Religious Lawyering Critique, The AALS Presentations

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THE RELIGIOUS LAWYERING CRITIQUE

Bruce A. Green†

One might think about the relationship between law practice and religion in different ways, depending on how one views either the professional norms or religious belief and observance. Some of the most recent academic literature on "religious lawyering" is premised on a highly critical view of the profession's norms and a claim that religious convictions that bear on the practice of law are incompatible with, and preferable to, aspects of the professional norms. My purpose here is to identify, and raise some questions about, both this critique and this suggestion, and to show how they are in tension with other insights of the religious lawyering literature.

A conception of the relevance of religion to lawyers' work need not begin with a critical view of professional norms and professionalism. On the contrary, one might start with the premise that the legal profession's expectations for law practice are socially and morally laudable, and perceive lawyers' religious convictions as providing support for good lawyering. This was the understanding expressed by Henry A. Boardman, a Presbyterian Minister, in an 1849 oration that was surely among the earliest recorded reflections on the relevance of religion to the work of U.S. lawyers.¹

Boardman recognized the important social function served by lawyers, and suggested that religious piety would encourage lawyers to serve that function conscientiously.² Although some lawyers "grossly

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2. See Boardman, supra n. 1, at 8:
The Bar must always, in a country like ours, be the chief avenue of civil distinction—the main road to posts of emolument and power. . . . [A] profession clothed with so lofty a mission, needs, both for its own sake and the sake of the country, to be pervaded with a wholesome religious sentiment. Piety alone will not, it is true, fit men to become juris,
misconceive[d]" their role,³ in his view, religious faith would influence lawyers toward the proper conception.⁴ Religion would also help foster the "moral qualities and habits" of a respectable, successful lawyer—"self-control, benevolence, candour, kindness of heart, and a love of truth and justice"⁵—and enable lawyers to resist temptations to depart from proper standards of practice⁶ and to act courageously in the face of pressures to do so.⁷

For Boardman, religion did not define the norms of professional practice. His understanding of the professional norms, as embodied in the work of good lawyers, was evidently taken from then-contemporary understandings that have largely continued to our own day.⁸ For example, Boardman said that clients "should be able to repose entire confidence in [a lawyer's] integrity,"⁹ and that lawyers should "deal honestly and kindly" with their clients.¹⁰ Although litigation should be "conduct[ed] . . . throughout in a fair and honourable manner," he said, this did not mean "that a lawyer is to assume the functions of a judge, and take both parties under his protection."¹¹ Rather, the lawyer must use every "legitimate means which may promise to benefit his client," including sometimes making arguments that he does not believe and

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³ Boardman maintained that some lawyers, "reckless petitifoggers of the profession," grossly misconceive their role, viewing law not as a science or even a trade, but as a "system of trickery":

They come to the Bar as a gambler to his club, to be honest where it is politic to be honest, and to practice fraud and chicanery where chicanery and fraud promise larger gains. They see nothing in a law-suit but a private dispute or quarrel, a sort of pugilistic encounter, in which it is all one to the community who beats and who is beaten.

Id. at 10; see also id. at 16.

⁴ Id. at 9 ("A very little consideration will suffice to show that an intelligent, scriptural faith, must be of great assistance in forming a just estimate of the nature and objects of the legal profession.").

⁵ Id. at 12.

⁶ Id. at 11-12 ("It would not be easy to exaggerate the value of personal religion in the actual practice of your profession. Whether regard be had to its temptations, its trials, or its duties, to the dangers to be shunned or the difficulties to be met.").

⁷ Boardman described the lawyer's need to defend unpopular clients or causes—for example, to prosecute an eminent individual or to defend one "who has made himself obnoxious both to the government and the people"—even at the threat of one's own professional prospects. Id. at 19. Whatever the personal consequences, he observed, the lawyer acting rightly "will not betray his client." Id. at 20.


⁹ Boardman, supra n. 1, at 15-16.

