciprocity. In my opinion, that is the real challenge. Perhaps today in the afternoon we will listen to, as I read here from the program, some testimony of experience in that regard. But I have found that that is the real challenge in particular for the economists.

I conclude by saying that we economists are sometimes too much obsolete, because we tend to cope with the new problems of the globalization epoch — and there are so many — by using the same categorical apparatus which was good for this type of society which is over.

QUESTION [Prof. Luigino Bruni, Professor, Department of Economics, University of Milan-Biococca]: May I ask a question of Professor Zamagni? Can you please say something more about reciprocity in two directions? First, my understanding of reciprocity is that reciprocity usually is not stable, is not a matched equilibrium. It is difficult to remain in a reciprocal situation.

The second is: which is the difference really between reciprocity and the exchange of equivalents? Because also in reciprocity there is a sort of bi-direction, there are two people — or maybe not two, maybe

three perhaps — then that is no altruism but there is something different. In two words, if you can say why it is no stable reciprocity in organizations, and second, the difference between reciprocity and market exchange, given that both are two or three parts doing something together?

PROF. ZAMAGNI: Perhaps we can collect other questions.

QUESTION: I have just a couple of comments.

One, I think I would like to congratulate Professor Schwalbenberg on his last statement, that the key, I think, is the difference between viewing the individual as an individual or viewing them as a person. I think almost all the mistakes that economists make start there, and I would encourage him to think about that and pursue that line.

I did want to make one little statement on our friend Adam Smith. I think you got the proportions a little wrong. I think economists accept 40 percent of Smith in Chicago, they accept 50 percent, but what they do not accept is the theory of moral sentiments, the other half. In the theory of moral sentiments, Smith gives an analysis of how we come to act in a moral way, and that moral individual is required for us to then allow these people into the marketplace and act in a self-interested way because they are controlling the abuses.

Chesterton tells us that self-government starts with governing ourselves.[25] Well, free exchange in a market requires that we control and limit ourselves, that we do not act in a way that our interest is at the expense of someone else's interest, but that somehow there is a mutual interest and a mutual benefit that is arrived at.

If we can only get economists — well, it would be nice if we could get them to read *The Wealth of Nations*, but if we can get them to read *The Theory of Moral Sentiments* first, I think we would make a lot of progress in this area.

PROF. ZAMAGNI: Thank you.

QUESTION: Professor Zamagni, I very much agree with your statement that modeling the interaction in a firm as an agency problem and then just looking at incentive structures is a very impoverished way of thinking about intra-firm relations for a number of reasons.

But I wonder whether the mainstream economist crowd might not quibble with your statement that the mechanism of price competition

25. The exact quotation is that "[s]elf-denial is the test and definition of self-government," *available at* http://www.chesterton.org/discover/quotations.html.

only works in markets. I am thinking here of Gary Becker's *Theory of the Family*,[26] where he models the interactions within a firm as market interactions and takes something like preferences to replace money, so it's not a monetized market, but it is nevertheless something that can be modeled as a market.

I wonder whether it is not a category mistake, rather it is just a decision theoretic choice about how to make the model. I do not think it is necessarily a category mistake, although I do tend to agree very much with you that it is an impoverished way of viewing the interactions within a firm.

PROF. ZAMAGNI: Thank you. Thank you very much.

The question raised by Professor Bruni is partly connected to your second question, so I will answer them jointly.

First of all, on this reciprocity issue, there is a growing literature. In the last ten years or so, or even less, the major journals in economics devote increasing attention, in particular because the empirical research — or better to say, I correct myself — experimental economics on the lines of Harris, Fehr, and many other people have given evidence that in actuality we human beings practice reciprocity.

If you ask people to play an ultimatum game, you notice that most of the time they would give you an answer which shows that people have sort of an inborn attitude towards reciprocity. And so, even from the experimental side, there is new evidence.

But the basic question was: what is the difference between the principle of reciprocity and the principle of exchange of equivalents? The basic difference can be said like this.

First of all, it has to do with the distinction between an individual and a person. Under individualism, the individual will always be able to practice exchange of equivalents — "I give you this and you give me in exchange the price," the equivalent in value, which is called the price. On the other hand, reciprocity postulates the recognition of the intimate relationality of the person; a person is an individual in relation with others, if you want to give the most emphatic definition of a person.

Now, the problem is that in the exchange of equivalents the two relations are — one is conditioned by the other. In other words, the second relation is dependent on the first one. If I give you the pen and if

26. Gary Becker, *Gary Becker's Theory of the Family: Some Interdisciplinary Considerations*, 66 SOC. & SOC. RES., No. 1 (1981).

you do not pay me the price, I can bring you to the court, or to the lawyer, according to the case, which means that you are paying, it is not free; it is conditioned on my initial giving to you.

The second difference is that in the exchange of equivalents the determination of the equilibrium price is a priori, comes before the exchanges of property rights. First of all, we have to agree on the terms of trade. Once we have found an agreement, which we economists call equilibrium, then we have the transfer of property rights. In the reciprocity, that is not the case because you have A moves towards B on the basis, for instance, of the gift principle, and it does so under the conjecture that B will reciprocate — the conjecture, which means that B is not compelled to reciprocate, it is only expected to reciprocate.

The third difference is that in the reciprocity relationship, B not necessarily has to reciprocate towards A, but could do that towards another person that we call C or D, etc. In other words, to generalize, the difference is the following: the reciprocity principle is nothing but the actual incarnation of the principle of fraternity. In other words, the principle of fraternity, if you want to translate that principle, which is philosophical, legal, etc., into economic terms, you get to the reciprocity principle.

That is why in these days there is a new interest towards the reciprocity, because people have discovered that freedom and equality — *liberté, égalité, fratérnité*, these were the three words of the French Revolution. As you know, after the French Revolution, the third word, *fratérnité*, was canceled. Saint-Just, when he became Minister after the French Revolution, passed a decree whereby he abolished the *fratérnité* principle. Now, there is no time to go into that, but it is fascinating to try to understand why that was so.

In fact, after the French Revolution, we kept on, in particular in liberal political theory, to talk about liberty and equality, which is okay, but the word fraternity was canceled, disappeared.

Now it is coming back again. Why is that so? Because we are discovering there are many problems in our societies, economic and social, which cannot be solved within only liberty and equality. We needed to get back to the fraternity principle, because the fraternity principle existed much before the French Revolution, and that is why the revolutionaries in France used as a banner also the fraternity principle.

Now, if you want to translate fraternity into economic jargon, you get the reciprocity principle. That is interesting to show. We have now

produced models in economic theory showing how market competition operates in the market for corporations or firms which are based as far as their internal organization is concerned on the fraternity principle or reciprocity principle and firms or corporations which are based as far as their internal organization is concerned on the principle of exchange of equivalents.

Now, what we can show theoretically by using models is that in the long run the first type or first category of enterprises are more efficient and more sustainable than the other. You have to use a theory of evolutionary gains, as we do in economics. By using a theory of evolutionary gains, you show that in the long run those firms whose working is based on the principle of reciprocity are stronger than the other ones. That is something on which we have to work, etc.

It seems to me that that is a proper way to have religious values or moral values entering into a discipline like economics, because in economics you cannot use the jargon of religious values in the usual sense, because that is moralistic or paternalistic, and people will say, "Oh, we do not care about that." You have to show that a value, such as fraternity, has implications in economics, not instrumental, but because they enter, as I said before, as an argument of the preference function.

Finally, the third question, I thank you, because of course I am not doing good justice to your remark, because it is very important. You referred to Becker.

Now, where is the difference? The difference is that the Beckerian approach — Coase, etc. — all that approach is based on an assumption which very seldom is made explicit. The assumption is the following: that economic agents enter the market scene with preferences which are default. That is the trick. As a professor, I always teach that to the students, to open their eyes, because that in my opinion is not intellectually honest, not to explicitly say like that.

Now, Becker is honest because he writes that, but most people, just for laziness, they say that that approach is based on that strategic assumption, that when we operate in the market we assume that the economic agents enter the market already with a preference. But that is not true. There is no need to be a psychologist to understand that it is not true, because we get that information.

In other words, when we enter the market, the market forms our cultural traits as well as the internal corporations, the organization of corporations, they form it only. If it is true, as it is true, that we spend

most of our time inside an organization, how can we possibly believe that the organization at the top of the firm does not modify our frame of mind?

So if we work in an organization where the only rule is to practice free-riding, to do shirking, to cheat, or to do dirty things, mobbing, etc., it is obvious that after awhile, since I spend most of my life in that organization, I will become like that.

But for Becker and many other economists, preferences are exogenously given, and then it is intolerable, because that factually is not true, because while we work, while we operate, in the market game, we change our frame of mind, so you have a sort of a co-evolution. We enter the market with certain preferences, but the market modifies our preferences.

So that is why in my opinion it is proper to make this consideration explicit. Then everybody is left free to choose their way. But at least we have to acknowledge that.

Thank you.

PANEL TWO: MANAGING AS IF FAITH MATTERS[1]

MODERATOR:

Michael Naughton
Professor, University of St. Thomas
Director of the John A. Ryan Institute for Catholic Social Thought

PANELISTS:

Joseph E. Geoghan, Esq.
Retired Vice-President and General Counsel, and
Member of the Board of Directors,
Union Carbide Corporation

Talat Ansari, Esq.
Partner, Kelley, Drye & Warren, LLP

Charles M.A. Clark
Senior Fellow, Vincentian Center for Church and Society, and
Professor of Economics, Tobin College of Business,
St. John's University

MS. UELMEN: I think we are just about ready to get started with the 11:30 panel. We have "Managing as if Faith Matters." We stole the title from a book by Michael Naughton, who is our moderator. I am very grateful that he has traveled to be here with us.

Then we have Joe Geoghan, who is the Retired General Counsel of Union Carbide; Talat Ansari, who is a Partner at Kelley, Drye & Warren; and Charles Clark, who is at St. John's Business School. We

[1] The title of this panel is taken from Helen Alford and Michael Naughton's book MANAGING AS IF FAITH MATTERED: CHRISTIAN SOCIAL PRINCIPLES IN THE MODERN ORGANIZATION (Univ. of Notre Dame Press 2001).

are very delighted to have this wonderful panel assembled.

There is also more background on each of the speakers in your materials. They have extensive biographies.

We will turn it over to Michael for "Managing as if Faith Matters." I think you all know about the hypothetical that is also in your materials.

PROF. NAUGHTON: Thank you, Amy.

While the title of our session comes from our book, we stole the title from another title of a book by E.F. Schumacher, a book called *Small Is Beautiful.*[2] The subtitle of that book is "Economics as if People Mattered." Schumacher's assumption is that the economic profession was going astray and that economics itself had to be redirected toward its primary object, which is the health and development of people.[3]

In a very similar way, what we want to do in this session is to explore together what corporate board decisions could look like, as if faith mattered. But in a very similar way, like Schumacher, we also come to the reality that often sometimes, we ourselves do not act or do not manage or do not work as if faith mattered.

