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The Jurisprudence of Love

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# ARTICLES

## The Jurisprudence of Love

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*Curse on all laws but those which love has made.*<sup>1</sup>

### INTRODUCTION

At first glance, love and the law may appear to be two entirely unrelated concepts. In fact, when we think of the law, the line from the popular 1980s song by Tina Turner, “What’s Love Got to Do With It,” may seem apt.<sup>2</sup> Yet love and spirituality are inherent in many of the questions lawyers grapple with.<sup>3</sup> This article suggests that love—energetic and spiritual love, rather than romantic love (“Love”)—is not only relevant to the law, but is the very foundation upon which laws should be based.<sup>4</sup>

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1. *Orzechowski v. Comm’r*, 69 T.C. 750, 757 n.1 (1978) (Dawson, J., dissenting) (quoting Charles M. Schutz, *Peanuts*, Dec. 2, 1977).

2. TINA TURNER, *What’s Love Got to Do With It*, on PRIVATE DANCER (Capitol Records 1984).

3. Love as an energetic, spiritual force is distinguishable from popular notions of romantic love. Love, as used in this article, is similar to the Greek term “agape,” which means spiritual love. See <http://www.dictionary.com> (last visited Sept. 10, 2008) (defining “agape” in spiritual terms, including the “unselfish love of one person for another without sexual implications”). See also Agape International Spiritual Center, *About Agape*, <http://www.agapelive.com/index.php?anchor=about> (last visited Sept. 10, 2008) (defining “agape” as unconditional love). Like many other spiritual teachers, Michael Bernard Beckwith, the founder and spiritual director of the Agape International Spiritual Center, refers to agape, or love as a “vibration.” *Id.* While the Greek language has other words for romantic love (eros) and brotherly love (philia), the English language uses one word to embrace all of these things. The Internet Encyclopedia of Philosophy, *Philosophy of Love*, <http://www.iep.utm.edu/l/love.htm> (last visited Sept. 10, 2008). In the interest of clarity, I capitalize the word Love in this article to clarify it as an energetic, spiritual force.

4. Spirituality differs from religion in that spirituality is concerned with the individual quest to connect with the Divine, while religion is group-based. Christianity, Buddhism, Hinduism, Judaism and Islam are examples of organized religions.

It is said that religions are more often than not involved with moralism, formalism, even ethnicity. For instance, a Polish Roman Catholic may find it

Ultimately, the purpose of the law is to serve justice; and Love can serve as a road map to get us there. It is a powerful spiritual, energetic, and vibrational force that can generate laws consistent with the goals of justice and equality.<sup>5</sup>

Little explicit regard to spirituality or Love is apparent in the current approach to the law. Instead, the focus is on logic, reason and analysis, determining whether a given fact pattern is the same as or distinguishable from others decided in the past. While logic, reason, and analysis are useful, “entrapping the intellect into attempting logical solutions to these ultimately spiritual questions . . . reveal[s] the inherent limitations of the legalistic mind as an instrument of knowledge or justice.”<sup>6</sup> Focusing on reason and analysis to the exclusion of Love results in laws that are not always just or fair. Some laws, for example, are grounded in the notion that only a limited class of individuals should be given certain rights.<sup>7</sup>

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difficult to be accepted in certain Catholic churches which are predominantly, say, Irish; or blacks may feel unwelcome in a prevalently white Protestant congregation . . . . Unfortunately, religions in the past have tended to divide people and to foster intolerance, fear, guilt, and other forms of conflict. In contrast to this, spiritual enlightenment . . . is concerned with existentially valid universal principles to enable man to love his neighbor as himself and be transcendently compassionate to all.

THOMAS HORA, *BEYOND THE DREAM: AWAKENING TO REALITY* 53 (The Crossroad Publishing Co. 1996) (1986). *See also* Robert F. Blomquist, *Law and Spirituality: Some First Thoughts on an Emerging Relation*, 71 UMKC L. REV. 583, 616 (2003) (“[S]pirituality is not synonymous with . . . religion . . . but should be viewed broadly as ‘entail[ing] a way of defining and pursuing truth, beyond oneself. . . .’ [I]t seems impossible to contemplate the notion of spirituality in a secular way that is not dependent on the search to know and become more familiar with God.”) (quoting Lucia Ann Silecchia, *Integrating Spiritual Perspectives With the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167, 179-80 (2000)); STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993); Gregory A. Kalscheur, *Ignatian Spirituality and the Life of the Lawyer: Finding God in All Things – Even in the Ordinary Practice of the Law*, 46 J. CATH. LEG. STUD. 7 (2007); Frederick Mark Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1208 (2005).

5. *See infra* notes 12-70 and accompanying text.

6. Paul Savoy, *The Spiritual Nature of Equality: Natural Principles of Constitutional Law*, 28 HOW. L.J. 809, 812 (1985) (“We must come to recognize that our quest for the elusive ideal of equality is ultimately a moral and spiritual aspiration. Constitutional law is laced with an unconscious spirituality which our legal education compels us to consciously deny while seeking to cultivate within us values such as the inherent dignity and worth of the individual, equality, fairness and justice, all of which are, in reality, substitute objects for our lost belief in the human soul.”). *Cf.* GARY ZUKAV, *THE SEAT OF THE SOUL* 60 (1989) (“The logics that have served our five-sensory exploration of physical reality cannot . . . meaningfully represent the existence of the soul.”).

7. The current debate over gay marriage, for example, centers on whether marriage should remain the exclusive preserve of heterosexuals or whether homosexual couples should also be able to join together in matrimony. A historical example of the law treating some individuals as more worthy than others is the Three-fifths Clause. *See* U.S. CONST. amend. XIV, § 2 (amending the Three-fifths Clause of the United States Constitution). *See*

Others may simply leave large numbers of people to fend for themselves.<sup>8</sup> “[T]here is a need for a broader, more synoptic linkage of law with spirituality: the connection between human-crafted law and inspirational forces or ‘higher powers,’ that can or should challenge and, possibly, even transform or transcend law.”<sup>9</sup> Viewing the law as a “derivative discipline,”<sup>10</sup> a discipline derived from Love, will enhance justice throughout the legal landscape.

Part I of this article explores the concept of Love as an energetic, vibrational, and spiritual force. Part II provides an overview of what Love means in practice. Part III explores two areas of the law—access to health care and global warming—and suggests that significant improvements to those laws would be generated by a Love-based approach to the law.<sup>11</sup>

## I. ENERGETIC LOVE IN THEORY

*Love is the Energy of the Soul.*<sup>12</sup>

### A. Energy

The traditional concept of science is that whatever we are studying must be accessible to quantification, measurements, and experimental validation. That limits the scientific approach a great deal to things which are tangible, which have dimensions,

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*also Williams v. United States*, 242 F.3d 169, 175 (2001) (holding that hospitals located on a Native American reservation and operated by the United States Public Health Service are not required, pursuant to the Indian Health Care Improvement Act, to provide medical care to non-Indians, even in an emergency); William M. Wiecek, *The Emergence of Equality as a Constitutional Value: The First Century*, 82 CHI.-KENT. L. REV. 233 (2007) (exploring the development of racially discriminatory laws in the United States).

8. The fact that the United States maintains a health care system that leaves 43.6 million people uninsured and many others underinsured is an example of this concept. See *infra* notes 71-95 and accompanying text. The widening income gap between rich and poor, leading to the top 1% getting richer at the expense of everyone else, is arguably another. See Bob Herbert, *Working Harder for the Man*, N.Y. TIMES, Jan. 8, 2007, at A19 (discussing pay inequity and how the wealth that most workers help to create is going to very few individuals). Continued emissions of greenhouse gases that could easily be reduced is yet another example. See *infra* notes 96-123 and accompanying text.

9. Blomquist, *supra* note 4, at 585.

10. BAILEY KUKLIN & JEFFREY W. STEMPEL, FOUNDATIONS OF THE LAW: AN INTERDISCIPLINARY AND JURISPRUDENTIAL PRIMER I (1994) (quoting *The Spirit of the Renaissance*, NYU LAW SCHOOL MAGAZINE 45, 45-46 (Spring 1993)).

11. Certainly there are many other laws that could also be explored. I have chosen to focus on access to health care and global warming because, arguably, neither area of the law is the result of prejudice against particular groups of people. Yet as described below, health and environmental laws derived from Love would look quite different from those that currently exist. In future articles, I will address the arguably more sensitive issues of Love in relation to groups that have been marginalized by society, such as prisoners, homosexuals, and members of racial minority groups.

