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Ideologically Oriented Enterprises Faced with the Reconfiguration of Ethics and Spiritual Management

*Louis-Léon Christians*¹

The question of religion in the workplace is as old as the concept of work and . . . religion. For the better, and sometimes for the worse, both concern the salvation of mankind: the meaning of life and eternal salvation in the case of religion, and the subsistence and dignity in this earthly world in the case of work. In contrast to those age-old concepts, employment *law* seems clearly more modern and with it the slow progress of human rights doctrine.²

“Employment law was first of all concerned with protecting the employee against the religious hold of some employers who, following a paternalist way of thinking, wished to bring salvation to the employees,” wrote François Gaudu in 2010.³ Gaudu presented those times as definitively over except for a “small revival at the end of the 1970s, when a few foreign companies wanted to force their employees to perform spiritual practices.”⁴

The secularization of Western societies and the across-the-board acquisition of individual human rights have been a major turning point in the modern relationship between work and religion.⁵ The guarantee of freedom of conscience and privacy are at the heart of work relationships. This is a guarantee codified by non-discrimination policies that protect religious beliefs or affiliations.⁶ Religious questions are no longer to disturb the now “secularized” (and in some ways “deprivatized”) work relationship as a result of the influence of these fundamental rights.

1. Université Catholique de Louvain, working under a EU-FP7-Religare Grant.

2. Alain Supiot, *Orare/Laborare*, 30 COMP. LAB. L. & POL'Y J. 641, 641–53 (2009); Kenneth D. Wald, *Religion and the Workplace: A Social Science Perspective*, 30 COMP. LAB. L. & POL. J., 471, 471–84 (2009).

3. François Gaudu, *La religion dans l'entreprise*, 2010 DROIT SOCIAL, 65 (Fr.); François Gaudu, *Droit du travail et religion*, 2008 DROIT SOCIAL, 959 (Fr.).

4. Gaudu, *La religion dans l'entreprise*, *supra* note 3.

5. Universal Declaration of Human Rights, art. 18, G.A. Res. 217A (III), U.N. Doc A/810, at 71 (1948).

6. Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) (2014).

How, then, can one explain the increasingly intense controversy relating to religion in the workplace? Some may argue that the recent controversies are simply a sign of an improved effectiveness of the control processes. But this seems too simple an explanation and a variety of data and facts seem to show that, on the contrary, new difficulties are emerging, which are not only more numerous but which are of a different variety compared with those of the past.⁷

First, the vast movement of secularization of Western European societies was made more complex by a movement of religious minorization and diversification linked as much to individualist reconstructions as to issues of more collective integration. These phenomena lead to dynamics of reaffirmation and anti-conformism that are even more complex to manage, given that they are increasingly diversified. At the beginning of the twenty-first century in Europe, conflict over Islamic practices arose most frequently, with employees seeking accommodations to wear headscarves or beards, or requesting their employers provide prayer rooms and special menus in cafeterias, etc.⁸ But, in fact, these Islamic issues are actually part of a much broader phenomenon which has existed, in one form or another, for a long time with Jews, Jehovah's Witnesses, pacifists, homosexuals, and even those belonging to previously dominant religions.⁹ To consider as complete, in a too hasty or too imperative manner, a social secularization of the labor pool further strengthens reactions that are, in fact, linked to a gap between normative positions and the much more complex sociological state of populations.

A second development further complicates the situation. The spread of market rationality leads, in effect, to new fertilizations between economic markets and spiritual markets. Once again, it is not simply a matter here of recalling the rapid emergence in Europe of Islamic modes of finance, trade, or industry. It is rather a question of paying attention to the deeper renewal of a pluralism of economic legitimacies linked to reference points such as business "ethics,"

7. Lucy Vickers, *Celebrating Diversity? The Implementation of the European Non-Discrimination Directives in the UK*, 13 MAASTRICHT J. EUR. & COMP. L. 279 (2006) (Neth.).

8. DOUNIA BOUZAR & LYLIA BOUZAR, ALLAH, A-T-IL SA PLACE DANS L'ENTREPRISE? (2009); Sonia Ghumman et al., *Religious Discrimination in the Workplace: A Review and Examination of Current and Future Trends*, 28 J. BUS. PSYCHOL. 439, 445 (2013).

9. Ghumman et al., *supra* note 8, at 441.

“culture,” and “participative management.” What difference, then, should we see between the appearance of the fast-food restaurant, Quick’s, that prepares meat in accordance with Islamic law and the secular business culture of Coca-Cola? Or, between the networks of Club bookshops or the Oxfam and Max Havelaar fair-trade chains, and even the long-standing development of ethnic shops, from the Chinese or kosher restaurant to Pakistani grocery stores and women-only fitness centers?

In at least one of its facets, this second development is different in nature than the first. With the first, society’s degree of “secularization” depends on *factual observation* of external practices, beliefs, and social (de)structuring. In this view, the work relation was a purely reactive one in the face of a social given.¹⁰ That reaction depends on the type of exception or, in more recent and perhaps inopportune vocabulary, on the manner of the social compromise or arrangement. The second development referenced business culture or economic ethics, relating more directly to a normative¹¹ or regulatory approach: to what extent can an employer *decide and state* its own “ethics” or “culture,” which for the employer might be of the order of a *principle* and not of an exceptional adaptation? This normative business perspective does not imply extreme communitarianism nor extreme *intuitu personae*. It is not an arbitrary claim, but an objective reference to a particular ethical project, often geared toward benefiting minorities. It is this question that will be one of the major issues in the law of non-discrimination and in a renewed theory of “ideologically oriented enterprises.” In

10. See e.g., Basil C. Bitas & Pedro P. Barros, *Tobacco Control and the Role of Litigation: A Survey of Issues in Law, Policy, and Economics*, 16 U. MIAMI INT’L & COMP. L. REV. 1, 40 (2008) (discussing businesses that “changed their behavior in order to find a new ‘business space’ adapted to prevailing social perceptions and circumstances”); Matthew G. Doré, *Déjà Vu All Over Again? The Internal Affairs Rule and Entity Law Convergence Patterns in Europe and the United States*, 8 BROOK. J. CORP. FIN. & COM. L. 317, 332 (2014) (“Firms are in fact embedded in their nation’s social context, which company law rules reflect.”); Nathaniel Lipkus, *How to Understand Product Development: Public-Private Partnerships as Vehicles for Innovation in Combating Neglected Disease*, 10 MICH. ST. J. MED. & LAW 385, 423 (2006) (mentioning an initiative which identified “companies which have historically adapted to economic and political circumstances”).