But of course the reason why we are here is that we also believe — and I think there are great signs in our culture that point this way — that people want to be faithful, because they want a greater depth of integration between their faith and work.

If I can just give you one quote from a poet, David Whyte, who speaks about this question of this integration, this reconnection, between faith and one's work, he says: "Whatever strategy we employ, or whoever we choose to speak with, we are eventually compelled to bring our work life into the realm of spiritual examination. We simply spend too much time and have too much psychic and emotional energy invested in the workplace for us to declare it a spiritual desert, bereft of life-giving water."[4]

And yet, if we are to engage these religious values, religious traditions, we of course cannot neglect the technical, the financial, the legal, and the various dimensions that modern corporations have to exist in.

The challenge for people of faith, of course, is to engage these

2. E.F. SCHUMACHER, SMALL IS BEAUTIFUL (Perennial 1989).

3. *Id.*

4. DAVID WHYTE, THE HEART AROUSED: POETRY AND THE PRESERVATION OF THE SOUL (Currency 1996).

technical dimensions within their particular theological religious tradition. This is no doubt a complex and difficult undertaking, but I think most of us realize it can reap great rewards, not only for one's own deep personal meaning in life, which we all seek, but also for a more just workplace and a better culture.

This morning we are very fortunate to have with us together three men who can help us both understand the complexities and bring their unique faith tradition to bear on the problem of outsourcing. What we plan to do this morning is to examine a particular case about a board of directors that has to make a decision whether to move operations from the U.S. to India. The question before the Board is whether to go or not to go.

Now, of course, as with all cases, we do not have all the facts, and we are just simply going to have to face that reality. But the focus that we want is: What do religious values specifically have to do when facing this particular case?

We will first hear from Joe Geoghan and Talat Ansari, who have both experience and general counsel on various multinational boards. They have been there. They have had to deal with the difficulties of the situation. They are both men of faith. I think they will have great insight for us. We also will hear after that from Charlie Clark, who is an economist, has done a lot of work in the area of labor, and who will approach this from a labor perspective, particularly within the broad Judeo-Christian tradition. Each person will have about five-to-seven minutes, and after their presentations, they will provide a one-minute response to each other. We will then open up the floor to the larger audience.

Joe, would you begin?

MR. GEOGHAN: Thank you, Mike.

Let me begin by reaffirming that, first, I am not an academic, I am a lawyer and I was a businessman. I was a business executive with Union Carbide Corporation and I was on the Board of Directors of Union Carbide Corporation for the last nine years of my career. I spent my entire career with them, forty years.

Not being an academic, I have not read some of the sources that were referred to, for example, earlier by Dean Sargent, but I do know corporate culture, I know it very well. I am familiar with the way other

companies operate. I am familiar certainly with the way my own company operated.

I have to tell you that I really hesitate to draw the kinds of conclusions that were drawn this morning from the misdeeds of a few. I think that, by and large, the corporate culture that exists in America is one with integrity. I think that the managers at the top level of the corporation, the inside management as well as the Board, are by and large people who are honest, capable, and have integrity.

Amy referred a little earlier to a little colloquium that she and I had about fraud and the impact on fraud of religious values. My take on that is that it has no impact. People who commit fraud are crooks.

I think the point is borne out when one looks at the background of a Kozlowski and one looks at the background of the person at the head of Parmalat, who was reputedly a devout Catholic. I must say, because I am a lawyer, parenthetically, that Mr. Kozlowski has not been convicted, nor has the CEO of Parmalat been convicted of anything, so I use those in a very loose way, and I would predicate my remarks by saying that they are alleged to have done misdeeds.

But these people allegedly decided to do something that was wrong. They allegedly knew it was wrong. They had religious values that told them it was wrong. They nevertheless decided to do it. It is the attitude of a typical criminal. It should not in any way, in my judgment, be applied as a generality to the entire corporate community.

Undeniably, there may be people in corporations, as in every population, who are not good people. In addition, young people at the bottom of the corporate ladder are likely to be very aggressive. They compete aggressively, they know they have to perform in order to earn their stripes and advance within the corporation, and they work very hard at it. Internal educational programs on corporate ethics are very important at this point. As people move up the ladder, gaining age, wisdom and maturity, this aggressiveness begins to be tempered much more by corporate reality, by a more highly developed sense of ethics born of experience and born of their own personal insights.

I would also note that most of the boards of these companies that have been targeted for prosecution have not been prosecuted criminally. They have some serious problems with civil law and their own personal fortunes, but they have not been prosecuted criminally. My reading of newspaper accounts of the position of many of these board members is

that they were apathetic in some cases, not capable of understanding the situations in others, and there was undoubtedly — and this continues to be a problem — cronyism. CEOs like to have other CEOs on their board. When a director does not understand a complex problem, in the context of cronyism there is more likelihood that he or she will tilt to management's side and just accept management's judgment of what is happening.

But the point is that what I see from my experience, the product of forty years in the corporate world, is that most people try to do the right thing, and particularly they try to do the right thing at the more senior levels.

Now I am going to move into the case of whether Americana, the corporation involved, will move its manufacturing operations to India. In order to put this in the right context, I need to sort of walk through my own formulation of how the law applies and how people at the very senior levels of the corporation, on the board, will look at this issue.

First, I subscribe to the traditional formulation of the responsibility of corporate directors. Basically, this requires that they act loyally, with due care, in good faith, and in the honest belief that they are acting in the best interest of the corporation and its stockholders. The Board must also have a coherent economic rationale dedicated to the best interest of stockholders and in the context of good-faith entrepreneurial risk-taking.

Now, I have used the term "best interest." Many others use "shareholder maximization" or "wealth maximization." Most of the commentators do use "best interest" I think, and there is considerable difference between the terms. I do know that "wealth maximization" has been used in the context particularly of takeover litigation, but I personally am more comfortable, and I think most people in the corporate world are more comfortable, with "best interest of the corporation" and "best interest of the shareholders." I think it gives one a much broader perspective within which to manage a corporation.

Query: Does the criterion of best interest of the corporation and its shareholders permit a corporation to consider the impact, as in our case, on its employees? I have always felt it did. There was quite a bit of litigation on this.

I have just been notified that I have two minutes. I spent too much time talking about the earlier debate at the first panel, so I am going to

run through a little bit of this.

In many states, as one of the people noted on the other panel, stakeholder legislation has been adopted. This clarifies, I think to everyone's satisfaction, that in every instance in those states, particularly New York, you may consider the interests of employees and other stakeholders in deciding any corporate action.

In my experience, the directors of every reputable corporation operate on a guiding principle that the best interests of the corporation are served by ensuring the corporation behaves ethically. I think that this was a point also made by Professor Zamagni. Ethical norms require the Corporation to act with justness and fairness in relations with the corporation's employees.

In fact, I note that this same point is made by Pope John Paul in his prophetic Encyclical *Centesimus Annus,* in which he says that "the negative actions against employees are morally inadmissible, but in addition will eventually have a negative repercussion on the firm's economic efficiency."[5] How true it is. And I think most corporations adopt that.

Moving to our case study, what norms and standards of justice does a director apply when the Board is comprised of people with different or no religious traditions? I believe that each director must answer that question by first examining any generally accepted norms that may be applicable, and then overlaying that with the norms and standards that form a part of that person's inner self or conscience. These norms may be acquired from a religious tradition or from secular human standards.

I do not believe that there should be a faith-based qualification for service as a director, nor do I believe that the Board should adopt any religious tradition as a guide. However, I strongly believe in the maxim that there is no wall of separation whatsoever between the principles that I apply in my personal life as a Roman Catholic and those applied in my business career. The norms and standards of conduct that I would apply to Americana's case would be influenced by the social justice teaching of the Church, beginning with the longstanding principle of the primacy of labor over capital, and then proceeding through perhaps another

5. *See* Pope John Paul II, *Centesimus Annus* (1991). *Centesimus Annus* was promulgated in 1991, on the hundredth anniversary of the first social encyclical, *Rerum Novarum.*

review of *Centesimus Annus*.[6]

I would note, seeing as this involves a move to India of the manufacturing function, there was one reference that I came across in rereading that *Encyclical* that I thought was interesting. In discussing charitable giving, the Pope points out, referencing it to a corporation, that "the decision to invest in one place rather than another, or in one productive sector rather than another, is always a moral and cultural choice."[7] That is an issue or point that I would fully subscribe to.

So one conclusion that I draw from a review of social justice principles of the Church is that there is at least a moral and ethical equivalence between investment in a manufacturing facility in the Midwest of the United States and investing in one in southern India, and perhaps even a tilt toward investment in India.

In this case, assuming that we can verify that the wages — you will see there is a little fillip in this case about wages in India — that these wages are not exploitative and assuming that we can build in very strong, well-thought-out compensation plans for the people of Americana who will be displaced by this move, who will lose their jobs, as a director of Americana, I would vote in one of two ways. I would either to vote to move the facility or move the manufacturing operation to India, premised on the obligation of acting in the best interests of stockholders while considering the interests of the employees and other stakeholders.

PROF. NAUGHTON: Thank you, Joe.

Talat, please.

MR. ANSARI: I basically agree with what Joe has said about a duty of a director. Having served on several boards and having practiced law for about thirty years, both here as well as internationally, I think directors owe a duty of care and loyalty, to act in the best interest of the corporation, and that is the primary duty of a director. So as we come with this hypothetical situation, I come to this hypothetical meeting with the clear idea of acting in the best interest of the corporation.

The problem that I have in facing this case study is that, in addition to being a director, I am also a human being who believes in faith. I

6. *See id.*

7. *Id.*

follow the faith of Islam. So what does Islam teach about how to deal with business and how to deal with issues of ethics as and when they arise?

There are some very, very basic ethical issues which are more human and universal issues which Islam applies to all its day-to-day functioning, which include truthfulness, trust, sincerity, equality of person, and justice. But in addition to that, unlike most of the great religions in the world, Islam was brought to this world by a person who before achieving his status as a prophet was also a trader, he was a businessman. So Islam contains, in addition to the universal ethical norms, certain norms of business as well, which have to be kept in mind and followed when any believer is supposed to be indulging in business.

These are some basic issues which have been adopted universally. For example, one of the fundamental Islamic business ethics is adherence to contracts. It is important that you fulfill your contract once you have promised someone that you will perform a certain thing.

In addition, there is a prohibition against false advertising and misrepresentation. There is a requirement to give accurate measurement and weight and value for goods or service that you are providing. There are prohibitions against hoarding and profiteering. And, last but not the least, there is a requirement of fair treatment of workers.

How do I apply this to the current situation if I adopt my background and advise the Board on how to proceed? Being of Indian origin, I should be delighted that this is going back to India. But that is not the case, because in this situation, in addition to the moving and profit achievement of Americana, about 900 people are going to lose their jobs.

