



2010

## Re-Enchanting the Corporation

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### Recommended Citation

Lyman P.Q. Johnson, *Re-Enchanting the Corporation*, *Wm & Mary Bus. L. Rev.* (2010).

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## RE-ENCHANTING THE CORPORATION

LYMAN JOHNSON\*

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### I. OUR ENDURING ENCHANTMENT

Ninety years ago, Max Weber, the great German sociologist, trenchantly described the modern condition as follows: “The fate of our times is characterized by rationalization and intellectualization and, above all, by the ‘disenchantment of the world.’”<sup>1</sup> By “disenchantment” Weber meant “the knowledge or belief...that there are no mysterious incalculable forces that come into play, but rather that one can, in principle, master all things by calculation.”<sup>2</sup>

Interestingly, Weber employed a term we seldom hear today—“disenchantment”—rather than one we hear far more frequently—

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1. Max Weber, *Science As A Vocation*, in MAX WEBER’S ‘SCIENCE AS A VOCATION’ 30 (Peter Lassman et al., eds., Michael John trans., 1989).

2. *Id.* at 13.

“secularization”<sup>3</sup>—because his focus was not only the observable, external, social and intellectual world; it was also the inner, personal world of the modern self.<sup>4</sup> In other words, Weber identified widespread disenchantment of world outlook at both the *public* and *private* levels.

A disenchanted, post-Enlightenment world is a less mysterious world. It is also a world that, to a considerable degree at least, is “knowable, predictable, and manipulable” by human agency.<sup>5</sup> We humans, navigating without divine guidance, are by default the “Master[s] of the Universe,”<sup>6</sup> and thus responsibility for human welfare falls entirely on our shoulders. Or, if not all persons equally exercise such mastery, at least certain heroic figures frequently seek to do so. A recent example can be seen in the efforts of Federal Reserve Chairman Ben Bernanke and former Treasury Secretary Henry Paulson to be “masters” of the nation’s financial universe as they frantically sought to restore order to crumbling capital markets during the tumultuous autumn of 2008.<sup>7</sup> The underlying and unspoken belief was that even so sprawling a landscape as the American financial markets would readily yield to the deft engineering of complex socio-economic problems via federal policy initiatives.<sup>8</sup>

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3. See, e.g., Symposium, *Constitutionalism and Secularism in an Age of Religious Revival: The Challenge of Global and Local Fundamentalism*, 30 CARDOZO L. REV. 2331 (2009).

4. Christopher L. Walton, *Is Disenchantment the End of Religion?*, PHILOCRITES, Jan. 18, 2003, <http://www.philocrites.com/essays/weber.html>.

5. Richard Jenkins, *Disenchantment, Enchantment and Re-Enchantment: Max Weber at the Millennium*, 1 MAX WEBER STUD. 11, 12 (2000), available at <http://www.maxweberstudies.org/1.1pdfs/1.111-32.pdf>.

6. The term “Master of the Universe” was coined both by novelist Tom Wolfe and Russian intellectual Aleksandr Solzhenitsyn. TOM WOLFE, *THE BONFIRE OF THE VANITIES* 1 (1987). Aleksandr Solzhenitsyn, author of *THE GULAG ARCHIPELAGO* (1973) and winner of the 1970 Nobel Prize in Literature, stated in his 1978 Harvard commencement address that man has become “the master of this world.” Charles Colson & Anne Morse, *Jeremiah at Harvard*, CHRISTIANITY TODAY, Aug. 2008, at 64. Tom Wolfe, in recently commenting on the current turmoil among Wall Street financiers, observed that: “The idea of the ‘Masters of the Universe’ on Wall Street just went kaput.” Andrew Ross Sorkin, *The Titans Take It on the Chin*, N.Y. TIMES, Jan. 27, 2009, at B1, available at <http://www.nytimes.com/2009/01/27/business/27sorkin.html>.

7. David Leonhardt, *Perhaps, It’s Time to Play Offense*, N.Y. TIMES, Sept. 17, 2008, at A1, available at <http://www.nytimes.com/2008/09/17/business/17leonhardt.html>. For an interesting Jewish law perspective on the financial crisis of 2008, see Hershey Friedman & Linda Friedman, *The Financial Meltdown of 2008: The Perspective of Jewish Law*, available at <http://ssrn.com/abstract=1419537>.

8. RAKESH KHURANA, *FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF*

A disenchanted world, therefore, is inevitably a human-centered world. It is a world in which humans must formulate plans and devise solutions without a “Supreme Complete Entity which used to restrain our passions and our irresponsibility.”<sup>9</sup> Consequently, the modern condition is said to be marked by the radical freedom to forge one’s own meaning in life, as even the Supreme Court famously noted in 1992: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe....”<sup>10</sup> In a disenchanted world, then, one does not speak of a moral Sovereign or of ultimate and absolute Truth (with a capital “T”) because there simply is no pre-existent, “unseen order” to guide our moral lives, to use William James’ vivid phrase defining religious outlook.<sup>11</sup>

A disenchanted world is a world ruled by science—natural sciences such as physics, chemistry, and biology, to be sure, but also the social sciences. Economics—whether of the neoclassical, behavioral, or neuro variety—psychology, sociology, and other disciplines all offer insight into the workings of the human and social dimension of life. Other vital influences in a demystified world include technology, rational government policy-making, and, of course, the law. Each of these influences is housed in a supposedly rational organizational structure following rational processes, while claiming, with some authority, to empirically understand and be capable of controlling significant portions of the world around us. Taken together, these forces promise, just as Weber foresaw, a fair measure of dominion over the natural and social spheres by means of human endeavor.

Two brief counter-observations are in order. First, one may rightly wonder whether the ninety years since Weber’s observation really tell a story of unqualified human attainment. To cite just two of countless possible counter-examples: we now witness extensive environmental degradation as seen in serious, widespread pollution of air,<sup>12</sup> water,<sup>13</sup> and

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MANAGEMENT AS A PROFESSION 298-99 (2007) (describing views of former Senator Daniel Patrick Moynihan on the hubris of academics and policy makers in seeking to bring about “social change through the manipulation of...the hidden processes of society”).

9. Colson & Morse, *supra* note 6 (quoting Solzhenitsyn).

10. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

11. WILLIAM JAMES, *THE VARIETIES OF RELIGIOUS EXPERIENCE* 55 (Vintage Books 1990) (describing religion as “the belief that there is an unseen order, and that our supreme good lies in harmoniously adjusting ourselves thereto”).

12. Hajime Akimoto, *Global Air Quality and Pollution*, *SCI.*, Dec. 5, 2003, at 1716.

soil.<sup>14</sup> We have also seen extraordinary breakdown and volatility in financial markets, accompanied by far-reaching public and private economic insecurity and hardship.<sup>15</sup> These are not emblems of human triumph and mastery.

Second, one may rightly question whether the world—or at least all of it—really is disenchanted in the way Weber described. Empirical evidence strongly indicates that, notwithstanding critiques of religious viewpoints by Richard Dawkins,<sup>16</sup> Christopher Hitchens,<sup>17</sup> Sam Harris,<sup>18</sup> and Bill Maher,<sup>19</sup> large numbers of people in the United States<sup>20</sup> and throughout the world are religious.<sup>21</sup> Evidence reveals not only that vast numbers of people hold religious beliefs, it also suggests that those convictions give

13.S.S.D. Foster & P.J. Chilton, *Groundwater: The Processes and Global Significance of Aquifer Degradation*, 358 PHIL. TRANSACTIONS: BIOLOGICAL SCI. 1957, 1957 (2003).

