

WILLIAM A. BRAHMS LECTURE ON  
LAW & RELIGION

RELIGIOUS LAWYERING IN A LIBERAL  
DEMOCRACY:

A CHALLENGE AND AN INVITATION

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INTRODUCTION

*May it be your will, Eternal our God, God of our ancestors, that your Torah be woven into our daily lives, and that we cling to your commandments.*<sup>1</sup>

*God our Father, open our eyes to see your hand at work in the splendor of creation, in the beauty of human life. Touched by your hand our world is holy.*<sup>2</sup>

We realize that this is not the typical way to begin a law review article. We could tell you that we decided to begin by invoking God because we watched VH1's *The Best Week Ever* and learned that

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<sup>1</sup> MISHKAN TEFILAH: THE NEW REFORM SIDDUR FOR SHABBAT MORNING 20 (Draft 2002).

<sup>2</sup> Alternative Opening Prayer for the Seventeenth Sunday in Ordinary Time, THE SACRAMENTARY (VATICAN II ROMAN MISSAL) 308 (Catholic Book Publ'g Co. 1985).

“God is hot.”<sup>3</sup> Or because flipping through the news channels, we saw how much attention religion draws, as evidenced by the media’s fixation with Mel Gibson’s movie *The Passion of the Christ*.<sup>4</sup> But that is not the whole story.

Although one of us prays as a Jew and one of us prays as a Christian, our prayers express who we are and who we want to be. As lawyers and as law professors, we aspire to weave God’s law into our professional lives, and to discover God’s own hand at work, sanctifying our world and our lives.

We would guess that this view may make some readers uncomfortable. In this article we hope to respond to some of their concerns. We will each begin this article with a sketch of how our own stories intersect with the new religious lawyering movement.<sup>5</sup> Then we will describe the novelty of religious lawyering and why increasing numbers of lawyers are turning to religion to find meaning in their work. We will then set out the challenge that religious lawyering poses for a culture of professionalism and attempt to answer some of professionalism’s challenges to religious lawyering. In all of this, we hope to show how religious lawyering brings a positive contribution to advance the administration of justice without undermining the basic values of liberal democracy.

#### RUSSELL PEARCE: A JEWISH LAW PROFESSOR JOINS THE RELIGIOUS LAWYERING MOVEMENT

Before I became a law professor in 1990, I had not given much systematic thought to the connection between my Judaism and my legal work.<sup>6</sup> Throughout my career, as a clerk to a federal judge, an associate at a Wall Street firm, a legal services lawyer, and then general counsel to a governmental civil rights agency, I believed gener-

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<sup>3</sup> See TV Tome, *VH1 Best Week Ever* Episode 6 (first aired Feb. 27, 2004), at <http://www.tvtome.com/tvtome/servlet/GuidePageServlet/showid-24819/epid-311163> (last visited Nov. 4, 2004) (stating that “[t]opics that amused the panelists include: God is hot and marketable”).

<sup>4</sup> See Reuters, “*Passion*” has big box office debut, (February 26, 2004), available at <http://www.cnn.com/2004/SHOWBIZ/Movies/02/26/film.passion.boxoffice.reut/> (last visited Nov. 4, 2004) (“Blessed by intense media attention and a heavy Christian turnout, Mel Gibson’s controversial film ‘The Passion of the Christ’ grossed well over \$20 million on its first day in theaters”).

<sup>5</sup> Personal narrative is somewhat typical of the religious lawyering genre. See, e.g., Thomas E. Baker & Timothy W. Floyd, *A Symposium Précis*, 27 TEX. TECH L. REV. 911, 911 (1996) (asking lawyers, judges and law professors to write “essays in the nature of personal narratives for symposium on *Faith and the Law*”); Howard Lesnick, *Religious Particularity, Religious Metaphor, and Religious Truth: Listening to Tom Shaffer*, 10 J.L. & REL. 317, 317 (1993-1994) (“I need to begin, however, not with Tom but with me . . .”).

<sup>6</sup> See generally Russell G. Pearce, *The Jewish Lawyer’s Question*, 27 TEX. TECH L. REV. 1259, 1260-61 (1996).

ally that Judaism was important to all parts of my life, but I had only a vague sense of how it applied to my work. Of course, I understood that Judaism required me to tell the truth, and to treat my co-workers and adversaries with kindness and respect.<sup>7</sup> I also viewed my choices to do *pro bono* work and to become a legal services lawyer as fulfilling my Jewish obligation to mend the world.<sup>8</sup> But that just about sums up the connections I had made.

When I started teaching Professional Responsibility in the spring of 1991, I encountered the scholarship of Professors Thomas Shaffer and Joseph Allegretti on how Christian values and perspectives could and should be integrated into day-to-day law practice. Tom Shaffer is widely considered the “father” of today’s religious lawyering movement.<sup>9</sup> Although religious lawyering had received occasional attention before his work, Shaffer triggered the development of a body of literature.<sup>10</sup> Beginning in the late 1970s, his books and articles on Christian lawyering made the shocking proposal that for Christians, their *faith* community should be a primary point of reference for decisions about their professional life.<sup>11</sup>

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<sup>7</sup> See, e.g., RABBI HAYIM HALEVY DONIN, TO BE A JEW: A GUIDE TO JEWISH OBSERVANCE IN CONTEMPORARY LIFE 41-60 (1972).

<sup>8</sup> See, e.g., Suzanne L. Stone, *Sinaitic and Noahide Law: Legal Pluralism in Jewish Law*, 12 CARDOZO L. REV. 1157, 1185-86 (1991) (discussing etymological, classical rabbinic and medieval definitions of “*tikkun olam*,” the obligation to “repair the world”).

<sup>9</sup> Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1078 (1998). See also Sherman L. Cohn, *Yale Rosenberg: The Scholar and the Teacher of Jewish Law*, 39 HOUS. L. REV. 872, 876 (2002) (noting Shaffer’s contribution).

<sup>10</sup> See Pearce, *supra* note 9, at 1075. See e.g., THOMAS L. SHAFFER, ON BEING A CHRISTIAN LAWYER: LAW FOR THE INNOCENT (1981) [hereinafter, SHAFFER, ON BEING A CHRISTIAN LAWYER]; THOMAS L. SHAFFER & ROBERT S. REDMOUNT, LAWYERS, LAW STUDENTS AND PEOPLE (1977). Entire Symposia have been dedicated to exploring the implications of Shaffer’s work. See, e.g., *Commentary on the Work of Thomas L. Shaffer*, 10 J.L. & REL. 277 (1993-1994). For recent discussions of the implications of Shaffer’s body of scholarship, see generally Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & REL. 459, n.3 (2002-2003) (a careful analysis of the body of Shaffer’s work; “But for the norms of scholarly writing, I would have entitled this essay, *Taking Tom Shaffer Seriously*.”); Robert K. Vischer, *Catholic Social Thought and the Ethical Formation of Lawyers: A Call for Community*, 1 J. CATH. SOC. THOUGHT 417, 424-427 (2004) (noting Shaffer’s contribution, and highlighting the need for a more community-based approach to religious lawyering).

<sup>11</sup> See, e.g., THOMAS L. SHAFFER & MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES 198 (1991) (“[T]he lawyer stands in the community of the faithful and looks from there at the law.”); *id.* (“When the study or practice of law becomes painful or confusing for her, she returns to the community of the faithful, and talks there, in that religious community, about her professional life.”). See also Thomas L. Shaffer, *The Tension Between Law in America and the Religious Tradition*, in LAW AND THE ORDERING OF OUR LIFE TOGETHER 28, 45 (Richard John Neuhaus, ed. 1989) (stating that business people should see themselves as “called out of the church, sent out from [a] particular people, to do something that is religiously important;” analysis subsequently applied to lawyers). See generally Thomas L. Shaffer, *Legal Ethics and Jurisprudence from Within Religious Congregations*, 76 NOTRE DAME L. REV. 961

In the early 1990s, Joseph Allegretti joined the scholarly conversation. Adapting H. Richard Niebuhr's typology of typical Christian approaches to the wider secular culture, Allegretti noted several models for the Christian's relationship with the legal profession and its standard paradigms.<sup>12</sup> As Allegretti described, a Christian could reject being a lawyer as sinful,<sup>13</sup> could equate Christian values with legal ethics,<sup>14</sup> could separate her private Christian values from her professional values,<sup>15</sup> or—as Allegretti recommends—could draw on Christian values to transform the lawyer's role.<sup>16</sup>

Shaffer's and Allegretti's explorations of how Christian values and beliefs could be applied to legal practice led me to think more deeply about being a Jewish lawyer and I began to look for Jewish analogues.<sup>17</sup> The only articles I found were either directed exclusively toward Orthodox Jewish audiences<sup>18</sup> (and I am Reform and not Orthodox), or else were concerned only with a very limited ethical question.<sup>19</sup> None offered a comprehensive way to think about being a Jewish lawyer analogous to the contributions of Allegretti and Shaffer. Intrigued, I decided that one day I would try to tackle this topic.

Before I found the time to do this, Professor Sanford Levinson presented a paper at Fordham Law School entitled *Identifying the Jewish Lawyer*.<sup>20</sup> He expected that at Fordham, New York City's

(2001); Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & REL. 101, 104, n.17 (forthcoming 2004, manuscript on file with the authors) (the religious lawyering movement directly challenges the notion "that a lawyer's personal allegiances and affiliations should be irrelevant to her representation of clients.").

<sup>12</sup> Joseph G. Allegretti, *Christ and the Code: The Dilemma of the Christian Attorney*, 34 CATH. LAW. 131 (1991). A few years later, Allegretti further fleshed out the argument in his book, JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (1996) [hereinafter ALLEGRETTI, *THE LAWYER'S CALLING*]. For his source text, see H. RICHARD NIEBUHR, *CHRIST AND CULTURE* (1951).

<sup>13</sup> ALLEGRETTI, *THE LAWYER'S CALLING*, *supra* note 12, at 10-13 (discussing the concept of "Christ Against the Code").

<sup>14</sup> *Id.* at 14-17 (discussing the concept of "Christ in Harmony with the Code").

<sup>15</sup> *Id.* at 17-20 (discussing the concept of "Christ in Tension with the Code").

<sup>16</sup> *Id.* at 20-23 (discussing the concept of "Christ Transforming the Code").

<sup>17</sup> See Pearce, *supra* note 6, at 1261. See also Cohn, *supra* note 9, at 876 (noting that Shaffer's scholarship and that of other Christian attorneys led Jewish academics and attorneys to explore what it means to be a Jewish lawyer).

<sup>18</sup> See Pearce, *supra* note 9, at 1076. See, e.g., Mordecai Biser, *Can an Observant Jew Practice Law?: A Look at Some Halakhic Problems*, 11 JEWISH L. ANN. 101 (1994); Michael Brody, *On the Practice of Law*, 20 J. HALACHA & CONTEMP. SOC'Y 5 (1990); Alfred Cohen, *On Maintaining a Professional Confidence*, 7 J. HALACHA & CONTEMP. SOC'Y 73 (1990).

<sup>19</sup> See, e.g., Gordon Tucker, *The Confidentiality Rule: A Philosophical Perspective with Reference to Jewish Law and Ethics*, 13 FORDHAM URB. L.J. 99 (1985) (evaluating Rule 1.6 of the *Model Rules of Professional Conduct* through the lens of Jewish law).

<sup>20</sup> Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of*

Jesuit law school, he would receive a critique of his draft from a Catholic perspective. Instead, he found me, who challenged him on the grounds that his models of Jewish lawyering excluded both Reform Judaism and a commitment to social justice. He invited me to write a response that was published with his article in the *Cardozo Law Review*,<sup>21</sup> together with a response by Jerome Hornblass.<sup>22</sup> These became the first comprehensive approaches to Jewish lawyering published in a mainstream law review and the first to join the scholarly conversation initiated by Shaffer and Allegretti.<sup>23</sup>

Three years later, Professors Thomas E. Baker and Timothy W. Floyd expanded the field dramatically when they invited close to fifty lawyers, judges and law professors to reflect on “how they have reconciled their professional life with their faith life.”<sup>24</sup> This 1996 volume expanded the religious lawyering literature beyond Christian and Jewish traditions to include a number of other faith traditions.<sup>25</sup>

Observing the wide-spread interest in religious lawyering, I realized that Fordham, a Catholic law school with a religiously diverse faculty and student body, located in New York City, would be uniquely situated to take a leading role in furthering the conversation. When I approached foundations seeking funding for one conference, I received enough money for two. In June 1997, Fordham hosted *The Relevance of Religion to a Lawyer's Work*,<sup>26</sup> the first national inter-faith conference on religious lawyering. N. Lee Cooper, President of the American Bar Association, and Thomas Shaffer gave keynote remarks,<sup>27</sup> and subsequent discussions analyzed the connections between religious values and legal practice from theological,<sup>28</sup> political

*Professional Identity*, 14 *CARDOZO L. REV.* 1577 (1993) (discussing how one's self conception as a Jew might intertwine with one's professional role as a lawyer).

<sup>21</sup> See Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 *CARDOZO L. REV.* 1613 (1993).

<sup>22</sup> Jerome Hornblass, *The Jewish Lawyer*, 14 *CARDOZO L. REV.* 1639, 1647 (1993) (tracing images and examples of Jewish lawyers throughout history, and lamenting the failure of some who rose to prominence to draw on their Jewish legal heritage).

<sup>23</sup> Pearce, *supra* note 9, at 1076.

<sup>24</sup> Baker & Floyd, *supra* note 5, at 911.

