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The Dark Side of Religion in the Workplace and Some Suggestions for Brightening It

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

There are many reasons for this jurisprudence, among them being the difficulty of balancing a moral system strongly influenced by a religious history with a tremendously diverse population that has rights to individual expression of religious belief, and a right to no belief at all. As difficult as this subject may be in a diverse United States, however, even more problems appear when one considers how global corporations can possibly deal with religious diversity in their worldwide operations.

This complex issue becomes more difficult when one considers the calls being made for businesses of all sizes to be more ethical and for penalties on businesses that fail to adopt ethical compliance. A manager who responds to calls for ethical business behavior must consider how to do so when the content of any such ethical behavior may touch upon and perhaps gravely offend some of 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 of employees upon entry to the company, and thereafter on a random basis. To protect against "false positives," any person testing positive would be retested prior to any further action. If the person tested positive again, the company would offer a substance abuse re-

habilitation program at the company's expense and the employee would be placed on probation. 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 that 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.

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 religious belief brings to a debate, even in determining ethical business behavior.

There is another danger. Throughout this book, I have occasionally referred to Dostoyevsky's *The Brothers Karamazov* and the notion of the necessity for the belief in God. From another perspective, legal scholar William Marshall reminds us of the dark side of religion. Marshall relies on the tale of the Grand Inquisitor from *Karamazov*. In the story, Jesus, who for Dostoyevsky provides the gift of freedom, returns to inquisitorial Seville. The people are initially drawn to him, but the Grand Inquisitor imprisons Jesus and tells him that people do not want freedom, but happiness, and that happiness is not fostered by freedom but by the Grand Inquisitor telling people what to do. It is out of the Grand Inquisitor's love of humanity that he removes freedom and allows people to be happy.² It is this dark side of religion, the side that removes freedom, Marshall argues, that itself causes problems.³ The final consequence is that "[t]he more rigid and expansive the doctrine, the more the believer is shielded from the tremendum. Eventually, because of the strength of its appeal, doctrine replaces God as the center of religious experience."⁴ A similar process occurs when ritual replaces God.⁵

Marshall has a valid point. There is a disturbing history of religious ugliness in the workplace as well as in the public square that could undermine the appeal I make for a more inclusive presence of religion. Trends suggest that the presence of religion may be increasing, which

raises these concerns to a more acute level. *Time* magazine ran a cover story in November 1999 featuring the growing presence of spirituality in corporate America.⁶ From accommodating religious practices by holding prayer meetings to noting that spiritual people “are less fearful, less likely to compromise their values, and more able to throw themselves into their jobs,”⁷ the story emphasized the fact that religion, like it or not, simply won’t go away.

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.⁸ Thus, a high “wall of separation” between church and state helps religion.⁹ Scholars such as Michael McConnell draw the opposite conclusion. For him, the religious orientation of the American people is both a current reality and a historically significant context that requires a lower wall between church and state interaction.¹⁰ Putting to the side which interpretation is more accurate, the point is that there is a strong consensus that the country has a strong religious orientation. Polls regularly substantiate this as well.¹¹

A second question is whether this orientation is deep or superficial.¹² Relatedly, some have asked whether being religious makes any difference to one’s behavior, particularly in business.¹³ While the *Time* article noted religion’s empowerment of ethical behavior, sociologist Robert Wuthnow argues that the evidence shows that religious belief makes little difference to the actions individuals take in business.¹⁴ The prevailing 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.¹⁵ 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. Two 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.”¹⁶ This desire to keep corporation and church separated is also supported by a 1988 study indicating

that business persons do not see the involvement of clergy as a helpful way to improve the ethical business climate,¹⁷ evidence that demonstrates a certain queasiness among business persons at the blending of religion and work.

Second and more indirectly, Frederick Bird studied the reasons managers give for “doing the right thing” at work.¹⁸ The primary conclusion he drew was that managers are often very reluctant to justify a decision on moral grounds for fear that it will appear “soft” or “weak.”¹⁹ In the rough-and-tumble corporate world, one needs to relate one’s decisions to self-interest, not moral virtue.²⁰ 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.”