14. Gerrit Betlem & Michael Faure, *Environmental Toxic Torts in Europe: Trends in Recovery of Soil Clean-up Costs and Damages for Personal Injury in the Netherlands, Belgium, England and Germany*, 10 GEO. INT'L ENVTL. L. REV. 855, 887 (1998).

15. Leonhardt, *supra* note 7.

16.RICHARD DAWKINS, *THE GOD DELUSION* 5 (2006) (stating religious faith is a persistent false belief). For critical responses to Dawkins' arguments, see ANTONY FLEW & ROY ABRAHAM VARGHESE, *THERE IS A GOD: HOW THE WORLD'S MOST NOTORIOUS ATHEIST CHANGED HIS MIND* 172-73 (2007); JOHN C. LENNOX, *GOD'S UNDERTAKER: HAS SCIENCE BURIED GOD?* 78-79 (2007). For various reviews of the Dawkins book and the books referred to *infra* notes 17 and 18, see Samuel W. Calhoun, *May the President Appropriately Invoke God? Evaluating the Embryonic Stem Cell Vetoes*, 10 RUTGERS J. L. & RELIGION 1, 6 n.24 (2008). Professor Calhoun addresses the propriety in public policy debates of grounding policy positions on faith-based values. *Id.* at 1. This Essay, as will be seen more clearly later, touches on the propriety of faith-based discourse within the private business sector.

17.CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* 13 (2007) (stating religious people will destroy human attainments).

18.SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* 31, 48-49 (2004) (stating we should "speak[] plainly about the absurdity of most of our religious beliefs").

19. Bill Maher wrote and starred in the 2008 film *Religulous*, which satirizes religious belief. RELIGULOUS (Thousand Words 2008).

20. See Lyman P. Johnson, *Faith and Faithfulness in Corporate Theory*, 56 CATH. U. L. REV. 1, 2 n.13 (2006). Reviewing recent evidence, the Managing Editor of Newsweek, Jon Meacham, observed that "we remain a nation decisively shaped by religious faith...." Jon Meacham, *The End of Christian America*, NEWSWEEK, April 13, 2009, at 35.

21. See Becky Hsu et al., *Estimating the Religious Composition of All Nations: An Empirical Assessment of the World Christian Database*, 47 J. SCI. STUDY RELIGION 678, 680-85 (2008).

meaning and purpose to their lives and shape behavior.<sup>22</sup> The issue is not whether, as a normative matter, people should or should not hold such beliefs. Nor is the issue whether, as a scientific matter, certain scientists and social commentators think people are foolhardy or, conversely, fully justified in doing so. The issue is more basic and empirical: people in large numbers *do* hold religious beliefs and consistently report that those beliefs influence how they live.<sup>23</sup> And, of course, for some people, the world remains enchanted not because of a religious outlook on life but because of other spiritual or New Age beliefs, or because of the occult or a host of other arational and seemingly unscientific convictions.<sup>24</sup>

This Essay will explore possible implications of continuing, widespread religious enchantment for the modern corporation. At present, religious discourse and business discourse largely occupy separate spheres with few evident connections. This Essay seeks a more concordant linkage between the realms of religion and business. Part IIA describes the undeveloped state of scholarship on the basic question of how religious faith already may be shaping corporate activity. It also relates how emerging cross-disciplinary work challenges core assumptions about human behavior in a way that invites scholarly attention to faith's possible influence in the business world.

Part IIB argues, on the grounds of institutional pluralism, that business firms need not uniformly pursue the goal of shareholder wealth maximization. It also advocates reform of unhealthy corporate practices from within the private sector itself, particularly on the part of those corporate actors motivated by religious convictions.

Part IIC outlines several changes in corporate law and corporate life that would emerge from more explicit attention to the religious enchantments of key decisionmakers in the business world. These include the need for corporate scholars of both contractarian and communitarian outlooks to reconsider the nature of corporate relationships. The business and legal discretion of corporate directors and officers themselves to draw

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22. See PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CENTER, U.S. RELIGIOUS LANDSCAPE SURVEY 1 (2008). The survey notes, among numerous other findings, that, overall, 92 percent of Americans believe in God or a universal spirit, 58 percent pray every day, and 62 percent reject the idea that religion causes more problems in society than it solves. *Id.* at 162, 173, 177.

23. See generally *id.*

24. Tom W. Rice, *Believe It or Not: Religious and Other Paranormal Beliefs in the United States*, 42 J. SCI. STUDY RELIGION 95, 95 (2003).

on religious beliefs when making decisions is emphasized. The salutary benefits of doing so from a corporate reform standpoint are identified.

Finally, Part IID of the Essay closes by noting the array of opportunities for business actors, scholars, and professional schools to explore possible connections between faith and business in a society where religious believers continue to play decisive roles.

## II. ENCHANTMENT AND THE CORPORATION

### A. *Rethinking Core Premises*

Weber's observations about world outlook and the two counter-observations noted above are pertinent, in a parallel fashion, to various subgroups within society, including, to cite a couple of examples, private schools (including law schools) and business firms. This Essay will focus on business firms, specifically the corporation, but the ideas could easily be extended to other voluntary associations that comprise civil society.

Contending and quarreling with Weber's notion of disenchantment offers a promising, overarching framework for grappling with some pressing issues in corporate law and corporate life more generally. For example, corporate law scholars should probe the implications for contemporary theories of corporateness if significant numbers of people in the business world—including executives, directors, investors, and employees—remain “enchanted” by religious faith or other spiritual belief systems. Again, the issue is not whether people should have such beliefs. What matters is whether, and how, as an empirical matter, various beliefs actually influence, or potentially *might* influence, behavior in the business arena. There is some limited fieldwork reporting what corporate executives say,<sup>25</sup> and there have been several efforts to explore how faith might inform business practices.<sup>26</sup> But there is not a lot of good, reliable information on that question, or on whether religious influence actually makes any difference in the financial performance of a firm.<sup>27</sup> And there is

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25. See Johnson, *supra* note 20, at 15-17.

26. *Id.* at 14-15; see also Thomas O'Brien, *preface to RELIGIOUS PERSPECTIVES ON BUSINESS ETHICS: AN ANTHOLOGY* (Thomas O'Brien & Scott Paeth eds., 2006).

27. Professor Stephen Arbogast has provocatively asked, for example, what differences we might find if we compared the “financial performance of firms with avowedly religious statements of purpose with a comparable sample of those with no such statements.” Stephen V. Arbogast, 24 J.L. & RELIGION 189, 192 (2009) (reviewing RELIGIOUS PERSPECTIVES ON BUSINESS ETHICS: AN ANTHOLOGY (Thomas O'Brien &

extremely sparse scholarship examining how religious faith might usefully inform and shed light on corporate law.<sup>28</sup> In short, there is much we do not really know. Instead, our models simply make assumptions about human decision making that may be unwarranted. To have descriptive power, a theory of the firm, in business and corporate law, must take meaningful account of all pertinent factors.

The seeking of such an enriched model of human motivation is what lies behind recent behavioral realist approaches in legal scholarship.<sup>29</sup> Here, humans are no longer wholly understood to be self-serving calculators of costs and benefits, as posited by rational choice theorists.<sup>30</sup> Rather, the influence of less visible but “pervasive, fundamental, and arational cognitive processes” on human conduct is being openly examined.<sup>31</sup> Also, growing evidence from a broad array of disciplines suggests that people—like other primates<sup>32</sup>—naturally regard others with sympathy<sup>33</sup> and that humans both value and reward cooperative behavior in others.<sup>34</sup> The ways in which markets themselves vitally depend on such

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Scott Paeth eds., 2006)). One study from several years ago suggests that CEOs who consistently apply the teachings of his or her religion attain superior achievement, experience higher levels of personal fulfillment, and contribute more to the community than CEOs who never apply faith to decision-making. Frank Toney & Merrill Oster, *The Leader and Religious Faith*, 5 J. LEADERSHIP & ORGANIZATIONAL STUD. 135 (1998).

