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WHAT'S LOVE GOT TO DO WITH IT?: CONTEMPORARY LESSONS ON LAWYERLY ADVOCACY FROM THE PREACHER MARTIN LUTHER KING, JR.

DEBORAH J. CANTRELL¹

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ABSTRACT

Lawyers have long been inspired by the advocacy work of Martin Luther King, Jr. From his work on the Montgomery bus boycott, to lunch counter sit-ins, to his March on Washington, Dr. King demonstrated skilled

1. Associate Professor & Director of Clinical Programs, University of Colorado Law School. I owe special gratitude to Russell Pearce and Amy Uelman, who fostered an interfaith conversation on "Love of Neighbor," culminating in an intensive reflection in March 2008 at the Focolare Community in Loppiano, Italy, and who have continued to guide me. I owe equal gratitude to all of the Loppiano conversants. I benefitted from post-Loppiano conversations with Russ, Amy, Ian Weinstein and Tsvi Blanchard. Finally, my thanks to Nestor Davidson, David Getches, Clare Huntington, Samuel Levine, Mark Loewenstein, Dayna Matthew, Max Minzner, Anne-Claire Mott, Pierre Schlag, and colleagues at the Colorado Law faculty workshop, for their guidance.

advocacy that resulted in important legal advancements. While lawyers give primacy to Dr. King as an advocate, Dr. King gave primacy to his work as a preacher. This article challenges the legal profession to consider the ways in which Dr. King, the preacher, may be as inspirational and instructive as Dr. King, the civil rights icon. Just as Dr. King's religious values were not abstracted from their context, but rather gave life to a seemingly intractable contemporary problem of values clashing with law, so too can lawyers deploy contextualized religious values consistent with their professional obligations and roles. The article explores Dr. King's essential concept, love in action, which he derived from his own Christian faith, and considers its corollaries in two other faith traditions, Judaism and Buddhism. The article then applies love in action in two typical lawyering situations – an initial client meeting and a settlement offer, and concludes that the preacher-like call of Dr. King for love in action can inspire lawyers as powerfully and appropriately as the calls to action of the advocate Dr. King.

I. INTRODUCTION

Along the way of life, someone must have sense enough and morality enough to cut off the chain of hate and evil. The greatest way to do that is through love. I believe firmly that love is a transforming power that can lift a whole community to new horizons of fair play, goodwill, and justice.²

For many lawyers, Martin Luther King, Jr. is a powerful symbol. His life inspires lawyers to believe in the possibility of monumental legal change through community mobilization; consider his work on the Montgomery bus boycott.³ His oratory inspires lawyers to believe in the possibility of monumental legal change through persuasion; consider how often Dr. King's *I Have a Dream* speech is quoted.⁴ Lawyers use Dr. King's speeches and sayings as a way of calling forth a narrative about how legal structures (among others) in this country were made to acknowledge a

2. MARTIN LUTHER KING, JR., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 63 (Clayborne Carson ed., Grand Central Publishing 1998) [hereinafter AMLK].

3. *See id.* at 50–53. The Montgomery bus boycott came after Rosa Parks refused to give up her bus seat to a white man. *See id.* It ended almost a year later when the United States Supreme Court affirmed a special three-judge district court order declaring Alabama's bus segregation laws unconstitutional. *See id.* at 93.

4. *See* MARTIN LUTHER KING, JR., *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 217 (James Melvin Washington ed., HarperCollins Publishers 1991) (1986) [hereinafter TOH] (emphasis added); *see, e.g.*, DAVID A. BOBBITT, *THE RHETORIC OF REDEMPTION: KENNETH BURKE'S REDEMPTION DRAMA AND MARTIN LUTHER KING, JR.'S "I HAVE A DREAM" SPEECH* ix (Robert E. Denton, Jr. ed., Rowman & Littlefield Publishers, Inc. 2004).

more legitimate sense of equality.⁵ Lawyers also look to Dr. King as a model advocate – a zealous and loyal representative of his underserved and underrepresented community.⁶

Dr. King, himself, recognized the importance of persuasion by lawyers. In his autobiography, he recounts his arrest in 1960, as the lunch counter sit-in movement intensified, for falsifying state income tax returns.⁷ He was defended by William Ming and Huber Delaney – two African-American lawyers from the North.⁸ Dr. King knew the criminal charges were illegitimate and an attempt by the “white Southern power structure” to derail his civil rights work.⁹ About the efforts of his lawyers, Dr. King recalled:

They [Ming and Delaney] brought to the courtroom wisdom, courage, and a highly developed art of advocacy . . . I am frank to confess that on this occasion I learned that truth and conviction in the hands of a skillful advocate could make what started out as a bigoted, prejudiced jury, choose the path of justice.¹⁰

Dr. King was acquitted.¹¹ Dr. King, the advocate, knew the power of persuasion, not only by his own work, but also by the work of lawyers around him.

For lawyers, then, looking at Martin Luther King, Jr. – in particular, Dr. King the advocate – his portrait fits smoothly into the contours of what many of us would expect of a socially-activist lawyer. Thus, it is easy for us to look to Dr. King as a model for what socially-engaged lawyering might look like. How might that model change if we consider Dr. King not in an advocacy role, but in his role as a preacher?

King gave primacy to his role as a preacher. As he said upon his installation in 1954 as minister at the Dexter Avenue Church in Montgomery: “I come to you with only the claim of being a servant of Christ, and a feeling of dependence on his grace for my leadership. I come

5. See Mark DeForrest, *Introducing Persuasive Legal Argument Via The Letter From a Birmingham City Jail*, 15 J. LEGAL WRITING INST. 130, 132–33 (2009), available at http://www.law2.byu.edu/law_library/jlwi/archives/2009_1.htm; see also AMLK, *supra* note 2, at 226 (“I have a dream that one day this nation will rise up and live out the true meaning of its creed—we hold these truths to be self-evident that all men are created equal.”).

6. See MODEL RULES OF PROF’L CONDUCT pmbl. (2009), available at <http://www.abanet.org/cpr/mrpc/preamble.html> (demonstrating these are the same qualities called on from lawyers under the ABA Model Rules of Professional Conduct).

7. See AMLK, *supra* note 2, at 135, 144–45.

8. See *id.* at 141.

9. *Id.*

10. *Id.*

11. See *id.*

with a feeling that I have been called to preach and to lead God's people."¹² Similarly, after the first day of the Montgomery bus boycott, for which organizers had hoped for 60% participation, and which had garnered almost 100% participation of the Black community,¹³ Dr. King was asked to speak to the community gathered that night at Holt Street Church.¹⁴ With little time to draft his remarks, Dr. King spoke without notes, proclaiming his now well-known statement: "And we are not wrong. We are not wrong in what we are doing. If we are wrong, the Supreme Court of this nation is wrong. If we are wrong, the Constitution of the United States is wrong. If we are wrong, God Almighty is wrong."¹⁵ King's remarks had "evoked more response than any speech or sermon [he] had ever delivered, and yet it was virtually unprepared."¹⁶ King credited his ability so strongly to evoke and capture the sentiment that night not to his commitment to civil rights or his capacity as an orator, but to his calling as a preacher.¹⁷

If for Dr. King, then, his ministry was the primary wellspring for the way in which he approached his advocacy, what did that mean for Dr. King? Further, what does it mean for lawyers today who look to Dr. King as an inspirational model for their own lawyerly advocacy? As the opening quote of this article makes clear,¹⁸ Dr. King relied on the principle of love and its resulting requirement of nonviolence. Acknowledging that love and nonviolence might be challenging commitments to be asked from the greater Black community, Dr. King took great care in delineating what he meant by love.¹⁹ He articulated many times that his theory of love

is not a weak, passive love. It is love in action. . . . [It] is love seeking to preserve and create community. It is insistence on community even when one seeks to break it. . . . In the final analysis, agape [Greek for love] means a recognition of the fact that all life is interrelated. All humanity is involved in a single process, and all men are brothers.²⁰

Dr. King believed that his practice based on love in action could bring about legal change, just as it could bring about social change.²¹ He saw the

12. *Id.* at 46.

13. *See* AMLK, *supra* note 2, at 55.

14. *See id.* at 59.

15. *Id.* at 58–60.

16. *Id.* at 61.

17. *See id.*

18. *See supra* Abstract.

19. *See* AMLK, *supra* note 2, at 67–68. For example, in his autobiography, Dr. King recounts that during the Montgomery bus boycott he was challenged about the wisdom of building a campaign based on love and nonviolence. *See id.*

20. TOH, *supra* note 4, at 20.

21. *See id.*; *see also* STEWART BURNS, *TO THE MOUNTAINTOP: MARTIN LUTHER KING JR.'S SACRED MISSION TO SAVE AMERICA 1955–1968* 93–94, 126–27 (Harper San Francisco 2004).

bus segregation law change in Montgomery.²² He saw the change in lunch counter segregation in Birmingham.²³ He saw the passage of the Civil Rights Act of 1964.²⁴ He also saw and experienced innumerable ways in which the law may be used illegitimately: a Montgomery jury refusing to convict seven white defendants on charges related to bombings,²⁵ his myriad arrests designed to curtail his advocacy,²⁶ and injunctions entered to stop lunch counter sit-ins.²⁷ Dr. King, the preacher, was called by his faith to commit to love in action, and Dr. King, the advocate, demonstrated its power to effect legal and social change.

Fast forward forty-five years to contemporary time. Imagine an annual meeting of the Young Lawyers Division of the American Bar Association – a group whose membership is comprised of lawyers 36 years or younger, or who have practiced five years or less.²⁸ To the assembled group of lawyers, almost all of whom were born after Dr. King was assassinated, the keynote speaker talks about his hopes for the ways in which the young lawyers will practice law. The speaker counsels, “[Love] says you must go on with wise restraint and calm reasonableness but you must keep moving.”²⁹ After acknowledging that the law can be a way in which society permits a kind of violence to be played out between individuals, entities, communities, and governments,³⁰ the speaker then further counsels, “. . . nonviolence in the truest sense is not a strategy that one uses simply because it is expedient at the moment; nonviolence is ultimately a way of life that men live by because of the sheer morality of its claim.”³¹ How would such a speech be responded to by the assembled young lawyers? Could those young lawyers embrace the message of Dr. King, the preacher, in the same way they might be willing to embrace Dr. King, the iconic civil rights advocate?

This article takes up those questions. In Part II, it sketches the contours of the historic tension in the legal profession between a perceived set of professional values and other value sets, particularly those based on

22. See AMLK, *supra* note 2, at 214.

23. See *id.*

24. See *id.* at 242.

25. See *id.* at 103–04.

26. See *id.* at 145–47 (providing Dr. King’s arrest in 1960 during a sit-in in Atlanta as an example).

27. See *id.* at 180–81.

28. See Young Lawyers Division of the American Bar Association, <http://www.abanet.org/yld/> (last visited Oct. 6, 2009).

29. TOH, *supra* note 4, at 14.

30. Robert M. Cover, *Violence and the Word*, 95 Yale L.J. 1601 *passim* (1986).

31. TOH, *supra* note 4, at 17.

religion.³² Using the life of Dr. King and his theory of love in action, the article then argues that to understand the advocacy lessons of Dr. King,³³ the preacher, lawyers must set aside any generalized discomfort about religious values, and must instead look to particularized values and the effect on legal advocacy of those values in action.³⁴ Understanding Dr. King's theory of love in action to consider not just relationships between individuals, but also relationships between strangers or between estranged communities, the article considers Dr. King's love in action as a variation of the Biblical commandment of love of neighbor.³⁵ The article assesses whether the actions required by love of neighbor are consistent with actions required by legal professional values.³⁶ The article then makes a further unique contribution by considering love of neighbor across multiple faith traditions – Christian, Jewish, and Buddhist.³⁷ The article concludes lawyers should be as inspired by Dr. King, the preacher, as they are by Dr. King, the extraordinary orator and creator of legal change.³⁸ The preacher's call for love in action provides a set of advocacy skills deeply consistent with, and encouraging of, the ways in which the profession calls on, and inspires, its lawyers to practice.

II. THE CURRENT STATE OF REFLECTION

In order to consider the possibility of lawyers being inspired by Dr. King's call for love in action, one must first acknowledge the legal profession's unease with religious values.³⁹ That unease is not new, and legal scholars have reflected on the place of faith in lawyering for some

32. See *infra* Part II.A.

33. See *infra* Part II.C.

34. See *infra* Part II.C. Dr. King's theory of love in action has a parallel in legal theory pioneered by Stewart Macaulay. See Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AMER. SOCIOLOGICAL REV. 1, 1 (1963), available at <http://www.law.wisc.edu/facstaff/macaulay/papers/non-contractual.pdf>. In 1963, Macaulay published a seminal work in which he introduced the theory of law in action as it related to business contracts. See *id.* at 5–19. Macaulay uncovered the ways in which business members relied on their relationships with each other to determine and interpret what they expected from contract law. See *id.* at 6–12. Just as King expected the law to respond to changes in relationships between communities, so too business members expect formal contract law to give way to the demands of their relationships. See *id.* at 12–19.

35. *Leviticus* 19:18 (King James).

36. See *infra* pp. 20–22.

37. See *infra* pp. 28–35.

38. See *infra* pp. 52–53.

39. See generally Calvin G. C. Pang, *Eyeing The Circle: Finding a Place for Spirituality in Law School Clinic*, 35 WILLIAMETTE L. REV. 241, 243–44 (1999) (delving into whether teaching law students and spirituality are mutually exclusive).

time.⁴⁰ That scholarship has laid out parameters that are useful to overview before considering whether lawyers are able to use Dr. King, the preacher, as a teacher of lawyerly practice. One might envision the existent scholarship as a kind of call and response. The call comes from lawyers and scholars who articulate a traditional view of the lawyer as partisan for client without accountability for the client's moral choices, and with faith as a suspect motivator. The response comes from another group of lawyers and scholars who posit the lawyer to be in morally engaged relationship with a client, informed by the lawyer's faith, and also by a client's faith, if present.

