

## CROSS-CULTURAL LAWYERING AND RELIGION: A CLINICAL PERSPECTIVE

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*This Article addresses an increasingly important yet frequently overlooked dynamic in the training and practice of lawyers: the centrality of religion as a cross-cultural factor. For although cross-cultural competency has rightly become a norm of contemporary legal training and practice, religion has been largely unexplored—to the distinct detriment of marginalized clients and those who serve them. The discussion below fills that gap by showing how religion fits the professional norm, and why it is vital to cross-cultural learning generally and the protection of religious minorities in particular.*

Law-school clinicians commonly include religion in the various litanies of cross-cultural dynamics to which client-centered lawyers should be attuned.<sup>1</sup> For although judges, philosophers, and even theologians may dispute its precise meaning and contours,<sup>2</sup> religion plays a central role in the lives of millions in this country and billions across the globe.<sup>3</sup> Unfortunately, however, it is a cultural factor that many

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<sup>1</sup> See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 41 (2001) (including religion as one of 17 likely “[c]ultural groups and cultural norms” that should be understood by cross-culturally literate lawyers); see also Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131, 133 (2006) (including religion on cross-cultural litany); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557, 565-67 (1999) (stressing religion as cross-cultural factor in community lawyering).

<sup>2</sup> See Mark C. Modak-Truran, *Reenchanting the Law: The Religious Dimension of Judicial Decision Making*, 53 CATH. U. L. REV. 709, 723 (2004) (noting that “no generally accepted definition of religion exists”); Val D. Ricks, *To God God's, to Caesar Caesar's, and to Both the Defining of Religion*, 26 CREIGHTON L. REV. 1053, 1054 (1993) (describing as “impossible” the ability of courts and scholars to define religion).

<sup>3</sup> See FRANK NEWPORT, *GOD IS ALIVE AND WELL: THE FUTURE OF RELIGION IN AMERICA* 11 (2012) (Gallup Editor: “[a]bout six in 10 Americans consistently say that religion can answer life's problems”); PEW FORUM ON RELIGION & PUBLIC LIFE, *THE GLOBAL RELIGIOUS LANDSCAPE* 9 (2012) (summarizing survey data showing that “84% of the 2010 world population” is religiously affiliated).

contemporary lawyers undervalue or neglect, and on which the professional literature remains sparse.<sup>4</sup> This is worrisome not just in the abstract, but particularly where the increasingly diverse nature of our society will only compound the consequences of any such ignorance in the coming decades.<sup>5</sup>

Religion is of course just one of a multitude of possible cultural dimensions in the intersecting lives and perspectives of clients, lawyers, and the system that occasions their meeting.<sup>6</sup> It is also often intertwined with other critical factors, such as ethnicity, race, or gender.<sup>7</sup> But given its abiding importance to so many, and the unique and meaningful window it can offer into other aspects of identity, motivation, and perspective—particularly in times of profound demographic change or political division, like the present—including religion among the core of cross-cultural lawyering dynamics is as sensible as it is essential.

Notably, this need for a deeper awareness of religion in the practice of law applies not only when representing religious clients as such or where faith-based claims are at issue—as in the religious liberty clinic we launched recently here at Stanford Law School.<sup>8</sup> Rather, it can arise in almost any type of legal work or client relationship.<sup>9</sup> Given its strong yet oftentimes hidden power in people’s lives, religion

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<sup>4</sup> See Evan R. Seamone, *Divine Intervention: The Ethics of Religion, Spirituality, and Clergy Collaboration in Legal Counseling*, 29 QUINNIPIAC L. REV. 289, 308, 313 (2011) (describing clinical insights on cross-cultural lawyering while lamenting that “[t]he legal profession largely avoids both religion and spirituality, making few distinctions in its categorical ignorance”).

<sup>5</sup> See Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 62 (2000) (recommending that as a result of demographics, “instruction focused on multicultural and cross-cultural settings will become increasingly important”); see also PEW FORUM ON RELIGION & PUBLIC LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY 5-8 (2008) (summarizing survey data showing that “religious affiliation in the U.S. is both very diverse and extremely fluid”).

<sup>6</sup> Susan Bryant and Jean Koh Peters describe the dynamic landscape of cross-cultural lawyering as a series of three dyads between or among lawyer, client, and legal system. See Bryant, *supra* note 1, at 68-70.

<sup>7</sup> As Professors Bryant and Koh Peters stress, an effective cross-cultural lawyer must avoid assuming her clients are limited to one, perhaps even dominant, cultural characteristic (“anti-essentialism”); rather, she must understand them as likely connected to many (“intersectionality”). Jean Koh Peters & Susan Bryant, *Talking About Race*, in SUSAN BRYANT, ELLIOTT S. MILSTEIN, & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 388 (2014).

<sup>8</sup> See generally James A. Sonne, *Religious Liberty, Clinical Education, and the Art of Building Bridges*, 22 CLIN. L. REV. 251 (2015) (describing the Stanford Religious Liberty Clinic’s work and pedagogy).

<sup>9</sup> See, e.g., Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 48-49 (1990) (emphasizing through client-framed storytelling in the poverty-law context that religion, spirituality, and the church as a social institution can be central to the expression of a client’s individual and community identity).

would in fact seem tailor-made for the definition of culture offered by cross-cultural lawyering expert Susan Bryant: “Culture is like the air we breathe—it is largely invisible and yet we are dependent on it for our very being. [It] is the logic by which we give order to the world.”<sup>10</sup> As those who engage in and teach the practice and profession of law in the contemporary world, we ignore religion at our peril.

This Article explores the necessity, challenge, and wider benefits of cross-cultural religious competency for lawyers, and why the law-school clinic holds particular promise in developing that understanding. It proceeds in five parts, followed by a brief conclusion. Part I presents an overview on how, despite the profound and abiding influence of religion on American law and culture and the lives of its people, the legal profession has largely ignored or avoided meaningful discussion of it as part of contemporary law practice and engagement. Parts II and III then provide, respectively, a summary of cross-cultural clinical pedagogy generally and a discussion of how religion comports with that pedagogy and carries it forth as a unique and important cultural dynamic—in both legal and non-legal contexts.

In support of this case for religion as a critical factor for cross-cultural exploration in clinical legal education and the broader practice of law, Part IV offers up our Stanford clinic as an illustrative study on the teaching and practice of religious sensitivity in developing culturally literate, client-centered lawyers. Then, Part V expands the point to its broader end with a suggested extrapolation of the cross-cultural factor of religion to other clinical and law-practice settings—stressing that its importance is not limited to legal matters where religion is at issue, but rather includes all situations where culture is in play. Finally, Part VI concludes the piece.

At bottom, this Article resists the famous adage that one should avoid discussing religion in polite company—an adage that, as described below and for a variety of historical and cultural reasons, seems particularly deep-seated among lawyers. On the contrary, the legal profession and the increasingly diverse population it serves might just require that discussion.

## I. OVERVIEW

Since our country’s founding, if even long before that, religion has been a fixture of American cultural identity.<sup>11</sup> And all of this despite—or, frankly, perhaps because of—a foundational and continuing political commitment to limiting the state in religious affairs, with an

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<sup>10</sup> Bryant, *supra* note 1, at 40.

<sup>11</sup> See NEWPORT, *supra* note 3, at 1 (observing that religion is a fundamental, if ever-changing, part of American society).

understanding of religion as something that, in the words of James Madison, must “be left to the conviction and conscience of every man” rather than the subject of governmental compulsion.<sup>12</sup>

From the ancient spirituality of Native American tribes to expanding strands of Protestantism, from immigrant waves of Jews, Catholics, Muslims, and others to various new-age or other domestic movements, religion has been a constant, if variable, dynamic of the public and private lives of our country’s people.<sup>13</sup> Indeed, even with recent increases of those who declare no religious affiliation at all, most of the unaffiliated were nonetheless raised with religion, still believe in God, or otherwise draw deep personal meaning from their “none” status relative to it.<sup>14</sup> And among the remaining majority who proclaim their religiosity, they are not only as devout as ever but have become increasingly diverse within and across traditions.<sup>15</sup> In short, “religion matters to people, and matters a lot.”<sup>16</sup>

Given its widespread cultural significance, therefore, religion necessarily affects the legal affairs and justice-access interests of those concerned—including the parties, but also lawyers, witnesses, judges, and juries as well.<sup>17</sup> As Rabbi Harold Kushner observes, “[r]eligion is first and foremost a way of seeing . . . [i]t can’t change the facts about the world we live in, but it can change the way we see those facts.”<sup>18</sup>

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<sup>12</sup> JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), reprinted in MADISON: WRITINGS 30 (Jack N. Rakove ed., 1999) (internal quotation marks omitted). Indeed, Madison warned that state establishments of religion hinder its flourishing. *See id.* at 31-33.

<sup>13</sup> *See* JULIA CORBETT-HEMEYER, RELIGION IN AMERICA 26 (7th ed. 2016) (calling religion in America both “a remarkably stable phenomenon” and one subject to “constant change”); JOHN CORRIGAN & WINTHROP S. HUDSON, RELIGION IN AMERICA 1-6, 380-82 (8th ed. 2010) (summarizing in broad terms the history of religion in America).

<sup>14</sup> *See* ELIZABETH DRESCHER, CHOOSING OUR RELIGION: THE SPIRITUAL LIVES OF AMERICA’S “NONES” 52 (2016) (“Ultimately, for most Nones the unaffiliated spiritual life is not defined by what may have been left behind, but rather by what was found.”); PEW RESEARCH CENTER, AMERICA’S CHANGING RELIGIOUS LANDSCAPE 43 (2015) (describing survey data showing that 80% of “nones” were raised in religious households); PEW RESEARCH CENTER, U.S. PUBLIC BECOMING LESS RELIGIOUS 5 (2015) (summarizing survey data showing that most of the unaffiliated still believe in God).

<sup>15</sup> PEW RESEARCH CENTER, *supra* note 14 (third entry), at 3 (observing that “by some conventional measures, religiously affiliated Americans are, on average, even more devout than they were a few years ago”); PEW RESEARCH CENTER, *supra* note 14 (second entry), at 51 (describing survey data showing increasing ethnic and racial diversity within particular religious groups); DIANA L. ECK, A NEW RELIGIOUS AMERICA 1-6 (2001) (describing trend of religious diversity generally across religious groups).

<sup>16</sup> STEPHEN L. CARTER, THE CULTURE OF DISBELIEF 4 (1993).

<sup>17</sup> *See* STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS 65-66 (5th ed. 2015) (including religion on a ten-item litany of cross-cultural factors, and urging lawyers that “[i]f you ignore the differences among cultures—or if you think of people in cultural stereotype—you will alienate clients, witnesses, other lawyers, and judges and juries”).

<sup>18</sup> HAROLD KUSHNER, WHO NEEDS GOD 21 (2002).

Because religion is the lens through which many, if not most, people understand the world, its impact on the law and its practice is inevitable and must be appreciated—even if we see it differently.<sup>19</sup>

Some interactions between the legal system and religion involve matters where the latter plays a starring role; for example, in asylum claims,<sup>20</sup> marriage or other domestic-relations issues,<sup>21</sup> or the workplace-discrimination and prisoners-rights cases we litigate in our clinic.<sup>22</sup> Most relationships between law and faith, however, occur where religion may be in the background but is no less a factor in the framing of a relationship or pursuit of a case. Because religion is implicated at times of crisis, its role in any conflict scenario is virtually assured.<sup>23</sup> But more fundamentally, because religion informs how people see the world, it necessarily frames their interaction with the legal process in most other, if not all, of its constituent parts; for example, in the favoring or disfavoring of people or groups, evaluations of narrative, or even the assessment of responsibility.<sup>24</sup> No matter the dispute, the litigation experience for a practicing Muslim in contemporary America is sure to differ from that of a Presbyterian, and, likewise, that of a Jewish, Catholic, agnostic, or atheist litigant.

Despite the seemingly obvious ubiquity of religion in domestic culture and law, however, contemporary lawyers largely avoid the matter—whether in counseling clients or in their practices more generally.<sup>25</sup> One reason may be our relative rates of personal affiliation; recent surveys show that those with post-graduate education are less likely to be religious, and lawyer-specific analysis suggests the odds

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<sup>19</sup> See Seamone, *supra* note 4, at 291 (relying on survey data to conclude that “religion and spirituality are lenses through which most clients view their problems”).

<sup>20</sup> See generally Craig B. Mousin, *Standing with the Persecuted: Adjudicating Religious Asylum Claims After the Enactment of the International Religious Freedom Act of 1998*, 2003 B.Y.U. L. REV. 541 (analyzing contemporary litigation of asylum claims based on fears of religious persecution).

<sup>21</sup> See James A. Sonne, *Domestic Applications of Sharia and the Exercise of Ordered Liberty*, 45 SETON HALL L. REV. 717, 730-35 (2015) (analyzing legal arrangements in the Muslim faith, particularly in the area of private lawmaking and domestic relations).

<sup>22</sup> See Sonne, *supra* note 8, at 270-75 (describing Stanford Law School Religious Liberty Clinic’s docket).

<sup>23</sup> See Seamone, *supra* note 4, at 292 (“The crisis-response function of religion and spirituality is relevant to lawyers because clients come for legal help primarily when they are in states of crisis.”).

<sup>24</sup> See Bryant, *supra* note 1, at 50-51 (describing significant role of culture in work of practicing lawyers, including its impact on values and judgments, biases and stereotypes, communication and perception, and attribution).

<sup>25</sup> See Seamone, *supra* note 4, at 308 (describing avoidance of religion by the legal profession); N. Lee Cooper, *Religion and the Lawyer*, 66 FORDHAM L. REV. 1083, 1083 (1998) (lamenting that “the discussion of religion is verboten in acceptable legal discourse”).

are even lower for the legal profession.<sup>26</sup> Other possibilities include a presumptive cross-cultural misunderstanding that religion is irrelevant unless it is directly at issue in the legal matter at hand.<sup>27</sup> Or in a more abstract sense, lawyers might be engaging in what could be described as a sort of professional transference of church-state separation principles reflected in domestic law and its culture from the founding; or perhaps they are simply echoing certain underlying social conventions of avoiding religion for fear of offending, engaging in the potentially irrational, or violating some other supposed norm of professional or personal relations or societal standing.<sup>28</sup> Whatever the reason, lawyers who fail to consider religious dynamics cannot be comprehensively client-centered where those dynamics are part of the mix.<sup>29</sup>

Fortunately, the insight and pedagogy of cross-cultural lawyering offers hope for bridging the gap between religion and the modern legal system because it elucidates the fundamental insight that effective client-centered lawyering must appreciate the cultural interplay of client, lawyer, and system—including the role religion might play between and among them, or not.<sup>30</sup> “All lawyering is cross-cultural,” as Professors Bryant and Jean Koh Peters urge.<sup>31</sup> For although clients should be treated as individuals and not be stereotyped, the cross-cultural insight fosters a heuristic by which lawyers seek to better under-

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<sup>26</sup> See Pew Forum on Religion & Public Life, Religious Landscape Study: Religious Adults with a Post-Graduate Degree, <http://www.pewforum.org/religious-landscape-study/educational-distribution/post-graduate-degree/> (last visited Aug. 6, 2016) (comparing survey data showing those with post-graduate degrees are less religious by most measures); Amy E. Black & Stanley Rothman, *Shall We Kill All The Lawyers First?: Insider and Outsider Views of the Legal Profession*, 21 HARV. J.L. PUB. POL’Y 835, 841 (1998) (summarizing survey data showing that “measures of religious salience suggest that a majority of the lawyers in the sample are not especially religious”).

<sup>27</sup> See Seamone, *supra* note 4, at 326 (arguing that the “absence of religion and spirituality in legal counseling is largely the result of a legal fiction that such matters are irrelevant”); Calvin G.C. Pang, *Sojourner to Sojourner*, in THE AFFECTIVE ASSISTANCE OF COUNSEL 496 (M. Silver ed., 2007) (lamenting that the “professional culture” of lawyers gives spirituality “little room to flourish”).

<sup>28</sup> See CARTER, *supra* note 16, at 3 (observing that the contemporary legal culture “presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them”); Amelia J. Uelmen, *Can a Religious Person be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069, 1083-84 (1999) (arguing that the domestic legal profession’s aversion to religion in lawyering is a cultural consequence of the emphasis and history of church-state separation, resulting in the placement of religion outside the “‘public square’ of [a lawyer’s] workplace”).