11. See Timothy L. Fort, *Religion in the Workplace: Mediating Religion’s Good, Bad and Ugly Naturally*, 12 ND J. L. ETHICS & PUB. POL’Y 121, 136 (1998) (“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.”).

any case, it is an even more difficult question, since the transposition to private businesses of the rules of ideological neutrality characteristic of public institutions does not seem to have acquired constitutional force. The assumption is that extending these public rules to private enterprise result in *solutions* rather than serious *questions* about interpretative discussion of both secularism (as in France) and neutrality (as in Belgium).

The first kind of workplace diversity (internal diversity of standard businesses), with issues like management of workers' freedom of conscience and religion, could become an outdated issue faster than expected. However, new forms of corporate vision (like emphasis on fostering external diversity of ideologically oriented enterprises) and more precisely contemporary reformulations of business ethics and spiritualities would demand new analyses from positive law. Continuing the line of thought begun in previous publications, this article will make a few observations bearing on the challenges of this new issue.

How can one legally analyze what might the impact of new business ethics, certifications, charters, and plans be on cultural and religious diversity? New forms of indirect discrimination might conceal themselves ever more skillfully, attempting to get round the advances in new anti-discrimination legislation. Not all specifications of an ethics or business culture necessarily result in a bias of discrimination, whether philosophical or political. Nowadays, ethnic and ethical claims tend to be mingled¹² and broaden into new and more extensive forms of ethical businesses.

12. The growing complexity of the respective figures of ethnicity, ethics and culture, and identity and profit, may complicate the analysis and conventional types. Comp. O. De Schutter tries to distinguish a gay bar from a Chinese restaurant : “[D]ans le cas de l’établissement destinés aux homosexuels, la possibilité pour ceux-ci de se retrouver entre eux peut être considérée comme une condition de leur épanouissement personnel, c’est-à-dire comme un élément de la vie privée. Encore les deux hypothèses ne sont-elles pas à confondre : tandis que dans le premier cas (restaurant ethnique chinois), c’est l’intérêt économique de l’établissement qu’il invoque pour prétendre échapper à l’interdiction de la discrimination directe fondée sur l’origine ethnique, dans le second cas (bar homosexuel), c’est le souhait des membres d’une minorité de pouvoir se retrouver entre eux qui est invoqué comme justification. Le conflit entre libertés fondamentales n’est véritable que dans cette dernière situation : dans la première situation, la seule question pertinente est celle de savoir quelle portée reconnaître au principe de proportionnalité que contient la disposition que les directives consacrent à la notion “d’exigence professionnelle.” [In the case of the gay bar, the opportunity for gays to get together amongst each other could be considered necessary for their personal development, or in other words, an element of their private life. The two hypotheses should not be confused though: In the first case, (the Chinese Restaurant) the

But the development of cultural diversity within business does not stop there. Business culture is opening up to increasingly varied processes, especially management processes. Various types of coaching, relational meditation, and psychological resources all contain practices can often be traced to religious roots.¹³ No doubt there are also functional and instrumental approaches involved, but the scientific legitimation of spiritual techniques does not necessarily suffice to distinguish them from what might previously have been considered to be a religious practice.

I. CHANGES IN THE CONCEPT OF THE IDEOLOGICALLY ORIENTED ENTERPRISE: RELIGION AS ETHICS

The definition of the idea of the ideologically oriented enterprise has always been fairly vague.¹⁴ Its legal interest, however, exists only by virtue of the effects of the law which might be attached to it—essentially linked to exemptions in terms of protected discrimination in hiring or firing for ideological reasons. While this theory originally developed in a fairly binary manner, the borders have now become blurred, especially as the attached effects lose their specificity. Following European Directive 2000/78/EC, only direct

claim is that it's the financial interests of the business under which he tries to escape the claim of ethnical discrimination, while in the second case, (the gay bar) it's the desire of the gay minority to be able to get together that that is provided as a justification. The conflict between these fundamental freedoms can really only be found in the latter situation. In the first situation, the only pertinent question is to know what range to give the principle of proportionality, which contains the given guidelines outlining the concept of what is an "occupational requirement."] OLIVIER DE SCHUTTER, DISCRIMINATIONS ET MARCHÉ DU TRAVAIL: LIBERTÉ ET ÉGALITÉ DANS LES RAPPORTS D'EMPLOI 68 (2001). This opposition is itself a sociological interpretation that other mutations will further complicate. The public debate on Quick halal restaurants shows other forms of fluidity between ethnic-type economy and identity-type economy.

13. F. Matthews-Giba, *Religious Dimensions of Mediation*, 27 FORDHAM URB. L.J. 1695, 1703 (2000) ("The religious and spiritual pedigree of mediation is quite extensive, and the practice of using spiritual aspects of mediation still continues."); Hendrika Vande Kemp, *Making the History of Psychology Clinically and Philosophically Relevant*, in HISTORY OF PSYCHOLOGY 224, 232 (5th ed. 2002) ("Throughout the course I discuss the contributions that other great psychologists have made to the psychology of religion, religious psychology, and spiritually oriented psychotherapies.") (citation omitted).

14. Benjamin Moses Leff, *Federal Regulation of Nonprofit Board Independence: Focus on Independent Stakeholders as a "Middle Way"*, 99 KY. L.J. 731, 781 n.156 (2011) (citations and quotation marks omitted) ("A family worshipping together is engaged in a quintessentially private religious enterprise and therefore is not a church If membership does not extend beyond [the founder's] immediate family, it would appear that plaintiff is engaged in a private religious enterprise, rather than a church.").

discrimination based on religious or philosophical conviction is justified, even to the exclusion of all discrimination based on other grounds.¹⁵ Thus, the exemption of the key functions of the ideologically oriented enterprise does not, as such, concern gender, sexual orientation, race, language or, more broadly, certain practices motivated by belief. Legally, therefore, the issue is a fairly narrow one. Belgium's Constitutional Court,¹⁶ however, has already shown on several occasions with regard to Belgian legislation that the narrow nature of this exemption is no constraint. Any problematic distinction other than religious or philosophical identity is steadily subjected to the common law which demands justification for any discrimination. This creates a system with a positive obligation to justify such actions, with judicial checks carried out after the event. If the legal effectiveness of the category of ideologically oriented enterprise tends to become subject to checking by proportionality over a long continuum of evaluation, we will see that the issues involved in a definition are themselves opening up to a distinctly more flexible approach. Hence the interest is no longer found in positive law alone. It also falls under an approach from legal anthropology, aimed at examining how legal practice will take into account the changes and developments mentioned in the introduction.

In the definition given by Phillipe Ardant, and then used by Gérard Couturier, "ideologically oriented enterprises" are those enterprises which "do not limit themselves to supplying goods or services, but which claim to be representative of a philosophy, an ethic, an ideal inseparable from their goal."¹⁷ However, what is the reach of this "inseparability"? Some classic examples illustrate this definition: "publishing companies; religious, educational or cultural institutions, etc."¹⁸ However, these remain linked to the formal diffusion of a doctrine. The Italian literature on the topic has also

15. A future issue would arise about exclusions held by religious authorities: how should a religious decision of banishment or excommunication upheld as a condemnation vis-à-vis an attitude contrary to religious morality be viewed?