12. ZUKAV, *supra* note 6, at 231.

[and] which have weight . . . . But science has already reached levels of understanding where we can study things which are not measurable, not quantifiable, and not accessible to sensory perception.<sup>13</sup>

There is a general consensus in much of both spiritual and scientific literature that everything in the universe is energy vibrating at varying frequencies, some visible and others invisible.<sup>14</sup> On the scientific side, the notion that tangible matter is simply a form of energy, is encompassed in physics. As the United States Department of Energy explains, a “remarkable consequence of special relativity is the famous equation  $E=mc^2$  [sic], which says that mass is just another form of energy.”<sup>15</sup> The subspecialty of quantum physics, particularly superstring theory, explores this idea in greater detail.<sup>16</sup>

Spiritual teachers who study the nature and meaning of life have come to the same conclusion.<sup>17</sup> From the auras that surround our bodies to the chakra energetic system, to the energy of our thoughts, emotions and intentions, spiritual teachers recognize the primacy of energy.<sup>18</sup> The recent movie *The Secret* is an example of how our thoughts are energetic and attract certain things into our lives.<sup>19</sup> *The Secret* speaks to how to use this power or energy of attraction to change our lives.<sup>20</sup> Dr. Wayne W. Dyer uses the term “intention” rather than “attraction” in his book *The Power of*

13. HORA, *supra* note 4, at 7.

14. Examples of invisible energies include the air we breathe, heat, radiation waves, atoms and infrared rays. Nor can we see our critically important thoughts and emotions. See *infra* notes 18-22 and accompanying text.

15. U.S. Department of Energy, Office of Science, *What is Physics?*, [http://www.science.doe.gov/Sub/Newsroom/News\\_Releases/DOE-SC/2005/What\\_is\\_Physics.htm](http://www.science.doe.gov/Sub/Newsroom/News_Releases/DOE-SC/2005/What_is_Physics.htm) (last visited Sept. 10, 2008).

16. See generally BRIAN GREENE, *THE ELEGANT UNIVERSE: SUPERSTRINGS, HIDDEN DIMENSIONS, AND THE QUEST FOR THE ULTIMATE THEORY* (1999) (describing a universe in which “everything might be composed of the vibrations of ultramicroscopic loops of energy called strings”). Cf. JOHN POLKINGHORNE, *QUANTUM PHYSICS AND THEOLOGY: AN UNEXPECTED KINSHIP* (2007) (exploring similarities between physics and theology).

17. See DEEPAK CHOPRA, *HOW TO KNOW GOD: THE SOULS JOURNEY INTO THE MYSTERY OF MYSTERIES* 30 (1st ed. 2000) (“At the quantum level the whole cosmos is like a blinking light. There are no stars or galaxies, only vibrating energy . . . .”); ERIC DOWSETT, *THE MOMENT THAT MATTERS* 71 (1996) (“[E]verything is energy.”); BRIAN WEISS, *MESSAGES FROM THE MASTERS: TAPPING INTO THE POWER OF LOVE* 135 (2000).

18. CAROLINE MYSS, *ANATOMY OF THE SPIRIT* (Three Rivers Press 1996) (exploring the chakra system); CD: CAROLINE MYSS, *ENERGY ANATOMY* (Sounds True Audio 1996).

19. DVD: *THE SECRET* (Prime Time Productions 2006). See also ZUKAV, *supra* note 6, at 61 (“Emotions are currents of energy that pass through us.”).

20. *THE SECRET*, *supra* note 19. See also NEALE DONALD WALSCH, *CONVERSATIONS WITH GOD* 54 (G. P. Putnam’s Sons 1996) (1995) (“Emotion is the power which attracts.”).

*Intention.*<sup>21</sup> Both, however, are speaking to the energy we create as dictating the course of our lives. Dyer concludes that “this is a universe of energy.”<sup>22</sup>

A number of well-known health-related disciplines are also based on the principle of energy.<sup>23</sup> Acupuncture, for example, is based on balancing the body by working, in part, on the energy fields that surround it.<sup>24</sup> Massage therapy, like acupuncture, works on both a physical and energetic level.<sup>25</sup> Pranic healing is energetic healing.<sup>26</sup> *Feng shui* balances the energy of the spaces in which we live, learn and work.<sup>27</sup> All of these disciplines recognize that the universe is energetic in nature.

One rather well-known experiment involving water merges the scientific with the spiritual, and similarly concludes that everything is energy and that Love is a higher form of energy than others. Masaru Emoto, author of the book *The Hidden Messages in Water*,<sup>28</sup> decided to conduct water experiments because the adult human body is comprised of 70 percent water. Theorizing that by studying water, he would also learn a great deal about people, Emoto’s experiments exposed water to positive and negative words and to different types of music. He refined a process by which he was able to photograph water crystals as they were exposed to these varying stimuli. Emoto discovered that the water crystals responded positively to positive words and music, but negatively to negative words and heavy metal music.<sup>29</sup> He found that the most beautiful crystal of all formed in response to the words love and gratitude.<sup>30</sup> Emoto concluded that “[e]xistence is vibration. The entire universe is in a state of vibration, and each thing generates its own frequency, which is unique. . . . [T]his is the fundamental principle of the universe.”<sup>31</sup>

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21. WAYNE W. DYER, *THE POWER OF INTENTION* 3 (2004) (“In the universe there is an immeasurable force which shamans call intent and absolutely everything that exists in the entire cosmos is attached to intent by a connecting link.” (quoting Carlos Castaneda)).

22. *Id.* at 247.

23. See Barbara L. Atwell, *Mainstreaming Complementary and Alternative Medicine in the Face of Uncertainty*, 72 *UMKC L. REV.* 593, 607-08 (2004).

24. *Id.*

25. *Id.* at 606.

26. *Prana, chi* and *qi* are Eastern terms meaning “energy.” *Id.* at 607 n.93.

27. According to traditional *feng shui* theory, everything—whether seen or unseen—is energy, vibrating at different frequencies. Love, though, is the most all encompassing vibration. See generally KAREN KINGSTON, *CREATING SACRED SPACE WITH FENG SHUI: LEARN THE ART OF SPACE CLEARING AND BRING NEW ENERGY INTO YOUR LIFE* (1997).

28. MASARU EMOTO, *THE HIDDEN MESSAGES IN WATER* (David A. Thayne trans., 2001).

29. *Id.* at xxv.

30. *Id.* at xxvi – xxvii.

31. *Id.* at 39. “[T]he science of quantum mechanics generally acknowledges that substance is nothing more than vibration. When we separate something into its smallest parts, we always enter a strange world where all that exists is particles and waves.” *Id.* In a less well-known example, Eric Dowsett, an international lecturer on the power of love,

### B. Human Interconnectedness

“[G]race . . . animates our seemingly impersonal but intimately interconnected universe.”<sup>32</sup>

In addition to the principle that everything is energy, many experts agree that all of humanity is energetically interconnected. This concept of interconnectedness can be seen in a variety of religious disciplines as well as among more modern spiritual teachers.<sup>33</sup> Human interconnectedness is a way of explaining that we are all united. It recognizes the non-dual nature of the world. In *Anatomy of the Spirit*, Caroline Myss’ first guiding principle is that “all are One.”<sup>34</sup> As she explains, “we are all connected to all of life. . . . [W]e are all part of one spiritual community.”<sup>35</sup> Another teacher explains, “[m]ost people think of their soul as being an individual thing because they can’t help but think of themselves as individuals. When that false belief is gone, then you know that there is really only *one* soul—which is our unlimited oneness as spirit.”<sup>36</sup> A traditional Buddhist myth about the Web of Indra, or Indra’s Net, is a further demonstration of human interconnectedness. Each knot of this mythical net has a jewel and the jewels reflect off of one another. “When any jewel in the net is touched, all other jewels . . . are affected. This speaks to the interconnectedness and interdependency of everything and everyone in the universe . . . .”<sup>37</sup>

Another present day spiritual teacher refers to this interconnectedness as a sort of cosmic soup.<sup>38</sup> Using the analogy of a bowl of soup of which we are all a part, it is clear that you cannot let a portion of the soup go bad without affecting the entire bowl. Imagine, for example, a bowl of lobster bisque. If the lobster or the cream is no longer fresh, the soup becomes inedible in its entirety. Similarly, the interconnectedness of all human spirit works the same way. To the extent that there is hatred and violence in that cosmic mix, all of humanity is impacted. This concept of interconnectedness explains why the cure for hatred is not more hatred or

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conducted experiments in which he used the power of love to “clear” another person’s energy fields. DOWSETT, *supra* note 17, at 158-59. See generally Eric Dowsett, <http://www.ericdowsett.com> (last visited Jul. 29, 2008) (“For the past fifteen years [Eric Dowsett] has been teaching his heart based methods of working with . . . the personal energy fields.”).

32. CAROLINE MYSS, *INVISIBLE ACTS OF POWER: PERSONAL CHOICES THAT CREATE MIRACLES 2* (2004).

33. See, e.g., GARY R. RENARD, *THE DISAPPEARANCE OF THE UNIVERSE: STRAIGHT TALK ABOUT ILLUSIONS, PAST LIVES, RELIGION, SEX, POLITICS AND THE MIRACLES OF FORGIVENESS* 156 (Hay House 2006) (2003).

34. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 104-05.

35. *Id.*

36. RENARD, *supra* note 33, at 328.

37. *Ibdra’s Net, The Indra’s Net: What Is It?*, <http://www.heartspace.org/misc/IndraNet.html> (last visited Sept. 10, 2008).