<sup>29</sup> See KRIEGER & NEUMANN, *supra* note 17, at 65 (“A lawyer can be effective only if the lawyer understands cultural differences and knows how to recognize and deal with them.”).

<sup>30</sup> See Bryant, *supra* note 1, at 41, 68-70 (describing cross-cultural lawyering along interconnected lawyer-client-legal system Venn diagram, and including religion as a cultural factor).

<sup>31</sup> *Id.* at 49.

stand their clients while at the same time examining their own biases.<sup>32</sup> And over the course of the past few decades, this insight has indeed taken root in clinical legal education and is now included as a staple in the core texts of clinical pedagogy.<sup>33</sup>

To this point, however, religion has been included yet rarely featured as a unique cultural dynamic across the practice of law.<sup>34</sup> This is unfortunate because if, as one cross-cultural lawyering expert rightly observed, culture encompasses our “customs, values, and traditions,” any effective client-centered service must include religion since it is commonly synonymous with these central aspects of life.<sup>35</sup> Now, religion in any particular instance is not an isolated thing, nor is it necessarily the most important thing. To be sure, it is often intertwined with other aspects of culture and identity, such as race, gender, language, and ethnicity. Given religion’s abiding and diverse prominence for so many, however, as well as its role across these and other dynamics—clinicians may call to mind Lucie White’s groundbreaking article about her client “Mrs. G” and the centrality of *Sunday* shoes to her dignity and voice<sup>36</sup>—the matter deserves the dedicated attention of lawyers and those who train them. It is to that task that the remainder of this Article therefore turns.

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<sup>32</sup> See generally Paul R. Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 27, at 143-82 (describing the importance of a balanced exploration of client culture and attorney bias in the latter’s representation of the former, stressing sensitivity without stereotype).

<sup>33</sup> See, e.g., BRYANT ET AL., *supra* note 7, at 4-5 (including cross-cultural lawyering among central “cross-cutting frameworks” of clinical legal education); KRIEGER & NEUMANN, *supra* note 17, at 65-73 (exploring cross-cultural lawyering across range of modalities); DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY, & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS* 32-39 (3d ed. 2012) (describing lawyer’s anticipation of her client’s cultural “motivations” as fundamental to client-centered interviewing and counseling).

<sup>34</sup> Though not chiefly cross-cultural treatments, there has been some exploration of lawyer spirituality as a tool for both professional self-understanding and in the resolution of client problems. See, e.g., Timothy W. Floyd, *Spirituality and Practicing Law as a Healing Profession: The Importance of Listening*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 27, at 473-92 (encouraging spiritual call of the lawyer as healer); Seamone, *supra* note 4 (advocating use of spirituality in legal counseling); Bruce A. Green, *The Religious Lawyering Critique*, 21 J.L. & RELIGION 283 (2005) (describing religious-lawyering literature); Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLIAMETTE L. REV. 241 (1999) (urging spiritual understanding in professional training of lawyers).

<sup>35</sup> Tremblay & Weng, *supra* note 32, at 148 (internal quotation marks omitted); see also T. Jeremy Gunn, *The Complexity of Religion and the Definition of “Religion” in International Law*, 16 HARV. HUM. RTS. J. 189, 200-05 (2003) (describing the multi-faceted dimensions of religion as a definitional concept, including belief, identity, and as a way of life).

<sup>36</sup> See White, *supra* note 9, at 48-53 (describing marginalized client’s vindication through the exercise of her own identity and voice, including its religious dimensions).

## II. CROSS-CULTURAL LAWYERING AND PEDAGOGY

A fundamental aspect of thoughtful and effective client-centered legal practice is indeed the recognition, appreciation, and anticipation of cultural dynamics between and among clients and their lawyers, as well as in relationships within and across the justice system more generally.<sup>37</sup> And given current demographic trends in our country—religious or otherwise—the ability of contemporary practitioners to understand and work within the culture of their clients, while both acknowledging their own biases and anticipating the implications for those who will be playing a role in deciding their clients' cause, is more important now than ever.<sup>38</sup> The process must begin in law schools, if not before.<sup>39</sup>

Culture is a wide and deep concept. It informs our manners and values, our means and understanding of verbal or physical communication and connection, our assessments of credibility and trust, and even our perceptions of reality itself.<sup>40</sup> It also concerns our view of, and approaches to, those who might seem similar to or different from us. Indeed, cultural perspectives are often framed by one's community affiliations;<sup>41</sup> or, perhaps more informatively, the ways in which a person differs from a group to which he or she might be linked—whether in reality or perception.<sup>42</sup> In short, no two people are identical.<sup>43</sup> For a

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<sup>37</sup> See BINDER ET AL., *supra* note 33, at 32-39 (describing contemporary lawyer's anticipation of client's cultural "motivations" as fundamental to client-centered interviewing and counseling).

<sup>38</sup> Barry et al., *supra* note 5, at 62 (arguing that "clinical instruction focused on multicultural and cross-cultural settings will become increasingly important" based on demographic changes, and observing that "[i]n the twenty-first century, the United States will become a majority 'minority' country").

<sup>39</sup> See ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 88-89 (Clinical Legal Education Association 2007) (hereafter cited as "BEST PRACTICES REPORT") (urging importance of sensitive and effective approaches to diversity in the training of lawyers, both in and through law schools); see also Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 772-73 (2011) ("Given the changing demographics of this country and of the legal profession, the cultural changes engendered by globalization require law schools to provide instruction on multicultural competencies.").

<sup>40</sup> See Bryant, *supra* note 1, at 38-48 (describing the range of client situations informed by culture).

<sup>41</sup> See Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373, 380 (2002) (observing group dimension of cross-cultural lawyering, particularly as it concerns "non-dominant cultures" that "tend to share certain preferences, styles, patterns, and values").

<sup>42</sup> See ROBERT F. COCHRAN, JR., JOHN M.A. DIPIPPA, & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 202-03 (3d ed. 2014) (warning against group-based stereotypes attributed to individual clients).

<sup>43</sup> See Bryant, *supra* note 1, at 41 (observing that no matter their shared culture(s) "no two people can have exactly the same experiences and thus no two people will interpret or



lawyer to truly represent the “dignity, voice, and story” of her client, therefore, she must explore and account for the lenses through which that particular client sees the world.<sup>44</sup> In other words, a lawyer’s effectiveness “depends almost entirely on how well [the lawyer] can understand [a] client’s story, needs, and goals.”<sup>45</sup>

But cross-cultural lawyering does not stop with appreciating client perspectives. It also requires a critical self-understanding of the lawyer’s own background and biases.<sup>46</sup> Cross-cultural scholars have in fact argued that a lawyer’s “self-awareness of the values and assumptions [she] brings to an interaction” is perhaps more critical to client-centered practice than the neutrality otherwise urged in the model.<sup>47</sup> This self-critique naturally involves the study of cultural differences between lawyer and client.<sup>48</sup> As importantly, however, it must also include reflection on similarities, either real or assumed; and on that note, assumptions of sameness are often less obvious and therefore more difficult to uncover and reconcile.<sup>49</sup>

Furthermore, between lawyer and client, of course, is a third cultural facet of their relationship; namely, the unique context in which they find themselves working together.<sup>50</sup> Because it is the American legal system that frames their interaction, a lawyer must appreciate both in herself and her client their relative connections, or lack thereof, to that system and its norms and values—and often in times of profound personal stress for the client, if not the lawyer as well.<sup>51</sup> This is of particular concern for racial or other minorities, who might perceive that system as a strictly majoritarian one that is hostile to, or

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predict in precisely the same ways”).

<sup>44</sup> Susan Bryant & Jean Koh Peters, *Reflecting on the Habits: Teaching about Identity, Culture, Language, and Difference*, in BRYANT ET AL., *supra* note 7, at 350.

<sup>45</sup> Tremblay & Weng, *supra* note 32, at 147.

<sup>46</sup> See Bryant, *supra* note 1, at 40 (“To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves.”).

<sup>47</sup> Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369, 426 (2006).

<sup>48</sup> See KRIEGER & NEUMANN, *supra* note 17, at 65-69 (framing cultural differences to be explored).

<sup>49</sup> See Alexis Anderson, Lynn Barenberg, & Carwina Weng, *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLIN. L. REV. 339, 341 (2012) (“[A]ssumptions rooted in sameness are particularly seductive and bring unique challenges to our work.”); see also Bryant, *supra* note 1, at 52 (recounting from clinical experience that students “who saw themselves as very similar to their clients often missed differences and made assumptions about client motivations and goals”).

<sup>50</sup> See Tremblay, *supra* note 41, at 379 (describing importance of understanding the particular systemic context where lawyers and clients meet).

<sup>51</sup> Using group dynamics, Professors Bryant and Koh Peters include the legal system as the fulcrum for cross-cultural understanding in the lawyer-client relationship. See Bryant, *supra* note 1, at 68-70.

least ignorant of, their interests, concerns, or voice.<sup>52</sup> Consequently, any such systemic barriers are therefore also deeply relevant to the lawyers of marginalized clients, as they must be sensitive to the needs and identity of those clients—including perhaps their view of the lawyer as just another part of an oppressive system—while also successfully operating within that system for their benefit.<sup>53</sup>

Ever since Michelle Jacobs' landmark article on race and lawyering two decades ago, the preeminent place for inculcating cross-cultural competencies across the foregoing client-lawyer-system triad has indeed been clinical legal education.<sup>54</sup> And the leading pedagogical approach has been the "Five Habits" sequence developed by Professors Bryant and Koh Peters.<sup>55</sup> In a nutshell, they urge a committed and continuing exploration and analysis of the dynamics just described, along with an appreciation of alternative client perspectives ("parallel universe" thinking), lawyer-client communication, and lawyer self-examination and development.<sup>56</sup>

No matter the formula or technique, however, complete mastery of cross-cultural dynamics is admittedly—and perhaps appropriately—an elusive venture.<sup>57</sup> This is not only because no one culture can be exhaustively understood. Rather, cross-cultural omniscience in the lawyering context is impossible chiefly because each person's cultural combination is unique to them.<sup>58</sup> As Stefan Krieger and Richard Neumann emphasize, therefore, "[t]he most important thing is to be curious and open-minded about how other people think and act and

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<sup>52</sup> See Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 361-74 (1997) (exploring systemic racial dynamics and their impact on client representation, and the attendant need for (re)examination of a lawyer's work within that context).

<sup>53</sup> See Bryant, *supra* note 1, at 70 (describing system-client struggle that lawyers must seek to resolve); see also Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1300 (1992) (describing lawyer's role as that of translator, where the client's voice is spoken and enhanced in an empowering way within the legal system).

<sup>54</sup> See Piomelli, *supra* note 1, at 131-33 (describing clinical origins and pedagogical evolution of cross-cultural lawyering, starting with Michelle Jacobs' *People from the Footnotes*, *supra* note 52).

<sup>55</sup> See Bryant & Koh Peters, *supra* note 44, at 352-61 (reflecting on the landmark teaching approach of cross-cultural lawyering "habits" that the authors developed for clinical courses).

<sup>56</sup> See generally Bryant, *supra* note 1 (offering leading pedagogical approach on cross-cultural competence).

<sup>57</sup> See Tremblay, *supra* note 41, at 373, 387-89 (describing cross-cultural competence as more of a "heuristic" that is necessarily approximate and tentative).

<sup>58</sup> Koh Peters & Bryant, *supra* note 7, at 388 ("By teaching the students the concepts of anti-essentialism and intersectionality, clinics can help students see a client as an individual with a particularized package of experiences unique to that individual and as a member of multiple groups.").

why they think and act that way.”<sup>59</sup> Other cross-cultural scholars have referred to this open-minded yet deliberate approach as an “informed not-knowing” or “disciplined naivete.”<sup>60</sup> Regardless the label used, the goal is therefore humble understanding without stereotype; or, to put it another way, to learn and represent a client in his or her authentic humanity, and not as a caricature.

Finally, any cross-cultural lawyering overview should also include some mention of microaggression theory. That theory’s central insight of expanding our understanding of bias to include the subtle yet subconscious “put down”—whether person-to-person in the form of, say, a distancing word choice, tone of voice, or body language; or systemically through, for example, expectations of behavior or the relative prioritizing of the concerns of different communities—has been developed in the race-discrimination context given its uniquely disturbing and pervasive history.<sup>61</sup> The concept, however, has since expanded to other cultural identifiers, such as gender, ethnicity, and sexual orientation.<sup>62</sup> Notably, there has also been some development for religion—particularly in the treatment of minority faiths.<sup>63</sup> No matter any wider legal or political implications or applications of the theory—which are matters outside the scope of this paper—any comprehensive approach to cross-cultural lawyering should therefore at least anticipate the possibility of subconscious bias as another layer to be explored and understood between lawyer, client, and legal system, as well as in the training of future lawyers in and through our law schools.<sup>64</sup>

### III. RELIGION AS A CROSS-CULTURAL DYNAMIC

In many ways, religion is the paradigmatic cross-cultural factor: it is deep and substantive, yet also diverse, varied, and individualized. On the other hand, the very fact of its richness and dynamism makes

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<sup>59</sup> KRIEGER & NEUMANN, *supra* note 17, at 70.

<sup>60</sup> Tremblay & Weng, *supra* note 32, at 150-51.

<sup>61</sup> See Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1565-68 (1989).

<sup>62</sup> See Christina M. Capodilupo, *Microaggressions in Counseling and Psychotherapy*, in DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIVERSE: THEORY AND PRACTICE* 179-212 (7th ed. 2016) (describing development, expansion, and examples of microaggression theory to encompass not only race but also gender, ethnicity, sexual orientation, and religion).

<sup>63</sup> See, e.g., Kevin L. Nadal, Katie E. Griffin, Sahran Hamit, Jayleen Leon, Michael Tobio, & David P. Rivera, *Subtle and Overt Forms of Islamophobia: Microaggressions toward Muslim Americans*, 6 J. MUSLIM MENTAL HEALTH 15-18 (2012) (exploring microaggressions against religious minorities, particularly Muslim Americans, while noting dearth of scholarship in the area). Even in supposed majority faiths, offense can be felt, if less threateningly so; for example, in the misuse of God’s name or judgments about family size.

<sup>64</sup> See Susan Bryant & Eliot S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education*, 14 CLIN. L. REV. 195, 249 (2007) (flagging the need to address microaggressions in clinical rounds, including among the student-lawyers themselves).

religion a tricky thing to anticipate, grasp, and incorporate into the lawyering process. This dilemma perhaps explains why religion is consistently included on lists of relevant cross-cultural considerations but nonetheless remains largely unexplored in the literature. In any event, however, religion-specific social-science scholarship, coupled with a broader understanding of contemporary lawyering and trends, makes clear that religion offers compelling cultural insights necessary for a lawyer's understanding.

### A. *Defining Religion*

The difficulty of exploring religious cross-cultural dynamics is perhaps clear from the start, namely with the threshold inquiry: what is religion?<sup>65</sup> For better or worse, there is no consensus among theologians, philosophers, or social scientists, much less judges or lawyers, on that seemingly simple question.<sup>66</sup> Some define religion in largely functional terms, emphasizing its supernatural beliefs and related institutions, traditions, and rituals.<sup>67</sup> Others see religion as a mere set of commands, perhaps even insulated from evidence;<sup>68</sup> or, alternatively, as a historical binding of people into groups over time.<sup>69</sup> And still others understand religion as an experience marked more by the

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<sup>65</sup> See Arthur L. Greil & David G. Bromley, *Introduction*, in *DEFINING RELIGION: INVESTIGATING THE BOUNDARIES BETWEEN THE SACRED AND SECULAR 3* (A. Greil & D. Bromley eds., 2003) (arguing that despite the importance of the subject, defining religion has proven a “notoriously difficult” task and “it is probably safe to venture the proposition that no consensus has yet been reached” on the question).

<sup>66</sup> See Jeffrey Omar Usman, *Defining Religion: The Struggle to Define Religion Under the First Amendment and the Contributions and Insights of Other Disciplines*, 83 N.D. L. REV. 123, 193-96 (2007) (describing differing definitions of religion from psychological, sociological, and theological perspectives, including concepts of emotional experience, outward social behavior, and “ultimate concern”); David M. Wulff, *The Psychology of Religion: An Overview*, in *RELIGION AND THE CLINICAL PRACTICE OF PSYCHOLOGY 45-46* (E. Shafranske ed., 2005) (noting split in psychology community between deconstructing and engaging the transcendent); Eduardo Penalver, *The Concept of Religion*, 107 YALE L.J. 791, 801 (1997) (“[T]he search for a constitutional definition of religion in the courts could be charitably described as unsettled.”).