16. Cour Constitutionnelle, 17/2009, Feb. 12, 2009 (Belg.); Cour Constitutionnelle, 2009/39, Mar. 11, 2009 (Belg.).

17. Phillipe Ardant, *Les libertés du citoyen dans l'entreprise: Introduction au débat*, 1982 DROIT SOCIAL 428 (Fr.); Gérard Couturier, *Droit du travail*, in LIBERTÉS ET DROITS FONDAMENTAUX 295, 313 (M. Delmas-Marty & C. Lucas De Leyssac, eds., 1996) (La finalité propre des entreprises de tendances).

18. Ardant, *supra* note 17.

adopted definitions with unclear parameters. Thus, Francesco Santoni, in what was later used by Maria G. Mattarolo and Gaetano Lo Castro, held that ideology can “si riflette sia sulla natura degli scopi perseguiti, sia sull’attività organizzata, alla quale devono risultare legate le prestazioni richieste *in funzione strumentale* rispetto alla realizzazione dei suoi fini caratteristici.”¹⁹ He thus left open the question of knowing precisely whether “la tendenza c.d. ideologica debba propriamente ritrovarsi nei *fini* dell’ente e li debba essere ricercata o se sia sufficiente ch’essa rappresenti il *presupposto* per l’esistenza dell’ente, la causa motiva ed efficiente di chi l’ha posto.”²⁰ If ideologically oriented enterprises are only the collective implementation of religious freedom—by means of the freedoms of business, of teaching, and of association—then is it not possible to envision other “inseparable links” between the ideals and the aims of the business? What some authors call the *degree of ideological coloration* demanded of a business in order to meet the demands of “inseparability” is something that remains singularly difficult to identify.

European Union law lends substantial weight to this examination. A comparison of Article 4 of Directive 2000/78/EC with the formulae initially foreseen in the planning clearly reveals European tensions. In the initial version, a narrow definition of ideologically oriented enterprises was outlined, restricting such enterprises to those “which have as their direct and essential objective ideological orientation in the field of religion or belief in relation to education, information and the expression of opinion.”²¹

19. FRANCESCO SANTONI, LE ORGANIZZAZIONI DI TENDENZA E I RAPPORTI DI LAVORO 3 (1983); MARIA G. MATTAROLO, IL RAPPORTO DI LAVORO SUBORDINATO NELLE ORGANIZZAZIONI DI TENDENZA: PROFILI GENERALI 92, 92-106 (1983); Gaetano Lo Castro, “*Individuo e insieme*” nella organizzazioni di tendenza confessionale. *Riflessioni generali*, in RAPPORTO DI LAVORO E FATTORE RELIGIOSO 61 (1988) (ideology can “be reflected both in the nature of the purposes pursued and in the organized activity which the required services are necessarily bound in their instrumental function of its characteristic purpose.”).

20. Lo Castro, *supra* note 19, at 63 (“The trend toward so-called ideology should properly be found in the institution’s purposes and must be sought out whether it sufficiently represents a prerequisite for the institution’s existence, if the cause motivates the institution, and if it is efficient for that institution.”).

21. *Proposition de directive du Conseil portant création d’un cadre général en faveur de l’égalité de traitement en matière d’emploi et de travail [Proposal for a Council Directive Establishing a General Framework for Equal Treatment in Employment and Occupation]*, at 42, COM (1999) 565 final (June 27, 2000) (art. 4(2)), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:51999PC0565&from=EN>.

The final text offers a much broader definition, including “occupational activities within churches and other public or private organisations whose ethos is based on religion or belief.”²² This final text begins this regime only provisionally, so as to preserve already existing legislation or to copy legislation using national practices in existence at the time of the directive.²³ This is what Belgian

“Member States may provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.” *Id.*

22. Council Directive 2000/78, art. 4(2), 2000 O.J. (L 303) 16 (EC), *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>. “Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos. This difference of treatment shall be implemented taking account of Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground. Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos.” *Id.*

23. *E.g.* Matthias Mahlmann, *Prospects of German Antidiscrimination Law*, 14 *TRANSNAT’L L. & CONTEMP. PROBS.* 1045, 1056–57 (2005) (“The [German] bill’s implementations again closely mirror the provisions of European law as far as labor relations are concerned. Different treatment based on a person’s religion or belief does not constitute discrimination in the case of occupational activities within churches or other public or private organizations where the ethos of the church or organization is based on religion or belief and where, having regard to the organization’s self-understanding, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute an essential, legal, and justified occupational requirement. In addition, the bill provides that the prohibition of discrimination on the ground of religion or belief does not prejudice the right of religious associations to require individuals working for them to act in good faith and with loyalty to the organization’s ethos.”) (citing Council Directive 2000/78); Dimitry Kochenov, *Democracy and Human Rights-Not for Gay People?: EU Eastern Enlargement and Its Impact on the Protection of the Rights of Sexual Minorities*, 13 *TEX. WESLEYAN L. REV.* 459, 480 (2007) (“In its 2002 Report, the Commission noted the fact that discrimination on the basis of sexual orientation was institutionalized in the Hungarian armed forces. Surprisingly, the Commission only mentioned this fact without criticising Hungary for this policy, which amounts to a breach of the ECt.HR and Directive 2000/78/EC.”); *id.* at 461 (“Article 13

legislators finally put into practice in Article 13 of the law of May 10, 2007,²⁴ after having avoided the issue in the earlier legislation of February 25, 2003.²⁵

This criterion change from the *aim of ideological promotion* to the *basis of the company* lies at the very heart of the tension examined here: it extends the law's application to other ideologically oriented enterprises such as restaurants, clinics,²⁶ or any other organization

EC allow[ed] for the adoption of the legislative measures prohibiting, inter alia, discrimination on the basis of sexual orientation and the Equal Treatment Directive that followed.”) (citing Council Directive 2000/78).