A. THE CALL

The view of lawyering reflected by the call is a longstanding one – what Bill Simon has labeled the “Dominant View” of lawyering in the United States.⁴¹ It understands our adversary system of adjudication to demand that actors in the system (lawyers, judges, disputants) conform their behaviors to their assigned roles within the system.⁴² The roles of lawyers and disputants, in particular, are articulated in ways intended to effectuate core liberal concepts of personal autonomy and freedom of thought.⁴³

Under the Dominant View, the adversary system is based on three assumptions.⁴⁴ First, that the disputants likely each have access to differing pools of information relevant to the dispute, and have differing points of view as to what an accurate, fair, or just result would be. Second, that the most effective way to develop a full and accurate accounting of the underlying facts and law of a dispute is to have an ardent presenter for each side. Third, that a neutral arbiter (the judge) can take the competing presentations and from them determine an accurate/fair/just result.

40. See Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1075–77 (1998) (becoming the first article to use the label “Religious Lawyering Movement,” and also providing a historical overview of scholarship about law and religion). As Russell Pearce notes, the Religious Lawyering Movement was presaged by earlier writings, most prominently those of Thomas Shaffer. See *id.* at 1076.

41. See WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 7 (Harvard Univ. Press 1998).

42. See *id.* at 7–11.

43. See *id.* at 63–64; Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 400–01 (2006) (noting the importance of individual autonomy in U.S. political traditions).

44. See SIMON, *supra* note 41, at 7–11.

45. *Id.*

Based on those assumptions, and mindful of personal autonomy and freedom of thought, the adversary system derives the roles of disputant, lawyer, and judge.⁴⁵ The disputant is the one whose autonomy and freedom of thought are to be secured.⁴⁶ The lawyer is the translator and presenter for the disputant within the processes of the adversary system.⁴⁷ In order to preserve the disputant's autonomy and freedom of thought, the lawyer owes the disputant a duty of loyalty to accurately translate the dispute into terms appropriate to be presented within the adversary system, and must then advocate the disputant's point of view vigorously. Under the Dominant View, the lawyer violates the disputant's autonomy and freedom of thought if the lawyer imposes her own substantive moral judgments when translating or presenting the disputant's case.⁴⁸ In exchange for not engaging her own moral judgments, the lawyer is not held accountable by the adversary system for the disputant's immoral choices.

There are varied descriptions of why and how a lawyer in the adversary system is to preserve disputant autonomy and freedom of thought. The most basic is to describe the lawyer-disputant relationship as one of agent and principal.⁴⁹ Under the doctrine of agency law, the lawyer is subordinate to the disputant-principal, and takes instruction from the principal.⁵⁰ By relying on an agency relationship, the disputant is the lead decision-maker, and thus is presumed to be motivated to keep her own interests at the fore.⁵¹ The lawyer, as agent, is not permitted to trump the disputant's directives.⁵²

46. *Id.*

47. *Id.*

48. Here, I am distinguishing between judgments about procedure or strategy from moral judgments about the merits of the underlying dispute or about the disputant's motivation. For example, the Dominant View expects the lawyer to give advice to the disputant that it would be better to file the lawsuit in state court rather than federal court, or that the complaint should include causes of action in both contract and tort. The Dominant View prohibits the lawyer from making moral judgments about the merits of the underlying dispute or about the disputant's motivation. For example, refusing to raise a statute of limitations defense in a case in which the disputant agrees she is liable.

49. See Eli Wald, *Taking Attorney-Client Communications (And Therefore Clients) Seriously*, 42 U.S.F. L. REV. 747, 751 (2008) (providing several cites to state court decisions in which the lawyer-disputant relationship is described as an agency relationship).

50. See RESTATEMENT (THIRD) OF AGENCY § 1.01 (Agency Defined) (2006).

51. See Wald, *supra* note 49, at 759.

52. See *id.* at 751–52.

The agency descriptive has been criticized by ethics scholars, who reject it as factually simplistic.⁵³ The descriptive presumes the power dynamic between lawyer and disputant is in favor of the disputant. However, as an empirical matter, the dynamic generally is the opposite, except in those cases in which the disputant is well-resourced and a legal sophisticate (such as a corporate client).⁵⁴ Thus, scholars argue that the agency relationship is more often turned on its head with lawyer as principal and disputant/client as agent.⁵⁵

In an effort to better preserve a disputant-client's autonomy, scholars have offered another descriptive – client-centered lawyering.⁵⁶ The client-centered approach is as much prescriptive as descriptive in that it instructs a lawyer to be aware of the power imbalance between attorney and client and prescribes the ways in which a lawyer should act in order to preserve client/disputant autonomy.⁵⁷ Under a client-centered approach, the lawyer actively engages the client in the relationship so that the client is equally involved in identifying, describing and categorizing her problem – both as legal and as non-legal matters.⁵⁸ The lawyer remains neutral as to the client's goals and choices as a way of ensuring the client retains her autonomy and freedom of thought.⁵⁹ In essence, the client-centered model prescribes lawyerly conduct so that the lawyer truly remains the agent of the client/principal.

Critical to the concept of client-centered lawyering is the idea that a client may conceptualize her problem along many different dimensions. She might see her problem as one of tangled relationships, or of economic

53. See *id.* at 752–54 (summarizing scholars' rejection of principal-agency descriptive).

54. *Id.*

55. See, e.g., Joseph Allegretti, *The Role of a Lawyer's Morals and Religion When Counseling Clients in Bioethics*, 30 *FORDHAM URB. L.J.* 9, 12–13 (2002) (describing such a transmutation as an "authoritarian" model of lawyering).

56. See DAVID A. BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH*

(1977) [hereinafter *LEGAL INTERVIEWING*] (developing the phrase "client-centered approach"). The book was further explicated in a subsequent work. See DAVID A. BINDER & SUSAN PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (West Publishing Co. 1991) [hereinafter *LAWYERS AS COUNSELORS*]. The phrase is now widely used, particularly among clinical law faculty. See, e.g., Laurie Shanks, *Whose Story is it Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 *CLINICAL L. REV.* 509 (2008); Kruse, *supra* note 43, at 369 ("This article examines the history, development and theory of the client-centered approach to lawyering, which has become the most prevalent theory of lawyering taught in law school clinics.").

57. See *LAWYERS AS COUNSELORS*, *supra* note 56, at 147–53.

58. See *id.* at 135–47.

59. See Kruse, *supra* note 43, at 373–74 (noting also that scholars have developed the client-centered model in ways that permit lawyer intervention if it serves client autonomy).

disadvantage, or of legal right, or of moral right.⁶⁰ The lawyer facilitates the client's work, but does not intercede in it and does not offer the lawyer's own view on any of the dimensions. In other words, the lawyer remains neutral as to the way the client conceptualizes her problems, including the moral or ethical choices the client makes.⁶¹ When a client reaches a decision about a course of conduct (only some of which may require the lawyer's skills), it is the lawyer's job to move forward in service of the client's decision. In that way, the lawyer best preserves client autonomy and freedom of thought.

Defending client-centered lawyering, Norm Spaulding has hypothesized a set of challenges facing lawyers who are to be in service of their clients, but who also bring self interests to the representation.⁶² As Spaulding articulates the issue, the Dominant View of lawyering designs the role of lawyer to meet institutional needs of the adversary system, but lawyers are motivated to shape that role to meet their own interests.⁶³ For Spaulding, the more the lawyer's self-interest is engaged by representing the client (in Spaulding's terminology "thick identity"),⁶⁴ the more likely it is that the lawyer will use the representation to serve her own self-interests rather than the client's.⁶⁵ Spaulding understands self-interest to include economic interests (getting paid a high fee) and non-economic interests (believing a client's goal is morally right).⁶⁶ Thus, thick identification distorts the attorney client relationship in a way that diminishes client autonomy.⁶⁷

Most relevant for this article, under Spaulding's model, thick identity constrains the legal profession's ability to honor value pluralism. A lawyer who thickly identifies with a client's values will go overboard for that client, while a lawyer who cannot identify with a client's values, will refuse to represent the client.⁶⁸ Thus, the kind of values put in play to the adversary system, and the degree to which those values are argued for, are derived from the limited set of values represented by members of the legal

60. See, e.g., *LAWYERS AS COUNSELORS*, *supra* note 56, at 138–40.

61. See *id.* at 147–50.

62. See Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1 *passim* (2003).

63. See *id.* at 10–11.

64. *Id.* at 18.

65. See *id.* at 23.

66. See *id.* at 16.

67. See *id.* at 66–71 (describing examples of attorney self-interest that triggered paternalistic behavior towards the client).

68. See Spaulding, *supra* note 62, at 13.

profession, not the larger set represented by the public at large.⁶⁹ According to Spaulding, it is only through thin identity leading to true client-centered lawyering, that value pluralism is protected.⁷⁰ For Spaulding, there is *no* possibility of unproblematic thick identity.⁷¹

From the above description of the Dominant View of lawyering it is straightforward to discern that the Dominant View mistrusts lawyers who look to religious values for guidance about how to lawyer.⁷² The critique is a respectful one, but nonetheless, an ardent one that uniformly counsels lawyers to separate religious faith from lawyering.⁷³ A lawyer's religious values are understood to be, at best, irrelevant, to a lawyer's job to serve client autonomy and client freedom of thought. At worst, religious values create a thick identity problem – they cause a lawyer to either overly engage or overly disengage with a client. Even if a client were to raise religiously-based concerns, or articulate her problem in religious terms, the lawyer should do nothing more than acknowledge the client's concerns and encourage the client to make her own decisions about the place of religion in solving her problem.⁷⁴

Sandy Levinson, in his oft-cited 1992 article *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*,⁷⁵ considered what it might mean for a Jewish lawyer to bring her faith to bear on her lawyering.⁷⁶ To frame the conversation, he notes that

[t]he triumph of what might be termed the standard version of the professional project [the Dominant View] would, I believe, be the creation, by virtue of professional education, of almost purely fungible

69. See *id.* at 78–79.

70. See *id.* at 79 (“[T]hin professional identity operationalizes this presumption [of autonomy] in the social arena by ensuring access to law on open terms, radically decentralizing authority to decide who shall have representation and what social interests and comprehensive doctrines shall be cast in the legitimating language of the law.”).

71. See *id.* Interestingly, Spaulding argues his model does allow for some cause lawyering (i.e., lawyering driven by commitment to a social cause compared to for-profit work). See *id.* He suggests that those cause lawyers who work to fill the void in access to legal services for the poor or disempowered are closer to his ideal of thin identity because they are motivated by the need for legal services, not by the needs of particular clients. See *id.* at 101–02. For a description of faith-based lawyering as cause lawyering, see Kevin R. Den Dulk, *In Legal Culture, But Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 197–219 (Austin Sarat & Stuart A. Scheingold, eds., Stanford Univ. Press 2006).

72. See Spaulding, *supra* note 62, at 77.

73. See *id.*

74. See Allegretti, *supra* note 55, at 23–25 (posing a hypothetical under the client-centered model where lawyer does not respond to client's religious concerns).

75. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577 (1992).

76. See *id.* at 1577.

members of the respective professional community. Such apparent aspects of the self as one's race, gender, religion, or ethnic background would become irrelevant to defining one's capacity as a lawyer.⁷⁷

That process of professional education is the bleaching out of personal ethics, including those derived from religious faith.⁷⁸

While Levinson stops short of affirmatively calling on law schools to bleach out their students, he crafts a tale of lawyering from faith that suggests that its most powerful consequence is to put a lawyer at odds with obligations of lawyering under the Dominant View.⁷⁹ For example, a Jewish lawyer who wishes to observe the Jewish Sabbath or Jewish holidays, but who has a client who needs work done on those days.⁸⁰ Or, a Jewish lawyer who wishes to advocate consistently with Jewish law (Halakhah), which Levinson understands to call for a kind of lawyering other than that envisioned by the Dominant View.⁸¹ Or, a Jewish lawyer who understands Halakhah to require certain conduct that American law would not (e.g., suing in Jewish court instead of a secular court).⁸²

In the end, Levinson's portrait is one of conflict in which a Jewish lawyer's faith will cause her to behave unprofessionally – either because she will be unable to do what her client asks her to do, or because she will dominate her client and force her client to act in a particular way.⁸³ One understands Levinson's portrait to teach that faith does not help a lawyer better serve her client, it presents only difficult obstacles that entice a lawyer to behave in domineering or dismissive ways that trump a client's autonomy and freedom of thought.⁸⁴

Martha Minow has been similarly skeptical about lawyers bringing religious values to bear in their practice.⁸⁵ Like Levinson, she raises the spectre of improperly-bounded lawyering.⁸⁶ Looking at Christianity, Minow worries that its focus on reconciliation would cause Christian lawyers to avoid the confrontation she understands is required by the adversary system.⁸⁷ As she articulates it:

77. *Id.* at 1578–79.

78. *See id.* at 1578, 1601.

79. *See id.* at 1591.

80. *See id.* at 1592.

81. *See Levinson, supra* note 75, at 1598–99.

82. *See id.* at 1602–03.

83. *See id.* at 1610–11.

84. *See id.*

85. *See Martha Minow, On Being a Religious Professional: The Religious Turn in Professional Ethics*, 150 U. PA. L. REV. 661 *passim* (2001).

