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TOWARDS A NEW ARCHITECTURE: CREATIVE PROBLEM SOLVING AND THE EVOLUTION OF LAW

JAMES M. COOPER*

A great epoch has begun.

There exists a new spirit. . . .

Our own epoch is determining, day by day, its own style.

Our eyes, unhappily, are unable yet to discern it.¹

With these words, Le Corbusier² introduced a new architecture into the twentieth century. A new mode of building structures had begun. The world was fully entering the age of Modernity with respect to progress in the arts, literature, health, urban planning, and the social sciences. Such a move

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1. LE CORBUSIER, TOWARDS A NEW ARCHITECTURE 3 (1931).

2. This article is structured around the ideas of architect and urban planner Le Corbusier (born Charles Edouard Jeanneret in La Chaux-de-Fonds, Switzerland in 1887). The visionary's ideas about architecture were first published in the journal L'ESPRIT NOUVEAU (co-authored with Amédée Ozenfant who also went by the pseudonym Saugnier) in the late 1910s and early 1920s. These works were republished and new material added as VERS UNE ARCHITECTURE (1923), with Le Corbusier as sole author. Originally published by Editions Arthaud in Paris, its thirteenth edition was translated into English by Frederick Etchells and published in England by John Rodker in 1931 under the title TOWARDS A NEW ARCHITECTURE. See STEPHEN GARDINER, LE CORBUSIER (1974); THE IDEAS OF LE CORBUSIER ON ARCHITECTURE AND URBAN PLANNING (Jacques Guiton, ed., Margaret Guiton, trans., 1981); GEOFFREY H. BAKER, LE CORBUSIER: THE CREATIVE SEARCH: THE FORMATIVE YEARS OF CHARLES EDOUARD JEANNERET (1996). Le Corbusier's legacy is huge. Kenneth Frampton refers to "[t]he absolutely central and seminal role played by Le Corbusier in the development of 20th-century architecture." KENNETH FRAMPTON, MODERN ARCHITECTURE—A CRITICAL HISTORY 149 (3d ed. 1992).

was fraught with conflict and societal discord. As Le Corbusier explained: "We are living in a period of reconstruction and of adaption to new social and economic conditions."³ For the Swiss visionary, good architecture made for good social relations. Facing what was an uncertain time, Le Corbusier was attempting to avoid upheaval. In essence, good architecture and planning would obviate the need for revolution.

Law has also replaced the need for revolution; instead, law has been about evolution. Based on the rule of precedent—*stare decisis*—legal precepts have followed a linear path of development.⁴ Routinized by this tradition, law has become the tool by which society regulates itself. Law orders affairs among its constituents and ensures a pattern of stability among its plethora of stakeholders. But over the last fifty years, our lives have changed so rapidly, and the influences and stimuli which affect our quotidian existences have become incredibly diverse and divergent. Law, as a tradition-bound set of rules, has not been able to keep up with our times. As Le Corbusier wrote about his generation's entry into the Modern era: "There reigns a great disagreement between the modern state of mind, which is an admonition to us, and the stifling accumulation of age-long detritus. The problem is one of adaptation."⁵

Law alone can no longer address the problems which the world, our nation, or our local community face. Confidence in political leaders is at an all time low. The end of the Cold War has brought economic prosperity to some, but the gap in the distribution of wealth continues to grow. The division between haves and have-nots is not just internal to any one country, but exists on a global level with the developing countries acting strictly as suppliers of cheap primary resources, and as labor pools producing goods for the developed world.

The disparity between the wealthy and the poor has widened.⁶ Much of the world faces chronic food shortages as the lack of tillable land increases due to overfarming, soil erosion, and environmental devastation. The world's population, however, has continued to grow, forcing further hyper-urbanization and the incumbent problems that come with overcrowding and

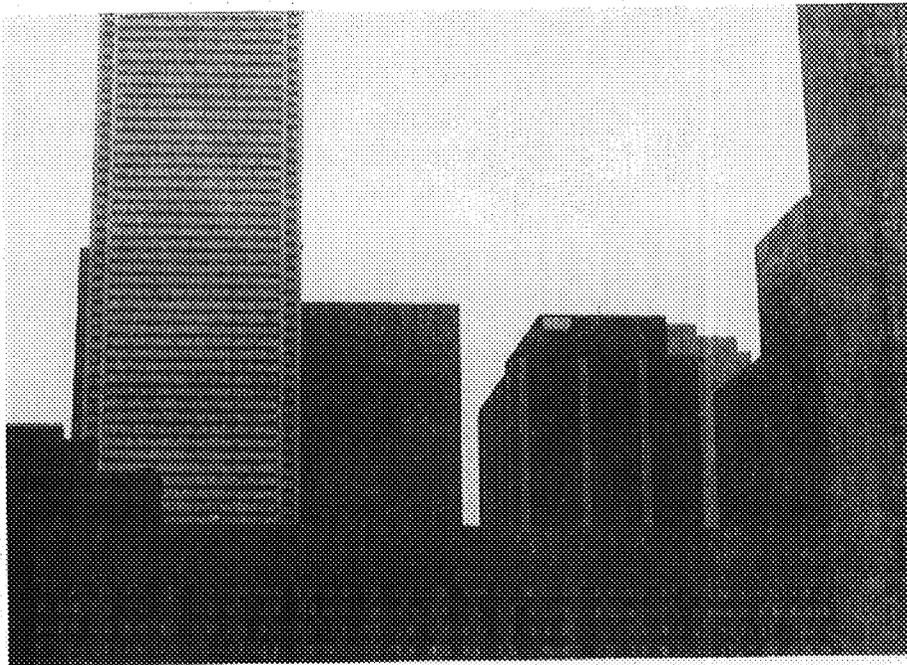
3. LE CORBUSIER *supra* note 1, at 63.

4. See Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983); Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).

5. LE CORBUSIER, *supra* note 1, at 288. See also JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS—CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 138 (William Rehg trans., 1996) ("The phenomena that first consistently appeared in modernity—the conglomeration of administrative power, the positivization of law, and the emergence of legal authority—conceal the beginnings of a kind of political authority that initially emerged in the context of traditional societies.").

6. See PHILIP ALLOTT, *INTERNATIONAL LAW AND INTERNATIONAL REVOLUTION: RECONCEIVING THE WORLD* 3 (1989) ("That means some human beings worry about the colour of the bed-sheets in their holiday-home in Provence or the Caribbean, while other human beings worry about their next meal or the leaking tin-roof of the hut that is their home.").

the lack of personal space. This further fuels environmental and noise pollution, and fosters an increase in crime rates, the rise of gang culture, and the overpopulation of prisons.



—Hyper-urbanization has brought overcrowding and environmental pollution.

At the human level, we have seen an increase in illness, lower birth weights, systemic inter-generational substance and physical abuse, and poor education rates. Time fatigue has also been predominant. While technology should have increased the amount of free time, it has not. Instead of increasing personal communication, the technological revolution over the last

7. Many scholars will see the use of photographs as nonacademic or unworthy of academic discourse. However, for Roland Barthes: "What the Photograph reproduces to infinity has occurred only once: the Photograph mechanically repeats what could never be repeated existentially. In the Photograph, the event is never transcended for the sake of something else" ROLAND BARTHES, *CAMERA LUCIDA* 4 (1981). For Roscoe Pound:

What we seek is a picture which will best enable us to understand what we are doing and to do it most effectively. Such a picture, I venture to think, would represent the social order as an organized human endeavor to satisfy a maximum of human wants with a minimum of sacrifice of other wants. It would represent the legal order as that part of the whole process which is or may be achieved by force of politically organized society.

Roscoe Pound, *The Theory of Judicial Decisions*, 36 *HARV. L. REV.* 954 (1923).

decade has increased the sense of isolation. People no longer need to communicate with each other face to face to conduct their daily lives.

Unemployment in many Western capitalist countries continues to approach Depression-era levels.⁸ There has been an increase in the number of part-time and more menial jobs,⁹ coupled with a lack of job opportunities for minorities, women, and the elderly.¹⁰ In the industrialized world, many jobs that do pay well require education that is less and less affordable. There is also a significant lack of affordable medical insurance for many working people.¹¹ Further, where taxation systems exist, taxes continue to rise, forcing down disposable income.



—The end of the Cold War has further intensified the gap in the distribution of wealth.¹²

8. See John Bellamy Foster, *The Long Stagnation and the Class Struggle*, 31 J. ECON. ISSUES 445 (1997). See also Organisation for Economic Co-Operation and Development, *The OECD Employment Outlook: Low-Wage Jobs: Stepping Stones Or Traps?*, OECD OBSERVER, Oct. 20, 1997, at 38 [hereinafter *OECD Employment Outlook*].