24. The Belgian Law of May 10, 2007 includes the broad wording of the directive, omitting, however, the concept of “ethics.” The Belgian provision covers both existing and future organizations: “Dans le cas des activités professionnelles des *organisations publiques et privées, dont le fondement repose sur la conviction religieuse ou philosophique*, une distinction directe fondée sur la conviction religieuse ou philosophique ne constitue pas une discrimination lorsque, en raison de la nature des activités ou du contexte dans lequel celles-ci sont exercées, la conviction religieuse ou philosophique constitue une exigence professionnelle essentielle, légitime et justifiée au regard du fondement de l’organisation. Sur base de cette disposition, aucune autre distinction directe fondée sur un autre critère protégé ne peut être justifié, à moins qu’elle ne le soit en application d’une autre disposition du présent titre. Pourvu que ses dispositions soient par ailleurs respectées, la présente loi ne porte pas préjudice au droit des organisations publiques ou privées dont le fondement repose sur la conviction religieuse ou philosophique de requérir des personnes travaillant pour elles une attitude de bonne foi et de loyauté envers l’éthique de l’organisation.” Loi tendant à lutter contre certaines formes de discrimination du May 10, 2007, *Moniteur Belge* (May 30, 2007) (emphasis added). [“In the case of professional activities of public and private organizations, whose foundation is based on religion or belief, direct discrimination based on religion or belief shall not constitute discrimination where, by reason of the nature of the activities or context in which they are exercised, religious or philosophical belief is a genuine occupational requirement, legitimate and justified under the foundation of the organization. On the basis of this provision, no other direct discrimination based on other criteria protected cannot be justified, unless it is under any other provision of this title. Provided that its provisions are otherwise complied with, this Act shall not prejudice the right of public and private organizations whose foundation is based on religion or belief to require individuals working for them to act in good faith and loyalty to the ethics of the organization.”]

25. LOUIS-LEON CHRISTIANS, *LE PRINCIPE DE NON DISCRIMINATION RELIGIEUSE EN DROIT BELGE ET COMPARÉ : ENTRE OBLIGATIONS DU LÉGISLATEUR ET OBLIGATIONS DES CONTRACTANTS*, in *LE PRINCIPE DE NON DISCRIMINATION EN DROIT DES OBLIGATIONS* 143–207 (Patrick Wéry, & Sophie Stijns eds., 2006); PATRICK DE POOTER, *DE DOORWERKING VAN HET GELIJKHEIDSBEGINSEL IN DE RELIGIEUZE GEMEENSCHAPPEN EN LEVENSBESCHOUWELIJKE GROEPEN* 489–509 (2003); OLIVIER DE SCHUTTER, *supra* note 12, at 71–77 (“Les entreprises de tendances” [Business Trends]); YVES STOX, *DISCRIMINATIE EN IDENTITEIT: IDENTITEITSGEBONDEN WERKGEVERS IN HET EUROPEES EN BELGISCH ARBEIDSRECHT* (2010).

26. Compare hospitals organized by religious orders, MICHELINE JAMOULLE, *LE CONTRAT DE TRAVAIL, PRÉCIS DE LA FACULTÉ DE DROIT DE LIÈGE* 55 (1986) and W. Rauws & H. Schyvens, *De bescherming van werknemersgrondrechten binnen de individuele arbeidsverhouding*, in K. RIMANQUE, *DE TOEPASSELIJKHEID VAN DE GRONDRECHTEN IN*

whose ethos might have a religious or philosophical foundation,²⁷ an extension which might have been uncertain under earlier Belgian legislation.

The abandonment of the reference to “ethos” in the Belgian law of May 10, 2007 is a lapse that reveals the fear of an excessively “ethical” extension of the concept of the ideologically oriented enterprise. In any event, the preparatory work does not mention any consideration other than the desire to have an exact transcription of the formula of the European Directive. Further, it is necessary that the basis of the enterprise has not just any kind of ethical referent but a “religious or philosophical conviction.” A “purely” cultural tradition or an ethos judged to be “purely” professional would not benefit from these arrangements. On the other hand, nothing allows us to think that political parties, in the classical view, would henceforth be excluded.

The announced extension, which is definite in its principle, nevertheless remains ambiguous in its scope. How, for example, can one distinguish clearly between a professional ethos and a philosophical foundation? The secularization of ideologies leads to eroding borders in post-modern societies and old reference points are poorly adapted to take these changes into account.

A first point may be easily understood in light of a classic doctrine: the simple religious conviction of the entrepreneur is not sufficient to establish the basis of an ideologically oriented enterprise,

PRIVATE VERHOUDINGEN 223 (Antwerpen: Kluwer 1982) (discussing Catholic charities) with *Rommelfanger v. Fed. Republic of Ger.*, App. No. 12242/86, 62 Eur. Comm’n H.R. Dec. & Rep. 151 (1989) available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1010#%22itemid%22:%22001-1010%22>}}.

27. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); *Stormans Inc. v. Selecky*, 844 F. Supp. 2d 1172 (W.D. Wash. 2012). Compare N. K. Kubasek, D. C. Tagliarina & C. Staggs, *The Questionable Constitutionality of Conscientious Objection Clauses for Pharmacists*, 16 J.L. & POL’Y 225 (2007) with *Pichon and Sajous v. France*, App. No. 49853199-2001-X Eur. Ct. H.R. 371 (no conscientious objection for catholic pharmacists) available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-22644#%22itemid%22:%22001-22644%22>}}; Eric Fouassier, *Doctrine, pharmacie, vers une clause de conscience du pharmacien d’officine?*, 2003 REVUE DE DROIT SANITAIRE ET SOCIAL, 43 (Fr.); Julien Raynaud, Note de jurisprudence, *à propos de l’arrêt de la cour européenne des droits de l’homme section 3 du 2 octobre 2001, infractions économiques et droits de l’homme, des pharmaciens ne peuvent arguer de leurs croyances religieuses pour refuser de vendre les pilules contraceptives*, 2002 J.C.P.E. 1149. In Belgium, a more balanced decision of the Order of Pharmacists: Ch. Laporte, *Un pharmacien ne peut abuser de sa clause de conscience lors d’une garde* [A pharmacist cannot abuse its conscience clause in a custody], LA LIBRE BELGIQUE (Dec. 19, 2007).

even if a number of stipulations may have been attached to that religion in the staff's employment contracts. In other words, the nature of the business eludes a purely subjective determination and is in this regard removed from the autonomy of individual will.²⁸ It is in this sense that the lease is not held to be foundational of an "ideologically oriented" relation since the religious conviction alone of the lessor is not sufficient to give the enterprise this confessional coloration.²⁹ This is clearly an operation of state classification, a true, public recognition of the specific character of an enterprise.

Admitting (or denying) that all activity apparently "secular" can be redefined religiously (or philosophically) and hence be classified by the law as such, clearly raises the question once again of the self-definition by the business of its religious or philosophical foundation, and the extent of that foundation. It seems difficult, at first sight, to be able to detect this "second-degree world" other than with the view and internal ideas specific to the tradition in question. Indeed, what State control might one imagine that does not raise it up as censor? The very act of identifying the foundation will certainly be explained by the incidence of dominant social ideas and, as a result, vary depending on whether the religion in question is a majority or minority one. However, it would then run the risk, once again, of constituting a discriminatory process.³⁰

The field of ideologically oriented enterprises, depending on their degree of independence, would be close, *mutatis mutandis*, to that of the *individual* conscientious objector encountered above and would thus call for comparative discussion. Without doubt, this is no longer a matter of taking into account the conformity with a religion of a given behavior, but more broadly of examining the intensity of the religious "reassumption" of the secular activity.³¹ This question

28. See Steven D. Jamar, *Accommodating Religion at Work: A Principled Approach to Title VII and Religious Freedom*, 40 N.Y.L. SCH. L. REV. 719 (1996) (distinguishing the case of religious ethos enterprises, commercial enterprises whose employer requires compliance with certain religious norms, and finally the case of enterprises with religious harassment between employees).