86. *See id.* at 678–79.

87. *See id.*

If all lawyers followed this search for conciliation, instead of pressing adversarial interests and adverse rights, I confess I would worry. I would worry about so truncated a range of lawyering styles for a client who seeks to vindicate a right, not reconcile with an opponent, or whose sense of violation would be compounded, not assisted, by efforts to seek reconciliation. I would worry about the lawyer who is so intent on conciliation that he or she does not explore with the client all the litigation options. I would be concerned for those who do not share the lawyer's religious views. And I would be concerned for an adversary system predicated on competitive fact-finding and argument. The system will not work if the lawyers appearing in court curtail the arguments available to them in an effort to promote reconciliation between the opposing parties.⁸⁸

Minow accepts the standard justifications of the Dominant View – the supremacy of client autonomy and freedom of thought.⁸⁹ Thus, she perceives that a lawyer who imbues her practice with faith-based values will not provide the full range of lawyering skills to her client, and that the lawyer might dominate her client and trump client autonomy.⁹⁰ For Minow, there does not appear to be *any* possibility that a lawyer could use faith-based values in service to a client.⁹¹

In addition to concerns about truncated or dominating lawyering, Minow adds another concern: that the language of faith is unfit to be used when lawyering in a public arena.⁹² Affirming the Rawlsian idea of public reason,⁹³ she argues that “reasons used in political discussion must be accessible to the comprehension, scrutiny, and response of those who do not share the speaker’s religious convictions. Otherwise, the prospects for open and reasoned debate diminish potentially irreparably.”⁹⁴ Under Minow’s vision of public reason, conversations from faith-based values are not easily translated either across religions or from a religious to a secular setting.⁹⁵ Rather than considering positive possibilities of efforts to translate across faiths or between faith and the secular, she argues that public arena conversations must be based in purely secular terms.⁹⁶

88. *Id.*

89. *See id.*

90. *See id.*

91. *See* Minow, *supra* note 85, at 687.

92. *See id.* at 672.

93. *See id.* at 675.

94. *Id.*

95. *See id.* at 677–78.

96. It is beyond the scope of this article to fully critique the idea of public reason. Interested readers may see Eduardo M. Peñalver, *Is Public Reason Counterproductive?*, 110 W. VA. L. REV. 515, 516 (2007) for the argument that limiting public discourse to secular language too narrowly cabins it and, as a result, disrespects pluralism.

Levinson and Minow are not the only scholars or lawyers who are leery of lawyers bringing faith-based values into their professional work, but they are exemplary of the critique.⁹⁷ The Dominant View presumes only two kinds of lawyers, those who remain neutral towards their clients, but who avidly pursue their client's objective, and those who cannot remain neutral towards their clients, and who disturb client autonomy with bad consequences.⁹⁸ It is a view that expects the worst of lawyers, what Thomas Shaffer has called the bad man theory of lawyering.⁹⁹ In its extraordinary concern for the bad-man lawyer, the Dominant View looks to the worst behavior. By always describing the worst behavior, the Dominant View reinforces the notion that any behavior by a lawyer that is other than neutral disconnectedness is bad.¹⁰⁰

B. THE RESPONSE.¹⁰¹

The response challenges the Dominant View of lawyering. Consider

97. See, e.g., W. Bradley Wendel, *Public Values and Professional Responsibility*, 75 NOTRE DAME L. REV. 1, 7–8 (1999) (rejecting idea of unified norms in the legal profession, and calling for value pluralism, but rejecting religious values as a source for professional norms); Leslie Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 FORDHAM L. REV. 1253, 1253 (1998) (acknowledging the role of religious values in determining personal conduct, but arguing that the legal profession must be able to articulate professional norms using secular, public reason). The role of religion outside the Dominant View has been criticized by some scholars. See Stephen Wizner, *Religious Values, Legal Ethics, and Poverty Law: A Response to Thomas Shaffer*, 31 FORDHAM URB. L.J. 37, 41–42 (2003) (acknowledging a personal connection with faith-based values, but expressing concern that religious texts are problematic sources of values because one can find multiple and conflicting values within the same text); see also Bruce A. Green, *The Religious Lawyering Critique*, 21 J.L. & RELIGION 283, 283 (2006) (noting the Religious Lawyering Critique may not have acknowledged the ways in which secular legal professional values are already consonant with religious values).

98. See DANIEL MARKOVITS, *A MODERN LEGAL ETHICS: ADVERSARY ADVOCACY IN A DEMOCRATIC AGE* 191 (Princeton Univ. Press 2008).

99. See, e.g., THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 21–22 (West Publishing Co. 1994) (describing how lawyers encourage clients to maintain a focus on self interests).

100. I want to emphasize that I am not arguing there are no hard cases for a lawyer who considers faith-based values. Of course there are, and they are troublesome for the very reasons articulated by the Dominant View. My argument is that hard cases are not the *only* kind of cases that come about when a lawyer considers his or her faith tradition.

101. Here I will focus on the response to the Dominant View from the Religious Lawyering Movement. There has also been a sustained critical response from a secular perspective which challenges the Dominant View's requirements that lawyers be loyal, partisan advocates who unengaged with, and not accountable for, their client's moral choices. Seminal critiques include: DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (Princeton Univ. Press 1988); DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* (Cambridge Univ. Press 2007) [hereinafter *LEGAL ETHICS AND HUMAN DIGNITY*]; WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* (Harvard Univ. Press 1998).

Thomas Shaffer, who has offered an ardent and sustained accounting of how his religious faith demands that he behave as a lawyer.¹⁰² Shaffer's account is personal as well as theoretical, drawing from his experiences as a lawyer and the personal stories of others.¹⁰³ Shaffer's consistent message is that lawyers of Christian faith (Shaffer speaks from his own Catholic tradition) are necessarily situated first within their religious communities (just as all persons are necessarily situated first within some primary community).¹⁰⁴ From those communities, lawyers (and others) discern their moral obligations.¹⁰⁵ For the Christian lawyer, "[t]he goal and purpose of a virtuous life in a profession is to help others become good persons"¹⁰⁶

In part through use of personal experience, Shaffer crafts an extended narrative that pushes for space in the existing narrative of the Dominant View of lawyering. Where the Dominant View insists on lawyers who are disengaged, and presumes the worst of both lawyers and clients (each of whom will act as bad men), Shaffer insists on a contrary view. One in which he, and other Christian lawyers, are deeply engaged with their clients, which presumes each to have the capacity for mutual moral conversation, and which leads to beneficial results.¹⁰⁷

Shaffer's is not the only narrative. His has been joined by other lawyer-scholars in the Christian faith,¹⁰⁸ as well as lawyer-scholars from

102. See Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME L. REV. 231 (1979); Thomas L. Shaffer, *A Lesson from Trollope for Counselors at Law*, 35 WASH. & LEE L. REV. 727 (1978); THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT (Brigham Young Univ. Press 1981) [hereinafter ON BEING A CHRISTIAN AND A LAWYER]; THOMAS L. SHAFFER & MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION (Univ. of Notre Dame Press 1991) [hereinafter LAWYERS AND THEIR COMMUNITIES]; SHAFFER & COCHRAN, *supra* note 99, at 90–91.

103. See, e.g., SHAFFER & COCHRAN, *supra* note 99, at 90–92. Stories of Shaffer and other lawyers are woven throughout, including in the form of written dialogue. See *id.*

104. See *id.* at 40–41.

105. See *id.* at 34–35.

106. LAWYERS AND THEIR COMMUNITIES, *supra* note 102, at 94. Shaffer repeats his call for lawyers to be good persons, and to help clients be good persons in other works as well. See, e.g., SHAFFER & COCHRAN, *supra* note 99, at 44–48.

107. See, e.g., SHAFFER & COCHRAN, *supra* note 99, at 40–55.

108. See Joseph Allegritti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 FORDHAM L. REV. 1101, 1116–17 (1998) (suggesting that the relationship between lawyer and client is akin to a covenant); see also Thomas E. Baker & Timothy W. Floyd, *A Symposium Précis*, 27 TEX. TECH L. REV. 911, 1259 (1996) (introducing symposium in which lawyers of many faiths were asked to narrate how faith informed their professional work); Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 FORDHAM L. REV. 1405, 1408–09 (1998); Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069, 1069 (1999); Robert K. Vischer, *Catholic Social Thought and the Ethical Formation of Lawyers: A Call for Community*, 1 J. CATHOLIC SOCIAL THOUGHT 417

other faiths. For example, Russell Pearce has written eloquently about the centrality of Judaism in answering for him “what it means to be an ethical lawyer”¹⁰⁹ Pearce affirms Shaffer’s position that it is untenable for a lawyer of faith to lawyer without regard to values that are core to his faith tradition.¹¹⁰ Pearce articulates that being a faithful Jew requires him to integrate his thought with his conduct. For Pearce, “lawyering demands a rejection of the professional project’s separation of the professional from the religious self. As a Jewish lawyer, . . . [he] would direct . . . [his] heart toward God in every moment of . . . [his] legal practice. This task requires study and prayer, but it also requires conduct.”¹¹¹

Like Shaffer, Pearce has responded to the Dominant View in part with a personal narrative as a way of claiming space in the conversation about ethical lawyering. As Pearce and Amelia Uelmen have noted, the initial call and response between the Dominant View and the Religious Lawyering Movement has been about whether or not.¹¹² In other words, the call of the Dominant View saying “Lawyer, do not bring personal values like religion to bear in your lawyering,” and the Religious Lawyering Movement responding, “Lawyer, do so.” The call and response continue,¹¹³ and will do so as long as the starting proposition is the dichotomy of whether or not.

Nonetheless, the second wave of the Religious Lawyering Movement has moved beyond the dichotomy “to assume that there should be space for lawyers to bring their religious values into their professional work, and thus focuses on more concrete and complex explorations of *how* to work as a religious lawyer.”¹¹⁴ The move to how reflects a core commitment to integrating thought and action. Recall Pearce’s comment that study and prayer must join with conduct.¹¹⁵ As philosopher Lenn E. Goodman has described it: “[M]ere study and devotion, prayer and meditation, are unfulfilled and unfulfilling without active engagement in behalf of our

(2004).

109. Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613, 1613 (1992).

110. See Russell G. Pearce, *The Jewish Lawyer’s Question*, 27 TEX. TECH L. REV. 1259, 1259 (1996) [hereinafter *Jewish Lawyer’s Question*].

111. *Id.* at 1268.

112. See Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering’s Second Wave*, 21 J.L. & RELIGION 269, 274 (2005-06).

113. See *id.* at 275.

114. *Id.* (emphasis added); see also Howard Lesnick, *Riding the Second Wave of the So-Called Religious Lawyering Movement*, 75 ST. JOHN’S L. REV. 283, 283 (2001) (“The Second Wave is one in which the calling, as addressed to the religious lawyer, asks what are you doing practicing law?”).

115. See *Jewish Lawyer’s Question*, *supra* note 110, at 1268.

fellow human beings.”¹¹⁶

C. ENTER DR. KING

In order to effect social change, Dr. King also understood the need to move beyond generalized, dichotomous talk. For race relations in the 1960's, the general conversation was limited to desegregate or stay segregated.¹¹⁷ Dr. King knew movement could only happen by leaving the generalized realm and instead looking at specifics. For Dr. King, that meant moving to direct action campaigns. To those who worried that his direct action campaigns were too provocative or radical, he responded that race-related tension already existed, that conversation did not further illuminate or resolve the tension, but that direct action “dramatize[d] the issue [so] that it can no longer be ignored.”¹¹⁸

The move of the second wave of the Religious Lawyering Movement to the *how* is similar to Dr. King's move to direct action. It reminds lawyers and scholars that a dichotomous conversation often cannot resolve – either into previously unrecognized agreement or into a confirmation of disagreement – without a move to direct action.¹¹⁹ In the case of religious values and lawyering, the move to direct action requires taking a common religious value and specifically applying it to lawyering conduct.

Taking Dr. King's call for love in action, this article now considers how to translate that into a common religious value that is held across several religious traditions, which can then be tested in specific lawyering settings.

III. LOVE OF NEIGHBOR AS AN EXAMPLE OF LOVE IN ACTION

As noted earlier, Dr. King was well aware that his call for love in action might be misunderstood or met skeptically by many in the Black community.¹²⁰ Over the course of his career as a preacher and civil rights activist, he returned regularly to the topic of what love in action required.¹²¹ First, he clarified he was not speaking about a sentimental emotion.¹²² Instead, he was speaking about “understanding, a redeeming good will for

116. LENN E. GOODMAN, *LOVE THY NEIGHBOR AS THYSELF* 16 (Oxford Univ. Press 2008).

117. See TOH, *supra* note 4, at 290.

118. *Id.* at 291.