28. Johnson, *supra* note 20, at 17-20.

29. See Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of “Affirmative Action,”* 94 CAL. L. REV. 1063, 1064-65 (2006); Sung Hui Kim, *Gatekeepers Inside Out*, 21 GEO. J. LEGAL ETHICS 411, 419 (2008).

30. For a description of rational choice theory, see Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051, 1061-66 (2000).

31. Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1494 n.21 (2005).

32. Robert Lee Hotz, *Tracing the Origins of Human Empathy*, WALL ST. J., Sept. 25, 2009, at A11 (reviewing recent studies).

33. It is increasingly being recognized that Adam Smith himself, who famously coined the phrase “invisible hand”—although apparently he used it only one time in his landmark book, *The Wealth of Nations* (1776)—believed that sympathy (or “fellow feeling”) toward others was a natural moral sentiment. Robert C. Solomon, *Free Enterprise, Sympathy, and Virtue*, in MORAL MARKETS: THE CRITICAL ROLE OF VALUES IN THE ECONOMY 16, 17, 34 (Paul J. Zak ed., 2008) [*hereinafter* MORAL MARKETS]; see also Scott Paeth, *Introduction: Religious Ethics and the Practice of Business in RELIGIOUS PERSPECTIVES ON BUSINESS ETHICS*, *supra* note 26, at 24-26 (describing Smith’s notion of benevolence).

34. Peter J. Richerson & Robert Boyd, *The Evolution of Free Enterprise Values*, in MORAL MARKETS, *supra* note 33 at 107, 111, 118 (describing a “moral hidden hand” inducing cooperation among humans).



character traits as trustworthiness, fairness, honesty, and concern for the welfare of others are being demonstrated.<sup>35</sup> This more well-rounded conception of people is at odds with standard, oversimplified assumptions in neoclassical economic theory<sup>36</sup>—uncritically embedded in much corporate theory:<sup>37</sup> that humans are inherently self-centered and routinely seek to maximize personal well-being.<sup>38</sup> It is also at odds with the notion that value systems are simply pragmatic constructs of human social systems.

We are seeing, in short, a growing interest in what Michael Jensen has called the “positive analysis of normative values....”<sup>39</sup> Rather than simply positing that humans are entirely self-serving in economic settings, many observers are undertaking more nuanced analyses of how values actually guide human interaction, including in the commercial sphere.<sup>40</sup> The willingness of scholars outside corporate law to challenge such a longstanding baseline assumption about human behavior nicely demonstrates the truth of Daniel Boorstin’s observation that scholars must guard against the “illusion of knowledge” and that “the history of science is a history of disproved thought.”<sup>41</sup> Scholars working in corporate theory, therefore, should be especially alert to the implications of this research for our own efforts to conceive—and possibly reconceive—the nature and workings of corporate relationships.

Data about religious beliefs both here<sup>42</sup> and abroad<sup>43</sup> tie into these larger, emerging scholarly pursuits and findings. After all, if religious

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35. This is the common theme of most of the essays in *MORAL MARKETS*, *supra* note 33, however different the disciplinary vantage points of the writers. For those interested in corporate law, the Essay by Professor Lynn Stout is especially useful. Lynn A. Stout, *Taking Conscience Seriously*, in *MORAL MARKETS*, *supra* note 33 at 157.

36. Princeton economist Allan Krueger has argued, for example, that modern understandings of Adam Smith’s beliefs have become unhinged from his actual writings. David Leonhardt, *Theory and Morality in the New Economy*, N.Y. TIMES BOOK REV., August 23, 2009, at BR23. Krueger argues that “Smith was a nuanced thinker. He was not nearly as doctrinaire a defender of unfettered free enterprise as many of his late-20th-century followers have made him out to be.” *Id.*

37. See FRANK H. EASTERBROOK & DANIEL R. FISCHER, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 4 (1991).

38. See Herbert Gintis & Rakesh Khurana, *Corporate Honesty and Business Education*, in *MORAL MARKETS*, *supra* note 33, at 300, 304-06.

39. Michael C. Jensen, *Foreword*, in *MORAL MARKETS*, *supra* note 33, at ix.

40. See *supra* notes 29-35 and accompanying text.

41. Peter Grier, *Discovery, Science, Technology, and the ‘Illusion of Knowledge,’* THE CHRISTIAN SCI. MONITOR, Jan. 2, 1992, at 3 (quoting Dr. Daniel Boorstin).

42. See, e.g., PEW FORUM ON RELIGION & PUB. LIFE, *supra* note 22, at 5.

faith—for some people—forms the very fiber and foundation of who they are (their self-concept) and how they interact with others (their relationships), we should expect faith to influence behavior in the corporate world. The groundspring of values for many people is, as a matter of socio-empirical fact,<sup>44</sup> religious belief: “[R]eligiously based virtues [such] as honesty, dependability, respect, and concern for others represent commitments by which a good person should live, and these commitments map dependably onto the kinds of mechanisms that can reframe economic life to make cooperation a dominant strategy.”<sup>45</sup> The Catholic Social Thought tradition, for example, recognizes that humans “are created with an essential linkage between our personal goods and the good of others. We cannot become good persons unless we intend our lives to serve others’ good as well as our own, and a vital way that we live for and with others is through institutions.”<sup>46</sup> The recognized linkage between individual welfare and the common good forms part of the “oldest moral traditions of the West, which held that persons should pursue not only proper individual self-fulfillment but also the common good and that those two ends were mutually implicated.”<sup>47</sup> In short, if faith influences one’s outlook on relationships and if the business firm is a dense network of relationships, corporate theory will be enriched by studying the faith and firm connection.

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43. See, e.g., Becky Hsu et al., *supra* note 21.

44. See, e.g., Vassilis Saroglou & Antonio Muñoz-García, *Individual Differences in Religion and Spirituality: An Issue of Personality Traits and/or Values*, 47 J. SCI. STUDY RELIGION 84-87, 93 (2008).

45. Oliver Goodenough & Monika Gruter Cheney, *Preface: Is Free Enterprise Values in Action?*, in MORAL MARKETS, *supra* note 33, at xxvi.

46. Jeanne Buckeye et al., *Educating Highly Principled Leaders: Catholic Social Principles for Business Education 7* (2009) (unpublished manuscript), available at <http://www.stthomas.edu/cathstudies/cst/facdevelop/CITII/CITII%20links/07.CST.Highly.Princi.pdf>.

47. John R. Meyer & James M. Gustafson, *Epilogue: For Whom Does the Corporation Toil?*, in THE U.S. BUSINESS CORPORATION: AN INSTITUTION IN TRANSITION 211, 230 (J. Meyer & J. Gustafson eds., 1988). Pope Benedict XVI underscored in his recent encyclical—*Caritas in Veritate (Charity in Truth)*—that desiring the common good and striving toward it is a requirement of justice and charity. Encyclical Letter *Caritas in Veritate* of Pope Benedict XVI to the Bishops, Priests and Deacons, Men and Women Religious, the Lay Faithful, and All People of Good Will on Integral Human Development (June 29, 2009), [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html) [hereinafter Encyclical Letter].