29. Compare with Melissa Fishman Cordish, *A Proposal for the Reconciliation of Free Exercise Rights and Anti-Discrimination Law*, 43 UCLA L. REV. 2113 (1996).

30. Matthew S. Steffey, *Redefining the Modern Constraints of the Establishment Clause: Separable Principles of Equality, Subsidy, Endorsement, and Church Autonomy*, 75 MARQ. L. REV. 903, 908 (1992).

31. Kathleen A. Brady, *Religious Organizations and Mandatory Collective Bargaining Under Federal and State Labor Laws: Freedom From and Freedom For*, 49 VILL. L. REV. 77, 85

of *field of application* will not be that, for example, of the *kosher conformity* of meat sold by a Jewish butcher's, but rather the recognition of the religious *nature*—or lack thereof—of this activity.³² However, by embarking on this type of examination, a new objection might arise that relates, in a new way, to the principle of equality. The same economic activity might, in fact, be classified in different ways depending on the religion of which it concerns. Not all religious faiths have the same hold on economic realities.³³ The butcher shop owned by a Catholic would not have the same characteristics as those of a kosher butcher. Similarly, the simple act of exclusively selling halal hamburgers would not, in itself, raise a restaurant to the status of ideologically oriented enterprise, whereas a restaurant which identified itself as halal or Muslim likely would. This variety of classification, however, does not appear at all to be discriminatory, *qualitate qua*. On the contrary, it would simply take account of a factual difference in the degree of the ideological hold over a secular activity. To deny the specific character of a kosher butcher would lead to as many paradoxes as applying the regime of ideologically oriented enterprises to a Catholic butcher.

Careful work is called for. Self-definition, while being necessary to establish a business as an ideologically-oriented enterprise, does not seem sufficient. The European Court of Human Rights emphasizes whether a certain behaviour or belief is a “central and necessary part” of a person's religious convictions versus behavior that is “simply motivated” by that religious conviction when determining whether a person should be exempt from certain rules or laws.³⁴ Perhaps the same could be done when determining whether certain behaviours of businesses should be enough to label it as an ideologically oriented enterprise. However, whatever

(2004).

32. Geneviève Koubi, *Droit et religions: dérives ou conséquences de la logique de conciliation*, 108 REV. DR. PUBLIC, 725, 742 (1992) (Fr.); Geneviève Koubi, *Le rite contre la règle. Réflexions à partir de Paris 25 mai 1990, Bami c. Arbib*, in LES RELIGIONS EN FACE DU DROIT - LES CAHIERS D'ACTION JURIDIQUE, 47, nn. 79–80 (1992); Jean Villaceque, *Note sous Paris 30 mars 1990 et 25 mai 1990, Aff. Fraternité Pie X c. Painsecq et aff. Arbib c. Bami*, 1990 DALLOZ 596 (Fr.) (kosher restaurant).

33. Brenda Cossman & Ratna Kapur, *Secularism's Last Sigh?: The Hindu Right, the Courts, and India's Struggle for Democracy*, 38 HARV. INT'L L.J. 113 (1997).

34. Robert H. Nelson, *Rethinking Church and State: The Case of Environmental Religion*, 29 PACE ENVTL. L. REV. 121, 129 (2011). Carolyn Evans, *The 'Islamic Scarf' in the European Court of Human Rights*, 7 MELB. J. INT'L L. 52, 55–56 (2006).

minimum standard is used to protect the preferences of businesses that try to be ideologically oriented cannot reduce the more effective guarantees contained in European Directive 78/2000/EC and the Belgian law of May 10, 2007.³⁵ Even in this context, it is not enough to formally discuss the “religious or philosophical” self-signification of a secular activity, but rather, of considering the religious and philosophical efforts that the business makes, so as to reveal, *at the margins*, a simple *foundation* whose religious and philosophical nature might be detected in a not unreasonable way and with no discriminatory effects.

Beyond the changes in the Muslim market, a much greater diversification of religious and philosophical resources is in store in the near future, whether in the wider context by means of movements for ethical labelling for companies, or by means of business culture. The emergence of “wild religiosity” might not be limited to individual phenomena but might reach the business world.³⁶ The criterion of “religious or philosophical foundation” will need to be able to meet these new challenges.

The first major interpretive challenge for the law occurred in 2008 in both Belgium and France in cases concerning what weight to give to a statement of business culture that transposes to the company, *mutatis mutandis*, the constitutional characteristics of the state (French secularism³⁷ or Belgian neutrality³⁸). Should one see here an ideologically oriented enterprise whose philosophical foundation might be secularism or neutrality, or just a standard business? Or even, should this statement of business culture fail to attain the substance of a foundation, will it just be a standard business? And in this case, would the legal relevance of this business statement vary depending on the selected referent according to whether or not this related to the constitutional features specific to the authorities? Would such a business be allowed to directly

35. See *Schüth v. Germany*, App. No. 1620/03 (Eur. Ct. H.R. 2010).

36. Shmuel Trigano, *In Search of Eternal Israel, Back to an Intellectual Journey*, in *JEWISH PHILOSOPHY FOR THE TWENTY-FIRST CENTURY: PERSONAL REFLECTIONS* 467 (Hava Tirosh-Samuelson & Aaron V. Hughes eds., 2014).

37. See Katayoun Alidadi, *Opening Doors to Muslim Minorities in the Workplace? From India's Employment Quota to EU and Belgian Anti-Discrimination Legislation*, 23 *PAGE INT'L L. REV.* 146, 152 (2011) (“Under French law, workers are said to have no religious rights, as employers have no legal obligation to accommodate religious practice.”).

38. See *STOX*, *supra* note 25.

discriminate against potential employees based on behaviour that is not compatible with its “neutral” or “secular” philosophy?