119. See Pearce & Uelmen, *supra* note 112, at 269–70.

120. See TOH, *supra* note 4, at 8.

121. See *id.* at *passim*. From 1956 to 1968, Dr. King spoke or wrote at least fourteen times about love in action or its requirements. See *id.*

122. See *id.* at 8.

all men, an overflowing love which seeks nothing in return.”¹²³ Further, love in action required a specific intent. As Dr. King described it, “nonviolent resistance is also an internal matter. It not only avoids external violence or external physical violence but also internal violence of spirit.”¹²⁴ Finally, love in action, as the phrase makes clear, requires action. Dr. King’s experience on the bus boycott in Montgomery was seminal for him in that regard. Of the boycott, he said:

The experience in Montgomery did more to clarify my thinking on the question of nonviolence than all of the books that I had read. As the days unfolded I became more and more convinced of the power of nonviolence. Living through the actual experience of the protest, nonviolence became more than a method to which I gave intellectual assent; it became a commitment to a way of life. Many issues I had not cleared up intellectually concerning nonviolence were now solved in the sphere of practical action.¹²⁵

Dr. King also noted the critical influence on him of Gandhi, saying:

Prior to reading Gandhi, I had about concluded that the ethics of Jesus were only effective in individual relationships. The “turn the other cheek” philosophy and the “love your enemies” philosophy were only valid, I felt, when individuals were in conflict with other individuals; when racial groups and nations were in conflict a more realistic approach seemed necessary.¹²⁶

Gandhi’s approach helped Dr. King to clarify the causal relationship that exists between practicing love in action towards an individual and the ultimate goal of creating a shared community (or “beloved community” in Dr. King’s words).¹²⁷

For Dr. King, then, love in action had four dimensions.¹²⁸ It was other-regarding and universal. In other words, it called for good will towards all, without expectation of return.¹²⁹ It also required a specific internal intent, and was not limited to external conduct.¹³⁰ That intent then required consistent conduct, or action.¹³¹

Consider now the concept of love of neighbor as it is articulated in

123. *Id.*

124. *Id.* at 13.

125. *Id.* at 38.

126. AMLK, *supra* note 2, at 23–24.

127. TOH, *supra* note 4, at 12.

128. *See id.* at 19.

129. *See id.*

130. *See id.*

131. *See id.* at 18.

Leviticus, the third Book of the Bible.¹³² The relevant verse reads: "Thou shalt not take vengeance, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself"¹³³ Of course, Dr. King was trained in a Christian religious tradition, thus well-versed with Leviticus. Presumably, he understood love of neighbor to be related to his call for love in action. But, to ensure that others in Christian traditions would concur, it will be helpful to look at perspectives from additional Christian writers, particularly those who write about Christianity as it relates to lawyering.

Furthermore, because this article has as one of its goals the examination of a religious value that is shared across multiple faith traditions, it must also consider whether the concept of love of neighbor translates beyond Christianity. The article considers two additional faith traditions: Judaism and Buddhism. The Book of Leviticus is text shared by Judaism and Christianity, but is not a part of Buddhist canon.¹³⁴ Thus, before presuming that love of neighbor is a religious value that one may productively apply to specific lawyerly conduct, it is important to consider whether it is possible to consider a concept across faiths in which a canonical text is not shared.

A. THE POSSIBILITY OF SHARING CONCEPTS ACROSS FAITHS

For there to be a fruitful possibility of sharing concepts across faiths, there must be a willingness of participants to connect with, and establish contact across, differing faith traditions. Stating the obvious, interfaith dialogue is hard.¹³⁵ It is hard because of histories of tension between faith traditions.¹³⁶ It is hard because religions do not necessarily share common languages or narratives.¹³⁷ It is hard in the context of religious conversation and the legal profession because of the Dominant View's commitment to the liberal idea of public reason that lawyering is a sufficiently public

132. See *Leviticus* 19:18.

133. *Id.* The translation in the King James version of the Bible is: "Thou shalt not avenge, nor bear any grudge against the children of thy people, but thou shalt love thy neighbor as thyself" In Judaism, *Leviticus* is one of the five Books of Moses. See ROBERT ALTER, *THE FIVE BOOK OF MOSES: A TRANSLATION AND COMMENTARY* x–xiv (2004). In Christianity, *Leviticus* is part of the Old Testament. See *Old Testament* (New Living Translation).

134. See *supra* note 133 and accompanying text.

135. See, e.g., Amelia J. Uelmen, *Reconciling Evangelization and Dialogue Through Love of Neighbor*, 52 VILL. L. REV. 303, 306 (2007) [hereinafter *Reconciling Evangelization*] (opening with a description of the fury over Pope Benedict's remarks in September 2006 about the prophet Mohammed).

136. See *id.*

137. See *id.*

activity such that the only appropriate conversation in the public square is done in secular language that might be understood by all.¹³⁸ Dr. King faced a similar challenge in seeking to share community across racial lines.¹³⁹ He noted “the ability of Negroes and whites to work together, to understand each other, will not be found ready-made; it must be created by the fact of contact.”¹⁴⁰ So, too, must there be contact across faiths for there to be fruitful sharing of concepts.

Fortunately, there are already numerous examples of contact and of vibrant interfaith conversations.¹⁴¹ In the broader world, one can see examples from each of the three faith traditions from this article.¹⁴² From Buddhism, the work of Thich Nhat Hanh, the founder of the Buddhist Order of Interbeing, is exemplary.¹⁴³ From Christianity, the work of the Focolare Movement, and its founder, Chiara Lubich, is exemplary.¹⁴⁴ From Judaism, the work of the Commission on Interreligious Affairs of Reform Judaism is exemplary.¹⁴⁵

More particularly, there are numerous examples of vibrant interfaith conversations among U.S. lawyers, such as conferences to monthly meetings to CLE programs.¹⁴⁶ The fact that at least some groups of lawyers have found ways for interfaith conversation reminds us that “the assumption that religious people are intolerant and incapable of complex interactions in a pluralistic society is a stereotype.”¹⁴⁷ The above examples demonstrate the possibility of interfaith conversations among lawyers is already present.

B. THE PRODUCTIVITY OF SHARING CONCEPTS ACROSS FAITH

One of the challenges to productively sharing a concept across faith

138. See Minow, *supra* note 85, at 675; see also Peñalver, *supra* note 96, at 521–22 (reviewing justifications for public reason).

139. See TOH, *supra* note 4, at 318.

140. *Id.*

141. See *Reconciling Evangelization*, *supra* note 135, at 306–07.

142. See *infra* Part III.C–E.

143. See generally THICH NHAT HANH, *LIVING BUDDHA, LIVING CHRIST* 2–4 (Riverhead Books 1995) (discussing several examples of interfaith dialogue).

144. Cf. *Reconciling Evangelization*, *supra* note 135, at 307–08 (briefly discussing the Focolare Movement); see also Focolare Movement, <http://www.focolare.us/> (last visited Oct. 5, 2009).

145. See Commission on Interreligious Affairs, <http://interreligious.rj.org/about/about.shtml> (last visited Oct. 12, 2009). I would like to express my gratitude to Russell Pearce for identifying the Commission’s work for me.

146. See Pearce & Uelmen, *supra* note 112, at 271, 274.

147. Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127, 158–59 (2004).

traditions is that of translation.¹⁴⁸ First, there may be literal translation issues. An example is the difference in translation between the Torah and the Christian Bible of Exodus 20:2-15 – the commandment not to steal.¹⁴⁹ Commentary in the Torah notes some rabbinic interpretations of “steal” understand it to refer to kidnapping.¹⁵⁰ The Christian Bible does not so limit the meaning.¹⁵¹

Or, in Buddhism, the need to translate its primary texts from Pali or Sanskrit into English may cause some confusion.¹⁵² For example, a core concept in Buddhism is *dukkha*, generally translated into English as “suffering.”¹⁵³ The English word suffering carries meaning in various faith traditions.¹⁵⁴ For example, Christianity builds on the idea that Jesus suffered (including dying on the cross) so that humankind could “live unto righteousness.”¹⁵⁵ The Christian idea of suffering is rich with images of physical pain.¹⁵⁶ However, Pali or Sanskrit translators explain the roots of *dukkha* are more akin to the English ideas of unsatisfactory or things awry or flawed.¹⁵⁷ Those ideas may include physical pain, but they would not

148. See Pearce & Uelmen, *supra* note 112, at 274.

149. See Exodus 20:2-15.

150. See ETZ HAYIM, TORAH AND COMMENTARY: THE RABBINICAL ASSEMBLY, THE UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM 448 (The Jewish Publication Society 2001). Thank you to Sam Levine for this example.

151. See Ephesians 4:28 (“[t]he thief must no longer steal, but rather labor, doing honest work with his own lands, so that he may have something to share with one in need.”); Jeremiah 7:9-11 (“[a]re you to steal and murder . . . and yet come to stand before me in this house which bears my name, and . . . has this house which bears my name become in your eyes a den of thieves?”).

152. There are three main branches of Buddhism: Theravadan, Mahayana, and Vajrayana. See The Three Main Branches of Buddhism, http://www.important.ca/three_branches_of_buddhism.html (last visited Oct. 12, 2009). The Theravadan School’s text is written in Pali, while the Mahayana School’s text is written in Sanskrit. See *id.*

153. Dan Edwards, *Reflections on Three Stories: “Practicing” Law and Christianity at the Same Time*, 27 TEX. TECH L. REV. 1105, 1111 (1996).

154. Compare Jobs 4:8 (“[a]s I see it, those who plow for mischief and sow trouble, reap the same.”), with Colossians 1:24 (“[n]ow I rejoice in my sufferings for your sake, and in my flesh I am filling up what is lacking in the afflictions of Christ on behalf of his body . . .”).

155. See 1 Peter 2:21-24. In finding that the suffering and death of Christ serves as both a source of salvation and example, the First Letter of Peter states:

For to this you have been called, because Christ also suffered for you, leaving you an example that you should follow in his footsteps. “He committed no sin, and no deceit was found in his mouth.” When he was insulted, he returned no insult; when he suffered, he did not threaten; instead, he handed himself over to the one who judges justly. He himself bore our sins in his body upon the cross, so that, free from sin, we might live for righteousness. By his wounds you have been healed.

Id.

156. *Cf. id.*

157. See KAREN ARMSTRONG, BUDDHA 23 (James Atlas ed., Penguin Group 2001).

likely trigger an image of crucifixion.¹⁵⁸ Thus, a Buddhist and a Christian speaking about suffering, without first confirming what ideas are captured by the word, may find they walk away from their conversation with very different ideas about what ground they covered.

Language translation issues generally can be overcome simply by being mindful.¹⁵⁹ Those looking to talk about and compare texts need to first look at whether the texts present language translation issues.¹⁶⁰ If the texts do, then the conversants need to learn about the possible translations and settle on a mutual set of understandings about the meaning of the material textual words on which their conversation will focus.¹⁶¹

Potentially more challenging than language translation issues are translation issues dealing with the concept itself (although the two kinds of translation issues may be intertwined).¹⁶² For example, as noted above, Buddhist texts do not have the phrase love thy neighbor.¹⁶³ The translation that needs to occur, then, is at a conceptual level. For example, does love of neighbor in the Christian and Jewish faiths encompass certain kinds of conduct? Does it encompass a specific intention? Is intent or conduct more important? How much overlap is there between the conceptual contours of the particular shared text in Judaism and Christianity?

Once one has determined the conceptual contours derived from the text of Leviticus, one must consider whether Buddhism includes similar conceptual contours.¹⁶⁴ The article will return to that particular conceptual translation issue shortly¹⁶⁵ and will consider the contours of love of neighbor in Judaism and Christianity,¹⁶⁶ and whether there is a Buddhist translation.¹⁶⁷

First, consider one more translation issue – that there is sufficient consensus within a particular religion about certain concepts to make it productive to converse across religions. Put differently, what good is

158. *Cf. id.* (finding dukkha to be present during societal hardship).

159. *Cf. Pearce & Uelmen, supra* note 112, at 274.

160. *See id.*

161. *See id.*

162. *Cf. id.*

163. *See supra* note 133 and accompanying text.

164. *Cf. Angela Harris, Margareta Lin & Jeff Selbin, From the "Art of War" to "Being Peace": Mindfulness and Community Lawyering in the Neoliberal Age*, 95 CALIF. L. REV. 2073, 2112 (2007) (discussing the Buddhist concept of *right livelihood*, as expressed in Thich Nhat Hanh's eleventh mindfulness principle, which asks people to take work that harms neither humans nor nature in a physical or moral matter).

165. *See infra* Part III.D–E.

166. *See infra* Part III.C–D.

167. *See infra* Part III.E–F.

interfaith conversation if people of the same faith cannot agree with each other? Thus far, the article has labeled Judaism, Christianity, and Buddhism, without acknowledging each tradition has its own set of sub-traditions. Some might argue there are as many differences within a faith tradition as there are between faith traditions.¹⁶⁸

For example, most Buddhist scholars consider there to be three main movements of Buddhism – Theravada, Mahayana, and Vajrayana – each of which has numerous schools within it.¹⁶⁹ All of the movements follow the teachings of Buddha, but through varying texts.¹⁷⁰ As with other religions, the teachings of the Buddha were first transmitted orally.¹⁷¹ Scholars believe Buddha spoke in an Indian dialect,¹⁷² but he encouraged monks to teach in their own dialects.¹⁷³ Thus, Buddhist oral traditions are broad.¹⁷⁴ After the Buddha's death, written transcriptions began to appear, and likely developed over the course of five to six centuries.¹⁷⁵ The Theravadan Movement relies on a transcription in Pali, called the Pali Canon, which the Movement understands to be a direct translation of Buddha's oral teachings.¹⁷⁶ The Mahayanist School acknowledges the Pali Canon, but also adds other transcriptions often written in Sanskrit.¹⁷⁷ The schools within the three main movements of Buddhism often vary by the way in which each will highlight a certain doctrine or concept, much like schools within Judaism or Christianity.¹⁷⁸ Buddhism, like Judaism and Christianity, is not homogenous or monolithic.¹⁷⁹

Thus, there is fertile conversation to be had within a single faith tradition. As Religious Lawyering scholars have noted, one important facet of a lawyer's own specific faith community is that it provides the lawyer with a supportive and similarly-situated group in which to discern how to

168. See Pearce & Uelmen, *supra* note 112, at 274.

169. See BUDDHISM 29–32, 37 (Richard A. Gard ed., George Braziller 1962).

170. See *id.* at 27.

171. See SANGHARAKSHITA, ETERNAL LEGACY: AN INTRODUCTION TO THE CANONICAL LITERATURE OF BUDDHISM 9 (Tharpa Publications 1985).

