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Religion in the Workplace: Mediating Religion's Good, Bad and Ugly Naturally

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RELIGION IN THE WORKPLACE: MEDIATING RELIGION'S GOOD, BAD AND UGLY NATURALLY

TIMOTHY L. FORT*

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I. INTRODUCTION

Several years ago when I was writing an article about Supreme Court church-state jurisprudence, a judge on a United States Circuit Court asked incredulously if I thought I could make sense of it. Indeed, the second half of the twentieth century regularly witnesses bewildering litigation over religion's proper role in a constitutional democracy.[1] The product of this litigation is immense, confusing and contentious.

Many reasons explain this jurisprudence, among them being the difficulty in balancing a moral system strongly influenced by a religious history with a tremendously diverse population with rights to individual expression of religious belief, and the right to have no belief at all. However, as difficult as this subject may be in a diverse United States, even more problems appear when considering how global corporations can possibly deal with religious diversity in their worldwide operations.

1. With regard to United States Supreme Court cases in the last third of the twentieth century alone, see, for example, Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1992); Lee v. Weisman, 505 U.S. 577 (1992); Board of Educ. v. Mergens, 496 U.S. 226 (1990); Employment Div. v. Smith, 494 U.S. 872 (1990); Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989); Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989); Bowen v. Kendrick, 487 U.S. 589 (1988); Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987); Edwards v. Aguillard, 482 U.S. 578 (1987); Witters v. Washington Dept. of Servs. for the Blind, 474 U.S. 481 (1986); Aguilar v. Felton, 473 U.S. 402 (1985); School Dist. v. Ball, 473 U.S. 373 (1985); Wallace v. Jaffree, 472 U.S. 38 (1985); Marsh v. Chambers, 463 U.S. 783 (1983); Mueller v. Allen, 463 U.S. 388 (1983); Larson v. Valente, 456 U.S. 228 (1982); Widmar v. Vincent, 454 U.S. 263 (1981); Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707 (1981); Wolman v. Walter, 433 U.S. 229 (1977); Meek v. Pittenger, 421 U.S. 349 (1975); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973); Lemon v. Kurtzman, 403 U.S. 602 (1971); Welsh v. United States, 398 U.S. 333 (1970); Walz v. Tax Comm'n, 397 U.S. 664 (1970); Epperson v. Arkansas, 393 U.S. 97 (1968).

A. *Religion, Ethics and Business: A Volatile Mix*

This complex issue becomes more difficult when considering the calls being made for businesses of all sizes to be more ethical.[2] This call has resulted in a new academic field of "business ethics," federal legislation (the "Federal Sentencing Guidelines") that imposes significant penalties on businesses that fail to adopt ethical compliance programs,[3] state "corporate constituency statutes" that allow managers to make corporate decisions for the benefit of non-shareholder stakeholders[4] and international corporate codes of conduct ranging from the Sullivan Principles[5] to the Caux Roundtable[6] and other codes created by treaty.[7] As controversial as such approaches may be,[8] their level

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2. These calls have resulted in the development of a nearly entirely new academic field of business ethics, new courses in business school curricula, and increasing numbers of corporate codes of conduct.

3. *See* U.S. SENTENCING GUIDELINES MANUAL §§ 8A1.1-8E1.3 (1995).

4. *See* FLA. STAT. ANN. § 607.0830 (West 1993); HAW. REV. STAT. ANN. § 415-35(b) (Michie 1993); IDAHO CODE ANN. § 30-1702 (Michie 1996); 805 ILL. COMP. STAT. ANN. 5/8.85 (West 1993); IND. CODE ANN. § 23-1-35-1 (West 1989); IOWA CODE § 491.101B (1991); LA. REV. STAT. ANN. § 12:92(G) (West 1994); ME. REV. STAT. ANN. tit. 13-A, § 716 (West 1981); MASS. GEN. LAWS ANN. ch. 156B, § 65 (West 1992); MINN. STAT. ANN. § 302A.251(5) (West 1985); MISS. CODE ANN. § 79-4-8.30 (1992); MO. REV. STAT. § 351.347 (1991); N.M. STAT. ANN. § 53-11-35(D) (Michie 1992); OHIO REV. CODE ANN. § 1701.59(E) (Anderson 1992); OR. REV. STAT. § 60.357(5) (1996); 15 PA. CONS. STAT. § 1715 (1995); R.I. GEN. LAWS § 7-5.2-8 (1996); S.D. CODIFIED LAWS ANN. § 47-33-4 (1997); WIS. STAT. § 180.0827 (1992); WYO. STAT. § 17-16-830(e) (1995).

5. The Sullivan Principles, a set of principles announced March 1, 1977 by Rev. Leon Sullivan, a black civil rights leader and member of the Board of Directors of General Motors, were a voluntary employment code implemented to combat racism and end apartheid in South Africa.

6. *See, e.g., The Caux Round Table Principles for Business,* BUS. ETHICS, May-June 1995, at 26, 26-27.

7. *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222; Final Act of the Conference on Security and Co-Operation in Europe, Aug. 1, 1975, 14 I.L.M. 1292; International Labor Organization: Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Nov. 16, 1977, 17 I.L.M. 422; Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, June 21, 1976, 15 I.L.M. 967; Draft United Nations Code of Conduct on Transnational Corporations, June 2, 1983, 23 I.L.M. 626; United Nations Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, at 71, U.N. Doc. A/810 (1948). For an analysis of these accords, see William C. Frederick, *The Moral Authority of Transnational Corporate Codes,* 10 J. BUS. ETHICS 165 (1991). *See also* Steven Salbu, *True Codes Versus Voluntary Codes of Ethics in International Markets: Towards the Preservation of Colloquy in Emerging Global Communities,* 15 U. PA. J. INT'L BUS. L. 327 (1994).

8. For commentary on the constituency statutes, see Thomas J. Baumonte, *The Meaning of the "Corporate Constituency" Provision of the Illinois*

of complexity escalates when one considers that ethical "codes" of behavior often arise from religious traditions and that differences between religious traditions have a significant amount of blood-spilling in their histories. Thus, a manager who responds to calls for ethical business behavior must consider how to do so when the content of any such behavior may touch upon and perhaps gravely offend those who work for the company.

Take the following as an example. Several years ago, my MBA ethics class developed a hypothetical drug testing policy. The class decided to allow drug testing upon entry to the company, and thereafter on a random basis. To protect against "false positives," any person testing positive would be re-tested prior to any further action. If the person tested positive again, the company would offer a substance abuse rehabilitation program at the company's expense. While the employee was placed on probation, she would be fired only if she dropped out of the program or tested positive again (subject to the "false positive" double-testing which would accompany any drug test).

One week later, a recently retired, deeply religious executive spoke to the class about business ethics. A student asked him what his drug testing policy would look like. The CEO repeated nearly verbatim the class's policy from the previous week (and he had no knowledge of that policy), except that he added three things.

Business Corporation Act, 27 LOY. U. CHI. L.J. 1 (1995); Joseph Biancalana, *Defining The Proper Corporate Constituency: Asking the Wrong Question,* 59 U. CIN. L. REV. 425 (1990); Walter M. Cabot, *The Free Market Promotes Long-Term Efficiency That Benefits All Shareholders,* 21 STETSON L. REV. 245 (1991); William J. Carney, *Does Defining Constituencies Matter?,* 59 U. CIN. L. REV. 385 (1990); John C. Coffee, Jr., *The Uncertain Case For Takeover Reform: An Essay on Stockholders, Stakeholders, and Bust-ups,* 1988 WIS. L. REV. 435, 437; Stephen Cohen, *Stakeholders and Consent,* 14 BUS. & PROF. ETHICS J. 3 (1996); Kenneth E. Goodpaster, *Business Ethics and Stakeholder Analysis,* 1 BUS. ETHICS Q. 53 (1991); James J. Hanks, Jr., *Playing With Fire: Nonshareholder Constituency Statutes in the 1990s,* 21 STETSON L. REV. 97, 111 (1991); Nell Minow, *Shareholders, Stakeholders and Boards of Directors,* 21 STETSON L. REV. 197 (1991); Lawrence A. Mitchell, *A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes,* 79 TEX. L. REV. 579 (1992); Eric W. Orts, *Beyond Shareholders: Interpreting Corporate Constituency Statutes,* 61 GEO. WASH. L. REV. 14 (1992); Edward D. Rodgers, *Striking the Wrong Balance: Constituency Statutes and Corporate Governance,* 21 PEPP. L. REV. 777 (1994); David Ruder, *Public Obligations of Private Corporations,* 114 U. PA. L. REV. 209 (1965); Gary von Stange, *Corporate Social Responsibility Through Constituency Statutes: Legend or Lie?,* 11 HOFSTRA LAB. L.J. 461 (1994); Steven M.H. Wallman, *The Proper Interpretation of Corporate Constituency Statutes and Formulation of Director Duties,* 25 CONN. L. REV. 681 (1993); Katherine Van Wezel Stone, *Employees as Stakeholders Under State Nonshareholder Constituency Statutes,* 21 STETSON L. REV. 45 (1991); Andrew C. Wicks et al., *A Feminist Reinterpretation of The Stakeholder Concept,* 4 BUS. ETHICS Q. 459 (1994).

First, he would not fire an employee even if the person failed the program or a subsequent test. Second, he, the CEO, would personally accompany the troubled employee to rehabilitation sessions if the employee so desired. Third, the reason for having this policy, the CEO said, was because as a Christian, he should take all steps necessary to help a neighbor in need. He substantiated this duty by quoting a series of biblical passages.

My students were angered by his comments, because he had justified his position on the basis of his religious beliefs, thereby "proving" that he was a "religious bigot." Although my students later thought that they may have been the ones practicing a form of prejudice, their reaction was a telling sign of the incendiary additive that religious belief brings to a debate, even in determining ethical business behavior.

B. *Delimitations of the Article and Preview of the Argument*

This paper proposes a beginning to ground ethical business practices in a way that is respectful to religions and which taps into the motivation to be ethical that religions provide. Such a goal is large, and for that reason some important issues must be kept peripheral and to a large extent neglected. More specifically, this paper does not pretend to be a paper about First Amendment issues in the workplace, although some discussion of such issues is necessary for limited illustrative purposes. Neither is this paper a comprehensive analysis of the Establishment Clause, although some of the lessons learned from this area of law will be explored as a resource for issues concerning "establishment" of religion in the workplace.

The article proposes an integration of religion into the workplace through three meanings of "natural law." Here again, natural law (in the traditional understanding of that term) scholars and those who use the laws of nature (such as evolutionary biologists) to explain behavior will find that I make incomplete forays into their fields (as well as a third field of "natural law" that will be more fully expanded in this paper). Much more is necessary for a complete "natural law" analysis than what is provided. The result of these three understandings of natural law is a concept known as Business as Mediating Institution ("BMI"). Here again, a fuller explanation of BMI is found elsewhere,[9] but this paper will sketch the contours of the concept to illustrate

9. *See, e.g.*, Timothy L. Fort, *The Corporation as Mediating Institution: An Efficacious Synthesis of Stakeholder Theory and Corporate Constituency Statutes*, 73 NOTRE DAME L. REV. 173 (1997); Timothy L. Fort, *Business as Mediating Institution*, 6 BUS. ETHICS Q. 149 (1996).

how it provides a model for corporate ethical behavior that is open to religious belief and spirituality.

C. *Thesis and Methodology*

Even with these delimitations, the thesis for this paper is large and can be stated as follows: Religious belief can be an important, legitimate, and even necessary element for corporate ethics, but because it can have negative consequences, religious inspiration must be tempered by a more basic, natural framework. This framework requires first, open communication among religious (and nonreligious) believers; second, participation by all employees in developing any codes of ethical business behavior; and third, offering secular reasons in addition to religious reasons for justifying ethical policies. Such a corporate construct can be provided when businesses are designed to be mediating institutions.

To support this thesis, the paper has four substantive sections responding to a specific question about religion in the workplace. First, is it appropriate to rely upon religious beliefs, at least in part, in implementing corporate codes of conduct and insisting upon ethical behavior in business? Section II, following this introduction, will argue that given the unlikelihood of any particular extant religious or nonreligious tradition commanding the assent of the world, any global business ethic must be open to a variety of religious positions. However, this business ethic should not exclude religion from commentary and involvement in public policy, including corporate policy. While this is true in liberal theory, it is even more illuminated by appealing to certain principles of traditional natural law.

Section III responds to the question of what dangers the principle-based approaches of philosophy and law pose to the implementation of ethical business practices. The answer to this question is likely to be counterintuitive, because it challenges the notion that the way to bridge differences among "comprehensive moral positions" (such as religious approaches) is in rational, carefully formulated philosophical or legal principles. Instead, it advocates a necessary, "spontaneous" element of any moral code of ethics that essentially eludes logical specificity. This is a spontaneous "natural law" necessary for ethical business behavior that may often have a religious dimension.