<sup>25</sup> See, e.g., J. Nickolas Alexander, Jr., *Faith and Law—A Lifetime of Balancing Interests*, 27 *TEX. TECH L. REV.* 941 (1996) (Buddhist); Azizah al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 *TEX. TECH L. REV.* 947 (1996) (Muslim); Ved P. Nanda, *Hinduism and My Legal Career*, 27 *TEX. TECH L. REV.* 1229 (1996) (Hindu); James F. Nelson, *The Spiritual Dimension of Justice*, 27 *TEX. TECH L. REV.* 1234 (1996) (Baha'i).

<sup>26</sup> Pearce, *supra* note 9, at 1077.

<sup>27</sup> N. Lee Cooper, *Religion and the Lawyer*, 66 *FORDHAM L. REV.* 1083 (1998); Thomas L. Shaffer, *Faith Tends to Subvert Legal Order*, 66 *FORDHAM L. REV.* 1089 (1998).

<sup>28</sup> See, e.g., Azizah Y. al-Hibri, *Faith and the Attorney-Client Relationship: A Muslim Perspective*, 66 *FORDHAM L. REV.* 1131 (1998); Joseph Allegretti, *Lawyers, Clients and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 *FORDHAM L. REV.* 1101 (1998);

theory,<sup>29</sup> and legal ethics<sup>30</sup> perspectives. The reflections and remarks from the Conference were published in the *Fordham Law Review* together with responses from leading experts in the field of law and religion.<sup>31</sup>

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Michael J. Broyde, *Practicing Criminal Law: A Jewish Law Analysis of Being a Prosecutor or Defense Attorney*, 66 *FORDHAM L. REV.* 1141 (1998); Peggy T. Cantwell, *Response to the Paper Authored by Professor Joseph Allegritti: Lawyers, Clients, and Covenant: A Religious Perspective on the Legal Practice and Ethics*, 66 *FORDHAM L. REV.* 1153 (1998); Lawrence A. Hoffman, *Response to Joseph Allegritti: The Relevance of Religion to a Lawyer's Work*, 66 *FORDHAM L. REV.* 1157 (1998); James M. Jenkins, *What Does Religion Have to Do with Legal Ethics? A Response to Professor Allegritti*, 66 *FORDHAM L. REV.* 1167 (1998); Kinji Kanazawa, *Being a Buddhist and a Lawyer*, 66 *FORDHAM L. REV.* 1171 (1998); Dr. Ana Maria Pineda, R.S.M., *Covenanting with the Powerless: Strangers, Widows, and Orphans*, 66 *FORDHAM L. REV.* 1177 (1998); Frank Pommersheim, *Representing Native People and Indian Tribes: A Response to Professor Allegritti*, 66 *FORDHAM L. REV.* 1181 (1998); K.L. Seshagiri Rao, *Practitioners of Hindu Law: Ancient and Modern*, 66 *FORDHAM L. REV.* 1185 (1998).

<sup>29</sup> See, e.g., Perry Dane, *Spirited Debate: A Comment on Edward B. Foley's Jurisprudence and Theology*, 66 *FORDHAM L. REV.* 1213 (1998) (asserting that theology's role in law is more complicated than merely providing law's theological basis); Edward B. Foley, *Jurisprudence and Theology*, 66 *FORDHAM L. REV.* 1195 (1998) (arguing that judges and legislatures should never base opinions or legislation on theological beliefs); Khaled Abou El Fadl, *Muslims and Accessible Jurisprudence in Liberal Democracies: A Response to Edward B. Foley's Jurisprudence and Theology*, 66 *FORDHAM L. REV.* 1227 (1998) (stating that religious views should be excluded from judicial and political decisions to the extent they are non-accessible and exclusive); John Langan, S.J., *How Far Can We Separate Theology and Jurisprudence? Comment on Edward B. Foley's Jurisprudence and Theology*, 66 *FORDHAM L. REV.* 1233 (1998) (asserting that a complete extraction of theology from jurisprudence is neither feasible nor desirable); Linda C. McClain, *Deliberative Democracy, Overlapping Consensus, and Same-Sex Marriage*, 66 *FORDHAM L. REV.* 1241 (1998) (arguing for a more comprehensive evaluation of justifications in law and politics).

<sup>30</sup> See, e.g., Anver M. Emon, *Negotiating Between Two Convictional Systems*, 66 *FORDHAM L. REV.* 1283 (1998) (addressing how an attorney can align professional conduct with religious beliefs); Monroe H. Freedman, *Religion Is Not Totally Irrelevant to Legal Ethics*, 66 *FORDHAM L. REV.* 1299 (1998) (arguing that the absence of consensus within religions regarding traditions and ethics should preclude application of religious ethics to legal ethics); Bruce A. Green, *Lawyer Discipline: Conscientious Noncompliance, Conscious Avoidance, and Prosecutorial Discretion*, 66 *FORDHAM L. REV.* 1307 (1998) (discussing conflicts of legal and religious ethics); Leslie Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 *FORDHAM L. REV.* 1253 (1998) (differentiating between theology and religious ethics and their respective applications to legal ethics); Thomas D. Morgan, *The Relevance of Religion to a Lawyer's Work—Legal Ethics: A Response to Professor Griffin*, 66 *FORDHAM L. REV.* 1313 (1998) (highlighting the positive role of legal ethics in contributing to lawyers' sound decisions); Burnele Venable Powell, *Risking the Terrible Question of Religion in the Life of the Lawyer*, 66 *FORDHAM L. REV.* 1321 (1998) (discussing religion as a standard by which to test personal values).

<sup>31</sup> See, e.g., Milner S. Ball, *Comment*, 66 *FORDHAM L. REV.* 1329 (1998); Teresa Stanton Collett, *Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil*, 66 *FORDHAM L. REV.* 1339 (1998); Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 *FORDHAM L. REV.* 1405 (1998); David L. Gregory, *The Discernment of (the Law Student's) Vocation in Law*, 66 *FORDHAM L. REV.* 1425 (1998); Steven H. Hobbs, *The Lawyer's Duties of Confidentiality and Avoidance of Harm to Others: Lessons from Sunday School*, 66 *FORDHAM L. REV.* 1431 (1998); Randy Lee, *The Immutability of Faith and the Necessity of Action*, 66 *FORDHAM L. REV.* 1455 (1998); Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 *FORDHAM L. REV.* 1469 (1998); Elizabeth Mensch, *Faith and the Liberal Legal*

The December 1998 follow-up conference, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, was designed to encourage lawyers and clergy to form local “religious lawyering” groups, and to provide them with resources to continue the discussion following the conference.<sup>32</sup> Groups of lawyers and clergy from a dozen cities attended, and a part of the conference was dedicated to mapping out practical plans.<sup>33</sup> Panel discussions delved into some of the more practical questions and concerns that arise when religious values are brought into a professional sphere.<sup>34</sup> The

*Order: An Appreciative Response to Shaffer and the Symbolism Workshop*, 66 FORDHAM L. REV. 1557 (1998).

<sup>32</sup> See John D. Feerick, Russell G. Pearce & Ismar Schorsch, *Welcome and Introductory Remarks, Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, 26 FORDHAM URB. L.J. 821, 823 (1999). See also Nadine Brozan, *At Legal Conclave, Clinton's Pastor Reflects on Morality*, N.Y. TIMES, Dec. 8, 1998, at B7 (discussing issues presented at Fordham conference).

<sup>33</sup> See, e.g., Doug Ammar et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report #1: Atlanta, Georgia*, 26 FORDHAM URB. L.J. 1019 (1999) (reporting plans to follow the Auburn-Finkelstein-Fordham model); James Conn et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report #2: Baltimore, Maryland*, 26 FORDHAM URB. L.J. 1021 (1999) (same); *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report # 9: Washington, D.C.*, 26 FORDHAM URB. L.J. 1039 (1999) (same); *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report #6: New York, New York*, 26 FORDHAM URB. L.J. 1031 (1999) (same); Thomas Porter et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report #3: Boston, Massachusetts*, 26 FORDHAM URB. L.J. 1023 (1999) (reporting ideas for a series of conferences); *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report #4: Chicago, Illinois*, 26 FORDHAM URB. L.J. 1025 (1999) (discussing plans for both inter-faith gatherings for lawyers and outreach to law students); S. Philip Brown et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report # 5: Macon, Georgia*, 26 FORDHAM URB. L.J. 1027 (1999) (detailing plans to cooperate with Mercer Law School to explore law's relationship to the humanities, to nurture the faith of law students, and to collaborate with restorative justice projects); Ijaz Chaudhry et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report # 7: Philadelphia, Pennsylvania*, 26 FORDHAM URB. L.J. 1035 (1999) (detailing plans for further contacts); Eric Jorstad et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Working Group Report # 8: St. Paul, Minnesota*, 26 FORDHAM URB. L.J. 1037 (1999) (detailing practical plans for ongoing monthly lunches).

<sup>34</sup> See Azizah Y. al-Hibri et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent, Panel Discussion: Does Religious Faith Interfere With a Lawyer's Work?*, 26 FORDHAM URB. L.J. 985 (1999) (discussing the interplay between religion and lawyering); Phylis Bamberger et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent, Panel Discussion: Does Professionalism Leave Room for Religious Commitment?*, 26 FORDHAM URB. L.J. 875 (1999) (discussing whether professionalism leaves room for religious commitment); Marie Failing et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent, Panel Discussion: Models of Successful "Religion and Lawyering" Programs*, 26 FORDHAM URB. L.J. 917 (1999) (discussing successful programs on faith and lawyering); Robert Reber et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent, Panel Discussion: Can We Find Common Ground as Religiously Committed Lawyers*, 26 FORDHAM URB. L.J. 961 (1999) (discussing whether

proceedings and papers which emerged from the conference were published in the *Fordham Urban Law Journal*.<sup>35</sup>

The response to the conference and the ripple effect of widespread interest in the developing dialogue far exceeded any expectations—and revealed a growing nationwide network of lawyers, judges, academics, law students, pastors, theologians, and philosophers who sought opportunities to continue the conversation about how religious values and perspectives may be integrated into the practice of law.<sup>36</sup>

Over the next few years, several of the local groups that had participated in the 1998 Conference continued to meet,<sup>37</sup> and a few held

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religious lawyers share common ground); Gerald Wolpe et al., *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent, Panel Discussion: Responses to the Keynote Address*, 26 *FORDHAM URB. L.J.* 841 (1999) (responding to Philip Wogaman's address on law as a vocation).

<sup>35</sup> See, e.g., Joseph Allegretti, *A Lawyer's Miscellany: Scriptural Resources for Christian Lawyers*, 26 *FORDHAM URB. L.J.* 1183 (1999) (applying various scriptural passages to specific legal ethics dilemmas); James L. Nolan, *To Engage in Civil Practice as a Religious Lawyer*, 26 *FORDHAM URB. L.J.* 1111 (1999) (discussing practical tools for engaging lawyers in the discussion); Thomas W. Porter, Jr., *The Spirit and the Law*, 26 *FORDHAM URB. L.J.* 1155 (1999) (discussing restorative justice and mediation as applications of Biblical conceptions of justice); Sadiq Reza, *Religion and the Public Defender*, 26 *FORDHAM URB. L.J.* 1051 (1999) (discussing issues which emerge in a criminal defense context); Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 *FORDHAM URB. L.J.* 1069 (1999) (discussing issues which emerge when religious values are integrated into practice in a large firm corporate and litigation context); Melissa M. Weldon, *Honoring the Spirit in the Law: A Lawyer's Confession of Faith*, 26 *FORDHAM URB. L.J.* 1167 (1999) (discussing the application of Christian teachings to work as a litigator). See generally Feerick et al., *supra* note 32, at 823 (referring to the Group Reports resulting from the conference). In comparison with the 1997 Fordham conference, many of the articles which emerged had a more practical emphasis.

<sup>36</sup> See, e.g., Anthony Cardinal Bevilacqua, *Faith and the Lawyer: To Become and Bring the Good News*, 31<sup>st</sup> Pope John XXIII Lecture at the Catholic University of America (Nov. 3, 1999) [on file with the Case Western Reserve Law Review] (noting the "enormous" implications of the religious lawyering movement); Samuel J. Levine, *Introductory Note: Symposium on Lawyering and Personal Values—Responding to the Problems of Ethical Schizophrenia*, 38 *CATH. LAW.* 145, 148 (1998) ("Religious values, in particular, have gained increasing prominence in the arena of legal ethics, as they present a comprehensive system of ethics for lawyers seeking to integrate their personal and professional lives."); Vischer, *supra* note 11, at 104, nn. 13-15 (describing the legal academy's "emerging cognizance" of the religious lawyering movement). See also Nancy B. Rapoport, *Living "Top Down" in a "Bottom Up" World: Musings on the Relationship Between Jewish Ethics and Legal Ethics*, 75 *NEB. L. REV.* 18-36 (1999) (describing a legal ethics analysis which unites "my Jewish world and my academic world").

