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John W. Reed
University of Michigan Law School, reedj@umich.edu

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. . . AND THE INVENTION OF THE FUTURE TENSE†

John W. Reed*

I. MILLENNIAL ANGST

This is the last session of the last meeting of the International Society of Barristers in the 1900s. Though the Third Millennium technically does not begin until 2001, the turn of the "odometer" from 1999 to 2000 leads us all to think of this as the end of a century and of a millennium. The pivotal date is yet ten months away, but the pundits are already issuing their lists, both profound and trivial—the greatest inventions, the best books, the worst natural catastrophes, the trial of the century (of which there are at least a half dozen), the most influential thinkers, and on and on.

Often there is in these lists the implicit question whether, over time, the world is becoming a better place or is mired, perhaps permanently, in man's inhumanity to man. There is, indeed, a great deal of millennial angst.

For most of us in this room, the sources of that angst range from the general to the professional to the personal.

General

Our dissatisfactions with the world in general include the decline of dignity and civility and excellence. In the words of the title of Jack Liber's recent article in the *Barristers Quarterly*, we live in a world that is "rude, crude, and lewd."[1] Indeed, there was a commercial during the Super Bowl telecast advertising a forthcoming movie starring Eddie Murphy; the movie's title is "Life," and—you're not surprised—it's rated R. Life seems increasingly brutal and coarse. You may have seen the recent cartoon showing a man entering a yogurt shop; the cartoon's caption read: "The closest Earl ever came to getting some culture. " We seem to be in the midst of a great dumbing down, in danger of entering a new cultural Dark Ages.

And with our laudable desire to be tolerant of others, our own society is being balkanized—a term never more fraught with meaning than now.

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* Thomas M. Cooley Professor of Law Emeritus, University of Michigan; Academic Fellow, Editor, and Administrative Secretary, International Society of Barristers.

[1] Liber, *Professionalism in Our "Rude, Crude, and Lewd" Society*, 33 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 409 (1998).

Around the world, and in our own country, ethnic and religious differences create more divisions and less harmony than I can remember in my lifetime. As the comedian Bill Maher put it:

> There used to be magazines everyone read, like "Life" and "Time." Now there's "Gay Indian Biker" magazine. You don't just get your coffee; you get your decaf frappucino latte. Everybody has a magazine and a channel. There are 500 channels and 500 magazines, and we wonder why we're not united as a country.[2]

We live in the midst also of a loss of faith in long-established institutions. The government, schools, the church, charitable organizations—their flaws have been revealed to us and we feel betrayed and cast adrift. There is even a loss of faith in the traditional concept of family. To what and to whom, then, can we turn?

Professional

We are also troubled professionally as we come to the end of the millennium. There are many developments that make life uncertain for us as lawyers: the growth of alternative methods of resolving disputes, for example (if there are no trials, how can there be any trial lawyers?); the bureaucratization of the judiciary, for example; the management of litigation by the budget officers of insurance companies, for example; the migration of lawyers, even partners, from firm to firm, for example. And, for example, the tendency to equate zealous advocacy with insolence and arrogance—the type of advocacy that someone has called "ice hockey in business suits." Now we may be headed for the practice of law not out of Suite 725 in the National Bank Building but out of a virtual office whose address is www.reed@lawyer.com (especially "com," for commerce).

Pervading all these problems—perhaps causing them—is the economic shift. In our profession there is a tension between the practice of law as a means of livelihood and the practice of law as a means of public service. That tension is inevitable; it has always been there, and always will be. But as this century and millennium have waned, the balance has shifted, and the economic model of the profession, the bottom-line mentality, has gained greater and greater ascendancy. I know, personally, many lawyers who are profoundly troubled by that shift and who find the practice of law, though lucrative, ultimately unrewarding.

Professionally, then, there is millennial angst.

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[2] MOTHER JONES, Jan./Feb. 1998.