Section IV asks what "Good, Bad and Ugly" things happen when one introduces religion into the workplace. Scholars such as Laura Nash have persuasively demonstrated the efficacy of corporate ethics programs when executives are religiously moti-

vated. Other scholars, such as Terry Dworkin and Ellen Peirce caution that bad and even ugly harassment can occur when those in power have free reign to impose religion on workers. This section discusses constitutional developments in religious harassment cases as a means of illustrating the importance of utilizing a reasonable person standard and relates that standard to a third notion of natural law that is associated with the physical laws of nature.

Section V asks what kind of corporation could integrate religion, ethics and business in a respectful way. It proposes the BMI concept as a way to mediate the good, bad and ugly of religious involvement. The rationale for this concept lies in a blend of the three conceptions of natural law described in previous sections.

II. RELIGION'S LEGITIMACY IN CORPORATE LIFE

A. *The Reality of Religion in the Workplace*

Nearly every Establishment Clause scholar notes the overwhelmingly religious nature of the American people. However, they draw very different conclusions from this fact. A strict separationist like Kathleen Sullivan, for instance, argues that spiritual expression and commitment are fostered when government stays out of religion.[10] Thus, a high "wall of separation" between church and state helps religion.[11] Scholars such as Michael McConnell draw the opposite conclusion. For him, the religious orientation of the American people is both a current reality and an historically significant context that requires a lower wall between church-state interaction.[12] Putting to the side which interpretation is more accurate, the point is that there is a strong consensus that this country has a strong religious orientation. Polls regularly substantiate this as well.[13]

A second question is whether this orientation is deep or superficial.[14] Relatedly, some have asked whether being religious makes any difference to one's behavior, particularly in busi-

10. *See* Kathleen M. Sullivan, *Religion and Liberal Democracy,* 59 U. CHI. L. REV. 195, 204-06 (1992).

11. *See id.* at 208.

12. *See* Michael W. McConnell, *The Origins and Historical Understandings of Free Exercise of Religion,* 103 HARV. L. REV. 1409, 1511-13 (1990).

13. *See* Richard N. Ostling, *In So Many Gods We Trust,* TIME, Jan. 30, 1995, at 72, *cited in* Michael J. Perry, *Religion in Politics,* 29 U.C. DAVIS L. REV. 729, 729 (1996) [hereinafter Perry, *Religion in Politics*]. Ostling reports that 95% of Americans believe in God and that 70% of American adults are members of a church or synagogue. *See id.*

14. *See generally* ROBERT WUTHNOW, GOD AND MAMMON IN AMERICA (1994).

ness.[15] Indeed, sociologist Robert Wuthnow argues that the evidence shows that it makes little difference to the actions that individuals take in business.[16] The prevailing optimal ethic, Wuthnow argues, is a sense of honesty interpreted subjectively by the individual person making a decision so that exceptions to when one must be honest are easily made.[17]

Thus, one can conclude that America's religious orientation makes little difference in business. One can also conclude that there is an implicit "wall of separation" between church and corporation that raises a bar to religious discourse about business issues. Three examples support this interpretation.

First, popular corporate theorist Tom Peters, in discussing spiritually oriented managerial practices, complains:

> [W]hen talk turns to the spiritual side of leadership, I mostly want to run. It should be enough if I work like hell, respect my peers, customers and suppliers, and perform with verve, imagination, efficiency and good humor. Please don't ask me to join the Gregorian Chant Club, too.[18]

This desire to keep corporation and church separate is also supported by a 1988 study indicating that business persons do not see clergy involvement as a helpful way to improve the ethical business climate.[19] Thus, evidence demonstrates a certain queasiness among business persons of the blending of religion and work.

Second, and more broadly speaking, First Amendment scholar William Marshall argues that there is a cultural separation of religion and public life that extends beyond governmental matters.[20] Religion, for Marshall, ought to be private, not public, because religion can be a dangerous additive to public discourse,[21] a claim to be discussed in depth later in this paper.[22]

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15. *See id.* at 198-221.

16. *See id.*

17. *See id.*

18. Tom Peters, *Business Leaders Should Be Spirited, Not Spiritual,* CHI. TRIB., Apr. 5, 1993, at 8.

19. *See* Peter Arlow & Thomas A. Ulrich, *A Longitudinal Study of Business School Graduates' Assessments of Business Ethics,* 7 J. BUS. ETHICS 295 (1988).

20. *See* William Marshall, *The Other Side of Religion,* 44 HASTINGS L.J. 843, 843-44 (1993).

21. *See id.* at 852-53.

22. *See infra* Section II.

Third, and more indirectly, Frederick Bird studied the reasons managers give for "doing the right thing" at work.[23] The primary conclusion he drew was that managers are often very reluctant to justify a decision on moral grounds for fear that they will appear "soft" or "weak."[24] In the rough and tumble corporate world, one needs to relate one's decisions to self-interest, not moral virtue.[25] If this is true, then it would seem likely that there is also a constraint against making an argument on the basis of "love of neighbor" or "mercy" or "peace" or "religious duty."

One is thus left in a situation in which there is an overwhelmingly religious nature to the American public, but one which is not expressed at the place where a good deal of our waking hours are spent.[26] But as Richard John Neuhaus writes, "[i]t is spiritually eviscerating that what millions of men and women do fifty or seventy hours of most every week is bracketed off from their understanding of their faith."[27] It is also odd that in a climate demanding ethical responsibility of business leaders, a source for understanding ethical obligation—religious tradition—is cordoned off from constructive dialogue. And if religious belief is to play a constructive role, how will it do so?

The following subsection makes an extended, but necessary, argument as to why and in what way religion can constructively be involved in workplace ethics.

B. *Three Approaches to Religion's Role in the Workplace*

Despite the tone of the previous subsection, to claim that religion has only recently begun to engage actively in questions

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23. Frederick B. Bird & James A. Waters, *The Moral Muteness of Managers*, *in* ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH 237 (Thomas Donaldson & Patricia Werhane eds., 5th ed. 1996).

24. *See id.* at 240-42.

25. *See id.* at 242.

26. *See* JULIET B. SCHOR, THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE (1991). I will not take up the debate spawned by Juliet Schor's book concerning whether Americans work more than workers have done in previous generations. The point is simply to recognize that a person who sleeps eight hours a day and works eight hours a day spends about half of the "work week" at work. For a good and concise summary of the debate about Schor's book, see Sue Shellenbarger, *Do We Need More Work or Not? Either Way We Feel Frazzled*, WALL ST. J., July 30, 1997, at B1. In it, Shellenbarger concludes that regardless of what methodology one accepts as best to determine the number of hours worked and their intensity, there is at least a perception among today's workers that they are, in fact, overworked and "frazzled."

27. RICHARD J. NEUHAUS, DOING WELL AND DOING GOOD: THE CHALLENGE TO THE CHRISTIAN CAPITALIST 62 (1992).

of business ethics is to make an absurd statement. Certainly, the religions of the world have made business affairs the subject of ethical analysis for thousands of years. For instance, in a recent issue of a prominent business ethics journal, Jewish ethicists Ronald M. Green,[28] Elliot N. Dorff[29] and Meir Tamari[30] all demonstrate the modern applicability of millennia-old religious principles to economics. Many clergy probably comment upon economic affairs in their weekly services today. Thus, one can hardly say that religious institutions and their leaders have been mute, although religious managers may have been quiet.

Nevertheless, Stewart Herman is on the mark when he writes that in the past ten years the emerging field of business ethics has not heard much from theologians.[31] Indeed, since Richard DeGeorge's seminal challenge that religion has little to teach philosophical business ethics,[32] theological contributions to the field of business ethics have struggled to emerge.[33]

Given this recent history, there is a concern as to whether religion ought to participate in prescribing normative behavior for business practices. The dimensions of this concern have been developed by those arguing about the proper role of religion in political matters. Thus, to explicate why religion should participate in developing moral business practices, it is worth recapping the salient features of the religion-political debate. In that debate, which is concerned with the morality, rather than the constitutionality, of relying upon religious belief in making political choices and in justifying those choices, one can identify (with only moderate oversimplification) three main positions. Part One describes the Strict Exclusionist view. Part Two describes two attempts at describing a moderate view. Part Three follows the writings of, to my mind, the most insightful and precise thinker in the field—Michael Perry—whose work places the issue of religion in public life in its most accurate formulation.

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28. *See* Ronald M. Green, *Guiding Principles of Jewish Business Ethics*, 7 BUS. ETHICS Q. 21 (1997).

29. *See* Elliot N. Dorff, *Judaism: Business and Privacy*, 7 BUS. ETHICS Q. 31 (1997).

30. *See* Meir Tamari, *The Challenge of Wealth: Jewish Business Ethics*, 7 BUS. ETHICS Q. 45 (1997).

31. *See generally* Stewart W. Herman, *Enlarging the Conversation*, 7 BUS. ETHICS Q. 5 (1997).

32. *See* Richard. T. DeGeorge, *Theological Ethics and Business Ethics*, 5 J. BUS. ETHICS 421 *passim* (1986).

33. This situation is hopefully (and thankfully) changing as evidenced in the March 1997 issue of *Business Ethics Quarterly* which is devoted to business ethics from the perspective of western religions. Many of the articles in that issue are cited herein.

1. The Strict Exclusionist Position

The Strict Exclusionist Position ("SEP") states that one should not rely upon religion, at least in terms of justifying one's position on religious grounds. Instead, one should rely on "shared values." This position has taken a variety of forms, but each essentially relies upon the development of a neutral set of moral principles generally excluding direct religious influence on public ethics.

Bruce Ackerman, for instance, attempts to derive what he termed "neutral" legitimate political argument through a three-step process. First, at any time when a person exercises power, he or she must present reasons explaining the exercise, and second, those reasons must be consistent with the reasons used to justify other uses of power.[34] Third, and most relevantly, some reasons should be excluded from public justifications of the use of power, and those justifications include religious ones.[35] The reason for excluding religious justifications is that religious reasons suggest that the power holder is "intrinsically superior" to others.[36] Instead of asserting moral superiority:

> whenever one citizen is confronted by another's question, he cannot suppress the questioner nor can he respond by appealing to (his understanding of) the moral truth; he must instead be prepared, in principle, to engage in a restrained dialogic effort to locate normative premises both sides find reasonable.[37]

The reason my students found the CEO in our class to be so threatening, I suspect, is not that they were horrified that religion had something to say about drug testing. Instead, it was a fear that a person with the power a CEO has could use such religious beliefs in ways that were troubling. Although there was no substantive distinction between his position on drug testing and that of the class, he offered no neutral principles to explain the exercise of his power. While my students seemed very quick—too quick—to stereotype him as a bigot because of his rationale, they emphasized an important problem: the exercise of power explained only by religious reasons can be very offensive in a pluralistic society.

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34. *See* BRUCE ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 7-8, 14 (1980).

35. *See id.* at 10-12.

36. *See id.* at 11.

37. Bruce Ackerman, *Why Dialogue?*, 86 J. PHIL. 5, 22 (1989).

Like Ackerman, Thomas Nagel attempts to create an "impartial" language.[38] Nagel argues that one should not attempt to coerce another person on grounds that person can reasonably reject.[39] The difficulty with relying upon religious belief to justify an exercise of power is that the listener is not able to share the religious believer's experience. The believer still has something that the listener does not have. By relying on impartial reasons, however, Nagel argues that one can eliminate this problem.[40]

The difficulty with this shared values approach is that it is both over- and under-inclusive. Michael Perry, for instance, has suggested that in many cases, individuals can appreciate experiences even when one party has not had a directly identical experience. He offers the example of a conversation between a drug user and the spouse of a drug user.[41] Neither would have a directly identical experience as the other, but they would probably be able to share a good deal of their experience. Likewise, it may well be true that a nonbeliever may strongly disagree with the believer's account of her experience, but it is not necessarily the case that constructive conversation cannot take place.

It may also be true that a person who claims that "God has told me to fire any nonbeliever working for me" will be unable to share fully that experience with the fired employee. But not all religious belief is so singularly revelational. A significant number of religious believers hold that their belief is rational in whole or in part. Even the CEO in my class, who offered no neutral or impartial principles, could be drawn into a dialogue of what is the best way to love one's neighbor. His religious belief did not dictate method, but direction and duty. Thus, the SEP school underincludes the ability of individuals to understand differing experience and overincludes all religious belief as belief that is inherently not shareable.

Moreover, it is a fact that many Americans do rely upon religious belief in making decisions that affect others. Michael Perry cites statistics showing that ninety-five percent of American adults profess belief in God[42] and seventy percent belong to a church

38. *See* Thomas Nagel, *Moral Conflict and Political Legitimacy*, 16 PHIL. & PUB. AFF. 215, 228-29 (1987).

39. *See id.* at 221.

40. *See id.* at 227.

