

2011

"Millennial Momentum" for Revising the Rhetoric of Lawyers' Relationships and Roles

Amelia J. Uelmen

Bluebook Citation

Amelia J. Uelmen, *"Millennial Momentum" for Revising the Rhetoric of Lawyers' Relationships and Roles*, 9 U. St. Thomas L.J. 446 (2011).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Law Journal. For more information, please contact lawjournal@stthomas.edu.

ARTICLE

“MILLENNIAL MOMENTUM” FOR REVISING THE RHETORIC OF LAWYERS’ RELATIONSHIPS AND ROLES

AMELIA J. UELMEN*

INTRODUCTION

This symposium on *The Lawyer’s Role and Professional Formation* posited the question of whether our conception of the professional role should influence our conception of the professional formation of students, and if so, how. This essay flips the framework by beginning with a reflection on the characteristics of students now entering law school. It then considers how these generational sensitivities and values may bring fresh insight to our conceptions of the professional role. Finally, it queries how these insights might, in turn, inform how legal educators and the legal profession as a whole introduce law students and new lawyers to conceptions of their professional role.

The basis for this analysis is admittedly tentative and anecdotal. The first graduate students in the “Millennial” generation, frequently delineated as born between 1982 and 2003,¹ have entered law school and the legal profession only in the past few years. The initial research on these generational trends obviously does not yet benefit from the insight or depth of

* Visiting Lecturer, Georgetown University Law Center; Director, Institute on Religion, Law & Lawyer’s Work, Fordham University School of Law (2001–July 2011). Many thanks to Heidi Altman, Brandon Berkowski, Paul D. Butler, Michael John Cedrone, David Koplow, Howard Lesnick, Carrie Menkel-Meadow, Russell G. Pearce, Robert K. Vischer, Ian S. Weinstein, and Robin West for helpful discussions about the draft and comments on the manuscript. Particular gratitude to Susanna K. Fix, not only for thoughtful edits, but also for sharing insights on her own Millennial experience. Finally, thanks to the editors and staff of the University of St. Thomas Law Journal for their excellent suggestions and all of the care they put into the editing process.

1. MORLEY WINOGRAD & MICHAEL D. HAIS, *MILLENNIAL MOMENTUM: HOW A NEW GENERATION IS REMAKING AMERICA* 1 (2011). *But see* Pew Research Center, *Millennials: A Portrait of Generation Next* 4 (Feb. 2010), <http://pewresearch.org/millennials/> (marking the Millennials as beginning with those born after 1980).

historical distance.² Further, some of the material that grounds this particular discussion—student essays, seminar conversations, and a YouTube video-poem—is not the usual stuff of law review articles. But with these caveats, I hope to begin fleshing out an intuition, which for me is becoming more than a hunch: With the Millennials’ entry into law school and the legal profession, legal educators and the legal profession as a whole have the opportunity to revisit some of the legal profession’s seemingly tried and true norms and review the potential for structural change.

Part I of this essay gives a brief overview of some of the characteristics of the Millennial generation discerned thus far. Part II considers these characteristics in light of a broader quest: the effort to develop a language that pushes beyond the framework of “ontological individualism.”³ Part III delineates a few aspects of the rhetoric of lawyers’ relationships and roles, and queries how conversations with law students and lawyers of the Millennial generation might help us to reframe these issues and push the envelope on professional norms and structures. The essay concludes with a few observations on how Millennial openness to cross-cultural models might provide further insight for revising and refining our rhetoric about lawyers’ relationships and roles.

I. MEET THE MILLENNIALS

In *Millennials Rising*, an early generational study, Neil Howe and William Strauss offered the following snapshot of the Millennial generation:

As a group, Millennials are unlike any other youth generation in living memory. They are more numerous, more affluent, better educated, and more ethnically diverse. More important, they are beginning to manifest a wide array of positive social habits that older Americans no longer associate with youth, including a new focus on teamwork, achievement, modesty, and good conduct. Only a few years from now, this can-do youth revolution will overwhelm the cynics and pessimists. Over the next decade, the Millennial Generation will entirely recast the image of youth from downbeat and alienated to upbeat and engaged—with potentially seismic consequences for America.⁴

In *Millennial Momentum*, a study published in 2011, Morley Winograd and Michael Hais noted, “Millennials, more than other generations, support racial and ethnic equality and inclusion, and look for win-win solutions that

2. This brief essay does not provide an exhaustive survey of the research on Millennials to date.

3. ROBERT N. BELLAH, RICHARD MADSEN, WILLIAM M. SULLIVAN, ANN SWIDLER & STEVEN M. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 276 (1985) (defining “ontological individualism” as “the idea that the individual is the only firm reality”).

4. NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* 4 (2000).

advance the welfare of everyone, whether it's their friends or all of society."⁵ Based on a spring 2009 survey, the study observed that Millennials expressed a significantly greater degree of optimism than aging Baby Boomers about their financial futures and the economy.⁶

Millennials look for meaning, both in what they buy and in the companies for which they choose to work.⁷ Considering Millennial reactions to the popular sitcom, *The Office*, Winograd and Hais note: "Millennials laugh at the quaint beings working in cubicles, certain that they will never be forced into such a life and if, unfortunately, they are, confident that they somehow can change its culture in ways that will benefit everyone."⁸ For 88%, the "opportunity to have an impact on the world" is an important consideration when choosing an employer.⁹ As one twenty-something blogged:

The ideal career path for me would be something that either is in the field of making the world a better place, where I can make ends meet simply by pursuing [sic] my ethical interests—or a job with high enough pay and flexible hours that allows me to make ends meet and do all the things that change the world for the better, but sadly pay nothing.¹⁰

Millennials are also confident that they can change broader social structures. According to Winograd and Hais, for this generation, Sarah Palin was "completely off base" when she declared in her vice-presidential nominee acceptance speech that "the world is not a community and it doesn't need an organizer."¹¹ Instead, "what the world needs most," according to this generation, "is thousands of community organizers, working at the local level to solve their own country's and the world's problems, linked electronically, of course, to friends around the globe."¹²

Interest in socially-oriented business has spiked, pushing leading business schools to develop programs that help respond to student interest in

5. WINOGRAD & HAIS, *supra* note 1, at 31. Winograd and Hais also note that Millennials "have taken to heart the lessons imparted to them as toddlers when their parent sat them in front of the TV to watch a show about a purple dinosaur named Barney. The program made it clear that even though on the outside Barney was 'as different as he could be, on the inside he was just like you and me.'" *Id.*

6. *Id.* at 121; see also Pew Research Center, *supra* note 1, at 2 (noting Millennials' 90% positive response to the question of having enough money or that will meet long-term financial goals despite the tight job market).

7. See WINOGRAD & HAIS, *supra* note 1, at 139 ("Millennials are determined to change the world of work once and for all. They want to create economic entities whose products or services reflect their generation's values and whose work environments generate energy and excitement among employees who, in turn, feel a sense of ownership and commitment to achieving an organization's goals.").

8. *Id.* at 138.

9. *Id.* at 151 (citation omitted).

10. *Id.* at 151–52 (quoting Asher Platts on MCAmerica.org).

11. *Id.* at 226.