So I would recommend to the Board, both because I believe that the duty of care that is required of a director is the best interest of the corporation as a whole, which includes not merely the shareholders but also the management, the workers, and the customers, and that duty of best interest should be to all of these ingredients of a corporate entity.

In order to do that, I would request the Board to consider how to best reduce the suffering or the firing of the 900 people that we are going to sever. Perhaps a better severance package may be considered by the Board. Perhaps additional training so that they could find jobs and continue their livelihood.

What also bothers me is that the government of Bompour, the

artificial state government in this case study, has for some reason refused to allow Americana to pay higher wages to the locals who will be working there. I would like the Board to consider recommending to the person handling the matter possibly going back to that institution, that state government, and asking them to reconsider a better wage rate for these employees.

PROF. NAUGHTON: Very good. Thank you very much, Talat.

Charlie?

PROF. CLARK: First, I would like to say that it is great to be back at Fordham. As a Fordham graduate from the College at Lincoln Center in 1982, Fordham is where I first read Thorstein Veblen and Leo XIII, and all my thinking since has been formed by both of them, so it is always great to be back here at Fordham.

We have to suspend reality here a little to accept the possibility that I would be put on a Board of Directors. I was brought to this panel to give a labor perspective; maybe to stir things up a bit, that is why they put me on the extreme left here. I will try to fulfill that role.

Michael likes to invite me to these types of forums because I make him look like a moderate, so I will do that as well.

My comments will be informed by the Catholic tradition of addressing social issues or economic issues, and that of course is Catholic social thought. Now, Catholic social thought is just common sense applied to the pursuit of happiness. All the principles of Catholic social thought can be accepted and argued without any recourse to revealed truths, except for one, and that is the first principle: the inherent dignity of the human individual. You cannot prove that. You either accept it as a matter of faith or you do not.

Now, secular humanists, who tend to have more faith than religious people, but not as much as atheists, they would accept that, and most religious traditions would accept it, even if they did not go back to Genesis, to the fact that we were created by God with reason and intelligence.

And even though we find many examples of deviations from reason and intelligence, reason and free will, it is still the inherent characteristics of the human person upon which all social analysis should start and should proceed from to the next principles.

So what I am going to do is just look at some of the principles in

Catholic social thought which I think would enlighten our conversation on this issue and give us some insight in terms of how we should make our decisions.

The first is that human happiness requires participation.[8] It is through participation with others as persons that we grow as individuals, as we achieve our happiness in giving ourselves in a loving manner to others, as John Paul has written extensively in his philosophical writings, both before his pontificate and in many of his Encyclicals after.

Now, an essential aspect of participation is economic participation and playing a role in the decisions that will affect your economic life. In the real world in a case like this, labor would not have a voice, would not have a vote, and would be excluded from participating in the decision which will impact them more than everyone else.

The worst-case scenario to the stockholders in the case we are considering here is that they get a lower rate of return on their money — there is no real risk here for them. The worst-case scenario for the workers is, of course, that they lose their houses, they lose their jobs, they are not able to support their families; the alcoholism rate and suicide rate will go up — all the horrible things that happened in Pittsburgh when they closed down the steel mills, in Youngstown, all over — all these things will happen; the risk here for the workers is much higher.

So in terms of the principle of participation, it is essential that the people who are most involved in this decision, most affected, should be the ones making it, and in this scenario they would be excluded.

The second principle, which needs to be mentioned, and which has been mentioned before, is the priority of labor over capital.[9] That is, tools in any economy are to serve the workers, tools serve people, and not the reverse. But it also means money (in the form of financial capital) serves people. People do not serve money — that is idolatry — but money is to serve people.

Now, in today's economy capital is also knowledge. What this corporation would be doing is moving not the real physical capital over to India, but the legal rights and the knowledge over to India. But again, it has to serve the people, not the other way around. So that should enter

8. *See* THOMAS MASSARO, LIVING JUSTICE 121 (Sheed & Ward 2000).

9. CHARLES E. CURRAN, CATHOLIC SOCIAL TEACHING 1891-PRESENT, 13, 78-80, 90, 204-5 (Georgetown Univ. Press 2002).

into the discussion.

A third principle in Catholic social thought is that wealth should be created in a moral way and it should not be created in an exploitive way.[10] In economics, we talk about wealth creation as if it is a good in and of itself, and of course it is not a good in and of itself. The human person is a good in and of itself. Creating wealth is only good if it serves that purpose, which means that it is created in a way that serves the human person and that it is used in a way that serves the human person, and it can never be that wealth is created as a good in and of itself.

Now, one bad way you can create wealth is to shift your costs on to someone else. So the owners of the capital shift the cost over to the workers by not paying them a just wage or a living wage, on to the community by not producing in a way that does not pollute the environment. In this case, in order not to get a small decrease in their rate of return, they are going to shift the costs over to India where they can pay much lower wages, not have to worry about safe working conditions, not have to worry about the community, have the government give them sweetheart deals so that they probably do not have to pay for the land, which most likely will be taken from the people who live there and given to the corporation either freely or at a very low rate. All these efforts in order to transfer some of the benefits of this wealth creation to an even smaller number of people.

Now, this is bad wealth creation. We can find numerous reasons in the Old and New Testaments as to why this is bad. The Bible clearly states that creating wealth at the expense of the poor is a grave evil.

A fourth principle is that private property is social.[11] Lawyers will tell you private property is based on the law. Economists will tell you private property has to be absolute so that the owners of the property can use it in the most efficient manner, which means whatever gets the most profit or rate of return to the owners of the property.

But we restrict property all the time. Why? Because we know that markets are not perfectly efficient, that there are externalities all over the place, that there are merit goods and higher responsibilities. I cannot

10. *Id.* at 173-213.

11. *Id.* at 173-81.

take out a cigarette and smoke it; that is there are restrictions on how I can use my private property in New York City. We restrict private property. Why? Because it is inherently social.

In terms of the corporation's property in the case we are discussing, part of the value of that property is because of the time, talent, and efforts that the workers have put into building up this corporation. They have invested considerable equity in this company, and yet it does not count for anything. But if we recognize the social basis for property, we would take that into consideration.

The decision by this company is legal, but in no way can we say that it is moral. I think we could also argue that it is only economically efficient if we define economic efficiency in terms of a small group's interest in ways that do not account for all the costs and benefits that this action will take.

Thank you.

PROF. NAUGHTON: Thank you.

Well, we certainly have a spectrum of ideas on the table here. A one-minute response by each.

Joe, could you begin?

MR. GEOGHAN: It is a little difficult in one minute, but I will try Mike.

PROF. NAUGHTON: Okay, two.

MR. GEOGHAN: I think that Professor Clark's analysis to some extent denigrates the role of the people in India who would benefit from moving the investment to that country. As I said in my own remarks, I think, again based on my own reading of Catholic social justice principles, there is at least a moral equivalence to locating a manufacturing facility in the Midwest or to locating one in India, and perhaps a tilt to India because of the greater effect, more profound effect, that locating such a facility would have there.

Insofar as getting an inside track on government things, I think that is a bit of a 19th century ideal, quite honestly, from the British Empire. That one can get those kinds of deals in India today — in my experience, and working with my friend here to my left for so many years — the people in India are very, very hard negotiators.

It is a very difficult situation with the employees of the United States who will be displaced by this and who will lose their jobs. The only way that it can be addressed is with compensation. I totally share

that view. I think the compensation has to be significant enough to ensure that there is a way to move on with their lives and undertake, hopefully, additional job opportunities.

Hopefully, these employees', long-term employees' in particular, interest in the equity of Americana — assuming most of them have been in 401(k) plans that have fared better than Enron's did — will benefit by increasing the profitability of the company and thereby increasing the stock price of the company.

As to Talat's views, he and I are, I think, in complete agreement, and I too would recommend that the Board direct management to go back and argue with the authorities in India with respect to the wages to be paid to the new operation there.

PROF. NAUGHTON: Talat?

MR. ANSARI: Charlie rightly said that he was on the far left. I think the only comment I have about Charlie's analysis of the case that we have today is that the hypothetical corporation, Americana, Inc., is faced with a severe competitive problem. It has two extremely low-cost manufacturers from Asia who are competing in the market, its stock price has already eroded 50 percent. If it is not able to compete at the pricing, the reality of the economic situation would be that the company may have to file for bankruptcy, wind up, or shutdown. What happens to the employees in that situation?

I think the ability of the corporation to give a decent severance package together with a possibility, if at all, to train them for future jobs may probably have a better impact on the labor force than just continuing a corporation which does not seem to have any substantive future in this area.

PROF. NAUGHTON: Thank you.

Charlie?

PROF. CLARK: We are given a choice between two options, but there are more than two options. If the employees were part of the decision-making process the whole time, then they would most likely be making decisions that would make sure that the company is more competitive because it is in their interest and they are able to participate and make those decisions. If the company goes bankrupt based on their decisions, well at least they have made the decisions and it will be their responsibility and not someone else's.

I do have to respond to this idea of a moral equivalence. There is no moral equivalence to taking one person's job away that they already have and then giving it to another person. If you are thinking about investing something that does not exist, then you might be able to pursue that argument, although I strongly doubt there is any altruism in any of this decision. It is made solely so that a few people can get a little richer, not because they want to help the people in India.

But this is something that already exists. These people have these jobs. Having these jobs should give them certain rights. It is like saying that there would be no moral equivalence if you lived in your house or if I took someone else and put them in your house. Well no, because you are already there. I would love to find anything in not only the Catholic social thought tradition but in religious tradition that suggests that we should take food out of the mouth of someone and make them hungry in order to give it to someone else.

It also presupposes that the people in India do not have a traditional economy, are not doing things right now, which again we cannot assume; that is not in the case. They are obviously subsisting as it is now because they are still alive, they have a university, and you want to go there and use their labor. You want to direct it to something that you can profit from instead of what it is being used for right now. So I would say there is no moral equivalence there.

PROF. NAUGHTON: Well, I think our panelists could keep going at this one. But let's turn this over to you and get out some other issues, or feel free to comment on what has already been spoken about.

QUESTION: In support of Professor Clark, I think the facts indicate that the company could probably survive, would not go into bankruptcy, even despite this competition. At least that is what the facts say.

But I think, obviously, if the company would go out of business, then you save 300 workers by transferring the 900 jobs to India. You save at least the other 300 jobs. Otherwise you lose them all.

I would just mention that most faiths that I am familiar with have some system of preferences. So I am not sure — I do not know enough about the Catholic approach of the moral equivalency. But I know that in Judaism, for example, you do charity. In charity, first one gives to his family, then his community and then to his city. So to a certain extent from a Jewish perspective there would be a concern about who gets

preference as to these jobs.