41. *See* MICHAEL J. PERRY, LOVE AND POWER 12 (1991) [hereinafter PERRY, LOVE AND POWER].

42. *See* Perry, *Religion in Politics*, *supra* note 13, at 729 (citing Ostling, *supra* note 13, at 72).

or synagogue.[43] As Perry writes, the issue of religion in politics cannot possibly be marginal:

> If few Americans were religious believers, the issue of the proper role of religion in politics would probably be marginal to Americans politics. But most Americans are religious believers. Indeed the citizenry of the United States is one of the most religious—perhaps even the most religious—of the world's advanced democracies.[44]

When a person does have religious beliefs, one cannot simply compartmentalize them as "private." They are likely to become constitutive elements of a person's entire moral framework. This is why Richard Jones writes:

> Religion creates a framework providing meaning for a person's whole life. It is, therefore, unrealistic to hope to relegate religious faith to the realm of purely private opinion which should have no consequences for one's public action in particular. Religion does not govern only limited areas in the life of the religious—it is not reducible to something exclusively personal or private. Instead, religion is *comprehensive* in the sense that all aspects of one's life are related in one degree or another to this fundamental framework.[45]

Many scholars have made similar claims and have further noted the difficulty in relying upon religious reasons in public.[46] Because Jones is right to identify the unrealistic requirement to compartmentalize religious belief, some scholars have developed more moderate positions than that of the SEP position exemplified by Ackerman and Nagel.

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43. *See id.* (citing Book Note, *Religion and* Roe: *The Politics of Exclusion,* 108 HARV. L. REV. 495, 498 n.21 (1994) (reviewing ELIZABETH MENSCH & ALAN FREEMAN, THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE? (1993))).

44. *Id.*

45. Richard Jones, *Concerning Secularists' Proposed Restrictions of the Role of Religion in American Politics,* 8 BYU J. PUB. L. 343, 346 (1994).

46. *See, e.g.,* PETER BERGER, THE SACRED CANOPY (1967); STEPHEN L. CARTER, THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION (1993); RICHARD J. NEUHAUS, THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA (1984); A. JAMES REICHLEY, RELIGION IN AMERICA (1985); Larry Alexander, *Liberalism, Religion, and the Unity of Epistemology,* 30 SAN DIEGO L. REV. 763 (1993).

2. The Moderate Position

a. John Rawls and Overlapping Consensus

The moderate position takes two forms. In the first form, championed by John Rawls, religious belief is recognized as an important rationale for private individuals to make political choices.[47] In "background" structures such as churches and families, public reason is not necessary.[48] Rawls, in fact, goes further to recognize that any kind of comprehensive moral position can be important for individual judgment, but in the liberal democracy of the United States, one must create a "public reason" for moral discourse.[49] The United States, he argues, is too diverse to anchor its political judgments on religious or any other comprehensive moral ground.[50] Instead, one ought to derive a public reason from the overlaps found in the various comprehensive moral positions.[51] In making arguments in public, one should rely upon the reasons found in this "overlapping consensus."[52]

Rawls' position certainly gives more room for reliance upon religious belief in "mediating institutions"[53] than found in the SEP school. Nevertheless, there remains several problems with this kind of approach. First, public beliefs are still important to believers, so the arguments against the unrealistic requirement of compartmentalizing one's religious beliefs apply equally to Rawls' position.[54]

Second, one must ask what sustains the overlapping consensus. Religious statements can and have acted as a prophetic denunciation of the overlapping consensus then in existence. Martin Luther King, Jr.'s insistence on civil rights, for instance, was rooted in religious belief and justified in religious language. If one only admits established consensus to public debate, one diminishes the ability of any society to correct itself. Jurgen Habermas has argued that, "The metainstitution of language as tradition is evidently dependent in turn on social processes that are not reducible to normative relationships. Language is also a

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47. *See* JOHN RAWLS, POLITICAL LIBERALISM 215-16 (1993).

48. *See id.* at 14, 220.

49. *See id.* at 212-54.

50. *See id.* at xvi.

51. *See id.* at 133-72.

52. *See id.* at 240-47.

53. I will take up the concept of mediating institutions later in this paper. For a good overview of the importance of mediating institutions, see ROBERT A. NISBET, THE QUEST FOR COMMUNITY: A STUDY OF THE ETHICS OF ORDER AND FREEDOM (1952).

54. *See* PERRY, LOVE AND POWER, *supra* note 41, at 59-60.

medium of domination and social power; it serves to legitimate relations of organized force."[55]

The same holds true in business. Total Quality Management (TQM), for instance, was completely rejected in the United States after World War II.[56] It was not part of any sort of established consensus. Instead TQM theorists such as W. Edwards Deming and Joseph Juran found receptive ears in Japan.[57] It was only after U.S. manufacturing interests, particularly the automotive industry, were being consistently routed by Japanese companies practicing TQM that Americans invited TQM theorists back home. Adopting TQM strategies, including Deming's and Juran's insistence that TQM was a "new religion,"[58] then turned around many companies. The point is that the overlapping consensus eliminates self-correction when it insists upon arguments made within the language and thinking of the extant consensus.

Of course, Rawls' advice that one should use language that others can find acceptable does have strategic value. One may very well build political coalitions on this basis. But such a reason for excluding religion from public debate is different from determining whether it is fair to rely upon comprehensive beliefs. Because Rawls' position is still unrealistic and because it removes an important method of correction, his more moderate position fails for the same reasons that those of Ackerman and Nagel failed.

b. Kent Greenawalt and Accessible Rationales

A second scholar, Kent Greenawalt, has taken a position even more open to religion. In his moderate position, one may rely upon religion in making public justifications of one's moral

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55. Jurgen Habermas, *A Review of Gadamer's 'Truth and Method,' in* THE HERMENEUTIC TRADITION: FROM AST TO RICOUER 239 (Gayle L. Ormiston & Alan D. Schrift eds., 1990)

56. *See* Robert E. Cole, *Learning from the Japanese: Prospect and Pitfalls, in* QUALITY CIRCLES 28 (Roger W. Berger & David L. Shores eds., 1986).

57. *See id.* at 28-41.

58. MARY WALTON, THE DEMING MANAGEMENT METHOD 58 (1986). See also Joseph Juran, who said:

> [t]he starting point is the *attitude* that a breakthrough is both desirable and feasible. In human organizations, there is no change unless there is first an advocate of change. If someone does want a change, there is still a long hard road before change is achieved. But the first step on that road is someone's belief that a change — a breakthrough — is desirable and feasible. That a change is desirable is mainly an act of faith or belief.

JOSEPH M. JURAN, MANAGERIAL BREAKTHROUGH: A NEW CONCEPT OF THE MANAGER'S JOB 15 (1964).

positions, but should not do so in certain circumstances. Some of those circumstances include: 1) when one is influential, and 2) when the position amounts to an imposition. The heart of Greenawalt's argument is to recognize 1) that individuals can and should honestly rely upon what motivates their positions, but 2) that because religious justifications of public positions can cause social conflict, influential individuals ought to refrain from using such language, except as a last resort, even if hiding one's belief is somewhat deceptive.[59] Although he attempts to provide as basis for this distinction "accessible rationales," which he claims is different from "shared values," there is no meaningful difference between the two, as I have argued elsewhere.[60]

While his philosophical distinction is not compelling, his consequentialist argument is. Relying upon the work of William Marshall,[61] Greenawalt worries about the unrest that could result if influential individuals justified public positions on the basis of religious belief.[62] One reason that it could cause unrest is because of the notion that religion is essentially private and a decision of individual choice. In terms of business ethics, however, a person's ethical stance, religious or otherwise, is about the treatment of others and therefore can never be private. While belief is undoubtedly a matter of private conscience, the ethical duties derived from such beliefs are, at least to some degree, public. Thus decisions made about politics or business ethics can neither be compartmentalized nor private.

It is worth noting that Greenawalt includes business executives in his definition of who is influential.[63] Since business executives are in positions of power, the arguments I have provided regarding religion and politics are applicable to their reasons for how they conduct their businesses.[64] Since executives and general counsels often promulgate ethical codes, they possess the kind of influence that would worry Greenawalt. There are costs, then, to Greenawalt's position.

First, it would seem that the cost of becoming influential is to forfeit one's ability to rely upon religious belief. But, if one's influence is tied to religious belief, such as that of Martin Luther King, Jr., for instance, why should that influence suddenly

59. *See* KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS 139, 163 (1995).

60. *See* Timothy L. Fort, *Religious Belief, Corporate Leadership, and Business Ethics*, 33 AM. BUS. L.J. 451, 459-65 (1996).

61. *See* Marshall, *supra* note 20.

62. *See* GREENAWALT, *supra* note 59, at 70.

63. *See id.* at 160.

64. *See* Fort, *supra* note 60, at 469-71.

become illegitimate? Relatedly, of course, the determination of exactly when one becomes influential is problematic.[65]

Second, Greenawalt assumes, as does the SEP school, that many religious beliefs are essentially nonaccessible and should not be shared. But keeping important beliefs private can cause as much dissension, mistrust and hatred as can open dialogue. Greenawalt is wise to note the unrest religious belief can cause, but silence can do so as well. The only way to conduct such dialogue is to challenge the notion that religion is essentially private. As long as religious belief, and more importantly ethics derived from religious belief, is viewed as idiosyncratically personal, then dialogue itself becomes problematic. If religious belief is not simply private, then one can conduct debate about it.

In spite of these criticisms of any variation of the shared values approach, however, there is an inherent wisdom in requiring that normative positions be justified according to some kind of objective standard. The SEP school and Greenawalt do this by making the standard that of secular justification. But one can acknowledge the need for a standard that is not idiosyncratically personal without eliminating religious belief. This leads to a third school of thought.

3. Michael Perry's Inclusionist Position

a. Ecumenical Politics and Full Inclusionism

Michael Perry has adopted the position that requires debate among religions and among religious and nonreligious belief about normative goods. Perry once advocated a position not dissimilar to Greenawalt in which he argued that one could rely upon religious belief in making political decisions provided that one presented arguments that were accessible to others and as long as one acknowledged the possible fallibility of one's position.[66] Perry advocated an "ecumenical politics" in which religious beliefs were admissible rather than being relegated to the side because they were not "neutral."[67] Indeed, Perry's critiques of Ackerman, Nagel and Rawls are extensive and (more completely than provided herein) make the criticisms laid out to date in this article.[68] While admissible in public debate, however, Perry recognizes that the dialogue featured by his ecumenical politics required arguments that were accessible and a humility

65. *See id.* at 467.
66. *See* PERRY, LOVE AND POWER, *supra* note 41, at 66-82.
67. *See id.* at 23-28, 43-47.
68. *See id.* at 9-16.

about the fallibility of one's position.[69] As we have seen by the fact that he believes that individuals with similar but not identical experiences (a drug user and a spouse of a drug user) can "access" the other's experience, his view of accessibility is much broader than we have seen in Greenawalt's position, let alone those of Ackerman, Nagel and Rawls.

Perry relies more upon the sincerity and authentic good will of the speaker in presenting reasons than on the characterization of those reasons by the listener. Under the SEP schema, if a listener cannot comprehend the descriptions provided, then the position is not accessible and ought not be offered. Under Perry's schema, if the speaker thinks the reasons are reasonable and shareable, then one meets the accessibility standard.

In an interesting later article,[70] Perry scaled back his position to a degree. He argued that his position amounted to one which sought to advocate his kind of religion—one based on dialogue, accessibility and fallibilism—to the exclusion of religious beliefs that did not value such traits.[71] This leads to his full inclusivist position ("FIP"), in which he argued that a believer ought to justify her decisions on whatever sincerely motivated the position.[72] Not only does this position have the benefit of honesty, but Perry challenges several deeply held assumptions about the view of religion in politics that are important to understand. Two are particularly important.

First, Perry challenges the notion that by relying upon religious beliefs in justifying political choice, we risk social unrest. Religious differences, he argues, may have resulted in bloodshed hundreds of years ago, but we are hardly in that predicament now.[73] As he put it in a still later article (to be discussed in a few paragraphs):

> [I]t is implausible to believe that in the context of a liberal democratic society like the United States, governmental reliance on religiously based moral arguments in making political choices (even coercive ones) is *invariably* destabilizing—or that is invariably *more* destabilizing than governmental reliance on controversial secular moral arguments.[74]

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69. *See id.* at 83-122.

70. *See* Michael J. Perry, *Religious Morality and Political Choice: Further Thoughts — Second Thoughts — in* LOVE AND POWER, 30 SAN DIEGO L. REV. 703 (1993) [hereinafter Perry, *Religious Morality*].

71. *See id.* at 710-12.

72. *See id.* at 713-723.

73. *See* Perry, *Religion in Politics, supra* note 13, at 754-55.

74. *Id.* at 755 (emphasis added).