12. *Id.*

learning, as one business lab director put it, how to “optimize both the bottom line and the social mission” of a business.¹³ He explained: for this generation, “[i]n the final analysis, businesses aren’t just businesses; they’re also people eager to connect with community.”¹⁴

Millennials also place a high priority on relationships. In response to the query of what is “one of the most important things in their lives,” 52% responded being a good parent; 30%, having a successful marriage; 21%, helping others in need; and only 15%, having a high paying career.¹⁵ Similarly, Millennials aspire not to the Generation X project of “work-life balance” but rather to “work-life blending.”¹⁶ Millennial Ryan Healy explains:

I would never dream of saying I want a Family/Life balance or I want a Friend/Life balance. . . . This whole notion of needing to separate work and life implies that your career, which takes up 75 percent of your day, is something you simply try to get through so you can go home and do what you really enjoy for the other 25 percent. . . . I don’t want to choose. I want a blended life.¹⁷

Winograd and Hais surmise that “employers who wish to attract top talent will have no other choice but to accommodate the generation’s demand for such things as telecommuting, flexible hours, child care, and round-the-clock access to technology to create a seamless blend between working and raising a family.”¹⁸

The “reversal” of the more cynical Generation X mindset toward a more hopeful Millennial outlook is graphically portrayed in a video-poem by Jonathan Reed, *Lost Generation*.¹⁹ The video scans down a series of seemingly pessimistic propositions about the certainty of a dark future:

I am part of a lost generation
 And I refuse to believe that
 I can change the world
 I realize this may be a shock but
 “Happiness comes from within”
 is a lie, and
 “Money will make me happy”
 So in 30 years I will tell my children

13. *Id.* at 153 (quoting Adlai Wertman, director of the Society and Business Lab, University of Southern California Marshall School of Business).

14. *Id.*

15. Pew Research Center, *supra* note 1, at 2.

16. See *Millennials Want Work-Life Blending (Not Balance)*, YPULSE (Jan. 10, 2012), <http://www.ypulse.com/millennials-want-work-life-blending-not-balance>.

17. WINOGRAD & HAIS, *supra* note 1, at 205 (citation omitted).

18. *Id.*

19. See Jonathan Reed, *Lost Generation*, YOUTUBE, (Nov. 30, 2007), http://www.youtube.com/watch?v=42E2fAWM6rA&feature=player_embedded. This video originally appeared as an entrant in the August 2007 YouTube AARP U@50 Video Contest, open to people between the ages of eighteen and thirty. Contestants submitted short videos on the subject of what they expect their lives to be like at age fifty.

they are not the most important things in my life.
 My employer will know that
 I have my priorities straight because
 work
 is more important than
 family
 I tell you this
 Once upon a time
 Families stayed together
 but this will not be true in my era
 this is a quick fix society
 Experts tell me
 30 years from now I will be celebrating the 10th anniversary of
 my divorce
 I do not concede that
 I will live in a country of my own making
 In the future
 Environmental destruction will be the norm
 No longer can it be said that
 My peers and I care about this earth
 It will be evident that
 My generation is apathetic and lethargic
 It is foolish to presume that
 There is hope.

The video then retraces its steps, scanning up through the same propositions, but reading them in reverse:

There is hope.
 It is foolish to presume that
 My generation is apathetic and lethargic
 It will be evident that
 My peers and I care about this earth
 No longer can it be said that
 Environmental destruction will be the norm
 In the future
 I will live in a country of my own making
 I do not concede that
 30 years from now I will be celebrating the 10th anniversary of
 my divorce
 Experts tell me
 this is a quick fix society
 but this will not be true in my era
 Families stayed together
 Once upon a time
 I tell you this
 family
 is more important than
 work

I have my priorities straight because
 My employer will know that
 They are not the most important thing in my life.
 So in 30 years I will tell my children
 “Money will make me happy”
 is a lie, and
 “Happiness comes from within”
 I realize this may be a shock but
 I can change the world
 and I refuse to believe that
 I am part of a lost generation

In the course of teaching law school seminars, my own discussions with law students have given me reason to believe that there is something more to this “reversal” than a sentimental fad. For example, in the past few years I have noticed a marked generational shift in discussions with students about the potential for change in law firm schedules.²⁰ In 2000, the year that the market bubble pushed large-firm starting salaries for first-year associates to \$125,000, my own efforts to start a serious conversation with my Generation X colleagues about more flexible schedules in exchange for less money were met with deep pessimism. Very few associates at the firm where I worked thought it was even worth having a discussion, either because partners and other powers that be in the firm could not be trusted to keep their end of the bargain, or because even raising the issue at that point might in some way disturb the market’s lock-step push toward higher salaries.²¹ An email from one of my colleagues baldly expressed the heights of this Generation X cynicism: “Shut up, Uelmen, we want the money.”

When I began teaching law school seminars and ethics classes in 2001, I observed that my students also seemed fairly cynical about the extent to which law firms could be responsive to young lawyers’ desires to spend more time with family and in other non-work activities. The general sentiment seemed to be that large firms allowed very little room for creative pushback and that if you sign up for that kind of job, then you must take it on the terms dictated by large-firm culture.

In the past three years, however, the same class readings with students at the same point in their professional development have generated a completely different discussion. The general tenor of the discussion now seems to move toward this question: “If this lifestyle isn’t working for people, then why shouldn’t we try to change it?” In listening to current law students’ reflections on their aspirational work arrangements, I detect a profound resonance with the “reversal” at the center of the “Lost Genera-

20. One of the springboards for these class discussions is an essay that I wrote about the process of trying to work out a part-time arrangement at a large law firm in the late 1990s. See Amelia J. Uelmen, *The Evils of “Elasticity”: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 *FORDHAM URB. L.J.* 81 (2005).

21. *Id.* at 115 n.118.

tion” poem: “My employer will know that / I have my priorities straight because / work / is more important than / family” is becoming “I tell you this / family / is more important than / work / I have my priorities straight because / My employer will know that / they are not the most important thing in my life.”²²

It is still early to draw conclusions about the characteristics or cultural trajectory of the Millennials. Further, the perspectives of students as they observe the legal profession from the distance of the law school classroom may differ substantially from the perspectives of young lawyers immersed in the workforce. And, of course, generational analysis is just one measure of the seismic shifts that have in recent years shaken the foundations of both legal education and the legal profession as we have known it.²³ This essay’s analysis is admittedly tentative in part because it is difficult to dissect a moving target with so many moving parts.²⁴

In spite of these limitations, it is possible to discern some key questions and themes for the research agenda moving forward. Part II considers how the current generational trajectory might impact professional formation from the perspective of language, focusing on the disjunction between this generation’s aspirations and the rhetorical tools that they have to express them. Part III then considers how this insight might shed light on the language we use to describe the lawyer’s role and bring students and young lawyers into the legal profession.

II. MILLENNIALS: REACHING BEYOND THE RHETORIC OF “ONTOLOGICAL INDIVIDUALISM”

If it is true that Millennials are less individualistic, more sensitive to the priority of building relationships, and more open to team building, a

22. Reed, *supra* note 19.

23. See, e.g., Stephen R. Strahler, *New Law Firm Reality: The Changes Rocking the Legal Profession Will Outlast the Recession*, CRAIN’S CHI. BUS., Feb. 15, 2010, at 15, 15–17; Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 10, 2011, at B5; ALI-ABA CONTINUING PROF’L EDUC. & ASSOC. FOR CONTINUING LEGAL EDUC., EQUIPPING OUR LAWYERS: THE FINAL REPORT OF THE CRITICAL ISSUES SUMMIT (2010).