¹⁰ Id. at 17.

¹¹ Id. at 18.
exploiting the other side’s technical errors. What the lawyer may not do, however, is to conduct the proceedings maliciously or vindictively, needlessly malign the opposing party’s character, misrepresent facts, or use similar means that “are incompatible with that integrity which is at once the ornament of the Bar and the safeguard of our rights.” While there was nothing uniquely religious about these professional expectations, and lawyers lacking in piety might conceivably accept and live up to them, Boardman’s view was that religion was essential because the pious lawyer had to think and act rightly—perhaps even more rightly than good lawyers who lacked religious conviction.

Few contemporary commentators would take quite as skeptical a view about the ability of non-pious people to be good lawyers as Rev. Boardman’s. But some have ascribed a similar supporting role to religion, recognizing that religion may foster lawyers’ efforts to achieve, and even exceed, professional expectations that they regard as worthy.

Alternatively, one might take a generally respectful, if not wholly embracing, attitude toward the professional norms, but recognize them

12. Id.
13. Id.
14. See id. at 11 (acknowledging that “right views . . . may undoubtedly be entertained and acted upon by individuals who are not under the control of religious principle,” but maintaining that “it is no less obvious that they are the views which a Christian lawyer must take of his profession.” (emphasis in original)); id. at 20 (acknowledging that “[i]t would be claiming too much for religion to affirm that this high moral courage can exist only in connec[ti]on with personal piety”); but see id. at 23 (asserting “that religion offers the only effectual shield against these dangers; that a firm faith is the best of all equipments to protect the members of the profession from those enticements to dissipation, and the more subtle enticements to dishonesty, which have proved fatal to so many brethren”).
15. Id. at 23:
My object has been to show the great value of personal religion, its professional value, so to speak, in the practice of law. It is not denied that examples may be found at the Bar, of eminent moral worth and distinguished success, dissociated from real piety. But it is contended that even in cases of this sort, religion would impart an additional lustre to the character; while its influence, if diffused throughout the body, would be most advantageously felt in removing the prevalent vices and defects of the profession, and augmenting all those virtues which make it one of the chief supports and ornaments of a refined civilization.
That religious considerations should not alter a public defender’s representation of a client to the legal detriment of the client does not mean that religion has no role in the public defender’s work. Religious imperatives and exhortations may well sustain and inspire a public defender in his work, and help him to treat clients with the compassion and dignity many feel is necessary to representing indigent criminal defendants.
to be incomplete and capacious,\textsuperscript{17} and conclude that for some lawyers, religious values, commitments and identity may therefore play a significant role in shaping law practice within the context of those norms. In this respect, an examination of religion's relevance to legal practice is an aspect of several broader questions on which there is a growing body of scholarship. One of these is the significance of lawyers' moral, political and social values, whether they are common and everyday values, religious values, or idiosyncratic ones. How, for example, may lawyers express their values through their work (e.g. how can they express their commitment to social justice through their choice of clients and areas of practice, or through their commitment to \textit{pro bono} representation)?\textsuperscript{18} How can lawyers bring their values to bear in counseling clients and other work on behalf of clients,\textsuperscript{19} and how should lawyers reconcile the professional rules and norms with other values when they are in conflict?\textsuperscript{20} Another broader question is how one can maintain a law practice consistently with other life commitments. Lawyers face the challenge of maintaining a balanced life in the face of the demands of a legal practice, which may leave little time for friends and family, culture and leisure, health and exercise, and other commitments, including religious ones.\textsuperscript{21} Finally, what is the relevance of personal identity to law practice—for example, the relevance of race, class, gender, sexual orientation and/or physical disability?\textsuperscript{22} Religious

\textsuperscript{17} See generally Bruce A. Green, \textit{The Role of Personal Values in Professional Decisionmaking}, 11 Geo. J. Leg. Ethics 19 (1997) [hereinafter Green, \textit{Personal Values}].