Without taking a clear position on these theories, the Cour de Travail (Employment Court) of Brussels³⁹ approved the firing of a female sales assistant of the Club bookshops for a “serious fault,” namely, the wearing of a headscarf. The Court noted that “freedom of religion is not at issue here: the company did not reproach the appellant for belonging to the Islamic religion but only for having arrived at work displaying an ostentatious religious sign, despite recommendations – that apply to all members of staff – according to which workers in contact with customers must not only wear clothing that bears the company’s commercial branding but must, in addition, abstain from displaying signs or clothing that might damage the ‘*open, available, plain, family and neutral*’ brand image of the company. The freedom to display one’s religion is not absolute; restrictions are possible when religious practices are of a nature to provoke *disorder*. The internal practice of a commercial company forbidding staff in contact with customers to wear certain types of clothing *that do not conform to neutrality*, and more precisely the wearing of the religious veil, rests on *objective considerations specific to the brand image of the commercial company*. Such practice, which applies to workers or a category of workers, is not discriminatory.”⁴⁰

How much leeway is a company allowed in adopting a “culture” that imposes certain “policies concerning religious matters” without at the same time being discriminatory? The business concerned in the Brussels judgement wanted an *image* that was both *open* and *neutral*, close to the image of the state itself. Might one see in it “a philosophical foundation” or simply view it as normal practice for a standard business? Would a different philosophical option, for example a pluralist or syncretistic one, have received the same positive treatment in court? Would a standard business be permitted to engage in these practices, or did its choices turn the business into an ideologically oriented enterprise, assuming the ‘brand image’

39. C.T. Bruxelles, *J.T.T.* (Jan. 15, 2008) at 140; Cf. Cynthia DeBula Baines, *L’Affaire Des Foulards—Discrimination, or the Price of a Secular Public Education System?*, 29 VAND. J. TRANSNAT’L L. 303, 324 (1996) (citing *Hijab Report Is Right on the Mark; Schools Should Heed Advice and Stop Discrimination*, GAZETTE (Montreal), Feb. 16, 1995, at B2) (explaining that according to the Quebec Human Rights Committee, “the hijab should only be banned when it is demonstrated—and not just presumed—that public order or sexual equality is in danger”).

40. C.T. Bruxelles, *J.T.T.* (Jan. 15, 2008) at 140 (emphasis added).

pushed by the business reached the intensity of a foundation (religious or philosophical)?

The route taken by the Brussels Cour du Travail might in any case be compared to the positions the famous Stasi Report took up in a chapter on the “secularism” of French businesses in common law, giving one to understand that in France the neutrality of business cultures ought not, perhaps, to be a freedom, but rather an obligation.⁴¹

On the other hand, the positions taken by the Haute Autorité de lutte contre les discriminations et pour l'égalité (HALDE, translated as “High authority for the struggle against discrimination and for equality”) are different overall to those of the Brussels Cour du Travail. A ruling⁴² on January 26, 2009, confirmed by a second ruling of April 6, 2009,⁴³ stated in fact that the “principle of neutrality,” applicable to the authorities, cannot be transposed or invoked by a private company in order to claim to limit, *by itself alone*, the religious freedom of expression of employees. In other words, according to our analysis, HALDE believes that the contractual invocation of secularism does not in itself convert a business into an ideologically oriented enterprise on a philosophical foundation (which would free it from increased legal checks) but, on

41. COMMISSION STASI, LAÏCITÉ ET RÉPUBLIQUE, RAPPORT AU PRÉSIDENT DE LA RÉPUBLIQUE, LA DOCUMENTATION FRANÇAISE 3.2, 3.2.3, and 4.2.3 (Paris 2004); compare with U.S. law, Laura S. Underkuffler, *Discrimination on the Basis of Religion: An Examination of Attempted Value Neutrality in Employment*, 30 WM. & MARY L. REV. 581(1989).

42. *Deliberation Relative a une Clause*, HALDE, (Jan. 26, 2009), <http://www.halde.fr/Deliberation-relative-a-une-clause,12796.html> (The contractual clause negatively assessed by the HALDE provides that “l'entreprise est un lieu neutre et la neutralité implique notamment le respect des conceptions philosophiques, idéologiques ou religieuses des salariés et le respect de leur libre exercice public et manifestations en entreprise. Toutefois, ces croyances et leurs manifestations ne doivent en aucun cas devenir une entrave, même mineure, au bon fonctionnement de l'entreprise. En conséquence, nous requérons la plus grande neutralité dans la tenue vestimentaire et le comportement de nos salariés.”) [The company is a neutral environment, and such neutrality significantly implies the respect of the philosophical, ideological or religious beliefs of employees and the respect of their right to public practice (of such beliefs) in the workplace. That being said, these beliefs and practices should in no way become obstacles, even minor ones, to the normal operation of the business. Therefore, we require the highest degree of neutrality in the dress and behavior of our employees.]. The same opinion has been ruled by the French Court of cassation (ass. pl.), June 25, 2014, in the famous Baby Loup case. See S. HENNETTE-VAUCHEZ, V. VALENTIN, L'AFFAIRE BABY LOUP OU LA NOUVELLE LAÏCITÉ (Paris, 2014).

43. *Deliberation Relative aux Regales Fixees*, HALDE, (Apr. 6, 2009), <http://www.halde.fr/Deliberation-relative-aux-regles.html>.

the contrary, it is still subject to the demands relating to a standard business. In a standard business, the mere invocation of an ideology, even if the ideology mirrors a constitutional feature of the Republic, does not result in the immunising effect of the controls of common law, except in the case that the invocation reaches the strength of a foundation.

After abandoning the test of “the direct and essential objective” in favour of any “ethos based on religion or conviction,” European law is now dealing head-on with contemporary changes and ethical diversification in businesses. While the Directive opens this Pandora’s Box only in relation to already existing situations, the same does not hold true for much national legislation. The future will tell if these issues will truly be encountered in a non-discriminatory way.

II. CHANGES IN MANAGEMENT METHODS: SPIRITUALITY AS A NEUTRAL METHOD?

Without returning to the (often poorly interpreted) theses of Max Weber⁴⁴ on the Protestant origins of capitalism, one is forced to take note of the new breadth of sociological and economic work devoted to the micro and macro influences of religious contexts, traditions, and psychologies on the spread of economies and markets.⁴⁵ But what attracts the attention of legal analysis here is another related phenomenon: that of the increasing power of management methods linked to the substantial or functional

44. ECONOMICS AND RELIGION: ARE THEY DISTINCT? (H. Geoffrey Brennan & A.M.C. Waterman eds., vol. 39, 1994); KURT SAMUELSSON, *ECONOMIE ET RELIGION: UNE CRITIQUE DE MAX WEBER* (1971); KURT SAMUELSSON, *RELIGION AND ECONOMIC ACTION: THE PROTESTANT ETHIC, THE RISE OF CAPITALISM AND THE ABUSES OF SCHOLARSHIP* (E. Geoffrey French ed., 1993).