9. See Clinton E. Boutwell, *Profits Without People; Lack of Job Opportunities for New Graduates*, 78 PHI DELTA KAPPAN 104 (1997).

10. See *OECD Employment Outlook*, *supra* note 8.

11. See Michael S. Ellis, *Let's Expose Medicine's Real Price-Gougers*, 68 MED. ECON. 21 (1991).

12. Photography, like precedent, is about history. For Barthes: "The Photograph does not necessarily say *what is no longer*, but only and for certain *what has been*. This distinction is decisive." BARTHES, *supra* note 7, at 85.

But despite this seemingly endless litany of problems, there is a new era which is emerging—one in which there is a convergence of the social sciences, humanities, and the hard sciences with new technologies and the media. Perhaps this is due to the fast approaching end of the second millennium. Perhaps it is the coming of the third one. Perhaps it is the saturation of media events and technological breakthroughs. A decade ago, 24-hour media coverage and advances in cloning seemed the far-fetched work of futurists. Today, we take for granted the homogenization of culture, the primacy of global capital markets, and the reign of *laissez-faire* economics. Our lives appear to be moving faster than society's or any state's capability of regulating them. In short, law—be it any one state's regulation or even the harmonization of several states' regulations—cannot cope with all these changes.

To address these trying times, a synthesis of many social sciences, hard sciences, the humanities, and other disciplines has begun. Edward Wilson has referred to this phenomenon as “consilience,”¹³ while Jon Spayde has dubbed it the “New Renaissance.”¹⁴ Some leading scientists have begun to understand that they can no longer work in a vacuum, a discovery that some philosophers, economists, and political scientists have shared. As Spayde explains, this new phenomenon is made up of:

a loosely-connected network of scientists, futurists, and social thinkers-and-doers who share a planetary perspective, a tempered optimism about technology, a long-range view of the continuing evolution of humanity, and a hope for an emerging integral culture—one of intense connectivity between humans and nature, humans and the spirit (variously defined) and humans and humans all over the globe.¹⁵

Such a new renaissance must also come from the legal world. Law must keep up with the changes or be relegated to the dustbin of history.¹⁶ Law is, after all, at the fulcrum of social changes—the driving force that binds society together. It is a thread which is sewn into the social fabric. We have created law to help us regulate societal affairs. The social contract is the result.¹⁷ It is the essence of our democracy. Law forms much of the

13. See Edward Wilson, *Back from Chaos*, ATLANTIC MONTHLY, March 1998, at 79.

14. See Jon Spayde, *The New Renaissance*, UTNE READER, Feb. 1998, at 38.

15. *Id.* at 42-43.

16. See HABERMAS, *supra* note 5, at 386 (“The regulatory competence of the political system fails if the implemented legal programs remain ineffective or if regulatory activity gives rise to distintegrating effects in the action systems that require regulation. Failure also occurs if the instruments deployed overtax the legal medium itself and strain the normative composition of the political system.”). Winston Churchill once said: “If you have ten thousand regulations you destroy all respect for the law.” Winston Churchill, *quoted in* ROBERT ANDREWS, THE CONCISE COLUMBIA DICTIONARY OF QUOTATIONS (1989).

17. See JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT AND DISCOURSES 333 (G.D.H. Cole trans., 1950) (1762) (“The social contract is the foundation of all civil society. . .”).

foundation of our social architecture.

Creative Problem Solving is the impetus to assist law in making the transition into this new renaissance. By examining the theory of law, legal education, lawmaking, and the practice of law as a form of architecture (and hence, social design) in this article, I hope to begin a discourse on the role of law during the next millennium in light of the coming convergence of social relations, social organization, and social function. As the role that law plays in our society changes, our attorneys and judges will be confronted continually with changing norms, conflicting jurisdictions, and transnational contexts. Creative Problem Solving, as an evolving approach to law, can assist law students, attorneys and judges alike in proactively using law as a tool to heal society. The study of law, the practice of law, and the making of law all require new thinking for a new age.

Creative Problem Solving will do just that. Using *Towards a New Architecture*—the seminal work of Le Corbusier—as its backdrop, this article will introduce the concept of Creative Problem Solving into the lexicon of jurisprudence.¹⁸ Part I of this article is an exploration of the lawyer's aesthetic—the realization that our profession enjoys neither a good reputation in society nor a sense of job satisfaction among its practitioners; moreover, it is a call for change in our approach to lawyering. We must first heal ourselves as professionals before we can move onto helping our clients and society. Part II provides three reminders to lawyers as per Le Corbusier's "Three Reminders to Architects": mass, surface, and plan. In essence, Creative Problem Solving strives to reconnect our profession with what it was intended to do and what it should do—heal societal discord and reconstruct the social contract. Part III explores Le Corbusier's understanding of "Regulating Lines" in light of the quest for order through law. Here, law is seen as a means to an end—a revisiting of the Sociological Jurisprudence school which recommended law as social engineering. A definition of Creative Problem Solving as social architecture is then offered in Part IV. In this endeavor, the lawyer's role as designer (for healing and for improved social ends) is better understood. Part V looks at some of the tools that the Creative Problem Solver can use in the practice of law, utilizing Le Corbusier's prescription "Pure Creation of the Mind." Part VI concludes by calling for the reinvestment in the legal profession and in legal education using Creative Problem Solving. In order to best keep law relevant to and reflective of society in a world of competing jurisdictions and affiliations, we must reinvest in law and examine what it is meant to do. Creative Problem Solving does and will act as a conduit to greater communication and interaction among lawyers and other professionals.

18. For an exploration of how the work of another visionary architect can be applied to lawyering, see John Nivala, *The Architecture of a Lawyer's Operation: Learning from Frank Lloyd Wright*, 20 J. LEGAL PROF. 99 (1996).

I. THE LAWYER'S AESTHETIC¹⁹

Le Corbusier called architecture "an admirable thing, the loveliest of all. A product of happy peoples and a thing which in itself produces happy peoples."²⁰ Law too was once a happy pursuit. In 1916, a Scottish lawyer opined: "The practice of law is more than a mere trade or business and those who engage in it are the guardians of ideals and traditions to which it is right that they should from time to time dedicate themselves anew."²¹ Sir William Jones went as far as to say: "The only road to the highest stations in this country is that of the law."²² Indeed, there have been many practitioners, judges, and professors who have sung the praises of law.

That too has changed.²³ According to one analyst: "Dissatisfaction permeates the public and professional discourse about lawyers and legal education."²⁴ We are not a happy lot.²⁵ Approximately twenty percent of lawyers are extremely dissatisfied with their jobs.²⁶ Evidence of this dissatisfaction is shown by the significantly higher levels of depression (19%) and substance abuse (15-18%) experienced by lawyers than individuals in other professions.²⁷ One expert has concluded: "Unhappiness among lawyers is

19. Lawyers, like judges, should consider themselves designers in addition to advocates or administrators of justice. The design element can supplement notions of justice to achieve greater harmony.

There is a point at which the lawyer's work achieves an aesthetic level, a level where it can be judged by whether it looks and feels right. There is more to law than detail, than rule discovery. There is a creative aspect to our work which means that our work . . . can be evaluated by aesthetic criteria, by how well it reflects a sense of the whole.

Nivala, *supra* note 18, at 134-35.

20. LE CORBUSIER, *supra* note 1, at 15.

21. Hugh Patterson MacMillian, Scottish lawyer, *The Ethics of Advocacy*, an address from 1916.

22. Sir William Jones, *quoted in* ROBERT ANDREWS, *THE CONCISE COLUMBIA DICTIONARY OF QUOTATIONS* 149 (1989).

23. I am indebted to Susan Daicoff for her comments at the American Psychology and Law Society biennial meeting in Redondo Beach, California on March 5, 1998. Much of the information concerning attorney attributes in this section comes from Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 45 AM. U.L. REV. 1337 (1997).

