

FAITH AND THE ATTORNEY-CLIENT RELATIONSHIP: A MUSLIM PERSPECTIVE

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THREE significant factors have converged to contribute significantly to the state of spiritual impoverishment, fragmentation, and work-place alienation experienced by professional people of faith in this country. They are: the emergence of material secularism as the dominant ideology, the uncritical acceptance of technological reductionism, and the over-broad interpretation of the public/private distinction. I shall discuss these factors from a spiritual perspective generally, and an Islamic one specifically. I shall also present an Islamic point of view on of the attorney-client relationship, critique Professor Allegretti's proposal, and mention some of the problems that lawyers of faith must consider in their daily practice.

THE PROBLEM

The emergence of material secularism as the dominant ideology in this country, and the problems it has spawned, has been discussed at length by many writers.¹ In brief, the concept of the separation of Church and State was embraced by the Founding Fathers of this country for the noble purpose, among others, of ensuring that no sect or religion could become established as a state religion and thus dominate all others.² With a constitution based on principles of democracy and freedom of thought, this country's choice in favor of the freedom of religion was inevitable. In time, however, due to a variety of developments, this spiritually-motivated sense of secularization was replaced by a radically different one, causing a fundamental shift in the meaning of the concept of secularization. The new sense of secularization is not *neutral* among religions, but rather *averse* to them.³ We

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1. See, e.g., Stephen L. Carter, *The Culture of Disbelief* (1993) (arguing that by overemphasizing the need to maintain division between religion and politics, American society has caused the religiously faithful to act as though their faith means little to them); Richard John Neuhaus, *The Naked Public Square* (1984) (discussing how it is both impossible and undesirable to maintain a public democratic forum devoid of religion).

2. See U.S. Const. amend. I; see also *Everson v. Board of Educ. of Ewing Township*, 330 U.S. 1, 8-16 (1947) (discussing the historical events that led the Founding Fathers to adopt the First Amendment's protection of religion).

3. See *The Random House Dictionary of the English Language 1731* (2d ed. 1987) (listing definitions of "secular" through "secularize"). According to this dictionary, the primary meaning of "secularism" is "a system of political or social philosophy that *rejects* all forms of religious faith and worship." *Id.* (emphasis added). The

do not need to study legal history to detect this fundamental shift in meaning. A mere glance at our dictionaries illustrates this point quite adequately.⁴

What is disconcerting about this fundamental shift in meaning is that it has taken place gradually, before our own eyes, without the benefit of a public vote or debate. It continues to influence every aspect of our lives. Even the education, character, and values of our children are being formed through the public school system and the long arm of the media reaching into our homes. At the same time, a democratic and predominantly spiritual country has found itself mostly voiceless in the face of this radical change. The country has been further hampered by certain materialistic claims that were circulated in the guise of objective reality.

One such claim is that technological progress requires scientific objectivity based on materialist theories of the world. In a society that has recently led the world in technological innovation and scientific discoveries, it is hard not to take that claim seriously or feel its deep impact. As a result of this popular claim, some people of faith opted for an easy way out, namely, to retreat to the privacy of their homes and cabin their spirituality to these confines. This approach, while costly to the human psyche, was popularized by an increasingly over-broad interpretation of the public/private distinction. This public/private distinction, though legitimate in many ways, became the vehicle for postponing all kinds of personal and social problems, conflicts, and dilemmas. The office, i.e., the site of technological, scientific, and business matters, became the public, "objective," "scientific," and "modern" sphere. The home, the site of close human relationships, often remained "subjective," "traditional," and religious.

This fragmentational approach to reality created not only isolated, alienated beings, but also fragmented knowledge of the world. A leading Muslim scholar, Dr. Seyyed Hussein Nasr, put it this way:

[F]or one who has yet to become aware of the Inward dimension within himself and the Universe about him, fragmented knowledge cannot but remain fragmentary, especially if it is based upon observation of the behaviour of a human collectivity most of whose members themselves live only on the outermost layers of human existence and rarely reflect in their behaviour the deeper dimension of their own being.⁵

The twin theses about the objectivity of science and the over-broad interpretation of the public/private distinction crumbled over two de-

now secondary meaning is "the view that public education and other matters of civil policy should be conducted without the introduction of a religious element." *Id.*