24. An important “moving part” in generational analysis is the debate over the changing nature of young adulthood. Some of the idealism and optimism that Millennials express into their late twenties and early thirties may also be interpreted as the effect of many in this generation not yet having fully assumed adult responsibilities. See, e.g., JEFFREY JENSEN ARNETT, *EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES* 16 (2004) (describing the stage of “emerging adulthood” as “an age of high hopes and great expectations, in part because few of their dreams have been tested in the fires of real life. . . . The dreary, dead-end jobs, the bitter divorces, the disappointing and disrespectful children that some of them will find themselves experiencing in the years to come—none of them imagine that this is what the future holds for them.”); see also Robin Marantz Henig, *What Is It About 20-Somethings?*, N.Y. TIMES MAG., Aug. 22, 2010, at MM28, available at <http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html?pagewanted=all> (describing debates over whether “emerging adulthood” constitutes a distinct stage in developmental psychology). I am grateful for conversations with Paul Butler and David Koplou, which led me to more nuanced analysis on this point.

first question might be whether these characteristics will pave the way for new descriptions of the professional role—descriptions that are more receptive to incorporating these qualities.

In my recent conversations with students, I have noticed that the students' critiques of received wisdom about professional life at times focus on the need to find a philosophical framework and a language to articulate substantive values. The voice of one of my most thoughtful students expresses this well. I will call him Brian. He is from the Midwest and worked for a few years before law school. Brian is in his mid-30s, right at the cusp of the Millennials. What follows is an excerpt from his 2010 seminar essay, which focused on the search for a framework for making professional judgments and a language to express these values:

As an impressionable college English major, I, along with several of my closest friends, fell under the sway of a charismatic professor who was a reckless proponent of secular relativism and never missed an opportunity to trash . . . anything that sounded like objective truth. It was not long before he had us talking and thinking like him and applying postmodern relativism to every situation. I left college believing that every aspect of mainstream society was part of an evil capitalistic conspiracy. One hallmark of all of this thinking was that it was reductive.

The further I got from college and the longer I lived in New York, the more I felt a sense that all the discourses to which I was exposed were similarly reductive. My job at the time—as a “Photoshop guy” and “web guy” for a big modeling agency—showed me two unsavory sides of business: (1) the degree to which the whole person is not respected in the fashion industry; and (2) the degree to which certain types of businesses are willing to abuse employees and act unethically in other ways in order to meet short-term goals.

This was also the post-9/11 Bush period, and I became very sensitive to the tenor of mainstream discourse concerning America's foreign and domestic policy. With its “my-way-or-the-highway” self-satisfaction, American discourse seemed entirely incapable of anything like cultural understanding or introspection, and it seemed dangerously reductive in its willingness to overlay black and white notions of good and evil on such a complex global situation.

In short, my job, my country's politics, and my own educational background all compounded in the years before I came to law school and left me with a strong sense that something very important was missing. All of these things seemed misguided and reductive. Nonetheless I did not have the language or tools to

think about these things and to criticize them. I kept applying my own black and white reductive discourse to them.²⁵

On one hand, Brian's analysis reflects a kind of classic generational pushback, expressed in profound dissatisfaction with educational, economic, and political models as he had experienced them thus far. But in a closer read, and reading between the lines, I also see something new—a certain hope, and perhaps even confidence, that it might be possible to “reverse” these trends and even find the language to get beyond a “black and white reductive discourse.” For example, in the part of his essay discussing economic structures, he indicates a readiness to dig deeper, even if that means hard work. He writes:

Business today is more or less conducted to enrich and empower private parties; a mere byproduct of the work, in some sense, is that it also meets people's needs. In other words, it has not incorporated a proper respect for the fullness of the human person—but it could.

When he wrote his essay, I do not think that Brian had in mind the 1985 sociological study of American individualism, *Habits of the Heart*.²⁶ (It was not part of the assigned class reading.) Nonetheless, his analysis closely tracks the study's conclusions about the rhetorical limitations of American discourse. Interviewing more than 200 white, middle-class Americans, sociologist Robert Bellah and a team of researchers traced some of the consequences of what they found to be Americans' “first language” of individualism, which “values independence and self-reliance above all else.”²⁷ What they termed “ontological individualism”—“the idea that the individual is the only firm reality”—had resulted in a society in which “every social obligation was vulnerable, every tie between individuals fragile.”²⁸

What is especially interesting about the *Habits of the Heart* analysis is the distinction it drew between the language that the interviewees used and their lived experience. As the research team described, it was not that they encountered moral monsters, or even “empty selves”—most interviewees were, in fact, “serious, engaged, deeply involved in the world.”²⁹ But to the extent that they could only speak the language of “radical individual autonomy,” they seemed to have very little capacity for imagining themselves as something more than “arbitrary centers of volition.”³⁰ Even if they did

25. Original student essay on file with the author. Quoted and slightly edited with the student's explicit permission, on file with the author.

26. BELLAH ET AL., *supra* note 3.

27. ROBERT BELLAH, RICHARD MADSEN, WILLIAM M. SULLIVAN, ANN SWIDLER & STEVEN M. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* viii (1996).

28. BELLAH ET AL., *supra* note 3, at 276.

29. *Id.* at 81.

30. *Id.*

sense that a deeper framework was at work in their lives and their decisions, they did not possess the language or cultural concepts to articulate it: “They cannot express the fullness of being that is actually theirs.”³¹ The *Habits of the Heart* researchers concluded that there is something seriously missing in our cultural framework: “[I]ndividualism alone does not allow persons to understand certain basic realities of their lives, especially their interdependence with others. These realities become more salient as individual effort alone proves inadequate to meet the demands of living.”³²

As Brian’s essay reveals, he is acutely aware that the rhetorical tools he has received through his education and work experience—the language of postmodern relativism, consumerism, and polarized politics—do not enable him to express “the fullness of being” that is his.³³ But on the cusp of the Millennial generation, and perhaps as an early expression of the generational “reversal,” he describes these cultural tendencies as “misguided and reductive,” and he reaches for rhetorical tools that will help him to “think about these things and criticize them.” Within and between the lines of his text, one can see that Brian actually believes that it might be possible for businesses to respect “the fullness of the human person” and for his country to move beyond its “‘my-way-or-the-highway’ self-satisfaction.” Brian and his generation still move in a world in which it seems that people are reduced to “arbitrary centers of volition,”³⁴ and “every social obligation [is] vulnerable, every tie between individuals fragile.”³⁵ But, nonetheless, Brian believes that these trends can be reversed. He also believes that it is worth the effort to push beyond the limits of “reductive discourse” in order to develop the linguistic tools he needs to articulate these hopes for positive and constructive change.

Read in the light of the *Habits of the Heart* analysis, Brian’s essay gives a glimpse of how Millennials are beginning to see with increasing clarity that “individualism alone” does not give them the rhetorical or cultural tools that they need to understand their world, “especially their interdependence with others.”³⁶ These limitations become increasingly salient, not only as each person journeys through life and experiences the extent to which “individual effort alone proves inadequate to meet the demands of living,”³⁷ but also as society moves through time. Brian articulates well how the rhetoric of “ontological individualism” has failed to equip his generation with the kind of “cultural understanding or introspection” which could help us to face our current “complex global situation.” Brian and his

31. *Id.*

32. BELLAH ET AL., *supra* note 27, at ix.

33. BELLAH ET AL., *supra* note 3, at 81.

34. *Id.*

35. *Id.* at 276.

