

A Lawyer in Pursuit of Truth and Unity: Mohandas Gandhi and the Private Practice of Law

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I. INTRODUCTION: GANDHI'S "SPECIAL VIEWS" OF LAWYERS AND THE TRUTH

Before he was known around the world as *Mahatma* (or "great soul"), Mohandas K. Gandhi was known as esquire. He was an attorney. In fact, after being called to the bar in England in 1891, Gandhi practiced law as a private attorney in South Africa and India for over twenty years.² He eventually gave up his practice so that he could devote all of his remarkable energies towards public service and independence for India.³

During his time as a practicing attorney, Gandhi developed "special," even "peculiar views" of lawyers and the practice of law.⁴ These views are interwoven with his religious and political thinking and are evident in how he practiced both law and his nonviolent action campaigns or *satyagrahas*. Gandhi's views are founded upon his unquenchable and unshakeable search for truth, as he understood it. For Gandhi, truth is God.⁵ To seek truth, therefore, is to seek God. A deeply religious but also practical man, Gandhi exhorted everyone to seek truth in all things as a means not only for salvation but also for ethical living and happiness. For lawyers, this means putting the pursuit of truth above the more narrow interest of clients, and putting societal interest

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2. See MOHANDAS K. GANDHI, *THE LAW AND THE LAWYERS* iii (S.B. Kher ed., 1962) [hereinafter GANDHI, *LAW AND THE LAWYERS*] (editor's introduction); see also MOHANDAS K. GANDHI, *AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH* 80 (Mahadev Desai trans., Beacon Press 1993) [hereinafter GANDHI, *AUTOBIOGRAPHY*].

3. In a sense, Gandhi never really stopped practicing law. Gandhi just kept one rather large and difficult client—the nascent state of India, its people, and especially its poor. In representing and advocating for India's poor, Gandhi continued to use his legal training. He marshaled and examined closely the relevant facts concerning disputes, called on the testimony of witnesses, and published carefully constructed legal arguments. Additionally, Gandhi negotiated compromise agreements, applying alternative dispute resolution techniques, and utilized the court system—although in a highly unorthodox way—to vindicate his client's interests.

4. See HARIJAN: A JOURNAL OF APPLIED GANDHIISM, 1933-1955 351 (Garland Publ'g, Inc. 1973) [hereinafter HARIJAN]; GANDHI, *LAW AND THE LAWYERS*, *supra* note 2, at 124 (quoting YOUNG INDIA, Oct. 6, 1920).

5. See GANDHI, *AUTOBIOGRAPHY*, *supra* note 2, at 503. In the "Farewell" section of his autobiography, Gandhi noted that "[m]y uniform experience has convinced me that there is no other God than Truth." *Id.*

above self-interest. It means rethinking a lawyer's duties and functions. This is not an idealist's flight of fancy. Gandhi was a practical reformer: he dubbed his autobiography "the story of my experiments with truth" because he tested his ideas by applying them to real life situations. In the practice of law, Gandhi endeavored to show readers in his writings and by his example that it is "not impossible to practice law without compromising truth."⁶ At the same time, Gandhi expressed a deep ambivalence about the practice of law, at times denouncing the practice as immoral and even calling upon lawyers to give up their profession.⁷

To examine these special views in depth, and to discern what value they may hold for lawyers practicing today in the United States, this article will compare current legal practice in the United States with three fundamental aspects of Gandhi's practice of law: his legal education, especially the connection with equity and religion; his representation of individual clients in private practice; and the role of alternative dispute resolution methods, especially arbitration.⁸ As shown below, Gandhi's views on these subjects remain important to lawyers today because they offer an alternative perspective to the prevailing adversarial system. By emphasizing a lawyer's duty to pursue the truth, Gandhi's insights and examples offer the possibility of more meaningful representation of clients, greater personal and professional fulfillment for attorneys, and a less confrontational society.

Appended at the end of this article are twelve principles for the ethical practice of law as Gandhi viewed it.

II. GANDHI'S LEGAL EDUCATION: LAW, EQUITY AND RELIGION

As remains true for most lawyers, Gandhi's primary reason for joining the bar was to earn a living. It was the goal of Gandhi's family for him to succeed his father as the *dewan*, a kind of prime minister, serving the rulers of the princely state of Porbandar and receiving a substantial salary.⁹ However, having withdrawn from Samaldas College in Bhavnagar, India, after only one term, Gandhi needed another means to qualify for *dewanship*.¹⁰ A local Brahmin friend, Mavji Dave, advised Gandhi's family to send the young student to England to join the bar.¹¹ Dave explained that it was comparatively easy and inexpensive to become a barrister in England, after which Gandhi

6. *Id.* at 365.

7. See MOHANDAS K. GANDHI, HIND SWARAJ OR INDIAN HOME RULE 48, 88 (Mahadev Desai trans., Navajivan Publ'g House 2009).

8. Civil disobedience is, of course, essential to Gandhi's views on the law and lawyers, but much has already been written on that subject, and it is too broad and complex a topic for this short paper.

9. See YOGESH CHADHA, GANDHI: A LIFE 2-3 (1997) (discussing Gandhi's father's role as *dewan*).

10. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 35 (noting Gandhi's struggles at Samaldas College).