Of course, deep-seated patterns of thought, ingrained business practices, and social norms make it difficult to link the spheres of faith and business, leading to what Alford and Naughton call “a divided life,” where matters of Spirit and finance occupy wholly separate spheres.<sup>48</sup> This is true at both the individual and firm level.<sup>49</sup> Overcoming these deep-rooted habits and roles can be extraordinarily challenging but can be beneficial for business itself in deflecting managerial and employee attention away from the singular pursuit of self-gain and toward achieving the greater corporate good. The blending of faith and work also has great significance to the individual by helping him or her to regain a sense of meaning and spiritual wholeness through work. As noted by Thierry Pauchant, who teaches ethical management at the HEC Montreal Business School: “It was taboo for so many years to talk about workers’ spirituality. But people are suffering by not being able to address that part of themselves and lead a more integrated life.”<sup>50</sup>

For many people of faith, the whole point of work means to be called into the everyday world to serve God in his creation,<sup>51</sup> thereby dissolving the supposed distinction between sacred and secular work. As expressed

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48. HELEN J. ALFORD & MICHAEL J. NAUGHTON, *MANAGING AS IF FAITH MATTERED: CHRISTIAN SOCIAL PRINCIPLES IN THE MODERN ORGANIZATION* 12 (2001).

49. Professor Lawrence Mitchell, writing from a secular vantage point, has noted how readily corporate directors “abandon” customary moral values upon entering the boardroom and assuming the “role” of director:

Consider a corporate director, John, as Jekyll and Hyde. John is a person of good moral character who enjoys a distinguished reputation in his community. He has a family and is a good father and husband. He belongs to civic and religious organizations.... But when he enters the boardroom he abandons the values of his daily life and takes on an entirely new personality, that of the corporation. As I have described it, this personality or role of stockholder price maximizer to the exclusion of all others is a role that we would consider pathological if it described a human personality. Yet this is the personality that American corporate law creates for John and other corporate directors, the role that the structure of the modern corporation reinforces.

LAWRENCE E. MITCHELL, *CORPORATE IRRESPONSIBILITY* 97-98 (2001).

50. Ronald Alsop, *M.B.A. Track/Focus on Academics, Careers and Other B-School Trends*, WALL ST. J., Jan. 11, 2005, at B6. Professor Buckeye and her co-authors recently noted how this “taboo” affects the academic culture: “[S]ome within academic disciplines ... prefer to ... see business as business only, isolated from the personal, communal, or moral dimensions of life.” Buckeye, *supra* note 46, at 4.

51. See Alister McGrath, *Calvin and the Christian Calling*, in *THE SECOND ONE THOUSAND YEARS: TEN PEOPLE WHO DEFINED A MILLENNIUM* 66, 71-73 (Richard John Neuhaus ed., 2001).

by Oxford theologian Alistair McGrath: “Work is, quite simply, an act of praise—a potentially productive act of praise. Work glorifies God, it serves the common good, and it is something through which human creativity can express itself.”<sup>52</sup> Recognizing that faith and beliefs can affect economic behavior seems important whether one seeks simply to *understand* the corporation as a matter of theory or also seeks to *reform* its conduct in some particular normative direction. Perhaps “faith-based” initiatives in the private sector, as with various analogous proposals pertaining to education and social programs in the public arena,<sup>53</sup> warrant serious consideration as an approach to upgrading corporate morality.

### *B. Possibilities for Re-Enchanting*

Currently, corporate law theory paints a fairly dreary picture of the self and human interaction within the corporate form of business: relationships with others essentially are “bargains” struck by wary, self-seeking individuals largely motivated by the hope for personal financial gain.<sup>54</sup> This conception appears to continue to dominate in business school approaches to corporate interactions as well.<sup>55</sup> Harvard Business School Professor Rakesh Khurana draws a disturbing picture of how importing agency theory into the curriculum at elite business schools has worked to undermine the idea that managers should strive to transcend self-interest to serve the larger corporate good.<sup>56</sup> This has happened in law schools as well,<sup>57</sup> as agency theory was brought into corporate law scholarship to bolster a field that was theoretically adrift in the 1980s.

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52. *Id.* at 72. This idea is captured as well in the Benedictine motto “to pray is to work, to work is to pray.” See Jose H. Gomez, *All You Who Labor: Towards a Spirituality of Work for the 21st Century*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 791, 804 (2006).

53. See Jeffrey Polet & David K. Ryden, *Past, Present, Future: Final Reflections on Faith-Based Programs*, in SANCTIONING RELIGION? 177-181 (David K. Ryden & Jeffrey Pole eds., 2005) (discussing challenges and opportunities presented by faith-based initiatives).

54. EASTERBROOK & FISCHER, *supra* note 37, at 8-12 (describing the corporation as a “nexus of contracts”). For a critique that contrasts this highly individualistic, “contractarian” conception of corporate relationships with a more organic, institutional conception, see Lyman Johnson, *Individual and Collective Sovereignty in the Corporate Enterprise*, 92 COLUM. L. REV. 2215, 2219-29 (1992) (book review).

55. Gintis & Khurana, *supra* note 38.

56. KHURANA, *supra* note 8, at 317-26.

57. Lyman Johnson, *Corporate Law Professors as Gatekeepers*, 6 U. ST. THOMAS L.J. 447 (2009). Former Delaware Chancellor William Allen has traced the ongoing clash

Thus, the baseline presupposition that humans maximize self-interest takes hold in the formative minds of novice lawyers and managers as “natural” and even obligatory,<sup>58</sup> perhaps leading them to believe that they and those they advise “should” behave to advance personal gain.<sup>59</sup> With such a shrunken view of human motivation in mind as an animating premise—a view now being challenged<sup>60</sup>—neoclassical theorists and their adherents in business and law schools seek consolation in the belief that Adam Smith’s mysterious “invisible hand” will somehow produce social good from all this selfish conduct.<sup>61</sup> Alternatively, a proponent of this conventional view simply remits achievement of the common good to the government (the rational bureaucrat, in Weber’s scheme) where public actors will sagely rectify whatever social maladies are generated by self-seeking individuals engaged in unfettered free enterprise.

Today, the pendulum of political thought has decidedly swung away from the libertarian and laissez-faire Reagan-Thatcher deregulatory outlook that was hospitable, in the 1980s, to neoclassical economic theory that then took root in (and still undergirds) modern corporate theory.<sup>62</sup> Instead, with financial breakdown in 2008 and the new Obama Administration, we have entered an era where greater regulatory intervention into, and oversight of, business and finance firms is virtually certain.<sup>63</sup> These political currents surely shape the larger “macro”

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between those who envision the corporation largely as an economic and financial vehicle with those who emphasize the social-institutional dimension of corporateness. William T. Allen, *Our Schizophrenic Conception Of The Business Corporation*, 14 CARDOZO L. REV. 261 (1992).

58. Such shared cognitive understandings, Professor Khurana notes, eventually take on “rulelike status in social thought and action.” KHURANA, *supra* note 8 at 323. That aptly describes the deep, non-legally binding grip that the concept of “shareholder primacy” has in contemporary legal education and business school training.

59. Professor Khurana recounts how Michael Jensen believed his course at Harvard Business School called “The Coordination and Control of Markets and Organization” made students more “tough minded” and shifted them away from a stakeholder model of corporate purpose toward a more pointed shareholder primacy conception. KHURANA, *supra* note 8, at 322.