A second implicit, but equally important, argument is Perry's confidence in debate. While Greenawalt[75] and Marshall[76] worry about the intolerance religion can perpetrate, Perry worries about religious illiteracy that precludes debate:

> Religious discourse about the difficult moral issues that engage and divide us citizens of liberal democratic societies is not necessarily more problematic—more monologic, say—than resolutely secular discourse about those issues. Because of the religious illiteracy—and, alas, even prejudice—rampant among many nonreligious intellectuals, we probably need reminding that, at its best, religious discourse in public culture is not less dialogic—it is not less open-minded and deliberative—than is, at its best, secular discourse in public culture. (Nor, at its worst, is religious discourse more monologic—more closed-minded and dogmatic—than is, at its worst, secular discourse.)[77]

In Perry' s position, one should permit honest reliance (with some exceptions such as that of a Nazi sincerely telling a Jew that the Jew is inferior)[78] upon the grounds that motivate an individual taking a moral position.[79] We then ought to debate the validity of the position.[80] Perry's willingness to engage in such debate is a statement of his confidence in the validity of his positions, on for instance abortion and homosexuality.[81] Indeed, he not only is willing to allow reliance upon religious beliefs in conducting debate, he argues that we ought to encourage it.[82]

b. Secular Corollaries

In his advocacy for open debate, Perry has continued to describe the ways in which argument can be made. He does not back down from his willingness to allow individuals, even influential ones, to rely upon religious reasons in making political choices, but he adds an interesting corollary. That is, one should offer a "secular" argument in addition to the religious argument.[83] Perry gives three reasons supporting this approach.

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75. *See* GREENAWALT, *supra* note 59, at 69-70.
76. *See* Marshall, *supra* note 20, at 847-63.
77. Perry, *Religion in Politics, supra* note 13, at 745-46.
78. *See id.* at 754.
79. *See* Perry, *Religious Morality, supra* note 70, at 704.
80. *See id.* at 720-722.
81. *See generally* Perry, *Religion in Politics, supra* note 13.
82. *See id.* at 748.
83. *See id.* at 768. In an important qualification too complex to detail here, Perry argues that questions about human worth are exempt from this requirement to offer a secular reason. The reason for this, as Perry has

First, he claims that most religious believers take a secular agreement with a religious position as proof of the validity of the position.[84] In particular, Perry cites Catholics, Episcopalians, Lutherans, Methodists and Presbyterians as doubting the truth of a religious argument if there is no corresponding secular support.[85] There does not necessarily need to be agreement or consensus among a large group as to the validity of the secular argument, but the believer ought to think that the secular argument is persuasive.[86] The central reason for this position returns Perry to his position on accessibility and, even more importantly, fallibilism:

> [R]eligious believers—even religious believers within the same religious tradition—do not always agree with one another about what God has revealed. Moreover, many religious believers understand that human beings are quite capable not only of making honest mistakes, but even of deceiving themselves, about what God has revealed—including what God might have revealed about the requirements of human well-being.[87]

It is important to note that Perry relies upon natural law to make his argument. Because God's revelation is open to all human beings, one can conduct rational argument about what nature has revealed.[88] Thus, his second reason for requiring a secular argument is because we all, not just the mainline Christian churches he cites, have the ability to reason to the knowledge of the good.

Furthermore, Perry describes the "human propensity to be mistaken and even to deceive oneself about what God has revealed" as "ubiquitous."[89] An argument only relying upon revelation, that is, one that is unsupported by a secular argument, is one that is particularly vulnerable to manipulation, self-decep-

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described in Michael J. Perry, *Is the Idea of Human Rights Ineliminably Religious?*, *in* LEGAL RIGHTS: HISTORICAL AND PHILOSOPHICAL PERSPECTIVES 205 (Austin Sarat & Thomas R. Kearns eds., 1996) is that notions of human worth boil down to religious, or at least nonprovable, claims. Perry details a sort of Rawlsian "overlapping consensus" to demonstrate that the notion of all life being sacred is a central tenet of religious and secular morality, which serves as a basis for human rights. Nevertheless, since the underlying basis for the morality is religious, this requirement is exempt from the secular requirement. *See* Perry, *Religion in Politics*, *supra* note 13, at 756-67.

84. *See* Perry, *Religion in Politics*, *supra* note 13, at 767-68.
85. *See id.* at 787.
86. *See id.* at 777.
87. *Id.* at 769.
88. *See id.* at 770-71.
89. *Id.* at 772.

tion and mistakenness. In short, human fallibility requires a secular argument as a check against these human frailties. Thus, his third argument for requiring a secular reason in addition to a religious reason is that our human weakness requires it as a check against self-deception and manipulation.

Perry anticipates a negative reaction against this position from fundamentalists for whom reason itself is corrupted.[90] He makes three key arguments to counter such objections. First, because Christians believe that basic requirements about human welfare are inherent in every human being—the natural law position grounded in *Romans* 2:14-16—one cannot dismiss secular arguments as not having a part of the divine.[91] He confirms this through the work of evangelical scholar Mark Noll, who says that "Nature is as truly a revelation of God as the Bible, and we only interpret the Word of God by the Word of God when we interpret the Bible by science."[92]

Second, and probably the most controversial position Perry takes, is that conservatives must also take into account the fallenness of themselves and, therefore, their religiously based arguments, because both religiously based arguments and secular arguments "are, finally, human arguments."[93]

A third, practical reason is that religious believers have little hope of influencing a liberal democracy unless they rely upon a secular confirmation of their moral position.[94] Noting the work of Richard John Neuhaus, Perry notes that any religion wanting influence in this democracy must subject itself to self-critical rationality and must develop a *mediating* language to describe its insights to the larger community.[95]

In both positions, Perry stresses the importance of making accessible arguments and recognizing fallibility, not as restrictive hurdles one must overcome in order to be allowed to speak, but as requisite characteristics for religious belief to be taken seriously and to strengthen religion's claim. Perry thus creatively uses the criteria of secular arguments as a strategic device to gain

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90. *See, e.g.*, David M. Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381, 391-92 (1991), *cited in* Perry, *Religion in Politics*, *supra* note 13, at 788.

91. *See* Perry, *Religion in Politics*, *supra* note 13, at 770-71.

92. MARK A. NOLL, THE SCANDAL OF THE EVANGELICAL MIND 207-08 (1994), *cited in* Perry, *Religion in Politics*, *supra* note 13, at 789.

93. Perry, *Religion in Politics*, *supra* note 13, at 789.

94. *See id.* at 772-73.

95. *See id.* at 773-74 (citing Richard John Neuhaus, *Reason Public and Private: The Pannenberg Project*, FIRST THINGS, Mar. 1992, at 55, 57; Richard John Neuhaus, *Nihilism Without the Abyss: Law, Rights, and Transcendent Good*, 5 J.L. & RELIGION 53, 62 (1987)).

influence and as a check against self-deception while preserving the full freedom of an individual to rely upon religious belief in justifying a public position.

c. "Natural Law and Business Ethics"

The real importance of Perry's position is not that he threads the minute needle of acceptable religious justification of a public position, although that threading is impressive and helpful. The real importance is his claim that religious belief need not be, and in fact becomes suspicious when it is, purely personal and idiosyncratic. If religion can be tied to more objective reality, an argument which I read Perry to be willing to undertake and not merely assume, then its legitimacy as a normative criteria for political, business and any other kind of public decision grows dramatically. Its accessibility increases and its "debatibility" opens. Because of this, one should not exclude religious belief from business ethics debate, policies, or theories. If a person has a sincerely held religious belief that addresses the propriety of business practices, that belief is as worthwhile and worthy of respect as any other normative belief. The exclusionism advocated by all the described theorists except Perry are not only inapplicable to the political setting, but they are inapplicable to the business setting as well. As opposed to Tom Peters' comment, the reliance upon religion in managerial decision-making does not necessarily lead to requests for singing in the Gregorian Chant Club. But because there is legitimate concern for imposition of religious belief on others, Perry's requirement of a secular, corollary justification to a religious belief is appropriate for any proposed religiously-based business ethic.

The ground for Perry's position is natural law. There are, of course, several different kinds of natural law, some religious and some not.[96] These variations of "traditional natural law" attempt to find basic normative principles of conduct through philosophical and/or theological reflection.[97] As I will argue in the following sections, there are understandings of natural law that rely on other sources as well, such as custom and science. The important point to note here and which will be developed more fully in Section III, however, is that the justification of acceptable religious belief cannot be predicated on an epistemological understanding of religion as idiosyncratically personal. If it is

96. See Manuel Velasquez & Neil Brady, *Catholic Natural Law and Business Ethics*, 7 BUS. ETHICS Q. 83 (1997) for a good overview of various natural law theories.

97. *See id.*

predicated on such a basis, then it risks falling prey to accurate assessments by the SEP school and by Greenawalt. It also becomes more likely to be incendiary if a justification for religious belief is simply individual understanding and not something that has at least an objective corollary, if not an identical secular justification.

Perry's position allows and even encourages religious believers to offer their insights in public debate. His concern is the political world, but Greenawalt is correct to note that corporate leaders, as influential individuals, are subject to the same concerns that arise when political leaders rely upon religious justifications for making moral and political decisions. In fact, this recognition of the power of corporate leaders is important to dwell on. While the discussion of political choices implies power throughout, there is an assumption implicit in the writings of all the writers in this field of the use of power over those who do not have power. This will have an impact in considering the freedom that corporate leaders have in relying on religious justification to implement ethics policies.

C. *Corporations, Power and Religion*

The only difficulty in applying Perry's position to the business world consists in the importance of power differentials. In his articles, he contends for an approach that legitimates the use of religious language against those who are in good positions to defend themselves. To argue, for instance, that intellectuals should be free to rely on religion in making political arguments, or that legislators should, or that judges should—even if such reliance does also require a secular corollary—is to describe a dialogue in which the person not relying upon religion, or relying upon a religion different from one who has power and who is relying upon religious belief in making her argument, is probably capable of defending herself very well. Further, even if the religious person is making a decision which has coercive consequences, the one not relying upon religious belief will have recourse to mechanisms of correction. That is, given Perry's emphasis upon religious pluralism as a check against any one religion or any one religious belief from becoming too powerful or spawning bloodshed, someone not happy with a religiously justified political choice has ready access to political resources to overturn a decision.

Perry is mindful of the importance of power differentials.[98] But because the debate in which he is engaged in the academic

98. *See* PERRY, LOVE AND POWER, *supra* note 41, at 132-133.

or jurisprudential world largely rejects the use of religious language, his argument is not really addressed to the situation where a religious believer is in a strong position of power while the person, whether a believer or nonbeliever who does not rely upon such justifications and perhaps may even find such justifications offensive, would be in a position with little recourse. An employee could find himself in exactly this situation if a corporate ethics policy was adopted by corporate executives to integrate religious belief in the policy and/or who justify the policy in conjunction with articulated religious belief.

The SEP school and Greenawalt are concerned that the religious person will be a power holder whose actions could be detrimental to someone without power. Thus, they are concerned with the coercive impact of the exercise of this power. Without a standard of accessibility,[99] neutrality,[100] public reason,[101] or impartiality,[102] the stage could be set for abuse of power by those religious persons who have no checks placed upon them.

The concern can be more acute in the corporate world than the political world. In business, the chief executive officer often holds the role as king of a fiefdom.[103] Not only can this structure undermine a requirement for the rational explanation of a position in order to acquire or retain power as is the case in a democracy, but the corporate world has far fewer checks to control an executive who views the workplace as fertile grounds for evangelizing. Indeed, the temptations of power explain executive action that leads to unethical behavior in the form of, for instance, harassment and excessive compensation, as well as actions which are concerned with personal prestige as opposed to economic performance.[104] In short, while the corporate world is freer from Constitutional restrictions concerning religion than is the political process, its structure also poses more acute questions regarding the use of that power.

Perry's requirement for accessibility depends upon a structure that makes accountable actions that must be explained in accessible terms. His requirement of fallibility may be less pronounced in a corporate structure that is not democratic. Thus, in addition to Perry's requirement of offering a secular reason

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99. *See id.*

100. *See* ACKERMAN, *supra* note 34, at 7-14.

101. *See* RAWLS, *supra* note 47, at 213-27.

102. *See* Nagel, *supra* note 38, at 215-40.

103. *See* ROBERT JACKALL, MORAL MAZES: THE WORLD OF CORPORATE MANAGERS 19 (1988).

104. *See* WILLIAM C. FREDERICK, VALUES, NATURE AND CULTURE IN THE AMERICAN CORPORATION 92-99 (1995).

for an action in addition to a religious one, the corporate world requires a proviso that cautions that the power holder accord the same ability of an employee to rely upon religious justifications as the power holder enjoys. In addition to accessibility, one must also equalize power, at least to some extent, so that the exercise of corporate power is not harassing. This proviso will be clearer in Section IV when the workplace problems of religion are described.