\textsuperscript{19} See e.g. Green, \textit{Personal Values}, supra n. 17.


\textsuperscript{22} See e.g. Bill Ong Hing, \textit{Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses}, 45 Stan. L. Rev. 1807, 1810 (1993). On the significance of race see e.g. Roland Acevedo et al., \textit{Race and Representation: A Study of Legal Aid Attorneys and Their Perception of the Significance of Race},
identity is among the aspects of personal identity that might influence a lawyer’s professional practice.\textsuperscript{23}

Much of the religious lawyering literature, proceeding from a respectful regard for the legal profession and its norms, explores how religious lawyers can integrate their religious convictions with their professional practice.\textsuperscript{24} In this view, professional and religious norms are ordinarily not antithetical, but capable of being interwoven.\textsuperscript{25}

One might also explore the relevance of religion from a comparative perspective, identifying points of similarity and dissimilarity between religious and professional premises. Just as one might compare the legal profession’s norms in the United States with the norms of practice in countries with different legal systems, one might ask what Protestant, Catholic, Muslim, Jewish or other religious belief systems say about lawyers’ work. In many cases, it may be doubtful that one can answer definitively. To the extent one can, one might ask how the norms for United States practitioners differ and how the


\textsuperscript{24}See e.g. Daniel O. Conkle, Professing Professionals: Christian Pilots on the River of Law, 38 Cath. Law. 151, 164 (1998) (“Christianity may affect lawyers not only in how they generally understand or structure their professional life, but also in their day-to-day manner of practice.”); Samuel J. Levine, Introductory Note: Symposium on Lawyering and Personal Values—Responding to the Problems of Ethical Schizophrenia, 38 Cath. Law. 145, 148 (1998) (“Religious values . . . present a comprehensive system of ethics for lawyers seeking to integrate their personal and professional lives.”).

\textsuperscript{25}See e.g. Timothy W. Floyd, The Practice of Law as a Vocation or Calling, 66 Fordham L. Rev. 1405, 1415 (1998); Nancy B. Rapoport, Living “Top-Down” in a “Bottom-Up” World: Musings on the Relationship Between Jewish Ethics and Legal Ethics, 78 Neb. L. Rev. 18, 36 (1999):

How do I avoid having to choose between my two worlds? For one thing, I can say “no” to representations that I can’t stomach—a luxury that, as a law professor, I can certainly afford. But I want to go beyond avoiding the conflict. I actually want to interweave both worlds, and I can do that. For one thing, as a lawyer and as a Jew, I can recognize that I’m an example in the community (both when I’m actually lawyering and when I’m doing non-lawyering things, like shopping for groceries), and I can behave accordingly. As a lawyer and as a Jew, I can treat people with kindness and with respect. I can enjoy both traditions’ enthusiasm for debate and interpretation—even when it comes to the hardest question of all: who am I?
professional norms might be better understood or critiqued by comparison.26

Some of the literature on "religious lawyering," however, regards aspects of the professional norms from a highly critical perspective. This religious lawyering critique has at least three interrelated themes: that the professional norms are essentially hostile to personal belief and identity; that the legal profession's "role differentiated" morality is essentially at odds with religious and ordinary societal morality; and that the professional norms presuppose a style of lawyering that is "amoral" and instrumental, a style captured by the metaphor of the "hired gun." The religious lawyering critique of the legal profession serves as a springboard for a claim that, at least from the religious lawyer's perspective, religious beliefs provide a better conception of what it means to be a good lawyer.27 This claim, which is often implicit, is a long way from Boardman's view more than one hundred fifty years ago—at a time when, by some accounts, the practice of law was in a far more challenged state than today28—that religious ideals and professional ideals are mutually complementary. My suggestion is that both the critique and the claim deserve closer and more critical scrutiny than scholars on religious lawyering have given them to date.