<sup>67</sup> See Greil & Bromley, *supra* note 65, at 4 (describing more exclusive (and traditional) understanding of religion as beliefs, institutions, and practices in relation to the supernatural).

<sup>68</sup> BRIAN LEITER, *WHY TOLERATE RELIGION 32-36* (2013) (contending religion can chiefly be distinguished from other sources of personal identity by its “categoricity of commands” and “insulation from evidence”).

<sup>69</sup> See JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION 273* (2012) (“We humans have an extraordinary ability to care about things beyond ourselves, to circle around those things with other people, and in the process to bind ourselves into teams that can pursue larger projects. That’s what religion is all about.”); see also EMILE DURKHEIM, *THE ELEMENTARY FORMS OF RELIGIOUS LIFE 10-12* (2008) (characterizing religion as “something eminently social” that is ultimately rooted in group identity, custom, and thought).

meaning it provides each believer than any supernatural practices, commands, or traditions it might also contemplate.<sup>70</sup>

To be sure, from a practical perspective these various, and at times competing, theoretical conceptions of religion are not as important as the meaning it holds in the lives of real people in real circumstances.<sup>71</sup> After all, and as with any cross-cultural lawyering, the process of seeking to understand and advocate for a client, while reconciling lawyer and system perspectives, is not an abstract thought experiment. Rather, cross-cultural lawyering chiefly concerns appreciating and integrating the identity of another human being in professional service, irrespective of the lawyer's own perspective—on the meaning of religion or otherwise.<sup>72</sup> As Peggy Levitt observes, “[t]he everyday lived experience of religion matters just as much as the theology or institutional practice.”<sup>73</sup> Even still, however, the enterprise of cross-cultural understanding of religion is not an unknowable or completely subjective thing. Indeed, there are numerous tangible and common elements that can and should be anticipated and explored, even if total comprehension remains (appropriately) illusive.<sup>74</sup>

In exploring the alternatives, Julia Corbett-Hemeyer provides a helpful working description of religion that seeks to be both broad enough to cover all faith expressions yet tailored to religion as such; namely, it is “an integrated system of beliefs, lifestyle, ritual activities, and social institutions by which individuals give meaning to (or find meaning in) their lives by orienting themselves to what they experience as holy, sacred, or of the highest value.”<sup>75</sup> Additionally, one might include as a friendly amendment the overlapping concept of spirituality, which can encompass religion but is often seen in less concrete, if not equally devout, terms.<sup>76</sup> No matter how diffuse religion is

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<sup>70</sup> See Greil & Bromley, *supra* note 65, at 4 (contrasting the traditional, supernatural-focused definition of religion with a purportedly more inclusive, functional, and experience-focused alternative).

<sup>71</sup> See Bryant, *supra* note 1, at 41 (emphasizing the individual client's experience as the ultimate focus for effective cross-cultural lawyering); see also Michael W. McConnell, *Why Protect Religious Freedom?*, 123 *YALE L.J.* 770, 784 (2013) (“What makes religion distinctive is its unique combination of features, as well as the place it holds in real human lives and human history.”).

<sup>72</sup> See COCHRAN ET AL., *supra* note 42, at 190 (“The underlying processes of connecting with clients, building relationships of trust and respect, and using communication strategies to help gather the client's full story and to explore the client's needs and interests apply across all groups and for all individuals.”).

<sup>73</sup> Peggy Levitt, *Immigration*, in *HANDBOOK OF RELIGION AND SOCIAL INSTITUTIONS* 392 (H. Ebaugh ed., 2006).

<sup>74</sup> See Tremblay & Weng, *supra* note 32, at 149 (describing the illusive yet necessary task of cross-cultural understanding).

<sup>75</sup> CORBETT-HEMEYER, *supra* note 13, at 15-16.

<sup>76</sup> See SUE & SUE, *supra* note 62, at 345 (describing spirituality as “an animating life

defined, however, Professor Corbett-Hemeyer rightly highlights several distinct themes—belief, ritual, lifestyle, institutions, orientation, and higher concern—that would seem to fit well Professor Bryant’s definition of culture for lawyering purposes as “the logic by which we give order to the world.”<sup>77</sup>

For our part in the Stanford Law School Religious Liberty Clinic, we include in our exploration with the students on the “what is religion” question a non-directive word cloud based on their client projects.<sup>78</sup> Invariably, we elicit the following alliterative responses: conscience, covenant, commitment, and community. Admittedly, our sample is somewhat unique in its consisting of 16 to 20 aspiring lawyers a year who apply for the opportunity to represent individuals seeking help in employment, prison, and land-use disputes where religion is already front and center.<sup>79</sup> But at least from a more traditionalist standpoint, these four attributes are hardly the supernatural aspects of religion one might expect to see emphasized.<sup>80</sup> What our students have repeatedly stressed instead are real people facing concrete challenges involving matters central to their daily lives. To us, this reflects what could be said of cross-religious understanding generally, in that it is less about God(s) and more about people.<sup>81</sup> Our experience shows that, for lawyering purposes, religion can be an accessible cultural category that does not require a theology degree. Nor should it.

Beyond its immediate definition, of course, religion also frequently overlaps with other aspects of identity, such as race, ethnicity, national origin, and gender. In her path-breaking *Mrs. G* article, for example, Lucie White describes religion, spirituality, and the “social institution of the Black church” as “central to the expression of Black

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force that is inclusive of religion and speaks to the thoughts, feelings, and behaviors related to a transcendent state . . . [but] can [also] be pursued outside a specific religion”); see also Courtney Miller, Note, “*Spiritual But Not Religious*”: Rethinking the Legal Definition of Religion, 102 VA. L. REV. 833, 840, 854-57 (2016) (describing the survey data and sociological-community analysis of the similarities and distinctions between religion and spirituality, while arguing for similar protection for both in the law).

<sup>77</sup> Bryant, *supra* note 1, at 40.

<sup>78</sup> When referring in this Article to “we” or “us” in the context of the teaching or supervising of students in the Stanford Clinic, I am including myself, as the program’s director and lead instructor, as well as the Clinic’s clinical supervising attorney, who is a staff lawyer that also has supervisory and teaching responsibilities. To the extent “we” or “us” is used in the context of serving clients in the field, it also includes the students.

<sup>79</sup> See Sonne, *supra* note 8, at 270-71 (describing the Stanford Clinic’s client-centered, personalist approach to workplace, prison, and land-use matters).

<sup>80</sup> See Greil & Bromley, *supra* note 65, at 4 (describing traditional understanding of religion as necessarily including supernatural elements).

<sup>81</sup> See KEVIN SEAMUS HASSON, *THE RIGHT TO BE WRONG* 145-46 (2d ed. 2012) (“[E]ven when we can’t agree on who God is, we can and should agree on who we are.”)

identity and group consciousness,” and, thus, potentially pivotal to her client’s self-definition in seeking justice.<sup>82</sup> Similarly, the cultural identity of Native Americans is invariably bound up with a universal spiritual perspective;<sup>83</sup> communities of Jews, Hindus, and Sikhs commonly understand—or at least experience—religion and ethnicity as inextricably linked;<sup>84</sup> and religion has continually proven to be a consistent source of meaning and strength for immigrant populations from across the globe.<sup>85</sup> And although faith is rarely sex-specific, the relationship between religion and gender—from roles and relations, to identities and expressions—can often provide powerful insights into each of them in turn.<sup>86</sup>

These overlaps arguably make religion a more difficult cultural attribute to pin down and incorporate into a cross-cultural lawyering effort. But, as that approach urges, no cross-cultural understanding can or should be reduced to one essential characteristic. Indeed, every individual human being is an amalgam of numerous and varied cultural threads.<sup>87</sup> Rather than ignoring religion as too unwieldy, therefore, understanding this complexity—whether in its own right or as a

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<sup>82</sup> White, *supra* note 9, at 48-49; *see also* SUE & SUE, *supra* note 62, at 342 (“The African American church has a strong influence over the lives of Black people and is often the hub of religious, social, economic, and political life.”); John P. Bartowski & Todd L. Matthews, *Race/Ethnicity*, in HANDBOOK OF RELIGION AND SOCIAL INSTITUTIONS, *supra* note 73, at 165 (“African Americans are believed to be among the most religious people in the entire world.” (internal quotation marks omitted)); *see also* Anastasia P. Winslow, *Sacred Standards: Honoring the Establishment Clause in Protecting Native American Sacred Sites*, 38 ARIZ. L. REV. 1291, 1295 (1996) (“For Native Americans, the spiritual life is not separate from the secular life.”).

<sup>83</sup> SUE & SUE, *supra* note 62, at 340 (observing that Native Americans “look on all things as having life, spiritual energy, and importance,” and therefore believe “we have a sacred relationship with the universe that is to be honored”).

<sup>84</sup> *See* Jaideep Singh, *Sikhs as a Racial and Religious Minority in the U.S.*, in THE OXFORD HANDBOOK OF SIKH STUDIES 524-33 (P. Singh & L. Fenech eds., 2014) (describing the (sometimes externally imposed) connection between religion and race for Sikhs in America); Molly E. Swartz, *By Birth or By Choice? The Intersection of Racial and Religious Discrimination in School Admissions*, 13 U. PA. J. CONST. L. 229, 248 (2010) (describing Jewish identity as an interplay of religion and ethnicity); Pyong Gap Min, *Religion and the Maintenance of Ethnicity Among Immigrants*, in IMMIGRANT FAITHS: TRANSFORMING RELIGIOUS LIFE IN AMERICA 99-119 (K. Leonard ed., 2006) (distinguishing ethnic overlaps in Indian Hinduism and Korean Protestantism, respectively).

<sup>85</sup> *See* ALEJANDRO PORTES & RUBEN G. RUMBAUT, IMMIGRANT AMERICA: A PORTRAIT 299-342 (2006) (describing “enduring presence” of religion for American immigrants, both in continuity and reactivity).

<sup>86</sup> *See* Nancy Nason-Clark & Barbara Fisher-Townsend, *Gender*, in HANDBOOK OF RELIGION AND SOCIAL INSTITUTIONS, *supra* note 73, at 207 (“Gender studies has a lot to contribute to the social scientific study of religions phenomena, just as religious expression and the spiritual quest is central in the lives of many, if not most, women.”).

<sup>87</sup> *See* Koh Peters & Bryant, *supra* note 7, at 388 (urging “anti-essential” and “intersectional” understanding of cultural dynamics—i.e., that we are not limited to one cultural attribute, but rather are a combination of many—as central to cross-cultural competency).

variation on other themes—promises enhanced insight into the perspectives, values, and interests of those whom the lawyer is called to serve, as well as those of the lawyer herself. And that is the ultimate goal of the enterprise in any event.<sup>88</sup>

### B. *The Religious Prism*

So, what are the cross-cultural insights that religion can provide? Naturally, the answer to that question depends on the particular individual, community, or circumstance. But religion potentially touches on everything, from social conventions and conceptions of basic morality; to understandings of gender, race, and sexuality; to matters of birth, death, and eternal life.<sup>89</sup> Perhaps more fundamentally, religion frequently serves as a perceptive window, or prism, on reality itself.<sup>90</sup> And it is often in times of stress or difficulty—such as amid the tumult of a legal dispute, to pick a pertinent example—that this interpretive perspective may be most pronounced.<sup>91</sup> As one religion and psychology scholar summed up applicable research, “the sacred is particularly helpful in the worst of times.”<sup>92</sup>

Aside from formal worship or rituals, religion is perhaps most outwardly noticeable in social interactions.<sup>93</sup> These might include one’s manner of greeting, talking, or eating; grooming or dress practices; or even the meaning of being “early” or “late” to a meeting.<sup>94</sup>

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<sup>88</sup> See Jacobs, *supra* note 52, at 411-12 (framing cross-cultural lawyering as key to client-centeredness).

<sup>89</sup> See Nason-Clark & Fisher-Townsend, *supra* note 86, at 208 (noting “key aspects of human experience, such as birth, death, inequality, and suffering, are linked inextricably to religion;” and that religion both “plays a major role in the moral decision making of believers” and “shapes the social interactions between men and women, children and adults, communities and even nations”).

<sup>90</sup> See Eugene Volokh, *Diversity, Race as Proxy, and Religion as Proxy*, 43 UCLA L. REV. 2059, 2071 (1996) (observing that “if religion means anything, it must mean that the devout of a particular faith tend to see the world through a lens quite different from that used by the secular, the less devout, or the devout of other faiths”).

<sup>91</sup> See Seamone, *supra* note 4, at 292 (“Religion and spirituality reinforce natural coping mechanisms that fail to work, and, accordingly, are deeply-engrained in one’s natural responses to stress.”).

<sup>92</sup> Kenneth Pargament, *Religious Methods of Coping: Resources for the Conservation and Transformation of Significance*, in RELIGION AND THE CLINICAL PRACTICE OF PSYCHOLOGY, *supra* note 66, at 233; see also *id.* at 225 (“Whether it is by a reframing of the situation, the person, or the sacred, much of the power of religion is located in its capability to find meaning in those situations that confound, baffle, and shake people’s most basic assumptions about the world.”).

<sup>93</sup> See ERIC B. SHIRAEV & DAVID E. LEVY, CROSS-CULTURAL PSYCHOLOGY: CRITICAL THINKING AND CONTEMPORARY APPLICATIONS 6 (2016) (observing that “[r]eligious teachings have a relatively similar impact on individuals, regardless of their religious affiliation, inspiring honesty, modesty, and/or kindness within human beings”).

<sup>94</sup> Although the book is geared chiefly to attendance at religious ceremonies, our clinic students have found the reference work *How to Be a Perfect Stranger* (Stuart M. Matlins &



Certain Muslims and Jews, for example, might try to avoid shaking the hand of a person from the opposite sex;<sup>95</sup> Sikhs traditionally maintain unshorn hair and beards;<sup>96</sup> Seventh-day Adventists are known not only for their defining observance of a Saturday Sabbath but also for their preference for a vegetarian diet and abstention from alcohol;<sup>97</sup> and scholars have contrasted, for example, certain Native American tribes with their Mormon neighbors as having relatively flexible or strict conceptions of timing, respectively.<sup>98</sup> Social dynamics are also implicated by whether a particular faith tradition urges the proselytization of non-believers (e.g., Christianity, Islam), or not (e.g., Judaism, Hinduism);<sup>99</sup> whether religious experience is predominantly seen as a collective or individualized concern;<sup>100</sup> and how one's personal or community narrative is shared and communicated.<sup>101</sup> These generalized preferences should of course not induce stereotype, but neither should they be ignored.<sup>102</sup>

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Arthur L. Magida eds., 5th ed. 2012) a particularly helpful resource in understanding the customs of a host of religions, in the ritual context or otherwise.

<sup>95</sup> See Kevin Roose, *Muslims on Wall Street, Bridging Two Traditions*, N.Y. TIMES, Apr. 14, 2012, at BU1 (describing practice of conservative Muslim women to avoid physical contact with men outside their families, including handshakes); Eugene Volokh, *Intermediate Questions of Religious Exemptions—A Research Agenda with Test Suites*, 21 CARDOZO L. REV. 595, 645 n. 145 (1999) (describing opposition among Orthodox Jewish women to the appropriateness of shaking the hand of a man other than their husbands).

<sup>96</sup> See W.H. McLEOD, HISTORICAL DICTIONARY OF SIKHISM 81 (1995) (describing the sacred Sikh practice of maintaining unshorn hair under a turban, or *kesh*).

<sup>97</sup> See Emily Esfahani Smith, *The Lovely Hill: Where People Live Longer and Happier*, ATLANTIC MAG. (Feb. 4, 2013) (describing prevalence of vegetarian, non-alcohol diet among Seventh-day Adventists); see also GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, 28 FUNDAMENTAL BELIEFS 9 (2015), [szu.adventist.org/wp-content/uploads/2016/04/28\\_Beliefs.pdf](http://szu.adventist.org/wp-content/uploads/2016/04/28_Beliefs.pdf) (noting Seventh-day Adventist commitments to the observance of a “seventh-day Sabbath as the day of rest, worship, and ministry,” as well as the “most healthful diet possible” and abstention from alcohol and tobacco).