Personal

And, finally, the personal. I do not presume to think that I can know and describe your own personal feelings at the millennium's turn—whether angst or not. I'm sure that as members of this accomplished group you take some pleasure in the high degree of your achievements, though I would remind you that it is hard to be sure what is achievement and what is good luck since good luck looks so much like something you've earned. Certainly, though, you are justifiably proud of your accomplishments. But tempering that joy of achievement are elements of anxiety about the uncertain future of the world, of our country and, surely for each of us, anxiety about the future of our families, our loved ones. And, course, there is stress—the stress of faster communication and overcommitment of our time and strength. Stress, someone has said, happens when your gut says, "No way," and your mouth says, "Sure, no problem." Things have come to a pretty pass when the best part of waking up is nothing more than "Folger's in your cup."

Even those for whom religious faith is an anchor sometimes find it difficult to reconcile that faith with the messy world we live in. They smile knowingly when they read E. Y. Harburg's little verse:

> No matter how I probe and prod,
> I cannot quite believe in God.
> But oh! I hope to God that He
> Unswervingly believes in me.
> . . *The Agnostic*

I suspect many of us, in our rational selves, look forward to the excitement of the brave new world ahead but also, in our emotional selves, are loath to leave the known of this century for the unknown of the next. And the danger is that in looking back with nostalgia we will, like Lot's wife, turn into useless pillars of salt.

As society changes, institutions must change and the legal system is no exception. It too is changing, apparently faster than ever before—everything about it: the courts, the lawyers, the law schools, the laws themselves. I would bet that, like me, you somehow have the feeling that we're moving to a new structure of the profession and that, if we're just patient, the changes will end, the profession will settle down again, and we can adjust to it. But that won't happen, of course. The only constant is change, and you and I simply live during a segment of that change, which will not end in our time, or for that matter, ever after. As Robert Frost said, "In three words I can sum up everything I've learned about life: It goes on."

So, with what frame of mind do we dismiss this millennium and its final century? With what attitudes, what goals, what commitments do we practice law in the year 2000 and beyond?

At last year's meeting in Orlando, Pat Williams, general manager of the Orlando Magic basketball team, spoke of "five secrets for a magical, miraculous way of life."[3] I am not a so-called motivational speaker and I have no list of dos and don'ts for you—no advice for you, like "don't sweat petty things, and don't pet sweaty things," or advice like "don't resent change, since, as Malachy McCourt said, 'Resentment is like taking poison and waiting for the other fellow to die.'" But I do offer some thoughts about your professional and personal lives as we move across the divide into the Third Millennium.

Recently I encountered a poetic phrase in a book by the Englishman George Steiner that caught my attention and provided the title for my remarks. Like those who ask the familiar question, "How can a good God let bad things happen to good people?," Steiner states that the injustices and unspeakable cruelties that abound in this world justify atheism insofar as they prevent God from what would be even a first coming. "But," he then says profoundly, "I am unable, even at the worst hours, to abdicate from the belief that the two validating wonders of mortal existence are love and the invention of the future tense. Their conjunction, if it will ever come to pass, is the Messianic."[4]

". . . the two validating wonders of mortal existence are love and the invention of the future tense."

II. THE FUTURE TENSE

There is in each of us a strong tendency to live in the past and the present, and to pretend that the future will simply be more of the same. We expect to wake up each day and, as in the movie "Groundhog Day," find that it is yesterday all over again—day after day after day. Lawyers, as a tribe, believe that to be true more than does the general population because, beginning in law school, we have been trained to look at precedent—at what courts *have* done—and to divine from that precedent what courts likely will do in the future. As a consequence, we are more backward-looking than most people. We are like passengers in the railroad observation car at the back of the train, watching the low hills recede behind us, unaware of the majestic mountains ahead.

I went to law school in Ithaca, New York. Cornell's campus—far above Cayuga's waters—is on high ground above Ithaca's business district. A main

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[3] 33 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 419 (1998).
[4] G. STEINER, ERRATA: AN EXAMINED LIFE 171-72 (1997).

route from campus to town is an uninterrupted six blocks of steep decline known as Buffalo Street. Snow and ice frequently coat Buffalo Street hill, making descent a perilous adventure. It is part of Ithaca lore that in the early days of the century "Mrs. Tichenor," a wealthy, elderly woman of great dignity and reserve, was seen being driven down Buffalo Hill in her two-horse sleigh. Her horses were shod for the ice, but the rails of the sleigh were smooth; and though the horses continued to go down the hill, due west, the sleigh with its human burden skidded almost sideways, facing south. As the horses moved on down the hill as intended, with the sleigh at almost a right angle, Mrs. Tichenor and her driver looked steadfastly straight ahead—south—refusing to acknowledge that their world was askew.