45. For a macro-approach, see BRUNO COLMANT, *ECONOMIE EUROPEENNE: L'INFLUENCE DES RELIGIONS* (2008); M. Noland, *Religions, islam et croissance économique*, 2 *REVUE FRANCAISE DE GESTION* 97–118 (2007); Rodney Wilson, *ECONOMICS, ETHICS AND RELIGION: JEWISH, CHRISTIANS AND MUSLIM ECONOMIC THOUGHT* (1997). For a micro-approach, see Luigi Guiso, Paola Sapienza & Luigi Zingales, *People’s Opium? Religion and Economic Attitudes*, 50 *J. MONETARY ECON.* 225–82 (2003); Eilert Herms, *Religion, Ethics, the Economy and Economics*, 153 *J. INSTITUTIONAL AND THEORETICAL ECON.* 182–206 (1997). Compare the “Law and Economics” literature, Richard A. Posner, Michael W. McConnell, *An Economic Approach to Issues of Religious Freedom*, 56 *U. CHI. L. REV.* 1 (1989); L. Panafit, *Les relations religions-Etats en Europe au prisme de l’économie*, in Pont-Chelini, B., dir., *RELIGIONS, DROIT ET SOCIÉTÉS DANS L’EUROPE COMMUNAUTAIRE* 49–71 (2000); L.R. Iannaccone, R. Finke, R. Stark, *Deregulating religion: the economics of church and state*, 35(2) *ECON. INQUIRY* 350–64 (1997).

effectiveness ascribed to ‘spiritual’ resources. Far from being a marginal or exotic fact, in the United States, the use of ‘corporate spirituality’ is steadily spreading beyond minority fundamentalist practice.⁴⁶ It is no longer necessarily a practice in tune with an identified religious conviction but, where necessary, a strategy with allegedly scientific justification that utilizes the effectiveness of particular mental resources and the embodied traces of resources once largely associated with religious traditions. The growing breadth of contributions to such issues in the specialist literature⁴⁷ is a sign that it should be taken seriously.

Legal analysis will not remain untouched. Will these new managerial approaches be able to pass the European test of religious freedom within standard companies? Or, if the answer is ‘no,’ is it possible to formalise, under the conditions required by the legal instruments, the integration of this type of business within the

46. Lake Lambert, *SPIRITUALITY, INC.: RELIGION IN THE AMERICAN WORKPLACE* (2009).

47. Blake E. Ashforth & Michael G. Pratt, *Institutionalized Spirituality: An Oxymoron?*, in *HANDBOOK OF WORKPLACE SPIRITUALITY AND ORGANIZATIONAL PERFORMANCE* 93–107 (R. Giacalone & C. Jurkiewicz eds., 2003); Blake E. Ashforth & Deepa Vaidyanath, *Work Organizations as Secular Religions*, 11 *J. MGMT. INQUIRY*, 359–70 (2002); Jerry Biberman & Michael Whitty, *A Postmodern Spiritual Future at Work*, 10 *J. ORGANIZATIONAL CHANGE MGMT.* 130–38 (1997); D.M. Boje, *Critical Theory Approaches to Spirituality in Business*, in *SPIRITUALITY IN BUSINESS: THEORY, PRACTICE, AND FUTURE DIRECTIONS* 160–87 (2008); Cathy Driscoll & Elden Wiebe, *Technical Spirituality at Work: Jacques Ellul on Workplace Spirituality*, 16 *J. MGMT. INQUIRY* 333–48 (2007); Theodora Issa & David Pick, *An Interpretive Mixed-Methods Analysis of Ethics, Spirituality and Aesthetics in the Australian Services Sector*, 20 *BUS. ETHICS: A EUR. REV.* 45–58 (2011); Douglas A. Hicks, *RELIGION AND THE WORKPLACE: PLURALISM, SPIRITUALITY, LEADERSHIP* (2003); Carole L. Jurkiewicz & Robert A. Giacalone, *A Values Framework for Measuring the Impact of Workplace Spirituality on Organizational Performance*, 49 *J. BUS. ETHICS* 129–42 (2004); D.J. Koys, *Integrating Religious Principles and Human Resources Management Activities*, 5 *TEACHING BUS. ETHICS* 121–39 (2001); Jeffrey S. Lewis & Gary D. Geroy, *Employee Spirituality in the Workplace: A Cross-Cultural View for the Management of Spiritual Employees*, 24 *J. OF MGMT. EDUC.* 682–94 (2000); Josep M. Lozano & Raimon Ribera, *A New Chance for Management—A New Challenge for Spirituality*, in *SPIRITUALITY AND ETHICS IN MANAGEMENT* 175–85 (L. Zsolnai ed., 2004); DAVID W. MILLER, *GOD AT WORK: THE HISTORY AND PROMISE OF THE FAITH AT WORK MOVEMENT* (2007); Ashish Pandey & Rajen K. Gupta, *Spirituality in Management: A Review of Contemporary and Traditional Thoughts and Agenda for Research*, 9 *GLOBAL BUS. REV.* 65–83 (2008); Douglas Polley, Jay Vora & P.N. SubbaNarasimha, *Paying the Devil His Due: Limits and Liabilities of Workplace Spirituality*, 13 *INT’L J. ORG’L ANALYSIS* 50–63 (2005); Cecile Rozuel & Nada Kakabadse, *Ethics, Spirituality and Self: Managerial Perspective and Leadership Implications*, 19 *BUS. ETHICS: A EUR. REV.* 423–36 (2010); Keyur B. Thaker, *Approaches to Implement Spirituality in Business*, 15 *J. HUMAN VALUES* 185–98 (2009).

category of organizations with a religious or philosophical foundation? This return of the religious—but in what form?—however, is not made explicit as such. It grows in a double mode of secularization and of neutralization. On the one hand, only a ‘method’ of management is put forward in a performance scientifically justified and without its religious origin necessarily being emphasised. On the other hand, the ambivalence of the concept of ‘spirituality’ must clearly be perceived: it relates more to morale than to morality, less to soteriological thought than to the psychology of mind, less to conscience-Gewissen than to consciousness-Bewusstsein. These slippages shift the legal question of freedom of religion towards the wider protection of the integrity of private life, itself susceptible to being opposed even to confirmed scientific claims. It is nevertheless in the gaps of this movement that distinct areas of dispute might reveal themselves, mainly through instrumentally abusive control issues.⁴⁸

A first sign of them may perhaps be found in a procedure at the Versailles appeal court⁴⁹ relating to professional coaching carried out by a sub-contracting company, which it later became clear had links with Scientology. There was no criticism of the good results achieved in the personnel training. Only the origin of the trainer was called into question, and more particularly, a number of approaches felt to be proselytising, although these were limited to coffee breaks. No doubt the core of this dispute related to the socially controversial nature of Scientology, but the fact that this organization attempted

48. See Marjolein Lips-Wiersma, et al., *Theorizing the Dark Side of the Workplace Spirituality Movement*, 18 J. OF MGMT. INQUIRY 288, 293 and fig. 1 (2009) (investigating the four quadrants of workplace spirituality (WPS)—seduction, evangelization, manipulation, and subjugation—in order to propose a Critical Workplace Spirituality (CWPS)); see also Dennis Tourish & Naheed Tourish, *Spirituality at Work, and its Implications for Leadership and Followership: A Post-Structuralist Perspective*, 6 LEADERSHIP 207–24 (2010). Some authors propose new answers for conciliating spirituality and management, not as a way to stimulate employee’s energy at work but to guarantee a reasonable level of personal expression. Kathy Lund Dean & Scott R. Safranski, *No Harm, No Foul? Organizational Intervention in Workplace Spirituality*, 31 INT’L J. PUB. ADMIN. 359–71 (2008).