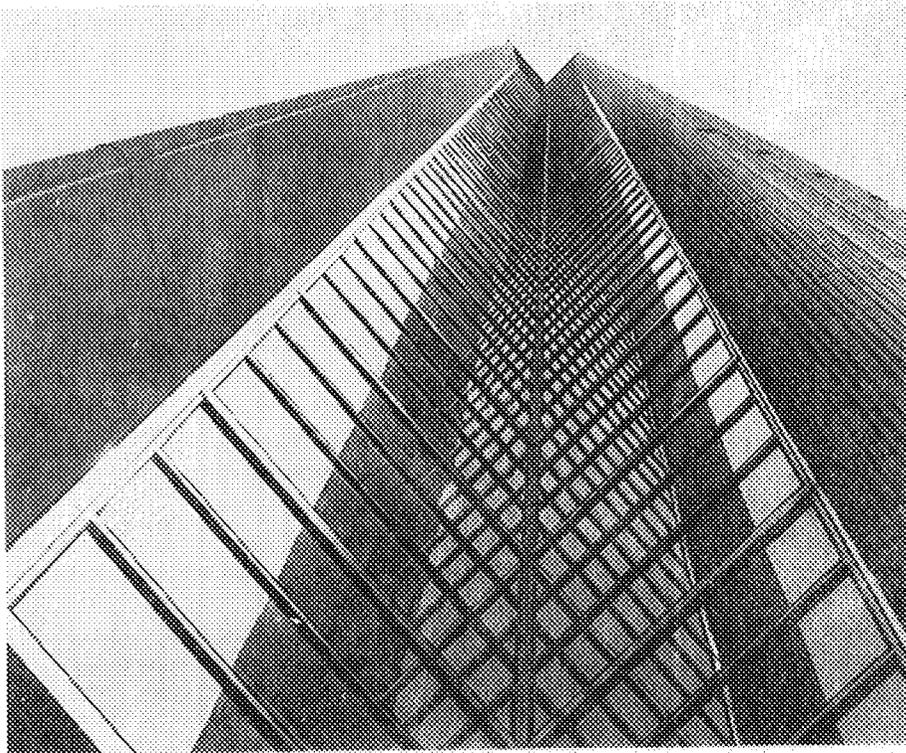
24. Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 119 (1997).

25. See Tina Gutierrez, "No Clean Socks": *The Crisis of Lawyer Dissatisfaction*, LAWYER HIRING & TRAINING REP., Feb. 1993.

26. See Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States* 22 (1994) (unpublished Ph.D. dissertation) (on file with Temple University). For an excellent discussion regarding the crisis of dissatisfaction among lawyers, see Daicoff, *supra* note 23.

27. Among the general population, only three to nine percent are depressed, and only ten to thirteen percent are chemically dependent. See G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 L. & PSYCHOL. REV.

pervasive, endemic, and out of control.”²⁸ Is it any surprise that only half say that if they had to do it over, they would become lawyers?²⁹



—Le Corbusier called architecture “an admirable thing, the loveliest of all.”

Lawyers are dissatisfied for a number of reasons. There is a distinct lack of personal time due to the pressures of increasing billable hours; lawyers are working harder to do more in less time, thereby creating unsound management practices at law firms. Technology has increased pressure on lawyers and increased overhead costs that must be covered by attorney billings. We have serious trouble keeping abreast of major changes in global telecommunications. While some lawyers have embraced the electronic

113, 114 (1992); see also G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 240-41 (1990). “The alcoholism rate among lawyers is an estimated 15%-20%, almost twice as high as the general population.” Paul Ciotti, *Unhappy Lawyers; They're Highly Trained and Highly Paid. So Why Do Many Feel So Low About Their Jobs?*, L.A. TIMES, Aug. 25, 1998, at part 5.

28. Ciotti, *supra* note 27 (quoting Jack Weinberg).

29. See Nancy McCarthy, *Pessimism for the Future*, CAL. ST. B.J., Nov. 1994, at 1.

revolution, using the Internet for communicating with clients and setting up Websites to advertise their services, most are technophobic. It is hard enough to get lawyers to communicate with their clients via the telephone and face-to-face meetings without asking them to enter the realm of cyberspace and provide personalized, diligent, and professional service. This genuine failure to communicate with clients creates even more dissatisfaction for both parties. As a result, client satisfaction with lawyers is low.

The communication problem does not rest exclusively between lawyers and their clients. Attorney-to-attorney dialogue is fraying. In short, lawyers don't like each other almost as much as they don't like themselves. Two-thirds of attorneys believe lawyers compromise their professionalism as a result of economic pressures.³⁰ Only forty-one percent of lawyers think the ethical standards of most lawyers are high. Two-thirds believe that attorneys will leave their positions because of dissatisfaction with their jobs.³¹

What is worse, however, is the public perception of the role of the lawyer in society. Society has long had a love-hate relationship with lawyers and the legal system. In the Bible it is written: "And he said, woe unto you also, ye lawyers! For ye lade men with burdens grievous to be born and ye yourselves touch not the burdens with one of your fingers."³² The Trustees for the Colony of Georgia prohibited the importation of slaves, rum, and "that pest and scourge of mankind called lawyers."³³ Connecticut and Virginia also forbade the practice of law.³⁴ One of the most famous quotations from William Shakespeare's *Henry VI* is: "the first thing we do, let's kill all the lawyers."³⁵

The public perception problems that lawyers face today are wider and deeper than any the legal profession has faced before. The general public, particularly minorities, the uneducated, and the poor, have consistently expressed dissatisfaction with the American legal profession. In a survey of 1,202 adults, the American Bar Association found that 84 percent thought favorably of teachers, 81 percent thought well of police officers, and 71 percent supported doctors. Forty percent vouched for lawyers. Only stockbrokers and politicians scored lower.³⁶ The recent decline in applications to law school provides further evidence of the poor public opinion of the legal profession.

With such a poor public image, is it any wonder why attorneys have the highest job dissatisfaction rate among the professions? Lawyers cannot effectively and efficiently serve their clients, community, and the profession if

30. *See id.*

31. *See id.*

32. *Luke* 11:52.

33. E. MERTON COULTER, *GEORGIA: A SHORT HISTORY* 74 (1960).

34. *See* KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 22 (1989).

35. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH*, act 4, sc. 2.

36. *See* Barbara Rosen, *Simple Things That You Can Do Everyday to Improve Your Image*, 16 *PA. LAW.* 22 (1994).

they are so unhappy. We need to heal as a profession and move away from the dog-eat-dog world of competition. In the words of Le Corbusier: "The diagnosis is clear."³⁷ Lawyers are looking for ways to develop their skills in traditional roles as counselors and problem solvers. Law, along with medicine and theology, should be considered and practiced as a healing profession.³⁸ Creative Problem Solving is a path to follow to lead us toward that destination. It is the fusing of law and humanism, order and life. It represents, in essence, a discovery of what already exists. We need only remind lawyers why they are lawyers in the first place.

II. THREE REMINDERS TO LAWYERS

Before we move towards a definition of Creative Problem Solving, it is important to understand that this evolving approach to law is merely a recognition of what already exists. Creative Problem Solving is the moniker under which the legal profession can cease to be driven by law, and begin to view law as a device which can assist clients, the community, and society. As we move towards that goal, we must revisit and reconstruct some basic tenets upon which we can build. These tenets can be framed around Le Corbusier's instructional premises: mass, surface, and plan. In essence, lawyering should be about good design. After all, law is simply one of the foundations of our social architecture.

A. Mass

The attorney today faces an increasing amount of information through which he or she must navigate. What clients want, however, are more simplified answers.³⁹ They do not seek lawyers to learn about cases, precedents, and obiter dicta. They want simple, easy to digest answers to the situations which confront their personal and professional lives. Primary forms of responses are required—not masses of information, downloaded treatises, or a myriad of case law.

We must return to basic principles and ask ourselves why it is we became lawyers in the first place. Lawyers are problem solvers. Our job is to facilitate social relations for our clients, with an ancillary duty to maintain the highest ethical standards, a duty to our profession and a duty to ensure

37. LE CORBUSIER, *supra* note 1, at 15.

38. See Robert Benham & Ansley Boyd Barton, *Alternative Dispute Resolution: Ancient Models Provide Modern Inspiration*, 12 GA. ST. U. L. REV. 623 (1996). Le Corbusier also compared architecture to medicine, seeing healing as a means to reinvigorate his own profession, clearly on the wane: "People still believe here and there in architects, as they believe blindly in doctors." LE CORBUSIER, *supra* note 1, at 17.

39. See Alan P. Levine, *Looking For Mr. Good Lawyer: What Clients Want*, 78 A.B.A. J. 60 (1992).

the smooth functioning of our community.⁴⁰

In her address to the American Bar Association House of Delegates, Attorney General Janet Reno said, "I became a lawyer to help other people."⁴¹ The U.S. Attorney General went on to remind the House of Delegates that lawyers must be problem solvers, and that the bar and law schools must lead in teaching problem solving techniques.⁴²

In the face of an increasingly complicated and over-regulated (and often mis-regulated) world, simplicity then seems to be in order. As Le Corbusier told his generation and future generations of architects: "Primary forms are beautiful forms because they can be clearly appreciated."⁴³ The practice of law, the education of lawyers, and the promulgation of legislation must strive towards simplicity.