11. See *id.* at 36 (discussing Dave's suggestion that Gandhi become barrister).

“could get the *Dewanship* for the asking.”¹² From that point, Gandhi wrestled, as many lawyers do, with striking the right balance between earning profits and performing public service. Gandhi believed he had found a way to do so, and lose “nothing thereby—not even money, certainly not my soul.”¹³

Before he could begin practicing, Gandhi had to study law and be admitted to the bar.¹⁴ Legal education in England at the end of the nineteenth century, and even today, differs significantly from legal education in the United States.¹⁵ Gandhi did not attend a law school. He did not learn legal principles from lectures or Socratic questioning, nor from the casebook method prevalent in most American law schools. Rather, the customary practice in England was to study legal treatises independently or with tutors. Accordingly, Gandhi came to rely primarily on his own interpretations of what he read, a habit of learning that gave him confidence later when he began his legal practice as well as when he began to assert his personal views on justice and morality. He read decisions of the common-law courts of England, Roman law (in Latin), the Justinian Code (which proved helpful to him in learning the Roman Dutch legal codes utilized in South Africa), and of particular note, Snell’s textbook, *Principles of Equity*.¹⁶ English principles of equity strongly influenced Gandhi’s view of legal and economic justice and his development of *satyagraha*.¹⁷

Equity is premised upon the recognition that strict application of the law can sometimes produce unjust results. Equity, in that sense, softens the sharp edge of the law, making it more flexible when justice so requires. Snell describes equity as a “moral virtue” and a “universal truth,” terms which, in Gandhi’s mind, linked the practice of law with the moral imperative to pursue truth.¹⁸ A foundational principle of equity reasons that a party seeking equity must “do equity.”¹⁹ Put another way, the party who seeks an equitable remedy must demonstrate that he or she has “clean hands” before invoking the cause of justice.²⁰ This principle resonates throughout Gandhi’s teachings, especially in his strict adherence to nonharming (*ahimsa*) and self-suffering (*tapasya*), which he required of himself and his *satyagrahis* before making demands on others.²¹

12. See *id.* (recounting recommendation of friend to pursue legal education in England).

13. See *id.* at 134 (discussing Gandhi’s satisfaction with his practice of law).

14. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 38-39 (detailing Gandhi’s choice to travel to London).

15. See *id.* at 79 (noting few British law students studied from textbooks).

16. See *id.* at 80 (describing the course of Gandhi’s legal studies). See generally EDMUND H.T. SNELL, THE PRINCIPLES OF EQUITY, INTENDED FOR THE USE OF STUDENTS AND THE PROFESSION (8th ed. 1887).

17. See Sharen Kay Dobbins, *The Principles of Equity and the Sermon on the Mount as Influence in Gandhi’s Truth Force*, 6 J.L. & RELIGION 131, 139-44 (1988) (analyzing effect of equity principles on Gandhi’s views of justice).

18. *Id.* at 136 (quoting Snell).

19. See *id.* at 138.

20. See BLACK’S LAW DICTIONARY 227 (5th ed. 1979).

21. In England, the courts of law and equity (referred to as the Court of Chancery) developed separately. See Dobbins, *supra* note 17, at 136-37. In the federal courts of the United States, the separate procedures for

Because “the Bar examinations did not require much study” and there was no need to follow syllabi to pass specific courses as in the typical law school education, Gandhi had the time and opportunity to read widely.²² In addition to the canonical legal treatises, Gandhi spent considerable time reading, thinking and talking about religion. He read the English Bible, the *Bhagavad Gita*—Sir Edwin Arnold’s translation—and Theosophy tracts; he also joined in the meetings and conversations of many religious friends.²³ He found himself captivated by the moral principles he discerned in the Sermon on the Mount and the *Bhagavad Gita* regarding public service, equality, nonviolence, noncooperation with unjust forces—principles that would later guide his legal practice and civil rights campaigns.²⁴ Thus, from the start, Gandhi’s study of law went hand in hand with his study of religion. Intertwining law and religion, both in study and practice, would continue throughout his life in South Africa and India with powerful effects.²⁵ As he later developed his nonviolent action technique of *satyagraha*, literally “truth force,” and his concept of “trusteeship” to describe the proper relationship between people and property, Gandhi reflected that in studying the *Bhagavad Gita* he was reminded of the maxims of equity, and that the teachings of law and religion fused in his mind: “My regard for jurisprudence increased, I discovered in it religion.”²⁶ Gandhi viewed both the law and religion as means of discovering truth in the daily challenge of trying to live a moral life.²⁷

In addition to studying for bar examinations, Gandhi and other would-be barristers had the requirement of “keeping terms,” which meant attending a series of dinners over three years hosted by one of London’s four Inns of Court, the fraternal organizations of lawyers responsible for selecting, training and regulating barristers in England and Wales.²⁸ The Inns of Court maintain a monopoly on calling students to practice at the bar. Gandhi joined the Inner Temple and attended its dinners, but he found them to be of no practical value.²⁹ Although he passed the bar examinations on his first try, he lamented

law and equity merged in 1938 and the states followed thereafter.

22. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 53.

23. *Id.* at 67-72.

24. See generally MOHANDAS K. GANDHI, GITA - MY MOTHER (Anand T. Hingorani ed., Bharatiya Vidya Bhavan 1965).

25. See generally Dobbins, *supra* note 17 (arguing equity and religion form philosophical basis for *satyagraha*).

26. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 265; see also JOAN V. BONDURANT, CONQUEST OF VIOLENCE: THE GANDHIAN PHILOSOPHY OF CONFLICT 65 (1988) (defining *satyagraha*).

27. See MOHANDAS K. GANDHI, TRUE EDUCATION vi, 127 (Navajivan Publ’g House 1st ed. 1962). Gandhi preached that the study of religion is “indispensible.” *Id.* To the extent the law promotes truth and nonviolence, it is, for Gandhi, another means of religious education. *Id.*; cf. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 167 (asserting religion and morality are “synonymous”).

28. See *Inner Temple*, GEN. COUNCIL OF THE BAR, <http://www.barcouncil.org.uk/about/innsforcourt/b-theinnertemple> (last visited Aug. 16, 2011).