What a wonderful parable for so many in our profession! The enterprise is moving one way and we are facing another, clinging determinedly to the illusion that nothing is amiss.

> [Too many of us] hold certainty dearer than truth. We want to learn only what we already know, to become only what we already are. And some of us even embrace "The Principle of the Dangerous Precedent," put forth by the British academic who said, "Nothing should ever be done for the first time."[5]

Our profession desperately needs the imaginative ministrations of its most creative practitioners, men and women such as yourselves. It *is* being reshaped, and the question is whether you and I are role players in that reshaping, or mere observers going along for the ride. As Yogi Berra said, "Predictions are hard to make, especially about the future." But the future will be more predictable if you and I address it, if we lift our heads out of the sand, out of our own daily concerns, and participate in shaping the changes that are taking place.

The unknowns of the future tense create stress, of course. I jokingly referred to stress a few moments ago, but I submit that a degree of stress, obviously within limits, is not a negative but a good. We do much of our most creative work under stress. The oyster produces the valuable Mikimoto pearl when it is irritated by a grain of sand. Left in its own contented state, the oyster produces nothing greater than an hors d'oeuvre on the half shell.

Another analogy is the vineyard. One of my sons-in-law is a knowledgeable wine salesman. He tells me that the best wines come from vines grown in rocky, shaley soil, in areas of limited rainfall. With less water, the vines put down roots as far as twenty feet and the grapes have less sugar and are less fleshy. The vinedressers trim the vines and hope for stress in terms of water

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[5] William Sloan Coffin, *Diversity and Inclusion*, MT. HOLYOKE ALUMNAE QUARTERLY Winter 1999, at 23.

shortage. The grapes then draw more nutrients from the soil and develop more concentrated flavor. The best grapes come from vines under stress. (Speaking of grapes and wines, you perhaps have heard the statement by the feminist sociologist: "Men are like fine wines. They all start out like grapes, and it is our job to stomp on them and keep them in the dark until they mature into something you'd want to have dinner with.")

Pearls of great price and grapes of distinguished vintage are the products of stress. Each of us surely would like less stress, but never doubt the relationship between a degree of stress and creativity. And facing the future tense provides plenty of stress. Let the Barristers welcome that future creatively. The characteristics and abilities that, by definition, qualified you to be Barristers qualify you to take lead roles in determining the future. They not only qualify you, they charge you with that responsibility, because each of us is accountable for the faithful stewardship of his or her talents. And you are an extraordinarily talented people.

III. LOVE

But talent is not enough; and here is where we come to the other part of Steiner's aphorism: The validating wonder of our mortal existence is not only the fact that there is a future—what he calls the invention of the future tense—but also love. Is it illegitimate to speak of love in a professional setting like this? It is simply sappy? Merely maudlin?

Not for me it isn't. First of all, I love this organization and I love its members and their wives and husbands. I have been privileged to be a part of you for twenty years. Individually and in the aggregate I count you as dear friends and even as family. I am led to believe that each of you, over time, has found similar friendships and warmth among your fellow members. There are few things more important than friends, and these relationships strengthen us, and arm us as we return to meet the challenges of daily practice and private lives. Indeed, this warm and caring fellowship is the genius of the Barristers.

But I want us to think about love as being part of one's professional qualities, part of a lawyer's equipment. It may seem strange for those of us who are trained in the craft of careful thought and rational discourse to talk about love. How is it relevant, to use the lawyer's term? Is love part of a Barrister's answer to the uncertainty of the Third Millennium?

I suggest that love is a part, an essential part, of being a true professional, a true Barrister. I use the term "love," of course, in the sense of charity—what the theologians call agape, what Noah Webster calls "unselfish and benevolent concern for the good of another." Love in the sense of affection for and commitment to another.

Love in the sense of caring is not only relevant, it is central to being a good person and to being a good lawyer. A different world cannot be built by indifferent people. Love animates; it gives purpose and leads to dedication. It is not mere tolerance of others. I think it was Garrison Keillor who said of one of the citizens of Lake Wobegon, "Olaf learned to behave without making people mad at him, which is not the same as being a good person."