38. DOWSETT, *supra* note 17, at 155.

revenge, but Love and forgiveness. If there is only one energy field of which we are all a part, we want it to be as Loving in quality as possible. It is analogous to the concept of darkness and light: In order to make a dark room light, you add light, not more darkness. In order for humanity “to be healthy, we must treasure spiritual values, such as love, harmony, beauty, goodness, intelligence, generosity, peace, assurance [and] gratitude.”<sup>39</sup>

### C. Love’s Energy

“The most powerful energy we have is love.”<sup>40</sup>

Given that the universe is energetic in nature and that we are all energetically interconnected, the special energy of Love needs to be explored, for it is because of the special power of Love that this article suggests using it as the driving force behind our laws. There is a large body of spiritual literature in the marketplace that discusses the nature of Love. Although this broad-based and somewhat diverse body of literature may originate from different vantage points,<sup>41</sup> one area of general agreement relates to the unique power of Love. As one spiritual teacher explains, “love is the only authentic power. . . . We violate this energy when we act toward others in unloving ways.”<sup>42</sup> Love is more than an emotion: it is a spiritual force.<sup>43</sup> One of the reasons why Love is uniquely powerful is that of all the different frequencies of energy, Love is the highest or most all encompassing kind: “Love is the ultimate answer. Love is not an abstraction but an actual energy, or spectrum of energies . . . . Since everything is energy and love encompasses all energies, all is love.”<sup>44</sup>

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39. HORA, *supra* note 4, at 19. “That which is existentially valid is subject to existential validation. If it is life enhancing, health promoting, increasing the capacity for love, wisdom, and beneficence of the individual, if it makes it possible for an individual to realize his inner potential . . . it is valid. If it has a disruptive, pathogenic effect, it is not valid.” *Id.* at 55.

40. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 197. Love’s energy is “pure power.” *Id.* at 199. Thus, Myss concludes that the spiritual truth of Love is that “Love is Divine Power.” *Id.* at 198.

41. These works routinely explore what is commonly referred to as “metaphysics.” Metaphysics is the “philosophical study of being and knowing.” <http://wordnet.princeton.edu/perl/webwn?s=metaphysics> (last visited Sept. 10, 2008). *See also* <http://www.swif.uniba.it/lei/foldop/foldoc.cgi?metaphysics> (“Metaphysics: branch of philosophy concerned with providing a comprehensive account of the most general features of reality as a whole; the study of being as such. Questions about the existence and nature of minds, bodies, god, space, time, causality, unity, identity, and the world are all metaphysical issues.”).

42. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 84.

43. MYSS, *INVISIBLE ACTS OF POWER*, *supra* note 32, at 150 (“Love is Divine Power.”).

44. BRIAN WEISS, *MESSAGES FROM THE MASTERS: TAPPING INTO THE POWER OF LOVE* 135 (Warner Books 2000). *See also* CHOPRA, *supra* note 17, at 146 (“[W]e are all in the

While one person refers to Love as Divine Power<sup>45</sup> and another as the energy of the Soul,<sup>46</sup> they are both essentially agreeing on the all-encompassing energy of Love. Emoto's water experiments further affirm that Love is the highest or most all-encompassing vibration.<sup>47</sup> Thus, it is Love rather than some other underlying premise that should be the fundamental driving force behind the law. Love is a force to be used for the betterment of humankind. It will inevitably lead to a focus on others and to acts of kindness and compassion.<sup>48</sup> The next Part explores in greater detail, energetic Love in practice.

## II. ENERGETIC LOVE IN PRACTICE

*"Humanity is not saved by ideological manifestos, but by the 'acts/ Of kindness and of love.'"*<sup>49</sup>

Knowing that Love is a powerful spiritual, energetic, vibrational force, and that we are all interconnected, leads to the question of how to apply this knowledge to everyday life and specifically to the enactment of laws. One spiritual teacher distinguishes between two sources of thought: "the sea of mental garbage," on one hand, and the "infinite ocean of Love-Intelligence," on the other.<sup>50</sup> In the "'ocean of Love-Intelligence' man does not become callous, unfeeling, and intellectual; man becomes intelligent, infinitely compassionate, spiritually loving, serenely dignified, peaceful, assured, grateful, and harmonious."<sup>51</sup> Love is demonstrated by "forgiveness, compassion, generosity, kindness, [and] caring for oneself and others."<sup>52</sup>

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force field of love . . . ."); LOUISE HAY, *YOU CAN HEAL YOUR LIFE* (2007); WALSCH, *supra* note 20, at 58 ("Love is the answer.").

45. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 198.

46. ZUKAV, *supra* note 6, at 231.

47. EMOTO, *supra* notes 28-31 and accompanying text. *See also* The True Nature of Love – Love as a Vibrational Frequency, <http://joy2meu.com/Love2.html> (last visited Sept. 10, 2008) (explaining that love is a vibration).

48. MYSS, *INVISIBLE ACTS OF POWER*, *supra* note 32, at 2.

49. Ian Ward, *Universal Jurisprudence and the Case for Legal Humanism*, 38 *ALTA. L. REV.* 941, 946 (2001) (quoting William Wordsworth, *Lines Composed a Few Miles Above Tintern Alley*, in 1 *POEMS* (J.O. Hayden ed., 1977)). *Cf.* DON MIGUEL RUIZ, *THE MASTERY OF LOVE* (1999).

50. HORA, *supra* note 4, at 73.

51. *Id.* at 74.

52. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 199.

The concept of Love is not always about doing, but being.<sup>53</sup> Keeping an open, compassionate, forgiving heart connects us to the energy of Love. Staying connected to the energy of Love will, in turn, lead to Loving, compassionate behavior.<sup>54</sup> This may be easy when life is going well. When we are confronted with life's challenges, however, it may become more difficult.<sup>55</sup> For example, let us assume that two individuals each lose a loved one prematurely. One of them reacts by being angry at the world for his or her loss. The other, despite extraordinary sadness and grief, focuses on gratitude for the time he or she had with the loved one and for the love they shared. Although this second individual, like the first, would undoubtedly wish that their time together had been longer, he or she is likely to face life without the loved one quite differently from the first. The second individual is likely to stay connected to the energy of Love through this very difficult time.

Other friends and family members can express Love through their compassion. This includes the ability to put themselves in their friend's shoes and to empathize with the struggles they are experiencing. Compassion is similarly defined in the context of a dying friend:

First, look at the dying person in front of you and think of that person as just like you, with the same needs, the same fundamental desire to be happy and avoid suffering, the same loneliness, the same fear of the unknown, the same secret areas of sadness, the same half-acknowledged feelings of helplessness. You will find that if you really do this, your heart will open toward the person and love will be present between you. . . . [S]econd . . . is to put yourself directly and unflinchingly in the dying person's place. . . . What would you most need?<sup>56</sup>

Compassion, forgiveness, and other attributes of Love are sometimes more easily articulated than practiced. One of the critical first steps toward practicing Love is to become aware of thoughts and emotions and learn to manage them. It requires a level of honest introspection in which we examine our thoughts to determine whether they are Loving in nature.

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53. In his workshops, Eric Dowsett, international workshop leader, stresses that having an open, compassionate heart is a way of being more than doing. DOWSETT, *supra* note 17, at 32. See also ERIC DOWSETT, *LOVING WHO SHOWS UP* (2006). Cf. [www.ericdowsett.com](http://www.ericdowsett.com) (last visited Sept. 28, 2008), (“[A]wareness and compassion . . . [are] a profound and meaningful way of being.”).

54. See generally SOGYAL RINPOCHE, *THE TIBETAN BOOK OF LIVING AND DYING* (Patrick Gaffney and Andrew Harvey eds., 1994) (1993).

55. “Christ points to the spiritual nature of law. . . . [F]or Jesus, justice . . . finds its perfection in love, calling his disciples to understand that they have no personal right of retaliation but that justice may require the opposite—personal suffering and sacrifice.” Blomquist, *supra* note 4, at 615 (internal quotations omitted) (quoting Mary C. Szoto, *Lawyers as Hired Doves: Lessons from the Sermon on the Mount*, 31 CUMB. L. REV. 27, 38, 40, 45 (2001)).

56. RINPOCHE, *supra* note 54, at 179.

Thoughts and emotions are critical forms of energy that we tend to pay scant attention to.<sup>57</sup> To become more conscious of our thoughts and emotions, we may need to adjust our lifestyles. Slowing down, whether through meditation, silence, journaling,<sup>58</sup> nature walks or some other mechanism that allows for quiet introspection is critical in order to be still long enough to be aware of our thoughts and feelings. Moreover, these techniques are often encouraged in order to have an “open and receptive consciousness where Divine Intelligence has the possibility of reaching us.”<sup>59</sup> This is essentially letting Love, the energy of the soul or divine energy, reach us.<sup>60</sup>

Once we are aware of our thoughts and feelings, we can take steps to try to manage them and to change them when necessary. For example, if we are filled with anger or hostility, or thinking about how to get revenge on someone who has treated us poorly, we are clearly not filled with Love.<sup>61</sup> It is possible, though, to shift our perception to one of understanding, acceptance, compassion, forgiveness, and Love.<sup>62</sup> In the example above, for instance, the person who is angry and resentful for the loss of a loved one is probably unaware that a different perspective is possible. He or she may be so absorbed by anger that the ability to think or feel differently seems impossible. It may require the Love and compassion

57. See JAMES ALLEN, *AS A MAN THINKETH* 7 (Filliquarian Publishing 2007) (1960) (“As a man thinketh in his heart, so is he.”); DOWSETT, *supra* note 17, at 71 (“Thought is energy because thoughts have frequencies.”); DYER, *supra* note 21, at 198; WAYNE W. DYER, *CHANGE YOUR THOUGHTS – CHANGE YOUR LIFE: LIVING THE WISDOM OF THE TAO* 9 (2007) (“By changing your thoughts you can change your life and truly live the bliss of oneness.”); HAY, *supra* note 44, at 13 (“Every thought we think is creating our future.”); ESTHER AND JERRY HICKS, *THE AMAZING POWER OF DELIBERATE INTENT* 34 (2006) (“As you consider any idea, you activate a vibration about it.”); HORA, *supra* note 4, at 90 (“The basic stuff of life . . . is thought.”); MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 104 (“[E]very belief we hold exerts influence upon the whole of life.”); MYSS, *ENERGY ANATOMY*, *supra* note 18; *THE SECRET*, *supra* note 19.

