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PERSONAL FULFILLMENT IN THE CHANGING WORLD OF LAW PRACTICE: OPPORTUNITIES AND OBSTACLES

*Howard Lesnick**

So many people today have expressed their appreciation to Phyllis Beck, Carrie Menkel-Meadow, and Eleanor Myers that I will resist the temptation to take my turn. They are all former University of Pennsylvania colleagues and old friends, and I have always been hopeful that I will grow up to be more like them. I do have to say this, however, to and about Eleanor: I have been to more conferences than I care to remember, and ran a lot of them during the days I did that sort of thing, and I have *never* been to a conference as good—as synergistic, thought-provoking, and just plain interesting—as this one.

I. FULFILLMENT

My topic this afternoon is, What are the opportunities for and the obstacles to personal fulfillment in the changing world of law practice? The first thing I have to acknowledge is the range of consequences that might give one personal fulfillment. I remember vividly, a year or two after I came back to Philadelphia from CUNY in the late '80s, one of my Professional Responsibility students saying, in response to a question asking what drew them to the profession, that he had noticed that lawyers wear nice clothes. (He obviously was not referring to law teachers). And he was quite serious.

I also recall meeting a former student on the street one day. He had taken one or two courses in Labor Law with me and was at the time practicing in the field on the management side. As he left to try a discharge arbitration for an employer client, he said he was off to “kill for the sake of killing.” He didn't say that the grievant was a deadbeat or that the union had been abusing the grievance system and needed to be reined in; nor that everyone is entitled to a lawyer. You may think that he was indulging in a bit of gallows humor, but I knew the fellow and he meant it. That's what gave him personal fulfillment.

More broadly, many will say, personal fulfillment? That's easy: money and power. Now my answer is, if those, or either of the above, are examples of what gives you personal fulfillment, go for it; no one would ever dream of asking me to give advice about opportunities and obstacles in those areas. (Seventy years ago, Karl Llewellyn wrote a little book that beginning law students were encouraged to read, in which he had some thought-provoking advice responsive

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to such goals).¹ I start with those examples to remind myself not to make assumptions about another person's goals in life, and to reassure you that I am not about to say that this-or-that are the goals you *ought* to have. What I will say is invitational and exploratory rather than didactic and prescriptive. I cannot, and in any event will not try to, prove that I am right; I will only put some thoughts before you and ask you to what extent you find some resonance with them.² If you don't, you will still get full CLE credit for being here.

What opportunity for personal fulfillment through a useful and satisfying life does law practice appear to me to hold out? I will mention five themes (which overlap the lists that Larry Fox and Carrie Menkel-Meadow each spun out this morning). The *first* is that a lawyer stands with those in trouble. I am not talking about "zeal" or "loyalty" in the reified sense that we use those terms in professional-responsibility law. There is some room in an ethical universe for withholding one's judgment of a client who is in more trouble than he or she deserves or, desert apart, has no one standing between him or her and justice. Making an argument that, but for your engagement on a client's behalf, you would not want to prevail is at times a fine thing to do. So long as these principles are not mindlessly invoked in cases where they are grievously inapt, or turned into abstractions to which you *must* be committed because of your role, they have, I believe, moral strength and a modicum of nobility.³

The *second* potentially fulfilling activity of lawyers is helping people to navigate their way through obstacles in a wide range of human contexts: forming businesses, enabling businesses or family members to separate, drafting agreements, wills, and letters—in short, facilitating the passage of people through the rapids they must traverse in this law-drenched world. The interests of the people involved are sometimes mostly divergent, at other times primarily congruent; a lawyer's help may be necessary in both cases.

I am not talking primarily about being a "lawyer for the situation" or a mediator, but about the opportunity that a lawyer often can have, although acting as counsel for one of the parties, to enable both his or her client and the others as well to reach a goal they regard as a good outcome. That is something that can give real satisfaction. Of course, there is a difference between what I have described and throwing tacks in front of another person's car so that a client's car can move around more freely. Although some people get fulfillment from doing that, it is not what I am talking about.