36. BELLAH ET AL., *supra* note 27, at ix.

37. *Id.*

generation may not have ready answers, but they are poised to work toward change.

III. “MILLENNIAL MOMENTUM” FOR THE RHETORIC OF LAWYERS’ RELATIONSHIPS AND ROLES

This section considers how a Millennial “reversal” might be applied to various aspects of the rhetoric we use to describe lawyers’ relationships and roles, and how this in turn might impact the professional formation of law students and new lawyers.

A. *Building on Efforts to Dislodge Individualistic Notions of Client Autonomy*

It would be fair to say that a rhetoric analogous to that described in *Habits of the Heart* as “ontological individualism” has claimed an important place in modern descriptions of lawyers’ relationships and roles. In many descriptions of the lawyer’s professional role, America’s “first language” of individualism, which “values independence and self-reliance above all else,”³⁸ is still predominant, in the sense that individualistic notions of autonomy—and in particular “client autonomy”—seem to be the undisputed centerpiece.

In his work to define what it means to ground lawyer-client relationships in respect for human dignity, legal ethicist David Luban notes:

Americans are in love with freedom of choice. Legal historian Lawrence Friedman, analyzing contemporary American legal culture, refers to us as “the Republic of Choice.” The fact that we don’t like someone else telling us what to do suggests that the offensive feature of paternalism lies in its violation of autonomy—that paternalism offends human dignity because autonomy is, or is the basis of, human dignity.³⁹

Luban distinguishes autonomy as understood in American culture from Kant’s understanding of “auto-nomy” meaning self-legislation, giving law to oneself and acting accordingly. Luban explains:

That is surely not what we mean by “autonomy” when we think of freedom of choice in the ordinary sense prevailing in American culture. Freedom of choice means doing whatever I want; that is, not having to do what others want me to do, or even to consider except in a calculating way what others might wish. Freedom of choice means consumer sovereignty. It means don’t tread on me. It means my way or the highway. The difference between this and Kantian autonomy could not be sharper. For Kant, autonomy lies in the power to act on the basis of duty rather

38. *Id.* at viii.

39. DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* 75 (2009).

than inclination, whereas in American culture, with its strong libertarian streak, it means the power of acting on inclination rather than duty. Kantian autonomy represents freedom achieved through stoic self-control and self-command; it means reasoned self-restraint. Freedom of choice represents casting off restraints.⁴⁰

When “client autonomy” is understood in such individualistic terms, for some the consequence is to see the heart of the lawyer’s professional role as simply facilitating the client’s freedom of choice. According to Daniel Markovits, the “professionally detach[ed]” lawyer should be completely effaced in front of the client.⁴¹ He analogizes to John Keats’s idea of “negative capability” as the starting point for a description of lawyer fidelity to clients.⁴² Through self-effacement, the poet maintains “‘no identity’ of his own” and so becomes a medium for some other body.⁴³ Likewise, the professionally detached lawyer effaces herself, “or at least her personal beliefs about the claims and causes that she argues,” so as to let her otherwise inarticulate clients speak through her.⁴⁴ In Markovits’s view, the good lawyer steadfastly suppresses her own ego in order to speak her client’s mind.⁴⁵ Images of lawyers as mere technicians or as “hired guns” are rooted in a reverence for client-autonomy, defined as casting off restraints, and as a consequence, lawyer self-effacement before a client’s demands.

In past decades, however, legal ethicists have engaged in a rich and creative discourse about how to break through the constraints of a cramped notion of autonomy and role morality in order to see clients as much more than “arbitrary centers of volition”⁴⁶ and to claim their own moral responsibility for their work and role in the legal system. As legal ethics scholar Russell Pearce put it succinctly, Model Rule 1.0 should read: “Lawyers are morally accountable.”⁴⁷ The work of William Simon and David Luban, for example, has in different ways laid important foundations for considering how concerns for justice and fairness should inform perspectives on the lawyer’s moral responsibility for her role in society and in her relationships with clients.⁴⁸

40. *Id.* at 75–76.

41. DANIEL MARKOVITS, *A MODERN LEGAL ETHICS* 93 (2008).

42. *Id.* (emphasis omitted).

43. *Id.*

44. *Id.*

45. *Id.* at 94; *see also* LUBAN, *supra* note 39, at 68–70 (discussing philosopher Alan Donagan’s justification for the adversary system as lending “voice” to the client’s story).

46. *Id.* at 81.

47. Russell G. Pearce, *Model Rule 1.0: Lawyers Are Morally Accountable*, 70 *FORDHAM L. REV.* 1805, 1807 (2002).

48. *See* DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYER’S ETHICS* (2000). *See also* LUBAN, *supra* note 39, at 76 (countering the notion that the concept of autonomy exhausts the basis of human dignity, because autonomy addresses only one human faculty, the will: “[H]onoring someone’s dignity means honoring their being, not merely their willing. Their being transcends the

Other legal theorists have prodded and pulled apart the limits of “binary” legal structures and solutions that place excessive emphasis on the “dualities” of the defendant, the opposing side, the client, those inside the law, and those outside.⁴⁹ In setting out a framework for an ethics of altruism, Carrie Menkel-Meadow challenged: “What would lawyering look like if we took the other seriously—as a person, as a part of our shared humanity?”⁵⁰ Similarly, Stephen Ellmann theorized how an “ethic of care” could provide a foundation for legal ethics.⁵¹ In discussing and critiquing Ellman’s work, Marie Failinger described this ethic as one in which “lawyers would function out of connection, perhaps even empathy, with their clients instead of from a position of detachment,” creating and sustaining responsive connections with adversaries and with others, working to avoid pain, and choosing tactics and strategies that mirror responsibility for third parties.⁵²

Through studies on the “difference” that reflection on race and gender might bring to ethical decision-making, legal theorists have drawn out implications for legal ethics that tend to push beyond individualistic interpretations of client autonomy and lawyers’ moral accountability.⁵³ Similarly, streams of virtue ethics as applied to legal ethics⁵⁴ and the “religious lawy-

choices they make. It includes the way they experience the world—their perceptions, their passions and sufferings, their reflections, their relationships and commitments, what they care about. Strikingly, the experience of caring about someone or something has a phenomenology very different from that of free choice. When I care about something, it chooses me—we sometimes say, ‘it grabs me’—rather than the other way around.”); Marie A. Failinger, *Face-ing the Other: An Ethics of Encounter and Solidarity in Legal Services Practice*, 67 *FORDHAM L. REV.* 2071, 2083 (1999) (discussing the influence of the work of Simon and Luban in “signaling the reappearance of the lawyer’s moral sense into the ethical dialogue”); William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones’s Case*, 50 *MD. L. REV.* 213, 224 (1991) (noting the extent to which autonomy and paternalist approaches to counseling can accommodate dialogic praxis and concerns about the dangers of oppressing or misunderstanding clients).

49. Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?* 8 *GA. ST. U. L. REV.* 385, 386 (1992); *see also id.* at 387 (“We learn early in our education to distance ourselves from the other and, in our ethical rules, to justify, if not encourage, a variety of practices that many lay people would find reprehensible if applied in everyday life. To say that lawyers should consider, let alone care, for the other side of a legal problem is probably close to blasphemous in our lawyering practices. Nevertheless, I want to explore the possibility of expressing in the context of lawyering a different conception of ethics—altruism or the care for the other.”).