B. Surface

The simple and primary approach that is required of the legal profession must work among the many constituencies to be navigated and assuaged. Attorneys and lawmakers alike must respect relationships. Many problems that clients bring to lawyers involve situations or relationships of long duration—periods which continue beyond that of the solicitor-client relationship. Sir Walter Scott once said: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."⁴⁴

An understanding of other disciplines is, thus, important. There are also a number of new stakeholders to consider in any given situation. In particular, it is important to recognize that factors aside from human relations play a role in everything we choose to do. Each decision that we make plays on the environment, or has some sort of impact on our ecosystem.⁴⁵ There is a distinct need for harmony among all the elements. Law can no longer be practiced in a vacuum.

Le Corbusier felt the same way about architecture. Frustrated by the

40. See Steve Smith, *Did You Hear the One About the Lawyer and . . . ?* SAN DIEGO BUS. J., June 7, 1997 ("The traditional role of law is to help people understand and solve problems efficiently . . . our real purpose is to be a *helping* profession.").

41. C. Timothy Hopkins, *ABA President Reminds Lawyers They Are Problem Solvers*, ADVOCATE, Apr. 1996, at 19 (quoting Janet Reno, Address to the ABA House of Delegates at their mid-year meeting in Baltimore, Md. (1996)).

42. See *id.*

43. LE CORBUSIER, *supra* note 1, at 23.

44. Sir Walter Scott, *quoted in* ROBERT ANDREWS, THE CONCISE COLUMBIA DICTIONARY OF QUOTATIONS 149 (1989).

45. See Anthony D'Amato, *Agora: What Obligations Does Our Generation Owe to the Next? An Approach to a Global Environmental Responsibility*, 84 AM. J. INT'L. L. 190 (1990); Anthony D'Amato & Sudhir K. Chopra, *Whales: Their Emerging Right to Life*, 85 AM. J. INT'L L. 21 (1991); Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

lack of inspiration and complete understanding with which architects approached their work, he wrote that “[t]he Engineer, inspired by the law of Economy and governed by mathematical calculation, puts us in accord with universal law. He achieves harmony.”⁴⁶

The Swiss Master, in discussing how a plan must achieve harmony, explained that “[t]he exterior is always an interior.”⁴⁷ In essence, there is a need to discover, respect, and maintain the interrelationships which exist in any part of a problem. If we deal with only one component of any situation, we may aggravate many other components. Consequently, attorneys must work with practitioners from other disciplines. Indeed, “sometimes legal solutions are counter-productive.”⁴⁸ Instead, a more collaborative approach is required to navigate throughout the life of a problem and ensure its final disposition. As Habermas explained: “Every social interaction that comes about without the exercise of manifest violence can be understood as a solution to the problem of how the action plans of several actors can be coordinated with each other in such a way that one party’s actions ‘link up’ with those of others.”⁴⁹

C. Plan

In order to serve all constituencies in the most efficient and meaningful manner, there is a need for advance planning in lawyering as there is for lawmaking.

Lawyers must possess skills of strategic forecasting, the ability to look ahead, and the capacity to determine the best path while considering all contingencies. This has always been the case. As far back as 1912, Joseph Bingham stated, “The lawyer, as does the scientist, studies sequences of external phenomena and he studies them with a similar purpose—to determine the cause and effects and to acquire an ability to forecast sequences of the same sort.”⁵⁰ It was natural to compare the skills that attorneys practice with those used in other disciplines: “The practicing lawyer, as much as, let us say, an engineer or doctor, is engaged in trying to forecast future events.”⁵¹

46. LE CORBUSIER, *supra* note 1, at 11.

47. *Id.* at 180. See also JOHN R. HAYES, *THE COMPLETE PROBLEM SOLVER* (2d ed. 1989). In order to understand the complete problem, the problem solver must make either an external or internal representation of the problem, see *id.* at 5. Written sketches or drawn images can embody external manifestations of the problem solver’s internal notions, the latter of which are in the problem solver’s mind like goals or mental operations.

48. Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15, 35 (1997).

49. HABERMAS, *supra* note 5, at 17.

50. Joseph W. Bingham, *What is the Law?*, 11 MICH. L. REV. 1, 9 (1912). Bingham goes on to write: “As lawyers we endeavor to forecast potential legal consequences of particular causal facts and to influence the actual trend of concrete legal consequences.” *Id.* at 15.

51. Walter W. Cook, *Scientific Method and the Law*, 13 A.B.A. J. 303, 308 (1927).

A balance must be struck concerning the role of planning. As one German jurist explained: "The critical examination of the past is necessary in order to discover the grounds upon which we rest, but the consideration for the future is none the less necessary in order to determine whither we are going."⁵² While there is a distinct need to pay homage to the past, we must direct our minds to the future to best serve our clients, honor our profession, and protect our community.

This bent on proactive behavior and strategic planning is key and must be engendered in the law student.⁵³ As Le Corbusier explained: "The [p]lan is the generator. Without a plan, you have lack of order."⁵⁴ A new approach to law and legal education is emerging. It is called Creative Problem Solving, and it is gaining credence in legal circles—even in international ones.⁵⁵ Le Corbusier wrote that "[m]odern life demands, and is waiting for, a new kind of plan"⁵⁶ Creative Problem Solving is that plan.

III. REGULATING LINES: LAW AS A MEANS TO AN END

Le Corbusier saw the regulating line as an "inevitable element of Architecture."⁵⁷ It acts as a "guarantee against willfulness" and "[i]t brings satisfaction to the understanding."⁵⁸ For the Swiss visionary: "The regulating line is a means to an end"⁵⁹

Around the same time, Roscoe Pound, among others, was also looking at law as a means to an end. For Pound, the Dean of Harvard, "the conception of law as a means towards social ends, the doctrine that law exists to secure interests, social, public and private, requires the jurist to keep in touch with life."⁶⁰ So began a new school of thought about law, Sociological Jurisprudence, which recognized that law, juristic thought, and juridical

52. Roscoe Pound, *The Scope and Purpose of Sociological Jurisprudence*, 24 HARV. L. REV. 591, 603 (1911) (quoting GESCHICHTE DER NEUEREN STAATSWISSENSCHAFT 625).

53. For a brief exploration into the role of Creative Problem Solving in legal education, see James M. Cooper, *Educating Lawyers for the New Era*, SAN DIEGO UNION TRIB., March 1, 1998, at G3. However, see Paul Brest, *The Responsibility of Law Schools: Educating Lawyers and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5 (1995), for a thorough exploration of the role that problem solving and negotiation should play in the law school curriculum.

54. LE CORBUSIER, *supra* note 1, at 2.

55. See Rhona K.M. Smith, *The International Impact of Creative Problem Solving: Resolving the Plight of Indigenous Peoples*, 34 CAL. W. L. REV. 411 (1998); Dino Kritsiotis, *The Power of International Law as Language*, 34 CAL. W. L. REV. 397 (1998); Stephen Nathanson, *Designing Problems to Teach Legal Problem Solving*, 34 CAL. W. L. REV. 325 (1998).

56. LE CORBUSIER, *supra* note 1, at 45.

57. *Id.* at 67.

58. *Id.*

59. *Id.*

60. Roscoe Pound, *The Scope and Purpose of Sociological Jurisprudence*, 25 HARV. L. REV. 140, 146-47 (1911).

method had failed to meet social ends.⁶¹ This led to a call for law to be concerned with social engineering. Lawmakers utilizing scientific data, whether judges or legislators, should use the law to achieve certain specified social ends.

Law can be viewed as a machine made by humankind to achieve a purpose. In the United States, there has long been a movement towards viewing law as an engine and its practitioners as engineers.⁶² For Karl Llewellyn, founder of the Realist Jurisprudence school, "the trend of the most fruitful thinking about law has run steadily towards regarding law as an engine."⁶³

This view is not particular to American legal thought. Indeed, one of the main features produced by the Italian judicial selection process, and for that matter the selection process of most civil law countries, is a judiciary with a civil service mentality. According to one scholar, "routinization of activity implies that issues that come before the official are no longer apprehended as presenting a unique constellation of circumstances calling for 'individualized justice.'"⁶⁴ Choices are narrowed: while there may be many ways to go about solving a problem, only one emerges as habitual.

On the European continent, society and the judiciary have tended to see themselves as another branch of the civil service, operating a machine built by scholars and legislators. One Italian commentator has referred to the judge as: "an electronic calculator. Inside the machine there is a program consisting of substantive and procedural legal rules; the facts are introduced, in a procedural form, and by pulling a lever, the decision comes out."⁶⁵

This "judicial slot machine," as it was termed by Haines and Kantorowicz,⁶⁶ reduces the judicial process to a mechanical and automatic form.