4. See *supra* note 3.

5. Seyyed Hossein Nasr, *Contemporary Western man between the rim and the axis*, in *Technology and Human Affairs* 354, 356 (Larry Hickman & Azizah al-Hibri eds., 1981).

cedes ago when feminist scholars found them too oppressive. In those days, it was very hard to argue that analytic logic and science, for example, were patriarchal. It took a lot of thinking to develop these arguments, but finally some feminists were successful in this endeavor.⁶ The work of certain mainstream scientists voicing doubts about the objectivity of science was no doubt helpful.⁷ Today, scientific claims are reviewed more carefully and new holistic ways of looking at science are emerging.⁸ An integrated view of science and spirituality is thus no longer a contradiction in terms.

The Feminist Movement also attacked the public/private distinction by declaring that the personal is political.⁹ With this declaration, the movement ripped the veil of silence that had accompanied wife and child abuse in the home. It pointed out that oppression and crime in the private sphere must be recognized as such in the public sphere. In other words, society's values do not stop at one's doorstep. Now that society has heartily embraced these arguments, people of faith must ask themselves a reverse question, namely, what justifications do they have for prohibiting their spiritual values from crossing that same doorstep into the public sphere?

6. For an excellent source, see *Special Issue, Feminism and Science II*, 3 Hypatia (Nancy Tuana ed., 1988), especially Nancy Tuana's *Introduction* which states:

By practicing the scientific method, scientists are believed to be detached from their personal motives or expectations and simply report facts. Given this model of science, the idea that knowledge or reason could be gendered was nonsense.

Feminists, in company with other theorists, have rejected this image of science. Science is a cultural institution and as such is structured by the political, social, and economic values of the culture within which it is practiced.

Id. at 2. See also Ruth Bleier's book, *Science and Gender: A Critique of Biology and Its Theories on Women* (1984), especially pages 195-97, where she argues that the concept of "scientific objectivity" has traditionally been defined by males, and is, therefore, not truly objective.

7. See, e.g., Thomas S. Kuhn, *The Structure of Scientific Revolutions passim* (2d ed. 1970) (arguing that the historical development of science reveals tendencies to de-emphasize the subjective nature of science); Michael Polanyi, *Personal Knowledge: Towards a Post-Critical Philosophy* 3 (1958) ("Any attempt rigorously to eliminate our human perspective from our picture of the world must lead to absurdity."); Israel Scheffler, *Science and Subjectivity* 8 (1967) (questioning whether scientific objectivity is possible).

8. See, e.g., David G. Warren, *Complementary Medicine and the Law*, 18 J. Legal Med. 257 (1997) (reviewing Julie Stone and Joan Matthews, *Complementary Medicine and the Law* (1996)) (discussing the strict regulation of conventional medicine in this country, and the growing acceptance of "alternative" medicine). For a list of internet links to holistic medicine websites, see *Holistic Medicine Links* (visited Jan. 17, 1998) <<http://www.duke.edu/~sjkmdphd/holistic.html>>.

9. See, e.g., Kate Millett, *Sexual Politics* 59-127 (1970) (documenting the history of the sexual revolution); Robin Morgan, *The Anatomy of Freedom: Feminism, Physics, and Global Politics* 296-301 (1982) (discussing how the revelation that the "personal is political" will (or should) affect women's lives); Mary O'Brien, *The Politics of Reproduction* 93-115 (1981) (arguing that a separation between public and private is possible only in theory).

THE ISLAMIC VIEW ON THESE MATTERS

As made clear by Nasr's quote,¹⁰ Muslim scholars do not subscribe to a secular, fragmentary view of technology and science, nor do they subscribe to a compartmentalization theory in the guise of a public/private distinction. The reason for this position lies at the heart of the Islamic revelation, as embodied in the Principle of Unicity. The best known formulation of this principle is the *shahadah*, the statement uttered by every Muslim. It asserts, in part, that there is only one divine being.¹¹ Muslim scholars have pondered over the *shahadah* and its implications in light of various Qur'anic passages. For example, since the divine being is the creator, then it follows that everything else is created. Furthermore, since this divine being is the source of all reality, then in accordance with the Principle of Unicity, there is no reality independent of the divine. Thus, created beings, at their own level of reality, manifest the unicity/reality of God. This means that a study of the world is a study of the miracles (creations) of God and God's unicity. In its ultimate expression, this view becomes the *sufi*¹² view that the whole world is nothing but a cosmic manifestation of the divine.¹³