58. For a particularly effective type of journaling called Proprioceptive Writing, see LINDA TRICHTER METCALF & TOBIN SIMON, *WRITING THE MIND ALIVE: THE PROPRIOCEPTIVE METHOD FOR FINDING YOUR AUTHENTIC VOICE* (2002). See also JULIA CAMERON, *THE ARTIST’S WAY: A SPIRITUAL PATH TO HIGHER CREATIVITY* (1992) (discussing morning pages, another form of journaling).

59. HORA, *supra* note 4, at 52. See also MYSS, *INVISIBLE ACTS OF POWER*, *supra* note 32, at 2 (discussing grace: “We receive infusions of grace on a daily basis, but in the middle of the everyday tasks of making a living and taking care of our family and friends, we can miss its subtle power.”).

60. Cf. Agape International Spiritual Center, *supra* note 3 (“We are on the planet to be and express the Divine Love . . . that is alive in every fiber of our being, waiting to be released through us onto our world. Living as love is a way of life.”).

61. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 84 (“We violate [the] energy [of Love] when we act toward others in unloving ways. . . . By far, the strongest poison to the human spirit is the inability to forgive oneself or another person.”).

62. See HAY, *supra* note 44, at 98 (advocating the use of positive affirmations to change thoughts).

of others to make him or her aware of a different way to be. In truth, the Loving response is not always easy to discern.<sup>63</sup>

Love embraces the entire human community. If all of humanity is spiritually linked, it makes sense that we would embrace fundamental human rights that apply to all people simply by virtue of the fact that they exist. This would apply regardless of where they live, what color they are, what religious beliefs they espouse, what their sexual orientation is, what socioeconomic status they have achieved, or any other distinguishing aspect of their circumstance. In other words, we would embrace fundamental human rights and the notion of a “universal jurisprudence.”<sup>64</sup> “Humanism is not the preserve of theology,”<sup>65</sup> but is a matter of everyday behavior embracing a “habit of loving.”<sup>66</sup> Thus, rather than an us-versus-them mentality, we would understand that we are one human community, whether black or white, citizen or immigrant, gay or straight, rich or poor, healthy or sick, fat or thin, or any other distinguishing factor that we might otherwise focus on.<sup>67</sup> Rather than fearing differences, we would embrace them.<sup>68</sup> We would keep open, compassionate hearts, thereby creating the vibration of Love.<sup>69</sup>

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63. To give a simple example, let us suppose that a small child asks his or her parents for a McDonald’s Quarter Pounder with cheese. Suppose further that the parents believe that the food their child has requested is not nutritious and contains excessive levels of fat, sodium and calories. Is the Loving response, then, to say no, or is the Loving response to make the child happy and say yes? Or does Love require some degree of flexibility so that the answer will sometimes be yes and at others a resounding no?

64. See generally Ward, *supra* note 49.

65. *Id.* at 957 (examining Wordsworth to reconceptualize humanism).

66. *Id.* at 955 (examining Leibniz to reconceptualize humanism).

67. See generally Luis E. Chiesa, *The American Experience with a Criminal Law for Outsiders: From the Alien Friends Act to Guantánamo Bay*, RUTGERS J.L. & PUB. POL.’Y (forthcoming 2008), available at <http://digitalcommons.pace.edu/lawfaculty/400> (referring to government acts that demonstrate an us versus them mentality and insiders versus outsiders). See also RENARD, *supra* note 33, at 370:

[Y]ou can’t have peace until people stop identifying with their particular nations and start seeing all of their brothers and sisters—and thus themselves—as spirit. When you’re limitless, you don’t have any borders to defend, and thus nothing to kill for. . . . [W]hile you appear to live your normal life you know in your heart where you really belong, and that the way home is not through defending illusions with illusions but by forgiving them.

Cf. NEIL MACCORMICK, *QUESTIONING SOVEREIGNTY: LAW, STATE AND NATION IN THE EUROPEAN COMMONWEALTH* (1999).

68. In fact, fear is often regarded as the opposite of Love. WEISS, *supra* note 17, at 135 (“Love dissolves fear. You cannot be afraid when you are feeling love.”). See also DOWSETT, *supra* note 17, at 71 (“Fear is a background energy . . . with a low, heavy sort of frequency.”). In other words, if you are connected to the energy of Love, fear will not be present. Fear and Love are analogous to darkness and light, discussed above. If Love is the objective, you add more Love, not fear. Fear would be like keeping a dark room dark.

69. MYSS, *ANATOMY OF THE SPIRIT*, *supra* note 18, at 199 (“Our . . . hearts are designed to express beauty, compassion, forgiveness and love.”).

The fact that Love is the highest vibration and that we are all interconnected means that laws derived from Love reflect both Love of others and self-Love. The merging of the spiritual concepts of Love with the law will allow us to look at a variety of legal scenarios with fresh eyes.

### III. LOVE AND THE LAW

*The idea of humanity has been too long forgotten in the discourse of jurisprudence.*<sup>70</sup>

#### A. Access to Health Care

In a report released in June 2007, the Centers for Disease Control (CDC) estimated that there were 43.6 million uninsured Americans in 2006.<sup>71</sup> Among the uninsured are 9.3 percent of children under the age of 18.<sup>72</sup> The millions of individuals who lack health insurance effectively lack access to timely, quality health care. As a result they are, on the whole, less healthy than the insured. If lack of health insurance had no correlation to an individual's actual health, an argument could be made that having over 40 million uninsured Americans was not particularly problematic. If we could not figure out how to provide health insurance for all Americans, that might also justify the large numbers of uninsured. Neither of these is the case. Therefore, a health care policy generated from Love would reflect compassion and care for all rather than the indifference of the current system.

Turning first to the health status of the uninsured, it has been well-documented that the uninsured are generally less healthy than those with health insurance.<sup>73</sup> The uninsured are less likely to have routine checkups.

70. Ward, *supra* note 49, at 944.

71. ROBIN A. COHEN & MICHAEL E. MARTINEZ, HEALTH INSURANCE COVERAGE: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, 2006, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur200706.pdf> (2007).

In 2006, 43.6 million persons of all ages (14.8%) were uninsured at the time of the interview, 54.5 million (18.6%) had been uninsured for a least part of the year prior to the interview, and 30.7 million (10.5%) had been uninsured for more than a year at the time of the interview.

*Id.* at 1. Although its statistics are not as current as the CDC's, the United States Census Bureau also tracks the number of uninsured. U.S. Census Bureau, Health Insurance, <http://www.census.gov/hhes/www/hlthins/reports.html> (last visited Sept. 10, 2008). One reason for such large numbers of uninsured is escalating health care costs. Despite employer provided health insurance, more working individuals are uninsured than in the past, either because it is cost prohibitive for the employer to offer it, or cost prohibitive for the employees to accept it due to increased cost sharing obligations. See *infra* note 86 and accompanying text.

72. COHEN & MARTINEZ, *supra* note 71.

73. See INSTITUTE OF MEDICINE, CARE WITHOUT COVERAGE: TOO LITTLE TOO LATE (2002). This report concluded that "working-age Americans without health insurance are more likely to receive too little medical care and receive it too late; be sicker and die sooner;

Instead, they are more prone to wait until they are sicker than the insured to seek medical help. Many use hospital emergency rooms for health care.<sup>74</sup> The problem with this, of course, is that by the time an individual is sick enough to seek emergency room care, his or her underlying illness is likely to be more difficult to successfully treat. For example, if an individual has undiagnosed cancer and waits until he or she becomes symptomatic before seeking emergency room care, the cancer is more likely to be advanced, inoperable, and terminal. On the other hand, the insured counterpart who undergoes routine screening is more likely to have the disease diagnosed at an earlier, treatable stage. Similarly, a heart attack victim who tries to wait out the pain, hoping that it will go away and that money can thereby be saved, is less likely to survive it. Without prescription drug coverage, the uninsured are also less able to successfully manage chronic illnesses like diabetes and hypertension that may require ongoing, expensive medications. The evidence is clear that it is healthier to have health insurance than to live without it.