<sup>37</sup> For example, in New York City, Fordham continues its collaboration with Auburn Theological Seminary and the Finkelstein Institute at Jewish Theological Seminary to bring together Catholic, Protestant, Jewish and Muslim lawyers for a religious lawyering speaker series which meets three-times per year. See Robert Reber, *Remarks at the Panel Discussion: Models of Successful Religion and Lawyering Programs*, 26 *FORDHAM URB. L.J.* 917, 935-40 (1999) (describing collaboration, topics discussed, and reactions to the program). Recent themes for discussion have included various faith perspectives on *Legal Ethics in a Post-Enron World: Religious Values as a Resource?*; *Religious Lawyering: Against the Tide?*; *Love of Neighbor and the Law*; *Is There a Common Ground for Legal Ethics?* [brochures on file with the Case Western Reserve Law Review]. In Columbus, Ohio a 20 member planning committee of Christian, Jewish, and Muslim lawyers and judges has organized consistent gatherings for lawyers



similar conferences in their cities.<sup>38</sup> The National Association of Muslim Lawyers credits the 1998 Fordham Conference for planting the seed that grew into a new point of reference for attorneys to explore the connections between legal practice and Islam.<sup>39</sup>

Also during this time, more law schools began offering courses that explored not only the internal laws of particular religious communities, but the issues that arise when faith-inspired values and morality are integrated into legal practice.<sup>40</sup> Finally, the past few years

and judges on Religious Values, Ethics and the Practice of Law. See, e.g., "Faith and the Law," (November 2004) at

<http://www.trinitylutheranseminary.edu/ContinuingEd/FaiththeLaw.pdf> (last visited Nov. 4, 2004). See generally <http://www.faithintheworkplace.org/10065.cfm> (last visited Sept. 7, 2004). In Atlanta, Georgia, "Faithful Lawyers" continue to gather for a monthly breakfast. See E-mail from Tom Cox to Amy Uelmen (Feb. 6, 2004) [on file with the Case Western Reserve Law Review].

<sup>38</sup> The Atlanta group's February 2002 Conference, *Issues of Faith and the Practice of Law: Towards a Deeper Understanding of Vocation and Work*, was co-sponsored by Emory's Center for the Interdisciplinary Study of Religion, the Georgia Chief Justice's Commission on Professionalism, the Atlanta Bar Association, and the Georgia Justice Project. See [http://www.law.emory.edu/cisr/events\\_previous2.htm](http://www.law.emory.edu/cisr/events_previous2.htm) (last visited Sept. 7, 2004). In the Los Angeles area, in February 2004 Pepperdine University School of Law hosted a national conference, *Can the Ordinary Practice of Law be a Religious Calling?* See Pepperdine University School of Law Institute on Law, Religion & Ethics, at [http://law.pepperdine.edu/prospective/centers\\_programs/ilre/religious\\_calling.jsp](http://law.pepperdine.edu/prospective/centers_programs/ilre/religious_calling.jsp) (last visited Nov. 4, 2004).

<sup>39</sup> The National Association of Muslim Lawyers [NAML] credits the 1998 Fordham Conference for bringing its initial members together for the genesis of their organization:

In December 1998, MuslimJD [which has since changed its name to "NAML"] began to develop a life of its own when a number of MuslimJD members met after-hours at a Fordham University School of Law Conference entitled *Rediscovering The Role of Religion in The Lives of Lawyers and Those They Represent*.

[http://www.namlnet.org/naml\\_history.asp](http://www.namlnet.org/naml_history.asp) (last visited Nov. 4, 2004).

<sup>40</sup> Thomas Shaffer taught what may have been the first "religious lawyering" course when visiting at the University of Virginia in 1975-76. See Robert F. Cochran, Jr., *Book Review*, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION, 16 J.L. & REL. 751, 752 (reflecting on the influence of Shaffer's class in the author's own life and scholarship); SHAFER, ON BEING A CHRISTIAN LAWYER, *supra* note 10, at 227. Another pioneer in this venture is Howard Lesnick at the University of Pennsylvania School of Law, whose Religion, Law & Lawyering seminar was first offered in 1992, team-taught with Emily Hartigan. The course was offered at Fordham in Spring 2003, team-taught by Lesnick and Amy Uelmen. See Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. at n.26 (forthcoming Fall 2004, manuscript on file with authors). Along similar lines, the "Faith, Morality and the Practice of Law" offered by Professor Ellen Pryor at Southern Methodist University's Dedman School of Law, explores similar questions. See Charles Osgood, *Faith and the Law*, Osgood File (June 23, 2004), available at

[http://wcbs880.com/osgood/osgood\\_story\\_177164314.html](http://wcbs880.com/osgood/osgood_story_177164314.html) (discussing how law students navigate potential moral, ethical, and religious conflicts). Villanova University School of Law Professor Kathleen Brady's Spring 2005 seminar will explore questions such as:

What is the connection between my career and my religion? Can I act consistently with my moral and religious beliefs and still be an effective lawyer? What happens when my religious commitments and my professional responsibilities conflict? What is the relationship between my religious beliefs and what I am studying in law

have seen increased interest in scholarly symposia exploring the integration of religious values into legal education<sup>41</sup> and practice.<sup>42</sup>

AMY UELMEN: A BIG FIRM LITIGATOR BRIDGES RELIGIOUS AND PROFESSIONAL LIFE

In response to the invitation of a Muslim friend on the New York organizing team, I attended Fordham's December 1998 Conference, and was impressed by the openness, depth and sincerity of the con-

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school? Are religious beliefs and values relevant to the content and development of law or are they a private matter? Do religious beliefs belong in the development and practice of law in a religiously pluralistic environment?

<http://www.law.vill.edu/currentstudents/curriculum/courseinformation.asp?ID=6043>

(last visited Sept. 13, 2004). See also Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternative Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y, 305, 319 (2000) [hereinafter Cochran, *Professionalism in the Postmodern Age*] (discussing seminars which had been offered as of 2000). Seminars in topics such as Catholic Social Thought and Jewish Law have long been staples in some religiously affiliated law schools. It would be interesting to explore how recent developments in the religious lawyering movement have influenced seminar course content and critique of professional norms, standards and cultures—a topic unfortunately beyond the scope of this essay.

<sup>41</sup> In 1994, the Association of Religiously Affiliated Law Schools was founded to further the exchange on the extent to which religious values can and should inform legal education and scholarship. See Steven M. Barkan, *The First Conference of Religiously Affiliated Law Schools: An Overview*, 78 MARQ. L. REV. 247 (1995); Francis M. Lazarus, *Genesis of a Conference*, 78 MARQ. L. REV. 397 (1995) (discussing the association's founding specifically because some schools opposed positions taken by the American Bar Association on controversial issues). Since 1998 the association has met biannually at Regent (Virginia Beach, VA, 1998), St. John's (New York, NY, 2000); Pepperdine (Los Angeles, CA, 2002); and Notre Dame (South Bend, IN, 2004). See, e.g., Howard B. Eisenberg, *Mission, Marketing and Academic Freedom in Today's Religiously Affiliated Law Schools: An Essay*, 11 REGENT U. L. REV. 1 (1998); David L. Gregory, *Introduction to the Third National Conference of the Association of Religiously Affiliated Law Schools*, 74 ST. JOHN'S L. REV. 565 (2000). See also Dennis Turner, *Infusing Ethical, Moral and Religious Values into a Law School Curriculum: A Modest Proposal*, 24 U. DAYTON L. REV. 283, 284-86 (1999) (tracking Yale Law School professors' efforts to infuse religious values into the curriculum).

<sup>42</sup> Part of the mission of Fordham's Institute on Religion, Law & Lawyer's Work (discussed *infra* at notes 44 and 55 and accompanying text) is to hold an annual conference on how religious values might inform a particular area of legal practice. The papers from the January 2002 Conference, *Religious Values and Legal Dilemmas in Bioethics*, are published in 30 FORDHAM URB. L.J. 1 (2002). See Amelia J. Uelmen, *Foreword*, 30 FORDHAM URB. L.J. 5 (2002-2003). The papers from the January 2003 Conference, *Religious Values and Poverty Law: Clients, Lawyers and Communities*, are published in 31 FORDHAM URB. L.J. 1 (2003). See Amelia J. Uelmen, *Foreword*, 31 FORDHAM URB. L.J. 1 (2003) [hereinafter Uelmen, *Foreword*]. The papers from the February 2004 Conference, *Religious Values and Corporate Decision-Making*, will be published in the FORDHAM J. CORP & FIN. L. (forthcoming Spring 2005). Since October 2003, Villanova University School of Law has sponsored an annual conference on Catholic Social Thought and the Law which is published in Villanova's new inter-disciplinary Journal of Catholic Social Thought. See, e.g., Mark A. Sargent, *What's Law Got to Do with It? Introduction to the Symposium on Catholic Social Thought and the Law*, 1 J. CATH. SOC. THOUGHT 201 (2004). Papers from the Pepperdine Institute on Law, Religion & Ethics inaugural conference, *Can the Ordinary Practice of Law Be a Religious Calling*, held in February 2004, will be published in Volume 32 of the Pepperdine Law Review, due out in early 2005.

versation it generated. Throughout my education and career I had tried to integrate my Roman Catholic values and perspective into my approach to law and legal practice, but in conversations with professors and colleagues I often felt as though I was speaking a foreign language. In the course of my work as a junior litigator in a large law firm, I worked hard to “translate” these values into a language that my colleagues and friends could understand.

At the 1998 Fordham Conference, I realized that many lawyers were working to bridge their professional lives with their religious perspectives. In order to connect with and encourage others in their efforts, I wrote an essay describing some of the challenges I faced in weaving religious values and perspectives into my work as a “big firm” litigator representing mostly large corporations.<sup>43</sup> This essay brought me into conversations with Russ Pearce in which we discovered a profound consonance in our views, and intuited the rich potential of pursuing the project on the basis of an inter-faith exchange.

When Fordham Law School’s own efforts to provide in-depth and consistent support to the national and local dialogue on how religious faith, teachings and traditions may be a resource for the practice culminated in the January 2001 opening of its Institute on Religion, Law & Lawyer’s Work, I came aboard as its first director.<sup>44</sup>

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<sup>43</sup> Uelmen, *supra* note 35, at 1069. See also Amelia J. Uelmen, *One Case at a Time: On Being a Catholic Lawyer*, in PROFESSIONS OF FAITH: LIVING AND WORKING AS A CATHOLIC 55-66 (James Martin, S.J. & Jeremy Langford, eds., 2002) (discussing application of the Focolare Movement’s Gospel-based spirituality of unity in the context of large firm litigation practice).

<sup>44</sup> See Rose Kent, *What’s Faith Got to Do With It?* FORDHAM LAWYER 10-14 (Summer 2001); Uelmen, *supra* note 40, n.20.

## SO WHAT'S NEW?

Associations of Catholic lawyers<sup>45</sup> and Jewish lawyers,<sup>46</sup> as well as chapters of the Christian Legal Society<sup>47</sup> have been gathering for decades. Many religious traditions include illustrious examples of lawyers who have integrated their religious values into their professional decisions.<sup>48</sup> And certainly the ties between religious values and the

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<sup>45</sup> For example, in many Catholic dioceses, Catholic Lawyers Guilds and St. Thomas More Societies have long-standing traditions of bringing the lawyers of the diocese together for an annual "Red Mass" and gathering for retreats or other occasions. *See generally* history of the Lawyers Guild of the Catholic Diocese of Cleveland, <http://www.dioceseofcleveland.org/news/redmassCleveland2004.htm> (last visited Nov. 4, 2004) (tracing the "Red Mass" tradition back to 1245 when the first "Red Mass" was held in the Cathedral of Paris to invoke the guidance of the Holy Spirit on the judges of the Ecclesiastical Courts.) Many Guilds have been in existence for decades. *See e.g.*, History of the Catholic Lawyers Guild of Chicago, *at* <http://www.clgc.org/history.html> (last visited Nov. 4, 2004) (noting its founding in 1934).

<sup>46</sup> For example, the New York Jewish Lawyer's Guild, began in 1962 with the motto, "fellowship and faith in tradition." *See* Jewish Lawyer's Guild, *About Us*, *at* <http://www.jewishlawyersguild.org/page3.html> (last visited Nov. 18, 2004). The American Association of Jewish Lawyers and Jurists began in 1983 as an affiliate of the International Association of Jewish Lawyers and Jurists formed in 1969. American Association of Jewish Lawyers and Jurists, *About Us*, *at* <http://www.jewishlawyers.org/pages/2/index.htm> (last visited Nov. 4, 2004). Its stated aim is to represent "the American Jewish legal community, defending Jewish interests and human rights in the U.S. and abroad." *Id.* *See also* Failing et al., *supra* note 34, at 928-31 (Matthew Kaliff discusses history and projects of the International Association of Jewish Lawyers and Jurists).

<sup>47</sup> The Christian Legal Society was founded in 1961 as a forum for Christian lawyers to share their problems, find fellowship, and assist pastors and church groups in "locat[ing] Christian lawyers who were willing and able to offer legal counsel from a Christian perspective." Samuel B. Casey, *Great is His Faithfulness: 42 Years of "His-story" at CLS*, *at* <http://www.clsnet.org/clsPages/history.php> (last visited Nov. 4, 2004). CLS now has 3400 members in 1100 cities in all 50 states, 10 foreign countries, 90 attorney and 165 law student chapters. *See* Christian Legal Society, *Christian Legal Society Facts*, *at* <http://www.clsnet.org/clsPages/clsfactsheet.php> (last visited Nov. 4, 2004). *See also* Failing et al., *supra* note 34, at 928 (Charles Emmerich discusses history and projects of the Christian Legal Society). *See generally* THE CHRISTIAN LAWYER (CLS publication from 1968-1979); CLS QUARTERLY (CLS publication from 1980).

