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IN PRAISE OF THERMOSTATS†

John W. Reed*

Fifty years ago, a famous book was published that chronicled the sea change then occurring in society. David Reisman's *The Lonely Crowd*¹ made us aware of the decline of concern for the common good and the rise of the search for individual meaning. What was going on at that time was one of the most profound cultural changes that has ever taken place in such a short time. It was not just the beginning of the Me Generation but, it turned out, the beginning of the Me Culture, which continues to this day.

To consider those changes fully would require a semester-long seminar. (Incidentally, there is no crisis to which academics will not respond with a seminar.) But in a nutshell, the changes grew out of a quest for meaning and purpose in life and, in the process, a substituting of peer values for tradition as a cultural and ethical guide. Those of us who had teenage children in the 'sixties well remember the feeling that our families' values were often at odds with the values of our children's peers, and, in broad bands of society, the peers won. We listened with keen understanding to that haunting lament from *Fiddler on the Roof*: "Tradition." On the other hand, many of you, especially among the newest Fellows, were yourselves those very children who resonated with the new culture to the sometimes dismay of your parents. You drove them up the wall with the Beatles—music that now seems so innocuous.

Although we may differ as to the causes, it's clear that as we moved into the 'sixties and beyond, we were ripe for the search for purpose. The psychiatrist Carl Jung called the widespread feeling of meaninglessness the "general neurosis of our time." No longer were our children content simply to follow conventions. They wanted to know whether their lives had meaning and purpose. That sounded like a good question to ask; and indeed to ask the question might be thought to be the first step toward an answer. But the quest, rather than easing the feeling of meaninglessness, actually increased it. It is one thing to feel dissatisfied with life when you've simply followed the tradition. It's another thing altogether to have sought for something more to life and come up empty-handed. The failure to find that meaning and purpose led inexorably to new sets of mores and cultural patterns. With tradi-

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¹ D. RIESMAN, *THE LONELY CROWD* (1950).

tion discounted and nothing profound to take its place, the rule became "Anything goes." Old dos and don'ts fell by the way.

That is not to say that no good came out of the upheaval. To offer just one example, we became a more open society, and in consequence a more open profession. Think about the legal profession in the past half century. When I graduated from law school, my Jewish and Catholic classmates were largely foreclosed from employment in the big firms, and I understood why many of the best plaintiffs' lawyers were Jews and Catholics. That wasn't a big problem for black law graduates, but only because there almost weren't any. In my time as a teacher there were law schools that would not accept black applicants. Indeed I was a young faculty member at the University of Oklahoma Law School when the Regents denied admission to Ada Lois Sipuel on the sole ground that she was black. Now, a half-century later, much of that has changed. Not entirely, but greatly. So I do not say nothing good has happened. It has.

But I think it is undeniable that socially, culturally, and also professionally, we are more materialistic, more hedonistic, more self-absorbed than at any time in recent history. And in many ways the bar has become, in Riesman's phrase, a lonely crowd. Our profession historically has been tradition-bound. We are trained to look at precedent. As a profession, we used to have a relatively secure sense of meaning and purpose. We rather easily and familiarly referred to Magna Carta, the Declaration of Independence, the wisdom of Oliver Wendell Holmes. Unself-consciously we employed eloquent, even flowery, language that reminded us of our commitment to justice and to service. Now we seem to be reluctant to speak confidently and forcefully of our roles in the justice system. We leave it to others to say good things about us. Hear these words from a 1996 book:

The strength of our nation today does not reside so much in our Congress, or in the vast apparatus of the executive branch, because all seem to be so lacking in vision, and we seem not to have the resources to rebuild those visions. Our real strength is in our Constitution, the court system that our legal profession has (so far) been watchful to maintain, and the legions of free institutions that flourish under the umbrella of these two powerful protectors. Feeble as so many of these free institutions are, they are the main sinews of strength we have to bind over to our children and grandchildren.²

That's a powerful statement of our profession's service. Did it come from a lawyer? No, it is the statement of the late Robert Greenleaf, a Quaker who

² R. GREENLEAF, *SEEKER AND SERVANT* 238 (1996).

taught leadership skills to both profit and nonprofit corporate personnel. Not enough lawyers are making such ringing endorsements of our opportunities and the service we perform.