The idea that professional norms exclude personal belief and identity, and especially religious belief and identity, derives from an observation made by Sanford Levinson in his 1993 article on the professional identity of the Jewish lawyer.29 Levinson suggested that "a particular version" of what he calls "the professionalism project" involves "the 'bleaching out' of merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our 'conscience.'"30 Thereafter, a broad "bleaching out" claim about the


27. See Martha Minow, On Being a Religious Professional, 150 U. Pa. L. Rev. 661, 663 (2001) observing that:

[the more typical legal scholarly treatment of religion and law practice] ... begins by noting an apparent crisis in the legal profession or a decline in ethics among lawyers [and] then advises a search for virtue and goodness that religious teachings, beliefs, and institutions can assist.


29. Levinson, supra n. 23.

30. Id. at 1578.
standard conception of law practice became an article of faith in writings on religious lawyering by my colleague Russell Pearce and others, and was developed further. In a response to Levinson, Pearce maintained that this conception that professionalism required the "bleaching out" of "religion, gender, race, and ethnicity" described not simply "a particular version" of the lawyer's role, but "the standard conception of the lawyer's professional role in the context of devotion to the rule of law." More recently, in an article on the religious lawyering movement, Robert Vischer suggested that the standard conception of law practice—what he characterizes as "the priesthood paradigm"—

reflects a "bleached out professionalism" under which lawyers' personal histories, loyalties and values are replaced with the bar's "own normative standards" that "are explicitly cast in universalist terms that purport to apply to all lawyers in all contexts."

Closely connected with the trope of "bleached out professionalism" is the idea that professional norms demand that lawyers act amoral, and thus, antithetically to their own religious and other moral principles. Vischer, for one, explicitly links these ideas, referring to the legal profession as "for the most part, . . . a gatekeeping body unified in its devotion to the amoral, technical provision of legal services," and to the paradigm of "the amoral, 'bleached out' lawyer—that is, . . . [the] call for 'a lawyer [to be] willing to diligently represent a client irrespective of any personal, moral, or ideological affinity between them.'" In turn, Vischer links the profession's conception that lawyers may pursue lawful means and ends that contradict their own "vision of the good" to the profession's paradigm [of] role-differentiated morality, under which "behavior that is potentially criticizable on moral grounds is blocked from such criticism by an appeal to the existence of the actor's role


34. Id. at 433 (quoting Levinson, supra n. 23, at 1578, and Wilkins, supra n. 22, at 1504).

35. Id. at 431.

36. Id. at 435 (quoting Norman W. Spaulding, Reinterpreting Professional Identity, 74 U. Colo. L. Rev. 1, 7 (2003)); see also Conkle, supra n. 24, at 152.
which, it is claimed, makes the moral difference.”  

Some religious lawyering scholars perceive the standard professional morality as not simply tolerant of work that contradicts a lawyer’s moral viewpoint, but as requiring it; the professional ideology, in their view, all but demands that lawyers serve as “hired guns.”

If professionalism is the illness, in this account, religion can be the cure: For religious lawyers, religious values should not simply reinforce professional norms (as in Boardman’s account) or supplement them (as in the view of those seeking to integrate religious and professional norms) or provide an occasion for reflection on them (as comparativists might propose), but, to some extent, supplant them.  

This presupposes that religious principles are different from professional ideals as well as, presumably, from garden-variety, everyday societal values. But in what way? Some of the literature suggests how highly particular religious beliefs may conflict with professional obligations, such as when a lawyer who is religiously opposed to abortion is compelled to represent a minor who is seeking judicial authorization for an abortion without parental consent. But these kinds of conflicts are both rare and avoidable. Indeed, one of the leading proponents of the religious

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37. Vischer, supra n. 34, at 443 (quoting Richard Wasserstrom, Roles and Morality, in The Good Lawyer: Lawyers’ Roles and Lawyers’ Ethics 25, 28 (David Luban, ed., Rowman & Allanheld 1983)).