The Qur'an itself gives support for the view that a study of nature is a study of the divine. In various places, it encourages Muslims to investigate nature in order to discover God's miracles.¹⁴ Furthermore, these miracles are based on rationality. Humans, nature, even the heavenly bodies, all operate in accordance with divine calculations and a rational plan.¹⁵ The Qur'an tells us that God gave humans an intellect that is capable of discerning this divine plan in the world.¹⁶ We are enjoined to marvel in God's creation and increase our knowledge of it.¹⁷ For this reason, the peoples of various Muslim states throughout history were leaders in their time in areas of science and technology.¹⁸ In short, for a Muslim scholar, learning the secrets of

10. See *supra* note 5 and accompanying text.

11. The other part asserts that Prophet Muhammad is the Prophet of God. In rough translation, *shahadah* means there is no God but Allah, and Muhammad is His prophet.

12. "*Sufism*" is Islamic mysticism. For more on *sufism*, see for example, Martin Lings, *What is Sufism?* 11-16 (1975) (discussing the history and doctrine of *sufism*).

13. For an in-depth discussion of this point, see Seyyed Hossein Nasr, *An Introduction to Islamic Cosmological Doctrines* 3-7, 10 (1964). Nasr cautions that this *sufi* view is not to be confused with pantheism, since it is balanced by the central doctrine of the transcendence of God. *Id.* at 5, 10.

14. See, e.g., Qur'an 2:164, 3:190, 6:99, 10:5, 13:3, 16:66-69. Where English translations are used in this article, I relied primarily on the translation of A. Yusuf Ali, *The Holy Qur'an: Translation and Commentary* (1938). I have modified this translation in certain cases to make it more precise.

15. See, e.g., Qur'an 6:95-99, 10:5, 36:38-40, 55:1-8.

16. See, e.g., Qur'an 2:242, 6:97-98, 16:11-12, 22:46, 29:43-44, 45:13.

17. See, e.g., Qur'an 3:191, 10:24, 16:69, 29:20, 88:17-20.

18. See, e.g., 3 Marshall G. S. Hodgson, *The Venture of Islam 165-75* (1974) (chronicling important historical advances made by Islamic societies); see also Seyyed

nature is not about establishing the domination of Man over Nature; rather, it is one more form of worship.

Furthermore, almost fifteen hundred years before feminists proclaimed that the personal is political,¹⁹ God made clear in the Qur'an that this indeed is the case. This fact too follows from the Principle of Unicity. The Qur'an states that God created us male and female from the same *nafs* (soul or spirit).²⁰ The most favored in the eyes of God are those who are most righteous.²¹ The Qur'an then lays down some basic principles of social relations in general and male-female relations in particular.²² From these principles, Muslim jurists derived an elaborate system of family laws that provided the wife with publicly mandated redress in the event that her basic rights within the marriage were violated.²³ Among these rights are the right to be well treated, the right to maintenance and inheritance, and the right to financial independence.²⁴ As a result of these laws, the whole public/private distinction collapses where injustice is being perpetrated under its cover.

Hossein Nasr, *Science and Civilization in Islam* (1968) (presenting various aspects of the scientific history of Islamic societies, from the Islamic perspective).

19. See *supra* note 9.

20. See, e.g., Qur'an 4:1, 6:98, 7:189, 31:28, 39:6.

21. Qur'an 49:13.

22. See, e.g., Qur'an 2:188-189; 2:282; 3:130; 4:7, 32; 6:151-153. For further discussion of this point, see my articles *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 Am. U. J. Int'l L. & Pol'y 1 (1997) [hereinafter *Islam, Law and Custom*], and *Islamic Constitutionalism and the Concept of Democracy*, 24 Case W. Res. J. Int'l L. 1 (1992).

23. One of the best recent discussions of the rights of Muslim women is provided by Abdul Halim Abu Shuqqah, *Tahrir al-Mar'ah fi Asr al-Risalah (Liberating Woman in the Era of Revelation [Early Islam])*, 6 vol. (1990-1994). See also Abdul Rahman al-Jaziri, *Kitab al-Fiqh (The Book of Jurisprudence)*, 5 vol. (1969). But see *Islam, Law and Custom, supra* note 22, at 24-25 (critiquing some patriarchal juristic interpretations of the Qur'an).