<sup>48</sup> In the Roman Catholic tradition, St. Thomas More, patron of statesman and people in public life, is only the most evident example. Pope John Paul II, Apostolic Letter issued *Motu Proprio*: Proclaiming Saint Thomas More Patron of Statesmen and Politicians (October 31, 2000), *at* [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20001031\\_thomas-more\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/motu_proprio/documents/hf_jp-ii_motu-proprio_20001031_thomas-more_en.html) (last visited Nov. 4, 2004). *See also* Thomas L. Shaffer, *The Biblical Prophets as Lawyers for the Poor*, 31 *FORDHAM URB. L.J.* 15 (2003) (discussing biblical prophets as models for lawyers for the poor). The Jewish historical tradition is more complicated because it values judges and dislikes lawyers. *See* Russell G. Pearce, *Reflections on the American Jewish Lawyer*, 17 *J.L. & REL.* 179, 180-82 (2002) (reviewing work of Michael Broyde and Jerold Auerbach, tracing ambivalence toward lawyers emerging in part from the inquisitorial origins of the Jewish legal system). *See also* Samuel J. Levine, *Professionalism Without Parochialism: Julius Henry Cohen, Rabbi Nachman of Breslov and the Stories of Two Sons*, 71 *FORDHAM L. REV.* 1339, 1354 (discussing the complexities of Cohen's 1916 text which is reluctant to draw explicit connections between Jewish thought and professional ethics, but also relies on an episode involving religious life to emphasize the importance of living a "consistently ethical life"). Nonetheless, in the Twentieth Century, notable lawyers grounded their commitment to social justice in Jewish values. *See, e.g.*, Pearce, *supra* note 21,

legal profession's goals of public service, civility, and honesty were evident long before the 1990s.<sup>49</sup> Thus, considering the more recent development in religious lawyering one might ask, "so what's new?"

In one sense, the religious lawyering movement builds upon and strengthens these long-standing community organizations and commitments. For example, it would be interesting to trace the extent to which efforts to integrate religious values into professional life have contributed to the growth of faith-based *pro bono* legal services to the poor.<sup>50</sup> Religious lawyering may also strengthen lawyers in their re-

at 1616-1623 (describing a "Jewish social justice" for lawyering); ALBERT VORSPAN, GIANTS OF JUSTICE 22-39, 40-57 (1960). See generally Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 FORDHAM URB. L.J. 1125 (1999) (discussing Joseph as Jewish lawyers' biblical antecedent).

<sup>49</sup> See Cochran, *Professionalism in the Postmodern Age*, *supra* note 40, at 306-307 (tracing the roots of "professionalism" from the medieval practice of professing commitment to a religious order and specifically within the religious order to expertise in divinity, law, or medicine; through its identification with "the generic, Judeo-Christian ethics of the upper class churches."). Note also a fascinating symposium on *Law and Christianity* published in 1957 by the Vanderbilt Law Review, which touched on a number of the themes that intersect with the more recent religious lawyering literature. See, e.g., William S. Ellis, *The Christian Lawyer as Public a Servant*, 10 VAND. L. REV. 912, 925 (1957) (identifying the ways in which Christian doctrines and teachings are relevant to a lawyer's or legislator's "formulation of decisions"); F. B. Mac Kinnon, *Summary of a Statement of the Effect of Religious Principles on Lawyers' Ethical Problems*, 10 VAND. L. REV. 931, 937 (1957) (exploring the extent to which religious attitudes toward the lawyer-client relationship are in opposition to "many of the traditional standards of the profession"); William Stringfellow, *The Christian Lawyer as Churchman* 10 VAND. L. REV. 939, 939 (1957) ("Worship is not isolated from the rest of Christian life; it is the integration of the whole of the Christian life in history. Worship is not peripheral, but decisive in the relationships of Christian faith and secular law."). For many the work of William Stringfellow is a prophetic sign of what would later emerge as a full-fledged movement. See, e.g., Russell G. Pearce, *Learning from the Unpleasant Truths of Interfaith Conversation: William Stringfellow's Lessons for the Jewish Lawyer*, 38 CATH. LAW. 235, 255 (1998) (building on Stringfellow's work to contrast the religious concept of vocation with professionalism); RADICAL CHRISTIAN AND EXEMPLARY LAWYER 5 (Andrew W. McThenia, Jr. ed., 1995) (collecting essays honoring William Stringfellow by a number of "oddball lawyers" influenced by his work, including Tom Shaffer, Emily Hartigan, Milner Ball and Ed Gaffney). For a bibliography of the literature from a Christian perspective published by 1957, see *A Bibliography of Christian Faith and the Law*, 10 VAND. L. REV. 967 (1957).

<sup>50</sup> See, e.g., Ashley T. Wiltshire, Jr., *Religion and Lifework in the Law*, 27 TEX. TECH L. REV. 1383, 1383 (1996) ("[F]or many of us who work for the poor or marginalized, the underlying motivation is there: religion made us do it. Truth to tell, the motivation is there whether we admit it or not."). For a comprehensive overview of Christian faith-based legal services, see Melanie D. Acevedo, Note, *Client Choices, Community Values: Why Faith-Based Legal Services Providers Are Good For Poverty Law*, 70 FORDHAM L. REV. 1491 (2002). Fordham's 2003 Conference, *Religious Values and Poverty Law: Clients, Lawyers & Communities*, also explored the intersection between faith and legal services for the poor. See Uelmen, *Foreword*, *supra* note 42, at 1. See also Mary Medland, *Religious Counsel: Legal Aid Programs Sponsored by Faith-Based Groups Are Expanding*, 89 A.B.A. J. 20 (December 2003) (reporting on faith-based legal services throughout the United States); Ohio Legal Assistance Foundation, *Pro Bono Resources, Interfaith Legal Services*, at <http://www.olaf.org/probonoresources/interfaith.shtml> (last visited Nov. 4, 2004) (describing collaboration between the Ohio Legal Assistance Foundation, various Legal Aid Organizations,

solve to set aside the necessary time for religious observance, even in the midst of the profession's pressing demands on their time.<sup>51</sup>

But we would posit that the religious lawyering project which has been germinating over the past decade asks for more—and presents a much deeper challenge for the legal profession. Certainly commentators generating scholarship in the field of religious lawyering would not be averse to encouraging a faith-inspired commitment to *pro bono* services for the poor,<sup>52</sup> or to the greater sense of community and religious commitment that the guilds and associations promote.<sup>53</sup> But these communities and commitments can be marginalized, even privatized, leaving the heart of day-to-day professional life untouched.<sup>54</sup>

Unlike many previous “law and religion” discussions, the religious lawyering movement focuses less on the conceptual relationships and tensions between law and religion and how these play out in a democ-

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and Southeast Interfaith Legal Services, which operates twelve clinics staffed with volunteer attorneys). In the area of indigent criminal defense, the faith-based approach of the Atlanta-based Georgia Justice Project is especially thought-provoking. See Douglas Ammar and Tosha Downey, *Transformative Criminal Defense Practice: Truth, Love & Individual Rights—the Innovative Approach of the Georgia Justice Project*, 31 FORDHAM URB. L.J. 49 (2003).

<sup>51</sup> See, e.g., Azizah al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 TEX. TECH L. REV. 947, 950 (1996) (lamenting the corporate law firm pace which left no time “to perform my five daily prayers, even in a corner of my office. It was not possible to fast the month of Ramadan or even celebrate my holidays. How could I when I had to work and bill every working moment of my long days and nights?”); M. Cathleen Kaveny, *Billable Hours in Ordinary Time: A Theological Critique of the Instrumentalization of Time in Professional Life*, 33 LOY. U. CHI. L.J. 173 (2001) (describing how a Roman Catholic conception of time may nourish a “culture of resistance” to the tyranny of the billable hour); Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH L. REV. 1199, 1202-03 (1996) (discussing the Orthodox Jewish lawyer's obligations of daily prayer and Sabbath observance).

<sup>52</sup> See, e.g., ALLEGRETTI, *THE LAWYER'S CALLING* *supra* note 12, at 61 (“For the Christian Lawyer, *pro bono* can never be simply a matter of charity . . . it is what God demands of me.”); Uelmen, *supra* note 40, at 109.

Certainly *pro bono* or any kind of commitment to the public good should be encouraged. Many attorneys live out their faith commitments in heroic dedication to public interest and *pro bono* work, and they embody the ideals of service at the heart not only of many religious traditions, but also of how many would like to envision the legal profession.

<sup>53</sup> See Vischer, *supra* note 10, at 428-45 (exploring whether Catholic Lawyers Guilds and similar organizations might serve as the primary locus for the ethical formation of lawyers).

<sup>54</sup> See generally Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 419-20 (2001) [hereinafter, Pearce, *Governing Class*]; Russell G. Pearce, *Retreat of the Elite: How Public Interest and Pro Bono Undermine Business Lawyers' Commitment to the Public Good*, AM. LAW., July 16, 2001, 79, 82-85 [hereinafter, Pearce, *Retreat of the Elite*] (“The *pro bono* duty, a product of the 1970s, also encouraged elite lawyers to shrink their obligation to the public good.”). See also Uelmen, *supra* note 40, at 109 (“Equating a commitment to justice with *pro bono*, public interest law and no more, leaves many practicing attorneys at a loss for how to integrate into their day-to-day work any notions of justice informed by values other than those of the market.”).

racy, and more on ways in which religious values and perspectives may provide a completely different structural framework for an approach to professional life.<sup>55</sup>

As anthropologist Clifford Geertz has described, the core of religious perspective is not so much to posit the theory of an invisible world beyond the visible; nor the doctrine of a divine presence; nor that there are “things in heaven and earth undreamt of in our philosophies.”<sup>56</sup> Rather, the heart of the religious perspective is:

[T]he conviction that the values one holds are grounded in the inherent structure of reality, that between the way one ought to live and the way things really are there is an unbreakable inner connection. What sacred symbols do for those to whom they are sacred is to formulate an image of the world’s construction and a program for human conduct that are mere reflexes of one another.<sup>57</sup>

Religious lawyering draws out the “unbreakable inner connection” between “the way things really are” and “the way one ought to live”—not only in a private “non-work” sphere, but also in profes-

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<sup>55</sup> Here it might be illustrative to note the distinction between the work of more recent projects such as Fordham’s Institute on Religion, Law & Lawyer’s Work and Pepperdine’s Institute on Law, Religion & Ethics, and the inter-disciplinary programs in law and religion at other schools. For example, in its self-description, Emory’s Law & Religion program is “designed to explore the religious dimensions of law, the legal dimensions of religion, and the interaction of legal and religious ideas and methods.” The *Law and Religion Program* at Emory University, at [http://www.law.emory.edu/lawrel/about/about\\_start.htm](http://www.law.emory.edu/lawrel/about/about_start.htm) (last visited Sept. 19, 2004). Similarly, at Catholic University Columbus School of Law:

[T]he Interdisciplinary Program in Law and Religion was created to provide a forum for study, research and public discussion of issues arising at the nexus of law and religion. These include questions of the separation of Church and state, public and private morality, and the relationship of concerns of the institutional Church to establish legal norms.

*Interdisciplinary Program in Law and Religion*, at [http://law.cua.edu/academic/institutes/institutes\\_e.cfm](http://law.cua.edu/academic/institutes/institutes_e.cfm) (last visited Nov. 4, 2004). In contrast, the programs, scholarship and material emerging from Fordham’s and Pepperdine’s “religious lawyering” work are more grounded in the discipline of legal ethics, and focus in particular on how religious values may shape lawyers’ approaches to their professional roles. From there they branch out into the substantive contributions and critiques that religious values bring to particular practice areas. Obviously there is significant overlap, but the emphasis is different.

<sup>56</sup> CLIFFORD GEERTZ, *The Struggle for the Real, in ISLAM OBSERVED: RELIGIOUS DEVELOPMENTS IN MOROCCO AND INDONESIA* 97 (1968).

<sup>57</sup> *Id.* We are deeply indebted to Howard Lesnick for identifying Geertz’s perspective as a literary key for religious lawyering, and for sharing his treasure trove of many other extraordinarily rich texts which have nourished our scholarship and work. See generally HOWARD LESNICK, *LISTENING FOR GOD: RELIGION AND MORAL DISCERNMENT* (1998). For a discussion of how Geertz’s definition of religious perspective might inform a theory of products liability, see Amelia J. Uelmen, *Toward a Trinitarian Theory of Products Liability*, 1 J. CATH. SOC. THOUGHT 603, 626-28 (2004).

sional life.<sup>58</sup> On this basis religious lawyering insists that there should be room in the profession for such convictions about the “inherent structure of reality,” and for lawyers then to integrate this perspective and to apply its substantive critiques and contributions to the issues which arise not just at the margins, but in the heart of ordinary day-to-day legal practice.<sup>59</sup>

Finally, the religious lawyering movement suggests that this is a step to be taken not just within one’s heart or the quiet of one’s individual conscience. It insists that this is an appropriate topic for open conversation, dialogue and debate in law offices, in judges’ chambers, in legislatures, and even in law schools.<sup>60</sup>

#### RELIGIOUS LAWYERING’S CHALLENGES TO PROFESSIONALISM

In the eyes of many, the religious lawyering movement’s insistence that religious worldviews and the substantive content of religious perspectives could and should be brought to bear on approaches to work as a lawyer is—to put it bluntly—unprofessional. As Sanford Levinson explains, professionalism posits that the lawyer’s role requires lawyers to “bleach[ ] out” the “merely contingent aspects of the

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<sup>58</sup> See Pearce, *supra* note 21, at 1624 (quoting Martin Buber):

We shall accomplish nothing at all if we divide our world and our life into two domains: one in which God’s command is paramount, the other governed exclusively by the laws of economics, politics, and the ‘simple self-assertion’ of the group . . . . Stopping one’s ears so as not to hear the voice from above is breaking the connection between existence and the meaning of existence.

See also Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 VA. L. REV. 879 (1997).