29. See CHADHA, *supra* note 9, at 27 (noting Gandhi joined Inner Temple); GANDHI, AUTOBIOGRAPHY,

in his autobiography that he had “read the laws, but not learnt how to practice law”; he understood the legal maxims but “did not know how to apply them in [his] profession.”³⁰

In the United States, law students typically spend their summers as interns at law firms or in government positions, then take associate positions after graduating with a three-year juris doctor degree.³¹ In England, after passing the bar, barristers typically apprentice for several years under the willing tutelage of a senior barrister.³² It is not clear whether such a position would have been available to Gandhi, a native of India, but in any event, he chose to return to India and seek practical experience from members of the bar in Bombay and Rajkot. From his experience with the Inns of Court, Gandhi knew that practicing law under the English system was an elite affair; becoming successful required connections with established members of society who could make introductions and send him business. This recognition served Gandhi well as he skillfully cultivated connections with successful lawyers, businessmen and politicians who were willing to support his private practice and later his *satyagraha* campaigns.

III. THE ROLE OF THE ATTORNEY AS ADVOCATE: ADVANCING TRUTH AND UNITY

In the United States, attorneys are ethically obligated to represent their clients’ interests zealously. This obligation forms the basis of our adversarial system of justice. The Model Rules of Professional Conduct (Model Rules), promulgated by the American Bar Association and adopted by most states, provide a framework for the ethical practice of law in the United States. The Preamble of the Model Rules states that “[a]s advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. . . . [It is] the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests.”³³

The obligation of zealous advocacy for the client’s interests was inherited from the English system. Gandhi undoubtedly would have read or heard the classic, if extreme, British version expounded by Lord Brougham when he represented Queen Caroline:

An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and

supra note 2, at 80 (noting “helplessness” Gandhi felt about his inability to practice law after completing his studies).

30. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 81.

31. See MONROE H. FREEDMAN, LAWYERS’ ETHICS IN AN ADVERSARY SYSTEM 105-12 (1975) (arguing superiority of Britain’s legal system to American legal system is myth).

32. *Id.* at 105.

33. MODEL RULES OF PROF’L CONDUCT pmbl. paras. 2, 9 (2010).

expedients, and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of the consequences, though it should be his unhappy fate to involve his country in confusion.³⁴

Thus, for Gandhi at the start of the twentieth century and for lawyers today, the central ethical dilemma facing the attorney in private practice is, as one leading scholar of legal ethics describes it, “the tension between the client’s preferred position . . . and the position of equality everyone else is accorded by general principles of morality and loyalty.”³⁵ In short, by favoring the client’s interests, the attorney subordinates the interests of everyone else. Gandhi felt this dilemma profoundly. He recognized how in representing his clients he might violate fundamental principles of justice and morality that should apply universally, principles such as equality and the pursuit of truth. Accordingly, Gandhi warned that the legal profession “teaches immorality”³⁶ because “in the practice of their profession lawyers are consciously or unconsciously led into untruth for the sake of the clients.”³⁷ Further, he found the profession prone to meritless quarrels, excessive costs and delays, sloth, and greed.³⁸

Gandhi’s solution to this ethical dilemma was to elevate the pursuit of truth above the narrow interests of his clients. While attorneys must certainly advocate for their clients, they have, according to Gandhi, a “prior and perpetual retainer on behalf of truth and justice.”³⁹ Consequently, lawyers are bound to follow the law when it comports with truth and justice, but “when law fosters untruth it becomes [their] duty to disobey it.”⁴⁰

In determining when to resort to civil disobedience of the law, Gandhi looked to his training as a lawyer, emphasizing sound judgment based on experience and knowledge of the facts.⁴¹ For the truth Gandhi was pursuing is

34. FREEDMAN, *supra* note 31, at 9.

35. GEOFFREY C. HAZARD, JR. & SUSAN P. KONIAK, *THE LAW AND ETHICS OF LAWYERING* 2 (1990); *see also* GANDHI, *supra* note 7, at 48 (identifying central moral tension in practice of law as lawyer’s “duty . . . to side with their clients”); James E. Moliterno, *The Lawyer as Catalyst of Social Change*, 77 *FORDHAM L. REV.* 1559, 1561-62 (2009) (describing lawyers’ duty to advocate for good of their clients, even to detriment of others).

36. GANDHI, *supra* note 7, at 48.

37. Mohandas K. Gandhi, *How to Spiritualize the Profession*, *YOUNG INDIA*, Dec. 22, 1927, at 428.

38. GANDHI, *supra* note 7, at 48-49.

39. GANDHI, *LAW AND THE LAWYERS*, *supra* note 2, at iv; *see also* HARIJAN, *supra* note 4 (a true lawyer places truth and service first).

40. BONDURANT, *supra* note 26, at 166 (quoting *YOUNG INDIA*, Sept. 16, 1919).

41. *See id.* at 470; *see also* Robert M. Palumbos, Comment, *Within Each Lawyer’s Conscience a Touchstone: Law, Morality, and Attorney Civil Disobedience*, 153 *U. PA. L. REV.* 1057, 1096 (2005) (arguing professional codes of ethics should recognize lawyers have duty to exercise their moral judgment, including civil disobedience of immoral laws).

earthbound; it is situational and contextual. Truth, he would say in the tradition of the Jains, is “many sided” (*anekantavada*).⁴² Gandhi believed it is necessary to view truth from different sides in order to see the whole of it more fully. That sounds like a job for a lawyer, and, indeed, Gandhi searched for truth like a lawyer prepares a case: he researched the facts and then evaluated the situation from different perspectives.⁴³