50. *Id.* at 407.

51. *See* Stephen Ellman, *The Ethic of Care as an Ethic for Lawyers*, 81 *GEO. L.J.* 2665, 2668 (1993).

52. Failinger, *supra* note 48, at 2091–92.

53. *See generally* “Critical Theories” (Chapter Five) in SUSAN D. CARLE, *LAWYERS’ ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER*, 224 ff. (2005).

54. *See* Lawrence B. Solum, *Virtue Jurisprudence: A Virtue-Centered Theory of Judging*, 34 *METAPHILOSOPHY* 178 (2003); *see also* THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS AND MORAL RESPONSIBILITY* 44 (1994) (placing “client goodness” at the center of counseling and representation); Heidi Li Feldman, *Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators?* 69 *S. CAL. L. REV.* 885 (1996) (discussing the extent to which black-letter codes are limited in their ability to inspire ethical practice). *See generally* CALIN FARRELLY & LAWRENCE B. SOLUM, *VIRTUE JURISPRUDENCE* (2008).

ering movement” have also brought to the legal ethics discourse ample reflection on how a lawyer’s philosophical or religious perspectives and commitments may shape his or her approach to the professional role.⁵⁵

Each of these theories is complex, and many aspects of the various theories are in tension with each other. This essay does not dive into those nuances but makes the narrow point that for decades legal scholars have been hard at work on theories that dislodge the extent to which individualistic notions of client autonomy still hold a tight grip on the rhetoric describing lawyers’ relationships and roles. Considering the contribution that Millennial perspectives and attitudes make to these already substantial theoretical efforts, the novelty that they bring is *not* the insight that discussions about lawyers’ roles must be sensitive to the ways in which lawyers and their clients are imbedded in a web of relationships, social structures, and responsibilities to society; those ideas have long been in circulation.

Instead, the novelty may be a certain *generational* momentum that arises from a Millennial awareness that they are not alone in believing that it might actually be possible to dislodge the profoundly individualistic paradigms through which we view social life and commitments. As the “Lost Generation” reversal reads: “It is foolish to presume that / My generation is apathetic and lethargic;” and “It will be evident that *my peers and I* care about this earth.” Because their horizon includes identifying the lie of a “quick fix *society*,” not just the limitations of individual responses to social problems, the Millennials have the potential to frame their efforts as part of a broader cultural trajectory and a larger vision. For this reason, Millennials may just have a shot at getting the kind of traction for the social shift that we need to break through some of the difficult tensions in how we envision lawyers’ relationships and roles.

B. *Millennial Momentum for Revising the Rhetoric of the Professional Role*

The following sections build on the work of “relational ethics” as applied to legal ethics and the extent to which these analyses already provide a solid theoretical basis for dislodging the more individualistic foundations of legal ethics. Based on observations about the Millennial generation’s cultural trajectory, the following subsections aim to make a narrow point: that while much of the substance of these theories of relational legal ethics aim toward appreciation for a more socially connected vision of lawyering, the rhetoric at times still reveals traces of “ontological individualism.” Further

55. See, e.g., Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy*, 55 CASE W. RES. L. REV. 127 (2004) (tracing the history of the religious lawyering movement and the impact of its ideas on legal ethics); Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & RELIGION 427 (2004) (analyzing the extent to which lawyers’ efforts to integrate religious beliefs into their legal practice threaten the legal profession’s traditional conceptions of professional identity).

conversation with Millennials, drawing on their own values and perspectives, might present a unique opportunity to refine the rhetoric we use to describe lawyers' relationships and roles so that we might better align our language with our efforts to reshape professional paradigms and also better express the "fullness of a being" that is already implicit in the various models of relational ethics.

1. Helping Individual Lawyers See Their Work as Part of a Mosaic of Community Commitments

In legal ethics, an initial step—one that precedes building a relationship with any client—is the more foundational question of how lawyers choose to focus their time, talents, and energy, as expressed by the type of practice in which they choose to engage and, on a day-to-day level, by the clients that they choose to accept.

Explaining the recent history of relational ethics as applied to legal services practice, Marie Failinger set out various scenarios that capture the basic lines of the varying approaches.⁵⁶ One of her narratives is based on the analysis of Charles Fried, in his famous essay, "The Lawyer as Friend."⁵⁷ In the narrative, a lawyer reflects on her encounter with Little A., a battered woman who has entered the lawyer's office needing immediate assistance to escape from a potentially life-threatening situation.

My only problem is that I have already decided to spend the next year working on a major welfare impact case which will take all of my time if I do it right, other than what I need for myself and my family. . . . My client, Juanita M. is counting on me to help her fulfill her dream of getting off of welfare and becoming a nurse, and I have made a firm commitment to her and her children. Moreover, I have to admit, I derive satisfaction out of impact work, it fulfills my needs as a professional. After all, I am a "responsible, valuable and valuing agent" who must first of all be "[d]ear to [my]self"; my concern for others must "presuppose a concern for [myself]." Because I am a person, not a resource, I am entitled to bestow my talents and time entirely according to my own discretion.⁵⁸

Failinger's thoughtful analysis both appreciates the extent to which Fried's "friendship" model reflects "a deformed ethics of autonomy" and critiques various aspects of the model's limitations.⁵⁹ But reading this ex-

56. See Failinger, *supra* note 48, at 2078–85.

57. *Id.* at 2079 (citing Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 *YALE L.J.* 1060, 1068–71, 1077–78 (1976)).

58. *Id.* (discussing how various theories of "relational ethics" grapple with legal ethics dilemmas at the heart of the lawyer-client relationship) (citing Fried, *supra* note 57, at 1068–71, 1077–78).

59. See *id.* ("Friends . . . are not just friends to further the friend's interest or autonomy; they are friends because of the intrinsic worth of the relationship, the mutuality of their values, and the

ample in light of Millennial attitudes and perspectives, it is interesting to note the lawyer's basic stance in the face of competing demands: she sees herself as a lonely savior. Even though the story recounts one example of "relational ethics," in the sense that it analyzes lawyers' relationships and commitments to clients and potential clients, the lawyer's own fundamental stance is that of solitude. She does not pick up the phone to see if another lawyer friend or social worker could help the battered woman. She does not send a call for help to any other group of lawyers or professionals. Given the financial constraints many legal service offices face, it is not far-fetched to conclude that many battered women do not get the legal help that they need and deserve. But it is nonetheless interesting to note all of the ways in which the model does not open out toward the community of lawyers, social workers, and other professionals who could potentially work together to respond to individual needs and solve social problems.

Similarly, in a provocative essay, Thomas Shaffer sharply critiques the ethics rule against providing financial assistance to a client in connection with pending or contemplated litigation.⁶⁰ He describes one case in which a court order required that a client procure a bed for her baby as a condition of having the baby home for Christmas. On the day before Christmas, when the charities were already closed, who would be so wooden, so lacking in humanity, as to say it was wrong for the lawyer to buy the crib with her own money?⁶¹ But on second thought, might this scenario also belie something of the lonely savior? Was there really no way at all to connect the client with a larger community of people who might want to help a mother to spend Christmas with her baby? Was the lawyer herself, or were the other professionals involved in the case, so disconnected from other sources of community life that this option did not even come to mind?⁶²

How might Millennials interact with these "lonely savior" models, which seem to present intractable dilemmas on how to orient one's own time, talents, and commitments? First, for a more team-based generation which sees the "world as a community" in which people work out local

sacredness of the person. A friend will challenge a friend as much as support her, will say 'no' as much as 'yes' to the friend's demands, all in support of the moral possibilities cherished by the friend and the self.").