Nash recognizes the good that religiously motivated managers can do, but she also says that religiously conservative CEOs have a “blind spot” with regard to the equal treatment of women.²¹ The relationship between this blind spot and the power CEOs have wielded over women, power that has resulted in harassment cases, is something that I expand 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 Piece 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.²²

In *Meltebeke v. Bureau of Labor and Industries*,²³ the owner of a painting business first told a worker that he was going to hell for living with his girlfriend, then told him that he must be a good Christian to be a good painter, then told him that he only wanted to work with Christians since they would not steal, and finally fired him.²⁴ In another case, employers held required devotional services during work.²⁵ The interesting thing about these cases is not that the employers held strong religious beliefs, but that, offering a secular reason for their ethic, they felt that those religious beliefs were good business.

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 incendiary, and because

someone with power could use that power in order to proselytize or embarrass another person, any freedom for religious expression in the workplace must take into account uses of power traceable to someone expressing her religious views. In essence, just as the Establishment Clause prevents government from, among other things, dictating religious belief but does not prevent government from looking at the behavior associated with the belief, so religious freedom in the business world requires similar attention. In particular, the protection of those not in power from being coerced by those with power is analogous to governmental frameworks. This makes comparisons with workplace harassment law worthwhile.

Harassment Analogies

In their review of harassment law, Dworkin and Pierce consider several different rationales for balancing an employer's freedom of religious expression with that of an employee. They reject as inadequate an "animus" standard that would prohibit an employee from making statements and taking actions along the lines of *Compston*.²⁶ The difficulty, they argue, is that this standard would not protect *Meltebecke* 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 to correct sinful behavior.²⁷ Similarly, they reject a "directed speech test"²⁸ because it likewise gives insufficient protection for an employee who must work in an environment quite hostile to her beliefs, even if statements are not directly targeted toward her.²⁹ Dworkin and Pierce offer an example of a poster that could create a very hostile environment, more offensive than a private bigoted remark.³⁰

Dworkin and Pierce, recognizing a 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 Equal Employment Opportunity Commission in publishing its very controversial, and subsequently withdrawn *Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age or Disability*.³¹ 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."³²

Dworkin and Pierce 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."³³ 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 guidelines as preventing the possession of religious symbols or photographs (such as on one's desk or neck) that would offend another person.³⁴

Rather than any of these standards, Dworkin and Pierce propose a "reasonable person" standard, which would determine the harassing nature, if any, of speech or action.³⁵ This "more objective" (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."³⁶ Moreover, relying upon its development in tort law, Dworkin and Pierce note that "[t]he 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."³⁷

Dworkin and Pierce recognize that this standard errs on the side of religious expression.³⁸ They also argue that religious expressions such as wearing a cross or having a picture of Jesus on one's desk are fundamentally different, under the reasonable person test, than the "girlie pictures" of *Robinson*.³⁹ 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."⁴⁰ Instead, they may be expressions of a person's faith.⁴¹ Moreover, a reasonable person, they argue, is more likely to find expression by a coemployee less intimidating than that by an employer.⁴² A reasonable person standard can make this distinction.⁴³

The Danger of "The First Man"

These dangers of harassment are real. But there is also danger in the loss of the sense of connectedness and transcendence that religion provides. Consider, for instance, this quote:

An enormous oblivion spread over them, and actually that was what this land gave out, what fell from the sky with the night over the three men returning to the village, their hearts made anxious by the approach of night, filled with that dread that seizes all men in Africa when the sudden evening descends on the sea, on the rough mountains and the high plateaus, the same holy dread that has the same effect on the slopes of Delphi's mountain, where it makes temples and altars emerge. But on the land of Africa the temples have been destroyed, and all that is left is this soft unbearable burden of the heart.⁴⁴

In this passage from Albert Camus's unfinished novel, *The First Man*, the solitary loneliness, because of the absence of temples and altars, is not only a description of the Africa of which he wrote, but of humanity. As in other works of Camus, the self is alone. The dark absurdity of the

evil-wielding, death-dealing universe gives one no hope for identity beyond that which the individual provides for herself. A commitment to reduce the suffering of the world is Camus's rational choice by the "first man" who could, however, have also chosen evil and solitude.