Many, perhaps most, issues in business will not be ones in which one must make judgments about the moral propriety of an action. But many will make such judgments. In particular, given the fact that ninety-five percent of Americans believe in God, one should not then be surprised that at the place where a very large part of their waking hours occurs—at work—religious beliefs should not have an important role to play in defining ethical business.

III. THE DANGER OF PHILOSOPHICAL AND LEGAL RULES

A. *Business Ethics and Precise Rules of Conduct*

The foregoing section exemplifies the very difficult issues that arise in proposing rules and principles for the interaction of religion in political and in business affairs. Because the issues are so complex and so important, the refinement of the principles necessary to be fair requires extremely careful and precise articulation of governing norms.

The same importance of refinement holds true in business ethics. What business activities are unethical, to what degree, and for what reasons? The literature on this subject has grown rapidly over the past two decades as ethics scholars wrestle with what approach best solves thorny ethical dilemmas. Thus, the field has generated "stakeholder theory,"[105] which essentially stands for the proposition that businesses ought to be managed for the benefit of all the stakeholders of a firm, not just the shareholders.[106] A stakeholder is any person affected by a corporate action, including shareholders, employees, customers, the local community, the environment, and others as well.[107]

105. *See, e.g.*, William M. Evan & R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation: Kantian Capitalism*, *in* ETHICAL THEORY AND BUSINESS 97 (Tom Beauchamp & Norman Bowie eds., 3d ed. 1988).

106. *See id.* at 101-05.

107. *See id.* The authors are clear that they think the list of stakeholders ought to be expansive. Thus they are open to many other stakeholders than what might be immediately apparent.

Stakeholder theory has legal manifestations in the form of corporate constituency statutes in which over half the states generally allow, but do not require managers to take into account nonshareholder constituents when making managerial decisions.[108] The debate about the moral propriety of this approach has been fierce.[109] The hard unanswered questions revolve around specifying what weights to give to the relevant stakeholders, at what times, and for what reasons.[110]

Another popular approach is based in social contract analysis. Here, Thomas Donaldson and Thomas Dunfee have argued that individual communities are free to develop norms appropriate for their culture and that, provided individuals within that culture have the freedom to consent to the norms, those norms are authentic.[111] They accord a higher level of moral goodness to those norms than square with universal "hypernorms" which are cross-cultural principles of moral goodness consistent with formal moral theory.[112] One of the reasons Donaldson and Dunfee offer this approach over that of stakeholder theory is because they argue that stakeholder theory does not provide enough moral guidance in concrete situations.[113] Their analysis thus requires a sophisticated assessment of what is a community,[114] how consent is manifested, and what norms are indeed cross cultural. They also provide six priority rules for determining what weights ought to be given in cases of moral conflict.[115] Donaldson and Dunfee thus provide a very rich, complex and sophisticated method of analysis, but one must determine whether their social contract approach will be understood by business persons.

There are other important theories such as basic rights[116] and Kantian business ethics.[117] But these raise questions about either the underspecificity of general rules, or become so complex that they can be applied with only the most sophisticated casuistry.

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108. *See* sources cited, *supra* note 4.

109. *See* sources cited, *supra* note 8.

110. *See* Arlow & Ulrich, *supra* note 19.

111. *See* Thomas Donaldson & Thomas W. Dunfee, *Toward an Unified Conception of Business Ethics: Integrative Social Contracts Theory*, 19 ACAD. MGMT. REV. 252, 262-63 (1994).

112. *See id.* at 265.

113. *See id.* at 255.

114. *See id.* at 275.

115. *See id.* at 269-70.

116. *See, e.g.*, PATRICIA H. WERHANE, PERSONS, RIGHTS AND CORPORATIONS (1985).

117. *See generally* NORMAN BOWIE & RONALD DUSKA, BUSINESS ETHICS (2d ed. 1990).

Oddly enough, business ethicists are increasingly attacked for the opposite problem as well. Exemplifying the frustration managers feel about the underspecificity of business ethics is an article in the *Harvard Business Review* by Andrew Stark.[118] Stark argued that business ethics is rapidly becoming irrelevant because it fails to specify moral rights and wrongs that are actually helpful for business persons to make decisions.[119] Thus, the heat is on for ethicists to become more precise. That need for preciseness is amplified when one introduces the religious grounds for ethical conduct for the reasons provided in the first section.

Not surprisingly, executives have turned to lawyers to develop defensible standards for corporate conduct. Motivated by the 1991 Congressional legislation that rewards corporations for developing ethical compliance programs and punishes them when they do not,[120] corporate counsels around the country have drafted long, detailed, precise rules for what constitutes ethical behavior.

The need for preciseness, however, ought not become too acute for the reasons offered by French jurist and lay theologian Jacques Ellul.

B. *Jacques Ellul and The Theological Foundation of Law*

Nearly forty years ago, Jacques Ellul wrote a small book, *The Theological Foundation of Law,*[121] in which he makes an argument about law, religion and politics that is directly relevant to the impulse for corporate codes present today.[122]

Ellul describes his approach as one based on natural law, but his notion of natural law is entirely different from that relied upon by Perry and which is typically used by natural law scholars.[123] Traditional natural law, Ellul argues, fails because it attempts to provide a meeting ground between Christians and non-Christians,[124] an effort analogous to the secular arguments proviso advocated by Perry. Instead, Ellul conceives of natural law as a specific event within a culture's history during which

118. *See* Andrew Stark, *What's Wrong With Business Ethics?*, HARV. BUS. REV., May-June 1993, at 38, 38.

119. *See id.*

120. *See supra* note 3.

121. JACQUES ELLUL, THE THEOLOGICAL FOUNDATION OF LAW (Marguerite Wieser trans., 1960).

122. For a more complete analysis of Ellul's position, see TIMOTHY L. FORT, LAW AND RELIGION 19-25 (1987).

123. *See, e.g.*, JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS (1980).

124. *See* ELLUL, *supra* note 121, at 10.

moral conduct spontaneously or naturally is understood without appeal to refined principles of analysis. Indeed, the need for refined principles indicates a deeply troubled culture.

I do not wish to follow Ellul's argument entirely. But there is an important kernel of truth within it that business ethicists ought to consider, particularly when the demand for preciseness is most acute as it is when religious belief enters the picture. Thus, it is worth sketching the four-part development of law in Ellul's schema.[125]

1. The Four-Part Typology

In its origin, Ellul argues, all law is religious.[126] A priest or shaman acts as the spokesperson for God or the gods and acts as the spokesperson for articulating the divine requirements for the particular village, tribe, or community.[127] At this point, there is no differentiation between religious and political power; they are one and the same.[128]

Gradually, the political and religious realms become separate. There is a political power independent from those individuals who are responsible for the spiritual welfare of the community.[129] According to Ellul, this is the point where natural law emerges. There is still a uniformity of custom that unites the people of what is right and wrong, but political authority does not impose what that right and wrong might be.[130] Law is not directed by the state nor by the religious *institution in toto* but comes from the common consciences of the people.[131]

Ellul has particular historical moments in mind when he describes this stage, but his point is accessible in contemporary terms as well. Custom is a powerful driver of morality. It is unlegislated and may very well not have any precise articulation by a religious institution, but people naturally understand that one should not, for instance, roll a bowling ball down the aisle of a funeral home when a funeral is in process or throw rotten tomatoes at a professor during a lecture (at least one hopes so). Even if such behavior could be deemed disturbing the peace, the reason one refrains from such activities is not to stay out of legal

125. Ellul actually characterizes it as a three-part development, but stages three and four as I describe them seem to be separate, but certainly related stages within Ellul's original stage three.

126. *See* ELLUL, *supra* note 121, at 18.

127. *See id.*

128. *See id.*

129. *See id.*

130. *See id.*

131. *See id.*

trouble, but out of respect for unspoken community norms. Indeed, in business, one of the first things one must learn when joining a company is what the local customs are.

Thus, Ellul's point is not simply historical, but stands for the entirely reasonable idea that many, perhaps most, of the more important normative regulators of behavior are exactly those which are not precisely specified. But Ellul does not stop here. Instead he goes much further and becomes much more controversial.

In stage three, law becomes more rationalized and theorized. Here, scholars begin to reflect on the customs that have guided the relevant community and attempt to rationally articulate the defensible, consistent principles that can be applied in the future to similar cases.[132] Ellul cites fourth century B.C.E. Greece, first century B.C.E. Rome, and 18th century England and Germany as examples of this stage.[133] The danger of this stage, according to Ellul, is that law ceases to become something that is part of one's life and instead becomes something outside of one's life.[134] As external to one's way of life, one has a weaker connection to it.

One reason this analysis and formalization may occur is because of religious diversity, where the underlying ideas of what is right and wrong have been undermined by differing conceptions of the good. For instance, I have elsewhere argued that eighteenth century Connecticut exemplifies Ellul's argument. There, the effects of the Great Awakening and Second Great Awakening undermined what had previously been a population with a very uniform religious approach.[135] With a more diverse understanding of what was required by God, one could not rely upon custom, but needed more precise principles of law.[136] Business, of course, prefers such specificity to chaos because it allows for planning. And that economic pressure, in combination with diversity and the quest for power, leads directly to Ellul's final stage.

In stage four, the law is corrupted because it loses its connection between its logic and the lives of people. This occurs, according to Ellul, when the law is solely the creation of the state, because the law can then be manipulated by those with the power to interpret it or legislate it for their advantage. Those

132. *See id.* at 19.

133. *See id.* "B.C.E." is the more politically-correct term for B.C. and stands for "before the common era."

134. *See id.*

135. *See* FORT, *supra* note 122, at 69-119.

136. *See id.*

with money can pay for the best and brightest jural talent to bend the law to designs most appropriate for commercial interests.

One need not go so far as to make this development into a planned conspiracy.[137] Ellul's fourth stage probably is not one of intentional design. More likely, it is the logical result of a time in a culture's history when the normative rules are the object of study rather than that of custom.

One need only look to the lobbyists in the halls of Congress to see evidence of laws that are implemented with very little popular involvement. The U.S. Tax Code, one piece of legislation that applies to nearly everyone and which is nearly impenetrably obtuse, even by the experts,[138] has little to do with the experience of justice in everyday life, which is one reason why it is so despised. It is difficult to explain why in estate taxation, the right of a spouse to spend the interest of trust principal for himself qualifies the trust for a marital deduction creating no tax, while the right of the same spouse to withdraw income for his daughter disqualifies the trust and subjects it to estate taxation.[139]

It is when the law is so abstracted from everyday life that respect for law is undermined. Law is then simply a game played by those with the resources to influence its drafting, implementation and interpretation. Similarly, a corporate code of ethics that is long, detailed and precise may not provide specificity because it may not be read. Philosophical principles that require extensive analysis of complex social factors may likewise be dismissed as having little to do with the experience of worklife, no matter how brilliant they may be.

2. Ellul's Natural Law and Business Ethics

Natural law, as Ellul conceives it, is thus not a set of basic principles that specify what is appropriate but a spontaneous understanding of what one ought to do. Its very elusiveness, at least in rational terms, is that which is part of its vibrancy. The danger, of course, is a sort of know-nothingness that rejects sophisticated analysis of any kind. But this is true only if one

137. *See, e.g.*, MORTON HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860 (1977). Horwitz did this when he alleged the existence of a very broad-based conspiracy of American businesses so that once commercial interests were firmly in power in the nineteenth century, jurists reinterpreted the law for the benefit of these interests.

138. I think here of the annual report shortly before April 15 that reports that 30-50% of the answers given on the IRS helpline to taxpayers are incorrect.

139. *See* I.R.C. § 2056 (1994).

takes Ellul's typology to an extreme. There are more moderate interpretations of the kernel of truth that his schema exposes.

In terms of business ethics and corporate codes, this spontaneous natural law is that aspect of working life that is not specified by philosophical or legal principles. The need for spontaneity suggests two things. First, issues of ethical business conduct are not so much about "fine-grained analysis"[140] but about a corporate culture that inculcates certain behavior on a regular basis.[141] Second, corporate codes and standards of ethical behavior ought not be alien to the experience of those who work in the company. If it is true that Americans have a strong religious dimension, then ethical principles which do not resonate with that experience violate the "lived" experience of which Ellul writes. For this reason, principles of business ethics can follow Perry's requirement of offering secular arguments, but such arguments should not stray too far from the experience, even if religious, of business persons.

There are many points where I do not wish to follow Ellul. For instance, I am unwilling to accept the notion that the clear articulation of ethical principles is an inevitably slippery slope to legal corruption. It may be a slippery slope for the ethics for a particular community, but communities inevitably grow into different shapes and forms. That which prevents the forms from settling disputes through warfare is likely to be an approach featuring negotiation, dialogue and the working out of common principles. Such dispute-resolution often requires clear articulation of principles that have been forgotten, half-remembered, or selfishly manipulated.