But in the global economy, with the person who is in charge, here a Muslim sheikh, I am not sure what his priority is and what each of the priorities of the people on the Board would be. And again from a Jewish perspective, there is a strong argument that you have to train these people if you do sever their jobs. There is a difference in Judaism between taking — you are not taking away a job.

You have to fulfill your contractual commitment with these employees. If you have a negotiated collective bargaining agreement, you have got to live up to the collective bargaining agreement. But they have no more than that. In other words, what they have they have. You are not at the end of the contractual terms transferring jobs to other people; you are not taking away that which these employees have. You do nonetheless have an important moral responsibility from a Jewish perspective to train them and give severance pay.

And indeed, in this case under these facts, if the local government in this fictional place will not let you increase the wages to the local Indian employees, you can use that extra money to help train and provide severance pay to the existing employees.

PROF. NAUGHTON: Who would like to respond to that? Charlie.

PROF. CLARK: A quick response. Thomas Aquinas has written about charity and these sorts of issues. He says you have to feed yourself and those you are most immediately responsible for, for the obvious reason that you will be no good in the future if you do not take care of that.[12] But meeting other claims from the poor and from others comes from your surplus, not from your basic subsistence.[13]

PROF. NAUGHTON: Joe?

MR. GEOGHAN: I think I generally agree with the gentleman's comments.

I would make just one observation on the equivalence issue. There is clearly, clearly an obligation to the U.S. employees. My contention is that that obligation does not require one to maintain the existence of a job when the rights of the owners of the business will be impaired by that, but it does require significant compensation to offset the loss of a

12. *Id.* at 176-77.

13. *Id.* at 193.

job. What that is we could debate for a long time, but it is significant. I want to also note that I do not use the word "generous" compensation because I think it is an obligation to pay significant compensation to offset the job loss.

QUESTION [Amy Uelmen]: I just had one question. Professor Clark talked about the idea of participation as being key. I wonder if there is another element coming from the other side, of participation on the part of future Indian employees, and in particular if Catholic social thought would not have something to say about American-run corporations operating in other countries. Additionally, the extent to which there is a concern about the participation of the employees and kind of being nested into the culture, whether there wouldn't be a concern from the other direction, and whether that wouldn't weigh in this decision as well.

MR. GEOGHAN: Amy, do I understand that you are concerned about the culture of the Indian employees, that there is some kind of acculturation process underway with the Americans? Is that the point?

QUESTIONER [Amy Uelmen]: Yes, the extent to which an American-run operation would leave enough room for a robust sense of participation on the part of the Indian employees.

MR. GEOGHAN: I do not know that an organization operating in India would operate much differently than it does in the United States in terms of participation by employees. There may or may not be a trade union. There are employee committees of one sort or another.

But I think that the culture that exists in India is essentially unaffected by the nationality of the employer. In our experience, the company I was with operated a huge subsidiary in India for fifty or eighty years with 11,000 employees. It was wholly Indian from the top management on down to the people who emptied the wastepaper baskets in the evening. That company encountered a terrible tragedy. But nevertheless, prior to that, the company was one of the gold stars of India.

So I think the system works. Exactly how one applies principles of participation by employees in a given environment depends on the culture and it depends on the laws of the country. But, in general, I do not think the employees that work for American subsidiaries suffer at all by moving their allegiance, if they do move their allegiance, from an Indian employer.

Do you want to comment on that?

MR. ANSARI: Yes.

Amy, my response to that is two-fold. One is that the Indian economy is currently very global. All kinds of corporations are functioning out of there.

Secondly, the Indian corporate governance norms have now provided — and that may not apply to Americana because Americana is not traded on an Indian stock exchange — but if Americana was traded on an Indian stock exchange, the Indian corporate governance will require them to have a representative of employees on its Board of Directors. That would result clearly in participation of the workforce.

PROF. CLARK: I would like to just say one quick thing. Participation is not just involvement at a minimal level. Just the fact that I work at a place does not mean I am fully participating. Because I am not involved in the decision-making process, I am not fully human or a full person in terms of the life of that corporation. We would not say that slaves are participating in the colonial economy because they are actually working in the fields. No, participation is much more than that.

We should remember — certainly there will be people in India that benefit from this, but this is not being done to benefit Indians. If you look at the statistics for 2002, $200 billion was the net transfer from the poor countries to the rich countries. There has been $200 billion from them to us. If you look at the 300-year history of the West dealing with the third world countries, they have been subsidizing our growth and development, our lifestyle, for the whole period, and this is just a continuation.

The money made at this factory — certainly the wages will spread throughout the economy in India, but the profits made, the surplus, are not going to be reinvested into the long-term development of that area. No, it is going to come back to the United States. This is what we find in all the economies that rely wholly on or mostly on foreign investment for their economic development.

PROF. NAUGHTON: We have two questions up there, so you can give us those two. Please.

QUESTION: I appreciate this model, but typically in the last ten or fifteen years that is not the model that U.S. corporations have been working with. U.S. corporations have been engaging in contract

suppliers and have no legal responsibility to workers, especially in developing countries. Could you comment on those models rather than maybe a subsidiary? Thank you.

PROF. NAUGHTON: One more question, behind you.

QUESTION: It occurs to me in listening to your discussion that yesterday, as many of you may have heard and seen, on "Meet the Press" Ralph Nader drew a rather harsh mirror image analogy between the current Administration as well as corporate ideology, practice, principle, or lack thereof.[14]

I am wondering — this is just a little bit off the reservation — if you could comment on, as we approach a very heated presidential election where many people from a variety of ideologies, both on the right, the left, and the middle, also echo the essence of what Nader is suggesting, that the American governmental system, and keeping in mind the separation of church and state, is now more advised or more informed or more enlightened by the corporate corridor and corporate considerations. This is evidenced by in-bound investment of human resources and ex-bound investment ala Americana's style. Do you see any increase in an advisory role for religion or basic fundamental principles, such as secular principles of fair play and fair trade? Can these principles advise, in a moral advisory way, American corporate politics as well as corporate investment while not running afoul of the political landscape in the larger legal context of the separation of church and state.

PROF. NAUGHTON: Great questions. Can you be quick and brief?

MR. GEOGHAN: With difficulty.

On the first question, not to make a pun out of it, but I think those companies are getting religion. I think the companies that use service contracts have taken to heart the pressure of the consumers and the activist groups that have been working very hard — the Nike example.

I really am not close to this area, but it is my sense that they have been going a very long way to try to meet basic human decency standards in those operations. And I applaud the role of the activists in making that happen. I think it has been almost entirely due to that role.

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14. NBC News, Meet the Press, featuring Ralph Nader and Arnold Schwarzenegger, Feb. 22, 2004 (National Broadcasting Co., Inc.).

On the other front, for I guess ten years I was responsible for Union Carbide's government relations, both federal and state, so I spent a fair amount of time in Washington. I think the influence of industry in Washington does not differ greatly from administration to administration. I think some of the players change and there are some offsetting pressures, if you will, from other sources in one administration versus another. For example, to take sort of an adversary of the business group, the American Association of Trial Lawyers is far more influential in a Democratic administration than they are in a Republican administration.

The church has to learn how to work in Washington. You know, this is a tangent, but I am quite active in the Catholic Church, and the fact that the Catholic Church does not have a political action committee I think is just unbelievable. Why the Catholic Church with the faithful in the United States is not taking a far more active role in trying to influence government — and I recognize there are tax issues, but these can all be managed — I just do not understand. The hierarchy speaks, but there is no effort to get down to the faithful to create a Catholic vote, and there should be a Catholic vote in the United States. So that is my partisan explanation.

PROF. NAUGHTON: Thanks, Joe.

Talat? No, okay.

Charlie?

PROF. CLARK: I am going to shock everyone and agree with part of the statement, and that is that the influence of industry remains high regardless of who is in the White House. The players do change, but basically the government is the shadow of big business. Big business is the power. There are different extents and limits to that, but I would agree with that.

PROF. NAUGHTON: Well, we are nearing the end of our time.

I wonder if I can just take a few moments to highlight several issues which are pertinent to our conversation this morning.

When we think about religious values and their incorporation to corporate social responsibility, what often religious values will want us to do is to take us from where we are at and get us to the ideal. The ideal is always the next step. So I would just like to make a couple of points.

One, how can religious values move us from a divided life to a life of integration and unity? Most religious traditions will often speak about this idea of a divided life — we call it hypocrisy. There is a document from Vatican II that said that one of the greatest errors of our age is the split between our professional lives and our religious values.[15]

And so, as Joe I think was mentioning, we do have models, we do have models in the corporate realm, but we also have some deep problems that go along with it. Secularization is with us.

When we had our meeting, a teleconference to talk about this session, Talat mentioned this idea of two hats, that often there is a sense of "I feel like I am wearing two hats," which sometimes can lead to two faces, which then can sometimes lead to two standards. Nathaniel Hawthorne once said that no man can wear for any period one face to himself and another to somebody else without finally getting bewildered about which one is true.[16]

So we have this problem of the divided life and the tensions. But we also have models of people who have done it right.

Second, moving from what we might call the dominance of instrumental reasoning to a sense of virtue. Dr. Zamagni talked about the idea that there is a sense of this crowding-out factor. When you are sitting in a boardroom, there are great pressures. Those pressures can crowd out other values. For example, if this is a publicly traded company, if there are significant stock options available here, there is a sense that those stock options can be used as a way of crowding out other values.

We find this in all organizations. We in a sense can be very instrumental. We can become somewhat laser-focused when we are in the midst of pressure decisions. When one looks at a lot of the controversies or the corruptions that occurred in something like Enron, people were under great pressures to do something very technical, and these other ideas, in a sense, got crowded out.

What we need is, of course, a tremendous sense that these people are involved in not just simply technical kinds of projects; there are really elements of virtue that need to be present.

Third, moving from a property relationship of disconnection to

15. *Gaudium et spes* 43.

16. *See generally* NATHANIEL HAWTHORNE, THE SCARLET LETTER (Bantam Classics 1965) (1850).

connection. This is controversial. We talked about it briefly. The property relationships you find in publicly traded companies are largely associated with disconnected shareholders who have very little sense of mission and its effects on the people who find themselves in these communities.

What we have to do is thicken a very much more connected relationship of property to the communities and people involved.

Fourth, we have run into the problem of pluralism. Here, how do we live not from our boundaries but from our center? How do we draw upon what is central to us in terms of our religious traditions instead of reaching for a least-common denominator?

It is very interesting that all of these Board members have a religious affiliation. Would we consider that part of the conversation, or rather would we just simply reach for what is in a sense the least-common denominator?

And fifth, moving from a sense of alienation to forgiveness. It would be very interesting, for example, for the Board to sit there and say, "What conditions led us to this situation that we may simply have to move?" And would they ever take responsibility for it? And if they did, what then would that lead to about how they would communicate to their employees? Would they seek forgiveness, a very important religious value?