This isolation is neither fictional nor dated. It remains a factor now as well. Corporate downsizing has left the loyalty of employees unrequited. Once, an employee's loyalty and commitment to a company provided a sense of identity and meaning. Today, "[t]hey've got to appreciate their value apart from the corporation."⁴⁵ It is increasingly difficult for individuals to find a sense of long-term identity in corporate America. The "company man" has become the "first man."

The "first man" and today's "company man" have little reason to seek the common good. Their notions of the good have been constructed from the perspective of self-interest: a good that is individually described and defined. If we are all "first men," what hope do we have for a politics concerned with communal welfare? What religion does it provide a sense of connectedness with others and with a transcendent source. As I have argued, this is an important connection, but one that has to be cautiously approached because of the harassing behavior it can promote.

THREE APPROACHES TO RELIGION IN THE WORKPLACE

To claim that religion has only recently begun to engage actively in questions of business ethics is, of course, to make an absurd statement. The religions of the world have made business affairs the subject of ethical analysis for thousands of years. In a recent issue of a prominent business ethics journal, Jewish ethicists Ronald M. Green, Elliot N. Dorff, and Meir Tamari all demonstrate the modern applicability of millennia-old religious principles to economics.⁴⁶ It is a fair guess that many clergy comment upon economic affairs in their weekly services today. Thus, one can hardly say that religious institutions and their leaders have been mute, although it is possible that religious managers 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.⁴⁷ Indeed, since Richard DeGeorge's seminal challenge that religion has little to teach philosophical business ethics,⁴⁸ authors of theological contributions to the field of business ethics have struggled to emerge.

Given this recent history, there is a concern as to whether religion ought to be a participant in prescribing normative behavior for business practices. It is a concern whose dimensions have been developed by those arguing about the proper role of religion in political matters.

Thus, to explicate why religion should be a participant in developing moral business practices, it is worth recapping the salient features of the religion-politics 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. The next subsection describes the strict exclusionist view. The following subsection describes two attempts at describing a moderate view. The third subsection 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.

The Strict Exclusionist Position

The strict exclusionist position (SEP) states that one should not rely upon religion, at least not to justify 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 a person exercises power, he must present reasons explaining the exercise. Second, those reasons must be consistent with the reasons used to justify other uses of power.⁴⁹ Third, and most relevant, some reasons should be excluded from public justifications of the use of power; those justifications include religious ones.⁵⁰ The reason for excluding religious justifications is that religious reasons suggest that the power holder is "intrinsically superior" to others.⁵¹ 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."⁵²

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 tests 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 were onto an important problem: the exercise of power explained only by religious reasons can be very offensive in a pluralistic society.

Like Ackerman, Thomas Nagel attempts to create an “impartial” language.⁵³ Nagel argues that the power holder should not attempt to coerce another person on grounds that person can reasonably reject.⁵⁴ 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.⁵⁵

The difficulty with this shared values approach is that it is both over- and underinclusive. Michael Perry, for instance, has suggested that in many cases, individuals can appreciate experiences even when one party has not had direct, identical experience. He offers the example of a conversation between a drug user and the spouse of a drug user.⁵⁶ Neither would have direct experience of what the other “has,” but it is likely that they would 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 another to assume that constructive conversation cannot take place.

It may also well 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 good 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 the best way is to love one’s neighbor. His religious belief did not dictate method, but a 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 95 percent of American adults profess belief in God⁵⁷ and 70 percent belong to a church or synagogue.⁵⁸ 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 American 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.”⁵⁹

With religion having such a presence, it seems odd to ask a religious person to compartmentalize her beliefs. 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 that 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."⁶⁰

Many have made similar claims but have also noted the difficulty in relying upon religious reasons in public.⁶¹ 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.

A Moderate Position

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 when they make political choices.⁶² In “background” structures such as churches and families, public reason is not necessary. 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. The United States, he argues, is too diverse to anchor its political judgments on religious or any other comprehensive moral ground. Instead, one ought to derive a public reason from the overlaps found in the various comprehensive moral positions. In making arguments in public, one should rely upon the reasons found in this “overlapping consensus.”