61. For an excellent examination of the movement in American legal thought from Mechanical Jurisprudence to Sociological Jurisprudence to Legal Realism, see G. Edward White, *From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America*, 58 VA. L. REV. 999 (1972). Legal Realists, too, saw a need for contemporary jurisprudence to recognize the tendency of societies to aspire after social purposes. See Karl Llewellyn, *Some Realism About Realism—Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1237 (1931) [hereinafter *Realism*]. See also NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* (1995); N.E.H. HULL, *ROSCOE POUND AND KARL LLEWELLYN: SEARCHING FOR AN AMERICAN JURISPRUDENCE* (1998).

62. Among the Progressive movement, there was "[e]ndless talk of order and efficiency, endless analogies between society and well-oiled machinery." MICHAL R. BELKNAP, *TO IMPROVE THE ADMINISTRATION OF JUSTICE—A HISTORY OF THE AMERICAN JUDICATURE SOCIETY* 27 (1992) (quoting ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920*, 156, 161 (1967)).

63. Karl Llewellyn, *A Realistic Jurisprudence—The Next Step*, 30 COLUM L. REV. 431, 464 (1930).

64. See MIRJAN R. DAMASKA, *THE FACES OF JUSTICE AND STATE AUTHORITY* 19 (1986).

65. Giovanni Meneghelli, *Il Formalismo Nella Interpretazione Giuridica*, 15 JUST. 228 (1964).

66. See Charles Haines, *General Observation on the Effects of Personal, Political, and Economic Influences in the Decisions of Judges*, in F.S. COHEN & M.R. COHEN, *READINGS IN JURISPRUDENCE AND LEGAL PHILOSOPHY* 250 (1979) (quoting KANTOROWICZ, *RECHTSWISSENSCHAFT UND SOZIOLOGIE* 5). See also Piero Calamandrei, *La Funzione Della Giurisprudenza Nel Tempo*

While the civil law judge is a functionary who performs important tasks, these tasks remain uncreative and unemotional in scope: "Judgments become pronouncements of an impersonal entity (a curia) even where a single individual is entrusted with their rendition."⁶⁷

Law is one of many tools which must be used for society.⁶⁸ Along with organized religion, ethnicity, language, and nationhood, law is a form by which communities regulate and organize themselves. As was pointed out long ago:

[H]uman laws are devices, tools which society uses as one of its methods to regulate human conduct and to promote those types of it which are regarded as desirable. If so, it follows that the worth or value of a given rule of law can be determined only by finding out how it works, that is, by ascertaining, so far as that can be done, whether it promotes or retards the attainment of desired ends. If this is to be done, quite clearly we must know what at any given period these ends are and also whether the means selected, the given rules of law, are indeed adapted to securing them.⁶⁹

Le Corbusier is most renowned for advocating that "the house is a machine for living in."⁷⁰ In the Creative Problem Solving rubric, law is a machine for living. Law is the machinery for social life and the life of society. Its wheels grind, sometimes to a halt, and often oil or other lubrication is needed. Like any machine, law must be fueled and serviced.⁷¹

This contention may not be new at all. Indeed, such an overture existed eighty years ago as the First World War drew to a close. The birth of Modernism came with many pressures that attend change. Indeed, Le Corbusier called for an awakening: "There is a new spirit: it is a spirit of construction and of synthesis guided by a clear conception. Whatever may be thought of it, it animates to-day [sic] the greater part of human activity."⁷²

Creative Problem Solving also recognizes and vindicates human nature to all so-called legal situations.⁷³ The very basis of common law—the development of rules from appellate court decisions—started with human be-

Presente, 6 STUDI SUL PROCESSO CIVILE 92 (1957).

67. DAMASKA, *supra* note 64, at 19.

68. Culture, a larger phenomenon under which law fits, has also been described as a tool. See J.M. Balkin, *Ideology as Cultural Software*, 16 CARDOZO L. REV. 1221, 1224 (1995) ("Culture is in this sense, a set of collectively created tools of understanding. This brings us to another basic metaphor: that of the tool. Human beings are toolmakers and tool users. Culture itself is a tool. It is a tool to make other tools.").

69. Cook, *supra* note 51, at 308.

70. LE CORBUSIER, *supra* note 1, at 4.

71. For a critique of this view, see Thomas D. Barton, *Creative Problem Solving: Purpose, Meaning, and Values*, 34 CAL. W. L. REV. 273 (1998).

72. LE CORBUSIER, *supra* note 1, at 89.

73. For general works on problem solving, see ROBERT J. STERNBERG, *THINKING AND PROBLEM SOLVING* (1994), JOHN BRANSFORD & BARRY S. STEIN, *THE IDEAL PROBLEM SOLVER: A GUIDE FOR IMPROVED THINKING, LEARNING, AND CREATIVITY* (1993).

ings who faced problems. In order to address that basic truth—that human beings face a number of difficult situations—the Creative Problem Solving approach to law seeks to educate lawyers and other professionals in an appreciation of collaborative, long-term, interdisciplinary, and symbiotic solutions. These are the building blocks of an architecture for the future of societal relations.

IV. ARCHITECTURE: CREATIVE PROBLEM SOLVING

Creative Problem Solving is an evolving approach to law.⁷⁴ It combines law, sociology, social anthropology, and the behavioral sciences (particularly cognitive psychology, group dynamics, and decision making) in a holistic fashion. It also includes the assessment of the impact of business theory and economics. Moreover, sciences and applied sciences have diagnostic and planning skills to lend to the study and practice of law.

In Creative Problem Solving, problems are thought of as multidimensional, often requiring nonlegal or multidisciplinary solutions. Most conflicts have interconnected causes, and their effects often impinge on competing jurisdictions and disciplines. In short, entrenchment of law and legal precepts can sometimes work against the solving of problems. In fact, Creative Problem Solving requires the parties to give up their linear understanding of the situation's history.⁷⁵ By focusing on a problem's past, we often become stuck in entrenched positions—with the result that no collaborative solution can be found.

We assume that problems may be prevented or solved more effectively by professionals from many disciplines joining together.⁷⁶ Not all problems require legal solutions, and not all legal problems should result in a lawsuit. The Creative Problem Solving lawyer does not litigate for the sake of litigation.⁷⁷ Indeed, only occasionally do a client's problems call for the kind of legal solutions that attorneys are so used to providing. In fact, rarely does any situation require just a legal solution. Problems often call for an inquiry into the psychology of the parties involved, and a thorough analysis of all the interests of the various constituents.

The practice of Creative Problem Solving requires a certain flexibility

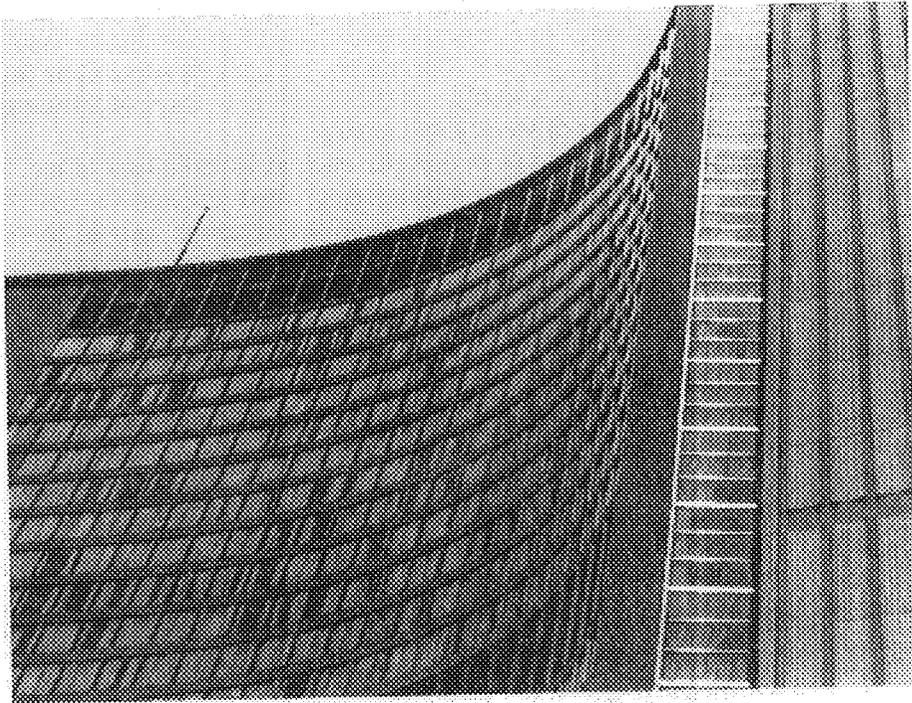
74. I am indebted to Thomas Barton, Janeen Kerper, and Steven Smith for their insight on the dynamics and parameters of Creative Problem Solving.