38. See e.g. Joseph G. Allegretti, The Lawyer’s Calling: Christian Faith and Legal Practice (Paulist Press 1996); Pearce & Uelmen, supra n. 23, at 148-151; Vischer, supra n. 33 at 441 (citing Geoffrey C. Hazard, The Future of Legal Ethics, 100 Yale L.J. 1239, 1278-1279 (1991)) (identifying Brougham with “the legal profession’s narrative”).

39. See Russell G. Pearce, Persons of Faith and the Practice of Law: Faith and the Lawyer’s Practice, 75 St. John’s L. Rev. 277, 279 (2001) (observing that the religious lawyering movement is divided between those who “believe[] that religious lawyering can exist with professionalism, and indeed can be mutually supportive” and those who “believe[] that religious lawyering and professionalism are inevitably in conflict and that professionalism should be rejected”); Vischer, supra n. 33, at 429 (observing that religious lawyers’ “primary loyalty is not to the profession’s stated vision of the good lawyer, but to their faith tradition’s stated vision of the good person”).

40. See e.g. Lesnick, Religious Lawyer, supra n. 31; Vischer, supra n. 33, at 429; see also Jennifer Tetenbaum Miller, Note, Free Exercise v. Legal Ethics: Can a Religious Lawyer Discriminate in Choosing Clients?, 13 Geo. J. Leg. Ethics 161 (1999).

41. But see Vischer, supra n. 33, at 429 (referring to “the frequent overlap between the compulsions of faith and the compulsions of the profession”).

42. For example, a recent article by Katherine Kruse explores the clash between the moral beliefs of a lawyer and client in the context of a scenario in which a lesbian couple seeking advice on how to use the law to best structure their family relationship to benefit their future child seeks assistance from a family lawyer who is morally and religiously opposed to homosexuality. Katherine R. Kruse, Lawyers, Justice, and the Challenge of Moral Pluralism, 90 Minn. L. Rev. 389, 409 (2005). Kruse argues compellingly for a “moral conflict of interest standard” which “would prohibit lawyers from representing clients with whom they fundamentally disagree on moral grounds.” Id. at 458. Earlier, I explored the moral disagreement between a lawyer and client in the context of a scenario in which a woman seeking exclusive custody of her child retains
lawyering critique, my colleague Amy Uelmen, has described such examples as caricatures of religious lawyering. The religious values that she and others put forth are more abstract and broadly applicable to professional practice, such as “concern for the common good,” “honesty and integrity,” and “decency and courtesy.” Even harsh critics of professionalism would concede the affinity between professional norms and certain religious principles, such as the commitment to “equal justice under the law,” and “concern for the poor and powerless.” But the suggestion—and here, there is some kinship with Boardman—is that, at the very least, religious doctrine provides a moral framework that is more robust than the one that many bring to their work as lawyers, and that religious lawyers are more strongly committed to their personal belief system than secular lawyers.

Both the descriptive and normative premises of the religious lawyering critique have been challenged in the past. Descriptively, it is not at all clear that the profession has ever endorsed the most extreme view of advocacy: Ted Schneyer long ago challenged the assumption that the “hired gun” is the profession’s standard conception of the

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a lawyer whose religious conviction (like that of a New Jersey judge on whom the scenario is based) is that children should be accessible to both parents. I suggested that family law might not be the appropriate area of practice for one holding such beliefs. Green, Personal Values, supra n. 17, at 36-38. See also Israel M. Greisman, The Jewish Criminal Lawyer’s Dilemma, 29 Fordham Urb. L.J. 2413 (2002) (arguing that Jewish doctrine would make it virtually impossible to serve as a criminal defense lawyer).