The *third* theme is that the first two give a lawyer an opportunity to *empower* (if I may use a word that makes some squirm) the client. What do I

1. KARL LLEWELLYN, *THE BRAMBLE BUSH* 119-27 (1930/1960).

2. As he often does, Jim White has been a wise guide here:

I invite the reader to check what I say against what he or she knows . . . Rather than making a case that is meant to stand or fall by the degree to which the unwilling are compelled to assent to it . . . I mean to present a set of reflections . . . to be tested against the reader's own.

James Boyd White, *Economics and Law: Two Cultures in Tension*, 54 *TENN. L. REV.* 161, 167 (1987).

3. The best analysis of this subject I have read was written by Bill Simon when he was a third-year law student. William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 *WIS. L. REV.* 30, 130-43 (1978).

mean by that? You doubtless know the line that all of Western thought is a series of footnotes to Plato. My favorite Platonic footnote call is in the *Gorgias*, where Socrates says to Callicles, "Has any citizen hitherto become a better man through the influence of Callicles?"⁴ Although Socrates' challenge was not addressed to a lawyer, it is especially arresting for us. For to me the question asks, What does it mean to represent someone?

Of course in our world to say that a lawyer's job is to help a client to become a better person immediately conjures up the specter of "paternalism," telling a client that he or she will be better off going to jail for ten or twenty years or paying thousands (or millions) in damages. But it need not be thought of in such highly polarized terms. It doesn't mean that clients should lose their homes, their liberty, or their lives—even if they deserve it. It *does* mean that representing a person is more than staving off disaster or getting some property away from the other fellow. What would it do to our idea of representing someone if it included—was not limited to but included—the idea of helping him or her to become a better person, one who can more fully act as an enfranchised person in the world, as—in Isaiah Berlin's wonderfully apt words—"a subject, not an object,"⁵ and in that way come to understand his or her self-interest in a way not always so highly polarized with the interest of others.

The *fourth* theme is that advocacy in law is a relatively peaceful way of seeking justice. Justice and peace are often posed as competing goods, and law offers a way of "fighting" without real violence. Of course law attracts people who have a certain degree of aggressiveness in them, but it usually takes verbal rather than physical forms—a Rule 11 motion⁶ rather than fists, clubs, or knives. In a world that continues to see so much violence far worse than fists, clubs, and knives, verbal aggression (even a Rule 11 motion) doesn't look quite so bad. Although, as Bob Cover so arrestingly reminded us,⁷ the ultimate power of law is its willingness to turn to violence, in many, many instances it uses that willingness as an unspoken means of calling disputants to account according to non-violent

4. PLATO, *GORGIAS* 515 (Walter Hamilton trans., Penguin Books 1960).

5. SIR ISAIAH BERLIN, *Two Concepts of Liberty* in *FOUR ESSAYS ON LIBERTY* 118, 131 (1969). The passage in which the quoted words appear deserve recall here:

I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's, acts of will. I wish to be a subject, not an object: to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be . . . deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them. This is at least part of what I mean when I say that I am rational, and that it is my reason that distinguishes me as a human being from the rest of the world. I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for my choices and able to explain them by reference to my own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that it is not.

Id.

6. FED. R. CIV. P. 11.

7. ROBERT M. COVER, *Violence and the Word*, 95 *YALE L. J.* 1601, 1628-29 (1986).

procedures and to norms that in some manner can justly claim to respond to the call of justice.

Finally, practicing law is the pursuit of a craft that can be endlessly challenging. Becoming better and better at tic-tac-toe must lose its appeal at some point, while becoming better and better at chess may remain perpetually rewarding. Of course, there is a lot of law practice that is “the same damned thing over and over,” one day after another, but I think you know what I mean about its endlessly challenging qualities. Law practice, moreover, has the great added value, which for most of us chess does not, that there is a purpose to one’s skill. Although lawyers may be prone to exaggerate its importance, law and law practice affect people’s lives for better and worse, and that can be a major validation of the satisfaction that comes from mastery of the craft.