75. In referring to Frank Lloyd Wright's approach to architecture, Nivala writes: "The process was continuous and recursive, not linear . . ." Nivala, *supra* note 18, at 107.

76. For an examination into interdisciplinary scholarship and the manner in which lawyers and non-lawyers may engage in discourse concerning their respective disciplines, see Annelise Riles, *Representing In-Between: Law, Anthropology and the Rhetoric of Interdisciplinarity*, 1994 U. ILL. L. REV. 597 (1994); Edward J. Conry & Caryn L. Beck-Dudley, *Meta-Jurisprudence: A Paradigm for Legal Studies*, 33 AM. BUS. L.J. 691 (1996).

77. See Stolle et al., *supra* note 48, at 34. The authors are right to declare that: "Clients don't care about winning lawsuits . . . What they do care about is achieving their objectives. All the rest of it is simply instrumental." *Id.* at 35.

of mind, and a bent towards the interpersonal sensitivity that enables one to apply the most appropriate skill at the most appropriate time.



—The practice of Creative Problem Solving requires a certain flexibility of mind.

In order to resolve the broad diversity of human problems that confront professionals and conflict managers—lawyers, diplomats, and mediators to name but a few—Creative Problem Solvers must have the skillsets to select collaboration and facilitation in some contexts, and a litigious, adversarial and competitive approach in others. These professionals must also have the ability to avoid problems, and the ability to intervene in situations before a dispute arises and protagonists become inflexible. Creative Problem Solving is, by its very nature, a preventive approach to law. Before interests in any situation become entrenched, the Creative Problem Solver has a plethora of skillsets to resolve disputes early and effectively.

Likewise, conflict (often viewed as a zero-sum game) must be re-evaluated. With all the binary byproducts that come with conflict—rights and liabilities, winners and losers, victors and vanquished—a new multi-polar, nonlinear approach must be embraced. The use of Creative Problem Solving techniques—interactive listening, consensus-building, and proactive

dialoguing—can assist in resolving situations and in building, maintaining, and strengthening positive relationships with other seemingly adversarial parties. In utilizing such tools, conflict can be viewed as the exploration of opportunities—opportunities for integrative bargaining and opportunities for workable win-win solutions. In essence, Creative Problem Solving expands the perspectives from which lawyers, lawmakers, and judges serve their respective clients and society as a whole. With all this, new ways of thinking and more sustainable modes of victory will emerge.

There are a number of schools of thought, such as Holistic Lawyering,⁷⁸ Restorative Justice,⁷⁹ Therapeutic Jurisprudence,⁸⁰ and Preventive Law,⁸¹ which share a similar belief in more collaborative lawyering. All of these schools, each in its own way, are part of the Creative Problem Solving matrix. They respect and encourage the need for private counseling in the legal paradigm, and recognize that psychological and sociological perspectives must be addressed. Creative Problem Solving borrows from Roscoe Pound the belief that law students, lawmakers, lawyers, and judges alike must study the actual social effects of legal doctrines. Creative Problem Solving must also focus on addressing legal reform. The substance of many regulations and regimes must be deconstructed and then reconstructed to better serve all stakeholders. Better lawmaking is an essential component of the Creative Problem Solving school of thought.

Growing dissatisfaction with the practice of law requires innovative solutions and new strategies for primary and continuing legal education.⁸²

78. Holistic Lawyering, on the other hand, has experienced a dearth in scholarship. The Holistic approach to law has generally been focused on the administration of criminal justice. See William T. Pizzi, *A Holistic Approach to Criminal Justice Scholarship*, 79 JUDICATURE 58 (1995). There are, however, other areas that have been examined from a Holistic approach. For a Holistic examination of law and environmental policy, see Steven M. Siros, *Borders, Barriers, and Other Obstacles to a Holistic Environment*, 13 N. ILL. U.L. REV. 633 (1993). This evolving and more organic approach to the administration of justice criticizes attorneys' narrowness of vision. A major target of this school of thought is the law school curriculum. "Training a student to think like a lawyer now has a negative connotation It indicates someone who can talk glibly about 'rights' and about this decision or that decision but lacks the ability to see the system in broader perspective." Pizzi, *supra*, at 58.

79. "Restorative Justice views crimes as a violation of one person by another, rather than as a violation against the state." Mark S. Umbreit & Mark Carey, *Restorative Justice: Implications for Organizational Change*, 59 MAR. FED. PROBATION 47 (1995). See also G. Bazemore, *Developing a Victim Orientation for Community Corrections: A Restorative Justice Paradigm and a Balanced Mission*, 1994 PERSP. 19 (1994).

80. See Stolle et al., *supra* note 48, at 17 ("Therapeutic jurisprudence is an interdisciplinary approach to law that builds on the basic insight that law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects.").

81. Preventive law has been defined as "a branch of law that endeavors to minimize the risk of litigation or to secure more certainty as to legal rights and duties." Edward D. Re, *The Lawyer as Counselor and the Prevention of Litigation*, 31 CATH. U. L. REV. 685, 692 (1995).

82. For an brief exploration into the role of Creative Problem Solving in legal educa-

Creative Problem Solving recognizes that by reshaping the role of the lawyer, we can go a long way in redressing much of society's concerns by reinvigorating an honorable and necessary profession. It is up to law faculties to embrace the goals behind the Creative Problem Solving project.

Some lawyers, law professors, and members of the Bench will see these "millennial" approaches as something that they "already do" as proactive professionals. Within Creative Problem Solving, like the other "new age" paradigms, there is a dearth of content and little empirical research upon which to proceed. These evolving areas of jurisprudence are relatively new to the study of law and have little practical history. Building curricula around these concepts will be of paramount importance so that lawyers and other professionals can become Creative Problem Solvers. Developing skills and disseminating the tools to facilitate their use, however, is a very pressing task.

V. PURE CREATION OF THE MIND: THE TOOLS OF CREATIVE PROBLEM SOLVING

As Le Corbusier explained: "There is no such thing as primitive man; there are primitive resources. The idea is constant, in full sway from the beginning."⁸³ The notion of Creative Problem Solving is also constant—it already exists in a nonlinear and disconnected way. And although lawyers, lawmakers, and jurists say that they already engage in Creative Problem Solving, they lack the tools to do so. With life moving at an even faster pace, we constantly require new tools for our times. Creative Problem Solving puts those tools in the hands of everyone.⁸⁴

Le Corbusier noted that "[i]n every field of industry, new problems have presented themselves and new tools have been created capable of resolving them."⁸⁵ This is true of law. Between on-line services for research, the use of multimedia presentations in the courtroom, and fax servicing of pleadings, the law has responded in some degree to the changes in societal communication.

We must now turn our attention to the process of lawyering and the training of lawyers. Le Corbusier faced the same thing in his day: "The

tion, see Cooper, *supra* note 53.

83. LE CORBUSIER, *supra* note 1, at 70.

84. For articles that approach or integrate Creative Problem Solving, see Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984); Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243 (1992); Roger Fisher & William Jackson, *Teaching the Skills of Settlement*, 46 SMU L. REV. 1985 (1993); Carrie Menkel-Meadow, *To Solve Problems, Not Make Them: Integrating ADR in the Law School Curriculum*, 46 SMU L. REV. 1995 (1993); Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

85. LE CORBUSIER, *supra* note 1, at 7.

history of Architecture unfolds itself slowly across the centuries as a modification of structure and ornament, but in the last fifty years steel and concrete have brought new conquests, which are the index of a greater capacity for construction, and of an architecture in which the old codes have been overturned.⁸⁶



—The notion of Creative Problem Solving is constant—it has long existed in a nonlinear and disconnected way.

A. Problem Identification: Tool #1 of Creative Problem Solving

Le Corbusier hit the nail on the head when he wrote: “When a problem is properly stated, in our epoch, it inevitably finds its solution.”⁸⁷ Problem identification is the first stage of Creative Problem Solving.⁸⁸ Essential to this stage is the process of judging relevance. In determining relevance, the problem solver may focus on the important parts of the problem and build a framework of analysis to reach solutions.⁸⁹

86. *Id.* at 7.

87. *Id.* at 110.