Nevertheless, there is an important point to be sandwiched between Section II's examination of the importance of precision and Section IV's attempt to provide criteria that prevents the bad

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140. *See* DeGeorge, *supra* note 32, at 422-23. According to DeGeorge, this is what business ethics is about.

141. Although beyond the scope of this paper, this is why virtue theories of business ethics are stronger than attempts to solve dilemmas. Several scholars have argued that corporations must be a kind of corporate community in which ethics is part of an ongoing practice or process. *See, e.g.*, EDWARD HARTMAN, ORGANIZATIONAL ETHICS AND THE GOOD LIFE (1996); ROBERT SOLOMON, ETHICS AND EXCELLENCE (1992); Janet McCracken & Bill Shaw, *Virtue, Ethics and Contractarianism: Towards a Reconciliation*, 5 BUS. ETHICS Q. 297 (1995); Jeffrey Nesteruk, *Law and the Virtues: Developing a Legal Theory for Business Ethics*, 5 BUS. ETHICS Q. 361 (1995). This is also the basis for my work characterizing business as a mediating institution, and for arguing the integral relationship between Total Quality Management and theologies of work. *See* Timothy L. Fort, *The Spirituality of Solidarity and Total Quality Management*, 14 BUS. & PROF. ETHICS J. 3 (1995).

and ugly practices that religion can perpetrate. That point is that ethics is not only precise legal rules or philosophic principles but needs to connect with an affective side of human nature.[142] An affective side is not always, and may rarely be describable in precise, rational and logical terms but is anchored in elusive elements of love, friendliness, spontaneity, reciprocity, forbearance and solidarity. Indeed, one of the most important contributions religion can make to business ethics is the engagement of this affective side. It is that side that often makes people want to be ethical, a topic poorly addressed by business ethics scholars.

Whether Ellul's typology is a fully accurate history of law and religion I put to the side. It does demonstrate an important point whose truthfulness can be seen in the way citizens react to the laws of their government. The more bureaucratic, abstract, and the less people participate in the rules governing them, the less compelling the principles will be. This is true not only of tax law, but of the ethical principles corporations use to inspire ethical behavior.

If business ethics become extensive corporate codes and policies that are difficult to read and interpret and which employees do not have a share in developing, one is bound to set the stage for an ineffectual program. If business ethics is about refined philosophical principles, they will also be ineffectual. Both legal codes and business ethics theory may be helpful for the development of the field in general, but to be effective, they must engage individuals on how the rules enable them to have a more fulfilling life. In short, they must interact with why people would want to be ethical. And one very important reason for wanting to be ethical is because of religious conviction.

C. *Why Be Ethical?: The Religious Component*

There are really four reasons why a person in business would want to be ethical. The first is simply that, to some degree, the law requires it. In addition to the provisions of the Federal Sentencing Guidelines, legislatures have enacted a variety of consumer, environmental and labor laws that insist that the law punish business when it harms consumers, the environment and employees. So obedience to the law is one rationale for restraining corporate profitability.

A second reason is that it can be good business. As LaRue Hosmer has effectively argued, trust depends upon a perception that one has been treated fairly, and such treatment is depen-

142. *See, e.g.*, JOHN C. HAUGHEY, S.J., CONVERTING 9 TO 5: A SPIRITUALITY OF DAILY WORK (1989).

dent upon being ethical.[143] Once one gains trust, one can build better relationships with creditors, the community and employees.[144] Ethics, in other words, can be an effective business strategy.

In their thoughtful critique of Hosmer's work, Bill Shaw and John Corvino state, but do not adopt, the classic philosophical conundrum that prevents solid analysis of another reason a person might want to be ethical. As Shaw and Corvino put it, to ask the question of why be ethical is to pose the tautological question of why should I be as I should be?[145] Because I should be ethical, then one needs no further motivation; indeed asking for it would in a sense be illogical.[146] Business ethicists generally do not go to this extreme in explaining this third reason for being ethical, but their unwillingness to probe further behind why a person should want to be honest, loyal, fair, etc. breaks the link between the actual lives of individuals working in business and the principles, often quite good ones, offered by ethicists of what those things would be. Nearly every business ethicist can relate many instances of students and executives asking why they ought to bother with being ethical. And after one has exhausted the legal and good business reasons, there is not much left.

At least there is not much left unless one brings in the fact that many will want to be ethical because of their religious convictions. Religion helps to address the "why be moral" question.[147] This fourth reason for wanting to be ethical then draws us directly to what benefits and costs accrue to a business that attempts to be ethical, but does so out of, at least in part, religious conviction as was the case with the CEO in my class.

In short, because it is necessary to engage an affective spirit in order to be ethical, one must offer more than legal or economic reasons. One may also find that one will want to be ethical for religious reasons. Helping such a person be ethical requires that any corporate code or business ethics policy interface with the experience of the person, which may very well be religious.

I do not wish to argue that every business person is religious and thereby make an argument that the refusal to engage religious experience is fatal to business ethics. Such an argument

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143. *See* LaRue Tone Hosmer, *Why Be Moral? A Different Rationale For Managers*, 4 BUS. ETHICS Q. 191 (1994).

144. *See id.* at 192-93.

145. *See* Bill Shaw & John Corvino, *Hosmer and the "Why Be Moral?" Question*, 6 BUS. ETHICS Q. 373, 374-75 (1996).

146. *See id.* at 375.

147. *See* Herman, *supra* note 31, at 16.

would be absurd. But it is not absurd to note that religious conviction may foster ethical behavior and that many workers, managers, and line-workers will evaluate corporate codes and their commitment to such codes according to (an often held) experience connected with religion. But the very attempt to foster a corporate culture that accesses this spirituality can also raise very deep problems.

Interfacing with a person's experience also requires that individuals are able to connect their ethical obligations with the consequences of obeying and defying those obligations. Rather than obeying abstract rules and principles, individuals must see how those rules and principles are important to their lives. This will require the structure of business as mediating institutions, the subject of Section V. Prior to that description, however, one must face the good, bad and ugly realities of religion in business.

IV. Religion, Power and Corporate Ethics Policies

To this point, I have argued that those relying upon religious beliefs ought to be allowed to participate in the development of normative rules of behavior. Religion is too fundamental to be put to the side of ethical problems. Its wisdom often resonates with the experience of those at work. It is fair, however, to impose Michael Perry's requirement that a person who advocates for certain kinds of moral behavior ought to offer a secular reason in addition to a religious reason as a way to engage dialogue and prevent self-deception and manipulation.

In advocating for any rule of business ethics, however, the more a theory is disconnected from the common experience of individuals affected by the rule and the more the affective side of human nature is left untapped, the more likely an ethical code of conduct will be viewed as something foreign to a person's understanding of what is ethical. Such a situation will not likely inspire a person to be ethical.

In this section, I wish to raise the problem of what happens if someone does attempt to integrate the affective, common experience of human beings by relying on religion in designing corporate ethics policies. Such a person, I will assume, will have even offered a secular reason required by Perry's methodology. If that person is an executive in a business, what dangers and opportunities present themselves? In short, what good, bad and ugly things might occur and what must a religiously grounded business ethic do to obtain religion's benefits without succumbing to its dangers.

A. *The Good, The Bad and The Ugly About Religion in the Workplace*

1. The Good

It is not hard to find executives whose religion causes them to practice virtues that, at least at first blush, go beyond the goal of creating shareholder value. In one of the more recently celebrated cases, Malden Mills chief executive officer Aaron Fuerstein did not lay off employees after a fire burned down a significant portion of the company's mill.[148] Even though employees had nothing to do, Fuerstein kept most of his employees on the payroll and continued their benefits.[149] When asked why, "[h]e softly mumbled in Hebrew to himself and then translated the words into English: 'What's important in God's eyes is when there is a situation where there is no ethical grounding, do everything in your power to be a man . . . [y]ou know, a *mensch*.'"[150]

This quest to be a *mensch*, a person who does what is right, directly springs, according to journalist accounts, from his Jewish faith, and he "has also turned to Orthodox Judaism for wisdom to run his business."[151]

Such a reliance upon faith was important for Roman Catholic Richard Sullivan.[152] Relying on a Catholic understanding of the dignity of all human beings, Sullivan took several atypical actions. When his company had to downsize (which would result in the reduction of forces in one regional office), he talked personally with each employee who might be terminated (approximately thirty individuals).[153] He provided about six months notice.[154] Management promised to work with the terminated employees to find work; this resulted in finding transfers for six and three retired with full benefits.[155] Aggressively courting new business resulted in keeping about four more employees than had originally been expected.[156] By the end of the month, the company was able to reduce or reposition its regional office

148. *See* Merrill Goozner, *The Mensch of Malden Mills Inspires*, CHI. TRIB., Dec. 26, 1996, at 1.

149. *See id.*

150. *Id.*

151. *Id.*

152. *See* Joseph P. Sullivan & Thomas F. McMahon, C.S.V., *Faith That Mandates Justice: A Case Study*, 28 CHI. STUD. 17 (1989).

153. *See id.* at 22.

154. *See id.*

155. *See id.*

156. *See id.* at 23.

while dismissing only one worker.[157] That worker was paid a bonus and the company attempted to find work for him elsewhere.[158] Why go to such lengths?

> In sum, I can say the following things. First, the two days [talking with the employees] were easily the longest days I have spent in building this company. It is not easy to go out and face people whom you are about to dismiss and tell them the reality of the situation. On the other hand, I believe that this is the only way that one can deal with this difficult situation in a Christian way. Secondly, I am absolutely convinced that this person-to-person approach motivates me and other managers to find ways to improve our business without letting people go. Once again, it is all too easy to use a computer list and the personnel department to handle this function. If you have to do it yourself, your motivation to define creative ways of improving the business is enhanced substantially. Finally, people appreciate the fact that they are being dealt with honestly and that every possible step is being taken to help them find other employment as well as provide them with the maximum possible notice of termination. In short, this is another good example of good Christian ethics being consistent with good business practice.[159]

Beyond this example, which is an excellent example of offering a secular reason (good ethics is good business in terms of loyalty and inspiring innovation), Sullivan also reported to local officials that they felt that the company plant was discharging too much pollutant into the local well water.[160] Rather than hide the problem or wait to be caught, they preemptively addressed the problem. They also refrained from taking advantage of a tax-abatement plan in the relatively poor rural area in which they are located.[161] The result was that the company paid more taxes to support the local schools, but the company benefited with a better-educated workforce as well as from goodwill.

A final example of the good that religion can foster in business comes from a study of Christian evangelicals. Laura Nash has studied them, and has concluded that these leaders have a high commitment to a "Christian concept"[162] of high quality,[163]

157. *See id.*
158. *See id.* at 22-23.
159. *Id.* at 23.
160. *See id.* at 27.
161. *See id.* at 28.
162. LAURA L. NASH, BELIEVERS IN BUSINESS 22 (1994).
163. *See id.* at 76.

by which she means that Christians have an obligation to produce high quality products and services. They also commit themselves to the development and training of employees[164] which is related to "dignification" of workers, which comes out of a sense of the obligation to love one's neighbor.[165] Whereas the average differential between executive compensation and lowest paid worker is eighty-five in the United States, among conservative evangelicals the differential is only twenty.[166] Workforces tend to be more participatory and more egalitarian.[167] Even diversity is encouraged.[168]

These three examples are meant to be illustrative, not exhaustive. I have no doubt one would find similar examples among Hindu, Islamic, Buddhist, Confucian and other executives of faith. They demonstrate the very good things that can come from religious motivation in the workplace. They illustrate the enhanced ethical responsibility that can emanate from religiously motivated executives. Of course, one could argue, as one would suppose Ackerman or Nagel or even Greenawalt to do, that these motivations, while important, ought not to be relied on in justifying what the executives do. But as demonstrated by the study of evangelicals, who are often lumped together with "sleazy" televangelists,[169] being deceptive about one's beliefs is as phony as the televangelists with whom CEOs are sometimes compared.[170]

Given this evidence, it is hard to fathom why anyone would burden religiously motivated business managers with a requirement to keep their rationales quiet. They even meet Perry's test of offering a good secular reason for what they do, because while their commitments to being a *mensch*,[171] or treating a person with dignity,[172] or in keeping salary differentials small[173] springs from religious motivation, it is also justified as a good way to operate a business profitably. One has to question, then, why management theorist Tom Peters would worry about a spiritually informed management that seems "to cross a line, to blur the borders between church and corporation."[174] But, of course, all the news

164. *See id.* at 102.
165. *See id.* at 131.
166. *See id.* at 149.
167. *See id.* at 159.
168. *See id.* at 245.
169. *See id.* at 124.
170. *See id.* at 266.
171. *See* Goozner, *supra* note 148, at 1.
172. *See* Sullivan & MacMahon, *supra* note 152, at 22-28.
173. *See* NASH, *supra* note 162, at 149.
174. Peters, *supra* note 18, at 8.

from religious executives is not so positive, and one can tie that bad and ugly news to the exercise of power over an individual who does not have meaningful, countervailing power.