<sup>98</sup> See Lawrence T. White, Raivo Valk, & Abdessamad Dialmy, *What is the Meaning of “On Time”? The Sociocultural Nature of Punctuality*, 42 J. CROSS-CULTURAL PSYCH. 482, 482-83 (2011) (describing social-scientist findings of contrasting approaches to punctuality among Mormons and the Navajo).

<sup>99</sup> See JOHN WITTE JR., SHARING THE BOOK: RELIGIOUS PERSPECTIVES ON THE RIGHTS AND WRONGS OF PROSELYTISM xiv-xv (2008) (contrasting Jewish, Christian, and Muslim views on proselytization).

<sup>100</sup> See Ronald J. Columbo, *The Naked Private Square*, 51 HOUS. L. REV. 1, 35-36 (2013) (contrasting understandings of religion as an individual or collective experience, and the resulting legal implications).

<sup>101</sup> See ARMIN W. GEERTZ, RELIGIOUS NARRATIVE, COGNITION AND CULTURE: IMAGE AND WORD IN THE MIND OF NARRATIVE 3 (2011) (“The expressions of religious narrative, and the media used to communicate them, are myriad.”); see also CARL OLSON, RELIGIOUS WAYS OF EXPERIENCING LIFE 30 (2016) (observing that, at bottom, “the narrative of religion is a narrative about humanity”).

<sup>102</sup> See Tremblay & Weng, *supra* note 32, at 150 (“A lawyer working with a client can neither assume that the client’s cultural preferences do not matter . . . , nor be certain that the specific differences of which the lawyer is aware will call for predictable variations in

Beyond social convention, another commonly distinctive feature of religion is its presence on supposed moral questions, controversial or otherwise. These include religion-specific norms, from tithing and charity mandates<sup>103</sup> to how (or whether) the divine should be named or depicted.<sup>104</sup> But faith-based morality can also include more pervasive and powerful understandings on deeply personal yet socially impactful matters such as sex, marriage, procreation, and child-rearing,<sup>105</sup> as well as related conceptions of gender roles, relations, and identity.<sup>106</sup> And then there are religiously informed perspectives on broader issues like crime and punishment, the use of military force, or the role of government more generally.<sup>107</sup> In other words, religion touches many, if not all, of the issues of the day on which people engage and, for better or worse, assess one another and themselves.

Finally, on an even more universal or eschatological level, religion almost always involves particularized understandings of reality and even the meaning of life itself, including birth, death, and the afterlife.<sup>108</sup> Faith perspectives, therefore, may affect one's appreciation of science;<sup>109</sup> or, for that matter, the evaluation of supposedly religion-neutral evidence more generally.<sup>110</sup> Faith also commonly con-

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their interaction.”).

<sup>103</sup> See Note, *Tithing in Chapter 13—A Divine Creditor Exception to Section 1325?*, 110 HARV. L. REV. 1125, 1125 (1997) (observing that “[m]any religious people believe that they are under a spiritual injunction to donate part of their income, without fail, to their religious organizations or to general charitable causes[.]” including Buddhists, Muslims, Jews, and Christians in particular).

<sup>104</sup> See Daniel Engber, *Graven Images 101: Does Islam Really Prohibit Images of Religious Figures?*, SLATE MAG. (Feb. 7, 2006), <http://slate.me/2culsdE> (describing traditions in the Abrahamic faiths on names and images, including Muslim teachings on depicting the Prophet and Jewish teaching on saying or writing the name of “G-d”).

<sup>105</sup> See Darren E. Sherkat, *Politics and Social Movements*, in HANDBOOK OF RELIGION AND SOCIAL INSTITUTIONS, *supra* note 73, at 10 (observing that “[s]exual morality is a focus of attention in all of the major religious traditions,” and including in that rubric teachings on sex, family planning, and marriage); *see also id.* at 9 (“For religious devotees, the training of children is prescribed within the tradition . . .”).

<sup>106</sup> See JOSEPH RUNZO & NANCY M. MARTIN, EDS., *LOVE, SEX AND GENDER IN THE WORLD RELIGIONS* 167-258 (2000) (providing essays on various religious perspectives on gender and related issues, including in Buddhism, Christianity, Islam, and Hinduism).

<sup>107</sup> See Sherkat, *supra* note 105, at 15 (observing in the political context that “[r]eligious values influence what people and communities believe are worthy public goods and noxious collective bads”).

<sup>108</sup> See John H. Mansfield, *Conscientious Objection—1964 Term*, 3 RELIGION & PUB. ORD. 3, 10 (David A. Gianella ed., 1965) (arguing that religion necessarily addresses “questions about the meaning of human existence, the origin of being, the meaning of suffering and death, and the existence of a spiritual reality”).

<sup>109</sup> See PEW RESEARCH CENTER, *RELIGION AND SCIENCE* 4 (2015) (summarizing survey showing that although 30% say their own religious beliefs conflict with science, 59% say religion and science are often in conflict; the gap is presumably due to the perception of the religious beliefs of others).

<sup>110</sup> See Stanton L. Jones, *A Constructive Relationship for Religion with the Science and*

tributes to how suffering and death are processed and understood,<sup>111</sup> as well as how one assesses moral culpability.<sup>112</sup> And a believer's understanding of the afterlife might not only frame expectations for that eventuality but can also influence how one acts in the meantime.<sup>113</sup>

In sum, for the believer, religion can be everything and everywhere. And because religion is becoming only more diverse and personalized in the United States—whether by immigration or the growth of more decentralized spiritual approaches—its facets have become more numerous and increasingly dynamic.<sup>114</sup> As Richard Wentz notes, “[t]he radicalism of religious diversity is a fact of contemporary life and may well become the most significant feature in the development of society and culture in the twenty-first century.”<sup>115</sup> On one hand, such pluralism is to be celebrated as a reflection of toleration and mutual respect.<sup>116</sup> On the other hand, divisions and xenophobia can run deep, as “in hardly any other sphere [than religion] are individuals so cut off from one another.”<sup>117</sup> In times of conflict therefore—whether in a given case or in society at large—religion can go many ways, thereby furthering the need for lawyers to appreciate and understand it as part of their profession and practice.<sup>118</sup>

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*Profession of Psychology: Perhaps the Boldest Model Yet*, in RELIGION AND THE CLINICAL PRACTICE OF PSYCHOLOGY, *supra* note 66, at 113-41 (challenging scientists generally, and psychologists in particular, to appreciate the religious lens through which their work is practiced and understood).

<sup>111</sup> See LEITER, *supra* note 68, at 52 (characterizing as definitional that religion provides for its believers a framework for understanding “the basic existential facts about human life, such as suffering and death”).

<sup>112</sup> See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS AND MORAL RESPONSIBILITY 93-94 (2d ed. 2004) (describing implications of religion on moral decision-making by clients (and lawyers)); see also MONICA K. MILLER, RELIGION IN CRIMINAL JUSTICE (2006) (analyzing the impact of religion in a jury's assessment of guilt and punishment in the criminal context).

<sup>113</sup> See MICHAEL REA & LOUIS POJMAN, PHILOSOPHY OF RELIGION: AN ANTHOLOGY 673 (2015) (“Most cultures and religions have some version of belief in another life, whether it be in the form of a resurrected body, a transmigrated soul, reincarnation, or an ancestral spirit present with the tribe.”); Azim F. Shariff & Mike Rhemtulla, *Divergent Effects of Beliefs in Heaven and Hell on National Crime Rates*, 7(6) PLOS ONE (2012), <https://doi.org/10.1371/journal.pone.0039048> (summarizing findings on the effects of religion generally and heaven/hell specifically on human behavior, particularly crime).

<sup>114</sup> See CORRIGAN & HUDSON, *supra* note 13, at 381 (describing rise of religious “diversity, adaptation, and experimentation”).

<sup>115</sup> RICHARD E. WENTZ, THE CULTURE OF RELIGIOUS PLURALISM 13 (1997).

<sup>116</sup> See Kevin M. Schultz, *The Blessings of American Pluralism and Those Who Rail Against It*, in FAITH IN THE NEW MILLENNIUM 269-83 (M. Sutton & D. Dochuk eds., 2016) (describing religious pluralism as a factor in declining inter-religious strife).

<sup>117</sup> Wulff, *supra* note 66, at 43.

<sup>118</sup> See COCHRAN ET AL., *supra* note 42, at 189 (“Across their differences, what brings people to lawyers is often the same impetus—conflict”); see also OLSON, *supra* note 101, at 7 (describing theory of religion as having “originated as a response to emotional stress” and “functioned to alleviate anxiety associated with the uncertainty and difficult nature of

### C. Cross-Cultural Lawyering

Armed with the foregoing understanding of religion as a cultural dynamic, the implications for cross-cultural lawyering track remarkably well across the lawyer-client-system triad according to both the clinical and broader counseling literature. In his work on cross-cultural representation, for example, Paul Tremblay proposes six key areas where cultural differences manifest themselves in legal counseling: (1) personal space; (2) body movement; (3) time and priority; (4) narrative preferences; (5) degree of individualism; and (6) reliance on scientific rationality.<sup>119</sup> While, relying on Dutch social psychologist Geert Hofstede's work, David Binder suggests five more: (1) tolerance for uncertainty; (2) acceptance of unequal power; (3) emphasis on the masculine or feminine; (4) orientation to the short or long term; and (5) emphasis on a communication's content or context.<sup>120</sup>

Given the innumerable aspects of life that religion touches, therefore, it necessarily evokes most, if not all, of the eleven "Tremblay-Binder" categories in one way or another. Faith-based views on punctuality and the manner of greeting or conversation, for example, would naturally implicate the interpersonal-relation dimensions of time, space, or physical interaction in a client-counseling setting.<sup>121</sup> Perspectives on the nature and interrelationship of gender would likewise present a host of dynamics for the representation of clients, and not only in many of the same interactive ways just described for client meetings but also in attendant dress and grooming matters, as well as in the broader appreciation of roles, identity, and expectations between or among the sexes.<sup>122</sup> A lawyer's approach to a client matter or relationship will necessarily differ in these respects depending on whether she is representing an elderly Jewish widower in Brooklyn, a twenty-something Unitarian woman in Berkeley, or a middle-aged Muslim man in Dearborn.

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human life").

<sup>119</sup> Tremblay, *supra* note 41, at 389-406.

<sup>120</sup> BINDER ET AL., *supra* note 33, at 34-35.

<sup>121</sup> See generally TERRI MORRISON & WAYNE A. CONAWAY, *KISS, BOW, OR SHAKE HANDS* (2006) (offering practical nation-by-nation guidance on conversation and manners of greeting and interpersonal interaction, with almost invariable emphasis on religion as integral to understanding the culture of a given country); see also ANINDITA NIYOGI BALSLEV & J.N. MOHANTY, *Introduction to RELIGION & TIME 1* (Anindita Niyogi Balsev & J.N. Mohanty eds., 1993) ("An essential part of understanding a religious world is understanding how space, time and causality are understood and how, so understood, they structure that world.").

<sup>122</sup> See GEERT HOFSTEDÉ, *CULTURE'S CONSEQUENCES* 327-31 (2d ed. 2001) (offering cultural analysis of religion's impact on gender and relationships); see also generally LINDA B. ARTHUR, ED., *RELIGION, DRESS AND THE BODY* (1999) (studying culture of religious-dress customs, with an emphasis on gender dynamics).

Because of its frequent confluence of history, tradition, and community, religion also involves distinct forms of narrative, communication, and identity—all central aspects of a lawyer’s counseling or advocacy for a client. In some faiths, for example, written text is emphasized; in others, the spoken word or even non-verbal expression is paramount.<sup>123</sup> In some religions, the physical depiction of a person is meaningful; in others, it can be quite controversial or even forbidden.<sup>124</sup> And no matter the form of a communication, its context—e.g., whether it is someone of the same or different background who is communicating, and under what circumstances—can affect how the message is received.<sup>125</sup> Relatedly, the degree to which meaning is seen in individual or collective terms differs across religious traditions, and also correlates with the development of trust as well as relative appreciations of the costs and benefits of a given transaction.<sup>126</sup> If, say, ancestral spirits would affect a client’s decisions, the client-centered lawyer must adjust.<sup>127</sup> Moreover, and more concretely and commonly, one’s connection to a broader group is a major factor in the representation of minority-faith groups, where common bonds can be both a strength and a challenge.<sup>128</sup>

Furthermore, the fact that various religious traditions have deep

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<sup>123</sup> See Jeppe Sinding Jensen, *Framing Religious Narrative, Cognition and Culture Theoretically*, in GEERTZ, *supra* note 101, at 37-38 (on the power of oral and written religious narrative, in religion itself and on to a broader understanding of “propriety and morals, freedom or social control, insight or superstition”).

<sup>124</sup> See B.C., *Why Islam Prohibits Images of Muhammad*, THE ECONOMIST BLOG (Jan. 15, 2015), available at <http://econ.st/2u1KyLC> (summarizing contrasting history of embrace and aversion to physical depictions of human and divine beings in Christianity and Islam, respectively).

<sup>125</sup> See generally STEPHEN M. CROUCHER & TINA M. HARRIS, EDs., RELIGION AND COMMUNICATION (2012) (studying impact of religion on interpersonal communication, as well as intercultural communication traits and behaviors); see also Stephen M. Croucher et al., *Religion, Culture, and Communication*, OXFORD RESEARCH ENC. OF COMM., available at <http://bit.ly/2udWNjn> (Jan. 2017) (updating research on the subject of religion and interpersonal and intercultural communication).

<sup>126</sup> See HOFSTEDE, *supra* note 122, at 249-50 (on the interplay between religion and individual/collective dynamics); see also Tremblay, *supra* note 41, at 400-02 (on challenges to individual-representation model based on story of physicians treating illness of a child of the Hmong faith, whose members conceive of themselves and their illnesses in community rather than individual terms); SUE & SUE, *supra* note 62, at 578-79 (describing counseling implications from collectivism in Islam, both in its joys and pressures).

<sup>127</sup> See Tremblay, *supra* note 41, at 404 (observing that “conventional counseling models . . . do not easily accommodate mysticism, voodoo, and other ‘bizarre’ or irrational decisionmaking vehicles”).

<sup>128</sup> See Andrew L. Milne, *Sharia and Anti-Sharia: Ethical Challenges for the Cross-Cultural Lawyer Representing Muslim Women*, 57 S. TEX. L. REV. 449, 450-54 (2016) (describing gender and attendant group dynamics in context of representing a Muslim woman in the American domestic-relations context); see also HAIDT, *supra* note 69, at 248 (“Religions are social facts. Religion cannot be studied in lone individuals any more than hivishness can be studied in lone bees.”).

and varied takes on the framing of reality itself—from an understanding of nature to the conflict between supposed certainty on one hand, and indeterminacy, inequality, and suffering on the other—affects how a client might see a problem, or lack thereof, differently than a lawyer.<sup>129</sup> To people of faith, the vagaries of human experience often point to an alternative source of meaning beyond the immediate and tangible world where a lawyer typically trains and works.<sup>130</sup> A setback or victory in a case might therefore be viewed and evaluated differently by a religious client; likewise, her tolerance for uncertainty or the attendant assessment of costs, benefits, or risks.<sup>131</sup> If a client sees a legal struggle as part of a divinely ordained plan, for example, she may be more likely to take risks—or, alternatively, to more easily make compromises—than if she saw the matter in purely secular terms.<sup>132</sup> This dynamic is common in the Stanford Clinic’s work and among its clients, and, as we have found, must therefore be understood in the course of counseling and advocacy in a way that meets the interim and long-term goals of those clients through the lens of their faith.

Additionally, and as with the cross-cultural triad generally, the Tremblay-Binder factors concern not only the client but the lawyer and system as well.<sup>133</sup> Consequently, the personal and societal roots of a lawyer’s religious beliefs, or lack thereof, can present bias or related challenges across a host of these factors—from communication and narrative dynamics, to the prisms of individual and community, to the assessment of reality and risk tolerance.<sup>134</sup> What’s more, the fact that many lawyers do not have any religious affiliation means the divide

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<sup>129</sup> See McConnell, *supra* note 71, at 786 (rejecting claim that religious people make judgments without relying on evidence: “Religious believers do not think they are ‘insulating’ themselves from all the relevant ‘evidence’ . . . [rather,] they think they are considering evidence of a different, nonmaterial sort, in addition to the evidence of science, history, and the senses.”).