60. See *supra* notes 29-35 and accompanying text.

61. See EASTERBROOK & FISCHER, *supra* note 37.

62. See Johnson, *supra* note 54 (tracing the rise of this view in corporate theory).

63. See, e.g., DEP’T OF TREAS., FINANCIAL REGULATORY REFORM: A NEW FOUNDATION: REBUILDING FINANCIAL SUPERVISION AND REGULATION 2-6, available at [http://www.financialstability.gov/docs/regs/FinalReport\\_wed.pdf](http://www.financialstability.gov/docs/regs/FinalReport_wed.pdf). For a listing of the broad range of governance and financial reforms proposed as of August 2009, see REPORT OF THE TASK FORCE OF THE ABA SECTION OF BUSINESS LAW CORPORATE

environment in which businesses operate—and thus cannot be ignored in corporate law or by those interested more generally in understanding corporate conduct—but for now this Essay will keep the spotlight focused on the private sector and not the public sector, however important. One reason for doing so is that over-reliance on public sector solutions to corporate problems can lead private sector leaders to wrongly believe they are socially and morally “off the hook,” and bear no responsibility for crafting private sector initiatives addressing ethical lapses. Moreover, excessive reliance on government programs may “in some cases actually crowd out the spontaneous workings of [moral] values.”<sup>64</sup> Laws, paradoxically, may in this way stunt further reform from within the business world itself due to a mistaken belief that new regulation has somehow sufficiently “fixed” the problem.

Scholars and other observers of the modern corporation should carefully examine the implications for contemporary corporate theory if, person by person or company by company, some part of the corporate landscape (what we still call the private sector) continues to be inhabited by people of faith who believe that their convictions require them to consider the interests of others as they go about conducting business. Much of religious thinking, after all, regards human self-centeredness (a given in contemporary corporate theory) as a hindrance to be overcome, not a quality to be lauded or passively accepted. This should be acknowledged in discourse about corporate law and corporate life. In the same way that we value pluralism in many areas of our social lives—e.g., we regard it as a social good to have both religious and non-religious law schools<sup>65</sup>—perhaps institutional pluralism among businesses will permit navigation between the twin goals of completely embracing unbridled private sector profit-seeking, on the one hand, or prescribing extensive governmental regulation of business enterprise, on the other.

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GOVERNANCE COMMITTEE ON DELINEATION OF GOVERNANCE ROLES & RESPONSIBILITIES 27-28 n.3 (Aug. 1, 2009) available at [http://www.abanet.org/buslaw/committees/CL2600pub/materials/20090801/delineation\\_final.pdf](http://www.abanet.org/buslaw/committees/CL2600pub/materials/20090801/delineation_final.pdf). New regulatory initiatives have continued to be proposed throughout the waning months of 2009.

64. Goodenough & Cheney, *supra* note 45, at xxiv. Professor Paul Zak points out, via a fascinating example, how laws might actually encourage violations. Paul J. Zak, *Values and Value*, in *MORAL MARKETS*, *supra* note 33, at 265. The same point is made by Richerson and Boyd, *supra* note 34, at 116-17.

65. Institutional pluralism was the overarching theme at the 2009 annual meeting of the Association of American Law Schools (AALS). One plenary session focused on law schools with religious missions. Recordings of the proceedings are available at [http://www.aals.org/events\\_am2009.php](http://www.aals.org/events_am2009.php) (follow - view schedule - hyperlink).

Relatedly, the current theoretical typology of “profit” and “non-profit” organizations may be too stark in describing how various enterprises frame corporate objectives. To a degree at least, it is more accurate to say that companies fall along a continuum in their pursuit of goals than it is to say that they fall in only one of two rigid categories.<sup>66</sup> To be sure, business corporations must make profits, but companies may vary widely in the degree of zealotry with which they pursue only that goal rather than balance it with other pursuits, such as, for example, giving greater attention to factoring the well-being of employees or other groups into managerial decisions. On the question of corporate purpose, there need not be a monistic model in a market system, as opposed to a more pluralistic approach. Companies, especially in a competitive economy where differentiation from rivals is sought, may deliberately self-identify and “brand” themselves as falling along a spectrum of emphasizing or deemphasizing, to varying degrees, share price maximization or other noninvestor-centered considerations. A review of company literature suggests that many businesses already do this,<sup>67</sup> or at least say they do.<sup>68</sup>

The recent papal encyclical explicitly advocates richer thinking about the goals of business activity, arguing that corporations can and should vary in the ends they seek:

What is needed, therefore, is a market that permits the free operation, in conditions of equal opportunity, of enterprises in pursuit of different institutional ends. Alongside profit-oriented private enterprise and the various types of public enterprise, there must be room for commercial entities based on mutualist principles and pursuing social ends to take root and express themselves. It is from their reciprocal encounter in the marketplace that one may expect hybrid forms of commercial behavior to emerge, and hence an attentiveness to ways of *civilizing the economy*. Charity in truth, in this case, requires that shape and structure be given to those types of economic initiative which, without rejecting

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66. See Howard L. Oleck, *Mixtures of Profit and Nonprofit Corporation Purposes and Operations*, 16 N. KY. L. REV. 225, 225-27 (1989).

67. See, e.g., Letter from E. Neville Isdell, Chairman of the Board of Directors, The Coca-Cola Company, to Shareholders (Mar. 5, 2009), available at [http://www.thecocacola.com/investors/pdfs/2008\\_annual\\_review/2008\\_annual\\_review\\_Chairman\\_Letter.pdf](http://www.thecocacola.com/investors/pdfs/2008_annual_review/2008_annual_review_Chairman_Letter.pdf).

68. For a fuller treatment of how managerial behavior is influenced far more by social norms, business lore, and markets than by the loose constraint of positive law, see Lyman Johnson, *A Role for Law and Lawyers in Educating (Christian) Business Managers About Corporate Purpose* (U. St. Thomas Working Paper No. 08-22, 2008), available at <http://papers.ssrn.com/abstract=1260979>.

profit, aim at a higher goal than the mere logic of the exchange of equivalents, of profit as an end in itself.<sup>69</sup>

Examples of institutional diversity in the corporate world are abundant and include many so-called “B corporations”—“beneficial” corporations—which explicitly provide in their organic documents that they will, in making decisions, consider a broader array of interests than just shareholders.<sup>70</sup> Some such companies seek “certification” by engaging in certain practices such as more democratic decisionmaking, providing reliably good benefits, and being energy efficient.<sup>71</sup> Many more mainstream companies also increasingly emphasize these matters. Moreover, there is growing interest in “social finance” and micro-finance movements based on the belief that financial innovation can be used to help the world’s neediest people while still providing respectable returns to investors.<sup>72</sup> We see growing signs of a blurring of what was once a clear boundary between the worlds of for-profit business and charity,<sup>73</sup> and a trend toward more hybrid organizational forms.

These developments, plus the existence of companies seeking to forge a distinct “moral identity,” led Professor Robert Vischer to argue for a more pluralistic conception of corporateness in which particular companies can channel the dictates of individual conscience into a shared *corporate* sense of purpose and identity in the marketplace.<sup>74</sup> The corporation itself, in Vischer’s view, becomes a venue for marshalling

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69. See Encyclical, *supra* note 47, at 20 (emphasis in original). In 1985, when Pope Benedict XVI was known as Cardinal Joseph Ratzinger, he was already seeking to link economics, the common good, and an ethical system grounded on religion: “It is becoming an increasingly obvious fact of economic history that the development of economic systems which concentrate on the common good depends on a determinate ethical system, which in turn can be born and sustained only by strong religious convictions.” Cardinal Joseph Ratzinger, *Church and Economy*, 13 COMMUNIO 199 (1986), available at [http://www.acton.org/publications/occasionalpapers/publicat\\_occasionalpapers\\_ratzinger.php](http://www.acton.org/publications/occasionalpapers/publicat_occasionalpapers_ratzinger.php).

70. Hannah Clark Steiman, *A New Kind of Company*, INC. MAG., July 2007, at 23.

71. *Id.* at 24.

72. *A Place in Society*, THE ECONOMIST, Sept. 26, 2009, at 83. See Shelly Banjo, *Consider It an Investment*, WALL ST. J., Nov. 9, 2009, at R6 (describing micro-finance).