24. These rights are based on Qur'anic passages. For example, the right to be well-treated rests on such Qur'anic verses as 2:231 and 30:21. The related jurisprudence is reflected in the personal status codes of various Muslim countries. In Jordan, for example, not only physical, but even verbal abuse is grounds for divorce. *Islam, Law and Custom, supra* note 22, at 13 n.58. Other types of redress are also possible in case of harm under the Islamic principle of *Qisas*, briefly described as the principle of "an eye for an eye." I have discussed the Islamic jurisprudence on this principle in another context in *The Muslim Perspective on the Clergy-Penitent Privilege*, 29 Loy. L.A. L. Rev. 1723, 1726-30 (1996), and indicated how it is balanced with other principles, such as that of forgiveness. The rights to maintenance and to inheritance are based on Qur'anic verses such as 4:7 and 4:32. Other rights also have firm Qur'anic foundation and juristic elaborations, such as the right to education and the right to participate in political and religious discourse, *Islam, Law and Custom, supra* note 22, at 38-42, and the right to work, Farida Bennani, *Taqsim al-'Amal Bayn al-Zawjain (Division of Labor Between Spouses)* (1992). Unfortunately, in the last few centuries, where cultural norms conflicted with these rights, patriarchal societies opted for cultural norms that perpetrated male privilege. See *Islam, Law and Custom, supra* note 22, *passim*.

Furthermore, while we are told to respect people's privacy, and while the Qur'an emphasizes the right to privacy within one's own home,²⁵ it also emphasizes that in all matters, whether public or private, a Muslim must live in accordance with God's basic principles.²⁶ Thus, justice is as much a question for the office as it is for the home. So are humility, civility, and honesty.²⁷ To do otherwise would be to live a fragmented, confused, and alienated existence—the very antithesis of the Principle of Unicity.

THE ISLAMIC VIEW OF THE LAWYER-CLIENT RELATIONSHIP

Because a Muslim is committed to an integrated worldview, a Muslim attorney is committed in her practice to advancing the cause of justice in society. This may be quite hard to do in a legal system where the lawyer's loyalty is viewed as belonging to the client.

The matter is further complicated by certain Qur'anic injunctions. Among them is the injunction not to engage in unjust or evil behavior or give succor to those engaging in such behavior.²⁸ Another, is the injunction to help orphans and the weak receive their due.²⁹ A third is the injunction not to suppress testimony because it may harm one's own interest.³⁰ A fourth is to honor one's contracts.³¹ A fifth is simply to be just.³²

Living by these five injunctions alone will significantly reduce a Muslim's legal practice. This is not, however, a specifically Islamic issue; lawyers from the other two Abrahamic faiths have similar conflicts. What is needed here is not simply lawyers who are full-fledged moral beings with an integrated system of values. Just as importantly, a society that takes its moral values seriously and reflects them fully in its legal system is also necessary. This means that we need to review and reform our legal system as it exists today. The present system has moved away from the average person's intuitive notions of fairness and equity, giving rise to cynicism, alienation, and frustration. In a country of laws, this loss of confidence in the legal system is disastrous. People of faith must seize the opportunity and initiate a national dialogue about the need for systematic legal reform.

THE SPIRIT OF HISTORY

As shown earlier, the problem with the "compartmentalization" approach in law and other aspects of our life is that it is simply unwork-

25. See, e.g., Qur'an 2:189, 24:27, 24:29.

26. See, e.g., Qur'an 4:135, 5:8, 6:90, 6:152-153, 7:33.

27. See, e.g., Qur'an 3:159, 14:24-26, 17:80, 31:18, 33:35.

28. See, e.g., Qur'an 5:2, 16:90, 26:183, 28:77, 42:42, 58:9.

29. See, e.g., Qur'an 4:8, 4:127, 6:152, 93:9, 107:1-2.

30. See, e.g., Qur'an 2:283, 4:135, 5:8, 5:106.

31. See, e.g., Qur'an 5:1, 17:34, 23:8, 70:32.

32. See, e.g., Qur'an 4:58, 4:135, 5:8, 6:152, 7:29, 26:181-182.

able. It is important to keep in mind that the rise of secular science and technology coincided with the spread of the First Industrial Revolution. This revolution ushered in its own modes of organization; chief among them is the fragmentational approach.³³ The First Industrial Revolution, however, is being quickly supplanted by the Second Industrial Revolution and the Age of Informatics.

