

## 21 Health Matrix 189, \*

n41 See Bruce Ackerman, *Why Dialogue?*, 86 J. PHIL. 5, 6 (1989).

n42 Ackerman calls this obligation to speak "the supreme pragmatic imperative." *Id.* at 10.

n43 See *id.* at 9. An economically oriented theorist might argue that a far better way through which social arrangements receive legitimacy is through voluntary exchange in free markets. Prices—more particularly, the willingness to pay a price and the willingness to accept payment in exchange for a certain outcome—provides a far better basis of legitimacy than the minutes of any meeting ever could. But this kind of market legitimacy is only fully reliable when the distributional status-quo is legitimate. See *id.* at 10-11 ("Of course, once I agree that those bricks over there are rightfully called 'yours,' and you agree that this beer over here is rightfully 'mine,' we may then side-step our other moral disagreements by trading away to our hearts' content."). In *Capitalism and Freedom*, Milton Friedman argues that the legitimacy problems of the distributional status quo can only be shown with reference to the adverse consequences of altering them. MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 161-77 (1982). Friedman emphasizes the power of the "payment in accordance with product" principle in facilitating voluntary, private coordination of enterprise. *Id.* at 162. According to Friedman, radical redistribution of wealth, even inter-generationally, would rob society of the utility of the "payment in accordance with product" principle. Of course, it does not seem that Friedman's principle would be upended if wealth accumulated through violence, exploitation, or sham was redistributed. *Id.* Whatever one thinks of Friedman's argument, notice that it is perfectly in keeping with Ackerman's primary injunction to explain in words why we should go along with a social design. Friedman's essay is an exercise in legitimation, and a vindication of the view that only speech can give full legitimacy to market exchange.

n44 Ackerman, *supra* note 41, at 17.

n45 It is important to emphasize that I am concerned here with exploring the contradictions between the kind of speech prescribed by canonical accounts of corporate theory, on the one hand, and liberal political theory on the other. I am not attempting to characterize extant patterns of political speech. Nevertheless, other scholars have made the claim that participants in mainstream political discourse do endeavor to conform to the norm of public reason. See, e.g., Dan M. Kahan, *The Cognitively Illiberal State*, 60 STAN. L. REV. 115, 118 (2007).

n46 See *id.*

n47 See *id.* at 129-131; see also *The Situational Character*, *supra* note 16, at 90-120 (reviewing social psychological studies regarding both the ubiquity of motivated reasoning in human thinking and the tendency of people to be blind to the influence of such motivations on their own thinking even as they readily diagnose motivated reasoning in others).

n48 See Kahan, *supra* note 45, 122. Drawing on psychological and anthropological research, Kahan identifies four basic world-view types which subconsciously inform people's thinking about public policy problems: "communitarians" who "favor a . . . social order in which the needs and interests of individuals are subordinated to the collective"; "individualists" who desire a "society . . . in which individuals are responsible for securing their own well-being without collective assistance or interference"; "hierarchicalists" who support a social order "in which . . . opportunities . . . and obligations are distributed on the basis of largely fixed social attributes, such as gender, ethnicity, lineage, and class"; and "egalitarians" who favor a society in which such fixed attributes "play no role in the . . . distribution of . . . opportunities . . . and obligations." *Id.* at 122-23. The accuracy of this particular categorization scheme is less important for present purposes than is the general claim that our "world-views" subconsciously influence our public policy assessments even as we view ourselves as thinking through such problems an objective, unbiased fashion.

n49 Consider the public-health related example of tobacco regulation. Proponents of smoking regulations endeavor to conform to the norm of public reason and "invoke secular rationales: reducing the public health costs of treating lung cancer victims, and abating the risk of disease or the simple annoyance associated with ingesting 'second-hand smoke.'" *Id.* at 136 (citations

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