2. The Bad and the Ugly

While Nash recognizes the good that religiously-motivated managers can do, she also says that equal treatment of women among religiously conservative CEOs is a "blind spot."[175] This relationship between a blind spot toward women and the power CEOs have wielded over women that has resulted in harassment cases is one worth expanding upon in the next subsection. Beyond the issue of the role of women, however, there is also a horror list of bad and ugly things that can happen in the workplace when religion is turned loose. As Terry Dworkin and Ellen Peirce write:

> For example, in *Compston v. Borden,* the first case to recognize religious harassment, Compston was continuously referred to both within and outside his presence as a "Jew-boy," "the kike," "the Christ-killer," the "damn Jew," and "the goddam Jew," after casually mentioning to his supervisor that he believed in the basic tenets of Judaism. In a later case, *Weiss v. United States,* Weiss was similarly taunted by a coworker and his supervisor for two years with slurs such as "Jew faggot," "resident Jew," "rich Jew," and "Christ-killer," when they discovered he was Jewish.[176]

In *Meltebeke v. Bureau of Labor & Industries,*[177] the owner of a painting business told a worker that he was going to hell for living with his girlfriend, that he had to be a good Christian to be a good painter, and that he only wanted to work with Christians because they would not steal. Finally, the owner fired him.[178] In another case, employers held required devotional services during work.[179] The interesting thing about these cases is not that the employers held strong religious beliefs, but that, in offering a sec-

175. NASH, *supra* note 162, at 159; *cf. id.* at 216. Executives themselves said that gender made no difference at the office. This raises the question of how aware religious executives were of the treatment of women generally.

176. Terry Morehead Dworkin & Ellen R. Peirce, *Is Religious Harassment "More Equal?",* 26 SETON HALL L. REV. 44, 78 (1995) (footnotes omitted) (citing Weiss v. United States, 595 F. Supp. 1050, 1053 (E.D. Va. 1984); Compston v. Borden, 424 F. Supp. 157, 158 (S.D. Ohio 1976)).

177. 852 P.2d 859 (Or. Ct. App. 1993), *aff'd,* 903 P.2d 351 (Or. 1995).

178. *See id.* at 861.

179. *See* EEOC v. Townley Eng'g & Mfg. Co., 859 F.2d 610, 612 (9th Cir. 1988).

ular reason for their ethic, they felt that those religious beliefs were good business.

In pointing this out, I do not wish thereby to claim that Perry's position is undermined. Perry was writing about political decisions, not business decisions. But it does demonstrate the importance of taking into account power differentials. The difficult hurdle for religious expression at work is the extent to which an employee has recourse or can participate in order to influence the ethics that are offered.

B. *Power and Employee Rights*

Because executives in the corporate world have significant authority over those who work for them, their exercise of that power is important for any business ethic. Because religion can be so incendiary, and because someone with power could use that power in order to proselytize or embarrass another person, any freedom of religious expression in the workplace must take into account how power associated with someone expressing her religious views is exercised. In essence, just as the Establishment Clause prevents government from, among other things, dictating religious belief, so religious freedom in the business world requires protection of those not in power from being coerced by those with power. This makes comparisons with workplace harassment law worthwhile.

1. Harassment Analogies

In their review of harassment law, Dworkin and Peirce consider several different rationales for balancing an employer's freedom of religious expression with that of an employee. They reject an "animus" standard which would prohibit an employer from making statements and taking actions along the lines of *Compston.*[180] The difficulty, they argue, is that this standard would not protect *Meltebeke* situations where the conduct and/or speech is harassing, but is done by the employer because the employer sincerely believes he or she has an obligation to witness to his or her belief and correct sinful behavior.[181] Similarly, they reject a "directed speech"[182] standard because it likewise gives insufficient protection for an employee who must work in an environment quite hostile to her beliefs, even if statements are

180. *See* Dworkin & Peirce, *supra* note 176, at 79.

181. *See id.* at 79-80.

182. For an explanation of the directed speech standard, see generally Eugene Volokh, *Freedom of Speech and Workplace Harassment,* 39 UCLA L. REV. 1791 (1992).

not directly targeted toward her.[183] Dworkin and Peirce offer an example of an offensive poster that could create a more hostile environment than that created by a private bigoted remark.[184]

Dworkin and Peirce, recognizing the unique status of religion, also reject the transference of a "reasonable victim" standard applied in sexual harassment cases. This is an approach taken in 1993 by the EEOC in publishing its very controversial, and subsequently withdrawn Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age or Disability.[185] The determination, under the Guidelines, of harassing conduct creating a hostile or abusive work environment was to be made according to "whether a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile, or abusive."[186]

Dworkin and Peirce argue that the difficulties with this "reasonable victim" standard are that its vagueness allows for too much discretion by "idiosyncrasies of protected classes" and is "too narrowly drawn to protect the First Amendment rights of the religious."[187] They note that given the results of a sexual harassment case where the mere possession of sexually explicit photographs could create a hostile environment, one could similarly interpret the Proposed Guidelines as preventing the possession

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183. *See* Dworkin & Peirce, *supra* note 176, at 87.

184. *See id.*

185. 58 Fed. Reg. 51,267 (1993) (to be codified at 29 C.F.R. pt. 1609), *withdrawn in* 59 Fed. Reg. 51,396 (1994). These guidelines said:

> Harassment is the verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that:
>
> (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
>
> (ii) Has the purpose or effect of unreasonably interfering with an individual's work performance; or
>
> (iii) Otherwise adversely affects an individual's employment opportunities.
>
> Harassing conduct includes, but it not limited to, the following:
>
> (i) Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts, that relate to race, color, religion, gender, national origin, age or disability; and
>
> (ii) Written or graphic material which denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on walls, bulletin boards, or elsewhere on the employer's premises, or circulated in the workplace.

Id. at 51,269.

186. *Id.*

187. Dworkin & Peirce, *supra* note 176, at 75.

of religious symbols or photographs (such as on one's desk or neck) that would offend another person.[188]

Rather than any of these standards, Dworkin and Peirce propose a "reasonable person" standard to determine the harassing nature, if any, of speech or action.[189] This "more objective" standard (than that of the reasonable victim) in [sexual] harassment cases means, according to the courts, "that 'no ordinary person' would welcome such comments and conduct."[190] Moreover, relying upon its development in tort law, Dworkin and Peirce note that, "The reasonableness test is intended to reflect changing social mores as well as to represent an objective standard which imposes the same behavior on everyone, thereby limiting political decision-making by a judge."[191]

Dworkin and Peirce recognize that this standard errs on the side of religious expression.[192] In addition to their reliance on the now-overturned Religious Freedom Restoration Act of 1993,[193] they also argue that religious expressions such as wearing a cross or having a picture of Jesus on one's disk is fundamentally different, under the reasonable person test, than the "girlie pictures" of *Robinson*.[194] While "girlie pictures" are demeaning, they argue, because they portray women as sexual objects rather than workers, the display of religious objects "is not generally seen by the reasonable person as demeaning."[195] Instead, they are simply expressions of a person's faith.[196] Moreover, a reasonable person, they argue, is more likely to find expression of a co-employee less intimidating than that of an employer.[197] A reasonable person standard can make this distinction.[198]

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188. *Id.* at 76 (citing Robinson v. Jacksonville Shipyards, Inc., 760 F. Supp. 1486, 1534 (M.D. Fla. 1991)).

189. *See id.* at 89-91.

190. *Id.* at 65-66 (citing Kotcher v. Rosa & Sullivan Appliance Ctr., Inc., 957 F.2d 59, 61 (2d Cir. 1992)).

191. *Id.* at 65 n.100 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 32, at 174 (5th ed. 1984)).

192. *See id.* at 89-90.

193. 42 U.S.C. § 2000bb (1994) (held unconstitutional in City of Boerne v. Flores, 117 S. Ct. 2157, 2170-72 (1997)).

194. *See* Dworkin & Peirce, *supra* note 176, at 90.

195. *Id.* at 90-91.

196. *See id.* at 91.

197. *See id.*

198. *See id.*

2. Reasonable Persons and Ellul's Natural Law

The interesting aspect of Dworkin and Peirce's argument is their reliance on the "objective" standard of "reasonableness" that is defined by the "social mores" of the time. What is reasonable in this description is something like a Rawlsian "overlapping consensus," but because Dworkin and Peirce implicitly leave open religious participation in the development of the standard, their approach is more akin to an Ellulian notion of natural law. What is reasonable is what a given society generally accepts as reasonable. Dworkin and Peirce rightly assume that today's society would differentiate between "girlie pictures" and displaying a cross on one's desk.[199] The demeaning nature of "girlie pictures" and the benign nature of a cross, however, may not be so reasonably assumed in a highly patriarchal society in which ethnic violence has been fueled by religious passion. In such a case, "girlie pictures" may be seen as benign and a cross as demeaning.

C. *Ethical Codes: Three Meanings of "Natural"*

1. Review of Two Meanings Previously Described

I do not mean to criticize Dworkin and Peirce's conclusion or their methodology. In fact, I generally support it. I simply wish to correlate their methodology with Ellul's natural law. As the previous subsection indicates, the weakness of the methodology is its implicit relativism.

Deferring to a standard of reasonableness is a sensible approach. It appeals to a standard of common understanding. For an employer crafting a code of business ethics, appealing to a sense of reasonableness in justifying code provisions would be quite appropriate.

There is a second sense of natural law that we have seen in Section II. This sense is not so relativistic. Perry relies on natural law to offer criteria of dialogue. That dialogue requires, according to him, notions of fallibility: accessibility represented most concretely by the willingness to offer secular reasons in addition to religious ones. Suggestive of Perry's approach is the extent to which traditional natural law can offer other standards by which one can determine the legitimacy of an action. If there is a universal ability to know right and wrong and to reason, then appealing to natural law sources provides a way to open up what is inside of us, even when that "revelation" conflicts with what a given community spontaneously understands to be right.

199. *See id* at 90-91.

I do not wish to begin an analysis of natural law theory and corporate codes of conduct. However, I do wish to take two important natural law principles and apply it to these matters. Natural law theorist John Finnis considers participation to be one key natural law principle: "[O]ne who is never more than a cog in big wheels turned by others is denied participation in one important aspect of human well-being."[200] Thus, it is a principle of justice that common enterprises be regarded not as ends themselves, but mechanisms for individuals to "constitute themselves."[201] The principle of subsidiarity, that is the principle that decisions ought to be made as close to a problem as possible rather than by appeal to a large common enterprise, thus becomes a central feature of justice.[202]

It is exactly at this point where the heretofore divergent notions of business ethics and religion come together. In large organizations, the development of a corporate code of ethics may not provide any individual the opportunity to participate meaningfully. Employees are truly cogs in a wheel. But when an individual is told of her ethical obligations without an opportunity to participate in the development of such standards, one has an objectified law that Ellul warns may not be part of the lived experience. In such cases, not only is a rule abstract, disconnected, and imposed on an employee, but it is also a denial of the individual's opportunity to "constitute herself" to obtain her personal identity. Given the significant amount of waking hours individuals spend at work, the removal of this opportunity to constitute one's identity is a critical blow to the development of ethical virtue. When one combines an imposed code with religious justifications, even if such justifications are accompanied by secular reasons (such as they help us comply with the Federal Sentencing Guidelines or they are good business practice), one has robbed the individual of an important aspect of human well-being.

It may not be possible for employees to establish democratic workplaces. But it ought to be possible to allow individuals to comment and participate in the development of the moral standards by which they work. Certainly there are requirements imposed, for instance, by the government, that workers cannot override. Both a traditional natural law sense and an Ellulian natural law sense require that moral standards be connected with the lived lives of individuals affected by them.

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200. FINNIS, *supra* note 123, at 147.
201. *Id.* at 169.
202. *See id.*

Another natural law theorist, Lon Fuller, argued that the essence of appropriate moral conduct is to communicate:

> If I were asked . . . to discern one central indisputable principle of what may be called substantive natural law—Natural Law with capital letters—I would find it in the injunction: Open up, maintain, and preserve the integrity of the channels of communication by which men convey to one another what they perceive, feel, and desire.[203]

Thus, two key principles of natural law—participation and communication—themselves necessary components of Perry's standard of dialogue, together with secular justifications for religious arguments, provide mechanisms for assuring that any corporate ethics code does not become an imposition, but a communal understanding of the good.

These two features of natural law—a communal spontaneity and a requirement that all those affected by a code of ethics participate and that the substance of the code is communicated to them—provide guidance as to how religion can be a voice in corporate ethics. Bolstered by the requirement of a secular argument for a religious position, they go a long way in making sure that religion's good side predominates over its bad side. It is, after all, difficult to see how a participatory ethical code would foster hatred and harassment. Yet, there is one final necessary understanding of natural law. This is the understanding of the laws of nature. I want to focus on one key element: the need for small sizes for the development of moral character.