<sup>59</sup> See, e.g., ALLEGRETTI, LAWYER’S CALLING *supra* note 12, at 32 (“At first glance, nothing changes . . . yet in another sense *everything changes* . . . . Her work has a different, wider frame of meaning. Her personal religious commitments . . . are inextricably entwined with her image of herself as a lawyer.”); Howard Lesnick, *Riding the Second Wave of the So-Called Religious Lawyering Movement*, 75 ST. JOHN’S L. REV. 283, 284 (2001) (discussing a text from Seyyed Hossein Nasr, *IDEALS AND REALITIES OF ISLAM* (1967), “the Shari ah [Divine Law] is the path that ‘gives a religious connotation of all the acts that are necessary to human life.... In this way, the whole of man’s life and activities become religiously meaningful . . . . There is a Hadith [saying of the prophet] according to which when a man works to feed his family he is performing as much an act of worship as if he were praying.”); Uelmen, *supra* note 57, at 626-645 (describing how the Trinity as a social model can inform products liability definitions of rationality). See also William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1720-21 (2003) (reviewing *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (M. McConnell et al. eds., 2001)) (lamenting the conventional nature of the essays in the collection with the exception of Thomas Shaffer’s and Joseph Allegretti’s work, which he praises for its emphasis on practice and its prophetic challenge to ordinary practice: “As Shaffer and Allegretti seem to understand, attitudes and relationships, not rules and standards, are at the core of Christianity’s agenda. It follows that Christianizing the legal profession might have a much larger effect on law practice than on law.”).

<sup>60</sup> See Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & REL. 459, 461-62 (2002-2003) (noting the increasing respectability in academic legal circles of exploring law from the vantage point of a specific faith perspective); Cohn, *supra* note 9, at 877 (same). See also discussion *supra* at notes 40-42.



self, including the residue of particularistic socialization that we refer to as our ‘conscience.’”<sup>61</sup> The exclusion of these “aspects of the self” derives from professional role morality—the conception that the professional’s conduct is governed by the morality dictated by the profession and not from outside the profession.<sup>62</sup>

Bolstering this concept is the notion that rule of law depends upon lawyers’ neutrality. The adversarial understanding of the legal system posits that the clash of opposing views before a neutral fact finder is the best way to ascertain truth and justice.<sup>63</sup> To function properly, the argument goes, the adversarial system requires that all parties receive equal representation and that lawyers function as extreme partisans who should not bring their own moral or religious sensibility to bear on their representation.<sup>64</sup> In this model, “[r]ule of law implies that the quality of lawyering and of justice an individual receives does not depend on the group identity of the lawyer or judge.”<sup>65</sup> A

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<sup>61</sup> Levinson, *supra* note 20, at 1578. See generally Pearce, *supra* note 6, at 1269-70 (noting that pursuant to the “professional project,” attorneys are required to detach themselves from their external group identities and take a neutral approach to lawyering). For the full context, see Monroe H. Freedman, *Legal Ethics from a Jewish Perspective*, 27 TEX. TECH L. REV. 1131, 1135 (1996) (lamenting that Levinson mischaracterizes his analysis of the tension between personal and professional ethics, and outlining the influence of Jewish traditions and values in his professional life).

<sup>62</sup> See Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 981, 983 (1990) (concluding that a lawyer faced with the conflict between ignoring the client’s needs, or the lawyer’s own need to salve his or her conscience should concede to the wisdom of the profession: “Do what the profession demands. That is the price of being a lawyer and that is the end of the story.”).

<sup>63</sup> See William Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WISC. L. REV. 29, 36-38 (1978). See also Stephen P. Jones, *The Prosecutor’s Constitutional Duty to Disclose Exculpatory Evidence*, 25 U. MEM. L. REV. 735, 735-36 (1995); David B. Wilkins, *Making Context Count: Regulating Lawyers After Kaye, Scholer*, 66 S. CAL. L. REV. 1145, 1188 (1993).

<sup>64</sup> See Stephen L. Pepper, *The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. J. 613, 622 (“For access to the law to be filtered unequally through the disparate moral views of each individual lawyer does not appear to be justified.”); Simon, *supra* note 63, at 36 (“The lawyer is expected to represent people who seek his help regardless of his opinion of the justice of their ends.” Even if a lawyer happens to share the client’s purposes, “he must maintain his distance. In a judicial proceeding, for instance, he may not express his personal belief in the justice of his client’s cause.”); Norman Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1, 7 (2003) (“effective service and open access to law demand uninhibited orientation of [lawyers’] faculties toward the realization of their clients’ lawful objectives”). Professor Monroe Freedman argues that “neutral” representation also upholds the value of respect for client autonomy. See MONROE H. FREEDMAN, *UNDERSTANDING LAWYERS’ ETHICS* 57 (1990) (“the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.”).

<sup>65</sup> Pearce, *supra* note 21, at 1629. See also Fred Dallmayr, *Hermeneutics and the Rule of Law*, 11 CARDOZO L. REV. 1449, 1469 (1990) (“courts and lawyers cannot maintain lawfulness or the rule of law in a society rent by deep ethnic, economic or other fissures . . .”).

lawyer's religion, morality, race, gender, or other personal attributes should be irrelevant.<sup>66</sup>

A Tennessee ethics case illustrates the approach. A Tennessee lawyer who was a devout Catholic opposed to abortion asked the Tennessee Supreme Court's Board of Professional Responsibility for permission to decline a court appointment to represent a female minor seeking to waive the statutory prohibition of abortion without parental consent.<sup>67</sup> In a stark illustration of the "bleaching out" approach to professionalism, the Board, while recognizing that the attorney's religious and moral beliefs were "clearly and fervently held" concluded that they were not "compelling reasons" for withdrawing from the appointment.<sup>68</sup> Although commentators have generally concluded that the Board was wrong from the perspective of legal ethics,<sup>69</sup> the case demonstrates the power of the "bleaching out" concept.<sup>70</sup>

The problem with the argument that personal attributes such as religion are irrelevant to the practice of law is that it runs counter to experience.<sup>71</sup> Lawyers are neither fungible nor neutral.<sup>72</sup> They differ in their abilities, as well as in the ways that their identities and experi-

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<sup>66</sup> Levinson, *supra* note 20, at 1579. See also Pearce, *supra* note 6, at 1261.

<sup>67</sup> Board of Professional Responsibility of the Supreme Court of Tennessee, Formal Op. 96-F-140 (1996), at [http://www.tsc.state.tn.us/OPINIONS/Ethics/BdofProResp/\\_PDF\\_Files/92-99/96-f-140.pdf](http://www.tsc.state.tn.us/OPINIONS/Ethics/BdofProResp/_PDF_Files/92-99/96-f-140.pdf). (last visited Nov. 4, 2004) [hereinafter Board of Professional Responsibility].

<sup>68</sup> *Id.*

<sup>69</sup> See e.g., Teresa Stanton Collett, *Professional Versus Moral Duty: Accepting Appointments in Unjust Civil Cases*, 32 WAKE FOREST L. REV. 635, 642-43 (1997) (faulting the Board for failing to analyze the case as a clear conflict involving fundamental beliefs, which under Model Rule 6.2(c) constitutes good cause for a lawyer to decline an appointment); Howard Lesnick, *supra* note 31, at 1471 ("I find every aspect of this opinion troubling . . ."); Martha Minow, *On Being a Religious Professional: The Religious Turn in Professional Ethics*, 150 U. PA. L. REV. 661, 681-82 (2001) ("I think that the Board of Professional Responsibility of the Tennessee Supreme Court wrongly concluded that a Catholic lawyer could not decline to represent a minor seeking an abortion even though the lawyer claimed that such representation violated his religious beliefs. Indeed, this might even be an instance of wrongful efforts to establish secularism and surely to constrain the free exercise of an individual's religion.").

<sup>70</sup> See Pearce, *supra* note 6, at 1261 (noting that pursuant to the "professional project," attorneys must take a neutral approach to lawyering and detach themselves from external group identities). See also Levinson, *supra* note 20, at 1578.

<sup>71</sup> See, e.g., Geoffrey Hazard, *The Future of Legal Ethics*, 100 YALE L.J. 1239, 1278-79 (1991) ("governing norms no longer represent the shared understandings of a substantially cohesive group"); W. Bradley Wendel, *Value Pluralism in Legal Ethics*, 78 WASH. U. L.Q. 113, 116-17, 201-203 (2000) (because the foundational normative values of lawyering and the ends served by the practice of law are diverse and valued in different ways, a lawyer's own "life history" can be a resource to weigh and balance values); David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1542 (1998) ("The traditional image of a homogeneous profession united by a common normative culture is increasingly out of touch with the realities of contemporary law practice."). See generally Vischer, *supra* note 11, at 115, nn.74-75 (noting legal ethicists' observations that it is difficult to describe the vastly differentiated legal profession as a "community").

<sup>72</sup> See Pearce, *supra* note 21, at 1634-1636.

ences influence their conduct.<sup>73</sup> The religious lawyering movement insists that we should not ignore this reality.<sup>74</sup> While it acknowledges that as a community lawyers must seek to improve our system so that all people receive impartial treatment, it nonetheless insists that this must occur within a framework that respects that lawyers are not “neutral” interchangeable parts.<sup>75</sup> It emphasizes that it is important for lawyers to honestly acknowledge their differences and to strive together to manage those differences in service of the shared goal of rule of law.<sup>76</sup>

#### RELIGIOUS LAWYERING AS A RESPONSE TO THE CRISIS IN PROFESSIONALISM

If religious lawyering is “unprofessional,” what explains its growing popularity?<sup>77</sup> At least part of the answer lies in what is commonly

<sup>73</sup> See *id.* at 1635-36. “Postmodern” legal ethics analyses also emphasize this point. See, e.g., Anthony E. Cook, *Foreword: Toward a Postmodern Ethics of Service*, 81 GEO. L.J. 2457, 2458 (1993) (describing how the postmodern shift to narrative effectively captures the complexity of how identity shapes the lawyer-client relationship: “postmodern ethics resists the temptation to silence the voices that speak from this space of human interaction, a space too often emptied of its richness and potential by those who stuff experience into abstract, normative categories that stultify our understanding of life and its possibilities.”).

<sup>74</sup> See, e.g., Cochran, *Professionalism in the Postmodern Age*, *supra* note 40, at 314-315: With a more diverse profession has come the loss of a common moral vision. It may be, however, that the key to renewed virtue in lawyers is to look within that diversity for moral insight. The very thing that caused the death of the old professionalism may provide a possibility for moral renewal. If Alasdair MacIntyre is correct that moral development comes primarily from within communities, we should encourage these communities to develop moralities (and theologies) of lawyering. It may be that from the particular traditions of those within the profession will emerge ways of lawyering that will transform not necessarily the whole profession, but the way that significant groups of lawyers practice.

Aspects of analyses emerging from Critical Legal Studies scholarship may prove to be a formidable ally in this venture. See, e.g., *Constitutional Law in a Comparative and International Setting*, GEORGETOWN LAW ALUMNI MAGAZINE (Spring 2003) 25, 37 interview with critical legal studies scholar Gary Peller:

Liberal constitutional law doctrine often treats religious beliefs and practices as if they are irrational and provincial. To the extent that many liberals have embraced this ideology and rhetoric and supported these kinds of Supreme Court decisions, they have helped to improperly alienate spiritually constituted communities from the “enlightened” mainstream of American intellectual and political life.

See also Stuntz, *supra* note 59, at 1715 (noting that the view of human nature implicit in Critical Legal Studies “focus[es] on the tendency of those at the top of the ladder to use the law to oppress those at the bottom. That view may not be far removed from the Christian view of sin.”).

<sup>75</sup> Pearce, *supra* note 21, at 1636 (arguing that the organizational goals of the professional project would be best maximized by openly acknowledging identity group differences).

<sup>76</sup> *Id.*

<sup>77</sup> Other scholars who have explored this question have focused on general spiritual, religious and cultural trends. See, e.g., Minow, *supra* note 69, at 662-671 (discussing the recent trend of increased reliance on religion in the development of professional ethics). See also Eilene Zimmerman, *The Many Delicate Issues of Spirituality in the Workplace*, N.Y. TIMES, Aug. 15, 2004, § 10, at 1 (discussing studies by the Tanenbaum Center for Interreligious Under-

called the “crisis” of professionalism.<sup>78</sup> The first major public acknowledgement of this crisis was Chief Justice Warren Burger’s 1984 Report to the American Bar Association on the State of Justice in which he complained that lawyers were betraying their responsibilities as professionals.<sup>79</sup> Since that time leaders of the bench, bar, and legal academy have described lawyers, their ethics, and their professionalism in the most dismal terms: “lost” and “betrayed,” in “decline” and in “crisis,” even to the point of facing “demise” and “death,” and most certainly in need of “redemption.”<sup>80</sup>

What these commentators often lament is the collapse of the careful distinction at the heart of professionalism’s ideology: the divide between business and the legal profession.<sup>81</sup> The Business-Profession dichotomy dates back to the Federalist Papers, which argued that only an elite governing class could ensure that a system of majority rule would promote the public good, preserve rule of law, and protect minority rights.<sup>82</sup>

According to *Federalist 35*, the elite would consist of “learned professionals”<sup>83</sup> who would pursue the public good, in contrast to merchants and business people who tend to pursue their own selfish interests.<sup>84</sup> It soon became clear that lawyers would serve this governing class role.<sup>85</sup> In formal government, they controlled the judicial branch and led the legislative and executive branches.<sup>86</sup> As they advised clients on the law, structured personal and business relation-

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standing, the Harris Poll, and the Pew Forum on Religion and Public Life, which suggest that factors such as increased time at work and an aging workforce contribute to the phenomenon of religion playing an increasingly larger role in the workplace).

<sup>78</sup> See Russell G. Pearce, *Looking Backward: A Foreword*, 71 *FORDHAM L. REV.* 1181, 1182-83 (2003) (discussing crisis of professionalism).