II. OBSTACLES

What are the obstacles to the kinds of fulfillment I have sketched? Some are exacerbated by the changing world of practice, but my view is that these are not specific recent developments like multidisciplinary practice. I have more in mind such fundamental factors as the endlessly increasing division of labor, bureaucratization, and hierarchy in the practice setting. When I was a fledgling practitioner some forty years ago, a friend who wanted to be a tax lawyer went with what was then a large firm, ninety lawyers. (There was at that time only one in the country that was larger). The work the firm gave him was to qualify pension plans under Section 401 of the Internal Revenue Code.⁸ That is all he ever did, and I felt sympathy for him.

Today, of course, a ninety-lawyer firm is one of those “unstable mid-size firms” we read about in the *National Law Journal* and *The American Lawyer*. That ongoing change makes it harder and harder to find fulfillment in most of the respects I spoke of above, because you are a less and less significant and informed cog in an increasingly large and complex wheel. This phenomenon isn’t a recent development. The firm I worked for after my second year of law school was in the last stages of a treble damage action that had been in the office for 12 years; among the 14 lawyers working on it was a partner who had never spent one hour on any other matter from the time he was a first-year associate. Nevertheless, it is certainly true that the endless move toward growth in size and complexity, and the accelerating consolidation and rationalization of the business-client world, have made matters much worse. These factors foster, what is a major problem for lawyers in the best of circumstances, an increasing detachment from consequences, a deepening denial of responsibility.

So recent changes certainly don’t yield any grounds for optimism. (I have to confess, though—what those of you who know me know too well—that I don’t move easily to optimism. I think of myself as an optimist because I believe that there is a pretty good chance that we will not destroy all life on the planet within the next couple of decades). I recall with delight a moment when, during a

8. 26 U.S.C.A. § 401 (1999).

university-wide faculty meeting, a faculty gadfly had said that a new initiative was going to work out very badly. The President responded by referring to “Cassandra-like prophecies,” prompting this reply: “Yes, everyone knows that Cassandra was a prophet and was put to death, but what a lot of people forget is that all of her prophecies came true.” So the pertinent question for me is not one of being an optimist or a pessimist but of justification for belief.

I don’t see much basis for espying a brave new world out there, whether MDP comes in or is held at bay. The unbridled role-differentiation that has characterized the profession for many, many years—and tells us that it is just and proper to surrender our norms, our identity, to those of the profession—has a dominating influence, powerfully imprinted from the earliest days of a neophyte lawyer’s education and powerfully reinforced by the demands of the emergent business world.

Broadly reinforcing that influence, moreover, is the corrosive effect of the broader culture. James Boyd White, in a fine essay initially addressed to law students, has given us a salient description of the deeper meaning of “the commercialization of law practice”—not such minor symptoms as advertising and firm marketing directors, but:

a professional life in which attention is focused not on the meaning of what the lawyer is actually doing, as a lawyer, so much as upon the market for his services. This in turn reflects a larger reconception of the nature of human life, especially our shared life, as an essentially economic activity, a process often described as one in which self-interested actors rationally pursue their goals, seeking to gratify whatever tastes or preferences they bring to the process.⁹

We can, I suggest, recognize that as a description not merely of law practice but of the world we live in and, increasingly, of the world we apparently will *be* living in.