172. See *id.* at 3.

173. See *id.*

174. See *id.*

175. See *id.* at 13–14.

176. See *id.* at 12–13.

177. See SANGHARAKSHITA, *supra* note 171, at 22, 93–95. For example, the Buddhist monastic code has been translated into Pali as part of the Pali Canon, but also translated into six versions in Sanskrit. See *id.* at 22. Similarly, the Collection of Discourses has one version in the Pali Canon, and another in the Mahayanist tradition, often referred to as the Mahayana Sutras. See *id.* at 93.

178. See BUDDHISM, *supra* note 169, at 29.

179. See Paul Morton, *The Evolution of God: An Interview with Robert Wright*, TIKKUN MAGAZINE, July 06, 2009, <http://www.tikkun.org/article.php/20090706081645927>.

integrate her faith and her profession.¹⁸⁰ As Robert Vischer describes it, people learn within their communities, and a community offers a productive space in which differing views and experiences can “be weighed and distilled into essential truth(s).”¹⁸¹

Nonetheless, interfaith conversation often provides an unexpected window into both another’s faith and one’s own faith.¹⁸² Two stories help to demonstrate that.¹⁸³ Howard Lesnick, in his book, *Listening for God*,¹⁸⁴ describes being raised in a “mild variety of Conservative Judaism” and becoming alienated from Judaism in college.¹⁸⁵ Then, in the 1970’s, Lesnick describes reengaging with religion when he began attending Quaker meetings, and also “mostly by accident” spent several summers at a Zen Buddhist farm.¹⁸⁶ Lesnick describes some disquietude in discovering he was “open to every religion but my own. . . .”¹⁸⁷ Lesnick discovered his engagement in faiths other than his own allowed him to view his own tradition in a renewed way.¹⁸⁸ It also revealed to him “the profound commonalities” between Judaism, Christianity, and Buddhism.¹⁸⁹

Russ Pearce describes an uncomfortable discovery of anti-Semitism by noted social justice advocate, and theologian, William Stringfellow.¹⁹⁰ In preparing for a conference to honor the legacy of Stringfellow, Pearce came across Stringfellow’s 1963 remarks at a conference on religion and race where, in speaking about unity among men, Stringfellow insisted “[t]he issue is baptism” – a remark which participants found offensive as suggesting that Jewish colleagues, as the unbaptized, were outsiders.¹⁹¹ Acknowledging Stringfellow’s remark was anti-Semitic, Pearce takes up the challenge of interfaith conversation to look further at Stringfellow’s

180. See Vischer, *supra* note 108, at 428–32, 438–39; see also Pearce & Uelmen, *supra* note 112, at 274; Thomas L. Shaffer, *Legal Ethics and Jurisprudence From Within Religious Congregations*, 76 NOTRE DAME L. REV. 961, 963 (2001) (arguing for the importance of religious communities as communities of moral discernment).

181. Vischer, *supra* note 108, at 432.

182. See Pearce & Uelmen, *supra* note 112, at 274, 276–77.

183. See HOWARD LESNICK, *LISTENING FOR GOD: RELIGION AND MORAL DISCERNMENT* (Authors Choice Press, 1998); RUSSELL G. PEARCE, *LEARNING FROM THE UNPLEASANT TRUTHS OF INTERFAITH CONVERSATION: WILLIAM STRINGFELLOW’S LESSONS FOR THE JEWISH LAWYER*, 38 CATH. LAW. 255 (1998).

184. See LESNICK, *supra* note 183.

185. *Id.* at 13–18.

186. *Id.*

187. *Id.* at 22.

188. See *id.* at 23.

189. *Id.*

190. See PEARCE, *supra* note 183, at 255–56.

191. *Id.* at 256–57 (internal quotes omitted).

writing and legal career.¹⁹² From those he builds a portrait of Stringfellow as a lawyer committed to a vocation of helping the poor, underserved, and underrepresented.¹⁹³ Pearce then looks to his Jewish faith and notes a Jewish lawyer “might very well arrive at the same answer as William Stringfellow” as to the lawyer’s vocation to serve the poor and underrepresented.¹⁹⁴ Pearce does not in any way excuse Stringfellow’s anti-Semitism, but uses it as a way of demonstrating how interfaith conversation can happen despite “discovering hurtful differences.”¹⁹⁵

The stories of Lesnick and Pearce are exemplary of the possibilities of productive interfaith conversations, while also foregrounding its difficulties. Building on the possibility of productive conversation, the article sketches out possible contours of love of neighbor in each religious tradition, considering there are common themes.¹⁹⁶ Mindful of the fact that faith traditions are not uniform, the article offers the descriptions as *one* set of possibilities coming from each tradition, not as the definitive set.¹⁹⁷

C. A CHRISTIAN VIEW OF LOVE OF NEIGHBOR

Thomas Shaffer has articulated a responsibility for lawyers to take a “risk of openness.”¹⁹⁸ While not using the phrase love of neighbor, Shaffer’s conception of risk of openness captures the idea of bridging divides between oneself and another.¹⁹⁹ For Shaffer, being open means each person in a professional relationship “meets the other in a deep way, [and] . . . meets the One in the other”²⁰⁰ Shaffer conceives of the relationship as one in which both lawyer and client welcome the moral conversation of the other and are open to the possibility that the conversation may change either of them.²⁰¹ Drawing on the work of Jewish philosopher, Martin Buber, Shaffer underscores that the lawyer commits to a belief that there is “something in the other (e.g., client) that [the lawyer] . . . can come to trust: ‘The worst in him and the best in him are dependent on one another . . . what we may call the good, is always only a direction.

192. *See id.* at 255–56.

193. *See id.* at 259–61.

194. *Id.* at 262.

195. *Id.* at 255.

196. *See* LESNICK, *supra* note 183, at 23–24.

197. *See* PEARCE, *supra* note 183, at 23–24 (emphasis added).

198. ON BEING A CHRISTIAN AND A LAWYER, *supra* note 102, at 28.

199. *See id.*

200. *Id.*

201. *See id.* at 29.

Not a substance.”²⁰² As a consequence of being open to the client, the relationship between lawyer and client, with lawyer representing client, involves the “acceptance of the principle (and of the fact) that even in ‘representation’ it is not only an argument or interest being asserted, but a person and a relationship being not asserted, but lived.”²⁰³

Shaffer calls for a particular intent from lawyers, which in turn, drives actions.²⁰⁴ Understanding Shaffer’s call for openness as consonant with love of neighbor, the requisite intent of love of neighbor would include receptivity, compassion, discovery, and commitment, while disavowing domination, manipulation, presumptiveness, and disengagement.

Amelia Uelman has also considered the intentionality called for by love of neighbor.²⁰⁵ In looking at the possible tension for a Catholic between a commitment to dialogue and the Catholic Church’s evangelizing mission, Uelman has drawn on love of neighbor as a way of navigating both provisions.²⁰⁶ Uelman consults papal writings to consider what characteristics are called for by the notion of Christ’s love, and thus, the characteristics to strive for in love of neighbor.²⁰⁷ Resonating with Shaffer’s idea of openness, Uelman identifies love as self-emptying, the letting go of individual attachments so that one might “make himself everything to everyone.”²⁰⁸ Further, love is universal, “it means loving everyone.”²⁰⁹ It is concrete; it requires intent and “practical commitment,” such as “concern, tenderness, compassion, openness, availability and interest in people’s problems.”²¹⁰

Both Shaffer and Uelman describe certain intentions required by love of neighbor.²¹¹ First, they describe an “openness” or “self-emptying,” an intent to set aside self-interest or self-involvement.²¹² Next “trust” or “universality,” an intent to be receptive to another regardless of the characteristics or conduct of the other.²¹³ Finally, an intent to do, engaging

202. *Id.* (quoting Martin Buber).

203. *Id.*

204. *See ON BEING A CHRISTIAN AND A LAWYER*, *supra* note 102, at 30.

205. *See Reconciling Evangelization*, *supra* note 135, at 306–09.

206. *See id.*

207. *See id.* at 311, 327–29.

208. *Id.* at 312 (quoting John Paul II).

209. *Id.* at 313.

210. *Id.* (quoting Benedict XVI).

211. *See Reconciling Evangelization*, *supra* note 135, at 311; *ON BEING A CHRISTIAN AND A LAWYER*, *supra* note 102, at 28–30.

212. *Reconciling Evangelization*, *supra* note 135, at 311–12; *see also ON BEING A CHRISTIAN AND A LAWYER*, *supra* note 102, at 28–29.

213. *Reconciling Evangelization*, *supra* note 135, at 311, 13; *see also ON BEING A CHRISTIAN AND A LAWYER*, *supra* note 102, at 87–90.

in conduct to demonstrate openness and universality.²¹⁴

D. A JEWISH VIEW OF LOVE OF NEIGHBOR

Professor Samuel Levine has written extensively on the ways in which Jewish law might inform ethical lawyering.²¹⁵ He has identified love of neighbor as an important general principle in Jewish law that may “be applied to govern situations not delineated in the Torah.”²¹⁶ As Levine notes, Jewish scholars have delineated some of the specific conduct required by love of neighbor, such as visiting the sick, but the delineations are exemplary, not exclusive.²¹⁷ Thus, love of neighbor stands as an ongoing source of existing, but “unenumerated” precepts.²¹⁸ It not only guides extraordinary circumstances, it guides daily and mundane actions, which, in some ways, are more important.²¹⁹

But love of neighbor calls for a particular intentionality as well, as philosopher Lenn Goodman has detailed.²²⁰ For Goodman, love of neighbor starts by acknowledging that individuals can be self-interested and egotistical and it then calls on a person to realize that another’s interest must be equally acknowledged.²²¹ As Goodman puts it:

Individual interests are presumed. Without them, the biblical imperative [of love of neighbor] becomes empty rhetoric. Mutuality is a moral implication of equality, treating the other as another self. . . . What the *mitzvah* ordains is that one deem all of another’s concerns as weighty as one’s own.²²²

Echoing Shaffer’s notion of “openness” and Uelman’s of “self-

214. See *Reconciling Evangelization*, *supra* note 135, at 311, 13; ON BEING A CHRISTIAN AND A LAWYER, *supra* note 102, at 29.

215. See, e.g., Samuel J. Levine, *Taking Ethical Obligations Seriously: A Look at American Codes of Professional Responsibility Through a Perspective of Jewish Law and Ethics*, 57 CATH. U. L. REV. 165 (2007) [hereinafter *Ethical Obligations*]; Samuel J. Levine, *Taking Ethics Codes Seriously: Broad Ethics Provisions and Unenumerated Ethical Obligations in a Comparative Hermeneutic Framework*, 77 TUL. L. REV. 527 (2003) [hereinafter *Ethics Codes*]; Samuel J. Levine, *Unenumerated Constitutional Rights and Unenumerated Biblical Obligations: A Preliminary Study in Comparative Hermeneutics*, 15 CONST. COMMENT. 511 (1998) [hereinafter *Unenumerated Rights*]; Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH L. REV. 1199 (1996) [hereinafter *Broad Life*].

216. *Ethical Obligations*, *supra* note 215, at 187.

217. See *Ethics Codes*, *supra* note 215, at 571–72; see also *Ethical Obligations*, *supra* note 220, at 187–88; *Unenumerated Rights*, *supra* note 215, at 525–26.

218. *Unenumerated Rights*, *supra* note 215, at 525–56; *Ethics Codes*, *supra* note 215, at 571.

219. See *Broad Life*, *supra* note 215, at 1199.

220. See GOODMAN, *supra* note 116, at 13–14.

221. See *id.* at 13.

222. *Id.* (emphasis added).

emptying,” Goodman describes the intent involved in looking at another’s concern “does [not] mean wanting for others just what we want for ourselves. Still less is it wanting others to be just like us. . . . The love that the Torah commends and commands means accepting the sanctity of each person’s capacity to choose and cherish.”²²³

Goodman reminds us the appropriate translation of neighbor from Hebrew to English includes the idea of a stranger, so the command of love of neighbor is an inclusive one.²²⁴ It is universal, to use Uelman’s term.²²⁵ Finally, good will is not enough.²²⁶ Love of neighbor requires action; recall Goodman’s earlier quote that “mere study and devotion, prayer and meditation, are unfulfilled and unfulfilling without active engagement in behalf of our fellow human beings.”²²⁷ That engagement need not be extravagant, it may be as simple as “fac[ing] one’s interlocutor, showing not just a profile or a blank, poker face but a responsive, expressive face, evincing warmth and interest.”²²⁸

E. A BUDDHIST VIEW OF LOVE OF NEIGHBOR

To situate the idea of love of neighbor in Buddhism, it is useful to first describe some core Buddhist concepts.²²⁹ As noted earlier, Buddhism does not share texts with Judaism and Christianity nor does it work from a notion of a personal “Creator-God.”²³⁰ Thus, if Buddhism embraces an idea of love of neighbor it starts from some place other than as a command from holy text.

In Buddha’s first lecture after his enlightenment, he described the pivotal propositions of Buddhism, the Four Noble Truths.²³¹ They are:

First Noble Truth: Life is dukkha (usually translated in English as

223. *Id.* at 14.

224. *See id.* at 15.

225. *See id.*; *Reconciling Evangelization*, *supra* note 135, at 313.