According to his autobiography, Gandhi discovered this connection between the practice of law and pursuit of truth during his first lawsuit in South Africa. Two related merchants were suing each other over a commercial contract. Through his brother’s business associate, Gandhi was engaged to travel to South Africa and essentially act as a liaison between the South African legal team and the firm’s Indian client, Dada Abdulla & Co.⁴⁴ Gandhi’s responsibilities in the case gradually increased. Following the advice of a more senior attorney that “facts are three-fourths of the law,” Gandhi dug deeper into the facts of the case and claims that upon “a re-examination of the facts I saw them in an entirely new light.” Gandhi was convinced that his client should and would win because “[f]acts mean truth, and once we adhere to the truth, the law comes to our aid naturally.”⁴⁵ Thus, in a lawyer’s dogged pursuit of facts on behalf of a client, Gandhi perceived a parallel quest for greater understanding of truth among people in dispute, and what that greater understanding might mean for law and justice.

This quest for a broader truth through the facts of a particular case allowed Gandhi sufficient detachment to step back and look at what the lawsuit was doing to both parties. He saw that delay, expense, and adversarial confrontations were ruining the plaintiff and the defendant, Tyeb Sheth. As Gandhi saw it, no one but the lawyers would benefit from continued litigation. At that point, Gandhi “felt that [his] duty was to befriend both parties and bring them together.”⁴⁶ He convinced both sides to submit their case to an arbitrator, who ruled in favor of Gandhi’s client, Dada Abdulla. However, immediate execution of the arbitrator’s award would have forced Sheth to bankruptcy, and so Gandhi advised his client to accept moderate installment payments. The result, as Gandhi described it, was two “happy” parties, two prospering

42. See Diana L. Eck, *Gandhian Guidelines for a World of Religious Difference*, in *GANDHI ON CHRISTIANITY* 79 (1991)

43. See *GANDHI, AUTOBIOGRAPHY*, *supra* note 2, at 133. For Gandhi, both in the practice of law and in the practice of life more generally, facts were of “paramount importance” because they “mean truth.” *Id.* If the facts changed, so did the truthful view of the situation. *Id.* As Gandhi explained to his South African supporters when urging them to register voluntarily with the government in compliance with a compromise agreement he had brokered: “[W]hat would have been a crime against the people yesterday is in the altered circumstances of today the hallmark of a gentleman.” *MOHANDAS K. GANDHI, SATYAGRAHA IN SOUTH AFRICA* 149 (V.G. Desai trans., Navajivan Publ’g House 2008).

44. *GANDHI, AUTOBIOGRAPHY*, *supra* note 2, at 101.

45. *Id.* at 132-33.

46. *Id.* at 133-34.

businesses, and a lawyer filled with “joy.”⁴⁷

The lessons Gandhi learned from this case were “indelibly burnt” into him. He had “learnt the true practice of law,” which he believed is to “find out the better side of human nature and to enter men’s hearts.”⁴⁸ “The true function of a lawyer” is, therefore, “to unite parties riven asunder.”⁴⁹ In other words, Gandhi found that through the practice of law and an unswerving commitment to truth, lawyers can perform transformative acts: they can move not only minds but also hearts, and thereby create lasting unity from damaging conflict.

Gandhi admits that these principles of truth and unity were tested repeatedly during his legal practice in South Africa (1893-1912), and as he responded to each test, he further refined his thinking on the proper attorney-client relationship. He recounts one case in which the court appointed accountants to examine a complicated set of ledgers and submit a report to the court. The accountants’ award favored Gandhi’s client, but Gandhi discovered a small but significant error in the accountants’ calculations—a debit was mistakenly labeled a credit.⁵⁰ Gandhi advised disclosure of the error to the court, but the senior attorney on the case took the position that no counsel was bound to admit anything that went against his client’s interest.⁵¹ The senior attorney was concerned that the court, after learning of the error, might lose faith in the accountants’ report and vacate the entire award, as the opposing counsel was urging. The client, hearing the conversation, followed Gandhi’s advice.⁵² Gandhi disclosed the error, and the court, after accusing Gandhi of “sharp practice,” ultimately affirmed the award with Gandhi’s requested correction.⁵³ The lesson Gandhi drew was that “it was not impossible to practice law without compromising truth.”⁵⁴

Gandhi’s actions in that case are consistent with the Model Rules. According to Rule 3.3, a lawyer shall not knowingly “fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer,” nor shall a lawyer “offer evidence that the lawyer knows to be false.”⁵⁵ Although in Gandhi’s case neither he nor his client offered the erroneous evidence, they would have, in effect, relied on the accountants’ report in pressing for the award. Model Rule 8.4(c) removes any ambiguity by declaring that it is “professional misconduct” for a lawyer to engage in acts of “dishonesty.”⁵⁶ Consequently, a lawyer in Gandhi’s position would be bound

47. *Id.* at 134.

48. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 134.

49. *Id.*

50. *Id.* at 362.

51. *Id.* at 363-65.

52. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 362.

53. *Id.* at 363-64.

54. *Id.*

55. MODEL RULES OF PROF’L CONDUCT R. 3.3 (2010).

56. MODEL RULES OF PROF’L CONDUCT R. 8.4(c) (2010).

under Rule 3.3 to “take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”⁵⁷ Under the Model Rules, Gandhi’s senior partner was wrong. The client’s interests do not trump a lawyer’s ethical duty of candor to the tribunal in which the lawyer is practicing. In this situation, the Model Rules support a Gandhian-like commitment to the truth.