60. Thomas Shaffer, *On Living One Way in Town and Another Way at Home*, 31 VALPARAISO UNIV. L. REV. 879, 886 (1997) [hereinafter Shaffer, *On Living One Way*]. Among other feats, Shaffer is to be credited for some of the initial and most-groundbreaking critique of the "ethics of aloneness." See Thomas L. Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963, 970 (1987).

61. Shaffer, *On Living One Way*, *supra* note 60, at 887.

62. As the editors of this Journal report, when a similar scenario arose for a Millennial generation University of St. Thomas Law School graduate, this time regarding a client's need for a stroller, the lawyer shared her concern with other members of the legal community, who pooled their money to buy what the client needed. See Memorandum from Erin Westbrook, Senior Editor, University of St. Thomas Law Journal, to author (Jan. 23, 2012) (on file with the University of St. Thomas Law Journal).

problems on a local level, one wonders if this might also unfold into a generational capacity to look beyond the tendency to see oneself as a lone and lonely savior in front of particular social problems in order to appreciate the power of seeing one's own efforts as part of and connected to a larger mosaic of social commitment.

Second, a generation that asserts "I tell you this / family / is more important than / work / I have my priorities straight because / My employer will know that / they are not the most important thing in my life" has discovered, or is going to quickly discover, that "lonely savior" models do not mesh with the kind of practical line drawing needed in order to have enough time for one's family. A generation with a more robust sense of "blending" their social commitments might just have the creative insight not only to see their clients as part of a relational web, but also to define their own foundational commitments as lawyers within a larger network of commitment to justice. If so, then perhaps a Millennial response to the appearance of Little A. in her office doorway might read something like this:

I have already decided to spend the next year working on a major welfare impact case which will take all of my time if I do it right, other than what I need for myself and my family. . . . My client, Juanita M. is counting on me to help her fulfill her dream of getting off of welfare and becoming a nurse, and I have made a firm commitment to her and her children. Within the realistic limits of my own time and resources, this is what I can do right now. I make a plan to reach out to others who may be able to assist Little A., and realize that personally I will not have time to be involved. I do not feel guilty about this, because I see my own work for the reform of welfare policy as deeply connected to the commitments of many others who are also working to make this a better world for Little A. and others who are similarly situated.

2. *Rethinking the Rhetoric of Client-Centered Counseling*

A second area to explore Millennial contributions to a potential rhetorical shift is in descriptions of "client-centered" counseling and representation. First introduced in 1977 by David Binder and Susan Price in their groundbreaking textbook on client counseling and interviewing,⁶³ this model of "client-centered" counseling and representation has thoroughly permeated legal education. The first edition of the book generated substantial controversy, especially for its bright line rule that respect for client autonomy means that lawyers should never give clients their own opinion.⁶⁴

63. DAVID BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

64. See Robert D. Dinerstein, *Client Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 504-05 (1990); see also Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697 (1992) (reviewing the 1991 edition of the Binder, Bergman, and Price text); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*,

With the release of the book's third edition, the text retains its center-stage position in legal education.⁶⁵

While at first glance one might be tempted to collapse "client-centered" with "self-centered," it would be a mistake to presume that the term necessarily implies an individualistic framework in the sense that only client interests matter. In a thoughtful article, Katherine Kruse has traced how over the years following the release of the 1977 text the term "client-centered" has assumed a variety of meanings and forms, some aspects of which are in tension with others.⁶⁶ For example, some theories of client-centered counseling interpreted the phrase as a reminder to focus representation on the client as a person rather than a "cardboard" caricature in which the client is perceived as a bundle of legal issues or rights.⁶⁷ As a teaching tool used especially in clinical legal education, "client-centered" techniques have proven effective in helping law students move beyond their preconceptions about the professional role in order to encounter clients as real people with their own voices and narratives, with their own perspectives on both the legal issues and how they might impact other commitments.⁶⁸ In light of this complexity of multiple meanings, Kruse suggests that the best way to understand client-centered representation is to acknowledge that the term embraces "plural values."⁶⁹

Kruse also proposes "plural" interpretations of the concepts of client autonomy, which is the theoretical foundation and philosophical inspiration for client-centered counseling. Contending that the admittedly ambiguous concept of autonomy is undertheorized in legal ethics,⁷⁰ she explains how autonomy in this context should embrace not only the negative freedom from restraint⁷¹ but also notions of "positive liberty."⁷² For example, depending on what constrains a person from the positive "project of self-au-

12 CLINICAL L. REV. 369, 380 (2006) ("The position that lawyers should not try to offer advice to clients was concededly overstated, and later versions of the client-centered approach qualified its extremity.").

65. See DAVID A. BINDER, PAUL BRUCE BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012).

66. Kruse, *supra* note 64, at 372.

67. See, e.g., *id.* at 377–78 ("[L]awyers must overcome their professional tendency to treat clients as bundles of legal rights and interests walking around inside a body, and put the client as a whole person at the center of the representation."); *id.* at 382 (discussing the problem of treating clients as bundles of legal issues, using the law to pursue these interests, without understanding their actual values). See also Katherine R. Kruse, *Beyond Cardboard Clients in Legal Ethics*, 23 GEO. J. LEGAL ETHICS 103 (2010).

68. Kruse, *supra* note 64, at 371–74; see also *id.* at 378 (describing how the technique focuses on "the importance of the lawyer understanding the clients' perspectives, emotions and values").

69. *Id.* at 374; see *id.* at 419 (describing the plural values of a "client-centered" taxonomy in which the client is at the center instead of legal issues; the lawyer's construction of the client; the client's stated wishes; the interests of third parties; or the client's best interests).

70. *Id.* at 399.

71. *Id.* at 401 ("Liberal political theory places primary importance on the promotion of autonomy, defined as the ability of individuals to develop and pursue their own conceptions of the

thorship,” genuine promotion of autonomy may involve more than leaving a person alone.⁷³ Intervention may actually expand one’s range of choices, and some short-range forms of constraint may actually preserve long-range future freedom.⁷⁴ Client-centered counseling should help lawyers to determine the “important difference” between “helping someone achieve what *she* really wants or values, and imposing what *you think she should* really want to value on her.”⁷⁵

One risk of pouring plural forms of interpretation into these particular keywords is that many lawyers, law students, and clients are likely to interpret them against the backdrop of their first language of “ontological individualism,” a rhetoric which does not facilitate the work of articulating the nuances of relationship or interactions within our social fabric. The substance of client-centered counseling may promise flexible sensitivity and receptivity to the complexity of the web of relationships in which the client is imbedded, as well as profound attention to the quality of the relationship between lawyer and client. But so long as we remain bound by the linguistic framework of “ontological individualism” we will struggle to express the “fullness of being” at the heart of lawyer-client relationships. As a result, more rigidly individualistic notions of client autonomy and client-centeredness may creep into descriptions of lawyer-client relationships. Take, for example, how Luban’s description of the lawyer’s receptivity to client narrative is caught up in the “egocentric predicament.”⁷⁶

Fuller once described the advocate’s job as displaying the case “in the aspect it assumes when viewed from that corner of life into which fate has cast his client.” The client’s story is not just the story in which she figures; it is the story she has to tell. It is *about* her in both senses of the term: she is its subject-matter, and she is its center. It revolves about her, just as, to terrestrials, the sun revolves about the earth (no more and no less). . . . [T]autologically, my world revolves around me; tautologically, that is, I am the one necessary being in my world. Human dignity is in some sense a generalization from the egocentric predicament.⁷⁷

As some theories of client-centered counseling attest, respect for client subjectivity and the integrity of client narrative does not necessarily reduce legal counseling to a concession to “egocentric” clients. Luban himself is

good without state interference, within limits set to ensure that they do not unduly interfere with the liberty of others.”).