44. Uelmen, Religious Person, supra n. 43, at 1094.
45. Conkle, supra n. 24, at 165.
46. Id.
47. Pearce, Jewish Lawyering, supra n. 32, at 1269.
48. Uelmen, Faith and Justice, supra n. 31, at 929:
When it comes to analyzing the implications of ordinary day-to-day work, many lawyers lack a robust intellectual framework which would help to challenge, or at least think about, how their work impacts the common good and the poor. For a few sensitive and inquiring souls, direct contact with poverty and injustice may be sufficient to provoke the kind of intellectual inquiry and moral reflection that will equip them for a probing structural critique.

49. Vischer, supra n. 33, at 447 (“A morally agnostic approach to clients is untenable when moral beliefs are not viewed simply as a matter of personal preference, but as having undeniable truth value.”).
lawyer’s role. I have previously suggested that it is a vast overstatement to say of the professional norms that they leave no room for lawyers’ personal morality, and, as William Simon has argued, it is doubtful that lawyers can help but bring their personal values to bear on their representations. The question is simply the extent to which lawyers can, should, and do draw on personal values, religious or otherwise. Norman Spaulding has argued that lawyers bring too much of themselves, not too little, to their work. He challenges attributions of lawyer dissatisfaction to “the professional ideal endorsed by the rules of professional conduct [which] envisions a lawyer willing to diligently represent a client irrespective of any personal, moral, or ideological affinity between them,” and argues, on the contrary, that lawyers’ malaise is often attributable to their over-identification with clients’ objectives.

On the other hand, from a normative perspective, as Boardman recognized, personal values should not be given full play. David Wilkins has defended the idea of deference to professional morality in the context of discussing black lawyers’ race-based moral obligations, and Daniel Markovits argues in a forthcoming article that the legitimacy of adjudication depends on lawyers’ maintaining substantial professional detachment from their private views of the morality of their clients’ claims. I would add that, even from the perspective of what Pearce has

50. Ted Schneyer, Moral Philosophy’s Standard Misconception of Legal Ethics, 1984 Wis. L. Rev. 1529, 1567 (“attack[ing] the claim that lawyers generally adhere to a Standard Conception of legal ethics which motivates them to act for their clients up to the limits of the law and without regard for the interests of anyone but their clients”); see also Ted Schneyer, Some Sympathy for the Hired Gun, 41 J. Leg. Educ. 11 (1991); Zacharias & Green, supra n. 8, at 15-16 & n. 95.

51. See Green, Personal Values, supra n. 17.

52. Simon, supra n. 18, at 1102 (“[E]ffective lawyers cannot avoid making judgments in terms of their own values and influencing their clients to adopt those judgments.”).


54. Id.

55. See Wilkins, supra n. 22, at 1590-1591:

First, the model insists that professional obligations carry independent moral weight. Black lawyers, like all lawyers, must take these obligations seriously. Second, all legitimate racial obligations must be derived from, and ultimately be subservient to, common morality. Racial obligations are therefore no excuse for race-based oppression. Third, in cases where there is an unavoidable conflict between a black lawyer’s racial obligations and her professional commitments, it is the legitimate social purposes underlying her professional obligations that must eventually carry the day. Racial solidarity, in other words, can never undermine the legitimate (as opposed to the self-interested) demands of professionalism. Fourth, to the extent that a black lawyer finds it impossible to conform to these demands, she must . . . express her disagreement in ways that ultimately support the moral force of the professional norm.

dubbed the "religious lawyering movement,"\textsuperscript{57} there is reason to question the religious lawyering critique, which is to say that the academic thinking on the broad theme of religious lawyering may be not just varied but divided.