From this illustration, it is fairly easy to draw the conclusion that a lawyer has an ethical duty to advise his client to act in unity with the truth as supported by the facts. It is not clear, however, what Gandhi would have done if the client had instead followed the advice of the senior attorney. Would Gandhi have felt ethically compelled to disclose the error against his client’s wishes, or would he have withdrawn from the representation?⁵⁸

In another case, Gandhi recounts an incident where he felt compelled to act against his client’s wishes. He was prosecuting a client’s claim before a magistrate in Johannesburg. When the client took the stand and began testifying, Gandhi realized that the client deceived him about the facts of the case. “[W]ithout any argument,” Gandhi asked the magistrate to dismiss the case; the client confessed his deception to Gandhi, and Gandhi rebuked his client for bringing a false claim.⁵⁹ Again, Gandhi’s actions appear consistent with the Model Rules. Rule 3.1 expressly prohibits a lawyer from bringing claims “unless there is a basis in law and fact for doing so that is not frivolous.” A client has no right to bring a false claim. What, however, if Gandhi was wrong about his client’s claim? The ethical nature of Gandhi’s action turns on his conclusion that his client had presented a false claim. If Gandhi acted precipitously, without sure knowledge, then he would have violated his duty to his client.⁶⁰ This example highlights an inherent danger in legal ethics based on a zealous commitment to truth, even at the client’s expense: the lawyer will be tempted to usurp the judge’s and jury’s role of determining the truth about a party’s liability or guilt. The Model Rules make no provision for such conduct, which is antithetical to the role of the lawyer as an advocate for the client’s interests.

This tension is evident in the case of Parsi Rustomji, an importer of Indian

57. MODEL RULES OF PROF’L CONDUCT R. 3.3 (2010).

58. Upon being convicted of violating the Rowlatt Acts in India, Gandhi famously challenged the judge to apply the law or else resign from the bench. See GANDHI, LAW AND THE LAWYERS, *supra* note 2, at 120. The judge chose to apply the law, and Gandhi went to jail, as he had requested. Extrapolating from this incident, it seems that when it is not possible to serve the cause of truth within the legal system, Gandhi would choose to resign rather than violate the rules of the legal system which, as a lawyer, he pledged to follow. This view helps explain why he later gave up the practice of law in India and urged a nationwide boycott of the courts and legal system. He concluded that Indians could not pursue truth in a legal system imposed on them by the British. *See id.*

59. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 365-66.

60. See FREEDMAN, *supra* note 31, at 51-58 (discussing limits of what lawyer can really “know” about client’s case).

goods to South Africa.⁶¹ Customs officials had discovered that Rustomji was also a smuggler.⁶² Rustomji confessed to Gandhi and sought his legal counsel.⁶³ Gandhi inquired of the facts and discovered that the smuggling had a long history but the incident under scrutiny was comparably minor. Rather than challenge the government's case, however, Gandhi counseled his client to confess to the authorities and offer to pay the penalty they fixed; if no agreement were reached, then Rustomji should plead guilty and serve jail time for his offense.⁶⁴ Rustomji was understandably upset. Gandhi explained that by following the path of truth, Rustomji had the best chance of not only resolving his case favorably, but of performing an honest penance which would reinforce his resolve never to smuggle again.⁶⁵ Rustomji followed the advice fearfully, but in the end Gandhi negotiated a settlement with a manageable penalty and no jail time.⁶⁶

Rustomji's case illustrates the danger that in the dogged pursuit of truth in the practice of law, a lawyer risks becoming the client's judge and jury. The central problem is what it means for a lawyer to "know" that a client is guilty or liable. Gandhi famously disagreed with the view that lawyers have a duty to defend a client whom they know to be guilty. Gandhi professed instead that the "duty of a lawyer is always to place before the judges, and to help them to arrive at, the truth, never to prove the guilty as innocent."⁶⁷ The ethics of Gandhi's position rest on the dubious presumption that the lawyer knows when the client is guilty. That knowledge is easy in the Perry Mason-like situations Gandhi describes where the client confesses guilt, but what about the cases where there is no confession? What if the client insists on his or her innocence despite the facts as the lawyer sees them? Or what if the facts are, as is often the case, equivocal or insufficient to form a definite conclusion? The truth is not always black and white; lawyers practice in gray. Model Rule 1.2(b) shields lawyers from claims that legal representation means endorsement of the client's views or activities, but Gandhi would have lawyers step in front of this ethical shield and take more responsibility for ethical decision making.⁶⁸ When the truth is unclear, the duty of a Gandhian lawyer, presumably, would be to continue the pursuit for truth and to abide by the client's wishes unless they diverge from the truth, as known to the lawyer at the time. This view is consistent with Model Rule 1.2, which insists that the lawyer "shall abide by a

61. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 367.

62. See *id.*

63. See *id.* at 367-68.

64. See *id.* at 368.

65. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 368.

66. See *id.* at 367-69.

67. GANDHI, LAW AND THE LAWYERS, *supra* note 2, at 212 (quoting YOUNG INDIA, Dec. 22, 1927).

68. See MODEL RULES OF PROF'L CONDUCT R. 1.2(b) (2010); see also John Leubsdorf, *Gandhi's Legal Ethics*, 51 RUTGERS L. REV. 923, 926, 928 (1999) (reconciling Gandhi's philosophy of engaging legal system as lawyer versus as private individual).

client's decisions concerning the objectives of representation" and, "[i]n a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered." Exceptions would arise only when necessary to prevent an "untruth," such as a fraud on the court or a frivolous claim.