<sup>130</sup> See Tremblay, *supra* note 41, at 404 (observing that “cross-cultural theorists” observe that “many non-Western cultures rely importantly on native rituals, beliefs and practices which are not likely to be seen by United States-educated lawyers as ‘scientifically rational’”).

<sup>131</sup> See Seamone, *supra* note 4, at 292-93 (emphasizing the particularized impact of religion in the litigation context, “[b]ecause faith plays such a vital role in addressing clients’ most pressing life problems”).

<sup>132</sup> See SUE & SUE, *supra* note 62, at 531-32 (describing attitude in religiously dominated Latino culture to suffering: “Latinas/os often believe that life’s misfortunes are inevitable and feel resigned to their fate.”).

<sup>133</sup> See Bryant, *supra* note 1, at 68-70 (describing cross-cultural dyads of clients, lawyers, and legal system).

<sup>134</sup> See BINDER ET AL., *supra* note 33, at 34-35 (describing cross-cultural implications across dynamics, including individual/collectivism, high-context/high-content communication, and uncertainty avoidance); see also Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLIN. L. REV. 369, 382-83 (2005) (urging lawyers to be aware of the “cultural basis” for their behavior).

may be particularly fluid when it comes to representing a religious client, as opposed to a client who differs in other culturally relevant ways.<sup>135</sup> A recent Pew survey shows that “[a]mong all U.S. adults, college graduates are considerably less likely than those who have less education to say religion is ‘very important’ in their lives.”<sup>136</sup> And further surveys indicate the difference is even wider for lawyers.<sup>137</sup> The need for the lawyer to reflect on bias and be actively self-aware in this context is therefore acute.<sup>138</sup>

As for the broader context, the domestic legal system is not a universally objective or accessible series of rules, procedures, and participants. Rather, it is a culture unto itself, both with norms of behavior as well as a history, priorities, and biases—which surely vary but nonetheless stand out.<sup>139</sup> For example, the American system places a heavy emphasis on the individual, whether in the lawyering process (e.g., confidentiality or conflicts rules) or the allocation of rights and responsibilities (e.g., guilt versus shame), something which naturally conflicts with the emphasis of numerous religions on the collective.<sup>140</sup> Likewise, our legal system’s preferred modes of communication are fashioned by the dominant, while the manner of proof is rooted—at least in theory—in the scientific or tangible, which are qualities that can present serious and respective access-to-justice implications for religious minorities or those who might allow for the intervention of divine authority.<sup>141</sup> Finally, the presence of religion can be altogether uncomfortable for the domestic system given a palpable, if perhaps

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<sup>135</sup> See Pargament, *supra* note 92, at 215, 232-33 (suggesting lack of appreciation for religion in therapy is due to lack of therapists’ personal experience with religion, and urging therapists to go beyond that experience).

<sup>136</sup> See PEW RESEARCH CENTER, *IN AMERICA, DOES MORE EDUCATION EQUAL LESS RELIGION?* 4 (2017). This same report noted, however, that among devout Christians, education did not seem to differ much.

<sup>137</sup> See Black & Rothman, *supra* note 26, at 841 (describing survey data suggesting the majority of “elite” lawyers and judges are “not especially religious”); see also Edward P. Shafranske, *Religious Beliefs, Affiliations, and Practices of Clinical Psychologists*, in *RELIGION AND THE CLINICAL PRACTICE OF PSYCHOLOGY*, *supra* note 66, at 152 fig. 1 (survey showing 35% of law professors prefer no religion at all).

<sup>138</sup> See Seamone, *supra* note 4, at 326-27 (criticizing “absence of religion and spirituality in legal counseling” stemming from a “legal fiction that such matters are irrelevant”).

<sup>139</sup> See Bryant, *supra* note 1, at 40 (observing that the legal system “is a culture with strong professional norms that gives meaning to and reinforces behavior”).

<sup>140</sup> See *id.* at 46-47 (describing domestic legal culture’s emphasis on the individual rather than the collective, both in the lawyering process and the establishment of legal rights and responsibilities).

<sup>141</sup> See Jacobs, *supra* note 52, at 358-60 (exploring communication implications arising from marginalized client’s conflation of lawyer and legal system in historical oppression and/or the imposition of dominant values); Bryant, *supra* note 1, at 43-45 (on the credibility challenges in an American courtroom presented by client who describes emigrating from her native country as a response to God’s appearance in a dream).

inevitable, wariness from an otherwise-understandable concern about the interaction of church and state.<sup>142</sup> Whatever the systemic dynamic, though, the client-centered lawyer must understand and bridge it to effectively serve the client.<sup>143</sup>

#### IV. REPRESENTING THE RELIGIOUS CLIENT, AS SUCH

Turning to the concrete, in operating the nation's only full-time law-school clinic on law and religion, there are particular insights from the field that we can fortunately offer on how religion impacts cross-cultural lawyering. Admittedly, there is some selection bias given the nature of our docket, where religious matters are necessarily front and center. In fact, one of the limitations of religious-liberty work for cross-cultural understanding is that the immediate matter of religion is assumed, so deeper exploration may paradoxically seem at times less pressing. Nonetheless, our focused experience cannot help but shed light on religion as a broader cross-cultural dynamic as it is a common ingredient in all we do. And this experience, in turn, suggests pedagogical approaches in other contexts as well.

##### A. *Examples from the Field*

In exploring the tripartite relationship of client, lawyer, and system in our clinic's work, three respective case examples provide insight into the tangible lessons and promise of religious considerations. The first example, which chiefly involves client perspectives and the dual importance of bridging and anti-essentialism, arises from our work for four Sikh truck drivers who lost their jobs after refusing to submit hair samples for drug testing. (Sikhs believe as an article of faith that they must maintain unshorn hair, and alternative testing methods were available to the company.) The second example offers a more lawyer-focused reflection on broader questions of identification and intersectionality, and likewise concerns accommodation in the workplace; this time, for a Seventh-day Adventist package-deliverer client who had been forced to report on Saturdays. (Adventists adhere to the Old Testament Sabbath, which lasts from Friday sundown to Saturday sundown.) And the third example presents systemic lessons from our work for a Messianic Jewish inmate who was denied partici-

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<sup>142</sup> See Uelmen, *supra* note 28, at 1083-84 (emphasizing historical and prevailing concerns about church-state separation in the law generally as a dominant factor in the domestic legal profession's aversion to religion in its practice); see also CARTER, *supra* note 16, at 3 (lamenting the pressure of contemporary legal culture to marginalize public expressions of faith).

<sup>143</sup> See Tremblay & Weng, *supra* note 32, at 146 (observing that "[t]o ignore likely differences in culture is an invitation to malpractice," while minding the countervailing importance not to presume or generalize).



pation in his prison's kosher-meal program—lessons that include the interplay of religious and racial dynamics across the legal system, and in both its civil and criminal dimensions. (Messianic Jews follow the Jewish dietary laws but also believe in Jesus Christ as the Messiah.) Skipping ahead, all three of these cases ended in settlements favorable to our clients, as well as significant cross-cultural reflection and learning for all involved.

### 1. *Sikh Truck Drivers*

The Sikh truck-driver case was one of the first matters our students handled, and arguably the richest so far in terms of cross-cultural lawyering opportunities. Our clients were four Sikh men who had immigrated to the United States at various times over the past decade and then applied to be drivers for an interstate trucking company—a particularly desirable high-paying job for those with more limited English proficiency, like our Sikh clients.<sup>144</sup> Unfortunately, on their first day of orientation each client was sent home for refusing to remove hair from their heads or beards for drug testing. Hair samples detect the presence of drugs for a longer period than urine, but fingernail testing is comparable and was an alternative option that the company neither accepted nor explored.<sup>145</sup> The men therefore came to our clinic for help, and not only did our students ultimately resolve the case successfully, they explored a wide range of cross-cultural dynamics in the process.<sup>146</sup>

“The truest wish of a true Sikh is to be able to ‘preserve the hair on his head to his last breath.’”<sup>147</sup> The practice of maintaining unshorn hair, or *kesh*, is in fact so sacred to the Sikh religion that the trimming or shaving of hair is considered by many to be “the direst apostasy.”<sup>148</sup> For various reasons—some predictable, some not—Sikhs have therefore faced continuing conflicts between the practice and public or pri-

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<sup>144</sup> See *Sikhs in Semis*, THE ECONOMIST, May 5, 2018, at 30 (describing the prevalence of Sikh immigrants in the trucking industry, estimating that some 40% of truckers in California are Sikh).

<sup>145</sup> See K. Graham, G. Koren, J. Klein, & J. Schneiderman, *Determination of Gestational Cocaine Exposure by Hair Analysis*, 262 JAMA 3328 (1989) (on benefits of hair-sample use over other types of drug testing); see also Kevin B. Zeese, *Drug Testing Legal Manual* § 2:39 (2d ed. 2017) (describing hair and nail testing).

<sup>146</sup> See Dan Weikel, *Sikh Truck Drivers Reach Accord In Religious Discrimination Case Involving A Major Shipping Company*, L.A. TIMES, Nov. 15, 2016, at B3 (summarizing Stanford Clinic case).

<sup>147</sup> See HARBANS SINGH, 2 THE ENCYCLOPAEDIA OF SIKHISM 466 (2d ed. 2001). In a particularly striking analogy, one of the founding Sikh gurus described the cutting of one's hair “as sinful as incest.” *Id.*

<sup>148</sup> *Id.*

vate rules, particularly in the military and in the workplace.<sup>149</sup> No matter the conflict, however, they try to hold fast; Sikhs have historically chosen martyrdom rather than cut their hair or beards.<sup>150</sup>

Despite the broad and profound importance of Sikh grooming practices, none of the students handling the trucking matter were Sikh, nor were they familiar in any significant way with that faith or its beliefs before joining the clinic. Rather, the bulk of those on the case across several academic quarters would describe themselves as either agnostic or committed in one way or another to the Judeo-Christian tradition.<sup>151</sup> Consequently, it was a priority for them as lawyers to not only learn about *kes* and be able to communicate its importance, but also to uncover any distinctions in its practice or meaning for each of the individual clients.<sup>152</sup>

The students' crash course naturally consisted of reading anything they could find about Sikhs and *kes*.<sup>153</sup> More directly, however, it also involved a repeated and frequent series of individual and group client calls and in-person meetings—or what Professors Bryant and Koh Peters might call “mindful listening” sessions—that involved the facts of the case as well as the wider cultural and religious dynamics in play.<sup>154</sup> Additionally, and where appropriate, the clinic students enlisted the help of the Sikh Coalition, a non-profit advocacy group dedicated to the Sikh community more broadly that had referred the clients to us and agreed to stay on the case as our co-counsel.<sup>155</sup> Finally, the students conducted self-reflective rounds sessions with their colleagues in the class who were not on the case, to ensure their ability to give voice to their clients while also bridging to a decidedly non-

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<sup>149</sup> See, e.g., Gurjot Kaur, *Abercrombie Religious Discrimination Case Less Than Cool for Supreme Court, Sikh Americans*, HUFF. POST, May 2, 2015, <http://bit.ly/2uJVI8d> (on the workplace challenges for Sikhs and their sacred grooming practices); James Dao, *Taking On Rules So Other Sikhs Join the Army*, N.Y. TIMES, July 8, 2013, at A9 (on the grooming-related challenges faced by Sikhs wanting to serve in the military).

<sup>150</sup> See generally LOUIS E. FENECH, *MARTYRDOM IN THE SIKH TRADITION* (2000).

<sup>151</sup> Out of respect for student privacy and autonomy, my descriptions in this Article of any religious or other personal background information are offered only in a non-attributive way consistent with their voluntary public disclosure.

<sup>152</sup> See BINDER ET AL., *supra* note 33, at 33-37 (warning against stereotyping, including assumptions of sameness across a particular culture—particularly where it is foreign to the lawyer's own).

<sup>153</sup> See Tremblay & Weng, *supra* note 32, at 154 (on benefits and limits of cross-cultural book learning).

<sup>154</sup> See Susan J. Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 27, at 196-200 (describing the importance of various steps in a lawyer's “mindful listening” to be able to understand and communicate with a client across cultures).

<sup>155</sup> More information on the Sikh Coalition and its work for that community can be found at <https://www.sikhcoalition.org>.

Sikh audience through which the case would hopefully be resolved in their favor—here, the opposing party and the EEOC in the course of that agency’s pre-suit conciliation process.<sup>156</sup>

One of the more poignant cross-cultural religious lessons in the Sikh case arose in an early exchange between the students and clients. In exploring the personal meaning of *kesh*, a student asked one of the clients, “what would the religious consequences be for you if you did cut your hair?” The client looked puzzled, and then replied softly, “But we are Sikh.” Another client wept.<sup>157</sup> The question, which the student later reflected on as rooted in his supposed Western understanding of personal sin and judgment, did not intuitively match the client’s communal sense of indispensable bodily integrity.<sup>158</sup> An additionally illuminating religious insight occurred when another student conflated the clients’ wearing of a turban to cover their hair as a practice engaged by another faith; although they were kind about it, the clients seemed taken aback, insisting that the Sikh practice was unique.<sup>159</sup> We later discussed as a class the critical importance of seeing clients individually, and not confusing cultures foreign to one’s own based on seeming outward similarities.<sup>160</sup> We also addressed the importance of exploring at the risk of embarrassment—to the lawyer or client—a client’s deeply held beliefs, albeit in a curious and humble way that puts the client at the center with a discrete appreciation of the lawyer’s professional role.<sup>161</sup>

The Sikh trucking case offered other interconnected cross-cultural opportunities as well. These included language, as three of the four clients spoke primarily Punjabi and only two spoke English with proficiency—an always-difficult barrier for counseling that will likely become only more of an issue in the years to come, and therefore one

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<sup>156</sup> See Bryant & Milstein, *supra* note 64, at 223-28 (describing case-specific and broader lawyering and educational benefits of discussing cross-cultural dynamics in wider classroom setting).

<sup>157</sup> It should be noted that the Sikh client wept at the student’s question about cutting his hair not so much in frustration at the question but rather in sorrow at the prospect, and in its connection to the dispute at hand.

<sup>158</sup> See SIRI KIRPAL KAUR KHALSA, *SIKH SPIRITUAL PRACTICE: THE SOUND WAY TO GOD* 201-02 (2010) (on the teaching of *kesh* in the Sikh religion, and its ethno-religious importance beyond individual acts and consequences for the believer).

<sup>159</sup> See Emma Green, *The Trouble with Wearing Turbans in America*, *THE ATLANTIC*, Jan. 17, 2015, available at <http://theatlantic.com/2mu2DNJ> (describing Sikh fight against confusion of their turban practices with those of Muslims).

<sup>160</sup> See Tremblay & Weng, *supra* note 32, at 156-57 (describing needed balance between accounting for cultural differences and anticipating the possibility of being wrong based on generalized assumptions).

<sup>161</sup> See Tremblay, *supra* note 41, at 379-82 (stressing importance of exploring “with curiosity and humility” a client’s culture as a key to lawyering success, despite the countervailing and respective risks of presumption and inattention).

that is valuable for aspiring lawyers in any field to confront.<sup>162</sup> Fortunately, a staff member of our non-profit partner was available to translate, which solved the dilemma on a practical level. For better or worse, however, that in turn introduced the further cross-cultural and client-centered dynamics of working with that translator and the related issue of balancing beneficial collaboration with a community advocacy group and the interests of the client.<sup>163</sup> Finally, there was the gender dynamic. All four clients were men working in an overwhelmingly male-dominated field, while half the clinic students on the case were women.<sup>164</sup>

In the end, our effort in developing cross-cultural competency in the Sikh case was a success for the clients and students alike. The students earned the trust of their clients and, in the process, helped secure a settlement that not only satisfied each of them financially but also required a series of company-wide policy changes based on a sustained education and advocacy effort about the Sikh faith. The students also had a rich learning experience. Based on a series of culture-focused supervision discussions, clinic-wide case rounds, and written self-reflections, as well as instructor follow-up with the clients, it was readily apparent that the broader lessons of humble curiosity, bridge-building, bias reduction, and group and individual interplay made their mark on our students as professionals and people.