First, the claim that professional norms bleach out personal identity is overstated. To be sure, law practice limits opportunities for self-expression. It is not alone in that regard. Virtually all work comes with shared expectations and limitations. Few who work for a living have the latitude to fully express their personal beliefs and characteristics in their work. A plastic surgeon cannot indulge her aesthetic preferences by rearranging a patient’s features without permission. A waiter cannot criticize a diner’s order on moral grounds (“it’s bad enough that you’re eating meat, but veal?!”). Lawyers who wear suits to court are hardly the only ones in a uniform. But it is not necessarily the “project” of “professionalism” to seek to obliterate personal identity and belief. And anyone who has been around lawyers for a while knows that, in fact, their personal characteristics are not “bleached out.”\textsuperscript{58} That is proven, in part, by those lawyers in the “religious lawyering movement” who have found ways to integrate religious faith with professional practice.\textsuperscript{59} In many respects, lawyers’ ability to express their personal identity is probably less a product of professionalism and professional norms than of the particular workplaces in which some lawyers choose to practice—e.g. large corporate law firms.\textsuperscript{60}

Second, one cannot make the case that the lawyer’s professional role is “amoral” simply by pointing to role differentiation and the identification of particular norms with particular roles. Role differentiation and role morality are necessary to any professional pursuit and are not invariably antithetical to morality. Indeed, they would seem to be as much a part of religious belief systems as other societal belief systems. Religious doctrine identifies particular expectations for how people conduct themselves in parent-child, master-servant, and other relationships. Secular laws presuppose, and respect, that certain religious doctrine demands confidentiality in communications between a priest and penitent when it might not


\textsuperscript{58} See Rapoport, supra n. 25, at 26-28 (questioning how extensively “bleaching out” occurs).

\textsuperscript{59} See supra nn. 24-25 and accompanying text.

demand confidentiality in communications between others.  

To be sure, when it comes to particularly tough questions, such as where to strike the balance between confidentiality and the protection of third parties, religious conventions may come out differently from professional ones, just as bar organizations may disagree among themselves from jurisdiction to jurisdiction. But the notion that professional roles imply a distinctive set of norms hardly seems hostile or foreign to moral beliefs.

Third, as Boardman well understood, it is not necessarily "amoral" for lawyers to implement their clients' lawful instructions or to seek to achieve their clients' objectives even while having moral qualms about the means or ends. That is very different from the rare situation where a lawyer might be faced with carrying out an objective that she believes to be gravely wrong, in which case, the lawyer generally can and should avoid or terminate the representation. Many people—doctors, waiters, carpenters, teachers, even clergy—serve those with whom they find fault. One would think that there is a moral good to feeding the hungry and healing the sick, even those who, after they are fortified or recovered, will do bad things. Moreover, the legitimacy of the moral dialogue advocated by those writing from the religious lawyering perspective and others would seem to depend, to some degree, on the lawyer's willingness to accept the client's decision at the end of the dialogue, rather than putting the client to the choice of accepting the lawyer's moral view or losing the lawyer's services.

Fourth, while it is true that professional norms are not expressed in explicitly religious terms, and often are not expressed in moral terms, that is generally true of the norms of any non-religious enterprise, be it medicine, journalism, or construction work. But it does not follow that lawyers' work itself cannot express religious or other moral convictions or that lawyers cannot bring their moral beliefs to their work. Beyond that, to help someone with a legal problem achieve a lawful end by lawful means is a good in itself. And, as the religious lawyering


62. See supra n. 42.


literature acknowledges, there is a nobility to performing the work well.\textsuperscript{65}

Fifth, it is not at all clear that the abstract religious virtues that are thought to improve law practice are so different from widely shared societal values, even if there are nuances of difference in how they are understood.\textsuperscript{66} Nor is it clear that the religious virtues are so different from those that have been promoted by the organized bar under the rubric of "professionalism."\textsuperscript{67} Many in the religious lawyering movement, at least on the academic side, have sought common ground among those with different experiences and perspectives\textsuperscript{68}—an endeavor with which the legal profession often finds accord.\textsuperscript{69} That being so, it is hard to see why some of the religious lawyering scholarship emphasizes the differences between religious values and either professional values or common societal values rather than what they have in common.