Rustomji's case also demonstrates how lawyers can take a much broader view of the client's interests. Lawyers can do more than offer legal advice and solve short-term problems. They need not become the client's guru, priest, or psychiatrist, but Gandhi challenges lawyers to view their representations more holistically and with a view to the long term. Gandhi looked not only at Rustomji's immediate legal problem but also its root causes: theft and deception. He then counseled his client to accept a course of action that would attempt to resolve the deeper problems and thereby avoid future conflicts. Similarly, in the Abdulla-Sheth case, while the client's immediate interest was getting paid as much as possible, Gandhi advised his client to consider the impact on the opposing party and then devised a collection plan that would minimize the harm to all sides and decrease the likelihood of future conflict. In both cases, by looking beyond his client's narrow, immediate interests, Gandhi arguably secured results that gave his client, himself, and the community greater and longer-lasting benefits. Gandhi's broader view of the lawyer's role can be consistent with the Model Rules, which stipulate in their Preamble that a lawyer should follow his or her "personal conscience," and which provide in Rule 2.1 that, "[i]n rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."

Lawyers can do more not only for their clients, Gandhi taught, but also for their communities, and this enhanced service will enhance the lawyer's practice. In his legal practice, Gandhi painstakingly developed a reputation for a devotion to truth and unity above all else. He refused to take false claims, kept meticulous accounts, avoided "violent language" in his legal arguments, kept his fees affordable, and declined contingent fee agreements to avoid even the temptation to win at the expense of truth.⁶⁹ Clients trusted him and sought him out. Gandhi also devoted substantial time to pro bono publico representation and community service.⁷⁰ That work raised his profile and, in turn, his business, until he was making a handsome living for that time and

69. See GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 361-66. Gandhi opposed referral fees for similar reasons but paid them on occasion. *Id.*; see also GANDHI, LAW AND THE LAWYERS, *supra* note 2, at 200 (quoting YOUNG INDIA, Sept. 27, 1919) (lawyers should use respectful, nonviolent language); Leubsdorf, *supra* note 68, at 925.

70. See MODEL RULES OF PROF'L CONDUCT R. 6.1 (2010). Rule 6.1 provides that lawyers should aspire to at least fifty hours of pro bono representation annually. Mandatory pro bono requirements have met with strong opposition. See GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING 830-31 (2d ed. 1990).

place.⁷¹ In fashioning his practice in this way, Gandhi tells us: “I lost nothing thereby—not even money, certainly not my soul.”⁷²

IV. ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION: THE “MASTER KEY”

Gandhi was a sharp critic of litigation and an avid proponent of alternative dispute resolution methods (ADR). Gandhi complained that litigation took too long, was too expensive, and posed too great a temptation to lawyers and their clients to behave falsely—to be “untrue.” This, he felt, was a “fundamental defect” in the practice of law.⁷³ Moreover, litigation is not designed to address the causes of a conflict, and consequently, it too often leaves one or both sides dissatisfied, which makes future conflict more likely.⁷⁴ Those same complaints are made today. Gandhi trumpeted ADR, which he called the “master-key,” for four compelling reasons: it saves time and money; it empowers ordinary citizens to resolve their own disputes; it is consistent with a lawyer’s duty to pursue truth and unity; and in his experience, it works. Most of these points remain compelling today as well.

For Gandhi and ADR, it was literally love at first sight. Gandhi became “disgusted with the profession” when representing Dada Abdullah in the commercial litigation against Tyeb Sheth. The demands of the case were distracting both sides from their businesses, legal fees were devouring the parties’ resources, and “mutual ill-will was steadily increasing.”⁷⁵ He also learned that the prevailing party could not recover the full amount of fees and expenses incurred in the litigation and, consequently, could not be made financially whole.⁷⁶ At that point Gandhi embraced private arbitration as a way to break this destructive cycle. His “joy was boundless” when the arbitration proved successful—the case was decided quickly, less expensively, and with the businesses intact. Additionally, the party with the truth on its side (Gandhi’s client, of course) won. As a result of this jubilant experience with arbitration as an alternative to litigation, Gandhi aggressively pursued compromise agreements in his legal practice.

Would Gandhi have become such an ardent support of ADR if his first

71. See CHADHA, *supra* note 9, at 82, 101 (noting professional success).

72. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 134.

73. *Id.* at 365.

74. See MARK JUERGENSMEYER, GANDHI’S WAY: A HANDBOOK OF CONFLICT RESOLUTION 7 (2005).

75. GANDHI, AUTOBIOGRAPHY, *supra* note 2, at 133.

76. See *id.* Gandhi notes that under the court fees regulation of that time, the prevailing party received fees according to a fixed schedule rather than actual fees incurred. *Id.* By contrast, under the American rule, parties are responsible for their own fees unless a contract or statutory provision provides for their recovery. Gandhi would likely have objected to the American rule as unfair and tending to discourage parties from seeking the truth, but an argument can be made that the American rule encourages parties to seek truth and justice because they are more likely to bring claims to court without the specter of paying the other side’s legal fees.

experience with it was less uplifting? There were then, and remain now, many reasons to prefer litigation. Common complaints about arbitration include the inability to obtain prehearing dismissal, less experienced fact finders, limited appellate rights, and decisions that too often resort to rough justice and “split the baby” results.⁷⁷ For Gandhi, however, ADR is about more than saving time and money, more than the legal principles involved. It is about empowering people to pursue truth and unity on their own and in a way that minimizes the likelihood of future conflict.⁷⁸