Some of this was due to the clients themselves, whose openness and warmth were remarkable—particularly in light of the stress they faced, and in both the litigation as well as the suffering that gave rise to it. The clients were ready and willing to share their faith, and had profound respect for each student in any other way they might differ (e.g., gender, language, ethnicity). Indeed, the Sikh religion is known for its teachings on equality.<sup>165</sup> In any event, having prepared for a wide-ranging cross-cultural engagement—both in what they knew and

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<sup>162</sup> See Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1010 (2007) (observing that “five interlocking imperatives demand a focus on limited English proficiency [for contemporary poverty-law clients]: demography, legal obligation, ethical duty, dignitary concerns, and antisubordination”).

<sup>163</sup> See *id.* at 1050-59 (describing various client-centered and cultural challenges presented by the use of a foreign-language interpreter); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 401-03 (2008) (on the pedagogical and social-justice benefits of collaborating with collectives in service to individual clients).

<sup>164</sup> See Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1818 (1993) (emphasizing the educational and professional-identity challenges and opportunities arising from lawyer-client gender differences in the law-clinic context).

<sup>165</sup> See NIKKY-GUNINDER KAUR SINGH, *SIKHISM: AN INTRODUCTION* 101-121 (2011) (stressing strong history of religious teaching on equality in Sikh faith, while also lamenting practical failures to live up to them).

in what they were open to learning—the students anticipated and responded.<sup>166</sup> They were also able to incorporate the supporting non-profit's assistance in a fruitful yet balanced way, and not just in language translation but also as a broader resource given the group's expertise in working for Sikhs across the country.<sup>167</sup> It was quite the meaningful experience.

## 2. Adventist Package Handler

Like Sikhs and their practice of *kesh*, Seventh-day Adventists also face difficulty in the workplace due to their defining belief in abstaining from paid employment on a Saturday Sabbath.<sup>168</sup> The challenge is in fact so prominent that California, among other states, expressly protects the practice under its human-rights law, and then subject only to a narrow employer defense of “significant difficulty or expense”—in essence, the same exacting standard as the Americans with Disabilities Act.<sup>169</sup> Using that state law, the clinic filed suit on behalf of an Adventist woman who worked as a driver for a private package-delivery service that had refused her request for a non-Sabbath schedule citing the needs of its customers and limitations from a collective-bargaining agreement.<sup>170</sup>

In pursuing the case, the client's actual religious practice was once more the central feature. Like millions of observant Adventists across the world, our client dedicates herself to abstaining from paid labor from sundown Friday to sundown Saturday.<sup>171</sup> In short, she be-

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<sup>166</sup> See Tremblay & Weng, *supra* note 32, at 153-54, 169 (stressing dual importance of preparation and open-mindedness when dealing with culturally different clients).

<sup>167</sup> See Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications for a Combined Advocacy Clinic*, 16 CLIN. L. REV. 451, 481-82 (2010) (noting professional-identity benefits of collaborating with “institutional players” in clinic setting).

<sup>168</sup> See Melanie Trotman, *Religious-Discrimination Claims on the Rise*, WALL ST. J., Oct. 27, 2013, at B1 (describing growing challenges facing Seventh-day Adventists and other Sabbath-observing faiths with the trend toward a seven-day workweek among American businesses).

<sup>169</sup> See CAL. GOV'T CODE §§ 12940(l)(1), 12926(u) (2013) (expressly protecting employee “observance of a Sabbath or other religious holy day or days” subject only to employer “undue hardship,” which is defined as “significant difficulty or expense”); see also 42 U.S.C. § 12111(10)(A) (2012) (similar hardship standard for the ADA). Strict protections are likewise found in New Jersey (N.J. STAT. ANN. § 10:5-12(q) (2014)), Oregon (OR. REV. STAT. § 659A.033(4) (2011)), and New York City (N.Y. EXEC. L. § 296(10)(d) (2016)).

<sup>170</sup> For another example of the Stanford Clinic's Sabbath-accommodation work, see Christina Neitzey, Kathryn Harris, & Mary Huang, *California Must Honor Its Commitment to Religious Diversity*, S.F. CHRON., June 6, 2017, at A10.

<sup>171</sup> See GARY LAND, *THE A TO Z OF THE SEVENTH-DAY ADVENTISTS* 4-9 (2009) (describing the Adventist Church's history of humble origins to massive growth, and the significance of its teaching on the Sabbath).

believes this period of time, or Sabbath, is reserved for God as a “perpetual sign of His eternal covenant between Him and His people.”<sup>172</sup> And Adventists are not alone in seeking to set aside one day each week to refrain from work and devote themselves entirely to their faith; the practice is common for many other Christians, Mormons, and Jews, to name a few.<sup>173</sup>

To develop an understanding of their client’s religious perspective—whether about the Sabbath or otherwise—the student teams on the Adventist case again did plenty of book research but, more importantly, met often with their client. The students understood her best in these meetings, especially when they met outside the office—which they quickly learned was more comfortable for her.<sup>174</sup> Poignantly, the students built a trust that allowed their client to share a series of sufferings in her life.<sup>175</sup> These challenges not only framed her faith, they offered insights the students could (delicately) use to tell an authentic story to the opposition, as well as any skeptical decision-maker, as one of personal identity rather than special treatment—an important framing point in the religious-liberty arena.<sup>176</sup>

Our engagement with the Adventist client on such deeply personal matters was not without its hiccups. That said, we tried as instructors to make each one a teaching moment. We explored, for example, the risk of role confusion and the value to the client of detached professional service, where the students’ closeness to her—both on an emotional and cause level—tempted some of them to over-identification.<sup>177</sup> As a committed believer, the client also seemed to want to share her faith more directly with the students; none of

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<sup>172</sup> GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, *supra* note 97, at 9.

<sup>173</sup> See Trotman, *supra* note 168, at B1 (describing workplace challenges for Sabbatarians of many faiths).

<sup>174</sup> See ROGER S. HAYDOCK & PETER B. KNAPP, *LAWYERING* 91-92 (3d ed. 2011) (emphasizing importance of comfortable settings for client meetings).

<sup>175</sup> See KRIEGER & NEUMANN, *supra* note 17, at 29 (emphasizing importance to clients of lawyers who seek to understand them and their suffering, such that they “see[] the world through the client’s eyes”).

<sup>176</sup> See Sonne, *supra* note 8, at 283-84 (on the importance of narratives that focus on human experience, particularly in the religious-accommodation context); see also Francesca Fontana, *Balancing Religion and the Office*, WALL ST. J., July 19, 2017, at B10 (noting growing encouragement of employees to “bring their whole selves to work” and celebrate their individual identities,” while noting challenge in area of religion).

<sup>177</sup> See Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1, 7 (2003) (arguing against the “[i]ntense identification between lawyer and client” as a “perversion of the service norm”); see also John T. Noonan, Jr., *The Lawyer Who Over-identifies with His Client*, 76 NOTRE DAME L. REV. 827, 841 (2001) (arguing a lawyer should not “contract his or her identity to the client’s”); Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 470-71 (2006) (stressing value of lawyer’s detached judgment, even when there is strong common cause).

whom were Adventist, and some who were not religious at all.<sup>178</sup> This, in turn, required and inspired us to develop a simulation that would examine the interplay between client-centeredness and lawyer autonomy, while also guarding against under-identification. For this, we used an instructor-acted, in-class model that drew on student-teacher presumptions of closeness and then pressed on participants to explore professional distance in role.<sup>179</sup> In that exercise, as in every step, we also emphasized anti-essentialism and intersectionality, as it is the client's multi-factor, real-life experience—and not just religion—that informs her needs and goals.<sup>180</sup>

As with the Sikh driver case, the Adventist case's religious cross-cultural dynamics overlapped with other dimensions of her identity, too. Indeed, both gender and class figured prominently. Regarding gender, half the client's student lawyers were men, as were almost all her co-workers. In what seemed quite the high-testosterone workplace, one student who deposed the client's supervisor compared his forearms to "tree trunks." So although the legal case focused on religion, it was vital for the students to anticipate and engage these gender dynamics, to ensure both trust and client-centered service—particularly given the risk of falsely presuming the client's gender perspectives in light of her more traditional religious commitment to the Sabbath.<sup>181</sup> We therefore engaged in a class study of gender difference and sameness, with religious overlays.<sup>182</sup> We also adjusted our interviewing and counseling simulations based on some of the gender issues we anticipated the student teams might face. Specifically, we experimented with assigning successive male-female, male-male, and female-female simulation pairs and then reflected on those dynamics,

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<sup>178</sup> See GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, *supra* note 97, at 6 (describing Adventist tenet that "[e]very believer is called to have a personal part in th[e] worldwide witness" to the faith).

<sup>179</sup> See Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1071-75 (1976) (advocating lawyer-client relationship as a "legal friendship"); see also Noonan, *supra* note 177, at 829 (noting that, although a lawyer should not overidentify, there should be a certain amount of "love that informs friendships . . . if the lawyer is to do the lawyer's work well").

<sup>180</sup> See Koh Peters & Bryant, *supra* note 7, at 388 (on the need not to limit client to one cultural characteristic).

<sup>181</sup> See Hing, *supra* note 164, at 1810 (emphasizing the need for rapport across lawyer-client differences, including gender in particular, as "critical to the success of the relationship and the outcome of the case"); see also SUE & SUE, *supra* note 62, at 725-742 (outlining generalized gender dynamics for counseling).

<sup>182</sup> See generally Bryna Bogoch, *Gendered Lawyering: Difference and Dominance in Lawyer-Client Interaction*, 31 LAW & SOC'Y REV. 677 (1997) (on communication, interaction, and emotional differences of lawyers and clients across genders); Anderson et al., *supra* note 49, at 341 (challenging "assumptions rooted in sameness," including in the gender context); see also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (critiquing essentialist approach to gender).

including how they impacted—and at times overshadowed—religious matters. In the process, the students were able to address assumptions and stereotypes in their work. More directly, they came to better understand the gender dynamics their client faced on the job, and perhaps in pursuing her case, and how those dynamics interacted with the expectations of her faith.<sup>183</sup>

Finally, the Adventist case presented the further matter of socio-economic class. As in the biblical parable on the respective authority of Caesar and God when it comes to paying taxes, the interaction of faith and money is a difficult issue for a lot of our clients.<sup>184</sup> The package-deliverer matter was no exception.<sup>185</sup> On one hand, Sabbath accommodation is about principle: the client insists on it to the bitter end as a matter of religious conscience. On the other hand, using the limited tools of the legal system, monetary remedies can lessen the damage on a more worldly level. Add to this tension a client who lives paycheck-to-paycheck but nonetheless sees success through the eyes of a faith that believes God will provide no matter the situation. And then further contribute to the mix that the client's economic position stood in contrast to her lawyers, with their particularly advantageous educational backgrounds and professional opportunities.<sup>186</sup> Our students, therefore, not only had to attune to these dynamics in their client-centered learning and counseling, they also had to work to uncover and minimize their own attendant biases in the process.<sup>187</sup> Specifically, the students had to subordinate their own views on whether it was “worth it” to settle or proceed to trial to those of their client based on her subjective goals and values—an important lesson for the students' future careers as lawyers no matter the focus of their practice.<sup>188</sup>

In the end, the students achieved a settlement in the Adventist case that pleased the client and allowed her to keep her job, and with a new supervisor. This would not have been possible without a delib-

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<sup>183</sup> See Nason-Clark & Fisher-Townsend, *supra* note 86, at 207-17 (on interplay of gender and religion).

<sup>184</sup> *Matthew 22:15-22* (Jesus responding to question on the validity of paying taxes under religious law: “Give to Caesar what is Caesar’s, and to God what is God’s”).

<sup>185</sup> See Randy Peterson, *Modern Voices: The Christian and Money*, CHRISTIANITY TODAY (1987), available at <http://bit.ly/2gpmPiJ> (on complex relationship between religious faithful and money); see also Pargament, *supra* note 92, at 216 (“[R]eligion is concerned with both the ends and the means of significance.”).

<sup>186</sup> See Piomelli, *supra* note 1, at 166-67 (emphasizing the importance of socioeconomic class as a cross-cultural dynamic between lawyer and client, and urging its inclusion in the law-school clinic setting).

<sup>187</sup> See *id.* at 174-78 (providing helpful framework for uncovering and addressing socioeconomic bias in a typical lawyer’s relationship with a poor or working-class client).

<sup>188</sup> See BINDER ET AL., *supra* note 33, at 34-35 (describing cross-cultural implications for risk assessment).



erate focus on religion as a central aspect of culture, both in and of itself and through its relationship with other factors. If, for example, the students focused only on financial risks and rewards as they related to the litigation process—a task with which they were at first most comfortable—they could have missed their client’s full objectives, including her desire to vindicate her right to observe the Sabbath in her current job while avoiding some, if not all, of its attendant gender conflicts. On the other hand, if the students ignored the risks and remedies of the secular process in absolute deference to the client’s faith in the abstract, they might have missed a problem-solving opportunity to meet her needs.

### 3. *Messianic Jewish Inmate*

A third illuminating cross-cultural example from our clinic involves our work for an African-American Messianic Jewish inmate whose sincere request for a kosher diet was denied by his prison’s rabbi chaplain, who also served as the state’s gatekeeper for that religious-meal program there. In the rabbi’s view, those who believed in both the Jewish laws and the divinity of Jesus—a distinctive feature of our client’s faith—did not qualify as Jewish and therefore could not receive meals that were meant for “Jews only.”<sup>189</sup> Unsurprisingly, there were a host of issues to unpack in the scenario. Most directly, there were the theological differences—both within the community of those who differ on the proper delineation of the Jewish faith and on to those who, like our students, were either not of that faith or of no religious tradition at all.<sup>190</sup> But the racial dynamics, as well as our client’s status as a prison inmate, figured almost as strongly—if not even more so.

On the religious front, the lawyer-client relationship again required our students to study, anticipate, engage, and listen.<sup>191</sup> Similar to the Adventist case, that relationship also involved a particularly devout client who sought to connect to the students in a spiritual way.

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<sup>189</sup> See DAVID RUDOLPH & JOEL WILLITTS, EDS., *INTRODUCTION TO MESSIANIC JUDAISM* 72 (2013) (describing general characteristics of Messianic Jews to include both a belief in “Yeshua the Messiah” and the observation of “some level of traditional Jewish practice”); see also *id.* at 302 (observing that “[t]he wider Jewish community in the late twentieth and early twenty-first centuries has considered Messianic Judaism a disingenuous—even an insidious—attempt to missionize Jews” from Judaism to Christianity).

<sup>190</sup> See generally LEONARD J. GREENSPOON, ED., “WHO IS A JEW?”: *REFLECTIONS ON HISTORY, RELIGION, AND CULTURE* (2014) (offering series of diverse essays debating central question of Jewish identification).

<sup>191</sup> See KRIEGER & NEUMANN, *supra* note 17, at 70 (suggesting a series of steps in handling a multicultural lawyering scenario, emphasizing that “[t]he most important thing is to be curious and open-minded about how other people think and act and why they think and act that way”).

This was typically at the more general level of asking students questions along the lines of, “so, do you guys believe in God, too?” But we still needed to prepare the students for the interaction—from those who would readily answer to those who understandably might prefer to dodge. Through a collaborative and evolving effort between instructors and students, therefore, we eventually settled on an approach that would pivot the conversation from the student’s own personal views to our clinic’s universal commitment to religious liberty—e.g., “as your lawyers, we have a wide variety of religious beliefs; but that is one of our strengths in fighting to defend your right to practice yours how you see fit.”<sup>192</sup> There are undoubtedly other, and perhaps better, ways to handle the matter. But focusing more on respect for our client’s interests than a personal emotional connection appeared best in this context.<sup>193</sup> And it seemed to work, both in reassuring the client as well as introducing our students to the continuous need for agility in effective cross-cultural lawyering.