88. See GARY A. DAVIS, *PSYCHOLOGY OF PROBLEM SOLVING: THEORY AND PRACTICE* 15 (1973).

89. See HAYES, *supra* note 47, at 5.

Diagnostic skills, such as those practiced by physicians and psychiatrists, would be welcome additions to the lawyer's toolbox. Likewise, an understanding of other stimuli in a client's life may affect or cause a particular problem. As Habermas suggests, "The communication structures of the public sphere are linked with the private life spheres in ways that gives the civil-social periphery, in contrast to the political center, the advantage of greater sensitivity in detecting and identifying new problem situations."⁹⁰

The Creative Problem Solving attorney must act as a counselor, and dig into the real motivations of each client, to serve the client's interests in the best and most diligent manner. Thus, in Creative Problem Solving the attorney-client relationship will fast become the subject of a new body of interdisciplinary research. The major challenge for legal educators worldwide is to provide future attorneys with the tools to address effectively the multitude of problems that a client may present. The courts, too, need to acquire problem identification skills.⁹¹

We need to focus on the teaching of interviewing skills, fact-finding tools, and the art of interactive listening. We must endeavor to find better ways of listening, not just faster and more effective ways of talking.

B. Thinking Outside the Box: Tool #2 of Creative Problem Solving

Critical thinking has been the darling of the intelligentsia in the late twentieth century.⁹² Management gurus extol the virtues of "shifting paradigms," "thinking outside the box," "pushing the envelope," and other metaphors to encourage free thinking. There are reasons for these mantras and slogans. As one jurist put it:

It is a curious paradox that when men are confronted with situations still more complex than those found in the physical and biological sciences, as is the case in economics, sociology, ethics, and law—situations which therefore are more difficult to deal with by scientific technique—the more insistent do they become as to the prior existence of fixed and universal principles or laws which can be discovered and directly applied and followed. . . . As a result they either fail to discover what their problems are or to deal adequately with them if they do.⁹³

90. HABERMAS, *supra* note 5, at 381.

91. The Holistic approach to law has much to add on the subject of problem identification: "The Court has before it a nice narrow set of facts and legal briefs arguing strenuously for or against the remedy sought. What the Court lacks, however, is an empirical basis on which to estimate reliably: (1) how often the problem at hand comes up around the country; (2) how serious the problem is when it does occur; (3) how effective the proposed remedy is likely to be in eliminating the problem; and (4) what the proposed remedy's likely impact on the system would be in terms of efficiency and reliability." Pizzi, *supra* note 78, at 59.

92. See EDWARD DE BONO, *PARALLEL THINKING: FROM SOCRATIC THINKING TO DE BONO THINKING* (1994).

93. Cook, *supra* note 51, at 306.

Lawyers, who have been indoctrinated by the case method of teaching, may find it alarming that there are some legal academics who have begun to question the use of the case method.⁹⁴ This debate raged during the days of Pound, Bingham, Llewellyn, and Frank.⁹⁵ One analyst has gone so far as to write:

I should indeed not hesitate to assert that the sanctification of ready-made antecedent universal principles as methods of thinking is the chief obstacle to the kind of thinking which is the indispensable prerequisite of steady, secure and intelligent social reforms in general and social advance by means of law in particular.⁹⁶

The need for critical thinking among lawyers, lawmakers, and judges is long overdue. We have been bombarded by a line of historical decision making that is proselytized as doctrine, and tyrannized by the loose interpretations of ancillary judgments which have been elevated to the status of obiter dicta. In short, in a war between competing judgments, we have suffered caseshock under the pretense of the case method. We can spot issues—that is, after all, how we answer law school examinations. We are good at following rules and finding precedents. But this does not help us with our lives as lawyers and problem solvers. We are not so good at finding creative, nontraditional, and often simple solutions to very complicated problems. Law schools have not taught creativity, or the ability to think outside particular situations, so as to see all the ramifications and permutations.⁹⁷

Creative Problem Solving recognizes the importance of the case method of legal education, but calls for another kind of learning: knowledge of the creative process and critical thinking. These skills must be developed in our law schools and tested on our Bar examinations. These are the tools which will assist our attorneys. These are the tools of the Creative Problem Solver.

C. Consolidation of Learning: Tool #3 of Creative Problem Solving

The Creative Problem Solver can grow by consolidating the lessons learned, both from his or her own experiences and from the retelling of narratives from others. It is crucial that the Creative Problem Solver reflect on

94. See Paul Brest, *The Responsibility of Law Schools: Educating Lawyers and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5 (1995).

95. In the early 1890s, an intense debate occurred within the American Bar Association between spokesmen for the emerging large-firm corporate Bar and law teachers from Harvard and other law schools that had followed Harvard's case-method lead. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 57-60 (1983).

96. John Dewey, *Logical Method and Law*, 10 CORNELL L. REV. 17, 27 (1924).

97. See Nivala, *supra* note 18, at 99 ("The lawyer as architect brings more to the client's problems than doctrinal knowledge and forensic ability; the lawyer as architect also brings a capacity for invention and ingenuity.").

the lessons learned immediately following the successful solution.⁹⁸

Part of consolidating the lessons requires an understanding of how to categorize them. An important tool that must be developed then is that of consolidating knowledge from other disciplines. This is akin to learning by doing, learning by experiencing, and learning by living. Studying all of the case law in the world will not prepare a new attorney when her client comes into her office and cries. Nothing in any statute book can prepare a young lawyer for a tough negotiation session with a cranky district attorney. We must teach our attorneys how to be savvy, how to be smart, and how to utilize timing.

We must also learn to communicate this learning. Creative Problem Solvers are openly committed to improving methods of communication.⁹⁹ It is the essence of Creative Problem Solving. Much of the battle to become creative rests in the dissemination of that creative content. We must learn to act as engineers as we construct and reconstruct relationships for our clients. Attorneys, lawmakers, and jurists are the social engineers of our society—we build and rebuild societal relations. As such, good foundations are crucial, as is an understanding of the best building materials for the right situation. As Le Corbusier put it concerning his profession: “The architect is above all an engineer.”¹⁰⁰ Under the Creative Problem Solving rubric, so too shall the lawyer be.

VI. CONCLUSION

Law as Social Architecture: Towards Creative Problem Solving

Creative Problem Solving is still formulative.¹⁰¹ It is evolving into a recognized approach to law. When referring to “the Lesson of Rome,” Le Corbusier may have meant that everything takes more time. Rome was not built in a day—nor shall this evolutionary approach to jurisprudence and the practice of law be built in a day.

But like Rome, we must endeavor to build solid foundations and establish long-term relationships. Lawyers must learn to work with other societal actors, such as non-governmental organizations. We must also understand that our clients may not exist now but may develop in the future. The Creative Problem Solving approach recognizes the value of relationships. Too

98. See HAYES, *supra* note 47, at 48. Hayes points to four general methods for searching for a solution: trial and error, proximity methods, fractionation methods, and knowledge-based methods. See *id.* at 30-44.

99. See Umbreit & Carey, *supra* note 79 (“There can be no substitute for consistent and thorough communication.”).

100. LE CORBUSIER, *supra* note 1, at 180.

101. “An idea needs time; its supporters need perseverance, stubbornness.” LE CORBUSIER, PRECISIONS: ON THE PRESENT STATE OF ARCHITECTURE AND CITY PLANNING 92 (Edith Schreiber Aujame trans., 1991).

often lawyering has been about the application of rules, separate to the human relations that the parties enjoy. In order to provide added value to clients, the Creative Problem Solving professional works at sustaining and building relationships that outlive any one particular legal situation.

As such, Creative Problem Solving recognizes that parallel decision making and obligation systems exist outside the ambit of formal law. Bonds and social patterns based on family, clan, ethnic grouping, and other affiliations often run parallel to the bonds and social patterns that have emerged in the Western notion of liberal democracy and the functioning of the social contract. For example, Creative Problem Solving recognizes that Aboriginal cultures have their own forms of dispute resolution.¹⁰² Long before the white European man imposed his law on this land, there were alternative systems of problem solving and means by which society's participants planned for future generations.¹⁰³ In fact, we can learn much if we see our dispute resolution in Western society as stemming from these more organic forms of conflict management. As Habermas rightfully explains:

In tribal societies, which were the seedbed for early state formations, the prestige-based *social power* of chieftains, priests, members of privileged families, and so forth, joined forces with *recognized behavioral norms* whose obligatory force stemmed from mythic powers, hence from a sacred background consensus. Together they formed a syndrome that already made institutions of conflict resolution and collective will-formation possible before the evolutionary step to state-organized power was taken.¹⁰⁴