<sup>79</sup> See Warren E. Burger, *The State of Justice*, 70 *A.B.A. J.* 62 (1984).

<sup>80</sup> See Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 *N.Y.U. L. REV.* 1229, 1257 (1995). For a discussion of the demise of the legal profession in the early 1990s, see the “trilogy” addressing this topic by the “best and the brightest of the legal world”: MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994); ANTHONY KRONMAN, *THE LOST LAWYER* (1993); SOL M. LINOWITZ & MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994). For a critique of the professionalism debate, see Samuel J. Levine, *Faith in Legal Professionalism: Believers and Heretics*, 61 *MD. L. REV.* 217 (2002). See also Thomas L. Shaffer, *Lawyer Professionalism as a Moral Argument*, 26 *GONZ. L. REV.* 393 (1991) (analyzing laments about the demise of professionalism).

<sup>81</sup> See Pearce, *supra* note 80, at 1230.

<sup>82</sup> See Pearce, *Governing Class*, *supra* note 54, at 383.

<sup>83</sup> *THE FEDERALIST* No. 35, at 257 (Alexander Hamilton) (Benjamin F. Wright, ed. 1961).

<sup>84</sup> Pearce, *Governing Class*, *supra* note 54, at 386-87; Pearce, *supra* note 80, at 1229, 1239; Pearce, *Retreat of the Elite*, *supra* note 54, at 79.

<sup>85</sup> Pearce, *Governing Class*, *supra* note 54, at 383; Pearce, *Retreat of the Elite*, *supra* note 54, at 79.

<sup>86</sup> Pearce, *Retreat of the Elite*, *supra* note 54, at 79.

ships, advocated before courts and juries, and participated in civic life, they served informally as the primary intermediaries between the government and the people.<sup>87</sup> In Alexis de Tocqueville's words, lawyers were the *de facto* aristocracy of America.<sup>88</sup>

A minority of lawyers argued for a "hired gun" conception of the lawyer's role—evoking the notion that lawyers should exclusively represent the self-interest of their clients—but the elite soundly rejected it.<sup>89</sup> Although lawyers were advocates for their clients, the governing class role bounded their advocacy.<sup>90</sup>

In the late 1800s, the governing class conception faced a crisis. Lawyers and non-lawyers complained that "law had become a business, with lawyers placing self-interest above the public good."<sup>91</sup> In response, lawyers turned to professionalism's emphasis on self-regulation.<sup>92</sup> Bar Associations, led by the "best men," would decide who could practice law, articulate ethical standards, and discipline violators.<sup>93</sup>

Professionalism had three interdependent elements that hinged on the distinction between business and the legal profession. First, lawyers had expertise that was not accessible to non-lawyers. Second, in contrast to business people, most lawyers worked for the common good, and not to maximize self-interest. Finally, given their expertise and their governing class role in the service of the common good, lawyers, unlike business people, could be trusted to regulate themselves.<sup>94</sup>

Professionalism remained dominant until the 1960s. For example, when sociologist Erwin Smigel interviewed Wall Street lawyers, they frequently described themselves as "guardians of the public good."<sup>95</sup>

<sup>87</sup> *Id.*

<sup>88</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 124 (Richard D. Heffner ed., Signet Books 2001) (1840). See also David Barnhizer, *Profession Deleted: Using Market and Liability Forces to Regulate the Very Ordinary Business of Law Practice for Profit*, 17 *GEO. J. LEGAL ETHICS* 203, 206-07 (2004); John O. McGinnis, *Lawyers as the Enemies of Truth*, 26 *HARV. J.L. & PUB. POL'Y* 231, 234 (2003); W. Bradley Wendel, *Regulation of Lawyers Without the Code, the Rules, or the Restatement: Or, What Do Honor and Shame Have to Do With Civil Discovery Practice?*, 71 *FORDHAM L. REV.* 1567, 1586 (2003).

<sup>89</sup> See Pearce, *Governing Class*, *supra* note 54, at 395; Pearce, *Retreat of the Elite*, *supra* note 54, at 79.

<sup>90</sup> Pearce, *Governing Class*, *supra* note 54, at 383.

<sup>91</sup> Pearce, *Retreat of the Elite*, *supra* note 54, at 80.

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*; Pearce, *Governing Class*, *supra* note 54, at 399. See also John A. Matzko, "The Best Men of the Bar": The Founding of the American Bar Association, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 75 (Gerard W. Gawalt ed., 1984) (describing the elite founders of the American Bar Association).

<sup>94</sup> See Pearce, *Retreat of the Elite*, *supra* note 54, at 80; Pearce, *supra* note 80, at 1231, 1240.

<sup>95</sup> See *id.* See also ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL*

Through the 1960s, most lawyers believed in professionalism, and looked to professionalism to give meaning to their work.

Toward the end of the 1960s, lawyers began to question their status as part of a governing class, precipitating what has been termed a “crisis” in professionalism.<sup>96</sup> Commentators declared that lawyers were just as selfish and greedy as everyone else<sup>97</sup>—and many lawyers agreed.<sup>98</sup> Gradually the “hired gun” image replaced the governing class as the dominant conception of the lawyer’s role.<sup>99</sup> Nonetheless, the bar continued to use the rhetoric of professionalism, especially when it came to protecting lawyers’ privileges from the incursions of accounting firms and others seeking to enter the legal services market.<sup>100</sup>

The result of this shift has been quite unsatisfying for lawyers in a number of ways. First, in contrast to the grandeur of the governing class ideal, the hired gun is a mercenary for selfish interests who cares nothing for moral values.<sup>101</sup> The only way to justify this conduct is procedural—the adversarial system demands that each client have the opportunity to have a hired gun champion their interests.<sup>102</sup> For those

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ORGANIZATION MAN? (Ind. Univ. Press 1964). See also Pearce, *Governing Class*, *supra* note 54, at 381 (discussing self-image of American lawyers); Pearce, *Retreat of the Elite* *supra* note 54, at 82 (describing Smigel’s findings).

<sup>96</sup> See Pearce, *Governing Class*, *supra* note 54, at 417 (noting that the governing class ideal collapsed post-1960s). See also ALLEGRETTI, *LAWYER’S CALLING*, *supra* note 12, at 3; KRONMAN, *supra* note 80, at 102.

<sup>97</sup> See generally Pearce, *Governing Class*, *supra* note 54, at 384 (noting that after the 1960s, the public and lawyers themselves began to doubt whether lawyers could promote the common good); Pearce, *supra* note 80, at 1256 (citing the results of an ABA-sponsored poll where 59% of the public considered lawyers to be greedy); Pearce, *Retreat of the Elite*, *supra* note 54, at 82 (discussing the changed perception of lawyers in the 1980s).

<sup>98</sup> Pearce, *supra* note 80, at 1256.

<sup>99</sup> See Russell G. Pearce, *MacCrate’s Missed Opportunity: The MacCrate Report’s Failure to Advance Professional Values*, 23 PACE L. REV. 575, 591 (2003) (noting that post-1960s, the hired gun conception replaced the governing class as the standard perception of the lawyer’s role); Russell G. Pearce, *Model Rule 1.0: Lawyers are Morally Accountable*, 70 FORDHAM L. REV. 1805, 1805 (2002) [hereinafter, Pearce, *Model Rule 1.0*] (noting that the dominant perspective of the lawyer’s role changed after the 1960s); Pearce, *Retreat of the Elite*, *supra* note 54, at 82 (discussing the shift in conception of lawyer’s role from governing class to hired gun).

<sup>100</sup> Pearce, *Governing Class*, *supra* note 54, at 404. See Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 VA. L. REV. 1707, 1742-43 (1998) (“Insisting on the patina of professionalism is even more important to protect lawyers’ special status as law practice comes to resemble a conventional business more closely.”); Jeffrey W. Stempel, *Embracing Descent: The Bankruptcy of a Business Paradigm for Conceptualizing and Regulating the Legal Profession*, 27 FLA. ST. U. L. REV. 25, 107 (1999) (noting that accounting firms have begun to penetrate the legal services market but stating that “[t]his phenomenon has not yet engulfed the United States, largely because of the dominating professionalism paradigm”).

<sup>101</sup> See ALLEGRETTI, *LAWYER’S CALLING* *supra* note 12, at 67 (“Hired gun thinking leads to an abdication of moral responsibility for our actions.”).

<sup>102</sup> See David Luban, *Are Criminal Defenders Different?*, 91 MICH. L. REV. 1729, 1729 (1993) (noting that zealous advocacy required by the adversarial system “will be impossible

lawyers who possess or desire a conception of substantive justice, the hired gun ideal is inadequate.<sup>103</sup> Second, even for those whose conception of justice is exclusively procedural, the adversarial system is a disappointment. Widespread inequality of access to legal services ensures that there will not be equal justice under law.<sup>104</sup> Third, the hired gun ideal offers lawyers no guidance for dealing with the increasingly harsh demands of the market for legal services. If lawyers are no longer an altruistic governing class, what are they? The hired gun paradigm offers no answers. To make matters worse, continued reliance on the rhetoric of professionalism makes many lawyers feel ashamed of their business conduct.<sup>105</sup>

It is not surprising, therefore, that many lawyers find the combination of the hired gun ideal and professionalism rhetoric disheartening. Surveys indicate that lawyers are far less satisfied with their work than people in other occupations. Many say that if they could do it over, they would not choose to become lawyers and they would advise people they care about not to become lawyers.<sup>106</sup> Of any occupation in the United States, lawyers have the highest incidence of depression, and are fifteen times more likely than the general population to suffer other forms of emotional distress.<sup>107</sup> Moreover, alcohol

unless advocates regard themselves as (in a phrase of Stephen Gillers) amoral agents of their clients"); Andrea Kupfer Schneider, *Building a Pedagogy of Problem-Solving: Learning to Choose Among ADR Processes*, 5 HARV. NEGOT. L. REV. 113, 113-14 (2000) ("Today, lawyers often view themselves as hired guns with little social or moral connection to their client. Many commentators have blamed the adversarial system for promoting this type of behavior."). See also Howard J. Vogel, *The Problem of Hope, the Question of Identity, and the Recovery of Meaning in the Practice of Law*, 32 SETON HALL L. REV. 152, 163 (2001):

The justice we do serve is often merely procedural. In the face of this realization, lawyers must seriously consider admitting that we have lost our nerve to even attempt a definition of substantive justice beyond mere platitudes that call us to trust blindly that the existence of legal rules will provide it.

<sup>103</sup> See WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE* 75-76 (1998) (noting concern that the "dominant view" frequently implicates lawyers in injustice). See generally DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 60-103 (1988) (outlining the limitations of adversarial ethics).

<sup>104</sup> See generally DEBORAH L. RHODE, *ACCESS TO JUSTICE* 1 (2004) ("'Equal justice under law' comes nowhere close to describing the legal system in practice.").

<sup>105</sup> See GLENDON, *supra* note 80, at 85-91 ("Beneath intensified pressures attributable to competition . . . simmers a deeper misery rooted in meaning.").

<sup>106</sup> See, e.g., GLENDON, *supra* note 80, at 85 (quoting several polls indicating high percentages of lawyers would choose another career, were planning to leave the practice of law in the near future, or would not want their children to become lawyers).

<sup>107</sup> Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know*, 13 J. LAW & HEALTH 1, 3-4 (1998-99) (citing a number of studies indicating that lawyers are much more likely than the general population to experience emotional distress, depression, anxiety, addictions, and other related problems). See also Lawrence Krieger, *The Inseparability of Professionalism and Personal Satisfaction, (or Why the Wrong Values Will Mess Up Your Life)*, at 2 (2003), at

abuse among lawyers is significantly higher than the national average.<sup>108</sup>

The recent growth of the religious lawyering movement is, at least in part, a response to the legal profession's failure to offer lawyers a satisfactory way to understand their role and responsibilities. With the decline in the ideology of professionalism, lawyers are looking elsewhere. And for those who are religious people, their religion is a natural place to look for guidance in reconciling their personal aspirations with their work as lawyers.<sup>109</sup>

Religion offers religious lawyers a constructive framework within which they can respond to a host of questions that the professionalism rhetoric leaves unanswered. It not only offers answers to the more practical question of how to be a good lawyer and a good person,<sup>110</sup> but also responds to deeper and more existential questions such as why try to be a good person in the first place. For many religious people, this larger overarching framework provides a moral anchor that enables them not only to resist temptations of greed and abuse of power, but also to situate their legal work within a sense of responsibility and service to the larger community.<sup>111</sup> Although the answers will differ depending on the religion and the individual, there will be answers.

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[http://www.law.fsu.edu/academic\\_programs/jd\\_program/legal\\_writing/busharis/inseparableweb2.pdf](http://www.law.fsu.edu/academic_programs/jd_program/legal_writing/busharis/inseparableweb2.pdf) (last visited Nov. 4, 2004); Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874-876 (1999) (statistics on lawyer depression and anxiety); GLENDON *supra* note 80, at 87 (same).

<sup>108</sup> Schiltz, *supra* note 107, at 876-77; GLENDON *supra* note 80, at 87.

<sup>109</sup> See MICHAEL J. PERRY, UNDER GOD? RELIGIOUS FAITH AND LIBERAL DEMOCRACY 30 (2003) ("[F]or the large majority of Americans who are religious believers, their most fundamental moral judgments are inextricably rooted in their religious faith; moreover, they are skeptical that those judgments can stand—can be warranted—independent of religious faith, whether their own religious faith or some other religious faith.").