2. A Third Meaning: Laws of Nature

Recently, anthropologists and psychologists have argued that human beings are not significantly different from their hunter-gatherer ancestors. In such small groups,[204] community duty is simply a part of community membership. Size is significant. Psychologist Robin Dunbar found:

> a correlation between the dimensions of the neocortex—the part of the brain engaged in conscious thought—and the size of different groupings in mammals . . . In humans, Dunbar found the size of the neocortex predicts [optimal

203. LON FULLER, THE MORALITY OF LAW 186 (rev. ed. 1969).

204. The size of the hunter-gatherer groupings varies somewhat. Julian Jaynes estimates them to be approximately thirty in number, and Colin Turnbull argues that the groups would consist of no more than four families. *See* JULIAN JAYNES, THE ORIGIN OF CONSCIOUSNESS IN THE BREAKDOWN OF THE BICAMERAL MIND 129 (1976); COLIN M. TURNBULL, THE FOREST PEOPLE: A STUDY OF THE PYGMIES OF THE CONGO 37 (1962).

> populations of] groups of about 150 people. This number happens to conform to the approximate number of the clan within hunter-gatherer societies; the company unit within the military; and the aggregate of employees within a business that can be managed without an elaborate bureaucracy. The figure of 150, Dunbar writes, represents the maximum number of individuals with whom "we can have a genuinely social relationship, the kind of relationship that goes with knowing who they are and how they are related to us.[205]

Without small groups, bureaucracy disconnects an individual's understanding of the relationship among ethics, self-interest and the common good. This is exactly what Ellul would predict, but Ellul does not focus on the importance of size. Size, however, explains how corporations, which utilize size to achieve competitive economies of scale, can easily lurch toward the kind of bureaucracy that undermines moral identity. This is because it becomes harder in a large society to identify with the community. Thus Charles Taylor writes:

> The socially derived identity was by its very nature dependent on society. But in the earlier age recognition never arose as a problem. General recognition was built into the socially derived identity by virtue of the very fact that it was based on social categories that everyone took for granted. Yet inwardly derived, personal, original identity doesn't enjoy this recognition *a priori*. It has to win it through exchange, and the attempt can fail. What has come about with the modern age is not the need for recognition but the conditions in which the attempts to be recognized can fail.[206]

Given the fact that ninety-eight to ninety-nine percent of our history as a species was spent in hunter-gatherer societies, we cannot simply dismiss our history as anachronistic. In short, to obtain our moral identity our nature requires that we participate in the development of the norms that guide our communities. A full engagement of the norms brought to a workplace by the diverse population that works in this country[207] can create a

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205. Gary Stix, *Different Strokes*, SCI. AM., Nov. 1996, at 36, 36 (reviewing ROBIN DUNBAR, GROOMING, GOSSIP, AND THE EVOLUTION OF LANGUAGE (1996)).

206. CHARLES TAYLOR, MULTICULTURALISM AND 'THE POLITICS OF RECOGNITION' 34-35 (1992).

207. *See, e.g.*, RONALD TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA (1993) (arguing that we meet our diversity fully at work).

spontaneous reasonableness that stands as a criteria for determining the legitimacy of the reliance on religious beliefs in developing corporate codes of conduct.

Thus, a central natural requirement for individuals to obtain moral identity and learn moral obligations is the size of communities that accords with our neurological development. And in small communities of one hundred fifty people, one may be able to conduct a Perry-like dialogue among participants that results in an Ellulian natural law. Small sizes thus create the conditions for the application of corporate culture in which moral obligation has a rightful place, and in which normative resources of the participants, religious or nonreligious, can contribute to the development of a business ethic. It requires, in other words, that businesses be constructed as mediating institutions.

V. Religion, Ethics and Business as Mediating Institution

How is this possible? In other fora, I have argued that business ought to be constructed as "mediating institutions."[208] In relatively small institutions, individuals learn their moral responsibility because the face-to-face interaction demonstrates the consequences of one's actions.

A. *Mediating Institutions and Religious Sources*

The general concept of mediating institutions as a vital communal force that forms moral identity is not new. Edmund Burke called these mediating institutions the "little platoons"[209] in which we learn our social obligations. Alexis DeToqueville said that "voluntary associations" (and religion) were the principal social formations of moral virtue that allowed American democracy to flourish.[210] While communitarians such as Amitai Etzioni often dwell more upon the megastructures of state and nation,[211] they too recognize the importance of small mediating institutions in forming moral identity.[212]

The most prominent exponents of the idea of mediating institutions have been religious "communitarians" (although I am uneasy in labeling them as such) such as Richard John Neu-

208. *See* sources cited *supra* note 9.

209. Edmund Burke, Reflections on the Revolution in France 44 (J.M. Dent ed., 1910).

210. 2 Alexis de Toqueville, Democracy in America 115-16 (Phillips Bradley ed., Henry Reeve trans., 1945) (1840).

211. *See, e.g.*, Amitai Etzioni, The New Golden Rule (1996).

212. *See generally* Robert Bellah et al., Habits of the Heart: Individualism and Commitment in American Life (1985).

haus and Peter Berger. For them, "megastructures" such as the state, but also the multinational corporation do not provide "meaning and identity for individual existence."[213] In mediating institutions such as neighborhood, family, religious institutions and voluntary associations, individuals obtain identity because (and when) they are empowered to have an impact on the actions of their organization. When a megastructure dominates without mediating institutions' buffer:

> the political order becomes detached from the values and realities of individual life. Deprived of its moral foundation, the political order is "delegitimated." When that happens the political order must be secured by coercion rather than by consent. And when that happens, democracy disappears.[214]

While the state draws most of the fire of this neoconservative idea, Berger and Neuhaus are clear that "the management mindset of the megastructure—whether of HEW [the Department of Health, Education and Welfare], Sears Roebuck, or the AFL-CIO is biased toward the unitary solution."[215] Thus, the issues of identity and moral obligation are central to business as well. They are also central to the well-being of efficiency as Michael Novak notes:

> A successful corporation is frequently based on the principle of subsidiarity. According to this principle, concrete decisions must be made on the level closest to the concrete reality. Managers and workers need to trust the skills of their colleagues. A corporate strategy which overlooks this principle—and many do—falls prey to all the vices of a command economy, in which all orders come from above.[216]

Novak's argument, as well as those of Berger and Neuhaus,[217] comes from a theological context. To follow Perry's advice about offering a secular argument, one can substantiate this wisdom from a purely business standpoint, and one can cite three important justifications.

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213. PETER BERGER & RICHARD JOHN NEUHAUS, TO EMPOWER PEOPLE: THE ROLE OF MEDIATING STRUCTURES IN PUBLIC POLICY 2 (1977).

214. *Id.* at 3.

215. *Id.* at 41.

216. MICHAEL NOVAK, THE SPIRIT OF DEMOCRATIC CAPITALISM 132 (1982).

217. Pope John Paul II has made similar arguments. *See* POPE JOHN PAUL II, CENTESIMUS ANNUS (1991).

B. *Mediating Institutions: Secular Corollaries*

First, the quality movement of the 1980's, which is still prominent in corporate America today, champions the idea of worker involvement. Not only must business meet the needs of external customers—the mantra for which TQM is typically known—but a co-worker is also a customer whose needs must be met, regardless of his or her place on the corporate hierarchy.[218] The reason for this is that it provides meaning, fulfillment and empowerment for the employee, exactly what mediating institutions do. Thus Deming writes:

> [The worker] will feel important to the job if he can take pride in his work and may have a part in the improvement of the system. Absenteeism and mobility of the work force are largely the result of poor supervision and poor management . . . The possibility of pride of workmanship means more to the production worker than gymnasiums, tennis courts, and recreation areas.[219]

It is true, of course, that while "bureaucracy can strangle initiative and progress, so too can a large number of empowered but unaligned individuals who are working at cross purposes."[220] But, constructing business as a mediating institution does not mean that workers hold elections on every issue. Instead, it means that they are empowered to solve the problems they directly encounter in their work. They solve problems on the work product they make.

This leads to the second secular justification: management today is already creating such models. *Wall Street Journal* writer Thomas Petzinger, Jr., not only notes that corporations are creating small teams to solve problems independent of central management, but that they follow a natural, "biological" model in doing so:

> [F]or 300 years leaders have built their organizations on the seemingly unassailable principles of Newton's mechanics, as if people were the gears of a timepiece. And it worked—until the speed and complexity of modern life began to overwhelm even the grandest control structures, from the Soviet Union to the mainframe computer. The new model for organizations is the biological world, where uncontrolled actions produce stunningly efficient and

218. *See* JOHN S. OAKLAND, TOTAL QUALITY MANAGEMENT 29-42, 145 (1989).

219. W. EDWARDS DEMING, OUT OF THE CRISIS 83-85 (1986).

220. GARY HAMEL & C.K. PRAHALAD, COMPETING FOR THE FUTURE 319 (1994).

robust results, all through adaptation and self-organization.[221]

Third, a recent British study indicates that the lack of control over one's job correlates with more heart disease.[222] The study found that those in low-grade jobs with little control over their work responsibilities had a fifty percent higher risk of heart disease than those in higher-level jobs, although those in higher level jobs were typically under more stress.[223] The offer of a BMI approach is that through more control over one's job, one may have associated health benefits.

C. *Integrating The Reasons*

What needs to be integrated then are codes of ethics that individual small groups enact for themselves. In doing so, they are likely to draw upon the formative normative knowledge they have, which may very well be religious. To prevent harassment, oppression and proselytization, they ought to discuss in corporate subunits, which are the mediating institutions in a large corporation. Every person should be allowed to participate, decisions should be honestly and openly communicated, and secular justifications should accompany religious ones.

Of course, such small subgroups may not fully know the obligations a corporation has to other constituents, such as the government. A subunit may devise policies that do not assist the company in complying with the Federal Sentencing Guidelines, for instance. Although this requires that a check be placed on the mediating institutions in terms of clearly communicated policies that are vital to the corporation, such a federalist approach is much different than a code of ethics being handed down in incomprehensible fashion by the General Counsel's Office. In order, however, to be sure that employees do not feel that their voice has been taken away in fashioning these required norms, there should also be representation of employees on the board of directors or at least on those committees with the authority to draft the codes of corporate conduct.

In enacting corporate codes, corporations should take such actions as keep them in compliance with applicable laws but thereafter ought to allow individual groups within the organiza-

221. Thomas Petzinger, Jr., *Self-Organization Will Free Employees To Act Like Bosses*, WALL ST. J., Jan. 3, 1997, at B1.

222. *See* Ron Winslow, *Lack of Control Over Job Is Seen As Heart Risk*, WALL ST. J., Jul. 25, 1997, at B1 (citing a study conducted by the International Centre for Health and Society at the University College in London).

223. *See id.*

tion to formulate the moral rules necessary for them. Those rules could be based on religious principles. The difference, however, is that in small institutions, individuals have a greater opportunity to influence the development of the standards affecting them. This would not allow for the oppression of individuals; the reasonable person standard advocated by Dworkin and Peirce would prevent that. But it would allow individuals to create the moral identity of their subgroup and of themselves. Even if carefully articulated, a result Ellul may not like, the crafting of rules in small groups is much different than in large groups because of the more equal power differential.

VI. Conclusion

For the reasons of Section II, it is legitimate epistemologically and consequentially to rely upon religious belief in making arguments and decisions about public activities. Those activities include business decisions and corporate codes of conduct. In making such arguments and decisions, however, one must also offer secular reasons and must encourage the participation of those otherwise without power

For the reasons of Section III, the overspecification of any rules regarding religion in the workplace will undermine religion's spirit. A spirit of wanting to be ethical is necessary if ethics are to be practiced. But too much specificity undercuts moral passion. While admirable, scholarly business ethics should not focus so much on the precise rules necessary to work through a difficult dilemma but on creating corporate cultures in which virtue is fostered.

For the reason of Section IV, nature explains that by communicating and participating, particularly in small groups, we can maintain spontaneity while protecting against religion's harshness. Our biological nature stresses that size is important. In large groups, we can feel disconnected from the logic of the rules that are imposed upon us. Without such a connection, moral spirit is undermined.

For the reasons of Section V, businesses can be structured as mediating institutions so that individuals are empowered in small corporate subunits. In fact, many businesses do this already. But to foster virtuous behavior, such mediating institutions ought to be responsible, at least in significant part, for the determination of appropriate business conduct. Such determinations remain subject to principles of natural law discussed in this paper and to the legal requirements shouldered by the corporation. But in any deferral to a higher corporate authority, there ought to be

representation of employees on decision-making committees. Meanwhile, in the smaller mediating institutions within the corporation, reliance on common experience may well mean that individuals rely on religious knowledge and belief in fashioning ethical codes of conduct. Provided that this reliance is dialogical, participatory, with open communication that includes secular justifications and protections for those without power, religious belief should be a legitimate aspect of business ethics.