Rawls's position certainly gives more room for reliance upon religious belief in “mediating institutions” than can be found in the SEP school. Nevertheless, there remain 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 as much to Rawls's position as to Ackerman's and Nagel's.⁶³

Second, one must ask what sustains Rawls's notion of an overlapping consensus. Religious statements can and have acted as a prophetic denunciation of overlapping consensus. Martin Luther King Jr.'s insistence on civil rights, for instance, was rooted in religious belief, justified in religious language, and violative of the racist overlapping consensus he was born into. If one only admits established consensus to public debate, one diminishes the ability of any society to correct itself. Jürgen Habermas has argued that.⁶⁴

The same holds true in business. Total quality management, for in-

stance, was completely rejected in the United States after World War II.⁶⁵ 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.⁶⁶ 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,"⁶⁷ 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 that consensus.

Of course, Rawls's 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's position is unrealistic in rejecting that reliance and because it removes an important method of correction, his more moderate position fails for the same reasons as those of Ackerman and Nagel failed.

Kent Greenawalt and Accessible Rationales

A second scholar, Kent Greenawalt, has taken a position more open to religion than Rawls. In his moderate position, one may rely upon religion in making public justifications of one's moral positions, but should refrain from doing so in certain circumstances, for example, when one is influential and 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.⁶⁸ Although Greenawalt attempts to provide a basis for this distinction on the basis of his "accessible rationales," which he claims are different from "shared values," there is no meaningful difference between the two.⁶⁹

Greenawalt's philosophical distinction is less compelling than his consequentialist argument. Relying upon the work of William Marshall,⁷⁰ Greenawalt worries about the unrest that could result if influential individuals justified public positions on the basis of religious belief.⁷¹ One reason Greenawalt says those justifications 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 kept private.

It is worth noting that in Greenawalt's definition of who is influential, business executives are included.⁷² Since they 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. Since executives and general counsels often are the ones promulgating ethical codes, they possess the kind of influence that would worry Greenawalt. There are costs, then, to the application of Greenawalt's position to business.

First, it would seem that one 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 become illegitimate? Relatedly, of course, the determination of exactly when one becomes influential and therefore required to abandon evidence of faith, is problematic.

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

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.

Michael Perry's Inclusionist Position

Ecumenical Politics and Full Inclusionism

The position legitimating debate among religions, and among religious and nonreligious belief about normative goods, is the one Michael Perry has adopted. Perry had once advocated a position not dissimilar to Greenawalt, in which Perry argued that one could rely religious belief

in making political decisions, provided one presented arguments that were accessible to others, and as long as one acknowledged the possible fallibility of one's position.⁷³ Perry advocated an "ecumenical politics" in which religious beliefs were admissible rather than being relegated to the side because they were not "neutral." 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 chapter. While it is admissible in public debate, however, Perry recognizes that the dialogue featured by his ecumenical politics required arguments that were accessible and a humility about the fallibility of one's position. As we have seen by the fact that he now recognizes more clearly that individuals with similar but not identical experiences (a drug user and a spouse of a drug user) can "access" each other's experience, Perry's view of accessibility is much now wider than it once was, and wider 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 he meets the accessibility standard.

In an interesting later article,⁷⁴ Perry scaled back his position to a degree. He argued that his position amounted to one that 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.⁷⁵ This seems to have led to a full inclusivist position (FIP), in which he argues that a believer ought to justify her decisions on whatever sincerely motivated the position.⁷⁶ 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 Americans are hardly in that predicament now.⁷⁷ 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."⁷⁸

A second implicit, but equally important argument, is Perry's confi-

dence in debate. While Greenawalt⁷⁹ and Marshall⁸⁰ 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 monological, 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.⁸¹

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)⁸² upon the grounds that motivate an individual taking a moral position. Once made, we then ought to debate the validity of the position. 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.⁸³ Indeed he not only is willing to allow reliance on religious beliefs in conducting debate, he argues that we ought to encourage it.⁸⁴

Secular Corollaries

In this 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 on religious reasons for making political choices, but he adds an interesting corollary. That is, one should offer a "secular" argument in addition to the religious argument.⁸⁵ Perry gives three reasons supporting this approach.