Although more of an institutional than student concern, a further cross-cultural—or intra-cultural—religious dimension of the Messianic Jewish case concerned our clinic’s work for more “traditional” Jewish clients in other matters, including for inmates.<sup>194</sup> Given the broader religious controversy over Messianic Jews—they are essentially considered heretical by many believers in Jewish and Christian circles alike—as well as the common argument by prison systems of having limited resources to accommodate religion, the case presented a challenge vis-à-vis other clients and partners who might prefer a narrower view of Judaism to ensure the feasibility of its protection in prison.<sup>195</sup> The need for our students to name the rabbi chaplain as a defendant to ensure effective relief only heightened the tension. In the end, we opted for—and taught—a fairly standard approach that focused on religious liberty as a universal and individual right no matter any larger group affiliation or community. But in the process, we were

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<sup>192</sup> See Sonne, *supra* note 8, at 295-97 (describing benefits to the client and the broader culture of emphasis on universal and personal liberty in litigating religious-liberty cases).

<sup>193</sup> See Robert J. Condlin, “What’s Love Got To Do With It?”: *The Complicated Relationship Between Lawyer and Client*, 82 NEB. L. REV. 211, 214 (2003) (emphasizing a respect for the client and his interests, rather than personal connection or friendship, as a primary model for lawyering in a “multi-cultural” world).

<sup>194</sup> See Peter Margulies, *Multiple Communities or Monolithic Clients: Positional Conflicts of Interest and the Mission of the Legal Services Lawyer*, 67 FORDHAM L. REV. 2339, 2352, 2376 (1999) (describing the challenge of positional conflicts across community of clients, and arguing for a contextualized approach over a formalized or monolithic approach based on mere equal opportunity or group identity, respectively).

<sup>195</sup> See Fried, *supra* note 179, at 1066 (arguing that, in serving a client, “it is right that a professional put the interests of his client above some idea, however valid, of the collective interest”).

able to at least acclimate students to professional-balancing issues between and among cause and/or community lawyering and client centeredness.<sup>196</sup>

As for the racial dynamics, the Messianic Jewish inmate case evoked a complex history and interaction of racial, ethnic, and religious identity and understanding—and one we suspected, though could never quite prove, played into the chaplain's refusal to see our client as Jewish.<sup>197</sup> More importantly in the training of lawyers, the racial distinctions between our African-American client and all but one of the student lawyers (was also African-American), along with the underlying racial tensions in the criminal-justice system generally, brought its own cross-cultural lessons.<sup>198</sup> The students could not help but reflect on racial disparities all around them; whether in their many prison visits to the client or court appearances with (or without) him, the differences were stark and frequent. It was therefore vital for our students to seek to understand and account for these aspects of their client's situation to be able to truly serve him.<sup>199</sup>

Finally, and also along systemic lines, was our client's inmate status. There are of course many ways for clinics to teach and bridge cultural dynamics for inmates who need legal help; for example, in the criminal-defense, post-conviction, or conditions arenas.<sup>200</sup> Our clinic suggests another, yet often in a way that has less to do with our clients' conviction or crime and more with the larger healing they seek in honoring their faith.<sup>201</sup> Nevertheless, the need to grasp the profundity of a client's status as a prisoner is no less acute for us; indeed, that status is central to one of the key policy rationales for the legal protections we draw on for them.<sup>202</sup> From something as simple as insisting on calling

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<sup>196</sup> See Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 574 (1990) ("To be successful, any model of lawyering must appeal to the primary constituency of lawyers' services: clients.").

<sup>197</sup> Cf. Edward S. Shapiro, *Blacks and Jews Entangled*, 45 FIRST THINGS 34 (1994) (describing a symbiotic yet complicated relationship between African-American and Jewish communities in the United States).

<sup>198</sup> See generally Koh Peters & Bryant, *supra* note 7, at 375-407 (encouraging special attention to race, both in its particulars and systemically, in effective cross-cultural lawyering and its teaching).

<sup>199</sup> See Jacobs, *supra* note 52, at 374-91 (arguing that, to ensure the effective and appropriate counseling of clients and avoid further marginalization, client-centered model must account for racial dynamics).

<sup>200</sup> See generally M. Chris Fabricant, *Rethinking Criminal Defense Clinics in "Zero-Tolerance" Policing Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE 351 (2012) (exploring pedagogical and social-justice benefits of a clinic experience focused on contemporary criminal-defense issues).

<sup>201</sup> See Sonne, *supra* note 8, at 285-86 (describing opportunities and limits for the use of stock narrative in the context of seeking religious accommodations for imprisoned clients).

<sup>202</sup> See *Cutter v. Wilkinson*, 544 U.S. 709, 720-21 (2005) (Justice Ginsburg observing for a unanimous court that federal protection of religious liberty of prisoners is constitutionally

their Messianic Jewish client by his surname to collaborating with the wider prisoners-rights community, we urged our students to learn all they could—and appreciate what they could not—about the overall psychosocial situation he faced.<sup>203</sup> Substantively, this seemed to serve the client well. The students developed a healthy representation that won the client a meal accommodation that he graciously credited with reconciling him to both his faith and healing in prison.<sup>204</sup> More broadly, it also offered our students a heart for the marginalized that we hope they will carry on.<sup>205</sup>

### B. Pedagogical Approaches

In our clinic at Stanford, we have engaged the religious and related dimensions of cross-cultural lawyering exemplified in the foregoing examples in at least three ways: (1) generalized in-class exercises and discussion; (2) comparative presentations; and (3) in-time learning and reflection through live case and client situations. Although we continue to tinker, our approach largely follows an established cross-cultural lawyering pedagogy. The twist, of course, is the novel yet fundamentally important factor of religion.

We begin cross-cultural learning right away. Like all Stanford clinics, ours runs “full-time,” meaning that it is the only law-school course its students take in a designated quarter.<sup>206</sup> Among other benefits, this approach allows us to begin the first week of each term with a five-day immersion sequence, or “boot camp,” of seminars, simulations, and introductory client calls. And throughout that opening week we engage the topic of cross-cultural lawyering, religious and other-

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proper, particularly since it applies in a “severely disabling” environment where the state “exerts a degree of control unparalleled in civilian society”).

<sup>203</sup> See Alan Ryan, *Call Me Mister*, 50 N.Y. REV. BOOKS 31, 32 (2003) (urging formality with vulnerable clients as a way of allowing them to “keep their self-respect in situations that seriously threaten[] it”).

<sup>204</sup> Part of the Messianic Jewish case settlement was a regulation requiring independent consideration of requests for kosher meals. See [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/NCDR/2016NCR/16-08/NCR\\_16-08\\_Notice\\_of\\_Proposed\\_Regulations\\_Posting.pdf](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2016NCR/16-08/NCR_16-08_Notice_of_Proposed_Regulations_Posting.pdf) (last visited Dec. 7, 2016).

<sup>205</sup> See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 138-39 (Carnegie Foundation for the Advancement of Teaching 2007) (hereafter cited as “CARNEGIE REPORT”) (observing that “a good pro bono experience can strongly influence a student’s future involvement in public service”); see also BEST PRACTICES REPORT, *supra* note 39, at 190 (noting that “providing services to under-represented segments of society [in a law-school clinic] helps develop positive professional characteristics”); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1475-77 (1998) (stressing a law-school clinic’s inculcation of an “ethos of public service”).

<sup>206</sup> See Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education*, 23 CLIN. L. REV. 471, 561, 570 (2017) (describing the full-time clinical program at Stanford Law School).

wise, in a series of exercises and discussion.<sup>207</sup>

The boot-camp exploration starts in earnest with a straightforward yet profound Venn Diagram exercise suggested by Professors Bryant and Koh Peters. That exercise asks students to first visualize through a series of prompts, lists, and overlapping circles their opening impressions of similarities and differences between and among themselves, their clients, and the legal system; and then to reflect on overstated, understated, or missing elements, as well as broader implications for client understanding and case approaches.<sup>208</sup> We also include in that first week an in-class interviewing simulation that is designed not only to teach and apply general interviewing and counseling basics but is also adjusted to anticipate scenarios like the case examples described above. The simulation might therefore include examples of a client who sees success in spiritual terms, holds faith-based views on gender relations, or presses the student on her religious views, thereby allowing students to struggle with the indeterminacy of any such counseling.<sup>209</sup>

In addition to the boot-camp exercises, we dedicate an expanded seminar session to cross-cultural lawyering later in the term—once the students have gotten to know their clients, cases, and each other better.<sup>210</sup> In the first half of that class, we revisit the Venn Diagram to see how first impressions have changed and examine the resulting retrospective and prospective lessons.<sup>211</sup> We then use a variation of Jeffrey Selbin and Tirien Steinbach’s “Light as a Metaphor” exercise, where students are asked to reflect in context on the visible, perceptible, and invisible elements of light, and their attendant implications, in illustration of the curiosity and self-examination needed to more fully appre-

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<sup>207</sup> See Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405, 425 (2002) (“Clinic instruction . . . commonly includes exercises that help the student understand cultural differences between the student and the client and help the student uncover and confront assumptions that may inhibit [understanding].”).

<sup>208</sup> See Bryant, *supra* note 1, at 65-69 (outlining Venn diagram approach, both in its initial outlay and as a vehicle for further reflection on client relationships, interviewing and counseling, and case theory/strategy).

<sup>209</sup> See David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191, 214-216 (2003) (emphasizing essential importance of targeted simulations, both as a matter of a student’s substantive learning and as motivation for her performance in the field).

<sup>210</sup> See Bryant, *supra* note 1, at 60 (suggesting cross-cultural discussion as a class might benefit from being postponed to a point where the group “has established itself as a learning unit”).

<sup>211</sup> See *id.* at 63 (encouraging exploration of cross-cultural dynamics across at least two classes, observing that “true cultural sensitivity can only take place with practice and reflection over time”).

ciate cultural dynamics in representing a client.<sup>212</sup> Although this latter effort is by no means limited to religion, it is particularly useful in emphasizing the typically pervasive yet intangible nature of faith, as well as avoiding bias or stereotype based on mere book learning or group association.<sup>213</sup>

Notwithstanding this emphasis on avoiding misattribution, however, the history and culture of religion do commonly include an associational dimension that must be understood and accounted for.<sup>214</sup> Even if the client longs to distance herself from or otherwise reject that larger group or story, it is important to have it in mind—whether as a distinguishing reference or simply to anticipate how others might see or misunderstand the client.<sup>215</sup> Group-based perceptions are very powerful, hence the emphasis in the cross-cultural literature on overcoming them to focus on the individual client.<sup>216</sup> In addition to client-based exercises and discussion, therefore, we also dedicate two seminar sessions to student presentations on religious cultures of their choice. Each of our eight full-time students gives a 20-minute talk on the history, basic tenets, and contemporary dynamics and challenges of a community of believers, followed by questions and discussion.

In the past six years, students have presented on a variety of both well-known and more obscure religions, literally from Amish to Zoroastrian. These include communities whose members we regularly represent—e.g., Buddhists, Hindus, Jews, Muslims—and those we have not yet had the chance to serve—e.g., Baha'i, Jains, Santerians.<sup>217</sup>

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<sup>212</sup> See Jeffrey Selbin & Tirien Steinbach, *The Role of Culture in the Lawyer-Client Relationship (Light as a Metaphor Exercise)*, in *WORKING WITH IMMIGRANTS: THE INTERSECTION OF BASIC IMMIGRATION, HOUSING, AND DOMESTIC VIOLENCE ISSUES IN CALIFORNIA* (2013).

<sup>213</sup> See CHRISTIAN SMITH, *RELIGION: WHAT IT IS, HOW IT WORKS, AND WHY IT MATTERS* 3-4 (2017) (defining religion in objective, supernatural terms, while expanding its practice and experience to the subjective, personal, and pervasive); see also COCHRAN ET AL., *supra* note 42, at 202-03 (urging lawyers not to stereotype based on association with a larger group); Weng, *supra* note 134, at 385-86 (same).

<sup>214</sup> See SMITH, *supra* note 213, at 27 (observing that “religions are almost invariably social activities—communities of memory engaged in carrying on particular traditions”).

<sup>215</sup> See Ahmad, *supra* note 162, at 1042 (emphasizing significance of “intracultural variation,” and the impact of likely differences on a presumption of cultural sameness in interpreter context); see also Bryant, *supra* note 1, at 41-45 (flagging the real possibility that some people “reject norms and values from their culture,” and that, in any event, a lawyer must account for any manner of cross-cultural dynamics).

<sup>216</sup> See BINDER ET AL., *supra* note 33, at 32 (rooting the risk of stereotyping, and resulting need for effective cross-cultural lawyering, in stereotypical thinking in the wider society); see also Bryant, *supra* note 1, at 70 (emphasizing broader systemic dynamics in developing cross-cultural understanding and strategies).

<sup>217</sup> In addition to religious communities that are traditionally recognized as such, our students have also presented on groups that have historically faced challenges to their inclusion in that sphere—e.g., Atheists, Secular Humanists, Scientologists, Wiccans. This has pushed the students to appreciate the implications of broad or narrow definitions of relig-

Among the benefits of the exercise is a collaborative expansion of student (and instructor) knowledge about unfamiliar religious cultures, with a corresponding humility about one's own.<sup>218</sup> But perhaps nearly as important is an appreciation of similarities in the human experience across religious traditions, including the desire for higher meaning (particularly in suffering), solidarity in community, and courage in the face of misunderstanding or even persecution.<sup>219</sup> We have found these collaborative sessions to not only help students with their own clients but also ground them in religion as a cross-cultural dynamic generally.

Finally, and as with most other aspects of the clinic experience, it is in supervised fieldwork that the lessons, skills, and benefits of cross-cultural lawyering—including in its religious dimensions—are most immediately taught, experienced, and learned.<sup>220</sup> For us, that means full-time engagement with a broad range of groups and communities, yes, but in a concrete way that allows and requires the student lawyer to orient and direct all of her efforts to and through the particular client.<sup>221</sup> Whether in scenarios like those involving our Adventist, Sikh, or Messianic Jewish clients, or in myriad other unique and frequently unpredictable ways, the opportunity to develop as a professional across deeply personal cross-cultural encounters as they arise is one of our clinic's central features.<sup>222</sup>

In this cross-cultural field supervision, we take a fairly non-direc-

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ion, as well as the personal dimension of culture that transcends labels or broader group affiliation.

<sup>218</sup> See Tremblay, *supra* note 41, at 412 (emphasizing “humility about the universality or inevitability” of the lawyer's own cultural perspective as a chief goal and benefit of cross-cultural understanding); see also Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1, 37-38 (1999) (emphasizing pedagogical and professional-identity benefits of peer-to-peer learning in a law-school clinic).

<sup>219</sup> See CORBETT-HEMEYER, *supra* note 13, at 15-17 (suggesting functional as well as substantive definition of religion to comprehend matters of deep “meaning in human life”); see also McConnell, *supra* note 71, at 791 (emphasizing common sacrifice of “lives, fortunes, social standing, . . . career advancement, and bodily comfort” as “count[ing] for something” in justifying religious freedom as a legal principle).

<sup>220</sup> See CARNEGIE REPORT, *supra* note 205, at 120 (suggesting that the “most striking feature” of clinical legal education is its ability to “engage and expand students' expertise and professional identity through supervised responsibility for clients”).

<sup>221</sup> See Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1740 (1993) (praising the benefit of live-client work in clinics, where “[s]tudents no longer see clients as abstract people with predetermined traits; rather, they see clients as unique individuals with particular characteristics situated within the social world”); see also DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 10 (2002) (“It is difficult to over-emphasize the importance of the real-life aspects of clinical education.”).

<sup>222</sup> See Bryant & Milstein, *supra* note 64, at 207 (extolling the value of “just-in-time” learning in clinic).

tive approach.<sup>223</sup> As instructors, we naturally provide the pedagogical frameworks for developing habits of mind for effective cross-cultural understanding—whether in the coursework noted above, through supervisory meetings and reflection, or in the course of case rounds.<sup>224</sup> We also make sure certain critical matters are not overlooked.<sup>225</sup> But it is ultimately the students' responsibility and opportunity to plan, engage, and incorporate into their representation the cultural dynamics at hand.<sup>226</sup> We have found that this student-first method is especially suitable for religious factors, given the risk of instructor dominance and the centrality of client trust on such a sensitive and deeply personal subject.<sup>227</sup> The matter could not be more central, yet particularized, for most of our clients—and, indeed, many of our students as well.<sup>228</sup>

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<sup>223</sup> See Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 213-17 (1996) (describing example of non-directive field supervision, which encourages students to take ownership of case-handling decisions and limits supervision to process and preparation framing, prodding by question, and plan evaluation); see also Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in BRYANT ET AL., *supra* note 7, at 189 (emphasizing intentional supervision on cross-cultural themes, all outside client's presence).