It is very interesting. There is a firm up in Montreal,[17] and when either a layoff or a firing occurs, the manager who performed the act must request two face to face meetings with the people who were laid off. One of the things the CEO, Robert Ouimet says is — he does all the stuff — he gives proper notification, he will give all the benefits, he will give training. But he says, "There is always alienation when those people leave that plant." He says, "You cannot have reconciliation in the midst of it. You can make it less, but you still have it." So in order to have reconciliation, he and his management must seek out these former employees and follow-up on a difficult and painful decision to be

17. For more details on this practice, see J. Robert Ouimet, *Reconciliation of Human Happiness and Business Profitability: It Can Be Done,* Fourth Revised Edition; *see also* http://www.our-project.org/en/home/home.htm (last visited Jan. 24, 2006).

sure the employee is alright and to see if they need further help.

And lastly from a religious perspective is the role of prayer, a contemplative outlook. There is a Protestant theologian by the name of Stanley Hauerwas. He once said to a bunch of Catholics, "What do all those masses do for you? What do all the Sabbaths do for you? What do five times praying a day do for you? Does that spiritual outlook cause you to see things that simply secular or technical ideas cannot do for you?"[18]

So there is a lot for us to contemplate. I think our panelists have done a great job of laying out some wonderful questions. But lunch is awaiting us, so let's get to it. But please join me in warm thanks.

MS. UELMEN: Thank you to each of you for a fantastic discussion.

We have lunch out in the Atrium here and we will be back for the next session at 1:30.

[Adjournment: 12:30 p.m.]

18. *See generally* STANLEY HAUERWAS, DISPATCHES FROM THE FRONT: THEOLOGICAL ENGAGEMENTS WITH THE SECULAR (Duke Univ. Press 1995).

PANEL THREE: VIABLE MODELS: SHAREHOLDER RESOLUTIONS

Patricia Daly, OP
Director of the Tri-State Coalition for Responsible Investment

Rabbi Mordechai Liebling
Director of The Shefa Fund

MS. UELMEN: Folks are still wandering in, but we can get started.

For our last and final session – we will have a discussion to try to think thematically about some of the overarching questions of the day — but we would like to focus also in this session on viable models.

We are very grateful for the help of the Interfaith Center on Corporate Responsibility. Pat Daly just gave me a tremendous hand in terms of assembling this panel. Unfortunately, Leslie Lowe had a death in her family last night and so was not able to be with us.

Pat Daly is the Director of the Tri-State Coalition for Responsible Investment. Rabbi Mordechai Liebling is the Director of The Shefa Fund.

This will be a chance to explore another model for how religious values can be incorporated into corporate decision-making with shareholder resolutions.

MS. DALY: Good afternoon, all. Thanks.

I am hoping that it might be helpful to give a little bit of history and current overview of the work of the members of the Interfaith Center on Corporate Responsibility, otherwise known as the ICCR. Neither Rabbi Liebling nor I are on that staff, but the ICCR community really is a large membership organization, and we represent shareholders and faith-based investors to that organization.

I would like to look at the history and also current activities of the members of ICCR. Rabbi Liebling will be looking at some of the premises of the approach of why we are doing this and the interplay between faith and business. Then we are hoping that we might be able to spend a good bit of time engaging in kind of a back and forth discussion.

As we look at investments — and we are institutional investors, faith-based institutional investors working with public and other private

investment firms — the members of ICCR really look at these investments as an extension of our mission.

The ICCR was founded in 1971. Many of you may remember it was the Episcopal Church that filed the first shareholder resolution asking General Motors to leave South Africa.[1] That was the first of the faith-based institutions to address a social issue with a corporation as a shareholder.

This movement really came out of the 1960s, where up until that time church groups and other faith-based institutions and individuals had decided if they really did not like what the company was doing, or the company's actions offended one's personal or spiritual values, then they would divest of stock. Then church leaders realized that, as U.S. investors, we were part of the company, owners of the company, and that we needed to speak up and participate in the structure.

Today, we are more than 275 Jewish, Protestant, and Roman Catholic institutions. Depending upon the stock market, we represent approximately $110-to-$150 billion in investments.

We have been seen as the initiator and inspiration for the Social Investment Movement. Today, well over 10 percent of portfolios — trillions of dollars internationally — are invested with some kind of ethical concerns, some kind of social criteria.

We have also helped to launch the Community Investment Movement, the Alternative Investment Movement. Microcredit is one form of that initiative.[2]

Today, in an attempt to focus our energy, our Working Groups address the following concerns: access to health care, contract suppliers, corporate governance issues, enabling access to credit, environmental justice, global warming, promoting human rights, violence and militarization of society, and water and food issues.

Very often, most people know us by our strategies of filing a shareholder resolution.[3] The most effective shareholder resolution is

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1. Peace and Justice Ministries, *Proxy Voting and the Mission of the Church* (Jan. 2000), http://gc2003.episcopalchurch.org/documents/PROXY1.PDF.

2. Microcredit is a process of lending by which small loans are extended to poor people "for self-employment projects that generate income, allowing them to care for themselves and their families." Grameen Bank, *What is Microcredit*, http://grameen-info.org/mcredit/definit.html (last visited Jan. 26, 2006).

3. In addition to the strategies discussed, an accompanying slide listed related

one that investors do not see, because investors and corporate management have actually come together to work out some kind of change within the company to address the concern.

In the past year, we also have an additional model. I was involved in a decision by the Ford Motor Company where the shareholders actually withdrew a resolution, but the company then decided to print the resolution anyway, and together we made a statement that was published in the proxy to inform the shareholders that concerns regarding climate change were raised, and the various steps Ford was taking.

You may have seen in Thursday's *Wall Street Journal* that AEP and Cinergy have now agreed with the shareholders on a similar model and are working on a report.[4] We expect that companies internally studying climate risk will be better positioned for long-term shareholder return, and will be the technology drivers for energy efficient initiatives. Hopefully, this will also bring about serious change in terms of their greenhouse gas emissions. These companies will also include information in the proxy using the same model that was developed with Ford Motor Company.

Corporate dialogue is really the essence; this means sitting down and working out the details of these concerns. That is really the core of our work.

There have been, over the years, some consumer actions. Back in the 1970s, you may remember the Nestle boycott. Companies that are not based in the United States do not offer similar access to shareholders, leaving consumer initiatives as critical strategies to compliment shareholder initiatives.

Today, it is very rare that we sit down with a company alone. We work with many organizations that bring technical assistance to the dialogue. In many, many ways the corporations look at us as resources that they cannot hire. We are investors. We want to make sure that the company succeeds financially. At the same time, we also are looking for credibility and integrity in a way that some other investors may not be looking for.

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legislative actions and collaboration with issue experts as other strategies.

4. Jeffrey Ball, *AEP and Cinergy To Outline Ways To Cut Emissions*, WALL ST. J., Feb. 19, 2004, at A8.

There are additional concerns with health care, both in the domestic concerns regarding affordable access to pharmaceuticals and the international access to HIV and AIDS drugs.[5] We are seeing some creative programs now, although we have needed to push very hard on the address of HIV/AIDS. This is going to be a critical business issue affecting the future of many of our corporations, certainly any company that has any business operations or depends upon business in Africa.

Our contract suppliers program seeks to work with companies on programs that ensure just wages and conditions in factories internationally. You can go to ICCR.org for information on all of our work. In particular, "Principles for Global Corporate Responsibility" offers benchmarks for measuring business performance. This addresses labor issues, environmental concerns, and corporate governance concerns. What are the very specific elements that are needed for a company to be successful financially and socially and ethically?

Corporate governance issues.[6] Let me give an overview — institutional investors are investing in corporations for the long haul. We are not day traders. In fact, some would argue that hitting the numbers on a quarterly basis does not help create a healthy economy. And so there are many ways of getting that overview into our dialogues.

With respect to enabling access to credit, we address capital flows internationally and also domestically. Equal Credit Opportunity — Community Reinvestment Act, Sub-prime Lending practices and International Implementation of the Community Reinvestment Act are some of the issues on the agenda before the financial institutions today.

We are just beginning our work on environmental justice.[7] Actually we are looking to use our ability to open doors with some companies on behalf of and with communities that are at risk.

Electrical utilities, insurance, manufacturing, oil & gas, and transportation are the industries that are being addressed in terms of

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5. An accompanying slide listed access & affordability, ethical patents, nonpartisanship, payments & rebates, and price restraints as domestic concerns and HIV/AIDS as an international concern.

6. An accompanying slide listed board inclusiveness, excessive/increased CEO pay during layoffs, pay disparity, and annual elections of boards of directors as corporate governance issues.

7. An accompanying slide stated that poor communities of color "carry a greater burden of toxic contamination."

climate change concerns.

Our concerns regarding human rights focus on Burma, Chad/Cameroon, China, and Nigeria.

In our Violence and Militarization of Society work we address weapons producers and concerns closer to home. Ethical criteria for foreign military sales are critical; we have too many examples of where the U.S. State Department had authorized sales to governments where, after relationships have changed, those weapons are used against United States citizens and others.

Water and food issues raise concerns that warrant a precautionary principle. Genetically modified foods are new life forms that have not been tested. There are no long-term feeding studies. We have no idea what the long-term effects on the environment and health will be. New life forms are not hybrids. Again, we are asking to consider the precautionary principle. And then, obviously, the use and privatization of water.

Other concerns continue. General Electric continues to resist the remediation of the Hudson River and the removal of PCB contamination and we continue to address the tobacco industry.

Here are some resources you may want to pursue.[8]

We will come back. Rabbi Liebling?

RABBI LIEBLING: Hi. I am here today as part of a member organization of ICCR, the Interfaith Center for Corporate Responsibility. I would say that ICCR is probably one of the most successful interfaith efforts in the United States. It is an organization that is over thirty years old.

We have managed to breach any theological divides in order to work together. I am going to talk about what I think are some of the underlying principles that we share across faith traditions that enable us to work together the way we do.

I think we would all agree that God is the source of all wealth and creation, that all wealth, all of creation, emanates from God, is part of God, and that all of us have a share in that wealth and in those resources. And not only do all of us have a share, but all of us have the responsibility to be good stewards of those resources, that one of the

8. A slide listed www.iccr.org, socialinvest.org, and www.foe.org as resources.

primary responsibilities of all human beings is to be a steward of the resources of the earth.

There is a Jewish Commentary on the Creation story: God is showing Adam around the Garden of Eden and says to Adam, "See all that I have created here. If you destroy it, it will not be fixed. It is your responsibility to take care of it." That is the human responsibility, to take care of creation and to be stewards of creation.

I think at ICCR — I was saying to Pat before that maybe we should change the culture of poverty to the culture of sustainability, and we would all have a better understanding of what that means, that we all are committed to a culture of sustainability, and resources are a good thing, not a bad thing inherently. It is how resources are used and disposed of and shared which is really the human issue.