This special appreciation for ADR was evident in how Gandhi used arbitration to resolve his famous *satyagraha* at Ahmedabad in 1918. The situation Gandhi confronted was a tense labor dispute between textile workers and mill owners.⁷⁹ The owners had announced that they were withdrawing a bonus originally paid to the workers to prevent work stoppages during a plague outbreak but continued after the epidemic.⁸⁰ The workers believed some part of the bonus was necessary to cover increased cost of living.⁸¹ After investigating the facts of the situation, Gandhi concluded that a thirty-five percent wage increase was fair and just and initiated a nonviolent campaign to convince the owners to accept it. The dispute was resolved after both sides agreed to arbitration.⁸² The workers formed the Ahmedabad Textile Labour Association, and the owners agreed to compromise with a wage increase and an arbitration agreement. Gandhi’s *satyagraha* campaign had empowered the workers to improve their situation through nonviolent collective action, and convinced the employers that it was also in their collective interest to adopt a formal process by which labor disputes could be resolved efficiently and without violence. The ballooning ill will between the parties was punctured, and the owners even provided sweets for the workers’ celebratory parade.⁸³ They had learned how to trust and respect each other again. The lesson of Ahmedabad, for Gandhi and his followers, was that citizens could use ADR to empower themselves in a way that pursues truth, justice, and unity, rather than mere submission.

Gandhi saw ADR as the “master-key” unlocking the solution to “rule by the

77. See generally Brian H. Corcoran & Mandie Landry, *Considering Arbitration’s Costs and Dangers*, LEGAL TIMES, Aug. 24, 2007, available at <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1187558904359>.

78. Gandhi’s faith in ADR may also rest in part on his flawed assertion that the “parties alone know who is right.” See GANDHI, *supra* note 7, at 49. This assertion presumes that one party is acting falsely, yet parties often litigate precisely because both sides believe they are right, and Gandhi himself acknowledges that both sides of a dispute can have different but valid views of the truth because truth is many-sided. Gandhi’s error—or hopefulness—highlights again the difficulties for lawyers pursuing truth above all else, especially the temptation to judge.

79. See BONDURANT, *supra* note 26, at 65.

80. See *id.*

81. See *id.*

82. See *id.*

83. See ERIK H. ERIKSON, GANDHI’S TRUTH: ON THE ORIGINS OF MILITANT NONVIOLENCE 361 (1993) (describing end result of labor dispute).

sword.”⁸⁴ In colonial South Africa and India, Gandhi experienced firsthand how the law could be used as an instrument of cruel oppression.⁸⁵ ADR put justice back into the hands of the people. Thus, during the escalation of conflict between Hindus and Muslims in India—culminating in the partition of Pakistan in 1947—Gandhi proposed the use of private arbitrators or a judicial tribunal to resolve political and social justice questions between the conflicting groups. ADR was the key, in Gandhi’s view, because his experience with it as both a lawyer and a civil rights leader demonstrated its capacity to promote truth and unity as well as its capacity to teach self-governance (*swaraj*). Successful ADR requires that parties act voluntarily, with mutual toleration, and with a willingness to compromise, trust, and be open to seeing differing viewpoints.⁸⁶ Gandhi believed these same qualities are vital to self-governance, at the levels of individuals, communities, and nations:

Evolution of democracy is not possible if we are not prepared to hear the other side. We shut the doors of reason when we refuse to listen to our opponents or, having listened, make fun of them. If intolerance becomes a habit, we run the risk of missing the truth. Whilst with the limits that nature has put upon our understanding, we must act fearlessly according to the light vouchsafed to us, we must always keep an open mind and be ever ready to find that what we believed to be truth was, after all, untruth. This openness of mind strengthens the truth in us and removes the dross from it, if there is any.⁸⁷

With this view of ADR as a means of creating communal harmony, it is easier to understand Gandhi’s later demands for lawyers to “give up the courts” and join a national boycott of the English court system in India. Gandhi envisioned lawyers playing an integral part in his ideal of communal harmony, serving as “guardians of law and liberty.”⁸⁸ He wished for them to “give up their profession” and reject a practice that foments conflict and reaps unreasonable profits. Gandhi also desired lawyers to use their education and skills not for selfish pursuits, but for public service, to “enlighten” the people and “induce” them into resolving their disputes independently and nonviolently.⁸⁹ Ultimately, Gandhi wished that lawyers would show us how to govern ourselves fairly and justly.⁹⁰

84. MOHANDAS K. GANDHI, *THE WAY TO COMMUNAL HARMONY* 16 (U.R. Rao ed., Navajivan Press 1962) (outlining Gandhi’s view on arbitration).

85. See Shubha Ghosh, *Gandhi & the Life of the Law*, 53 SYRACUSE L. REV. 1273, 1275 (2003) (detailing theory Gandhi developed regarding inappropriate use of law as instrument of oppression).

86. GANDHI, *supra* note 43, at 146-47 (stressing importance of compromise and trust in voluntary dispute resolution).

87. GANDHI, *supra* note 84, at 22.

88. GANDHI, *LAW AND THE LAWYERS*, *supra* note 2, at 144.

89. See GANDHI, *supra* note 7, at 88.

90. See Moliterno, *supra* note 35, at 1573-80 (Gandhi is an example of how lawyers are particularly well-

V. CONCLUSION

Lawyers today would be wise to examine closely Gandhi's example and teaching in the private practice of law. A century ago, Gandhi was struggling with many of the same issues still confounding lawyers today, including the balance between private and public interests, ethical tensions in prioritizing the client's interests, obligations to pro bono representation, determining reasonable fees, minimizing temptations and opportunities for dishonesty, making litigation more expeditious and affordable, and effective use of ADR. Gandhi's experience working through these issues will help lawyers identify and address the strengths and flaws in private practice today, and suggest alternatives even within the current ethical parameters established by the Model Rules.