Given the genesis of the professional norms in writings of the nineteenth century professional elite, many of whom no doubt met Boardman's standard of religious piety, and many of whom drew little distinction between religious, societal and professional morality, one would not expect the differences between religious and professional morality to be terribly sharp. And one might expect that many people are drawn to the practice of law precisely because of the opportunities it provides to serve a sense of the good that would resonate with religious and secular lawyers alike. Rather than stress differences, I would second Carrie Menkel-Meadow's observation that

[w]hatever the discipline from which we choose to recognize our values, . . . all of us . . . share a sense that our professional practice should be informed with human significance, meaning, and "good" values [which] enhance human flourishing, promote respect for others, allow us to recognize our human commonalities and connections as well as our individual differences, and enable us, through our own actions, to make the world a better place than we

\textsuperscript{65} See e.g. Robert F. Cochran, Jr., Introduction: Can the Ordinary Practice of Law Be a Religious Calling?, 32 Pepp. L. Rev. 373, 374 (noting "that most religious traditions accept the notion that all productive work can be a religious calling").

\textsuperscript{66} For a response to this point, see Pearce & Uelmen, supra n. 23, at 152-153.

\textsuperscript{67} See Thomas L. Shaffer, Lawyer Professionalism as a Moral Argument, 26 Gonz. L. Rev. 393 (1990).


\textsuperscript{69} See e.g. Bruce A. Green, Foreword, Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients, 67 Fordham L. Rev. 1713, 1735 (1999).
Which brings me to my final point: It is not so clear that if professionalism is the problem, religion is the solution. At a level of generality, professionalism and religious belief are not in conflict. One can bring one’s values—commitment to social justice, concern for the less fortunate, respect for others, integrity, humility—to one’s work as a lawyer. It is at the level of particularity where the perceived conflict presumably arises—e.g. how does one counsel a particular client or interact with a particular witness in light of a commitment to “love of neighbor.” The process of figuring out what one’s religious world view says about the specifics of legal practice can be a complex one; on the particular questions, in the course of reflection it may be hard for religious lawyers to determine what answer religious beliefs offer precisely because religious beliefs did not originate specifically with an eye to law practice, much less twenty-first-century United States law practice. 71 Different answers may be derived not only from different religious faiths but from different understandings of the same faith. In contrast, professional understandings develop over time through dialogue among lawyers of differing faiths and no faith, who are seeking to derive the best understandings about how lawyers should conduct themselves in a concrete system of law and practice. At the margins, there is room for disagreement. But why would one assume that the answer that any individual lawyer derived from his or her personal understanding of religious faith, or even the answer that any group of same-faith lawyers derived from their collective understanding, will be better? Better it may be for them, because they may have greater loyalty to their understanding of the tenets of their faith than to those of the legal profession, as would be true even if one did not perceive a crisis in professional norms and values. But it is far from clear that the answers would be better from the public perspective, from the profession’s perspective, or even from the perspective of lawyers with differing personal moral and religious perspectives.

By focusing on the conflict between religious and professional norms, the religious lawyering critique raises the possibility that it is simply not enough for religious lawyers to avoid, or withdraw from,

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71. On the communal effort to explore the religious and moral significance of a lawyer’s work see e.g. Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J. L. & Relig. 459, 465 (2002-03); Thomas L. Shaffer, *Legal Ethics and Jurisprudence from Within Religious Congregations*, 76 Notre Dame L. Rev. 961 (2001); Vischer, supra n. 34.
those rare representations in which their fundamental beliefs are at odds with their clients’ objectives. If the different norms are more generally irreconcilable, perhaps religious people must not practice law at all. This suggestion challenges the assumption that many bring to the dialogue on religious lawyering about the ability to integrate religious and professional norms. This is to say that the religious lawyering critique, while explicitly challenging aspects of lawyer professionalism, implicitly challenges a core premise of the religious lawyering movement itself. So it would be understandable if many of the writers on religious lawyering feel discomfort with a rhetoric that offers religion as an antidote to the profession’s ideal of the good lawyer rather than beginning with the professional ideal and, like Boardman, encouraging lawyers to be even better.