Probably what unites the various members of ICCR the most is a passion for justice. Whether that justice is from the Book of Amos or the Book of Matthew, it is a passion for justice. Justinian had a definition of justice which I think fits all of us: "Justice is the firm and continuous desire to render to everyone that which is his due."[9]

Justice is not a principle as much as it is a passion. Justice is a way one tries to lead one's life, and it is a passion for creating justice in the world. In the Book of Deuteronomy, it says: "Justice, justice, you shall pursue."[10] That is one of the primary commandments that all of the faiths share. In the Book of Isaiah, I believe it says, "God will be exalted through acts of justice [sic],"[11] So it is our passion for justice that unites all of us in working with the corporate world.

There is a little Hasidic story that helps me understand what we do. There was a man who owned a factory, who had his rebbi, his teacher, whom he studied with faithfully and followed. Finally, this man realized he had enough money that he could sell his factory, retire, and study Torah all day long. He came to his rebbi and said, "Rebbi, I am going to sell my factory and retire so I can study Torah all day long. My factory will close." The rebbi said, "You can't do that. You have fifty people who work for you. The Torah that you bring to the world is to

9. The Quotations Home Page, http://www.theotherpages.org/topic-j2.html (last visited Jan. 24, 2006).

10. *Deuteronomy* 16:20.

11. *Isaiah* 5:16 ("And the LORD of Hosts is exalted by judgment, the Holy God proved holy by retribution.")

give people jobs. You can study with me, but you can't sell your factory."

So the creation of wealth in the world through justice and through a fair means is something that we can share across faith traditions and realize that there are principles that we can bring into the world of business.

The people at ICCR think of ourselves more as owners rather than as investors. When we own stocks in a corporation, the reality of the modern American stock market is that our money is not going to Ford Motor Company to expand its factories when we buy shares in Ford. Our buying a share in Ford Motor Company has the same relation to Ford as our buying a used Ford from a car dealer down the street. It has no relationship whatsoever to capitalizing Ford Motor Company. So we are not investing in a company in that sense.

But we are owners of that company, and in Jewish law, at least, we have the responsibility as owners of any enterprise to make sure that something we own does no harm.[12] We always have the responsibility that our assets can never harm anybody else. So if we are owners of large corporations, we have a responsibility to do whatever is in our power to make sure that those assets don't hurt anybody else.

Now, I will not go through the details of Jewish law, but clearly when many observant Jews own shares in companies that are open on Saturday — that would be against Jewish law and making money — the Rabbinic ruling at that point was: because you own such an infinitesimally small part of the company and you cannot affect company policy, it was fine to do that. That is the essence of it, without going into the details.

But the difference today around issues that we are talking about now is, as Pat showed you, institutional investors own a huge amount of the capital of the United States. Ten percent of the capital that is institutionally invested is already invested with socially responsible criteria. Over 50 percent of all the equities in the United States are institutionally owned. That is a huge amount. So institutional owners, in fact, do have power to change corporate policy.

The major change in the world of shareholder activism in the last

12. *Leviticus* 25:15 (prohibiting any wrong in buying or selling).

two or three years has been the entrance of pension funds, particularly union funds, but also the biggest player is California State Pension Funds. The State of Connecticut now has a very progressive policy on pension funds. So pension funds, along with the funds of religious institutions, can now in fact affect corporate policy in a very serious way. The landscape in the last several years has dramatically changed in terms of the ability of share owners to affect corporate policy.

That has been additionally bolstered by the SEC's ruling six months ago that mutual funds and money managers are now going to have to disclose how they vote their proxies.[13] So automatically voting with management might not happen as much as before.

Religious institutions have the ability and responsibility to bring moral desiderata into the world. Of all the issues that Pat put out before us, we will take the idea of justice and say, "What is justice?" We will take the idea of stewardship, which is the basic principle governing having a healthy environment and say, "What is this going to contribute to a healthy environment?"

In the Book of Deuteronomy, it says, "You shall love God with all your heart, with all your soul, and with all your might."[14] It is part of the central Jewish prayer of the day, and I know that that line from Deuteronomy also appears in many Christian prayers as well.

If you look at the Hebrew word for "love God with all your might," that word actually means strength. In fact, the way the rabbis used it, it means economic strength. So a careful analysis of *m'odekha* (your strength) actually means with all of your wealth, you should love God with all of your wealth.[15]

A part of that is, of course, giving money for justice. But a part of loving God with all of your wealth is the wealth that we keep, our assets, in this case shares in our corporations. How do we love God with our assets? We love God with our assets by trying to do justice with them, by taking responsibility for the assets that we have, and saying: "Okay, what is the most responsible thing for me to do as an owner in this

13. Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors, Exchange Act Release No. 34-48301, 17 C.F.R. 240 (Aug. 8, 2003).

14. *Deuteronomy* 6:5.

15. Parashat Va'ethanan Part II on the Shem'a Yisrael Passage, http://www.judaic.org/bible/vaethanan2.pdf (last visited Jan. 24, 2006).

corporation, and how can I get this corporation to change its policies to be more responsible? And, given the fact that institutional investors do have some clout, then I really do have the moral responsibility to go ahead and do that, because it is a doable task, in fact I have the ability to change policy."

In conclusion, I think that the various faith groups of ICCR take the belief and commandment to "love your neighbor as you love yourself" to say that we have to exercise our responsibility as owners of assets, as owners of capital in this society, to make sure that justice is done with all of the assets that we have.

Pat, do you want to say something more?

MS. DALY: Over the years, I know I have been doing this work long enough to tell you stories of being booed by 3,000 people and people screaming at me, "I do not care about those people in South Africa" — actually not as nicely as I just said that — again, pretty awful times where people did not have the skills or the ability to be able to put these concerns together with the idea of profitability.

Over the years, I believe — we are certainly not the ones responsible for this — over the years the business community has realized that attention to workers, attention to the environment, attention to the communities within which we work, attention to product safety — we can go on down the line — is actually quite key to profitability. Obviously, if you ignore all of those things, you are going to be in trouble at one point.

So over the years our support has increased. Initially, we were thrilled to get 3 percent of the vote because that meant that we were able to go back the next year. According to the Securities and Exchange Commission's Guidelines, shareholders need 3 percent of the vote for the first year that you file a shareholder resolution, you need 6 percent the second year, and 10 percent the third year.

Now, while some of our concerns still are in the 3-to-6 percent area, we are also getting 40-some-odd percent of the vote, even for environmental concerns. That is pretty significant. I think we have been able to prove that some of these issues are clearly financial issues.

The other piece that I would just like to reflect on here is the number of teams of people within corporations that I have been really honored to work with, people who are working in the trenches and really

bringing about some very, very serious change that I know not only is it evident today but will be in the future. The goal here is to eventually run this company on principles of sustainability. There are certain steps we need to take in the next couple of years in order to see the changes that will need to be in place ten and fifteen years from now. It is really an honor to work with many of those people who are out there today.

I cannot say that exists in all the companies right now, but it is certainly the model that I think is getting out there, whether they are working with ICCR members or other partners who are concerned about these issues.

RABBI LIEBLING: I want to add one thing to Pat before we throw it open to questions.

I think that, as Pat said earlier, corporate dialogue is probably the way we are most effective in bringing about change. Face-to-face meetings with other human beings change things, and I think that many times the people on the corporate side are very appreciative that ICCR has brought these concerns up because it allows them many times to make the changes that they do really want to make.

We have to remember that there are human beings who populate the corporate world making these decisions, and many of them make decisions because of what they perceive as the bottom line, and they are frequently open and grateful if somebody can show them that acting in an ethical way will improve the bottom line. And it gives them the arguments to bring further up the chain of how to change company policy for reasons that are both financial and ethical.

MS. DALY: I have even had a CEO say to me, "I really welcome this shareholder resolution because this is going to give me support within the company for doing the things that we need to do here."

Should we have some conversation around this?

QUESTION: Rabbi Liebling, you mentioned microcredit. Are you also interested in microfinance? As far as microcredit is concerned, which type of model? Are you affiliated with [inaudible] bank type?

Second, are you also — not imposing, but suggesting — to your companies standards, such as SA-8000?

And, Rabbi Liebling, you mentioned that justice is the basic value which guides your decision. But the question, which is a bit subtle, I realize, could be the following. As we know, the concept of justice is clear to everybody. But as you know, there are many different theories

of justice. For instance, one could be utilitarian and could interpret justice along utilitarian lines. Another one could follow neo-contractualism by John Rawls, and then you would interpret justice in practice in a particular way, according to the leximen criterion, etc. Or you can have the other theory of justice according to the so-called theories of rights, such as Ronald Dworkin, a famous philosopher, lawyer, etc.

Now, in these cases, when you come to practical actual decisions, when you have to choose between different alternatives, and these alternatives have different meanings in terms of different theories of justice, how do you solve this problem among yourselves? That would be very interesting to me.

RABBI LIEBLING: It sure would be.

MS. DALY: Back in the 1970s, as we reflected on our work together, we realized that we were in primarily an adversarial role and we were critiques of corporations. We wanted to also put our money where our mouths were and also invest in some of the other models.

So over the years, our institutions have put aside money and have tried to look at our whole portfolio and identify the percentages that would go into whether it would be alternative investing, community-developing investing, and so there are a variety of models.

Our Tri-State Coalition for Responsible Investment founded the Leviticus Fund, which is based here in New York, and finances small projects, businesses, with the theme in the last ten years of day care and housing here in the northeast. Obviously, there are other models internationally.

For the most part, unless you are working with a huge pension fund — my Sisters, we have a few million dollars, the Dominican Sisters of Caldwell. The United Methodists are probably working — what did they have, $12 billion?

RABBI LIEBLING: Yes.

MS. DALY: We come with really different portfolios. They would have the ability to vet a number of projects that our own Sisters would not, so we would typically use an intermediary.

Your second question, when we are working on some standards, we do have these global principles. There is also the GRI model that is out there and others that you had mentioned, some environmental standards.

It just means like a 100-page survey sometimes.

The key for us would be third-party verification. We can come to an agreement on what is the appropriate model or the appropriate vehicle to really evaluate the behavior and the standards within the company.

RABBI LIEBLING: All I can say is thank God we do not have to have academic debates about justice in our work. The truth is we have not had discussions like that. For the most part, ICCR works as a federation rather than a univocal organization.

Any member institution is free to put forth a resolution and then invite other institutions to be co-filers with them on their resolution. If the resolution falls within the general framework of ICCR, then ICCR will devote staff time to it to help support the resolution.

But sometimes a member will propose a resolution that nobody else particularly agrees with. They have the right to propose that resolution. ICCR as an entity will not devote staff time to it, but they are free to propose that.

So our federated system gives us the luxury of not having to work out the fine details of what theory of justice we are operating under.

MS. DALY: We work on the issues we can work on in communion. That is what we do.

QUESTION: Pat, I am familiar with most of the issues that you are involved in, but I am not familiar with the HIV/AIDS advocacy. Would you elaborate a little bit on that and what you are asking the companies to do and what position you are taking?