The Age of Informatics is characterized by interconnectedness, by the Global Village, and by the new modes of communication that have rendered the office/home distinction effectively obsolete—the spirit of history is moving in the direction people of faith favor. Thus, history is presenting us an opportunity to reshape the future in ways that are more congruent with our beliefs and the needs of the post-industrial society. For this reason, I welcome enthusiastically the lead article by Allegretti which moves boldly away from the compartmentalization approach and asserts a full-blooded commitment to Christian/Abrahamic values and principles in both public and private life.

PROFESSOR ALLEGRETTI'S SOLUTION

To combat compartmentalization, Allegretti proposes a covenant model of the lawyer-client relationship. He distinguishes this model from the contractual one that he views as minimalistic, formalistic, and based on a relationship of dominance and quid pro quo between the two parties.³⁴ The covenant model, however, is based on a relationship of trust, mutual commitment, and equality among the parties. They are both part of a moral community, in which each is answerable to the other.³⁵

At first blush, this approach appears quite attractive and in accordance with many of the positions argued for earlier in this response. The solution to the problem of compartmentalization, however, does not lie in superimposing a new agreement/covenant over the old contractual one. Rather, it lies in re-examining the public/private distinction and redefining our spiritual worldview so as to allow our values to permeate all aspects of our lives. In other words, if we solve the problem of the average person of faith in this society, we would solve at the same time the problem of the attorney, physician, accountant, and other people of faith who have compartmentalized their values.

There is nothing inherently secular, uncaring, authoritarian, or detached about a contract between an attorney and her client. A contract is an agreement between two parties. We have been led to

33. See Marshall McLuhan, *Understanding Media* 4, 11-12, 85 (1995); Azizah al-Hibri, *The American Corporation in the Twenty-First Century: Future Forms of Structure and Governance*, 31 U. Rich. L. Rev. (forthcoming 1998) (manuscript at 14-27, on file with author).

34. Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 Fordham L. Rev. 1101, 1112-15 (1998).

35. *Id.* at 1116.

believe that a contractual agreement between two parties is defined solely by its own terms. Consequently, any two other parties executing an identical contract would be viewed as having reached an identical agreement. This view of contracts ignores completely the fact that a person's moral beliefs constitute a set of meta-rules and conditions by which she is morally bound under the contract. Since two different sets of contracting parties may have two different sets of beliefs, the comprehensive set of binding rules, meta-rules, and conditions may turn out to be significantly different in each case.

In particular, where two contracting parties share a non-compartmentalized spiritual worldview, their contract will be bound by meta-rules of morality that make their relationship less formalistic and more caring and equitable. This very worldview would also make their relationships with others potentially equally rewarding.

Thus, in the presence of a liberated spiritual worldview that permeates our lives, it is no longer necessary to speak of covenants with clients or any other parties. Our covenant is with God directly. Through our faith, we have promised God to behave in certain ways, for example, to care about other humans, help those in need, and uphold justice. If we fall short, then we would fail in our covenant with God, and that is a much more serious problem than letting a client down.

The problem with covenanting with a client is that it remains a piece-meal solution. Each client will require a covenant of his own, along with his contract.³⁶ What we really need is a fundamental and comprehensive solution, one which provides the overarching principles for interpersonal interaction, and which responds at the same time to the needs of the twenty-first century. After all, the Age of the Global Village is the age of interconnectedness, communication, caring, and cooperation.³⁷ These are basic features of the spiritual community. So, could the Global Village turn out to be the Heavenly City, if we overcome compartmentalization, fragmentation, and alienation? This is the challenge people of faith face today. It is best met by a national alliance among people of faith dialoguing with other individuals in this country to reach a humanistic understanding that allows each one of them to be fully liberated from the "surplus repression" imposed by artificial compartmentalization.³⁸ Such an understanding would require increasing tolerance and democratization,