<sup>224</sup> See Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37, 39-40 (2008) (describing dual purposes of breaking and making habits for effective intercultural communication and understanding); see also *id.* at 68 ("Faculty members teaching in clinics have a rich opportunity to use case supervision as a vehicle for helping students develop useful knowledge, attitude, and skills in working with clients from different cultures.").

<sup>225</sup> See Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 169-70 (1994) (suggesting litany of prompting examples with which faculty supervisor can help the student-lawyer plan, engage, and reflect on cultural dynamics she might otherwise miss); see also Deborah N. Archer, *There is No Santa Claus: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a "Post-Racial" Society*, 4 COLUM. J. RACE & L. 55, 71-72 (2013) (urging more directive supervision on race, where contemporary law students might miss the full nature, causes, and/or implications of racism for their clients and social-justice goals more generally).

<sup>226</sup> See Srikantiah & Koh, *supra* note 167, at 473 (emphasizing professional-identity and in-role benefits of "traditional student ownership and non-directiveness methods in the individual case context," where students "thrive on the opportunity to assume responsibility for a case, and are often able to reflect and adjust their approaches to the myriad legal, ethical, cross-cultural, and inter-personal issues that their cases present").

<sup>227</sup> See David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1539-40 (1998) (lamenting supervisor intervention as infringement on student's formation of professional identity through authentic and direct relationship with client); see also Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 145 (2014) ("[O]ne of the goals of cultural competency training must be to teach students how to create trusting lawyer-client relationships with clients from different cultures than their own.").

<sup>228</sup> See CARTER, *supra* note 16, at 4 (observing that "religion matters to people, and matters a lot"); see also Tremblay, *supra* note 41, at 379 (emphasizing subjective and bilateral nature of cross-cultural lawyering).



At bottom, our clinic's experiment with religion as a cross-cultural factor—whether in the classroom, office, or field—is at once traditional and novel. This approachable yet unique combination, however, has not only proved fruitful for our clients and students in situations where religion is already a key ingredient, it also offers insight for expansion to other clinical contexts as well. It is on that broader implication that we now close.

## V. LAWYERING GENERALLY

As first conceived, this Article would focus almost entirely on the foregoing types of cases we handle in our religious liberty clinic; namely, where religion is already a central part of the matter on which students are working. In presenting it as a work in progress at the AALS Conference on Clinical Legal Education, however, the received wisdom was that the cross-cultural lessons from our seemingly unique experience were valuable, and perhaps even necessary, for any clinic in its preparation of tomorrow's lawyers and leaders—and now more than ever, given the growing religious diversity in our country and the varied and mounting challenges facing members of minority-faith communities in particular.<sup>229</sup>

Stepping back, the study of cultural dynamics in the professions has its roots in psychological counseling.<sup>230</sup> But clinical legal education has no doubt become a leader in broadening its importance, both in urging an understanding of those to be helped and also insisting on self-reflection by the professional serving them.<sup>231</sup> In this context, therefore, and as with the clinic experience more generally, a well-developed cross-cultural pedagogy contemplates two overarching goals: (1) the development of skills, knowledge, and judgment; and (2) a commitment to justice.<sup>232</sup> And although these might be pursued through only one or two projects in a given clinic term, it is hoped that

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<sup>229</sup> See WENTZ, *supra* note 115, at 13 (suggesting religious diversity may be “the most significant feature” in the evolution of contemporary society); MARTHA C. NUSSBAUM, *THE NEW RELIGIOUS INTOLERANCE: OVERCOMING THE POLITICS OF FEAR IN AN ANXIOUS AGE* 7-13 (2012) (describing history and trends in the persecution of religious minorities in America, with a special focus on current challenges facing Muslims).

<sup>230</sup> See SHIRAEV & LEVY, *supra* note 93, at 25-26 (tracing historic roots of cross-cultural psychology).

<sup>231</sup> See Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the “Self” as “Other,”* 17 FLA. COASTAL L. REV. 185, 187 (2016) (describing cross-cultural understanding as a “precept [that] has become so ingrained in the core competencies of effective lawyering that it is [now] an unwritten rule of professional responsibility”).

<sup>232</sup> See Dubin, *supra* note 205, at 1478-79 (summarizing professional-skills and social-justice goals of clinical legal education); see also Zawisza, *supra* note 231, at 188 (describing cross-cultural lawyering as a “norm” of clinical legal education that is “formative in preparing new lawyers for practice”).

the process will instill a transferrable foundation from which the lawyer-in-training can learn, adapt, and apply in future service to her clients and the wider community.<sup>233</sup> Our clinic's religious-liberty experience shows religion has much to offer on these fronts, but its lessons are not limited to that field.

On that note, Lucie White's groundbreaking *Mrs. G* essay is an excellent example for showing the broader benefit of appreciating religious dynamics in lawyering. To recap, the story centered around a client Professor White represented as a legal-aid lawyer in rural North Carolina.<sup>234</sup> The client was an African-American single mother of five young girls who was facing an administrative hearing for retaining two AFDC checks at a time when she had also received an insurance settlement of a few hundred dollars.<sup>235</sup> Although the client lost at the hearing, the case against her was later dropped and, just as importantly, she found her voice in the process.<sup>236</sup> To that end, the client testified that not only was the overpayment excused based on the legal defense of "life necessities" but the church shoes she bought for her daughters with it fit that bill—a position she came to unrehearsed and instinctively, and in apparent conflict with everyone present except a staffer of her same race, gender, and age.<sup>237</sup>

Professor White's resulting analysis of race, gender, and socioeconomic dynamics between and among lawyer, client, and system is rightly heralded as transformative in the clinical world.<sup>238</sup> The intimidation, humiliation, and objectification involved in Mrs. G's hearing, along with her countervailing empowerment, offer many lessons both tragic and triumphant.<sup>239</sup> And central in it all is an inextricable, if overlapping, religious idea—shoes for church—as a vehicle for that vindication and its differential resonance across those involved in the dispensation of justice, from the privileged to the subordinated.<sup>240</sup> The urgency for understanding religion as an intersectional factor in a

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<sup>233</sup> See Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 494 (2013) (describing "learning to transfer" as "the heart of clinical pedagogy").

<sup>234</sup> White, *supra* note 9, at 21-32.

<sup>235</sup> See *id.* at 21-24 (providing background facts leading to the administrative hearing).

<sup>236</sup> See *id.* at 32 (describing technical and personal outcomes of the hearing and appeal).

<sup>237</sup> See *id.* at 30-32 (describing client-initiated "Sunday shoes" argument and its reception at the hearing).

<sup>238</sup> See Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 924 (1997) (praising Lucie White's work as "groundbreaking").

<sup>239</sup> See Shalleck, *supra* note 221, at 1750 (describing client's broader welfare-system dynamics in *Mrs. G*).

<sup>240</sup> See White, *supra* note 9, at 48-51 (analyzing client's articulation of faith-related custom, together with the "social institution of the Black Church," as a profound source of power balancing in an otherwise foreign or hostile cross-cultural environment).

manner similar to, say, our Adventist or Messianic Jewish client experiences, would therefore be relevant even if the immediate facts, law, and process seemingly had nothing to do with religion.

Other promising examples come to mind, some more direct than others. In a clinic for the elderly, for example, religious dynamics would seem inevitable on care and end-of-life issues.<sup>241</sup> Likewise, in a domestic-violence clinic, appreciation of religious influences on gender may well be vital to evaluating the client's situation and how best to counsel and advocate.<sup>242</sup> And in an immigration clinic, understanding group faith identity, along with tensions from an individual-focused lawyer or system, may similarly be crucial.<sup>243</sup> Even in transactional or environmental work for non-profit clients, it might help to explore the not-infrequent role of religion in the founding and self-understanding of such groups—both for the client relationship and to improve the lawyer's presentation to the target audience.<sup>244</sup>

Innumerable indirect opportunities to draw on religious cross-cultural insights arise as well; in fact, that may be where they are most needed. It is hard to imagine, for example, how one could represent our Sikh trucking clients in their turbans and beards in any setting without appreciating the meaning, role, and impact on others of their faith.<sup>245</sup> Likewise, if in varying degrees, in the representation of a Muslim woman donning a headscarf, a Jewish man wearing a yarmulke, or a Christian woman with a crucifix around her neck.<sup>246</sup> And even where there is no outward sign or indication of faith, an effective cross-cultural lawyer should seek to understand the religious dynamics in play for any client who might see the legal system, or their lawyer,

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<sup>241</sup> See Barry et al., *supra* note 5, at 66 (flagging “religious issues” in elder-law context).

<sup>242</sup> See Milne, *supra* note 128, at 450-52 (urging religious understanding by, between, and among lawyer and client in context of domestic-relations representation).

<sup>243</sup> See PORTES & RUMBAUT, *supra* note 85, at 305 (providing chart of religious and group-based transition for immigrants of faith); see also Alex Stepick, *God Is Apparently Not Dead*, in IMMIGRANT FAITHS, *supra* note 84, at 16 (“The social networks and organizational resources of religious organizations not only help immigrants define their identities, but they also [help] combat prejudice and discrimination in their new society.”).

<sup>244</sup> See Jillian A. Tullis & Shawn D. Long, *Intersecting Religion and Organizational Communication*, in RELIGION AND COMMUNICATION, *supra* note 125, at 63 (“In the United States, most public and many private organizations would describe themselves as secular. However, upon closer examination, these same organizations have a variety of policies, practices, and rituals linked to religion.”); see also Lisa A. Binder, *Religion, Race, and Rights: A Rhetorical Overview of Environmental Justice Disputes*, 6 WIS. ENV. L.J. 1, 13 (1999) (describing role of religion in environmental justice and rhetoric).

<sup>245</sup> See Green, *supra* note 159 (describing broad, and potentially dangerous, stereotyping challenges faced by turban-wearing Sikhs in contemporary America).

<sup>246</sup> See, e.g., M. Catherine Daly, *The “Paaarda” Expression of Hejaab Among Afghan Women in a Non-Muslim Community*, in RELIGION, DRESS AND THE BODY, *supra* note 122, at 147 (describing secular view of Muslim women who wear head coverings to include depersonalizing and essentializing).

as foreign or hostile to them or their view of the world in that way.<sup>247</sup> Notably, this should also include agnostic or atheist clients who might feel alienated by religious elements in the history, or even operation, of that system.<sup>248</sup>

This particularized focus on religion can also benefit the training of lawyers beyond the clinic space. As Roy Stuckey emphasizes in *Best Practices for Legal Education*, a key learning goal for all law-school graduates should be the development of a professional identity marked by “the capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture.”<sup>249</sup> And although this goal may be most concretized in the in-house law clinic, aspiring lawyers should develop an “understanding of their roles and responsibilities as lawyers” throughout their entire three years of law school—and beyond—as the *Carnegie Report* observes more globally.<sup>250</sup> In that process, they will hopefully see the attendant obligation that practicing lawyers have to confront their own biases and serve as a cultural bridge for marginalized clients in the pursuit of justice—both on their behalf and for the benefit of society as a whole.<sup>251</sup>

Given its impact across a range of factors—communication, narrative, group and individual identity, and even reality itself—religion provides contemporary law students a powerful vehicle for developing this professional norm of practice, both in its own right and as a prism into other areas. The cultural gap between the typical student and client has been stressed in other contexts, with a rightly particular focus on race and poverty.<sup>252</sup> But there is no reason to ignore analogous

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<sup>247</sup> See Bryant, *supra* note 1, at 42 (“When the client’s culture fosters a significant distrust of outsiders or of the lawyer’s particular culture, the lawyer must work especially hard to earn trust in a culturally sensitive way.”); see also MICHAEL J. BROYDE, SHARIA TRIBUNALS, RABBINICAL COURTS, AND CHRISTIAN PANELS 9-10 (2017) (describing rise in religious arbitration based on perceived alienation from secular legal system of minority-faith communities).

<sup>248</sup> See *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring) (warning against the endorsement of religion by government as “send[ing] a message to nonadherents that they are outsiders”).

<sup>249</sup> BEST PRACTICES REPORT, *supra* note 39, at 79.

<sup>250</sup> CARNegie REPORT, *supra* note 205, at 139.

<sup>251</sup> See Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV. 1, 63 (1997) (urging integration of the “analysis of difference” across the law-school curriculum).

<sup>252</sup> See *id.* at 25 (observing that “[l]aw students typically come from backgrounds far more privileged than those of their clients,” and thus their “abstract understanding of justice will almost always conflict with the reality of their clients’ lives”); see also Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 CLIN. L. REV. 109, 109 (1997) (noting the cross-cultural challenge where mostly white, middle-class students “inhabit a world vastly different from—indeed

divides when it comes to religion; indeed, the available data suggest the need for bridging may be significant on that score.<sup>253</sup> And it is especially acute given the growing challenges facing minority communities of faith in particular.<sup>254</sup>

Finally, there is also a profound benefit for the wider profession and society in engaging religion as a cross-cultural dynamic. Invoking a prescient observation from Judge Learned Hand, Mary Ann Glendon has argued that lawyers who are able to embrace their role in representing those who differ from them can “greatly aid the country’s adjustment to a larger and more varied population.”<sup>255</sup> Given its increasing and broad diversity, the point is a salient one when it comes to religion in contemporary America.<sup>256</sup> From the rise in xenophobia, to the corrosive side effects of the so-called “culture wars,” to the daily struggle of a pluralistic people to know, live, love, and work with one another, the salutary effect of lawyers who appreciate and try to help navigate such differences is indeed a noble and necessary enterprise.<sup>257</sup> And this holds true for, and from, both the religious and non-religious alike. If, as Professor Glendon encourages further, lawyers should take up their “peacemaker” role, now would be a good time and religion a good way.<sup>258</sup>

## VI. CONCLUSION

Religion is a complex and elusive subject, particularly in the lived experience of a real person. Given its central importance to so many, the numerous facets of life it can touch, and the increasing diversity and attendant challenges it presents, therefore, religion must be part of any effective and justice-seeking lawyering. Like any other cross-cultural factor, religion is neither isolated nor can it be fully under-

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some might say diametrically opposed to—the world inhabited by the clinic’s client[s]).

<sup>253</sup> See PEW RESEARCH CENTER, *supra* note 136 (describing survey data showing education-based disparity on religiosity); *see also* Black & Rothman, *supra* note 26, at 841 (describing survey data suggesting low religiosity of “elite” lawyers). A recent voluntary survey of students at Yale Law School showed a 30-percentage-point gap between those students and the broader population on the question whether religion is “very important” to them. *See Survey on Religious Affiliation at YLS* (October 2011), available at <http://bit.ly/2hk0Syf>.

<sup>254</sup> See NUSSBAUM, *supra* note 229, at 13 (observing that “religious fear in the United States is on the rise, particularly against Muslims”); *see also* Fontana, *supra* note 176 (noting a 50% spike in religious-discrimination claims filed with the Equal Employment Opportunity Commission from 2006 to 2016).

<sup>255</sup> MARY ANN GLENDON, *A NATION UNDER LAWYERS* 106 (1994).

<sup>256</sup> WENTZ, *supra* note 115, at 13 (emphasizing significance of religious diversity in contemporary society).

<sup>257</sup> *See* Sonne, *supra* note 8, at 295-98 (urging thoughtful, personalist approach to religious-liberty cases).

<sup>258</sup> GLENDON, *supra* note 255, at 102-08.

stood. But a humble and thoughtful inquiry and exploration into its nature and role in the life of a client, as well as its impact on the problem and possible solutions, is necessary. So, to hell heck with the adage about polite company!

After our students prevailed in the above-described struggle for our Messianic Jewish client in securing kosher meals for him in prison, he sent a note he invited us to share. It read in part:

Thank you all for your help through my journey of rehabilitation spiritually, mentally, emotionally and physically. As I came back from my work assignment I walk in my assign cell and look at the bunk, and I see my Kosher meal on that bunk. . . . Each step that you all help me along the way I'm humbled, honored and grateful for but it has taught me that there are people outside these walls that are kind, supportive, and willing to view me and people such as myself as human beings and are willing to live up to the standards, principles and integrity of growth, change, love, and redemption.

A kosher meal might not seem like much, but it meant the world to our client, and, in turn, to us. What an amazing, necessary, and transferrable opportunity to learn and serve.