226. *See* GOODMAN, *supra* note 116, at 16.

227. *Id.* at 16.

228. *Id.* at 17.

229. For this paper the author focuses on select core Buddhist concepts and does not offer a comprehensive description. Those readers who wish for a deeper introduction may wish to see HUSTON SMITH & PHILIP NOVAK, *BUDDHISM: A CONCISE INTRODUCTION* (HarperCollins 2003), and ARMSTRONG, *supra* note 157. For an articulation of Buddhism within the school in which the author practices, The Order of Interbeing, readers may wish to see THICH NHAT HANH, *THE HEART OF THE BUDDHA’S TEACHINGS: TRANSFORMING SUFFERING INTO PEACE, JOY & LIBERATION* (Parallax Press 1998).

230. SMITH & NOVAK, *supra* note 229, at 53; GARD, *supra* note 173 at 44–47.

231. *See* SMITH & NOVAK, *supra* note 229, at 31.

“suffering”).²³²

Second Noble Truth: The cause of dukkha is tanha (usually translated in English as “desire”).²³³

Third Noble Truth: The end of dukkha comes by overcoming tanha.²³⁴

Fourth Noble Truth: The way of overcoming tanha is the Eightfold Path.²³⁵

Recall that dukkha, or suffering, is captured by the idea that things are askance or dislocated; “its pivot is not true.”²³⁶ The reason that our lives are akimbo is that we crave permanence in a world that is ever-changing.²³⁷ We desire personal fulfillment, which pushes us to cling to a false sense of an individualized, separate, permanent self.²³⁸ Once we understand that that our dislocation is caused by the “narrow limits of self-interest,” we may overcome our dislocation by following the Eightfold Path.²³⁹ Our destination upon overcoming dukkha and tanha is equanimity toward all, expressed through loving-kindness, compassion, and mindfulness.²⁴⁰ Before exploring the Eightfold Path, first consider the Buddha’s idea of interconnectedness.

The Buddha described the interconnectedness of everything as “dependent arising” – that everything and every process arises in, and is dependent on, every other thing and process.²⁴¹ As a result, the world is a place webbed by interconnectedness, not a place full of individuated and separated beings and processes. As Thich Nhat Hanh has described it: “You cannot just *be* by yourself alone. You have to inter-be with every other thing.”²⁴² One of Buddha’s most well-known phrases, and one which repeats itself throughout Buddhist texts in all traditions is about dependent arising: “This is because that is. This is not, because that is not. This comes to be, because that comes to be. This ceases to be, because that ceases to be.”²⁴³

Dependent arising propounds that what may appear as dichotomous,

232. *Id.* at 32.

233. *Id.* at 36.

234. *Id.* at 32, 36–37.

235. *Id.* at 37.

236. *Id.* at 34.

237. See SMITH & NOVAK, *supra* note 229, at 34–35.

238. See *id.* at 36–37.

239. *Id.* at 37.

240. See *id.* at 39.

241. *Id.* at 61.

242. THICH NHAT HANH, *ESSENTIAL WRITINGS* 56 (Robert Ellsberg, ed., Orbis Books 2001).

243. THICH NHAT HANH, *supra* note 229, at 221.

ultimately reveals itself as interdependent.²⁴⁴ Again, Thich Nhat Hanh:

All phenomena are interdependent. When we think of a speck of dust, a flower, or a human being, our thinking cannot break loose from the idea of unity, of one, of calculation. We see a line drawn between one and many, one and not one. But if we truly realize the interdependent nature of the dust, the flower, and the human being, we see that unity cannot exist without diversity. Unity and diversity interpenetrate each other freely. Unity is diversity, and diversity is unity. This is the principle of interbeing.²⁴⁵

Returning to the Eightfold Path then, one can understand it as a daily intentional regime designed to help one become aware of mistaken notions of self, self-interest and craving for permanence, and to become aware of, and embrace, the interconnectedness of all.²⁴⁶ The Eightfold Path is generally translated as:

Right View
 Right Intent
 Right Speech
 Right Conduct
 Right Livelihood
 Right Effort
 Right Mindfulness
 Right Concentration²⁴⁷

The Path is not linear – one does not start at Right View, perfect it, and then move to Right Intent, and so on.²⁴⁸ It is a “noble path of eight limbs” with each limb requiring the other and all requiring practice together.²⁴⁹ For purposes of this article, it is likely most helpful to expand on one part of the Path as it is illustrative of all parts of the Path.²⁵⁰

Consider Right Speech. Inherent in the concept are both intent and conduct.²⁵¹ The intent is to be aware of the power of words.²⁵² The power to mislead or inform, to trigger emotions from anger to happiness, to cause

244. *See id.*

245. THICH NHAT HANH, *supra* note 242, at 67.

246. *See* SMITH & NOVAK, *supra* note 229, at 39.

247. *Id.* at 41–49.

248. *See* THICH NHAT HANH, *supra* note 229, at 117.

249. *Id.* at 50, 117–18.

250. *See generally* SMITH & NOVAK, *supra* note 229, at ch.5; THICH NHAT HANH, *supra* note 229, at Part 2.

251. *See* DAMIEN KEOWN, *THE NATURE OF BUDDHIST ETHICS* 121 (Palgrave 2001) (detailing the requirement of the Eightfold Path for both intent and conduct).

252. *See* THICH NHAT HANH, *supra* note 229, at 85.

discord or harmony.²⁵³ The conduct is not only mindful word choice, but the precursor of “deep listening” – to “listen with the eyes of compassion” so that one is moving beyond self-interest.²⁵⁴ The practice of Right Speech, like all of the Path, encourages intent and conduct that allows one to move beyond a sense of separated self, to a sense of interconnectedness.²⁵⁵

From the above, one can see the call of “love of neighbor” is easily accommodated within Buddhism. As part of one’s efforts to understand and work towards interconnectedness, an intent to be other-regarding and to act with compassion towards another (i.e., love one’s neighbor) is consistent with the Eightfold Path.

F. COMMONALITIES

The commonalities between Judaism, Christianity and Buddhism related to love of neighbor are captured along the same four dimensions that are present in Dr. King’s love in action.²⁵⁶ First, love of neighbor is other-regarding – one takes a perspective that places the interests of another on equal footing with one’s own.²⁵⁷ Next, it is inclusive and universal – one must respond to everyone with openness and equanimity, and no particular relationship need stand above another.²⁵⁸ Third, although this dimension is implicit in the first two, it requires a specific intent – one must hold the intent to be other regarding and universal.²⁵⁹ Those may not be just by-products of self-interest (i.e., It is not “I’ll scratch your back if you scratch mine.”). Finally, it requires action – one must engage in the world, from mundane actions onward.²⁶⁰ It is not enough to passively respond to other’s conduct.²⁶¹

Having found that Dr. King’s love in action could also be understood as love of neighbor, and that such a concept is shared across religious traditions, the next step is to apply the concept to lawyerly practice.

253. See *id.* at 85.

254. *Id.* at 86.

255. See *id.* at 85. For a description of other mindfulness practices that are derived from the Eightfold Path, and their application to lawyering, see Harris, Lin & Selbin, *supra* note 164.

256. See *Leviticus* 19:18 (appearing in religious texts of both Judaism and Christianity).

257. See, e.g., *id.* (King James) (“love thy neighbor as thyself”).

258. See GOODMAN, *supra* note 116, at 15 (stating the command of “love of neighbor” is inclusive); *Reconciling Evangelization*, *supra* note 135, at 313 (finding love “means loving everyone”).

259. See KEOWN, *supra* note 251, at 84–87 (stating the practice “Right Speech” allows one to move beyond a sense of separated self to a sense of interconnectedness).

260. See TOH, *supra* note 4, at 12 (stating the intent required is a specific internal intent that is not limited to external conduct).

261. See *id.* at 12 (stating intent requires consistent conduct).

IV. WHAT'S LOVE GOT TO DO WITH IT?

Dr. King was working in a time of notable social upheaval.²⁶² In his work, love in action, while it may have focused on a mundane, daily activity like riding a bus, was immediately transformed into action about broad social change.²⁶³ For us now, the name Rosa Parks does not bring to mind an ordinary woman.²⁶⁴ Rosa Parks was *the* woman who started desegregation in Montgomery, Alabama.²⁶⁵ Her action was not ordinary and mundane – it was heroic. Thus, when one thinks about the context in which Dr. King was relying on love in action, one thinks of big events, not of the routine.

In contrast, for contemporary lawyers, most of their time is spent on legal tasks that are mundane and ordinary; tasks like document review, contract review, and general advice and counsel. If a contemporary lawyer's work is mostly mundane and ordinary, is love in action relevant? Dr. King would likely counsel that it is.

Dr. King understood that heroic moments had to be followed by steady, daily work in order to preserve progress.²⁶⁶ Some eleven years after Rosa Parks refused to give up her bus seat, with the struggle for civil rights still at hand, Dr. King remarked: "The answer was only to be found in persistent trying, perpetual experimentation, persevering togetherness."²⁶⁷ Through his work he had discovered that the potency of a march or protest did not last without daily, follow-up efforts.²⁶⁸ Thus, when he began a civil rights campaign in Chicago with a rally at Soldier's Field, he did not stop there.²⁶⁹ He encouraged and supported tenants in their efforts to create tenant unions, which were then able to bargain collectively with local landlords.²⁷⁰ Those tenant unions dealt with daily, mundane issues like janitorial services.²⁷¹

Love in action, then, should be as useful to a contemporary lawyer in

262. See Thomas Kleven, *Systemic Classism, Systemic Racism: Are Social and Racial Justice Achievable in the United States?*, 8 CONN. PUB. INT. L.J. 207, 240 (2009) (discussing the social upheaval during the civil rights era of the 1960s).

263. See *infra* notes 274–76 and accompanying text.

264. See *Parks remembered for her courage, humility*, CNN, Oct. 30, 2005, <http://www.cnn.com/2005/US/10/25/parks.reax/index.html> (explaining Rosa Parks was one of the most inspiring women of the twentieth century).

265. See AMLK, *supra* note 2, at 69.

266. See *id.* at 318.

267. *Id.*

268. See *id.* at 308.

269. See *id.*

270. See *id.*

271. See AMLK, *supra* note 2, at 308.

her daily law practice, as it would be to her in any part of her practice focused on more monumental change. Because the majority of a lawyer's time is spent on the mundane,²⁷² this article will focus on examples of that kind of lawyerly work in applying love in action, or love of neighbor.²⁷³ The article considers two lawyering moments: the initial meeting between lawyer and client, and a meeting at which the lawyer and client discuss a pre-filing settlement offer (i.e., an offer before a civil complaint has been filed).²⁷⁴

Furthermore, the article considers the lawyering practice called for by love of neighbor in light of the Dominant View's concern about religious values causing a lawyer to disrespect client autonomy and to disrespect value pluralism.²⁷⁵ By applying love of neighbor in the specific contexts of an initial lawyer-client meeting and a pre-filing settlement offer, the article discerns whether the move to specific application provides a way to break the logjam that exists in the more generalized conversation between the Dominant View and Religious Lawyering.²⁷⁶

A. INITIAL MEETING BETWEEN LAWYER AND CLIENT

Assume a common case: an individual client, not an entity, and an attorney in private practice.²⁷⁷ Outside of small claims actions, in which an attorney is often not present, the most common kind of civil case is a contract action.²⁷⁸ There is another reason to focus on a common case in

272. See SMU, Dedman College, Job Opportunities: Legal Careers, <http://smu.edu/prelaw/job.asp> (describing the daily, mundane life of a lawyer).

273. See *supra* note 133 and accompanying text.

274. See BLACK'S LAW DICTIONARY 1114 (8th ed. 2004). Offer of compromise is defined as the "[a]n offer by one party to settle a dispute amicably to avoid or end a lawsuit or other legal action. . . . Also termed offer of settlement." *Id.*

275. See *supra* note 96 and accompanying text.

276. See *supra* pp. 17–18.

277. See BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990S vii (American Bar Foundation 1994). The American Bar Foundation periodically publishes lawyer statistical reports in which it looks at various descriptive information about the U.S. lawyer population. See *id.* According to the last report covering data collected in 1991 and published in 1994, almost 45% of lawyers are solo practitioners, with another 21% of lawyers practicing in firms of 20 lawyers or fewer. *Id.* at 25; see also John P. Heinz, Robert L. Nelson & Edward O. Laumann, *The Scale of Justice: Observations on the Transformation of Urban Law Practice*, 27 ANN. REV. SOC. 337, 341 (2001). Most solo and small firm work focuses on individual client representation as opposed to corporate representation. See *id.*; see generally Pearce & Uelmen, *supra* note 112 (discussing whether a religious lawyer can work in a large firm).

278. See National Center for State Courts, Examining the Work of State Courts: A National Perspective from the Court Statistics Project 32–33 (2006), available at http://www.ncsconline.org/D_Research/csp/2006_files/EWSC-2007WholeDocument.pdf (last

addition to the fact it is a likely and consistent practice experience for a lawyer. That reason is to challenge one of the typical features of the existing Dominant View-Religious Lawyering discourse.²⁷⁹

The discourse almost always presumes the uncommon case (or, the “hard case”).²⁸⁰ For example, a Catholic lawyer who is asked to represent a minor girl who wishes to get an abortion without her parents’ consent, and who lives in a state with a statute requiring the minor to get a court’s permission for an abortion without parental consent. Focusing on a common case is not a dodge of the hard cases. The hard cases are hard. They make finding agreement hard, especially if both sides have experienced the other primarily in disagreement. Changing the focus to the everyday case, reminds us there is much more in the world of lawyerly practice than hard cases. Thus, the change in focus also allows us to see beyond the existing polarized discourse to discover possible areas of agreement. It gives us the potential to experience agreement in the face of a history replete with disagreement.²⁸¹ It is following Dr. King’s advice to use the fact of contact to create understanding.