Gandhi attempted to redefine the essential nature of the attorney-client relationship. He saw in his practice too many incentives and opportunities for unethical conduct. One could argue that Gandhi's view is unduly pessimistic, especially as applied to the practice of law in the United States today. Indeed, he admitted in his autobiography that it is "not impossible to practice law without compromising the truth."⁹¹ Nevertheless, it is fair to say that there were then and remain today too many incentives and opportunities for unethical conduct by lawyers. Gandhi recognized then, as ethicists do today, that a core problem is the lawyer's duty to prioritize the client's interests above all others. Gandhi tried to resolve that issue by transforming the role of the attorney from a zealous advocate of client interests to a dedicated seeker of truth and unity for clients and their communities. As he told the Bar Association of Peshawar: "A true lawyer . . . was one who placed truth and service in the first place."⁹²

To perform this transformation, Gandhi had to commit himself to serving truth and unity, and then convince clients and opponents to do the same. He did so by refusing to segregate his legal ethics from the rest of his life and by taking a much broader view of client interests.⁹³ His holistic view included looking at the ethical and moral consequences of legal decisions, how those decisions might affect his client's long-term interests, and how they might affect his client's position in the community. These considerations are permitted by the Model Rules and form the basis for many recent initiatives in holistic legal practice in which Gandhi is the paradigm.⁹⁴

Gandhi focused on lawyers and their clients as moral agents with obligations

sited to be effective agents for social change).

91. See GANDHI, *AUTOBIOGRAPHY*, *supra* note 2.

92. HARIJAN, *supra* note 4, at 351.

93. Leubsdorf, *supra* note 68, at 935.

94. See Eileen Barker, *What Would Gandhi Do?*, *ACRESOLUTION*, Spring 2007, available at <http://www.mediate.com/articles/ebarker4.cfm> (stating Gandhi's view that lawyers should act to better world); J. Kim Wright & Dolly M. Garlo, *Law as Healing Profession*, *OR. ST. B. BULL.*, April 2003 (explaining function and purpose of holistic legal practice).

to the societies in which they live. In this sense, Gandhi was more interested in ethics than legal ethics. His ethics derived from his moral beliefs, not from a professional code of conduct.⁹⁵ For Gandhi, the connection between law, morality, and religion began with his legal education. Lawyers today should reconsider the value of including in law school, and associate training, explicit efforts to examine the ethical dimensions of the practice of law.⁹⁶

Gandhi's view of lawyers as moral agents with community obligations also colored his view of dispute resolution.⁹⁷ He viewed litigation as too confrontational—too divisive—because it often led to protracted court battles that ultimately fail to uncover the truth, unify the parties, or prevent future conflicts. ADR is preferable—in his view—not only because it is more practical in terms of time and expense, but also because it harmonizes ends and means. If the goal is justice and unity among disputing parties, then the process should be one which encourages behavior conducive to those ends.⁹⁸ Proponents of mediation have championed these principles.⁹⁹ This does not mean that lawyers have an ethical obligation to abandon litigation. Rather, lawyers have an ethical obligation, as recognized in the Model Rules, to seek and pursue the most effective means of dispute resolution in the context of their client's broader interests.

Gandhi's view of legal practice, however, is not without its own serious risks and concerns. In burdening lawyers with the obligation to always seek and profess the truth, there is the danger that they become not advocates but judges. Clients may be unwilling to confide in lawyers who will judge them morally as well as legally. Lawyers, in practice, may be unable to effectively advocate a client's interests when they disagree with their client's view of the morality of a situation. Moreover, there is a very real concern that lawyers would feel compelled to impose their views on unwilling clients. Not all lawyers have Gandhi's discerning judgment and personal integrity. Moreover, even in Gandhi's example, there is a question about whether his clients were truly convinced of Gandhi's views and adopted them as their own, or whether he was imposing his view on vulnerable clients who were willing to compromise their principles to gain Gandhi's services. Thus, as with any fiduciary relationship, there must be rigorous self-scrutiny and vigilant

95. See Leubsdorf, *supra* note 68, at 938.

96. See Harris Wofford, *On the Teaching of Law and Justice*, 53 N.Y.U. L. REV. 612, 614-15 (1978) (arguing legal education should emphasize, as Gandhi did, dialectic relationships rather than adversarial ones).

97. Seeking truth and unity did not prevent Gandhi from practicing law aggressively in the client's interest. He took on trials, appeals, and even motions on procedural grounds. See Leubsdorf, *supra* note 68, at 926-27.

98. See MOHANDAS K. GANDHI, ALL MEN ARE BROTHERS 81-84 (UNESCO Publ'g 1958) (stating "means and end are convertible terms in my philosophy.").

99. See Andrew Schepard, *An Introduction to the Model Standards of Practice for Family and Divorce Mediation*, 35 FAM. L.Q. 1, 23-24 (2001) (advocating mediation as effective medium for problem solving and peace making).

professional supervision to avoid oppressive or unethical conduct.

Still, it is hard to argue with the example of a lawyer who proclaimed the “sovereign rule of love” and who dedicated his life to the pursuit of truth and unity. Lawyers following his example could do much worse, and perhaps no better.

APPENDIX: PRINCIPLES FOR THE GANDHIAN PRACTICE OF LAW

1. Commit to seeking and following the truth.
2. Always be honest with clients, courts and opposing parties.
3. Consider the moral and ethical consequences of legal decisions.
4. Make public service the highest priority.
5. Devote substantial time to pro bono representation.
6. Aim to unify parties to a dispute.
7. Consider the client’s interests holistically, offering counsel informed by more than narrow legal goals.
8. Address the root causes of a conflict.
9. Never resort to violence in deed or language.
10. Encourage parties to resolve their disputes voluntarily by negotiation or alternative dispute resolution methods.
11. Minimize costs and delays in litigation.
12. Charge reasonable, affordable fees, and avoid contingent and referral fees.