First, he claims that most religious believers take a secular agreement with a religious position as proof of the validity of the position.⁸⁶ 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.⁸⁷ 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.⁸⁸ 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.⁸⁹

It is important to note the ground Perry relies upon to make his argument. It is that of natural law. Because God's revelation is open to all human beings, one can conduct rational argument about what has been revealed by nature.⁹⁰ Thus, his second reason for requiring a secular argument is that we all, not just the mainline Christian churches he cites, have the ability to reason to the knowledge of the good.

Even further, Perry describes the "human propensity to be mistaken and even to deceive oneself about what God has revealed" as "ubiquitous."⁹¹ An argument only relying on revelation, that is, one that is unsupported by a secular argument, is one that is particularly vulnerable to manipulation, self-deception, and mistakenness. In short, human fallibility requires a secular argument as a check against these human frailties. Thus, his third argument for considering 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.⁹² He makes three key arguments to counter such objections that arise directly out of the above-described rationale. First, because Christians believe that basic requirements for 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.⁹³ 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."⁹⁴

Second—and probably the most controversial position Perry takes—he argues that conservatives must also take into account the fallenness of themselves and, therefore, of religiously based arguments, because both religiously based arguments and secular arguments "are, finally, human arguments."⁹⁵

A third reason is that religious believers have little hope of influencing a liberal democracy unless they do rely on a secular confirmation of their moral position.⁹⁶ Noting the work of Richard John Neuhaus, Perry notes that any religion wanting to give witness in this democracy must subject itself to self-critical rationality and must develop a *mediating* language to describe its insights to the larger community.⁹⁷

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. Perry thus creatively uses

the criteria of secular arguments as a strategic device to gain 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.

NATURAL LAW AND BUSINESS ETHICS

The real importance of Perry's position is not that he threads the minute needle of acceptable religious justification for 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 that I read Perry to be willing to undertake and not merely assume, then its legitimacy as a normative criterion 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 from policies or from 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's comment, reliance on 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 proposal for 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.⁹⁸ These variations of "traditional natural law" attempt to find basic normative principles of conduct through philosophical and/or theological reflection.⁹⁹ 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. However, the important point to note here, which will be developed more fully in the next section, is that the justification of a religious argument that is acceptable in public discourse cannot be predicated on an epistemological understanding of religion as idiosyncratically personal. If it is predicated on such a basis, then it runs great risk of 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 a secular corollary, if not a corresponding 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 consider further.

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 upon religion in making political arguments, or that legislators should, or that judges should—even if such reliance does also have a secular corollary—is to describe a dialogue in which the person not relying on religion, or relying on a religion different from one who has power, and who is relying on religious belief in making her argument, is probably capable of defending herself. Further, when the religious person is making a decision that has coercive consequences, if she is not relying on religious belief, she 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 not unmindful of the importance of power differentials. But because the debate in which he is engaged in the academic 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 position of power, and the person, whether a believer or nonbeliever who does not rely upon religious justifications, and perhaps finds such justifications offensive, is in a position of little power. This, however, is exactly the situation an employee could find himself in if a corporate ethics policy was adopted by corporate executives who seek to integrate religious belief in policies.

In the arguments of the SEP school and Greenawalt, there is a concern 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,¹⁰⁰ neutrality,¹⁰¹ public reason,¹⁰² or impartial-

ity,¹⁰³ 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 of king of a fiefdom.¹⁰⁴ Not only can this structure undermine a requirement for the rational explanation of a position that seems to acquire or retain power, as would be the case in a democracy, but the corporate world has far fewer checks to reign in 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 that provide personal prestige without regard to economic performance.¹⁰⁵ 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 power.