Consider, then, a client who contracted for a new roof and has found that the new roof leaks. How would a lawyer mindful of love of neighbor (the “LON lawyer”) proceed with an initial client meeting. The lawyer may consider many simple things such as where she and the client sit – in the lawyer’s office with an imposing desk between them, or in a conference room, side-by-side. Has the lawyer made sure to set aside sufficient time for the meeting, or does she announce when she comes in “I have 30 minutes before I have to be in court.” Does the lawyer encourage the client to start the conversation wherever she is most comfortable, or is the lawyer directive? Does the lawyer solicit the client’s hopes for outcomes in an open way or does the lawyer quickly slot facts into a possible cause of action and then announce the proposed outcome (i.e., You have a contract claim and under contract law, the kinds of damages you can get are ____.)?

For each of the simple examples above, it may be likely that most lawyers would say they strive to behave as does the LON lawyer. It may be that many lawyers would also say that the LON lawyer is not doing anything differently from a conscientious, courteous lawyer. The LON

visited Jan. 31, 2010).

279. See *supra* pp. 17–18.

280. Minow, *supra* note 85, at 681. The author uses as an example a Catholic lawyer who declined to represent a client regarding the client’s abortion due to his religious beliefs. See *id.*

281. See Danny Brown, *Conversation is Good*, Jan. 11, 2009, <http://dannybrown.me/2009/01/11/conversation-is-good/> (explaining that people have always disagreed).

lawyer would likely agree. If there is a difference it is in the constancy of the intention. In other words, the LON lawyer commits to being mindful about the mundane and simple at all turns – to acting intentionally rather than habitually. Nonetheless, the LON lawyer and the conscientious lawyer may not be dissimilar, while both may be in similar contrast to the self-involved lawyer who puts her own interests ahead of the client's.

The similarity between an LON lawyer and other conscientious lawyers is a notable response to the Dominant View's perception that the necessary result of faith-based lawyering is domination or disengagement.²⁸² But as the above description makes clear, the LON lawyer is actively working to engage her client as an equal, and to do so from the very beginning of the relationship.²⁸³ It may be that the Dominant View worries that the issue is not mundane lawyerly behavior, but behavior during certain critical moments. But, the lawyer-client relationship consists of much more of the mundane than the critical.²⁸⁴ Thus, it is in the mundane that an attorney has repeated opportunities to demonstrate her commitment to a client.²⁸⁵

The LON lawyer takes the mundane seriously and imbues the mundane with possibility. An oft-heard story in Zen Buddhism is of the eager learner who wishes to dig into the Zen practice and is told to go wash dishes as the most important starting point, for if one cannot find meaning in the mundane, one cannot find it anywhere.²⁸⁶

B. PRE-FILING SETTLEMENT OFFER

What, then, of a critical moment in the representation? How might an LON lawyer act when meeting with her client to discuss a settlement offer from the roofing company, which has come in response to the lawyer's communications with the company that the client is considering filing a lawsuit? Consider first what the tenor of the communications between

282. See *supra* note 79 and accompanying text.

283. See *supra* p. 40.

284. See Stephen E. Schemenuaer, *What We've Got Here . . . Is a Failure . . . To Communicate: A Statistical Analysis of the Nation's Most Common Ethical Complaint*, 30 HAMLINE L. REV. 629, 646 (2007). Note that lawyers get grieved by clients most often for behavior such as not returning phone calls. See *id.*

285. See *id.* at 662.

286. See SMITH & NOVAK, *supra* note 229, at 102. "Zen wears the air of divine ordinariness . . . If you cannot find the meaning of life in an act as routine as that of doing the dishes, you will not find it anywhere." *Id.*; see also LESNICK, *supra* note 183, at 18. When noting he was hoping to learn more about Buddhism during his summer stay at a Buddhist farm, Lesnick was told: "Great! Just go into the kitchen, and start doing the dishes!" *Id.*

lawyer and roofing company might have been.

The LON lawyer, being committed to universality, will have treated representatives of the roofing company with respect and courtesy. The lawyer will not have sent a blustery demand letter in which the lawyer insists on recompense in an overreaching way. The lawyer will, however, have attempted to learn the roofing company's side of the story and to have listened with a non-partisan ear.²⁸⁷ It is useful to highlight listening to note that an important starting point for an LON lawyer is a multi-perspective understanding, and that such understanding may happen when one is acting on behalf of another.²⁸⁸ Further, nothing about love of neighbor suggests that an LON lawyer will undermine a client's interests or goals during communications with the roofing company (recall Martha Minow's concern about truncated lawyering).²⁸⁹

In other words, an LON lawyer will strive to understand the other side, but in doing so will not demean or dismiss her own client's interests.²⁹⁰ To bring the principles of love of neighbor to bear, a lawyer need not transform herself into a neutral seeking to mediate between two parties.²⁹¹ She honors her fiduciary commitment to her client, and her love of neighbor commitment to both parties by mindful, open, compassionate listening.²⁹²

Coming now to the meeting of the LON lawyer and her client in which they discuss the roofing company's settlement offer. The LON lawyer will have already kept her client abreast of the conversations with the roofing company.²⁹³ The lawyer may either know that her client may not be experienced in legal matters and may be particularly anxious about the dispute, or may know that the client is experienced, and thus may wish to have more regularized input.²⁹⁴ Regardless, as noted above, the LON lawyer is mindful of the ordinary and mundane.²⁹⁵

At the meeting, the LON lawyer will start with the proposition that the conversation is a mutual one, and that the client is willing, and

287. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 70–72 (2001) (describing a process of envisioning a parallel universe as a way of understanding alternative explanations for a client's behavior).

288. See *id.* (describing a process of envisioning a parallel universe as a way of understanding alternative explanations for a client's behavior).

289. See *supra* p. 13.

290. See *supra* note 288.

291. See *supra* p. 13.

292. See *supra* note 288.

293. See MODEL RULES OF PROF'L CONDUCT R. 1.4 (1983).

294. See *id.*

295. See *supra* p. 38.

interested in, all facets of the conversation.²⁹⁶ The LON lawyer will exchange any new information from the roofing company with the client and make sure she learns of anything new from her client.²⁹⁷

When discussing possible action, the LON lawyer will be transparent with her client about the lawyer's commitment to respect others, to show compassion and the like.²⁹⁸ Importantly, the LON lawyer will underscore those are her commitments and that she hopes to listen to, and understand her client's own perspective on those commitments.²⁹⁹ If the lawyer disagrees with the client, she will note that disagreement, but do so with tact and consideration.³⁰⁰ As Lenn Goodman has described such an engagement: "We are forbidden to shame him, but tact is not silence. Love means overcoming reticence and, here, too, not standing idly by to watch another stumble."³⁰¹

For example, the roofing company might have set up some appointments with the client to repair the roof and the client may have failed to be at home to let the company in. The LON lawyer would raise that with the client in an honest and engaged manner – what was the client's perspective on how firm the meetings times were, on why the client was away, or on whether the company's employees would be irritated by the missed appointments? The LON lawyer would not start with a lecture the client about clean hands – signaling to the client that the lawyer is morally superior – nor start by strategizing with the client about ways to avoid the bad facts – signaling to the client that moral valence is irrelevant.³⁰²

The LON lawyer would also look for shared interests between the client and the roofing company, and focus those for the client.³⁰³ Thus, to the extent the settlement offer broached common ground, the LON lawyer would highlight that to try and move beyond a sense of tit for tat to shared interests.³⁰⁴ Nonetheless, an LON lawyer is not categorically opposed to going forward with a lawsuit (i.e., that love of neighbor demands

296. *See id.*

297. *See* MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (1983).

298. *See id.* (requiring lawyers to consult with the client as to the means by which the client's objectives are to be accomplished); GOODMAN, *supra* note 116, at 17 (describing particular facets of one's attitude in dealing with others).

299. *See* GOODMAN, *supra* note 116, at 17.

300. *See id.* at 19.

301. *Id.*

302. *See id.* at 17.

303. *See id.*

304. *See* ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 95 (Houghton Mifflin 1991).

reconciliation regardless).³⁰⁵ But the going forward with a lawsuit happens in a manner consistent with love of neighbor.³⁰⁶ Some examples might include that the complaint is accurate and without bombast, that service of process is done in a way not designed to embarrass or intimidate, and that discovery goes forward in a timely and cost-effective way.³⁰⁷

As with the initial meeting between lawyer and client, many may say the description of the LON lawyer meeting with her client about settlement is consistent with the kind of conduct of any good lawyer. For example, the LON lawyer's conduct is consistent with the Model Rules of Professional Conduct, which call on a lawyer to be diligent, to communicate with her client, and to allocate decision-making about settlement to the client.³⁰⁸ The LON lawyer's conduct is also consistent with federal and state court rules about open, timely and efficient discovery.³⁰⁹

The point in providing another example of LON lawyering that looks to many lawyers like standard-issue good lawyering is to emphasize that lawyering from faith is not necessarily the chimera that the Dominant View understands it to be. When we move from the question of whether or not lawyers should be informed by faith to the question of how, we are able to scrutinize worries of lawyer dominance or disengagement in a more discriminating way. Thus far, love of neighbor provides an example of faith-based lawyering that rejects dominance, and rejects disengagement because of difference.³¹⁰ Instead, it offers an example of lawyering very open to, and respectful of, client perspectives and autonomy, of lawyering engaged in learning all of the relevant perspectives, and of lawyering

305. Compare GOODMAN, *supra* note 116, at 17 (requiring the conciliation of quarrels), with Minow, *supra* note 85 and accompanying text (describing the dangers of bringing one's religious values to their law practice).

306. I acknowledge the important influence for me of Robert Cover's writings on violence in the law. See, e.g., Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986). Thus, I understand that filing a lawsuit may constitute a kind of violence that is antithetical to my Buddhist training and to the idea of love of neighbor. Nonetheless, I also acknowledge the legal system to be a legitimate place of dispute resolution, and one in which the parties and their counsel have substantial abilities to mitigate the violence that may occur.

307. See GOODMAN, *supra* note 116, at 17.

308. See MODEL RULES OF PROF'L CONDUCT R. 1.2 (1983) (discussing the allocation of settlement decisions to the client); see also MODEL RULES OF PROF'L CONDUCT R. 1.3 (1983) (calling on the lawyer to be diligent in her representation); see also MODEL RULES OF PROF'L CONDUCT R. 1.4 (requiring the lawyer to communicate with the client so that the client is informed about the representation).

309. See, e.g., FED. R. CIV. P. 26; COLO. R. CIV. P. 16.

310. See GOODMAN, *supra* note 116, at 17.

courteous to others.³¹¹

C. BUT, WHAT IF . . . ?

One can envision a circumstance in which a lawyer and her client may, after an engaged conversation, disagree about a course of conduct. For example, here the client may be very angry at the roofing company and may decide that for her it is more important to file a lawsuit, than to accept a settlement offer that she finds agreeable because she hopes that a lawsuit will embarrass the roofing company. The lawyer may disagree – either because she does not agree that embarrassment is an appropriate goal, or because she does not believe that filing a lawsuit will meet the client's hopes. Would a Dominant View lawyer and an LON lawyer behave differently with the client? This article concludes yes, but possibly not in the way predicted by the Dominant View.³¹²

Under the Dominant View, so long as filing a lawsuit was not frivolous and would not violate relevant court pleading rules or rules of professional conduct,³¹³ the lawyer should accede to the client's wishes to file the lawsuit instead of settle.³¹⁴ The Dominant View would put the client's autonomy ahead of the lawyer's assessments.³¹⁵ The Dominant View lawyer may certainly have shared her assessment with the client that filing a lawsuit might not embarrass the roofing company as the client had hoped, but the Dominant View lawyer would not press the client further.³¹⁶

The LON lawyer would be more engaged with her client.³¹⁷ The LON lawyer would have an explicit conversation about the client's wish to embarrass the roofing company.³¹⁸ But, importantly, the lawyer would come with an intent to be open, to listen without judging, and to respond with humility and compassion.³¹⁹ So, the LON lawyer might inquire of the client why embarrassment is important to her. Maybe the client just feels vindictive. Maybe the client was referred to the roofing company by a

311. See *id.* at 17–19.

312. See SIMON, *supra* note 41, at 7–9 (summarizing the Dominant View theory of legal ethics).

313. See, e.g., FED. R. CIV. P. 11(b) (requiring legal claims to be warranted and factual claims to have evidentiary support); see also MODEL RULES OF PROF'L CONDUCT R. 3.1 (stating that a lawyer shall not file a frivolous lawsuit).

314. See SIMON, *supra* note 41, at 7.

315. See *id.*

316. See *id.* at 26.

317. See GOODMAN, *supra* note 116, at 19.

318. See *id.*

319. See *id.* at 17.

neighbor and has learned that the neighbor, and the neighbor's friend had similar problems with the company, so the client wants to protect others. Whatever the reason, the LON lawyer's engaged conversation explicitly acknowledges the client as a moral actor, and encourages the client to attend to the moral valence of her actions.³²⁰ By doing so, the LON lawyer is not trying to badger the client into any particular conduct, but is instead trying to create space for the Shafferian good man.³²¹ In the end, the decision remains the client's.