73. Dana Brakman Reiser, *Charity Law’s Essentials* (Brooklyn Law Sch. Legal Studies Research Papers Working Papers Series, Research Paper No. 167, 2009), available at <http://ssrn.com/abstract=1479572>.

74. Robert Vischer, *The Morally Distinct Corporation: Reclaiming the Rational Dimension of Conscience* (U. St. Thomas Legal Studies Research Paper No. 07-37, 2007), available at <http://ssrn.com/abstract=1028881>.



individual beliefs into an institutionally robust forum for joint moral action in the commercial sphere.

*C. Changes in a Re-Enchanted Corporate Outlook*

If there were some greater degree of institutional pluralism in the business arena, either at the firm level or the individual actor level, we might witness several significant changes in corporate law theory and corporate life itself. First, corporate law theory would have to change to be more descriptively accurate. Contractarian theorists might have to acknowledge that some private actors are not altogether self-seeking in business dealings, but instead value integrity and consciously strive to serve others. As noted, emerging research strongly suggests the existence of a natural human impulse of sympathy toward others.<sup>75</sup> Whether natural or the by-product of religious commitments, other-regarding behavior is at odds with the conventional economic and corporate law nostrum that people are largely self-seeking. To ignore such inclinations in business endeavors is to inaccurately model both *intra-firm* interactions and *inter-firm* dealings in the wider marketplace.

A richer account of human motivation's actual and potential influence on corporate interactions also would forthrightly recognize the possibility that some—perhaps many—business leaders regard adherence to an ethics of stewardship as integral to what they do in the world of commerce. Jeanne Buckeye and her co-authors argue in a recent paper that stewardly leaders “realize that they are not the ultimate owners of the gifts entrusted to them; rather, these goods and abilities are an inheritance which they are called to care for and build up.”<sup>76</sup> Daniel Yankelovich similarly has described stewardship ethics as a “commitment to care for one’s institution and those it serves in a manner that responds to a higher level of expectations.”<sup>77</sup> He argues that many business leaders in fact strive to act in that way; although undoubtedly such behavior does not make flashy headlines in the way fraud or other corporate scandal does. Yankelovich notes too that a core element of such an ethics is caring.<sup>78</sup> Care is a concept central to many religious faiths, including Christianity, as seen in

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75. See *supra* notes 23-24 and accompanying text.

76. Buckeye, *supra* note 46, at 10.

77. DANIEL YANKELOVICH, PROFIT WITH HONOR: THE NEW STAGE OF MARKET CAPITALISM 14 (2006).

78. *Id.* at 91.

the well-known parable of the Good Samaritan,<sup>79</sup> and it is a key doctrine in corporate law itself.<sup>80</sup>

Of course, orthodox agency theory stands at odds with this Western moral tradition in dogmatically positing (caricaturing may be more accurate) that all business officials are inclined to slack off or appropriate wealth to themselves rather than energetically generate it for investors.<sup>81</sup> From the standpoint of firm model-building, there is little room for individual or company-cultural variation in such ethical stereotyping of corporate actors. Perversely, such models actually may induce business persons to believe they *should* be self-seeking, since theory so posits, however antithetical that stance may be to an individual's or company's own moral compass.<sup>82</sup> Such can be the coercive power of social norms and business lore first insidiously instilled, oftentimes, in the thoughtless canon-like presuppositions of professional school training.

Another way in which unexamined customs and lore can powerfully influence business and law practice is seen in the widespread misunderstanding as to what the law says—or does not say—about corporate purpose. Outside one specific context (under Delaware law but not the law of many other states), the law simply does not mandate maximization of shareholder wealth or corporate profits.<sup>83</sup> Rather, such exclusively investor-oriented goals are widely accepted due to deeply ingrained business lore and strong social norms,<sup>84</sup> not the dictates of law. Deviating too far from such goals is constrained not by law but by various market pressures and by shareholders exercising voting rights.<sup>85</sup>

Oddly, the teaching of agency theory at graduate business and law schools seems to utterly ignore the lack of a legal mandate for the premises of that theory of corporate relations. Perhaps it is wrongly implied to business and law students that they “must” behave the way the theory posits. Considerable legal discretion to pursue non-wealth maximizing goals endures, however, at both the board of director and

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79. *Luke* 10:25-37 (New International Version).

80. See Lyman Johnson, *After Enron: Remembering Loyalty Discourse in Corporate Law*, 28 DEL. J. CORP. L. 27, 43-47 (2003) (describing full range of meanings of “care”).

81. Gintis & Khurana, *supra* note 38, at 303-05. For a fuller development of this argument, see KHURANA *supra* note 8, at 316-26.

82. See *supra* notes 54-59, 64 and accompanying text.

83. See Johnson, *supra* note 68, for a full discussion of this point. Many states have enacted “constituency” statutes which explicitly permit director consideration of nonshareholder interests when formulating business decisions. *Id.* at 6-7.

84. *Id.* at 20-21.

85. *Id.* at 16, 19.

senior executive level, and the key issue is what specific business goals will be pursued with this discretion. Legal freedom necessarily is a critical predicate to any call for more ethical and socially responsible conduct in the private sector. Only if and when business leaders understand—from the outset of their education and throughout their careers—that there is some degree of latitude in crafting corporate purpose will they truly recognize that the various strategic and operating decisions they make are freighted with moral implications.<sup>86</sup> Here is where business judgment decisions often are inescapably moral choices, and it is precisely here that sources of moral authority—including religious belief—can provide helpful guidance.

Corporate directors with strong moral convictions, possibly grounded in religious faith, might, for example, demand that senior management in certain firms and industries answer at least two questions that have been on everyone's mind lately: First, why did you expose this company to such extraordinary financial risks<sup>87</sup> and how is such managerial behavior consistent with such classic and long-esteemed virtues as prudence and moderation?<sup>88</sup> Second, why did you manage this company in such a way

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86. An example of how abruptly formal pronouncements about what constitutes the proper goal of business endeavor can change is seen by examining how the influential Business Roundtable's policy statement was modified from 1990 to 1997. In 1990, the Business Roundtable statement read as follows: "The thrust of history and law strongly supports the broader view of the directors' responsibility to carefully weigh the interests of all stakeholders as part of their responsibility to the corporation or to the long-term interests of its shareholders." THE BUSINESS ROUNDTABLE, CORPORATE GOVERNANCE AND AMERICAN COMPETITIVENESS 5 (Mar. 1990). By 1997, however, the statement redirected business purpose in a dramatic and unjustified manner:

In The Business Roundtable's view, the paramount duty of management and of boards of directors is to the corporation's stockholders; the interests of other stakeholders are relevant as a derivative of the duty to the stockholders. The notion that the board must somehow balance the interests of other stakeholders fundamentally misconstrues the role of directors.

THE BUSINESS ROUNDTABLE, STATEMENT ON CORPORATE GOVERNANCE 3 (Sept. 1997).

87. On July 10, 2009, the Securities and Exchange Commission proposed new rules on executive compensation mandating that corporate directors explain in their proxy statement how business risk management and executive compensation are related. Proxy Disclosure and Solicitation Enhancements, 74 Fed. Reg. 35,076 (proposed July 10, 2009) (to be codified at 17 C.F.R. pt. 229, 239-40, 249, 270, 274), available at <http://www.sec.gov/rules/proposed/2009/33-9052.pdf>.