Every one of us knows that the state of mind with which a person does something is critical to its meaning. Intent, purpose, motive—these make a difference in the legal effect of the thing done. Not only the legal effect but the personal and social effects as well depend on intent, purpose, motive. Referring to Don Quixote, Oliver Wendell Holmes said, "If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make . . . his world ideal." If our daily work is the mere performing of professional tasks—research, depositions, trials, negotiations, even personal counseling of clients—then that work, no matter how skillfully done, is Sancho Panza's work; and we are likely to feel unfulfilled. But if, despite the corrosive effect of our years in the trenches, we can do that work with the soul of an idealist—that is, with generosity and helpfulness and caring—that is to say, with love—then we will make our profession more nearly ideal, and our personal lives as well.

Mentioning Mr. Justice Holmes reminds me of another Holmes—Sherlock Holmes—who well knew that one's purpose affects meaning. Holmes and Dr. Watson went on a camping trip. After a good meal and a bottle of wine, they lay down for the night and went to sleep. Some hours later Holmes woke up, nudged his faithful friend, and said, "Watson, look up at the sky and tell me what you see."

Watson replied, "I see millions of stars."

"What does that tell you?"

Watson thought for a moment and replied, "Astronomically, it tells me that there are millions of galaxies and potentially billions of planets. Astrologically, I observe that Saturn is in Leo. Horologically, I deduce that the time is approximately a quarter past three. Theologically, I can see that God is all powerful and that we are small and insignificant. Meteorologically, I suspect that we will have a beautiful day tomorrow. What does it tell you?"

Holmes was silent for a second, then spoke: "Watson, you idiot, it tells me that someone has stolen our tent. "

It *is* essential to know what the real question is. And that's a lawyer's skill.

All of this brings me to my constant theme, as I have spoken to you over the years: the importance and the responsibility of the individual, especially the talented individual. A year ago we lost the presence of Craig Spangenberg, a founder of the Barristers and one of the great men of the American

trial bar. He was talented, skilled, and he bore in himself these two validating wonders of mortal existence—love and the future tense. He cared about others, not only his family and friends and fellow Barristers—which was easy for him, as it is for us—but he cared deeply about the future of his profession, about the legal system and the law. He not only served his clients with dedication but he had a noble vision for the profession and he gave of himself prodigiously to the controversies of his time. He cared—that is, he loved—and he mightily affected the future. Like the poet's description of the original St. Nicolas—Nicolas, the Bishop of Myra—Craig was "prodigal of love." And when I identify love as a central theme of his life, I do not mean talking about it but translating it into action. He embodied the words of Eliza Doolittle's wonderful song to Professor Henry Higgins, in *My Fair Lady:* "Don't speak of love. Show me!"

In the late fourth century, St. John Chrysostom, a church father and the patriarch of Constantinople, stated a theory of ethics in which one learns how to behave by imitating or copying exemplary models. Although that self-evident truth is at least 1600 years old, too many believe that ethics and civility can be taught by lecturing, by preaching—that lawyers can be hectored into behaving professionally. "Do as I say," not "Do as I do." But as a teacher, if I am shallow in my thinking, shoddy in my preparation, disrespectful of my students, too busy to deal with them personally, what good will it do to lecture them on the qualities of a responsible, caring lawyer? And so I have an obligation to offer them, in Chrysostom's terms, something to imitate, to copy.

And so does each of you. Each has the obligation to be a model, an exemplar. You are being watched by young associates, by colleagues, by clients, by judges and juries, by the public. You are only one, but you *are* one. That's what the International Society of Barristers is all about—not just having delightful, restorative times together, as here, but serving our profession as a leaven, a leaven made up of those two validating wonders of mortal existence: love and the invention of the future tense.

Is there cause to be hopeful? Does optimism depend on memory loss? There is indeed much fear and hatred and injustice in this world and therefore much cause for pessimism. But Israel's Abba Eban once said, "We do the right thing only after exhausting all the alternatives." Like Eban, I am a short-term pessimist but a long-term optimist. We will do the right thing in the end.

The good news is that we live in a moral universe, and the point is to love, to hope, and to have courage. Welcome to the Third Millennium!