Perry's proposal for accessibility depends upon a structure that makes accountable actions that must be explained in accessible terms. His requirement for fallibility may be less pronounced in a corporate structure that is not democratic. Thus, in addition to Perry's proposal of offering a secular reason for an action in addition to a religious one, the corporate world requires a proviso that cautions the power holder to accord an employee the same ability to rely on religious justifications. In addition to accessibility, one must also equalize power, at least to some extent, so that the exercise of corporate power is not harassing.

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 be moral judgments. In particular, given the fact that 95 percent of Americans hold a belief in God, one should not then be surprised that at the place where a very large part of their waking hours is spent—at work—religious beliefs should have an important role to play in defining what ethical business is.

THE DANGER OF PHILOSOPHICAL AND LEGAL RULES

Nearly forty years ago, Jacques Ellul wrote a small book, *The Theological Foundation of Law*,¹⁰⁶ in which he makes an argument about law, religion, and politics that is directly relevant to the present impulse for corporate codes.¹⁰⁷

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 that typically used by natural law scholars.¹⁰⁸ Traditional natural

law, Ellul argues, fails because it attempts to provide a meeting ground between Christians and non-Christians,¹⁰⁹ 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 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 in whole. 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.¹¹⁰

The Four-Part Typology and the Need for Spontaneity

In its origin, Ellul argues, all law is religious.¹¹¹ 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.¹¹² At this point, there is no differentiation between religious and political power; they are one and the same.¹¹³

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.¹¹⁴ According to Ellul, this is the point where natural law emerges. There is still a uniformity of custom that unites the attitudes of the people toward right and wrong, but there is no imposition by political authority of what that right and wrong might be.¹¹⁵ Law is not directed by the state nor by the religious institution in toto, but comes from the common consciences of the people.¹¹⁶

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 a disturbing of the peace, the reason one refrains from such activities is not to stay out of legal trouble, but not to violate 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 that are not precisely speci-

fied. But Ellul does not stop here. Instead he goes much further and becomes much more controversial.

In stage 3, 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.¹¹⁷ Ellul cites fourth-century B.C.E. Greece, first-century B.C.E. Rome, and eighteenth-century England and Germany as examples of this stage.¹¹⁸ 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.¹¹⁹ It is 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.¹²⁰ With a more diverse understanding of what was required by God, one could not rely on custom, but needed more precise principles of law.¹²¹ 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 to Ellul's final stage.

In stage 4, 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 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.¹²² Ellul's fourth stage need not, in fact 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. They have become precise.

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 for the experts,¹²³ 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 to it estate taxation.¹²⁴

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 still may not provide specificity, because no one reads it. Philosophical principles that require extensive analysis of complex social factors may likewise be dismissed as having little to do with the experience of work life, no matter how brilliant they may be.

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 takes Ellul's typology to an extreme. There are more moderate interpretations of the kernel of truth 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 but about a corporate culture that inculcates certain behavior on a regular basis. 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 that 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 proposal 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 to 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 here: ethics is not only

about precise legal rules or philosophic principles, but needs to connect with an affective side of human nature.¹²⁵ 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 rules become, and the less people participate in the rules governing them, the less compelling the principles behind the rules will be. This is true not only of tax law, but of the ethical principles corporations use to inspire ethical behavior.

If business ethics turns into extensive corporate codes and policies that are difficult to read and interpret, and which employees do not have a share in developing, they 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, both law and ethics 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.

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 will 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 dependent upon being ethical.¹²⁶ Once one gains trust, one can build better relationships with creditors, the community, and employees.¹²⁷ 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 themselves 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 Why be ethical? is to pose the tautological question Why should I be as I should be?¹²⁸ Because I should be ethical, then I need no further motivation; indeed asking for it would in a sense be illogical.¹²⁹ Business ethicists generally do not go to this extreme in explaining this third reason for being ethical. Their unwillingness to probe further behind why a person should want to be honest, loyal, fair, and so on breaks the link between the actual lives of individuals working in business and the principles, often quite good ones, offered by ethicists. 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.¹³⁰ 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. This 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 would be absurd. But it is not absurd to note that religious conviction may foster ethical behavior, and that many workers and managers will evaluate corporate codes and their commitment to such codes according to (an often held) experience connected with religion.