The intent of an LON lawyer described above challenges the Dominant View's presumption of bad man lawyering. By cultivating LON intent, a lawyer may resist self-interested or dominating behavior. A lawyer also resists presuming a bad man client. As David Luban has noted, sometimes cognitive distortions can miscue a person's judgment, and what might appear as bad man behavior is behavior that is based on faulty cognitive processes.³²² The lawyer who is unwilling to have an explicit conversation with a client about all the bases of the client's judgment call (moral or otherwise) will be unable to differentiate between the badly-motivated client and the well-motivated client who has misperceived the situation.³²³ The lawyer may wrongly assume a badly-motivated client and miss an easy opportunity to help a misperceiving client correct her cognitive errors.³²⁴

Nonetheless, assume the roofing client decides to go forward with the lawsuit solely for sport. The client tells the lawyer she feels like toying with the roofing company because she can, and has no other reason for going forward.³²⁵ That client is the archetypical bad man, and the kind of client that the Dominant View holds up as the test case for protecting client

320. See *id.* at 20.

321. See Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 41 U. PITT. L. REV. 181, 182–224 (1981).

322. See LEGAL ETHICS AND HUMAN DIGNITY, *supra* note 101, at III.7–8. In both articles, Luban discusses cognitive distortions like dissonance and group polarization as factors that account for bad judgment in which bad intent is not present. See also David Luban, *The Inevitability of Conscience: A Response to My Critics*, 93 CORNELL L. REV. 1437, 1449 (2008) (“Furthermore, even if the client’s value system finds nothing wrong with the tactic, that may be the result of cognitive distortions . . . rather than a fundamentally different moral outlook.”).

323. See LEGAL ETHICS AND HUMAN DIGNITY, *supra* note 101, at III.7–8.

324. As David Luban has described it: “In cases where the client’s decision results from cognitive distortion rather than a genuinely different moral code, moral acquiescence on the lawyer’s part will reinforce the distortion, while moral activism may break the spell” *Id.*

325. In my experience (and, I expect, in most lawyers’ experiences), such a client is exceedingly rare. In fact, in my almost twenty years of experience between corporate litigation, legal aid, and clinical work, I have never had such a client.

autonomy.³²⁶ It is also the kind of client that the Dominant View believes lawyers of faith cannot respect.³²⁷

In fact, the LON lawyer commits to respecting her client, regardless of the client's motives. What the LON lawyer does not commit to is acting as the client's representative if the client's motivations are inconsistent with the lawyer's commitment to actions in line with the principles of love of neighbor. In the roofing case, then, the LON lawyer may have a candid, respectful conversation with the client about the fact the lawyer will not be the client's attorney should she go forward with the lawsuit.³²⁸ The conversation will be without opprobrium or ultimatums.³²⁹ The LON lawyer will continue the conversation to go over the client's options – how the client might find another lawyer, whether the LON lawyer might recommend new counsel, whether the client wishes to reconsider, and the like.

Importantly, the client should not be surprised by the LON lawyer's decision not to represent her in the roofing suit. The LON lawyer will have been transparent throughout her interactions with the client about the lawyer's commitment to a certain kind of lawyering, and will have modeled LON lawyering behavior throughout.³³⁰ Thus, the client will have had concrete examples of what kind of lawyer the client was working with.³³¹ Finally, the LON lawyer will have engaged the client in moral conversation in a way that ensures the client understands herself to be fully participating in the conversation.³³² The client will have maintained her sense of being the final decision-maker about her own conduct.³³³

326. See LEGAL ETHICS AND HUMAN DIGNITY, *supra* note 101, at III.7–8.

327. See *id.*

328. See *id.*

329. See *id.*

330. See Robert K. Vischer, *Moral Engagement Without the "Moral Law": A Post-Canons View of Attorneys' Moral Accountability*, J. OF THE PROF'L LAWYER 213, 222 (2008), available at <http://www.abanet.org/cpr/pubs/vischer.pdf>.

331. See *id.* (discussing the importance of a lawyer being overt about moral conversation, yet doing so in a way that preserves client decision making).

332. See *id.*

333. Cf. *id.* I acknowledge that the client's ability to find new counsel is more challenging in those cases where the client has less access to lawyers, generally. See Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011, 1028 n.60 (2009). For example, clients who live in rural areas where lawyers are scarce, or clients who are low income, or who have small cases that may not be financially attractive to lawyers. See *id.* However, that is not a problem unique to LON lawyers, but presents a challenge to any kind of lawyering other than the strongest vision of Dominant View lawyering. See generally W. William Hodes, *Accepting and Rejecting Clients – The Moral Autonomy of the Second-to-last Lawyer in Town*, 48 UNIV. KAN. L. REV. 977 (2000) (describing the last lawyer in town challenge for lawyer autonomy in client choice). Interestingly, those who

The actions described above have not referred to any particular faith tradition because the commonalities between the three faith traditions considered in this article are very strong.³³⁴ Thus, the LON lawyer described could come from Christianity, Judaism or Buddhism.³³⁵ Furthermore, the LON lawyer would be well regarded by the legal profession as diligent, competent, and a good communicator.³³⁶ While the Dominant View would not likely agree with the way in which the LON lawyer engaged in moral conversation nor the LON lawyer's decision not to go forward with representing the client, the Dominant View's fears of attorney domination and disengagement are unfounded.³³⁷ The *how* of faith-based lawyering that one sees from love of neighbor demonstrates the importance and benefit of looking at a particular facet of faith-based lawyering.³³⁸

D. A DISTINCTION WITH A DIFFERENCE?

One point should be developed further – that LON lawyering looks very similar to good secular, humanist lawyering. In making that comparison, the article is not implicitly arguing that LON lawyering is good lawyering because it is the same as secular lawyering. For an LON lawyer, the purpose of looking to love of neighbor as a guide is to transform. For example, a Buddhist commits herself to the Eightfold Path as a way of transforming herself, and as a way of engaging in the world so that others might see the possibility of transformation in her actions.³³⁹ An LON lawyer's reasons for acting are different than those of a secular lawyer.

Furthermore, as Dr. King repeatedly reminded those with whom he spoke, love in action has an internal component – an intent.³⁴⁰ Thus, LON

worry about the last lawyer in town problem often focus on the challenges faced by those putting forward unpopular or controversial legal claims. *See id.* at 984. But, at least in the United States with its fairly robust cause lawyering community, the clients with unpopular or controversial causes may have an easier time finding a lawyer than would the hypothetical roofing client of this article. *See* KEVIN R. DEN DULK, *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 304 (Austin Sarat & Stuart A. Scheingold eds., Stanford Univ. Press, 2006).

334. *See* LESNICK, *supra* note 183, at 23.

335. *See id.*

336. *See* MODEL RULES OF PROF'L CONDUCT R. 1.3-4 (2008) (rule 1.3 calls on the lawyer to be diligent in her representation, and Rule 1.4 requires the lawyer to communicate with the client so that the client is informed about the representation).

337. *See* ON BEING A CHRISTIAN AND A LAWYER, *supra* note 102, at 28–30.

338. *See* Vischer, *supra* note 108, at 428–31 (emphasis added).

339. *See* SMITH & NOVAK, *supra* note 229, at 50.

340. *See* TOH, *supra* note 4, at 13.

lawyering requires a specific intent.³⁴¹ Without the requisite intent, an LON lawyer is not meeting an essential criteria of love of neighbor.³⁴² For an LON lawyer, the fact that her outward behavior looks like good lawyering is insufficient.³⁴³ The LON lawyer is also charged with cultivating intent.³⁴⁴ While it may be enough for a non-LON lawyer to outwardly behave in a certain way, an LON lawyer must do more.³⁴⁵ Thus, to say that LON lawyering is good lawyering because it looks just like good secular lawyering is to misunderstand a fundamental point of LON lawyering.

E. A CRITIQUE: LOVE OF NEIGHBOR IS TOO EASY AN EXAMPLE

One critique from those who are skeptical about the appropriateness of faith-based lawyering might be that love of neighbor is too easy an example.³⁴⁶ In other words, love of neighbor is so capacious in the conduct it might encompass that it does not raise the possibility for lawyer domination or disengagement of which the Dominant View is concerned.³⁴⁷

Love of neighbor is capacious in the sense that Samuel Levine has noted.³⁴⁸ There is much specific conduct that is unenumerated, but contained within the concept of love of neighbor.³⁴⁹ Nonetheless, love of neighbor as considered in Christianity, Judaism and Buddhism is bounded by four concrete dimensions.³⁵⁰ It is other-regarding, it is inclusive and universal, it is intentional, and it requires active conduct.³⁵¹ Those four dimensions provide clear sorting mechanisms for conduct that is within love of neighbor and conduct without.³⁵² It is not the case that love of neighbor can be made to accommodate any lawyerly conduct.³⁵³

Consider again the roofing company example. In describing the initial client meeting, the article suggested that it would be inconsistent with love of neighbor for a lawyer to set aside insufficient time for the

341. *See id.*

342. *Cf. id.*

343. *See* GOODMAN, *supra* note 116, at 16.

344. *See id.* at 16–17.

345. *See id.* at 16.

346. *See id.*

347. *See Ethical Obligations, supra* note 215, at 187–89.

348. *See Broad Life, supra* note 215, at 1207–08.

349. *See Ethics Codes, supra* note 215, at 549, 571–72; *see also Unenumerated Rights, supra* note 215, at 525; *Ethical Obligations, supra* note 215, at 187–88.

350. *See* TOH, *supra* note 4, at 13.

351. *See id.*

352. *See supra* notes 256–61 and accompanying text.

353. *See supra* Part IV.

meeting. A lawyer who did so would not be other-regarding, and would likely send a message to the new client that the client's time and interests were less important than the lawyer's.³⁵⁴ But, nothing in the Rules of Professional Conduct penalizes a lawyer for failing to be other-regarding in setting the initial meeting.³⁵⁵

Or, consider the somewhat recent trend of bar associations and courts propounding civility codes for lawyers.³⁵⁶ The civility codes usually call for lawyers to show basic courtesies to each other, the court and litigants.³⁵⁷ The codes do not require a specific intent, merely conduct.³⁵⁸ Thus, a lawyer, while being courteous, is free to silently think discourteous thoughts.³⁵⁹ As noted above, that is not true for an LON lawyer, for whom intent is as important as outward conduct.³⁶⁰ An LON lawyer fails to meet her responsibilities if her conduct is respectful, but her thoughts are not.³⁶¹ As the two examples demonstrate, love of neighbor can guide lawyerly practice in a way that is different from the current professional baseline, but that need not be antithetical to that baseline.

By offering love of neighbor as an example of faith-based lawyering that is good lawyering, the article has tried to be conscientious about remaining in the particulars.³⁶² In order to continue to move beyond the existing dichotomous conversation, remaining in the particulars is important. It ensures that the analysis is not overbroad, while also ensuring that conclusions are not inappropriately generalized.

V. CONCLUSION

Return to the annual meeting of the Young Lawyers Division, where the audience listens to the speaker conclude his remarks about love in action as a lawyerly practice. There may have been some in the audience who will have left as soon as the speaker began investigating the interplay

354. See *supra* p. 38.

355. See MODEL RULES OF PROF'L CONDUCT R. 1.4 (2008).

356. See L. Timothy Perrin, *Lawyer as Peacemaker: A Christian Response to Rambo Litigation*, 32 PEPP. L. REV. 519, 525 (2005). For a list of local bar associations that have adopted civility codes, see American Bar Association, <http://www.abanet.org/cpr/professionalism/profcodes.html> (last visited Jan. 31, 2010).

357. See Perrin, *supra* note 356, at 525.

358. See generally ABA Section of Family Law, CIVILITY STANDARDS (2006), available at http://www.abanet.org/family/reports/standards_civility.pdf.

359. See *supra* p. 48 and note 345.

360. See *supra* Part IV.A.

361. See *supra* pp. 47–48 and notes 341–43.

362. See *supra* Part IV.B.

between lawyering and a religious value.³⁶³ For them, the Dominant View triumphs and there can be nothing but problems when a lawyer considers a religious value when deciding how to lawyer.³⁶⁴ Even if they knew the speaker's words were those of Martin Luther King, Jr., they remain unwilling to consider the lessons provided by Dr. King, the preacher.³⁶⁵ Others in the audience have remained – some more from courtesy than interest; some intrigued by, but maybe skeptical of, the idea that the legal profession could be motivated by a concept such as love in action.³⁶⁶

By the end of the speaker's remarks, the audience leaves the auditorium with some shared thoughts. The Dominant View of lawyering is able to conceive of only one way for a lawyer to be able to respect client autonomy and freedom of thought.³⁶⁷ That way is for a lawyer to remain removed from her client – partisan to the client's goals, but unaccountable for the client's moral choices. There is another way to envision lawyerly practice, and that is through the unexpected lens of love in action or love of neighbor.³⁶⁸ By considering lawyerly practice through that particular value, one discovers a way in which lawyer and client both may deeply and genuinely engage with each other.³⁶⁹ The lawyer commits to a practice that accepts the client as she presents herself and her legal problem, but that also accepts the client as having the capacity for moral conversation.³⁷⁰ The practice further commits the lawyer to an internal intent of equanimity for all, and external action consistent with that. By the end of the remarks, the audience may have a sense that they could be as inspired by Martin Luther King, Jr., the preacher, as they are by Martin Luther King, Jr., the civil rights hero.³⁷¹

363. *See supra* pp. 4–5 and note 28.

364. *See supra* p. 11 and note 72.

365. *See supra* Part I.

366. *See supra* p. 4 and note 21.

367. *See supra* p. 7 and note 41.

368. *See supra* p. 20 and note 132.

369. *See supra* Part IV.

370. *See supra* p. 46 and note 332.

371. *See supra* Part I.