III. POSSIBILITIES

One rejoinder to all of this gloom-and-doom is, “That’s just reality, son. Are you trying to say it’s *not* like that?” My reply is that I am not talking about “it,” but about you and me as individuals. Particularly to those of you who have not yet (or have recently) entered the practice, the question I want to look at is whether Bob Dylan was right when he said, “There must be some way out of here.”¹⁰ The conference title suggests that we are examining the question, In the new roles emerging for lawyers, what should be the rules? The truth is that I am less and less interested in what the ABA’s *Ethics 2000* project, the ALI’s long-awaited *Restatement of the Law Governing Lawyers*, or any existing set of rules, say or come to say. It was asserted this morning that MDP is a flood-tide with which lawyers will have to ride along. I tend to agree with that, but the more pertinent observation is that, when there is a flood tide, unless you are Moses or

9. James Boyd White, *Meaning in the Life of the Lawyer*, 26 CUMB. L. REV. 763, 765 (1995-96).

10. BOB DYLAN, *ALL ALONG THE WATCHTOWER* (Sony Music 1967).

Joshua, you cannot step into the river and tell it to stop and back up a bit. What you *can* do (sometimes) is swim to the shore and get away from there quickly. So my advice to you is to let system-wide solutions go, although you can work on them if that interests you. But in the meantime, look for your own answer, in *your* practice life.

There is more play in the joints than you may think, and the deeper inhibition comes, not from the threat of discipline or malpractice suits, but from ingrained habits of thought. Over three centuries ago, George Fox, founder of the Religious Society of Friends, challenged his hearers in these words: "You will say, Christ saith this, and the apostles say this; but what canst thou say?"¹¹

Remember, Fox was a fervently religious Christian. He was talking about people he regarded as the greatest witnesses to the Truth. Yet he called to us, Don't tell me what is authoritatively pronounced. "What canst thou say?"

The question is how we can tame the influences of this world on our mind and our work situation, so that, living our lives "by our own pondered thoughts,"¹² we can find our own way toward fulfillment as a lawyer. The answer, of course, is that I don't know. But let me recall a few lines from Robert Pirsig's *Zen and the Art of Motorcycle Maintenance*:

You look at where you are going and where you are, and it never makes sense. But then you look back at where you've been, and a pattern seems to emerge. And if you project forward from that pattern, then sometimes you can come up with something.¹³

When you look back, what do you see? That's a question I *can* answer: When you look back, you see what came before. In some Buddhist traditions every day begins with a service in which the names of "Buddhas and ancestors" are recited, a lineage that goes back twenty-five hundred years. Now *there* is a practice calculated to give one some perspective on what's important and what isn't. For many of us, it's our parents, our religion, what we learned in kindergarten, what we came to law school with (to be told by many law teachers, forget everything you ever learned so that we can teach you to be a lawyer). So the question, *how* to get somewhere other than where professional or cultural norms want you to go, is not the central one, for it will not even come into view until you know where it is you *want* to go.

In that regard, perhaps my list of "themes" may strike a chord; perhaps not. I will close with a wonderful passage from one of my favorite sources, Robert Bolt's classic study of Sir Thomas More, *A Man for All Seasons*. At a time when the net is closing around him, More confronts his loyal friend, the Duke of Norfolk, seeking to provoke him into breaking off their friendship:

[W]hat would you do with a water spaniel that was afraid of water?
You'd hang it! Well, as a spaniel is to water, so is a man to his own

11. GEORGE FOX. *The Testimony of Margaret Fox*, in *THE WORKS OF GEORGE FOX* 50 (AMS Press Inc. 1975).

12. ROBERT NOZICK, *THE EXAMINED LIFE: PHILOSOPHICAL MEDITATIONS* 15 (1989).

13. ROBERT M. PIRSIG, *ZEN AND THE ART OF MOTORCYCLE MAINTENANCE: AN INQUIRY INTO VALUES* (1974).

self. I will not give in because I oppose it—I do—not my pride, not my spleen, nor any other of my appetites, but I do—I! (*MORE goes up to him and feels him up and down like an animal. . . .*) Is there no single sinew in the midst of this that serves no appetite of Norfolk's but is just Norfolk? There is! Give *that* some exercise, my lord.¹⁴

So I will end on that '90s theme: *Exercise*.

14. ROBERT BOLT, *A MAN FOR ALL SEASONS* 123-24 (1960).