The second question, whether we have the knowledge and ability to provide health insurance to all Americans is also worth exploring. Certainly other countries have managed to cover all or virtually all of their citizens, yet they spend far less per capita on health care than the United States, often while maintaining high quality care. “We have managed a very special accomplishment - we spend more than European countries like France, Italy, and Germany, yet we manage to do worse than these countries on most measures of health performance, including life expectancy and infant mortality.”<sup>75</sup>

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and receive poorer care when they are in the hospital, even for acute situations like a motor vehicle crash.” *Id.*, excerpt available at [www.iom.edu/CMS/3809/4660/4333.aspx](http://www.iom.edu/CMS/3809/4660/4333.aspx). See also Barry R. Furrow, *The Politics of Health Law: Access to Health Care and Political Ideology: Wouldn't You Really Rather Have a Pony?*, 29 W. NEW ENG. L. REV. 409-10 (2007) [hereinafter *The Politics of Health Law*]; Laura D. Hermer, *Private Health Insurance in the United States: A Proposal for a More Functional System*, 6 HOUS. J. HEALTH L. & POL'Y 1, 3-4 (2005) (“A system in which [over 40 million people] lacked health coverage . . . is not functioning properly. This would not be so problematic if lacking coverage statistically had little effect on one's health. But, alas, those who lack coverage, even for limited periods of time, tend to be in worse health and have worse care than those whose coverage is continuous.”); Eric Lamond Robinson, *The Oregon Basic Health Services Act: A Model for State Reform?*, 45 VAND. L. REV. 977, 983 (1992) (“Not surprisingly, studies indicate that people with no health insurance are less healthy than those with coverage. Perhaps the primary reason the uninsured are less healthy than insured Americans is that they receive little preventative care and generally rely on emergency rooms for acute care.”).

74. Robinson, *supra* note 73, at 983. The Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd (2006), prohibits hospitals that have emergency rooms and participate in Medicare from refusing to treat patients who are suffering from an emergency medical condition. EMTALA, however, simply requires that hospitals stabilize the patient before he or she can be discharged. It does not require that the hospital treat the underlying condition if the patient is stable.

75. Furrow, *supra* note 73, at 405-06 (“Health care cost inflation is on the rapid ascent as managed care has receded into ineffectiveness. Employee health care coverage costs

The United States has managed to cover all or virtually all of certain groups of individuals. For example, it provides health care for most of the elderly through Medicare.<sup>76</sup> It also covers veterans through the Veteran's Health Administration.<sup>77</sup> Many, though certainly not all, of the poor are covered through Medicaid.<sup>78</sup> Health coverage for children living in families who earn too much to qualify for Medicaid, but below set income levels, has also been expanded through State Children's Health Insurance Program (SCHIP).<sup>79</sup> Thus, the United States has been successful in

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continue to rise at twice the overall inflation rate, and far in excess of any wage increases that workers receive. The 7.7 percent increase in 2006 was the lowest since 1999, but the average cost to employees continued an upward trend, reaching \$ 2,973 annually for family coverage.”). *See also* Timothy Jost, *Why Can't We do What They Do?*, 32 J.L. MED. & ETHICS 433 (2004); Paul Krugman, Op. Ed., *Health Care Terror*, N.Y. TIMES, July 9, 2007, at A17 (“[E]very wealthy country except the United States already has some form of universal care. Citizens of these countries pay extra taxes as a result—but they make up for that through savings on insurance premiums and out-of-pocket medical costs. The overall cost of health care in countries with universal coverage is much lower than it is here. . . . [E]very available indicator says that in terms of quality, access to needed care and health outcomes, the U.S. health care system does worse, not better, than other advanced countries—even Britain, which spends only about 40 percent as much per person as we do. . . . And the French manage to provide arguably the best health care in the world, without significant waiting lists of any kind.”).

76. *See* 42 U.S.C. § 1395c (2000) (discussing the scope of federal coverage). *See also* Jonathan Barry Forman, *Making Universal Health Care Work*, 19 ST. THOMAS L. REV. 137, 139 (2006) (“The Medicare program provides nearly universal coverage for elderly Americans.”). Retirees who are eligible for Social Security benefits are generally entitled to Medicare. Although the age for Social Security benefits has increased from 65 to 67, Medicare eligibility remains at 65. Medicare also covers virtually everyone with end-stage renal disease (ESRD). *See generally* Centers for Medicare & Medicaid Services (CMS), <http://cms.hhs.gov/MedicareGenInfo/> (last visited Sept. 10, 2008).

77. *See generally* Veterans Health Administration, <http://www1.va.gov/health> (last visited Sept. 10, 2008). Although there have been recent complaints about the V.A. Health care system being overburdened with veterans wounded in Iraq, the system has been praised by some as one of the better health care programs. *See* Paul Krugman, Op. Ed., *Health Care Confidential*, N.Y. TIMES, Jan. 27, 2006, at A23 (“I know about a health care system that has been highly successful in containing costs, yet provides excellent care. And the story of this system's success provides a helpful corrective to anti-government ideology. For the government doesn't just pay the bills in this system – it runs the hospitals and clinics. . . . The system in question is our very own Veterans Health Administration, whose success story is one of the best-kept secrets in the American policy debate.”).

78. 42 U.S.C. § 1396 (2000). Unlike Medicare, which is a federally run program, Medicaid is a joint federal-state undertaking. Each state, therefore, has its own eligibility and coverage components. *See* Centers for Medicare & Medicaid Services, *supra* note 76.

79. The SCHIP program was designed to provide health insurance coverage for children whose parents' income made them ineligible for Medicaid, but who tended to be uninsured. Congress is currently trying to expand SCHIP to cover more children; however, the Bush administration opposes the expansion. President Bush was quoted as saying, “After all, you just go to an emergency room.” Paul Krugman, *An Immoral Philosophy*, N.Y. TIMES, July 30, 2007, at A17. As noted above, the emergency room is no substitute for routine checkups and early screening for diseases like colon and breast cancer, and diabetes. *See also* Robert Pear, *Rules May Limit Health Program Aiding Children*, N.Y. TIMES, Aug.

providing health care coverage for those populations that it considers worthy of covering.<sup>80</sup> It also does so cost-effectively.<sup>81</sup>

The United States could cost effectively expand one or more of the foregoing programs to cover the more than 40 million uninsured if the will to do so was present. It could eliminate some of the administrative costs of multiple programs by implementing a single-payer system. Arguably, a single-payer government-run program would be the most cost effective way to provide universal health insurance.<sup>82</sup> Alternatively, the government and the private sector might join forces to create a system that covers all individuals. For example, employer-based health insurance could be expanded and supplemented to include the unemployed and self-employed.<sup>83</sup> Finally, a shift to individual consumer driven coverage also has its advocates.<sup>84</sup>

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21, 2007, at A1 (“The Bush administration, continuing its fight to stop states from expanding the popular Children’s Health Insurance Program, has adopted new standards that would make it much more difficult for New York, California and others to extend coverage to children in middle-income families.”).

80. See generally 25 U.S.C. § 1603 *et. seq.* (2000) (discussing the Indian Health Service); 30 U.S.C. § 901 (2000) (discussing the Black Lung Program). The States also have programs designed to act as a safety net for individuals who are uninsured. The fact remains, though, that the number of uninsured remains unacceptably high while the quality of health care they receive remains unacceptably low. Massachusetts has gone furthest to ensure universal health care to its residents. Forman, *supra* note 76, at 146 (“Massachusetts recently enacted major legislation designed to achieve nearly universal coverage. The new law requires individuals to have health insurance and redeploys state funds to help pay for it. Within three years, the law is expected to provide health insurance coverage to 95% of the 550,000 uninsured Massachusetts residents. Everyone ‘plays their part:’ individuals, government, health care providers, and employers.”).

81. See *infra* notes 85-91 and accompanying text.

82. Hermer, *supra* note 73, at 4-5 (“Even if federal law mandated all U.S. residents to obtain and maintain health insurance or otherwise pay on their own for their own health costs under the present system (in conjunction, perhaps, with some public expansions), studies indicate that health costs would remain inadequately controlled, and significant inefficiencies would remain. On the contrary, in order to both contain costs and expand coverage with the end of improving the overall health of our population, some degree of universal, public coverage will be necessary.”).

83. Employer-based health insurance, however, is on the wane. See *infra* note 86 and accompanying text.

84. See, e.g., REGINA HERZLINGER, WHO KILLED HEALTH CARE? AMERICA’S \$2 TRILLION MEDICAL PROBLEM AND THE CONSUMER DRIVEN CURE (2007) (arguing that health care should be treated like other commodities and that with full competition, prices and quality would be kept in check). Others would argue that health care should not be treated like other commodities since it is a necessity for everyone, including those who cannot afford to pay for it. Cf. Deborah Stone, *The Struggle for the Soul of Health Insurance*, 18 J. HEALTH POL. POLY & L. 287, 290 (1993) (“The central argument of this essay is this: Actuarial fairness – each person paying for his own risk . . . is a method of organizing mutual aid by fragmenting communities into ever-smaller, more homogeneous groups and a method that leads ultimately to the destruction of mutual aid. This fragmentation must be accomplished by fostering in people a sense of their differences, rather than their

The challenge associated with involving the private profit-seeking sector in health insurance coverage is that such involvement generally leads to much higher administrative costs, and the focus tends to be on profitability rather than the provision of effective health care.<sup>85</sup> In fact, the level of private employer provided health insurance has decreased in recent years and for those employers that continue to provide it, the employees' cost sharing obligations have increased.<sup>86</sup> Government-run programs like Medicare have successfully provided health care at far less cost. Nonetheless, scare tactics are often used to make people think that a single-payer system will somehow equate with a socialist society.<sup>87</sup> The Bush II

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commonalities, and their responsibility for themselves only, rather than their interdependence.”).