RABBI LIEBLING: I will start and then Pat can go.

The majority of the HIV shareholder resolutions that are being proposed this year are being proposed to companies like Coke, Pepsi, Caterpillar, that have large work forces in southern Africa.

One of the difficulties of the HIV/AIDS pandemic is that culturally people do not want to get tested, testing is considered a taboo. If the employer would institute testing, that would remove the cultural taboo in many cases and would go a long way towards beginning preventive strategies. If the employers would begin to take measures educating their work forces about HIV/AIDS, it would also go a long way towards changing things.

So these shareholder resolutions are all transparency resolutions, meaning they are asking the company, "What are you doing with your

work force relative to the HIV/AIDS issue? Please prepare a report in six months or a year to let us know what steps you are taking to ensure that our company will have a healthy and available work force in the future." That is the bulk of the HIV/AIDS resolutions this year.

MS. DALY: We started a couple of years ago primarily working with the pharmaceutical companies on getting access, availability of drugs into Africa. Obviously, these are serious cultural issues. The issue of confidentiality is critical in these programs. The dependents — you know, "family" is a relative term in many cases. The question would be in some communities you would need to make sure that a number of wives are covered by insurance and have availability. There are all kinds of intricacies in our dialogue.

I would say that in every company that has received a resolution, there is an active dialogue going on regarding this right now. Some problems in terms of really having companies get their heads around this. Others have taken this on and really want to be in the forefront of how U.S. corporations are responding to this pandemic.

QUESTIONER: I ask it really too because our company had at one point huge operations in southern Africa with, if memory serves me, about 40 percent HIV-positive and 20 percent full-blown AIDS. It was a terrible, terrible problem to deal with.

MS. DALY: The understanding is that this will have long-term effects on the business of the company, in terms of whether it is a product availability — I mean, this is really shifting the whole economic arena throughout the continent.

QUESTION: I think we would all like to believe that, as you say, ethical business practices enhance the bottom line. In business ethics, people use the phrase "doing well by doing good." I suspect, in the majority of cases, it is in fact true that ethical practices enhance the bottom line. But I was wondering if you have encountered situations in which the right thing to do would actually be something that is counterproductive to the bottom line of the corporation, and what happens if you encounter that situation?

I suppose as investors that is something you never deal with because you would not be investing in a company for which that is true. But I was wondering if you ever faced a situation in which it is actually not in someone's self-interest to do the right thing, which is really when

ethics has some bite, right? If it is in your interest to do good, then that is easy, you should do good because it will benefit you. But ethics becomes really hard when it is not in your self-interest to do the right thing.

MS. DALY: Do you know a situation?

QUESTIONER: No. You are much more involved in this on the ground level than I am. I am curious if you see this.

MS. DALY: The comment I made before about the long-term health of economic viability, not only for the company but for economic systems, obviously needs to bring us beyond hitting the numbers for this quarter.

I will give you an example. I have been working for many years with the issue of cleaning up the Hudson River and General Electric's responsibility there. One might offer that certainly this company would have to continue to fight this because it is going to cost them a good chunk of money. We are asking right now as shareholders to tell us how much it has already cost in trying to delay the cleanup. When you have spent thirty years trying to get out of a liability, obviously that is an issue.

I know at one meeting around the design of the cleanup there were twenty-seven employees, mostly attorneys, at that meeting just a few weeks ago. I mean, this is a serious economic hit. One would say in the long-term interest of the company, "You know, this is what you have been asked to do. Do it, even if it is going to be a hit in this quarter or in this year." And certainly when you are talking about one of the largest capitalized companies in the world, you are talking about profits for about a week and a half.

RABBI LIEBLING: I was not part of these negotiations, but an example that comes to mind is a year or two ago, Citibank bought a sub-prime lender. A sub-prime lender is somebody who lends money to people at outrageous rates. Shareholders of Citibank met with Citibank. And clearly it would affect Citibank's bottom line; they would make less money if they were not involved in sub-prime lending.

And, after a series of dialogues, Citibank agreed to a set of guidelines that would seriously reduce the amount of sub-prime lending that this company did. They did it for reputational reasons and for ethical reasons, but it was a hit to the bottom line.

MS. DALY: While you are moving the microphone around the

room, I will just give you this other resource too. This is our new proxy resolutions book. It is the publication. We have 199 shareholder resolutions before seventy-six companies this year. Again, it is available at iccr.org.

QUESTION: How do you work with companies from the point of view of investing? Let's say you have a biotech company, it is public, but it is rather young, let's say it is a few years old, and they are doing work in gene therapy, gene splicing, that sort of thing. The bulk of their laboratories are involved in various areas, but they have one small laboratory that is looking at genetically modified foods. Would you fail to recommend that company to be invested in?

MS. DALY: I would say our members have social screens, so each of our members — at this point, I do not know of any of our members with a screen that would set aside biotech, although that is a discussion right now.

RABBI LIEBLING: Let me clarify something. ICCR does not make investment recommendations to its members. Every institution develops its own screens. There is no common screen. There are 275 institutions. There are probably 275 different screens. Every institution, as I said, is autonomous, develops its own screens, will decide what to invest in and what not.

Some institutions are very careful about where they put their money. Some institutions say, "I do not believe in socially responsible investing screens. Shareholder activism is what is important. That is what really makes changes and screened investment does not make changes."

ICCR as an institution takes no position on that. All we do is work with institutions that want to be involved in shareholder activism.

MS. DALY: Thank you, Rabbi Liebling. I was going down a very complicated road. You simplified it.

QUESTIONER: Can I ask another question? What about the transparency of the institutions? In other words, are you making pressure for reducing the isometric information between citizen institutions? I think transparency is a big issue in your field of activity.

RABBI LIEBLING: Absolutely, that is right.

MS. DALY: Certainly since Enron had such an effect on the climate of investments in the United States and internationally, I believe

that more and more shareholders, institutional and personal shareholders, see the very critical need for disclosure and transparency from companies, as well as the fact that the accountability of boards of directors is not a token accountability, that they clearly need to be representing shareholders and not be the buddies of executives.

RABBI LIEBLING: Let me give you a brief history, if I may. Up until really the last couple of years, there were two fairly separate strands of the shareholder activist movement in the United States. There was ICCR, which really represented the social justice wing of the shareholder activist movement, and then a much larger movement was focused on corporate governance. So let's say in a typical year ICCR members would put forth 150 or 200 resolutions; the corporate governance world might be putting forth 400 or 500 resolutions.

Since Enron, etc., those two movements are now working in much more cooperation and coalition with each other. It is the corporate governance wing of shareholder activism that has been much more focused on transparency, election of boards of directors, CEO pay, all of those very important governance issues.

ICCR is now doing more of that and there is a lot more cross-fertilization between those two branches of shareholder activism to focus more on transparency issues, because I would say that we have learned how important transparency issues are and issues of CEO pay and boards of directors are to impact the justice issues.

MS. UELMEN: Thank you so much for this wonderful discussion.

We will move immediately — we thought to spend just the last half-hour with a little bit of time for a kind of more thematic discussion of the overarching themes and to continue the back-and-forth and putting forward ideas which have emerged throughout the day.

To facilitate that discussion we have Professor Bob Hurley, who is from Fordham's Graduate School of Business Administration. I will turn it over to Bob.

FINAL DISCUSSION

MODERATOR:

Robert Hurley
Professor, Fordham University

PROF. HURLEY:[1] A very stimulating day, wouldn't you say?

I was taking notes. One of the most exciting things about being in the academy is the stimulation of ideas, and we certainly heard a lot of that today. I am going to just go through a few highlights and then throw it out to the group for discussion.

We learned from Dean Sargent that individual moral priorities are disappearing, leading to moral indifference. We learned about the power of bureaucracy, and the compelling need to conform and be accepted can be a danger. We also learned about pressure, ambition, and unguided pragmatism.[2]

We learned from Brad Wendel that Christianity is a radical and subversive enterprise — and I would add, only if practiced well. We also learned that perhaps the question is that we need to learn how to craft non-religious, widely shared reasons for coercive control of behavior.[3]

We learned from Steve Resnicoff that there is really only one conscience, not two; not the individual and the corporate — but that there is only one — which requires courage.[4]

We learned from Professor Zamagni that there is a micro view of this whole thing and that companies appear to want to be more socially

1. Robert Hurley is a Professor of Management Systems at the Fordham University Graduate School of Business Management. Additionally, Professor Hurley is a widely published authority in the business and marketing fields.

2. Sargent, *supra* Panel One: Does Corporate Decision Making Allow Room for Religious Values?

3. Wendel, *id.*

4. Resnicoff, *id.*

responsible about the demise of Taylorism, about the rise of the knowledge worker, and the need to use human reciprocity to motivate and to lead to cooperative ventures. We have also learned in that session that religious values can actually be compatible with corporate success, and about the importance of fraternity.[5]

We learned from Joe Geoghan, Michael Naughton, Talat Ansari and Charles Clark that corporations do have integrity.[6] We learned that happiness requires participation and we need to move from division to integration.[7]

We learned from Amy Uelmen and Professor Bruni that there is an Economy of Communion and that public happiness requires fraternity, again compatibility between religious values and economic success.[8] We also learned that entrepreneurship, which is central to wealth and enterprise, is a person on a mission, a person with passion, which goes again back to the individual, and what probably Keynes would describe as the animal instincts of creation.[9]

We learned from Pat Daly and Rabbi Liebling the incredible power of like-minded individuals and that we are owners, not investors.[10]

In summarizing those interesting and compelling ideas, let me throw out to the audience the following question: What were the most compelling insights for you from the day?

PARTICIPANT: I think that whenever I want to really understand modern society, I try to find someone from the third or fourth century. One of the greatest critics of wealth, the creation and accumulation and all that goes with it, was St. John of Antioch's Christendom. He was not in favor of massive or forced redistribution. He said it was important to change the minds and the hearts of those who had accumulated wealth,

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5. Zamagni, *supra* Keynote Address: Religious Values and Corporate Decision Making: An Economist's Perspective.

6. Ansari, Clarke, Geoghan, Naughton, *supra* Panel Two: Managing As If Faith Matters.

7. *Id.*

8. Amy Uelmen and Luigino Bruni, *infra* Religious Values and Corporate Decision Making: The Economy of Communion Project.

9. John Maynard Keynes (1883-1946) was a prolific writer and key figure in the field of economics. Keynes viewed the economy as a contest between the "hoarding" instinct (instinct to save and look for conservative investments) and the entrepreneurial instinct or "animal spirits."

10. Daly, Rabbi Liebling, *supra* Panel Three: Viable Models: Shareholder Resolutions.

which he argued either was through fraud on their part or their parents' or grandparents'. Somewhere along the line he always thought that it was based on an injustice — and in his society it was probably more true than not true that that would be the case — but that it is important to change the minds and the hearts of those who have this power.