72. *Id.* at 404 (citing Isaiah Berlin, *Two Concepts of Liberty*, in *LIBERTY* 166 (Henry Hardy ed., 2002)) (distinguishing negative and positive liberty).

73. *Id.* at 405.

74. *Id.*

75. *Id.* at 410.

76. LUBAN, *supra* note 39, at 71.

77. *Id.* at 70–71.

sensitive to this dimension. But the linguistic images of clients as “cornered” and as subjects who see themselves as “the one necessary being in their world” does not facilitate the work of breaking out of “egocentric” frameworks and limits.

A second risk of the “client-centered” rhetoric is that it may also carry some of the limitations of an approach grounded in Carl Rogers’s theories of psychotherapy. As Kruse explains, in the Rogerian approach to psychotherapy, the goal of therapy is defined as “internal to the client,” and in this context, the therapist’s largely facilitative and non-judgmental role makes sense.⁷⁸ In contrast, legal representation “is directed toward goals that are external to the client”—requiring an external focus and at times decisive action that impacts external circumstances.⁷⁹

How might the attitudes and perspectives of Millennials inform debates surrounding the rhetoric of “client autonomy” and “client-centered” counseling? Three generational factors may contribute to how Millennials approach lawyer-client relationships. First, to the extent that Millennials are inclined to limit the extent to which “work” commitments and frameworks place a claim on their lives and to assert that “My employer will know that / they are not the most important thing in my life,” similar limits may inform how they see their own work in relationship to client demands. Second, to the extent that Millennials can be characterized as optimistic team builders, they may be more inclined to see their clients not so much as “cornered” but as imbedded in a web of relationships and so draw out the implications of that web in the course of their dialogue. Finally, to the extent that the “ideal career path” for a Millennial is “something in the field of making the world a better place,” Millennials might also be more forward in their efforts to “blend” their sense of social responsibility into their counseling conversations with clients.

If Millennial cultural trajectories such as these begin to inform how lawyers interact with clients, at what point will the phrase “client-centered” fail to capture the complexity of the plural values of clients-in-relationship who are no longer at the center but are part of a web of social commitments? At what point does the rhetoric of “client-centered” counseling fail to capture the nuances of lawyers-in-relationship with clients, affirming their clients’ moral responsibility for their decisions as well as their own moral responsibility to their own web of social commitments? Might it become something of a rhetorical stretch to characterize as “client-centered” the realities of both lawyers and clients as embedded in complex social contexts, with shifting economic and power dynamics? Millennials might find that “client-centered” rhetoric is, in Brian’s turn of the phrase, “too

78. Kruse, *supra* note 64, at 386.

79. *Id.*

reductive” to capture their sense of the full complexity and full potential in the dynamic of lawyer-client relationships and conversations.⁸⁰

3. *Creating a Space for Common Reflection on the Common Good*

Third, if it is true that Millennials resist the idea of a “quick fix society” and are comfortable asserting the “shocking” proposal that “I can change the world”—it might also be interesting to explore whether the shift signals a readiness to move beyond mere procedural justice in order to wrestle with foundational questions about substantive justice.

One of the problems with some aspects of postmodern supersensitivity is that in practice its unending uncertainty can lead to paralysis. Gary Blasi’s 1994 reflection is illustrative:

People are not representable in any ordered sense of self or interests. People are but eddies in the turbulent cross currents that comprise them. All questions are contingent on assumptions that are infinitely reflexive. All answers are evanescent, becoming false even as they are spoken, as they suppress other questions and other answers. In less radical form, we believe that we should listen, knowing that we never fully understand and that we must resist imposing our projected orderings and normative sense onto others.⁸¹

As Kruse notes, “the client-centered approach’s original proscription against lawyer advice-giving was based on a kind of epistemological skepticism that a client’s values are ultimately *unknowable* to the lawyer.”⁸² Kruse, however, submits that it’s time to move on. “The claim may in some sense be true, but it is based on a rigorous standard of epistemic certainty that rarely governs our day-to-day activities.”⁸³ As such, “[w]hile our in-

80. One resource for the broader rhetorical project might be to grapple with the extent to which “self-interest” is actually in tension with other-regarding altruistic behavior. Scholars of law, economics, and other disciplines are beginning to explore the tautology which lies at the foundation of some current of altruism: When a theory of altruism assumes that other-regarding behavior leads to a negative impact on the self, it is simply the flip side of theories of autonomous self-interests. Theories of “relational self-interest,” on the other hand, posit that other-regarding behavior can actually be in harmony with self-interest if fulfillment of the self is defined within a relational framework. See, e.g., Russell G. Pearce & Eli Wald, *Obligations of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1 (2011); see also Luigino Bruni & Amelia J. Uelmen, *Religious Values and Corporate Decision-Making: The Economy of Communion Project*, 11 FORDHAM J. CORP. & FIN. L. 645, 665 n.68 (2006) (discussing how the logic of gift transforms the conceptual analysis of altruism); Amelia J. Uelmen, *Caritas in Veritate and Chiara Lubich: Human Development from the Vantage Point of Unity*, 71 THEOLOGICAL STUD. 29, 38 (2010) (critiquing some theories of altruism as the tautological flip side of individualism, “for they are grounded in an assumption that the other’s interests are in fundamental tension with one’s own”).

81. Gary L. Blasi, *What’s a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1077–78 (1994).

82. Kruse, *supra* note 64, at 411.

83. *Id.*

ability to know the ‘real values’ of someone else should give us pause, it need not lead to paralysis.”⁸⁴

Jurisprudence scholars agree that the time is ripe to again take up questions about the substantive nature of the good. As Robin West points out in *Normative Jurisprudence: An Introduction*, progressives should turn to questions about the substantive nature of the good because the purely procedural approaches to jurisprudence have run out of steam and because they matter to students: “The indeterminacy thesis, the dissolution of the distinction between law and politics, and the partial idealism behind some identity claims that have been the major products of left academic life over the past thirty years go nowhere near filling the need for explicit discussion of moral value in the classroom.”⁸⁵

If the more civic-minded Millennials maintain their claims that “[i]t will be evident that / My peers and I care about this earth / No longer can it be said that / Environmental destruction will be the norm,” and their conviction that “I can change the world,” they are going to need the categories of thought which open out toward the substantive nature of the good and of the goods shared by the human family. And moving beyond the focus on procedural justice is likely to have an important impact on the rhetoric describing lawyers’ relationships and roles.