85. See Paul Krugman, Op. Ed., *The Health Care Racket*, N.Y. TIMES, Feb. 16, 2007, at A23 (“One major factor is that we spend \$98 billion a year in excess administrative costs, with more than half of the total accounted for by marketing and underwriting – costs that don’t exist in single-payer systems.”). A clear example of how politics and profitability enter the picture is the concession made under the Medicare drug benefit program in which negotiating with drug companies for better prices is not allowed. See *id.* (“Drug companies . . . charge much higher prices in the United States than they do in countries like Canada, where the government health care system does the bargaining. McKinsey estimates that the United States pays \$66 billion a year in excess drug costs, and overpays for medical devices like knee and hip implants, too.”).

86. Furrow, *supra* note 73, at 409.

Between 2001 and 2005 the share of employees who were covered by employer-sponsored insurance (ESI) decreased by almost four percentage points. . . . Declines in employer sponsorship over the four year period were deepest among poor and near-poor employees, those working in small businesses, and those under age 35, further widening the existing gaps in access to ESI. By 2005, nearly 15% of employees had no ESI available to them, either through their own job or that of a family member - an increase of 2.5 percentage points from 2001. Between 2001 and 2005, the number of uninsured employees grew by 3.4 million, two-thirds of whom were from low-income families. Almost 19 million employees . . . were uninsured in 2005.

*Id.* (quoting LISA CLEMANS-COPE, BROWN GARRETT & CATHERINE HOFFMAN, THE HENRY J. KAISER FAMILY FUND, CHANGES IN EMPLOYEES’ HEALTH INSURANCE COVERAGE 2 (2001-2005) (Oct. 2006)), available at <http://kff.org/uninsured/upload/7570.pdf>). Many others are underinsured and also lack timely, effective health care. See Susan Adler Channick, *The Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Will It Be Good Medicine for U.S. Health Policy?*, 14 ELDER L.J. 237, 245 (2006) (“When employees who have been relying on their employers to provide affordable health insurance can no longer afford either rising premiums or high deductibles, they will join the already swelling ranks of the employed who are uninsured or underinsured.”). Another group increasingly at risk of being uninsured are retirees. Larry Grudzien, *The Great Vanishing Benefit, Employer Provided Retiree Medical Benefits: The Problem and Possible Solutions*, 39 J. MARSHALL L. REV. 785 (2006). A health care system that relies heavily on employer provided health insurance also leaves vulnerable, the unemployed and self-employed, for whom other arrangements must be made.

87. See Krugman, *supra* note 75 (“These scare tactics have often included over-the-top claims about the dangers of government insurance. ‘Sicko’ plays part of a recording Ronald Reagan once made for the American Medical Association, warning that a proposed program of health insurance for the elderly – the program now known as Medicare – would lead to

administration seems particularly focused on minimizing the role of government in the provision of any kind of social services.<sup>88</sup> Yet health care is one area in which the government has proven more efficient than the private sector. Therefore, a single-payer system may prove the most cost effective route to universal care.

[One report] estimates the cost of providing full medical care to all of America's uninsured at \$77 billion a year. Either eliminating the excess administrative costs of private health insurers, or paying what the rest of the world pays for drugs and medical devices, would by itself more or less pay the cost of covering all the uninsured. And that doesn't count the many other costs imposed by the fragmentation of our health care system.<sup>89</sup>

The key is that we know we are capable of providing universal health coverage regardless of the form it takes, and that people who lack health insurance coverage die or are sicker as a result.<sup>90</sup> Yet instead of providing such coverage, we have created unfounded fears about a government-sponsored single-payer system and have allowed the insurance lobby to have far too much power.<sup>91</sup>

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totalitarianism. Right now, by the way, Medicare – which did enormous good, without leading to a dictatorship – is being undermined by privatization.”).

88. See, e.g., Krugman, *supra* note 79 (“[W]hy should Mr. Bush fear that insuring uninsured children would lead to a further ‘federalization’ of health care . . . ? It’s not because he thinks the plans wouldn’t work. It’s because he’s afraid that that they would. That is, he fears that voters, having seen how the government can help children, would ask why it can’t do the same for adults. . . . He wants the public to believe that government is always the problem, never the solution. . . . [Thus] the more good a proposed government program would do, the more fiercely it must be opposed.”).

89. Krugman, *supra* note 85. In addition to excess administrative costs are other “‘important consequences of the multipayor system,’ like the extra costs imposed on providers. The sums doctors pay to denial management specialists are just one example.” *Id.*

90. See Krugman, *supra* note 75 (“This isn’t one of those cases where we face painful tradeoffs – here, doing the right thing is also cost-efficient. Universal health care would save thousands of American lives each year, while actually saving money.”).

91. Jost, *supra* note 75, at 437-39 (exploring a variety of reasons for the lack of universal health coverage in the United States, including a weak left wing and a strong right wing, special interest groups, societal opposition to a government run health care system, the nature of our political institutions and “perhaps . . . most important[ly] . . . the commercial insurance and managed care lobby.” *Id.* at 439). It is unlikely that the uninsured are afraid of a government sponsored single-payer health care system that provides universal coverage or any other equitable system that achieves the same end. See Krugman, *supra* note 75. (“[The United states has a] dysfunctional health insurance system, a system in which resources that could have been used to pay for medical care are instead wasted in a zero-sum struggle over who ends up with the bill. . . . [I]t’s an arms race between insurers, who deploy software and manpower trying to find claims they can reject, and doctors and hospitals, who deploy their own forces in an effort to outsmart or challenge the insurers. And the cost of this arms race ends up being borne by the public, in the form of higher health care prices and higher insurance premiums.”).

Love demands much more. While no one suggests that society has some personal animosity against the uninsured, our health care policy reflects indifference toward them.<sup>92</sup> Indifference is incompatible with Love.<sup>93</sup> Choosing Love and compassion, we would put ourselves in the place of the uninsured and recognize the hurdles they face. We would empathize with their daily worries over lack of access to affordable health care.<sup>94</sup> Lawmakers connected to the energy of Love would act accordingly, recognizing that we are one human family, each of whom needs health care. They would find a way to provide it with care, compassion, and generosity. There would be no political gridlock because neither money nor politics would be the central concern. Instead, lawmakers would unite and collaborate, understanding that it is fundamentally unacceptable from the viewpoint of Love, to have more than 40 million Americans who lack health insurance. Immediate, broad-scale efforts would be undertaken to correct the problem. The only question would be what method would most effectively achieve that end. The current U.S. health care system has maintained millions of uninsured individuals for many years. Love requires a redesigned and vastly improved health care system that provides access to health care for all.<sup>95</sup>

*B. Environmental Responsibility—The Response to Global Warming*

*There are good people who are in politics, in both parties, who hold this at arms length because if they acknowledge it and recognize it, then the moral imperative to make big changes is inescapable.*<sup>96</sup>

While access to health care in the United States focuses on the 43.6 million uninsured Americans, environmental responsibility focuses on the health and welfare of the entire planet. We tend to think of environmental concerns as being rather recent in vintage. At least one environmental law,

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92. The uninsured include disproportionately large numbers of immigrants, members of racial minorities and the poor. Furrow, *supra* note 73, at 409. See also A. H. Strelnick, *Increasing Access to Health Care and Reducing Minority Health Disparities: A Brief History and the Impact of Community Health Centers*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y. 63 (2005). In general, however, society does not look upon the entire 43.6 million uninsured with animosity, groups that are treated indifferently at best in other contexts.

93. See *supra* notes 50-54 and accompanying text.

94. See generally Furrow, *supra* note 73, at 412-15 (arguing generally for ideological reform in health care in order to focus on insuring everyone); SUSAN STARR SERED & RUSHIKA FERNANDOPULLE, *UNINSURED IN AMERICA: LIFE AND DEATH IN THE LAND OF OPPORTUNITY* (2005).

95. See Krugman, *supra* note 75 (“For more than 60 years, the medical-industrial complex and its political allies have used scare tactics to prevent America from following its conscience and making access to health care a right for all its citizens. I say conscience, because the health care issue is, most of all, about morality.”).

96. *AN INCONVENIENT TRUTH* (Paramount Pictures 2006), unofficial transcript available at <http://www.hokeg.dyndns.org/AITruth.htm>.

however, dates back to 1888.<sup>97</sup> Moreover, footage of Robert F. Kennedy, taken prior to his 1968 assassination, shows him expressing serious concerns about pollution to young school children.<sup>98</sup> Nonetheless, most of our major environmental laws like the Clean Air Act and the Clean Water Act date back to the 1970s.<sup>99</sup> Despite the existence of these statutes and some corresponding environmental successes,<sup>100</sup> we seem to be losing ground rather than gaining it in the fight against global warming.