88. As to prudence, long considered a "cardinal virtue," see Joseph F. Johnston, Jr., *Natural Law and the Fiduciary Duties of Business Managers*, in BUSINESS AND RELIGION: A CLASH OF CIVILIZATIONS? 279, 289-90 (Nicholas Capaldi ed., 2005). As to

that you now believe we must lay off thousands of workers, with all the attendant hardship that course of action will visit on them, their families, and surrounding communities; have you considered other measures—furloughs, benefit reductions, job-sharing, for example—besides layoffs to solve our current plight?<sup>89</sup> This last set of questions also demonstrates the way in which labor relations and corporate governance necessarily intersect. Poor corporate governance practices frequently jeopardize the jobs of employees who may be conscientious, devoted, and productive workers.<sup>90</sup>

Moreover, businesses can incur high costs in not being attentive to job security issues or thinking carefully about staff reduction and retention strategy. Research reveals that the number of employees who show strong commitment to their employers declined from 1982 to the turn of the century.<sup>91</sup> Recent surveys confirm this trend. For example, between June 2007 and December 2008, the proportion of employees who professed loyalty to their employers slumped from 95 percent to 39 percent, while the number voicing trust in them fell from 79 percent to 22 percent.<sup>92</sup> One reason for the downturn in employee commitment is the perceived lack of loyalty to employee well-being.<sup>93</sup> The loss of best efforts and devotion on the part of *non-laid off* workers thus also may be exacting an unacknowledged cost on many business firms that, while not expressly reflected in the income statement, nonetheless reduces productivity and firm profitability over time. This is particularly true if highly productive

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other virtues such as moderation, see Zak, *supra* note 64, at 261-62 (describing various traditional virtues).

89. See, e.g., Philip L. Rones, *Response to Recession: Reduce Hours or Jobs?*, 104 MONTHLY LAB. REV. 3 (1981) (discussing reducing hours of the work week rather than cutting the number of jobs). A recent report about law firm layoff practices urged firms to consider reducing attorney hours and salaries rather than cutting lawyers altogether. Elaine Meyer, *Report Urges Firms to Cut Hours, Pay Instead of Jobs*, LAW 360, OCT. 22, 2009, <http://www.law360.com/articles/129735>.

90. See, e.g., Kent Greenfield, *Reclaiming Corporate Law in a New Gilded Age*, 2 HARV. L. & POL'Y REV. 1, 13 (2008) (“Downsizing is just a subset of short-term business strategies that emphasize making profit for shareholders in the short-term at the expense of other firm stakeholders and the firm as a whole in the long term.”).

91. YANKELOVICH, *supra* note 77, at 43-44, 112-13.

92. Joseph Schumpeter, *Hating What You Do*, ECONOMIST, Oct. 10, 2009, at 70.

93. *Id.* Sociologist Alan Wolfe believes corporate America already has squandered its reserve of loyalty. “Of all the virtues presumed to have been lost in America, loyalty generally takes pride of place .... No other institution ... provokes such bittersweet reflections of loyalty lost as the business corporation.” ALAN WOLFE, MORAL FREEDOM 23, 26 (2001).

workers feel discouraged because they are the most likely to move when the economy picks up.<sup>94</sup>

Therefore, there are many reasons for “contractarian” theorists to attend to the actual and potential influence of faith on business interactions. Conversely, those communitarians or “progressives” in corporate law who, in contrast to contractarians, laud the explicit pursuit of the common good, also should acknowledge that for many business people such other-regarding behavior flows from religious faith.<sup>95</sup> And, in an effort toward greater transparency in the private sector—a quality sometimes in short supply—such business persons should be permitted to say why they hold the business positions they do, for example, on employee relations or environmental issues, without social progressives getting skittish that “religious” talk is being used to ground certain policy positions.<sup>96</sup> Professor Stephen Arbogast, in recently reviewing a book purportedly about religious perspectives in business, notes the “success philosophy has had in banishing religion from the discussion [about business ethics].”<sup>97</sup> Professor Hunter Baker recently observed that many religious people themselves “buy into the idea that their religion should be private and purely devotional and not have application to life in the wider world.”<sup>98</sup> He disputes this view, believing that to deny the importance of religious belief is dishonest, and he argues that religion “should be a perfectly acceptable ground on which people can make their decision.”<sup>99</sup> Clearly, progressives should explore more carefully whether religion might not make a useful contribution to upgrading corporate conduct in accordance with their policy preferences, and rethink how a disenchanting world outlook may be excluding religious viewpoints, thus narrowly cabinning the permissible terms in which corporate reform is discussed.

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94. Schumpeter, *supra* note 92.

95. Progressive and communitarian corporate law scholars largely have ignored how religious faith could aid in reforming corporate practices. *See, e.g.*, PROGRESSIVE CORPORATE LAW (Lawrence E. Mitchell ed., 1995); David Millon, *New Directions in Corporate Law*, 50 WASH. & LEE L. REV. 1373, 1378-82 (1993).

96. *See* Johnson, *supra* note 20, at 31-44 (describing the many salutary benefits of open discourse).

97. *See* Arbogast, *supra* note 27, at 191.

98. Sarah Pulliam, *The Clothed Public Square*, CHRISTIANITY TODAY, Oct. 2009, at 67. Professor Hunter is the author of the book, THE END OF SECULARISM (2009).

99. Pulliam, *supra* note 98.

This is especially true given that recent research has more clearly identified the most important characteristics of ethical business cultures.<sup>100</sup> The key attributes of healthy business cultures include, among others, a focus on the long-term and a commitment to “stakeholder balance” in which both nonshareholder interests and shareholder welfare are attended to.<sup>101</sup> This, of course, has long been a great concern of progressive/communitarian scholars,<sup>102</sup> and the tenets of many religions likewise emphasize caring for the common good, not just the welfare of one group.<sup>103</sup> It bears emphasizing that there is no constitutional issue here as long as we are not dealing with a governmental actor, either in the sense that a government agency is the employer or in the sense of a law mandating a particular practice. We are dealing, rather, with those private businesses where senior managers, using the vast discretion accorded them by corporate law, choose to follow or permit certain practices. In a religiously diverse world, we must all become better at engaging in civil dialogue across religious lines in the workplace, just as the need for healthy conversation across ethnic and racial lines has received wide attention in recent years.<sup>104</sup>

Second, beyond the relevance of faith to the contractarian/communitarian theory debate, for those who favor private sector reform of business from *within*—yes, there are a few “progressives” on the right—the introduction of a religious voice into reform debates would offer at least a plausible basis for optimism. Weber himself was not optimistic about the corrosive effect of a capitalist economy on religious ethics: “The more the world of the modern capitalist economy follows its own immanent laws, the less accessible it is to any imaginable relationship with a religious ethic of brotherliness. The more rational, and thus impersonal, capitalism becomes, the more is this the case.”<sup>105</sup> But while that may be a tendency—perhaps a strong tendency as we look around today—it is not

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100. Alexandre Ardichvili et al., *Characteristics of Ethical Business Cultures*, 85 J. BUS. ETHICS 445 (2008).

101. *Id.* at 449-50.

102. *See supra* note 95.

103. *See supra* notes 45-47, 78-79 and accompanying text.

104. *See, e.g.*, WILLIAM WINTER INSTITUTE FOR RACIAL RECONCILIATION, WE ARE THE PEOPLE WE HAVE BEEN WAITING FOR: EQUIPPING COMMUNITIES TO HEAL THEMSELVES, available at <http://www.winterinstitute.org/documents/resguide.pdf> (discussing the importance of racial conversation and listing numerous organizations working to facilitate dialogue).