We tend to neglect the importance of our independence and freedom as advocates in an adversary system. Multidisciplinary practice—which Meredith Hellicar mentioned on Tuesday³—may or may not work in the commercial field and in office practice, but when it comes to conflict between citizens and government, the traditional independence and professional responsibility of the lawyer is a well-nigh indispensable bulwark of individual freedom.

Alternative dispute resolution—lauded by Robert Smith, also on Tuesday⁴—may not be an unalloyed blessing. There are undeniable advantages of economy in many ADR modes, especially in commercial matters. No one—least of all I as a procedure teacher—can deny that there are great benefits in arbitration and mediation and the like. But sometimes there also are disadvantages, to the party and to the judicial system, that impose unacceptable costs, and trial lawyers do not make that point often enough.

The jury has been dismembered in many venues. Jury trial seems to be sliding away. The trial bar needs to fight harder to preserve that institution that is so central to our freedoms. (On the point of preserving the jury, I think it was George Burns who said, “We got married by a judge. I should have asked for a jury.”)

Globalization of the profession—offices around the world—is occurring. Here, there are inevitable process dangers that we must guard against. I refer to the fact that the independent judiciary and free bar that are, in Greenleaf’s terms, so vital to our strength as a nation are almost nonexistent in those other countries with which we will engage. You may remember Newton Minnow’s little list:

In Germany, under the law everything is prohibited except that which is permitted.

In France, under the law everything is permitted except that which is prohibited.

In [Russia], everything is prohibited, including that which is permitted.

And in Italy, under the law everything is permitted, especially that which is prohibited.

Lawyers, especially trial lawyers, will have to be vigilant and pro-active in maintaining the essential core of our system of justice.

³ M. Hellicar, *The Practice of Law and Generation X*, 35 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 357 (2000).

⁴ R. Smith, *Mediation: Fast, Flexible, Creative, Cathartic*, 35 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 369 (2000).

Will it be easy to maintain our commitment to first principles? Not likely. But hear the words spoken by Antrobus to his wife Maggie in Thornton Wilder's *The Skin of Our Teeth*:

Oh, I've never forgotten for long at a time that living is struggle. I know that every good and excellent thing in the world stands moment by moment on the razor-edge of danger and must be fought for, whether it's a field, or a home, or a country. All I ask is the chance to build new worlds and God has always given us that.

In our profession as in the nations, the battle for freedom is never won; it must be fought continually. And God has always given us that chance.

In the same years that our society has lessened its reliance on tradition, there has been a loss of grounding by the legal profession. We look for guidance not to first principles but to our peers, and we take on their coloration. We resemble the child who, when reproached for his behavior, says, "But everyone is doing it." In short, we have become other-directed.

There clearly was a time when there was camaraderie, if not a unity, among the bar. You may have noted the item I included in a Barristers Newsletter about the well-known 19th century lawyer who volunteered to argue both sides of an appeal when his adversary could not afford to stay in town until the case came up in the Illinois Supreme Court. Here is his letter informing the adversary of the result:

My dear Mr. Bishop:

The Supreme Court came in on the appointed day and I did my best to keep faith with you. Apparently I argued your case better than my own, for the court has just sent down a rescript in your favor. Accept my heartiest congratulations.

Very sincerely yours,
A. Lincoln

To the extent that there were associations of lawyers, they were not specialized—as, indeed, lawyers themselves were not specialized. But, like the lonely crowd, each member following his own interest, his own quest for meaning, lawyers began gathering in clumps to pursue the particular self-interests of their category of clients—plaintiffs' lawyers, defendants' lawyers, railroad lawyers, insurance lawyers, admiralty lawyers, criminal lawyers. Each group had its own agenda, and that agenda often included hostility to lawyers on the other side. Loyalty to a tradition of service in the quest for justice took on the color of particular client interests, and the profession was fractured. And we went along—everybody's doing it.

In short, much of what Riesman observed and described—the lessened importance of tradition and the increasing influence of peer values—did indeed shape our society and our profession in the fifty following years, in many ways not for the better but for the worse.

To understand the past and the present is indeed to predict the future. To be truly responsible, we ought to look around us at the seeds of what will happen in our profession in the next fifty years, and to cultivate those seeds that give the most promise of a vital profession that will best serve the cause of justice in our rapidly changing society. I suggest that Riesman's book offers a clue to what we need in order to do that.