CONCLUSION: ENCOURAGING MILLENNIAL MOMENTUM THROUGH CROSS-CULTURAL EXCHANGE

In conclusion, a word on one more characteristic of the Millennial generation that may prove to be an asset in the endeavor to reshape professional paradigms: their openness and connectedness to international and global perspectives. Millennials are more likely than any other generation to have travelled internationally or to have had significant work or service experience in another country. They are poised to welcome new ideas, wherever they find them. As one twenty-nine-year-old business manager explained:

Diversity means *everything* . . . an international perspective as well as a domestic one. It’s different thought processes and diverse communication styles. If we cannot be open and embrace diversity, we limit our learning and progress, and we start asking irritably, “Why isn’t our business competitive?”⁸⁶

Given their readiness to pick up and blend ideas that strike them as interesting and helpful, Millennials might be poised to engage with reflections on legal practice in other parts of the world. Returning to the dilemma

84. *Id.*

85. ROBIN WEST, *NORMATIVE JURISPRUDENCE: AN INTRODUCTION* 57 (2011).

86. LYNNE C. LANCASTER & DAVID STILLMAN, *THE M-FACTOR: HOW THE M GENERATION IS ROCKING THE WORKPLACE* 237 (2010); *see also* RONALD ALSOP, *THE TROPHY KIDS GROW UP* 17 (2008) (noting that Millennials have more frequent international work experience than previous generations).

that *Habits of the Heart* diagnosed—the American tendency to speak in the language of “ontological individualism,” which neither matches nor fully expresses one’s actual experience—engagement with rhetorical patterns that describe professional life outside of the American experience might be especially valuable.

Projects to foster such cross-cultural exposure among Millennials are already underway. For example, in February 2009, more than 250 young lawyers and law students from twenty-six different countries and five continents gathered in Rome for an international conversation, “Law in Search of Justice.”⁸⁷ The story of Isabelle de Moffarts, a lawyer who has practiced for fifteen years with a small firm in Belgium, found particular resonance with this group and thus might signal some of the emerging characteristics of Millennial lawyering.⁸⁸ From the tenor of her rhetoric, Moffarts does not appear to be conditioned by the American diction of “ontological individualism.” Some aspects of her approach to lawyer-client relationships follow to the letter many of the substantive techniques of “client-centered” counseling, but she expresses them in a diction more sensitive to the relational web:

Starting with the effort to understand my clients, I try to establish relationships of trust with them. Together we look for the best solution, beginning with the situation as it is, even if we would have wanted circumstances to be different. I respect their wishes, of course within the limits of my conscience. I do not drag them to a trial if they fear the cost and the consequences. I ask their opinion before each decision. I try to open lines of communication with the client, resisting the “expert” temptation to control every aspect of the process. . . . The more I “enter” into what the client is living, the more I can express it, give reasons for behavior and give a voice to feelings of injustice. It also helps the judge better understand the situation.⁸⁹

On the other hand, Moffarts found plenty of room for communicating to clients her own values and convictions but with a humility which is careful not to crush the client’s voice or own sense of responsibility and which is ready to admit weakness or failure in the effort to fully comprehend the client or her situation. She explained:

Clients come with their own perception of reality: a feeling of injustice, a desire for revenge, the certainty of being right or an attitude of victimization. I try to fully welcome them as they are, but I also do not hesitate to speak up when I do not share their

87. Anne-Claire Motte, *Reimagining the Legal Profession: Young Lawyers Explore and Experience How Justice Is Love in Action*, LIVING CITY, June 2009, at 9. See generally *Law in Search of Justice*, COMUNIONE E DIRITTO, <http://comunionediritto.org/en/events-texts/youth-congress-2009/105-27-febbraio-1-marzo-2009.html> (last visited Feb. 23, 2012).

88. Isabelle de Moffarts, *Keywords for Lawyers*, LIVING CITY, June 2009, at 7–8.

89. *Id.* at 7.

vision of reality. Suffering can blind people to the fact that the other side may have legitimate reasons for their actions. I feel it is my duty to share my point of view with my client, with respect and readiness to accept that I may have not fully understood the situation. I see that this relationship of truth gives deep roots to our collaboration and often leads to profound agreement on a particular strategy. When clients choose an option that I would not have chosen, I respectfully inform them of my reservations.⁹⁰

Further, for Moffarts, adversaries and third parties are also an essential part of the relational web:

Respect for the client is an obvious principle of our profession, but I also feel called to respect my adversaries. I try to use exact words to describe facts without unnecessarily denigrating the opponent. This can be very difficult in practice, especially when you are in the heat of the conflict. The judge often appreciates the capacity to step back and stick to the facts and concrete claims without useless aggression. This attitude does not keep me from strongly denouncing injustice. In fact, the more I live the value of respect, the better I can present my client's claims. And each time I recognize my mistakes or the mistakes of my clients, it increases my own credibility. By not pretending to be right on everything, I have more authority to ask for what I see as right.⁹¹

The internal balance that Moffarts has struck between sensitivity to her client's story, reality, and desires, her own personal values and convictions, and her respect for third parties has helped her to help her clients discern their course of action even amidst conflicting emotions and goals. She gives one example:

At the end of the Christmas holiday this past year one of my clients phoned me, panicked because her son's father had refused to return the boy to her custody and had indicated that he intended to bring him to the African country where he works. All of this was in violation of the custody agreement. There were many legitimate reasons to be outraged by this, and I immediately moved for a hearing before the court. The law was clearly on my client's side, even if the boy had given false testimony to the police that she was mistreating him.

By really listening to my client, however, I came to understand that, even though she was very angry, she also appreciated that the boy really wanted to live with his father. It was not that he was unhappy with her, but rather that he needed his father at this point in his development. This understanding complicated my client's goals. If we were to consider the "best

90. *Id.*

91. *Id.*

interests” of the child, it no longer meant “winning” the case, which would have been pretty easy.

The new goal was to renegotiate the custody agreement so that the boy’s transfer to his father would also guarantee the relationship with his mother at a distance. At times, it was difficult to navigate my client’s emotions and competing desires. Creativity and perseverance were needed, but after three weeks of tough negotiations, the boy flew to Africa, peaceful and sure of both his parents’ love.⁹²

This particular story has a happy ending, but Moffarts admits that her practice also brings her face to face with suffering, failure, powerlessness, and doubt. On the deepest level, she reflects, “I cannot heal a raped girl. I cannot bring a child back to life. I cannot reconcile the parents who are set on destroying each another. I cannot shield the despairing foreigner from expulsion.”⁹³ And on a professional level,

I also experience a sense of suffering and failure when I receive a decision that seems absurd, when it seems that the judge did not listen to arguments that, in my opinion, were well-founded, or when I notice that I am giving way to the logic of the conflict, forgetting my great ideals. Many of these “whys” remain without answers. My task is to live this drama fully, to be there to accompany those who suffer so as to protect their human dignity.⁹⁴

If the receptivity of the law students and young lawyers at the “Law in Search of Justice Conference” to Moffarts’s approach was any indication of what Millennials might contribute to current reflections on the lawyer’s role, perhaps we should begin to see how our structures of legal education and professional formation can begin to absorb this hopeful “shock” that the Millennials refuse to believe that their generation of lawyers will be “lost,” and they really do believe that they “can change the world.”⁹⁵

92. *Id.*

93. *Id.*

94. *Id.* at 7–8.

95. *See* Reed, *supra* note 19.