

CHANGE

“This is the dawning of the Age of Aquarius” - from the 1967 musical Hair.

While no doubt dating myself, I recall this rather sappy song being an anthem for a certain segment of my generation during our coming of age. It represented a push back against a countervailing force in our culture - the one that enshrined the buck as the ultimate display of worth, honored masculine hubris as the finest demonstration of strength and resisted change as a descent into chaos. While this characterization may be thought extreme - consider in our own legal culture the continued consternation over law as a “business” rather than a “profession”; recent concerns expressed by (male) law students that non-doctrinal courses represent the feminization of the legal education and the resistance of the profession and academy to a wide array of changes - away from hourly billing, Socratic instruction and zealous advocacy for and recognition of only one interest in a dispute, for just a few examples.

To be sure, the ferment of the “Aquarian” 1960's represented an extreme in our heritage of experimentation and continual re-invention. While at times veering into self absorption, this impulse has also inspired the creative engine that attracted many millions to our shore from old, atrophied societies. The recent election of Barack Obama is emblematic of the uniquely American ability to shed the old and imagine a different future. This tendency has been with us from the beginning, notes David Reynolds in his masterful history of the U.S. during the age of Jackson, *Waking Giant*. He depicts a roistering time that brought stunning accomplishments in engineering (the Erie Canal and steam engine); the Arts (the development of an American literature with Poe, Hawthorne, Thoreau and Melville); religion (with the rise of scores of home-grown religious prophets and communities - chief among them being Joseph Smith and the Mormon Church) and the political ascendancy of “the people” over the moneyed classes with Jackson’s election. Virtually nothing we experience now is without precedent in those times. John Quincy Adams expressed paranoia that was positively Nixonian in its intensity. The media was so overtly biased that present carping over Fox News and the New York Times is yawningly predictable. The “class war” of today is just another repeat of the fight between Jackson’s Democrats and the US Bank. The love affair (among some) with Sarah Palin’s hokey mom frontierism and moose-dressing doesn’t stray from the throngs of 1840 who voted for Harrison because he was a regular guy, born in a log cabin.

The constant theme of reinvention and overturning atrophied habits of thought and practice runs like a steel thread throughout our history. Innovation, intellectual freedom and a willingness to explore a different (and perhaps better) path is part of our national character. Also enduring is the thread of institutional conservatism. While some might have been singing about Aquarius in the ‘60's, a Governor (and later conservative icon) was promising to crush the Berkeley protesters; adults were increasingly angry about the generation gap with their kids who said, “Don’t trust anyone over 30”; a Solid South rejected a Democratic party they believed had abandoned them for a civil rights movement and all the while, the huge engine of business dwarfed the economies of everywhere else in the world. This is, after all, a wealthy and conservative culture.

These two paths: one of conservatism and the preeminence of financial success - the other marked by ferment and experimentation continue to mark our cultural development. It is no surprise that they are deeply imbedded in the current shifts and struggles facing the practice and teaching of law.

This is certainly found in the legal academy. Since the seminal work of University of Washington's Andy Benjamin and colleagues in the 1980's, it has been hard to dispute the growing distress reported by law students. Depression, substance abuse and a growing sense of alienation mark the experience. While the initial response was but a trickle of articles in the 1990's, it has grown in this decade to a flood. The most recent example is the relatively nascent "Balance in Legal Education" section in the American Academy of Law Schools. Larry Krieger, Bruce Winnick, Marjorie Silver, Barbara Glesner-Fines, Gerry Hess and Michael Schwartz are among the leading forces in this movement. Search any of these names and you will find thoughtful explorations of a new approach to legal instruction. Clinical education is another vector (in Susan Daicoff's terminology), as these departments have more than come into their own. Clinics are the "stars" of the Carnegie Report, which wonders, "Why aren't law students being trained to be *lawyers*, rather than law professors?" Why indeed. In eight years teaching practice - related courses at U.W and Seattle U., I have always been impressed by the *hunger* students have for instruction that is both practical and supportive. What I have found remarkable, in both experience and review of related literature, is that law students who are, by nature, extremely bright, passionate and accomplished, come to doubt the first, disdain the second and develop an exceedingly limited definition of the third. These young people, who any of us would delight in their character and accomplishments if they were our own children, enter an apprenticeship of self-doubt in choosing the course of the law. Ten years ago, instructors who sought to nurture these gifted young people, who, after all, are still *so young*, would be dismissed as odd. While this may still be the case, a growing number in the legal academy are gaining strength in mutual commitment to this goal.

Outside of the legal academy, we are beginning to re-examine the impact we have on our clients' well-being in ways that, while still scoffed at by the majority in the field, are gaining in credence. Litigation as a business is still seen as a profit center. Litigation as a human activity is also being recognized as an often needlessly destructive. What has always been ironic about the litigation mind-set is that lawyers are trained to understand the justice and meaning of each side of a dispute. Many in our society distrust lawyers because we are able to argue either side of a dispute. At the same time, our strength is that we are able to understand what is vital to both disputants. More are turning their attention to communicating to the other side what is meaningful to their client, and conversely helping their clients understand and honor the legitimate concerns of the other. The death grip that attorneys extolling the "my client's interests are the only interests" had on the profession is weakening with the rise of Susan Daicoff's Comprehensive Law disciplines - Therapeutic Jurisprudence, Restorative Justice, Collaborative Law and the like.

As a family lawyer, I am most familiar with the latter. As such, I can report from the "trenches" that practitioners are embrace Collaborative Practice with a passion that may be found unseemly by many in the field. Yet lawyers of many years experience express marvel at how this avenue rekindles their joy in practice. People speak unabashedly of "healing" in the

practice of law. Collaborative practice is most assuredly not a way to riches. It is a way to peace of mind and a sense of meaning in this chosen profession. Lawyers view this as a path to *creative* practice.

We find our profession reinventing itself in a myriad of ways. Rules of confidentiality change to acknowledge the interests of society. "Civility" has become a value in practice. Collaborative Practice promotes valid interests in addition to those of one's client, alone. Hourly billing is being reconsidered. Attorneys are exploring meditative practices. The Millennial Generation of lawyers are seeking balance of family and practice with an insistence unheard of only 10 years ago.

It is likely that the conservative interests in our profession will still control the conversation for some years to come. However, the push - the striving - to reinvent this often hidebound profession is vibrant. That's the change to watch for, I think, in the coming years.