36. Allegretti makes clear at the end of his article that he is not calling for the abandonment of contracts. He says, "The contract model establishes the bottom line of the relationship." *Id.* at 1128. He adds later that "[t]he choice, then, is not between contract or covenant. Covenant builds upon and enlarges contract." *Id.*

37. See McLuhan, *supra* note 33, at 4-5; al-Hibri, *supra* note 33 (manuscript at 3-10, on file with author).

38. The term "surplus repression" is borrowed from Herbert Marcuse, *Eros & Civilization: A Philosophical Inquiry into Freud* 35, 88 (1966). In that work, however, "surplus repression" refers to society's repression of Eros (the life instincts) in the

and the development of advanced rules of disagreement and difference in civil society.

OTHER ISSUES

Every change brings with it its own issues. In this case, a move towards increased spiritualization needs to be balanced with substantive tolerant behavior among people of faith. It is important to observe the Founding Father's initial commitment not to permit any spiritual worldview in this country to dominate others.³⁹ This is not as simple a matter as it appears to be initially. For example, if lawyers are entitled to their integrated spiritual existence, why shouldn't judges be entitled to the same? In such a case, where the conflicting parties belong to different faiths, how are we to assure the party whose faith is not represented on the bench that she or he will be treated fairly? How do we guard against subconscious judicial bias in these cases? Such issues need to be discussed openly and systematic safeguards put in place to insure equal justice for all.

Furthermore, not all clients care about a spiritual approach or share the spiritual beliefs of their lawyer. For such reasons, it is imperative that the lawyer disclose to the client from the outset her approach to the practice of law, and identify her religious beliefs fully to the extent they are relevant to the case.⁴⁰

It is very possible that a client from one religion will choose a lawyer from another religion, where both are people of faith and the attorney has disclosed her beliefs. Such cases indicate the importance of interfaith education that fosters knowledge of and respect for the other's beliefs. While Abrahamic religions tend to share a substantial ethical foundation, other faiths may vary to some extent. Unless we start recommending the fragmentation of legal practice by faith, we need to embark on a comprehensive interfaith education and put in place interfaith structures that act as consulting bodies.

Mundane issues are also morally significant. Allegretti's covenant proposal suggests that the lawyer provide the client with moral advice where necessary.⁴¹ After all, they share a moral community.⁴² But a mundane issue arises when the lawyer bills the client. Should the client be billed for all the time the lawyer spent disclosing, morally advising, and otherwise caring for the client? The bill could turn out to be

interest of domination. *Id.* at 35. In this article, the term refers to society's repression of Spirituality (the soul instincts) in the interest of domination.

39. *See supra* note 2.

40. Notice that to achieve this type of relationship with the client and divulge this sort of information to him, the lawyer will have to modify her views on privacy.

41. Allegretti, *supra* note 34, at 1119 (stating that the lawyer and client, under the covenant approach, share a moral community and hence have responsibilities to and for each other that go beyond the "letter of the law").

42. *Id.*

so high that its financial burdens would offset all expected financial benefits. Also, since Allegretti views the client under the covenant model as part of a "relationship of true equality and mutual respect,"⁴³ should the client bill the lawyer (or at least receive financial credit) for providing the lawyer with valuable moral advice? Clearly, a new system of calculating and billing needs to emerge under our spiritually integrated approach to the profession and the world.

One final issue persists. If an integrated worldview is so critical to the lawyer's well being, can we not say the same about political leaders, too? In that case, we need to be prepared to study ways in which we are able to promote spiritually enlightened leadership, while at the same time safeguarding a truly diverse and democratic spiritual society.

CONCLUSION

It is no longer tenable to live under the First Industrial Revolution's regime of compartmentalization and fragmentation. The new world is racing towards holistic integration and interconnectedness. The spiritual worldview promotes cooperation, communication, and community, and is, therefore, well-suited for this new world. This means that the time is ripe for people of faith to cooperate with others in restructuring our society in ways that will produce a harmonious, caring, and interconnected community.⁴⁴

43. *Id.* at 1120.

44. Concerned lawyers have also addressed the issues raised by Allegretti from the perspective of the Ethics of Care. See, e.g., Paul J. Zwier & Ann B. Hamric, *The Ethics of Care and ReImagining the Lawyer/Client Relationship*, 22 *J. Contemp. L.* 383 (1996).