<sup>110</sup> See THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS (David Luban, ed. 1983); Stephen Gillers, *Can a Good Lawyer Be a Bad Person?* 84 MICH. L. REV. 1011 (1985-96) (reviewing Luban collection). See also Robert P. Lawry, *The Central Moral Tradition of Lawyering*, 19 HOFSTRA L. REV. 311 (1990). Cf. THOMAS E. BAKER AND TIMOTHY W. FLOYD, CAN A GOOD CHRISTIAN BE A GOOD LAWYER? (1998).

<sup>111</sup> See, e.g., Uelmen, *supra* note 35, at 1079:

Religious reflection brings me to a sense of obligation—not because of an external command, but rather out of an internal conviction about the essence of my nature as a person and the consequent relationships with God and with others. Listening to God within, I understand who I am as a person and feel the desire to correspond to that reality in my daily life. It is not a burden, but a joyous and grateful response in the context of a relationship. Based on religious reflection, I arrive at the conclusion that if I would like to be a person, to be fully human, I *must* keep before me a vision of the common good, I *must* live according to the implications of this vision in every aspect of my life.



Religion also offers religious lawyers a way to transcend the dichotomy between the noble professional and the selfish business person. The notion of a calling or vocation, common to many religions, can make all work meaningful.<sup>112</sup> As Martin Luther King, Jr. taught:

If it falls your lot to be a street sweeper, sweep streets like Michelangelo painted pictures, like Shakespeare wrote poetry, like Beethoven composed music; sweep streets so well that all the host of Heaven and earth will have to pause and say, "Here lived a great street sweeper, who swept his job well."<sup>113</sup>

What is true of street sweepers is equally true of lawyers.

By providing inspiration to individual lawyers, religious lawyering also makes an important contribution to society. Even if lawyers describe their role with the image of the hired gun, they nonetheless continue to serve as a governing class. They still control the judicial branch and lead the legislative and executive branches.<sup>114</sup> In representing clients, they still serve as the primary intermediaries between the government and private parties.<sup>115</sup> Following the collapse of the Business-Profession dichotomy, religious lawyering brings to the profession a much needed and persuasive explanation for why lawyers are individually and collectively responsible for the quality of justice and the stability of society.<sup>116</sup>

Religious lawyering provides a robust framework for lawyers to explain why they are morally accountable for their service as the governing class and why they must incorporate personal integrity and

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<sup>112</sup> See e.g., ALLEGRETTI, *LAWYER'S CALLING*, *supra* note 12, at 24-36 (discussing religious roots of the concept of "vocation" and applying analysis to legal practice); Floyd, *supra* note 31 (same); Samuel J. Levine, *Reflections on the Practice of Law as a Religious Calling, From a Perspective of Jewish Law & Ethics* 32 PEPPERDINE L. REV. (forthcoming 2005, manuscript on file with the authors) (analyzing the Jewish concept of work as a religious calling); Pearce, *supra* note 49, at 262 (in contrast to the dominant professional ideology's amoral tendency to relieve lawyers of accountability for whom they represent and how they represent them, "vocation requires lawyers to pursue justice in all aspects of their profession. It demands accountability as to both ends and means. Indeed, vocation is all about accountability: Accountability to God in every moment of our work."). See also Judith L. Maute, *Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations*, 77 TUL. L. REV. 91, 147 (2002) ("The contemporary 'religious lawyering movement' has renewed interest in the concept of vocation as a faith-based command to serve the common good. Being 'called' to serve in a vocation is rooted in Judeo-Christian, Islam, and Baha'i traditions.").

<sup>113</sup> Facing the Challenge of a New Age, Address delivered at the First Annual Institute on Nonviolence and Social Change (December 3, 1956), in 3 PAPERS OF MARTIN LUTHER KING, JR. 457 (Clayborne Carson et al. eds., 1992).

<sup>114</sup> See Pearce, *Retreat of the Elite*, *supra* note 54, at 85.

<sup>115</sup> See *id.*

<sup>116</sup> See *id.*

consideration of the public good into client representation. This does not mean lawyers must abandon client advocacy. It does require, however, that lawyers recognize that their own decisions regarding client goals are always morally laden, thus pushing them to engage clients in conversation regarding the morality of their conduct.<sup>117</sup>

#### OBJECTIONS TO RELIGIOUS LAWYERING

Despite these benefits, religious lawyering faces three types of objections related to its effectiveness, fairness, and compatibility with liberal democracy.

##### *1) Does religious lawyering really make a difference?*

The first objection is quite simple. Religious people are no more moral than anyone else. After all, recent headlines recount many examples of religiously devout business people and professionals who nonetheless have been caught in corporate scandals and other illegal conduct.<sup>118</sup>

Our claim is not that religious people are inherently more moral. Rather, we argue that religious lawyering offers lawyers a reason to behave ethically at a time when persuasive reasons to accept moral accountability are hard to find. While no guarantee, it does offer religious lawyers a way to draw a substantial and consistent connection between their religious values and their professional decisions. People who find religion a compelling source of moral authority may find it an equally compelling source in their work as lawyers.

The second form of this objection asks whether religious lawyering adds anything to secular values such as honesty, civility, moral counsel and service to the poor. The answer to this objection hinges on the premise that identity and perspective do make a difference. For those working within a religious framework, religious values often have additional—and perhaps decisive—pull which allows them to situate their professional decisions within an integral, coherent and transcendent framework.<sup>119</sup> Paraphrasing Geertz, religious lawyering

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<sup>117</sup> Pearce, *Model Rule 1.0*, *supra* note 99, at 1809 (“if lawyers acknowledge their moral accountability, their personal and communal responsibility for justice will become integral to their practice.”).

<sup>118</sup> See, e.g., *Church Donor and CEO Accused of Fraud*, CHRISTIAN CENTURY, May 17, 2003 (chronicling Christian affiliations and the philanthropy of Enron CEO Kenneth Lay and HealthSouth Corp CEO Richard Scrushy, both subsequently indicted for fraud). See also Lynne Browning, *Top Tax Shelter Lawyer No Longer at a Big Firm*, N.Y. TIMES (June 30, 2004), Sec. C, p.1 (noting that tax partner Raymond J. Ruble was dismissed from Sidley Austin Brown & Wood for breaches of fiduciary duty; notes had authored an article that began with a quote from the Gospel of Matthew).

<sup>119</sup> Vischer, *supra* note 11, at 119-121 (describing how religious communities help lawyers

will help religious lawyers make an “unbreakable inner connection” between “the way things really are” and “the way one ought to live” one’s professional life.<sup>120</sup> For religious people, religious lawyering makes a difference because it offers an often more compelling reason to adopt these values.<sup>121</sup> Granted not all people necessarily see the “unbreakable inner connection,” but there should be room in the profession for those who do to draw on their deepest and most compelling resources for an integrated approach to their professional lives.

## 2) *Is religious lawyering unfair to clients?*

Another objection arises from the fear that religious lawyers will impose their religious discourse and worldviews on clients. This brings to mind an incident in which an American Airlines pilot asked Christian passengers to raise their hands and suggested that the other passengers might want to speak to the Christians about their faith during the flight.<sup>122</sup> Many thought that the pilot’s suggestion was completely inappropriate and that it was extremely unfair for the pilot to proselytize his captive passengers.<sup>123</sup>

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to frame their professional experience within coherent and transcendent narratives).

<sup>120</sup> See *supra* notes 56-59 and accompanying text.

<sup>121</sup> See, e.g., Cochran, *Professionalism in the Post-Modern Age*, *supra* note 40, at 316 discussing how for Christians the story in Matthew 25, concluding “Just as you did it to one of the least of these who are members of my family, you did it to me,” is more likely to generate service to the poor than the ABA Model Rule 6.1 aspiration to render fifty hours of *pro bono* legal services per year:

[Religious] communities are more likely than the profession to inspire lawyers to go beyond the requirements of professional codes and against the incentives of the market. Their teachings are the kind which are likely to wake you up in the middle of the night with questions about the direction of your life. They can change the way a person lives.

<sup>122</sup> CBS Broadcasting, Inc., *Coffee, Tea or Jesus?*, (February 9, 2004), at <http://www.cbsnews.com/stories/2004/02/09/national/main598794.shtml> (last visited Nov. 4, 2004) (noting a passenger’s characterization of the pilot’s remarks: “Well, you have a choice, you can make this trip worthwhile or you can sit back relax, read a book or watch a movie.”).

<sup>123</sup> CNN.com, *Pilot’s Proselytizing Scares Passengers, American Airlines Apologizes for Comments on Religion* (February 9 2004), at <http://www.cnn.com/2004/TRAVEL/02/09/airline.christianity> (“American Airlines apologizes if anyone was made to feel uncomfortable by the comments of this pilot.”); Susan Paynter, *Pilot’s Comments Set Off Alarm Bells With Readers* (February 16, 2003), SEATTLE POST-INTELLIGENCER, at [http://seattlepi.nwsourc.com/paynter/160606\\_paynter16.html](http://seattlepi.nwsourc.com/paynter/160606_paynter16.html) (last visited Nov. 4, 2004):

Readers usually divide up on equal sides over everything from prayer in school to those prayer cards served with Alaska Airlines sausages. But nearly all who wrote and called after last week’s column condemned Rodger Findiesen, the American Airlines pilot who asked all the Christians onboard to raise their hands and share their beliefs with their seatmates on a cross-country flight from L.A.

Is a religious lawyer like that American Airlines pilot? The 1996 Tennessee ethics opinion discussed above would probably say yes.<sup>124</sup> In that case, the Board concluded that the Catholic lawyer should not discuss with his minor client either potential alternatives to abortion or the virtues of her consulting with her parents or legal guardian.<sup>125</sup>

As legal ethics scholars have noted, this conclusion is contrary to the legal ethics rules.<sup>126</sup> Model Rule 2.1 provides that “[i]n rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political factors, that may be relevant to the client’s situation.”<sup>127</sup> The Comment to the rule makes clear that “[i]t is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.”<sup>128</sup> If the religious lawyer explains to the client the full range of options, including the moral implications of each, that seems to fall squarely within the rule and not to present a problem.

But what if the lawyer refers specifically to religion and not just to morality? Although Rule 2.1 does not expressly mention religion, it does refer generally to “other [non-legal] factors.”<sup>129</sup> This broad language would include religious considerations so long as they are “relevant to the client’s situation.”<sup>130</sup>

What the rule does not expressly authorize is an action analogous to that of the American Airlines pilot who introduced religious discourse that was not relevant to his work. But would that conduct be forbidden? Most agree that a lawyer should not charge for that time.<sup>131</sup> Beyond that, it does not appear to be forbidden. Rule 1.8(a)

<sup>124</sup>Board of Professional Responsibility, *supra* note 67 and accompanying text.

<sup>125</sup>*Id.*

<sup>126</sup>*See, e.g.*, Collett, *supra* note 69, at 643, n.41 (“[A]ll commentators agree that one dimension of the lawyer’s independent judgment is the obligation to raise issues that clients may have overlooked or inappropriately discounted.”). *See also* Lesnick, *supra* note 31, at 1471 (“The analysis evidences a wooden and impoverished view of the lawyer’s counseling function . . .”).

<sup>127</sup>MODEL RULES OF PROF’L CONDUCT R. 2.1 (2004).

<sup>128</sup>MODEL RULES OF PROF’L CONDUCT R. 2.1, cmt. 2 (2004). For the Model Code analogue, see MODEL CODE OF PROF’L RESPONSIBILITY, Ethical Consideration 7-8 (1983) (“Advice of a lawyer need not be confined to purely legal considerations . . . . In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.”).

<sup>129</sup>MODEL RULES OF PROF’L CONDUCT R. 2.1 (2004).

<sup>130</sup>*Id.*

<sup>131</sup>*See* RESTATEMENT OF THE LAW GOVERNING LAWYERS § 94, cmt. h, n.3 (“Whether a lawyer may appropriately charge an hourly fee for [non-legal aspects of a proposed course of conduct, including moral, reputational, economic, social, political and business aspects] depends on whether the parties contemplated that the lawyer’s compensated services would include such advice.”). *See also* Sanford Levinson, *The Lawyer as Moral Counselor: How Much Should the Client Be Expected to Pay?* 77 NOTRE DAME L. REV. 831, 838 (2002) (proposing that lawyer and client split the bill for “time spent in conversation about morals” because “the conversation is as much in the lawyer’s interest (as well as, of course, at the lawyer’s behest) as in the cli-

prohibits or regulates business transactions and solicitation of gifts, but it says nothing about solicitation for a cause, a candidate, or a religion.<sup>132</sup>

Even while permitted, discussion of religion with clients is often inappropriate. What is most bothersome about the American Airlines example is the pilot's abuse of his power in imposing his views on a literally captive audience of buckled-in passengers. While perhaps not captive to the same degree, in many practice contexts clients are often more vulnerable than their trusted lawyers.<sup>133</sup> For this reason some ethics authorities advocate prohibition of otherwise permitted behavior between lawyer and client, including the giving of gifts as well as consensual sexual relationships.<sup>134</sup> But it is important to emphasize that these concerns go to a professional's coercive abuse of power, and not the discussion of religion.<sup>135</sup>

In light of these concerns, some have suggested that a lawyer must disclose her commitment to religious lawyering to each client at the start of the representation.<sup>136</sup> Here, the legal ethics rules provide the

ent's.').

<sup>132</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.8(a) (2003) (prohibiting an attorney from entering into a business transaction with or knowingly acquiring a pecuniary interest adverse to a client unless certain conditions are met); MODEL RULES OF PROF'L CONDUCT R. 1.8(c) (2002) ("A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client.").