I think one of the themes of this whole discussion, especially the last panel and what they do, is trying to change the minds and the hearts and to treat the people who work in the corporations as much as persons as the poor people that we frequently advocate for.

When John Paul talks about the preferential options for the poor and others, a lot of rich people said, "This is great."[11] But what he really meant is that we are all equally persons and we all have to have the same dignity, and we do not want to exclude anyone.

I think that this approach is very much in tune with what the tradition for 2,000 years has been saying, and I was very encouraged.

PROF. HURLEY: Other insights, comments, from the themes?

Let me ask a slightly different question. What are the implications for action or where we go forward in terms of religion and corporate decision-making, corporate life and religious life? Any thoughts about where we ought to go in the future of where this is headed?

PARTICIPANT: I think the implications for looking at what the ethical language is for Muslims, Christians, Jews, Buddhists, Hindus are profound. This is especially true given the globalization realities that we are dealing with, and the fact that money is something that passes through everybody's hands.

PROF. HURLEY: A common currency.

PARTICIPANT: So it does come down to the common language of economics. Economics does not articulate ethical principles as clearly as religious language, and so ecumenical dialogue becomes a very important commodity. It is important in order to start to realize the importance of defining justice, of defining right relationship among peoples and right relationship among a creator, whatever that might mean in particular. And so it really does have global implications, financial implications, and I think human implications.

PROF. HURLEY: Interesting.

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11. POPE JOHN PAUL II, GENERAL AUDIENCE (Oct. 27, 1999), http://www.vatican.va/holy_father/john_paul_ii/audiences/1999/documents/hf_jp-ii_aud_27101999_en.html.

As you were saying that, I was thinking of a religious economist and where he or she might publish. There probably are not too many disciplines where we combine the two, and perhaps that is part of our problem in developing the lexicon.

PARTICIPANT: When I first took a business ethics course, about twenty five years ago at Teachers College, I was the only person who could talk to the professors in any language outside of utilitarianism.[12] When I was bringing up questions to the business people outside of utilitarianism, they thought I was crazy and radical.

PROF. HURLEY: Which was true, right?

PARTICIPANT: I do not think that has changed. I think it has grown even more critical, and that is truly unfortunate. Ethics is no longer ethics, it is now PR. When ethics becomes public relations and marketing tools, then everybody is diminished tremendously in terms of the quality of life.

PROF. HURLEY: Interesting. Yes?

PARTICIPANT: In terms of the issue of religious values in the corporation, my sense is that there is a consensus at the end of the day that there is a role for religious values in decision-making in a corporation, but there is not a consensus on where those values should be placed and how they should be employed.

I think there are two distinct avenues: one being the inculcation into the corporate entity itself of some kind of religious orientation or value system or faith tradition; the second is further strengthening the ability of the people who run the corporation and the people in the mid-management of the corporation to use their own faith value systems to accomplish potentially the same goal, but not be the corporate entity itself. The distinction is an important one, because I think basically the corporation is a civil body, it is like a state in a sense. It is secular in nature.

I think that by way of further action there needs to be continued dialogue within the academic community as to how to bridge that apparent difference between trying to further inculcate religious values into the corporate entity, as opposed to strengthening the ability of the managers to bring their own religious value system to decision-making.

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12. Utilitarianism holds that actions are good in proportion to the amount of happiness produced and number of people happiness is produced in. *See* JOHN STEWART MILL, UTILITARIANISM (1861).

PROF. HURLEY: Interesting. That requires leaders shaping cultures to allow those kinds of conversations to happen, and that is a difficult process.

PARTICIPANT: I would just like to say that as someone who has neither studied economics nor law, something that Professor Bruni said I think holds true for the whole event today, that it comes from life.[13]

There are a lot of things we talked about today. We find trouble with the language of trying to transpose ideas from religion to economics, or back and forth, or just getting ideas even between different religions or between different people. The strongest tool we have is the life, and that is similar to words like fraternity and reciprocity, even though we may have different ideas of what they are, if we live them together, then we will get to those answers. That is why dialogue is such an important thing.

It does not mean that we need to know the answers right now. The theory and the talking about it can help. If we go back to our corporations, go back to our academic institutions, and we try to live with the values and try to experiment with the values and try to treat people properly, then I think little changes happen. I think individuals do make ripples, and this can be an example of it.

PROF. HURLEY: That is a great example.

If you look at the literature on organizational learning and organizational change, what essentially happens is individuals have dialogue with other individuals, which come to groups and groups have dialogues, and then it sort of bubbles up, and it can affect institutional change. So I think dialogue is absolutely right.

Pat?

MS. DALY: To your point of what is next, later this year there will be an initiative that will be announced, kind of a pilot program, which initially came from ARC, the Alliance of Religions and Conservation. It is a group that has its headquarters in Manchester, England.[14] In the past — I guess it was sometime in October — the World Bank actually published their book on "Faith and Conservation."

Now, the people who have been involved in ARC are launching what is referred to as the IIIG, the International Interfaith Investment

13. Uelmen & Bruni, *supra* note 8.

14. For more information on the Alliance of Religions and Conservation, visit ARC http://www.arcworld.org (last visited Mar. 1, 2006).

Group, gathering the ten major faiths of the planet.[15] Part of it will be picked up using ICCR as a bit of the model, but it will be not just a resource but also it will be an investment arm. This resource will hopefully, over the years, impact on a local level as well as an international level when one has major money invested and pooled from all of the faith traditions. So watch for that.

PROF. HURLEY: You heard it here - breaking news.

Other thoughts, comments?

PROF. ZAMAGNI: Thank you. Two remarks.

The first one — and perhaps that was the answer to your first question — what I most liked today in this laboratory experiment is the trans-disciplinary approach. That is something that we academics are missing particularly in this time. Usually we talk only among our, let's say, clones. Our seminars are made of people not only economists, because economics is too late, and discuss micro or macro economics for international trade, but within that we discuss only with those colleagues who are working exactly on the same thing.

That is a major problem, because universities were not created right from the beginning for that purpose. The word itself, university, means convergence towards the unity of knowledge. To converge towards the unity of knowledge we need to be trans-disciplinary.

So the idea of putting together a professor of law, a professor of economics, non-professors but people who can teach and can explain part of their experience, I found it very important, very interesting. So I hope that Fordham University might continue this.

On the other hand, to answer your second question about action, now there is a risk these days as I perceive it, in this time, as far as the corporate social responsibility discourse is going on. The risk is the following.

As perhaps some of you know, we belong to the old continent. The European Union has started two years ago publishing the Green Book on Corporate Social Responsibility.[16] We know that it is going to take some measures at the level of the European Union, which includes twenty-five countries.[17] In a couple of months, as we know, the

15. For more information on the International Interfaith Investment Group, visit 3iG, http://www.3ignet.org/ (last visited Mar. 1, 2006).

16. For more information on the European Union's green papers, visit EUROPA, http://www.europa.eu.int (last visited Mar. 1, 2006).

17. For more information on the member and candidate states of the European

European Union will give guidelines to the various corporations working within the European Union.[18]

So what is the risk? The risk is that corporate social responsibility might become a new terrain, a new field, a new battle. In the past, the battle was on commodities. Commercial trade meant that the country or those countries who were better equipped and were more efficient, could gain ground.

Now the risk is that this type of battle is transferred from the commodity or service field into corporate social responsibility, which means ethics. So perhaps something should be done coming from experiences of this type, etc., because that would be in my opinion a disaster, namely because that would mean that ethics would be transformed into a new type of implicit competition.

As far as I know, in this part of the world, North America, the United States and Canada, they are not following the same track as the European Union as far as that goes. So suppose that next year the European Union fixes the guidelines of corporate social responsibility, and here in this part of the world, or in China and Japan, nothing. What is going to happen to international trade? I mean, these are really very serious problems.

Perhaps — who knows? Fordham University might propose something. Amy could.

PROF. HURLEY: Amy will solve that.

PROF. BRUNI: Thank you. I would just add something to what Professor Zamagni said.

My first impression of this day was we are coming from a country where now the picture that comes of the USA is not the picture that we discovered today here. The idea of corporate responsibility, that for me was a very, very big discovery, to know that there are people looking for something new, even in Manhattan, in New York, in Fordham.

At this particular moment of time, in Europe the picture that we have is very different. That for me was personal — I knew, but it touched directly.

Secondly, as a proposal, I think as people interested in keeping

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Union, visit EUROPA, http://europa.eu.int/abc/governments/index_en.htm (last visited Mar. 1, 2006).

18. For more information on the area of Corporate Social Responsibility in the European Union, visit CSR, http://www.europa.eu.int/comm/employment_social/soc-dial/csr/index.htm (last visited Mar. 1, 2006).

religious values within economics, economic life, I think in my opinion one peculiar characteristic of people who have the gift of faith is the value of intrinsic motivational action. Today the great debate is: how is it possible to have non-instrumental motivation, because everything can be represented as a sort of need for an individual?

I think religious people are people who can create and can be a sort of spring of intrinsic motivation even in business, in market interaction. I think this is a great service to humankind because everybody needs intrinsic motivation, and also because it is very difficult to create exogenously in market interaction. I think this is an important role of the religious values.

PROF. HURLEY: It is interesting. My area of research is in leadership, and in leadership a hot topic these days is emotional intelligence in leadership. Emotional intelligence really gets at the question of how do you inspire people, and empathy, and how do you get below the surface, which is also connected to this idea of humanity and community. And so it can be tied together in terms of leadership.

That gets right at the heart of intrinsic motivation. How do you connect people's interests? One of the best definitions of leadership I have come across was by Robert Hogan, who is a psychologist. He said that what good leaders really do is they get people to temporarily suspend their individual interests for the common good, which is someone giving something up for some reason, such as fraternity, community, or something larger than oneself.[19] This is inspiring.

So perhaps a way out of this problem is leadership, and more of it, and maybe perhaps different kinds of leadership.

MS. UELMEN: And perhaps they might ultimately discover that it is in their individual interest to then enter into that dimension.

I would just like to add if you have any looming questions or a sense of what are the open areas to explore, I personally am all ears, because this is a conversation that we would like to continue, perhaps in a workshop forum. We are open to ideas or suggestions for the format as well.

For those who have CLE, there was an evaluation sheet. But even if you did not get Continuing Legal Education, if you would like, you may jot down a few notes on the evaluation and your ideas and thoughts

19. *See generally* Robert Hogan, Gordon Curphy & Joyce Hogan, *What We Know About Leadership*, AMERICAN PSYCHOLOGIST, June 1994.

for how to continue this conversation.

Again, thank you so much to all of you who have helped to make this day a success. We will end with a very simple reception out in the Atrium, cheese and crackers, basically as a way to continue the conversation. Thank you again to all of you for coming and all who have contributed today.

[Adjournment: 4:00 p.m.]