105. Max Weber, *Religious Rejections of the World and Their Directions*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 323, 331 (H.H. Gerth & C. Wright Mills eds., 1948).

inevitable in the business world. It certainly is not the result of law, but only of customs and norms, which frequently change when legal freedom is recognized. Business reform, like charity, should begin at “home,” that is, from within business itself rather than simply being imposed by public regulation from outside the corporation.<sup>106</sup>

As a supplement, if not an alternative, to redoubled governmental regulation of business and finance (a huge gamble on bureaucratic rationality),<sup>107</sup> one might advocate a renewing of the moral infrastructure within the corporate world. Financial institutions could use an infusion of moral capital to survive and flourish, as surely as many of them needed an injection of financial capital during the market collapse of 2008. One way to do so is to acknowledge and encourage the religious enchantments—what Solzhenitsyn called the “spiritual blaze”<sup>108</sup>—of those business persons who esteem prudence, charity, self-control, and compassion, and who wish to direct business decisions in accordance with those values.<sup>109</sup> This is a choice to be made entirely by such persons themselves, however. There is moral freedom to do so, but no compulsion, unlike the case with positive law, which is binding, and in its categorical and inflexible thrust, may clumsily miss the reform mark to varying degrees.<sup>110</sup>

Third, proceeding on a company-by-company or sector-by-sector basis reminds us that a reform strategy of engaging (and making) business culture can begin “locally” and proceed from the ground up, and need not be a “global,” top down, centralized, government-sponsored, or all-or-none strategy. This seems a more modest and more feasible approach to corporate reform, at least where unhealthy corporate culture and norms are

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106. Restoration of trust in the private sector was the theme of a March 2009 conference held at the University of St. Thomas. See Lyman Johnson & Neil W. Hamilton, *Our National Challenge: A Blueprint for Restoring The Public Trust*, 6 U. ST. THOMAS L. J. 397 (2009) (conference proceedings).

107. See note 63 for an enumeration of proposed governance and financial bills as of August 2009.

108. See Colson & Morse, *supra* note 6.

109. See *supra* note 88. For a recent, extended treatment of how four virtues—prudence, justice, courage, and temperance—can influence business life, see JEFFREY CORNWALL & MICHAEL NAUGHTON, BRINGING YOUR BUSINESS TO LIFE 71-166 (2008). These virtues not only form an essential part of the moral tradition of the West, they are emphasized as key traits of good conduct in the Christian faith. *Id.*

110. David Skeel has observed that law “works best if its ambitions are modest, leaving wider scope for ordinary morality.” David A. Skeel, Jr., *Christianity and the Large Scale Corporation*, in CHRISTIANITY AND LAW 311 (John W. Witte, Jr. & Frank S. Alexander eds., 2008).

the culprit and may surface in different ways in different firms. Moreover, it highlights the critical mediating role of those many civic institutions—including business firms—that stand between the individual and the state. We do not simply have, on the one hand, “churches, temples, and homes” where religion may hold sway, and, on the other hand, the “public business of the nation,” from which many would banish religion.<sup>111</sup> Instead, there is vast social space between those two domains—e.g., business firms (along with many other voluntary associations)—that are neither religious nor state-administered, but which are important social groups inhabited by many who are not “disenchanted” in their personal or world outlooks. As recently noted by Professor Geoffrey Stone, the nation’s founders generally agreed that “religion could help to foster republican virtue.”<sup>112</sup> Philosopher Alfred North Whitehead likewise saw a particular social dividend where business persons had a broader understanding of their social significance: “[A] great society is a society in which its men of business think greatly of their functions.”<sup>113</sup>

Finally, to re-enchant the corporation (or to acknowledge its continuing enchantment) is to permit people of faith and spirituality to ground their work lives on something enduring and transcendent, rather than on something precarious and fleeting. It permits people in all kinds of organizational settings to inhabit the workspace and work day with a fuller portion of their defining humanity. As noted earlier,<sup>114</sup> this can yield benefits both for the individuals themselves and the firms they work for. At the practical level, this is not to deny the vexing challenges of reasonably accommodating employee religious expression in the workplace with the due needs and expectations of the employer and the legitimate interests of fellow employees.<sup>115</sup> Nor can the threat of legal challenges be ignored where the government acts legislatively, even in the

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111. Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 UCLA L. REV. 1, 24 (2008). In discussing the Framers’ views on the proper relation between religion and law in a free society, Professor Stone emphasizes a distinction between “private” and “public.” *Id.* There are, however, regions of our social life together that are not government-sponsored but also are not in “churches, temples, and homes.” *Id.* Business is one such sphere where religion can contribute to the fostering of virtuous conduct.

112. *Id.* at 23.

113. YANKELOVICH, *supra* note 77, at 2.

114. *See supra* notes 48-52 and accompanying text.

115. See the proceedings from a conference devoted to the subject of religion in the workplace. Kenneth D. Wald, *Religion in the Workplace: A Social Science Perspective*, 30 COMP. LAB. L. & POL’Y J. 476, 480-83 (2009).



private sphere, to protect, in some manner and to a certain degree, religious expression.<sup>116</sup> These practical difficulties cannot be sidestepped but will themselves have to be addressed on a company-by-company basis. At the theory level, acknowledging faith's importance—even in the workplace—permits an emphasis on the forgotten associational elements of corporateness, one which appreciates that firms are complicated networks of relations among persons who are more than atomistic, one-dimensional productive inputs.<sup>117</sup> Indeed, it is this very complexity that creates practical workplace challenges.

#### *D. Venues for Re-Enchanting*

There are many venues for the work of re-enchantment and likely many views on it. Certainly, mission-oriented law schools and business schools should be deliberate about linking their faith traditions and business curriculum. But secular law schools and business schools also should be zealous to safeguard that they are neither misinforming their students about matters as basic as what the law really says (and does not say) about corporate purpose<sup>118</sup> and about emerging evidence on the array of human motivations.<sup>119</sup> For business school educators—and for those professors who teach corporate law in law school—it bears remembering that the hallmarks of a professional include “discipline, self-restraint, and a willingness...to preserve the good name of the professional community and advance the greater good...”<sup>120</sup> In thoughtlessly repeating the canard that people in business settings act from self-interest, legal and business scholars are adhering to a highly deterministic and overbroad account of human motivation—often unexamined and unexplored—that can have a powerful socializing pull on students. One hidden effect of this is to draw them away from the ideals of a profession (and those of the university setting itself) and toward routinely legitimizing selfish conduct in commercial settings.

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116. See William W. Van Alstyne, *Religion In The Workplace: A Report on the Layers of Relevant Law in the United States*, 30 COMP. LAB. L. & POL'Y J. 627 (2009).

117. Abram Chayes, *Preface to JOHN P. DAVIS, CORPORATIONS* xix (Abram Chayes ed., Capricorn Books 1961).

118. See Johnson, *supra* note 57; *supra* notes 83-85 and accompanying text. For an extended critique of elite graduate business school teachings on this point, see KHURANA, *supra* note 8, at 315-26.

119. See *supra* notes 29-38 and accompanying text.

120. KHURANA, *supra* note 8, at 374.

As to theory, scholarship seeking more “behavioral realism,”<sup>121</sup> grounded in empirical observation, might probe how religious or spiritual beliefs do (or could) shape decision making if actors truly appreciated their legal and economic freedom to factor in those convictions in business settings. And those who legally advise, or themselves serve as, directors or officers must accurately understand—from professional school training and forward—what factors do and do not constrain them. Thereafter, some leaders—those who remain “enchanted”—may then decide to bring those religious beliefs to bear in tackling real world business problems, many of which have a moral dimension. As noted by David Skeel, “the literature also shows that if even one person takes a stand, the likelihood of misbehavior sharply declines.”<sup>122</sup> Discourse within all these settings—or, consistent with the theme of pluralism, at least in some of them—can only be enriched by acknowledging reality. The reality is that, for many business people, ninety years after Weber’s observation, the corporate world remains poised to be more fully enchanted.

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121. *See supra* note 29 and accompanying text.

122. Skeel, *supra* note 110.