Even as he clearly described the oncoming peer culture, which he characterized as other-directed, Riesman suggested that a new psychological mechanism was emerging that is appropriate to the more open society. He called it a "psychological gyroscope." "This instrument, once it is set by the parents and other authorities, keeps the inner-directed person 'on course' even when tradition . . . no longer dictates his moves. The inner-directed person becomes capable of maintaining a delicate balance between the demands upon him of his life goal and the buffetings of his external environment."⁵

Riesman hastened to point out that the metaphor of the gyroscope shouldn't be taken literally—that the inner-directed person may well be capable of learning from experience and can be sensitive to public opinion in matters of external conformity. In short, the gyroscope is not an automatic pilot. But, details aside, the author offered little gloom and no doom. Rather, he saw hope in the survival of a core of inner-directed individuals who would build on the new forms that emerge from the anguish and turmoil created by the conflict of values—a conflict clearly visible when he wrote in 1950 and continuing even today in our increasingly diverse and fractured society.

What is called for, obviously, is the presence of men and women whose characters are firmly grounded in the humane values of service, and caring, and a passion for justice, and who are sufficiently inner-directed that they can withstand the buffeting of what Kipling called "foul circumstance." These are the men and women who have a psychological gyroscope.

As I reread *The Lonely Crowd*, I thought about other metaphors I have heard used to describe the same or similar phenomena—the metaphor of the thermometer and the thermostat, for example. The world is filled with people who merely record the temperature of their environment. They do nothing to change it; they just report it. They may not make it worse, but they certainly don't make it better. They just "go along." They do what everybody else is doing. They are the classic group that is "other-directed." Their polestar is

⁵ RIESMAN, *supra* note 1, 16-17.

their peer group. They are the thermometers of this world. The thermostat, on the other hand, sets the temperature, controls the temperature. It certainly is aware of the temperature; it senses it, but then it works to change it as necessary to reach the desired setting. People who seriously seek to set and to improve the temperature of their environment are the thermostats of this world, and their number is all too few.

Another metaphor derives from a story I heard in my childhood. It is the story of the schoolboy who approached his science teacher after a class about dinosaurs. He said, "Miss Friedman, you told us about dinosaurs and showed pictures and stuff, but there aren't any of them any more. Who killed the dinosaurs?" "Nobody," she said, "nobody killed the dinosaurs. The climate changed and they all died." The lesson, the moral, is clear, of course. We may not be valiant slayers of dinosaur-size problems. But we can be men and women who help change the climate, and the problems then die.

These somewhat glib metaphors of gyroscope and thermostat and dinosaur-slaying climatic change are not intended to oversimplify the complexity of the problems we all face in our profession and the difficulty of solving them. Though an academic, I do have some perception of how difficult it is out there in the trenches. But I offer one important basis for hope among the trial bar.

Riesman's book title, *The Lonely Crowd*, suggested a sense of alienation, a loss of common bond and common values, and, as I said, his characterization has been borne out by the experience of these fifty years. Indeed, it seems to have been borne out with a vengeance in this day of the Internet and virtual reality. In recent weeks there have been several press commentaries on the findings of a Stanford University study of the lives of Internet users. That study suggests that the lack of face-to-face contact is making for an increasingly lonely populace. That's as true in our profession as it is in society at large. Yet we all know there is strength when people of purpose band together. Each member is made stronger, and the whole is greater than the sum of the parts. Indeed, the whole becomes a source of strength for its various parts. I ask you to entertain the possibility that this organization, this International Society of Barristers, may be such a source of strength for each of you. Although as individuals all of us are beset with imperfections, the fact is that you were made a part of the Barristers because of your integrity, your professional excellence, and your amicable relationships with others. You obviously are inner-directed; your ethical standards obviously are balanced by a psychological gyroscope. You are thermostats in your profession. You affect the professional climate that can cause the dinosaurs to die.

Each of us knows, however, that such tasks are difficult when tackled alone. It is like the simple advice in the little book entitled, *All I Ever Really Needed to Know I Learned in Kindergarten*. The child's advice recorded

there is: "It is best to hold hands and stick together." In this good company, there is support and strength. In this good company there is hope and promise. You are no longer alone. And the Barristers Society, whose influence is greater than the sum of all of us individuals, can and must support us and remind us constantly of who we are, and what we are, and what we are about. That is why I am grateful that you and I are part of this body of trial lawyers which is faithfully fulfilling the premise and the promise of its founders thirty-five years ago. In the words of the poet, "For this good company, good God, we give Thee thanks."