A major culprit is the release of carbon dioxide (CO<sub>2</sub>) into the atmosphere which traps heat, creating a greenhouse effect. The United States remains the world's single largest producer of CO<sub>2</sub>, releasing about 30 percent of manmade CO<sub>2</sub> into the earth's atmosphere.<sup>101</sup> We see the effects of global warming regularly. We see it in the form of extreme weather like Hurricane Katrina in 2005, and flooding in India and the United States this year.<sup>102</sup> We also see it around the world with the melting of the polar ice caps and glaciers.<sup>103</sup> We certainly experience global warming in terms of the increasing number and intensity of heat waves.<sup>104</sup>

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97. Robert F. Kennedy, Jr., *The Hartman Hotz Lecture* (Apr. 8, 2004), in 57 ARK. L. REV. 885, 892 (2005) (discussing the 1888 Rivers and Harbors Act, which made it illegal to pollute any waterway in the United States).

98. BOBBY (Bold Films 2006).

99. The Clean Air Act is one example. See 42 U.S.C.A. § 7401 (West 2003). See also Kennedy, Jr., *supra* note 97, at 897-98 ("In 1970, th[e] accumulation of [environmental] insults drove twenty million Americans out into the street. Ten percent of our population, the largest public demonstration in American history, demanded that our political leaders return to the American people the ancient environmental rights that had been stolen from our citizens over the previous eighty years. . . . Over the next ten years, we passed twenty-eight major environmental laws that protect our air and water and endangered species and food safety and wet lands, etc. Those laws, in turn, became the model for over 120 nations around the world that began their own versions of Earth Day and began making investments in their environmental infrastructure."); Robert V. Percival, *Environmental Law in the Twenty-First Century*, 25 VA. ENVTL. L.J. 1, 6 (2007) (referring to the "remarkable burst" of legislative activity in the 1970s).

100. The hole in the ozone layer, for example, was successfully addressed. See R.T. Pierrehumbert, *Climate Change: A Catastrophe in Slow Motion*, 6 CHI. J. INT'L L. 573, 574 (2006) (noting that we were able to address the problem of the hole in the ozone layer with little sacrifice, and comparing it with global warming, which is quite different).

101. AN INCONVENIENT TRUTH, *supra* note 96. See also Sara C. Aminzadeh, *A Moral Imperative: The Human Rights Implications of Climate Change*, 30 HASTINGS INT'L & COMP. L. REV. 231, 232 n.4 (2007) (explaining that the U.S. is the nation with the largest share of emissions at 24%).

102. See *Around the Globe, 2007 is on Track to be a Year of Extreme Weather*, <http://www.cnn.com/2007/TECH/science/08/07/weather.extremes/index.html> (last visited Sept. 10, 2008) ("Four monsoon depressions, double the normal number, caused heavy flooding in India, Pakistan and Bangladesh."). See also Libby Sander, *Midwest Stays Underwater as Storm Death Toll Climbs*, N.Y. TIMES, Aug. 24, 2007, at A13.

103. AN INCONVENIENT TRUTH, *supra* note 96.

104. The summer of 2007 witnessed severe heat waves in southern Europe and in the United States Midwest. See *Heat Wave Takes Toll on Southern Europe*, INT'L HERALD TRIBUNE, July 24, 2007, available at <http://www.ihf.com/articles/2007/07/24/news/heat.php>;

There is no longer any serious debate that human activity is contributing to global warming.<sup>105</sup>

Not only is human activity contributing to global warming, but there is evidence that global warming is occurring at a much faster rate than experts had originally predicted.<sup>106</sup>

[S]cientists are trying new ways—any ways they can think of—to wake people up to this urgency. In January 2007, the Harvard Medical School’s Center for Health and Global Environment convened top climate scientists to hold a press conference . . . with national evangelical Christian leaders. They jointly delivered an “Urgent Call to Action” to the President of the United States to “protect Creation.” How many times have you seen scientists and Evangelicals holding a press conference together to protect Creation? . . . [They] declare[d] that every sector of our nation’s leadership . . . must act now . . . before it is too late . . . . Business as usual cannot continue yet one more day.<sup>107</sup>

Because of the urgent need to address greenhouse gas emissions now, it is worth exploring why environmental laws have not done more to clean up the environment during the past three to four decades. Some argue that

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*Heat Wave Claims 44 Lives in Southeast, Midwest*, [http://npat.newsvine.com/\\_news/2007/08/20/908431-heat-wave-claims-44-lives-in-southeast-midwest-cnncom](http://npat.newsvine.com/_news/2007/08/20/908431-heat-wave-claims-44-lives-in-southeast-midwest-cnncom) (last visited September 21, 2008). See generally Sara A. Peay, *Joining the Asia-Pacific Partnership: The Environmentally Sound Decision?*, 18 COLO. J. INT’L ENV’T L. & POL’Y 477, 478 (2007).

105. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2001: IMPACTS, ADAPTION, AND VULNERABILITY, available at [www.grida.no/climate/ipcc\\_tar/wg2/index.htm](http://www.grida.no/climate/ipcc_tar/wg2/index.htm). See also COMMITTEE ON THE SCIENCE OF CLIMATE CHANGE, CLIMATE CHANGE SCIENCE: AN ANALYSIS OF SOME KEY QUESTIONS, available at [http://nap.edu/catalog.php?record\\_id=10139#toc](http://nap.edu/catalog.php?record_id=10139#toc) (endorsing the finding that global warming is real and that human activity plays a role); Patrick Parenteau, *Anything the Industry Wants: Environmental Policy Under Bush II*, 14 DUKE ENVTL. L. & POL’Y F. 363, 368 (2004) (arguing that the Bush II administration has opposed measures to curb global warming); Peay, *supra* note 104, at 478-79.

106. See Nicholas D. Kristof, *The Big Melt*, N.Y. TIMES, Aug. 16, 2007, at A21 (noting that at the current rate of global warming the “‘permanent’ north polar ice cap may disappear completely in our lifetimes”). See generally SCIENCE MAGAZINE, Mar. 16, 2007, available at <http://www.sciencemag.org/content/vol315/issue5818/index.dtl> (theme issue on polar science that discusses global warming); Mary Christina Wood, *Nature’s Trust: A Legal, Political and Moral Frame for Global Warming*, 34 B.C. ENVTL. AFF. L. REV. 577 (2007).

107. Wood, *supra* note 106, at 586-87. “The international community is sounding the same alarm. . . . Tony Blair said to the world: ‘This disaster is not set to happen in some science fiction future many years ahead, but in our lifetime. Unless we act now . . . these consequences, disastrous as they are, will be irreversible.’ In February 2007, an international climate team released a report setting forth immediate policy initiatives to combat climate crisis, stating: ‘Humanity must act collectively and urgently to change course through leadership at all levels of society. There is no more time for delay.’” *Id.*

the Clean Water Act, the Clean Air Act, and other environmental laws have not proven more effective because they leave too much room for discretion, allowing politically powerful corporations to continue to pollute.<sup>108</sup> The consequences of this discretion have been especially apparent during the Bush II administration: its inclination seems to allow private enterprise free reign to impair the environment.<sup>109</sup> In discussing the growing rates of asthma and its many possible contributing factors, Robert F. Kennedy, Jr. noted that:

We know that fifty percent of these materials in our air in the eastern states, come primarily from 1100 coal-burning power plants in the Ohio Valley. Those power plants discharge these components illegally, . . . in violation of the Clean Air Act. . . . The Clinton Administration, the Justice Department, and the Environmental Protection Agency (“EPA”) began prosecuting them criminally because they were knowingly violating the criminal provisions of the Clean Air Act. There were seventy investigations and fifty-one prosecutions. . . . President [Bush] came into the White House and ordered the Justice Department and the EPA to drop these lawsuits. Never before in American history has a political contributor being prosecuted for criminal violations had such lawsuits dropped by an incoming president. The Justice Department called the action unprecedented. The

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108. *Id.* at 593-94. The heart of the problem is this: While the purpose of every local, state, and federal environmental law is to protect natural resources, nearly every law also provides authority to the agencies to permit, in their *discretion*, the very pollution or land damage that the statutes were designed to prevent:

Consider how our federal government is using this discretion frame to justify inaction in the face of climate crisis. EPA is the only federal agency charged by Congress to control air pollution. Even though the Clean Air Act (CAA) provides EPA with the authority to regulate carbon dioxide, EPA has steadfastly refused to do so. Viewed through the frame that EPA has presented to the American public, the air is simply an object of regulation, a nebulous commons, and EPA can use its discretion to permit pollution by the oil, gas, coal, and automobile industries, despite the fact that this legalized pollution will degrade the atmosphere so much that it will no longer support human civilization as we know it.