<sup>133</sup> Note, however, that in certain practice contexts the client dominates, thus aspects of this analysis would not apply. See Uelmen, *supra* note 35, at 1092 ("[I]n the relationship between a corporate client and its outside counsel, it may be the client who dominates the relationship or manipulates the lawyer. Concerns about the lawyer 'imposing' personal values may be out of context.").

<sup>134</sup> See, e.g., John M. O'Connell, *Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule*, 92 COLUM. L. REV. 887, 909 (1992) (discussing the effect of the attorney-client power dynamic on the client's ability to consent to sex); Malinda L. Seymore, *Attorney-Client Sex: A Feminist Critique of the Absence of Regulation*, 15 YALE J.L. & FEMINISM 175 (2003) (arguing that attorney-client sex is exploitative and contributes to the poor public perception of lawyers). See also Yael Levy, *Attorneys, Clients and Sex: Conflicting Interests in the California Rule*, 5 GEO. J. LEGAL ETHICS 649, 657-58 (1992) (expressing concern regarding attorney-client sex especially where client is vulnerable). See generally Roger C. Cramton, *Symposium: The Future of the Legal Profession: Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 560 (1994) (noting that the potential for client exploitation is increased when the client is vulnerable).

<sup>135</sup> See Uelmen, *supra* note 35, at 1089 (arguing that it is unfair and inaccurate to base a critique of religious lawyering on "superficial caricature[s]" of religious people as "awkward and bumbling in the course of . . . social interactions," and rigid and over-bearing in how they present their views).

<sup>136</sup> See, e.g., Azizah Y. al-Hibri, *supra* note 28, at 1139 (advocating that a lawyer disclose his or her approach to lawyering at the outset of representation and identify his or her religious beliefs to the extent relevant to the case); B. Carl Buice, *Practicing Law to the Glory of God*, 27 TEX. TECH L. REV. 1027, 1033 (discussing potential clarification on attorney's approach in divorce cases); Harold S. Lewis, Jr., *Shaffer's Suffering Client, Freedman's Suffering Lawyer*,

proper framework for balancing lawyer beliefs and client vulnerability. Rule 1.7(a)(2) requires a lawyer to disclose a personal interest only when there is a “significant risk” that it will “materially” limit the representation.<sup>137</sup> Unless such a material limit exists, as in the rare case where a religious lawyer would refuse to seek a particular remedy that would ordinarily be available, the rules do not and should not require disclosure. Religion should be treated no differently than other attitudes or opinions that could be conceivably relevant but pose no significant risk of a material limitation.

Nevertheless, when a lawyer introduces irrelevant personal comments, whether religious, political, or moral, disclosure may be appropriate as a matter of prudence and respect. Like those American Airlines passengers who felt that the pilot was disrespectful, clients who wish to avoid proselytizing of any kind in their professional relationships should be able to do so.<sup>138</sup>

### 3) *Is religious lawyering dangerous for democracy?*

The third challenge to religious lawyering is the argument that it poses a danger to liberal democracy—our system of majority rule that protects individual and minority rights.<sup>139</sup> As some initial reactions to religious lawyering indicate, this objection carries a lot of intuitive

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38 CATH. U. L. REV. 129, 131 (1988) (“unfair surprise to the client about possible outcomes could be mitigated substantially if a lawyer holding Shaffer’s view were to disclose the moral limits of her advocacy when the relationship is formed.”). *But see* Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19, 55 (1997) (noting that not all professional norms are open to negotiation between lawyers and clients); Reza, *supra* note 35, at 1059 (noting reservations about moral counseling in the criminal context as the option to request different counsel is not typically available to the criminal defendant who receives a court-appointed lawyer).

<sup>137</sup> MODEL RULES OF PROF’L CONDUCT R. 1.7(a)(2) (stating that a concurrent conflict of interest exists if “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer”); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-101(A) (“Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.”).

<sup>138</sup> As Bob Cochran has noted, the problem of lawyers imposing their own values on clients is certainly not limited to the religious lawyering sphere, as is evident by the ample literature on moral counseling. *See* Robert F. Cochran, *Crime, Confession, and the Counselor-at-Law: Lessons from Dostoyevsky*, 35 HOUS. L. REV. 327, 328 (1998) (“Moral influence occurs almost every time a client enters a law office.”); *id.* at 391-396 (presenting religiously grounded analysis of the elements of respectful moral conversation between lawyers and clients); THOMAS L. SHAFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS & MORAL RESPONSIBILITY* 50-54 (1994) (same).

<sup>139</sup> *See* PERRY, *supra* note 109, at 36 (“The foundational moral commitment of liberal democracy is to the true and full humanity of every person—and, therefore, to the inviolability of every person—without regard to race, sex, religion, and so on.”).

punch. For example, at a Fordham conference, when a distinguished lawyer proclaimed the importance of his relationship with Jesus Christ, a prominent judge walked out and angrily told one of us, “You have created a nightmare.” Some law school faculty and legal scholars have expressed similar concerns.<sup>140</sup>

These fears appear to arise from two sources. First, in a country that is more than 75% Christian,<sup>141</sup> Jews, Muslims, and people of other minority religions might very well worry that they will suffer unequal and unfair treatment if actors in our legal system make decisions based on religious identity.<sup>142</sup> Moreover, non-believers may have an even greater fear of discrimination given that close to 87% of Americans identify themselves as believers.<sup>143</sup> A second and related worry is that allowing more room for religion in the public square will inevitably lead to divisiveness and intolerance, adding further fuel to the fires of polarizing culture wars.<sup>144</sup>

Despite these fears, religious lawyering does not offend our system of liberal democracy. The United States Constitution promotes liberal democracy by prohibiting the establishment of religion and protecting free exercise.<sup>145</sup> While disagreeing about the particular contours of these provisions, most political theorists agree that in a liberal democracy, citizens should have the freedom to make political decisions based on religious convictions.<sup>146</sup> Whether and how to express

<sup>140</sup> See, e.g., DAVID B. LYONS, ETHICS AND THE RULE OF LAW 191 (1984) (to appeal to principles and arguments not accessible to all is “to deny the essential spirit of democracy”); Minow, *supra* note 69, at 674 (worrying that “the notable increase in the religious content of political argument will make communication, trust, and coalition building across different groups more difficult, and unravel our already fraying public realm.”). See also RICHARD RORTY, *Religion as a Conversation Stopper*, in PHILOSOPHY AND SOCIAL HOPE 171 (1999) (“The main reason that religion needs to be privatized is that, in political discussion with those outside the relevant religious community, it is a conversation-stopper.”).

<sup>141</sup> See Barry A. Kosmin & Seymour P. Lachman, *The American Religious Identity Survey* (2001), available at [http://www.adherents.com/rel\\_USA.html#religions](http://www.adherents.com/rel_USA.html#religions) (last visited Nov. 4, 2004).

<sup>142</sup> See, e.g., Minow, *supra* note 69, at 672 (including among “ambivalent responses” to the religious turn in professional ethics: “As a member of a religious minority group, I am reminded of the risk of second-class status, exclusion, and worse.”).

<sup>143</sup> See Kosmin & Lachman, *supra* note 141.

<sup>144</sup> See, e.g., MARTIN E. MARTY, POLITICS, RELIGION AND THE COMMON GOOD 23-41 (2000) (outlining the argument that religion in the public square can be divisive, disruptive and violent); Minow, *supra* note 69, at 672 (noting concerns about incendiary effects when political actors have mobilized people around religious differences in Bosnia, Israel and Northern Ireland); *id.* at 673 (noting potentially divisive effect of religious discourse); William P. Marshall, *The Other Side of Religion*, 44 HASTINGS L.J. 843, 859 (1993) (describing the “dark side” of religion that “has the potential to be a powerfully destructive political force.”).

<sup>145</sup> See U.S. Const. amend. I.

<sup>146</sup> See e.g., KENT GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE 215-216 (1988) (arguing that described model of liberal democracy “leaves considerable room for religious citizens to rely on religious grounds for moral judgments that effect public policy.”); Foley, *supra* note 29 (discussing whether it is ever appropriate in our system of law for a princi-

religious convictions in the public square, especially when one serves a public role, is of course the subject of intense controversy. But even assuming the disputed point that the lawyer-client relationship is part of the public square,<sup>147</sup> this debate implicates how religious lawyers discuss their religion with their clients, not whether they can appropriately ground their approach to lawyering in their religion.<sup>148</sup>

Even when religious lawyering is placed against the backdrop of American liberal democracy's protections and constraints, some may still fear discrimination and intolerance. It is understandable that minority groups fear majorities, whether religious or not. Nonetheless, as a practical matter, the United States continues as a liberal democracy only because the vast majority of religious Americans find liberal democratic values consonant with their religious values.<sup>149</sup>

Fears about religious lawyering may also stem from misperceptions and stereotypes about religion and religious people. The assumption that religion leads to divisiveness and cultural polarization is often based on a perception of religious traditions as monolithic. In reality, religious perspectives both within and among different religious traditions run the cultural gamut, and intersect with secular perspectives at many points along the spectrum.<sup>150</sup> Similarly, the as-

ple of law to depend upon a religious belief); Sanford Levinson, *Religious Language and the Public Square*, 105 HARV. L. REV. 2061 (1992) (reviewing MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991)).

<sup>147</sup> See Minow, *supra* note 69, at 674-75 (arguing that Establishment clause concerns "seem largely in the background" when "religion is joined with professional identity and practice. Except where the professional fills a public role—such as Attorney General, Surgeon General of the United States, or Supreme Court Justice—the professional operates as a private individual whose own acts do not risk violating the Establishment Clause or the values it represents."); KENT GREENAWALT, *PRIVATE CONSCIENCES & PUBLIC REASONS* 134-164 (1995) (proposing distinct analyses for judges, legislators, and ordinary citizens).

<sup>148</sup> See 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, 163-64 (2004) ("Rawls would permit comprehensive religious and moral doctrines to be introduced into public discourse about fundamental political principles provided that those who make these arguments also give public reasons to support their position."). See generally JOHN RAWLS, *POLITICAL LIBERALISM* 224-25 (1993) (stating that reasons used in political discussions must be accessible to the comprehension, scrutiny, and response of those who do not share the speaker's religious identity); John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765 (1997).

<sup>149</sup> See Pearce, *supra* note 6, at 1269 ("... the conduct of the Jewish lawyer in upholding the rule of law and in serving the poor could be quite consistent with professional ideals."). See generally John A. Coleman, S.J., *Public Religion and Religion in Public*, 36 WAKE FOREST L. REV. 279, 281 (2001) (discussing sociological studies which show how religion is an "indispensable anchor" for a renewed society, and specifically how religion uniquely or disproportionately generates behaviors, attitudes and resources essential to civic virtue and engagement).

<sup>150</sup> See generally STEPHEN L. CARTER, *GOD'S NAME IN VAIN: THE RIGHTS AND WRONGS OF RELIGION IN POLITICS* (2000) (tracing religious activism and religious language in various political causes in United States history); Jay D. Wexler, *Framing the Public Square*, 91 GEO.



sumption that religious people are intolerant and incapable of complex interactions in a pluralistic society is a stereotype.<sup>151</sup> Beyond stereotypes, of course, neither religious nor non-religious people have monopolized small-mindedness or generosity of spirit.<sup>152</sup>

If a lawyer's religious approaches to lawyering generate discrimination and intolerance, the lawyer's conduct should be subject to professional and social critique, and discipline where appropriate, just as any other approach that is less than respectful of others. To the extent that religious approaches and perspectives are difficult for others to understand, religious lawyers should work harder to make themselves understood—as would be reasonable to ask of any attorney who fails to communicate her views effectively.

At its core, religious lawyering is an invitation to appreciate the ways that liberal democracy leaves room for a variety of approaches and perspectives to enrich the practice of law without detracting from its essential values. Indeed, we will better promote the rule of law by honestly acknowledging our differences and managing them rather than denying that they exist. As Martha Minow has observed, "You cannot avoid trouble by ignoring difference. You cannot find a solution in neutrality."<sup>153</sup>

#### CONCLUSION

At a time when many believe that law is no longer a noble profession, many lawyers see no reason to devote time and energy to promoting the public good. Religious lawyering may offer a powerful antidote: a robust framework for lawyers to integrate into their pro-

L.J. 183 (2002) (reviewing GOD'S NAME IN VAIN). See also Cochran, *Professionalism in the Postmodern Age*, *supra* note 40, at 320 ("It is my hope that as we seek to identify lawyer ideals within our traditions, a common vision will emerge; that, as Anthony Cook has said Martin Luther King found—as we go deeper into our particularities, we find commonalities."); PERRY, *supra* note 109, at 41 (discussing biblical religious imagery as a common cultural patrimony). See also Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 SAN DIEGO L. REV. 817, 841-42 (1993):

Even if people are exposed in argument to ideas over which they are bound to disagree . . . it does not follow that such exposure is pointless or oppressive. For one thing, it is important for people to be acquainted with the views that others hold. Even more important, however, is the possibility that my own view may be improved, in its subtlety and depth, by exposure to a religion or a metaphysics that I am initially inclined to reject.

<sup>151</sup> See Uelmen, *supra* note 35, at 1089.

<sup>152</sup> See MICHAEL J. PERRY, RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES 46 (1997) ("[W]e probably need reminding that, at its best, religious discourse in public culture is not less dialogic—not less open-minded, not less deliberative—than is, at its best, secular discourse in public culture.")

<sup>153</sup> MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 374-75 (1990).

professional lives their most deeply rooted values, perspectives and critiques, and persuasive reasons to improve the quality of justice and work for the common good. At its best, religious lawyering echoes Martin Luther King's advice to the street sweeper. How wonderful it would be, indeed, if we practiced law so well that the host of heaven and earth would pause to say, here lived great lawyers who did their job well.