49. See Catherine Pherivong, *Note de jurisprudence, à propos de l’arrêt de la Cour de Versailles du 22 mars 2001, le refus de salariés de participer à un séminaire suspecté d’être infiltré par une secte ne constitue pas un acte d’insubordination*, 89 JURISPRUDENCE SOCIALE: LAMY 22 (2001); Christophe Willmann, *La bonne foi contractuelle et les convictions religieuses, note sur Versailles 23 janvier 1998*. J.C.P.E., 1999, no. 21. Compare with Cour de cassation de France [Supreme Court for Judicial Matters], 17 octobre 1973, JCP, 1973, II, 17698, note Y. Saint-Jours.

to describe itself as a ‘Church’ was not without importance. The suspicion that a hidden religious dimension is disguised under scientific appearances might also have supplied grounds for the liveliness of reactions in the case. We see that the level of performance of the management or training technique will not be sufficient to remove the question of the origin of the technique from the background of such cases. Will we have to envisage an obligation to reveal non-membership of a socially controversial⁵⁰ or secret movement,⁵¹ as well as of the insignificance or religious or philosophical harmlessness of the technique offered?⁵²

III. CONCLUSION

The legal regulation of religious diversity at work is a test for contemporary claims to social pluralism. On the one hand, it is necessary to find a balance between the right to differentiate and the right to discriminate, between the right to remain silent regarding one’s affiliations and the freedom to express them.⁵³ On the other hand, it is necessary to balance the status of the enterprise between a policy of non-discrimination and an emerging movement towards ethical diversification, without confusing the across-the-board application of human rights with an across-the-board (and self-contradictory) extension of the principle of pluralism and neutrality⁵⁴ that is the province of the state to corporations.⁵⁵ Other issues have also appeared in the light of a legal anthropology of the religious and its contemporary, or even postmodern, forms. The individualization

50. VASSILIS SAROGLOU, LOUIS-LÉON CHRISTIANS, CORALIE BUXANT, & STEFANIA CASALFIORE, *MOUVEMENTS RELIGIEUX CONTESTES. PSYCHOLOGIE, DROIT ET POLITIQUES DE PRECAUTION* (2005).

51. Compare with *Siveri & Chiellini v. Italy*, App. No. 13148/04 (Eur. Ct. H.R. 2008).

52. Compare with litigation related to the choice of some student restaurant which serves only halal food, holding that non-believers may remain indifferent to the symbolic ritual efficacy in which they do not believe, or even to question of the definition of yoga as a religious or a sport practice. See Walter A. Effross, *Owning Enlightenment: Proprietary Spirituality in the “New Age” Marketplace*, 51 *BUFF. L. REV.* 483 (2003).

53. See generally LUCY VICKERS, *RELIGION AND BELIEF DISCRIMINATION IN EMPLOYMENT—THE EU LAW*, EUROPEAN COMMISSION (2006), available at <http://ec.europa.eu/social/BlobServlet?docId=2013&langId=en>.

54. See Rafael Palomino, *Religion and Neutrality: Myth, Principle, and Meaning*, 2011 *BYU L. REV.* 657.

55. On the tension between the liberal tradition and religious liberty, see Aldir Guedes Soriano, *Liberal Democracy and the Right to Religious Freedom*, 2013 *BYU L. REV.* 581.

and flexibility of forms of beliefs and philosophies modify the tensions between the ethnic identification of the religious and its re-emerging ethical dimension. Articulating diversity management while strengthening the link to ethical conscience, or rebuilding it on an engineering of “handicapping” cultural traits, is not a neutral choice. Between increasingly uneasy anticipation or increasingly less valid revelation, how can one open up a method that continues to give satisfaction to the process of humanization and to the freedom to speak one’s difference in a diversified space? One can imagine that there is not one single answer to this question, but that several answers might coexist by means, for example, of the market’s diversified ethical choices. Finally, diversity is not only manifested within companies or between companies but is also apparent in the secular reappropriation of managerial resources stored in spirituality usage or in philosophical wisdom. The interrelationships between a spiritual component of management and the classical issues about religion in workplace⁵⁶ will become an important legal issue for Europe in the near future.

Islam will ask Europe each of these questions,⁵⁷ and in doing so, will profoundly affect our varied and complex postmodern systems, redefining traditional notions of the ethnic, the ethical, the religious, the philosophical, the cultural and the rational. It is within the eternal quest to reconcile the body and mind (“*labora et ora*,”⁵⁸ physical confines and mental freedom, etc.) that a new and vital part of the legal treatment of diversity might play its part.⁵⁹

56. Don G. Schley, *Legal Aspects of Spirituality in the Workplace*, 31 INT’L J. OF PUB. ADMIN. 342, 354 (2008) (“Management scholars must delve into such issues more deeply, rather than following the increasing tendency in secular academic culture to dismiss religion as a negative external influence or factor, while embracing a nebulous, ill-defined and all-encompassing and purely internal spirituality as somehow positive (as long as it serves their purposes). Danger lies in that direction, too, as expressed by John Whitehead: ‘... any attempts to impose (either directly or indirectly) a common value system will violate equal protection principles inherent in the American system of justice.’”).

57. See Toni Johnson, *Europe: Integrating Islam*, COUNCIL ON FOREIGN RELATIONS (July 25, 2011), <http://www.cfr.org/religion/europe-integrating-islam/p8252#p2>.

58. The Benedictine motto “*ora et labora*” is Latin for “pray and work” or “pray and labor.” The phrase refers to the monastic practice of combining prayer with work. St. Benedict viewed prayer and work as partners. “We need both contemplation and action.” LONNI COLLINS PRATT & DANIEL HOMAN, *BENEDICT’S WAY: AN ANCIENT MONK’S INSIGHTS FOR A BALANCED LIFE* 47 (2000).

59. Reinhold Fahlbeck, *Ora et Labora—On Freedom of Religion at the Work Place: A Stakeholder cum Balancing Factors Model*, 20 INT’L. J. COMP. LAB. L. & INDUS. REL. 27, 33 (2004).