*Id.*

109. *See, e.g.*, John M. Broder, *Rule to Expand Mountaintop Coal Mining*, N.Y. TIMES, Aug. 23, 2007, at A1 (discussing Bush Administration’s decision to continue to allow coal mining via the destruction of mountaintops and pollution of surrounding waters. It was described by one environmentalist as “a parting gift to the coal industry.”). *See also* National Resources Defense Counsel, *EPA Will Not Act to Control Hazardous Contaminant*, Apr. 12, 2007, <http://www.nrdc.org/media/2007/070412b.asp> (last visited Sept. 10, 2008) (“Abdicating once more its responsibility to set regulations that protect people’s health, the U.S. Environmental Protection Agency (EPA) announced today that it will not initiate any regulatory action on perchlorate, a widespread, hazardous contaminant that puts millions of Americans at risk everyday.”).

four top enforcers at the Justice Department and EPA quit their jobs as a result of this.<sup>110</sup>

The reluctance to force corporations to take stronger measures to protect the Earth is readily apparent in our automobile mileage standards. Canada, Australia, Japan, the European Union, and China all have more stringent gas mileage regulations than we have. In fact, U.S. car manufacturers cannot sell cars in China because the American cars do not meet China's environmental standards. The technology to manufacture more fuel-efficient cars clearly exists.<sup>111</sup> This is not the time to allow corporations to buy their way out of irresponsible behavior.<sup>112</sup>

The Kyoto Protocol is another example of the United States' lack of serious effort to combat global warming. The Kyoto Protocol is an international effort to help reduce greenhouse gases.<sup>113</sup> It would require binding emissions reductions on the part of participating countries.<sup>114</sup> Virtually every advanced and many developing countries have signed onto the Kyoto Protocol.<sup>115</sup> In fact, the United States was also a signatory under

110. Kennedy, Jr., *supra* note 97, at 886-87. These 1100 power plants also emit unsafe levels of mercury which then settle into the water and land creating health hazards for those who eat the fish that swim in the affected waters or who drink the water. *Id.* at 887-88. *See also* Parenteau, *supra* note 105; Percival, *supra* note 99, at 2 (commenting on the Bush Administration's use of the Office of Management and Budget (OMB) to combat effective environmental regulations).

111. *See* NATIONAL RESOURCE DEFENSE COUNSEL, ENERGY FACTS (Jan. 2007), available at [http://www.nrdc.org/legislation/factsheets/leg\\_07011701A.pdf](http://www.nrdc.org/legislation/factsheets/leg_07011701A.pdf). *See also* NATIONAL RESOURCE DEFENSE COUNSEL, A RESPONSIBLE ENERGY PLAN FOR AMERICA 5, <http://www.nrdc.org/air/energy/rep/rep.pdf> (last visited Sept. 10, 2008) ("Technologies exist today that can deliver savings of more than 3 million barrels of oil per day by 2015.").

112. NATIONAL DEFENSE COUNSEL, *supra* note 111, at 5-6 ("The single most important action the administration can take to reduce our country's oil dependence is to raise federal fuel economy standards. . . . These fuel economy standards would also bring huge reductions in global warming pollution."). Shareholders have begun to call their corporations to account for their environmental impacts. *See* Dashka Slater, *Resolved: Public Corporations Shall Take Us Seriously*, N.Y. TIMES MAGAZINE, Aug. 12, 2007, at 22-27 (discussing ongoing efforts by shareholder groups to force ExxonMobil to improve its response to global warming and ExxonMobil's resistance thereto. One shareholder who leads the movement is also a nun and was urged to change her stance from focusing on the profitability of being green to morality. "[B]asically, he was saying, 'You should play the God card.' . . . The fact that a corporation can preoccupy itself with quantifying the financial risks of global catastrophe while ignoring the human and environmental ones is what [has led] . . . shareholders [to] use the power of their proxies to influence corporate behavior." *Id.* at 25-26). Currently, there are tax credits available in the United States for certain hybrid cars. *See, e.g., Additional Honda Vehicles Certified for Hybrid Tax Credits*, <http://www.irs.gov/irs/article/0,,id=164492,00.html> (last visited Sept. 10, 2008).

113. Paolo Galizzi, *Introduction to Reducing Greenhouse Gases: State Initiatives and Market-Based Solutions*, 17 FORDHAM ENVTL. L. REV. 101, 102-03 (2006); Peay, *supra* note 104, at 481.

114. Peay, *supra* note 104, at 481.

115. *Id.* The United States, China, India, Japan, South Korea and Australia subsequently formed the Asia-Pacific Partnership on Clean Development and Climate

President Clinton. When George W. Bush took office, however, he repudiated the Kyoto Protocol.<sup>116</sup> The Bush II administration's rollback of environmental regulations is alarming.

Like access to health care, we have the know-how to address greenhouse gas emissions. We simply have been unwilling to do so. "We already know everything we need to know to effectively address this problem . . . save, perhaps, political will."<sup>117</sup> Also like health care, doing the right thing environmentally is generally economically profitable as well.<sup>118</sup> Toyota and Honda, for example, the two leading car manufacturers of hybrid cars, have significantly increased their share of the U.S. automobile market, while Ford and GM have lost ground and are struggling to compete.<sup>119</sup>

Since we have the technological ability to significantly clean up the environment and can do so cost effectively, allowing people to be displaced from their homes, to die in heat waves, and to cause irreparable harm to the planet is both a sign of indifference and irresponsibility.<sup>120</sup> This is inconsistent with Love. Love encompasses compassion for ourselves and others. It requires empathy for victims of extreme weather conditions. Moreover, it requires action to prevent future extreme weather conditions to the extent possible.

Thus, if we approach environmental issues from a place of Love and compassion, we will take to heart the virtually unanimous scientific consensus that global warming is being generated by human activity and that it will cause massive dislocation, death, and suffering, and we will do what we can to correct it. The environment is arguably the single most important issue we face because without a habitable place to live, everything else is secondary. We need, therefore, to enforce our current environmental laws and assess the need for other, more stringent regulations. Mandatory greenhouse gas emissions standards that will significantly reduce CO<sub>2</sub> levels need to be established and enforced.

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Change. This partnership does not, however, implement binding emissions reductions. Instead it focuses on new technologies. *Id.* Both are needed.

116. Parenteau, *supra* note 105, at 365. The President repudiated the Kyoto Protocol, "notwithstanding the fact that the U.S. got exactly what it had demanded in the negotiations—namely, a cap and trade program to reduce greenhouse gases ("GHGs") and the use of 'carbon sinks' to generate credits for emission offsets." *Id.*

117. AN INCONVENIENT TRUTH, *supra* note 96.

118. See Kennedy, Jr., *supra* note 97, at 895 ("In 100% of the situations, good environmental policy is identical to good economic policy.").

119. Joe Benton, *Ford to Challenge GM for Single-Year Loss Record*, Sept. 14, 2006, [http://www.consumeraffairs.com/news04/2006/09/ford\\_losses.html](http://www.consumeraffairs.com/news04/2006/09/ford_losses.html) (last visited Sept. 10, 2008).

120. Cf. Aminzadeh, *supra* note 101, at 231 ("[C]limate change threatens food security, public health, property, and the livelihoods and lives of members of affected communities. . . [C]limate change threatens the human rights of those living in affected communities.").

The law can be used to bolster both grass roots and corporate activities that would minimize global warming. Through its taxing and spending powers, for example, the government can encourage environmentally correct behavior. Education is also critical. One of the simplest things that we can do immediately is to increase gas mileage standards.<sup>121</sup> Other parts of the world have already done this. While there are still many gas guzzling cars and sports utility vehicles on the road, the increasing cost of gasoline may lead more individuals to choose smaller, more gas-efficient or hybrid cars in the future.

A host of innovative, environmentally friendly ideas are beginning to make their way into everyday life.<sup>122</sup> For example, individuals are encouraged to do things like take reusable bags to the grocery store, purchase energy-efficient light bulbs, and use renewable energy where possible. The most energy-efficient appliances and other products are labeled with the Energy Star label, giving consumers the information they need to make the greenest choices. Fluorescent and light-emitting diode (LED) light bulbs are gaining in popularity, as are smaller hybrid and other fuel-efficient cars. The law can provide incentives for these and other environmentally friendly activities by providing tax credits or subsidizing their costs. But if large corporations are given a pass allowing them to continue to engage in activities that create widespread pollution, we will not make the kinds of environmental gains quickly enough that are necessary to bring the earth back to its normal temperature.<sup>123</sup> For that, government regulations must be strictly enforced.

#### CONCLUSION

The law does not stand alone, isolated from those who are impacted by its reach. Instead, the law is a tool for human justice. A Love-based approach to the law can provide a road map to lead us toward justice. The key to creating laws derived from Love is to stay connected to the spiritual energy of Love. This requires an open, compassionate, forgiving heart.

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121. See *supra* note 112 and accompanying text.

122. Cf. Thomas L. Friedman, *Go Green and Save Money*, N.Y. TIMES, Aug. 22, 2007, at A19 (discussing a plan in which companies will be rewarded “for the kilowatts they *save* customers by improving their energy efficiency rather than rewarding them for the kilowatts they *sell* customers by building more power plants”). See generally ALEX STEFFEN, *WORLD CHANGING: A USER’S GUIDE FOR THE 21ST CENTURY* (2006) (outlining everyday changes individuals can make to help the environment).

123. Wood, *supra* note 106, at 591. (“Political will grows overnight when citizens demand action. But those Americans who *are* awake to this crisis are focusing their energy on reducing their own carbon footprint rather than holding their leaders accountable. Our voluntary efforts are vitally important, but they also conceal a state of national chaos. We will not come into compliance with Nature’s Mandate in the very short time we have left through voluntary efforts alone. The fact that Americans are trying to solve global warming on their own tells us that we have lost our sense of governmental accountability in environmental issues.”).

Love demands compassion for and access to health care for all. It does not tolerate 43.6 million uninsured. Similarly, Love and compassion for everyone on the planet means making global warming the highest of priorities, including responsible governmental leadership.