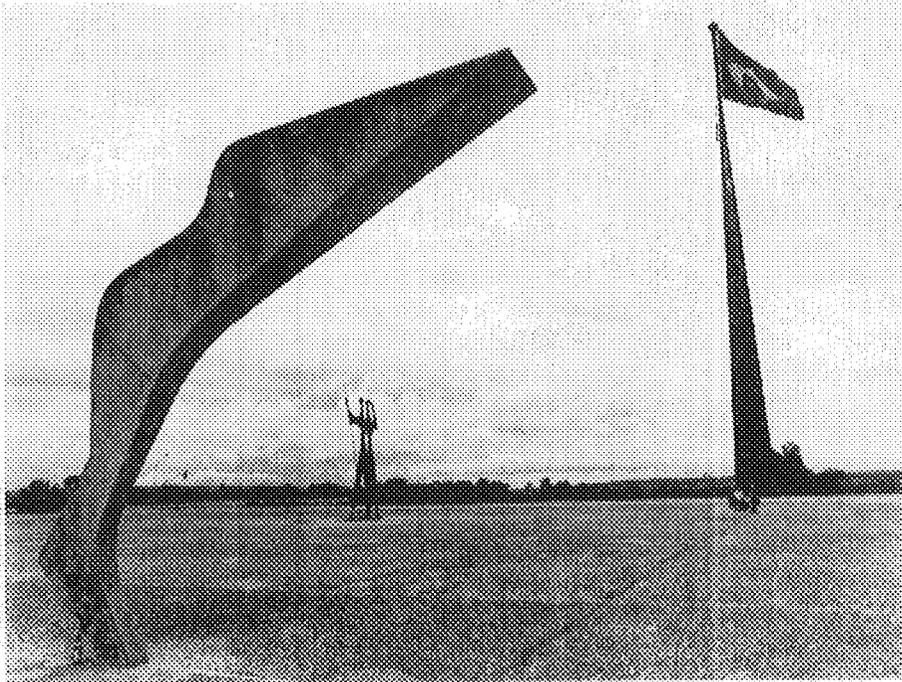
Like Rome, Creative Problem Solving is looking to expand its nascent empire. Indeed, Creative Problem Solving is hyper-global in outlook and outreach. While attorneys who adhere to approaches like Therapeutic Jurisprudence or Preventive Law focus on helping their client's overall well-being, and ensuring that the client's total legal health is considered, the Creative Problem Solving lawyer looks at more than the client. The Crea-

102. The forms of dispute resolution and conflict management in which the First Nations and Aboriginal Peoples around the world engage are not *Alternative* Dispute Resolution but *Original* Dispute Resolution.

103. The traditional concept of Navajo justice is based upon discussion, consensus, relative need and healing. See Robert Yazzie, "Hozho Nahasdlii"—*We Are Now In Good Relations: Navajo Restorative Justice*, 9 ST. THOMAS L. REV. 117 (1996). The core of Navajo justice is peacemaking. In peacemaking, a thoughtful and attentive examination of each aspect of a given problem is made to reach conclusions about how to best resolve the problem. The Navajo justice system is a horizontal justice system in which no person is above another person, as in a vertical model of justice such as the American justice system. A horizontal justice system is often portrayed as a circle, because there is no left and no right, nor a beginning or an end, and each point (or person) on the line of a circle looks to the same center as the focus. The circle is symbolic in this culture because of its nature; it is perfect, unbroken, and a celebration of unity, harmony and interconnectedness. See Robert Yazzie, "Life Comes From It": *Navajo Justice Concepts*, 24 N.M. L. REV. 175 (1994).

104. HABERMAS, *supra* note 5, at 138.

tive Problem Solving lawyer recognizes that an attorney's counseling and a client's decision making may impact the profession, the community, and society. The Creative Problem Solving lawyer attempts to correct wrongs as strongly as he or she will defend rights. The Creative Problem Solving lawyer looks to serving the public good rather than defending simple self-interest.¹⁰⁵



—*Creative Problem Solving is hyper-global in outlook and outreach.*

Society is constantly in flux, and “in flux typically faster than the law, so that the probability is always that any portion of law needs reexamination to determine how far it fits the society it purports to serve.”¹⁰⁶ Creative Problem Solving can fill the gaps where legal regulation has abdicated its role or where it has yet to exist.

Creative Problem Solving embraces the notion of competing jurisdictions, many of them not traditionally based on law. These *juriscapes* recognize that we atturn to more jurisdictions than to the city, state, or country in which we reside. We also are bound by traditions related to family, kin, religion, ethnicity and language. Each of these *juriscapes* has its own code of

105. At the very least, the Creative Problem Solving attorney ensures that his/her client's long-term interests are protected rather than sacrificed for short-term gain.

106. Llewellyn, *Realism*, *supra* note 61, at 1237.

conduct and forms of enforcement mechanisms, outside the ambit of state control. In this, Creative Problem Solving shall become the midwife for the right of self-determination.¹⁰⁷

Indeed, "we have reached the era of relativity."¹⁰⁸ We must stress the importance of comparative law and cultural sensitivity. Rome also taught us that conquering territory and imposing laws on foreign lands is not conducive to good governance.¹⁰⁹ History has shown that instead of conquering, collaborating appears more likely to bring long-term results. The problems which face our world today—the population explosion, environmental devastation, the rise in ethnic conflict, and inequitable economic stratification—appear to be unsolvable, immense, and out of our collective control. Attorneys must understand, as scientists and philosophers do, that our respective disciplines can solve little on their own. Only together, can we heal society and our globe.¹¹⁰

Creative Problem Solving is by its very nature therapeutic at heart. It is about healing society, reconstructing the social contract, and strengthening community bonds, big and small. It is also global in scope. Creative Problem Solving is the umbrella under which Preventive Law, Therapeutic Jurisprudence, Holistic Lawyering, and Restorative Justice schools of thought rest. As we forge new tools and new curricula to teach those tools, we look forward to drawing on the strengths of these symbiotic approaches to legal education and legal practice.

Law however cannot, like mathematics or the sciences be taught dogmatically. There are no essential verities. Law can never stand still long enough to allow them to be extracted. What is law to-day is not necessarily law to-morrow [sic]. Hence law, like the movements of the earth

107. For the international community's enshrinement of a general right of self-determination, see International Covenant on Civil and Political Rights, 1966, 999 U.N.T.S. 171, and International Covenant on Economic, Social and Cultural Rights, 1966, 993 U.N.T.S. 3, art. 1(1). For an affirmation of the right by the International Court of Justice, see Advisory Opinion on the Western Sahara, 1975 I.C.J. 12, at 121. The U.N. Special Rapporteur provided an early review of the right of self-determination in *Implementation of United Nations Resolutions Relating to the Right of Peoples Under Colonial and Alien Domination to Self-Determination*, U.N. Doc E/CN.4/Sub.2/40 (1978). For a warning of the dangers of uncontrolled self-determination, see United Nations, *Report of the Secretary-General on an Agenda for Peace—Preventive Diplomacy, Peacemaking and Peace-Keeping*, June 17, 1992, para. 17, 31 I.L.M. 953 (1992).

108. Cook, *supra* note 51, at 303.

109. The international reaction to the extraterritorial application of U.S. legislation is a case in point. All of America's major trading partners have protested the Helms-Burton Act, U.S. legislation aimed at punishing foreign corporations legitimately doing business in Cuba by allowing for Cuban nationals who are U.S. citizens the right to sue in U.S. Federal Court for damages relating to expropriated property under the Castro regime. See James M. Cooper, *Creative Problem Solving and the Castro Conundrum*, 101 CAL. W. INT'L. L.J. 405-12 (1998).

110. See HABERMAS, *supra* note 5, at 386 ("As steering problems become more complex, irrelevance, misguided regulations, and self-destruction can accumulate to the point where a 'regulatory trilemma' results.").

itself can only be observed in operation. Let us then at the same time observe and consider the changing conditions of society which will furnish the path that law must follow and to which it must adjust itself. Only by doing so will we in any degree be able to prophesy where law is tending.¹¹¹

There will be an inevitable blurring of boundaries between the so-called “soft” approaches to law. The Creative Problem Solving school looks forward to a long future of collaboration, shared learning, and the belief that lawyers can make the difference. Only together can we reverse the trend of negativity—both internal to the profession and external in terms of public opinion—that weighs down the legal profession.

Creative Problem Solving is an evolving approach to law and legal education. It must be extended into the practicing Bars across the United States and internationally. But it must not be limited to the legal profession alone. The new renaissance which is emerging and cross-fertilizing among other disciplines implies a whole new set of tools that professionals—lawyers, engineers, architects, doctors, and psychologists—must possess, and must correctly and effectively utilize. Indeed, there are many Creative Problem Solving skills which lawyers and nonlawyers can use. As this interdisciplinary pollination occurs, Creative Problem Solving will become a system that runs parallel to law. For scholars of jurisprudence, “the field of law is part of the field of the science of government.”¹¹²

It is now time for law to be recognized as social architecture. As we build our future, it must be on solid and simple foundations. Its infrastructure can be erected through the collaborative, interdisciplinary and transglobal mechanisms of Creative Problem Solving. For Le Corbusier, “Architecture is a matter of ‘harmonies,’ it is ‘a pure creation of the spirit.’”¹¹³ It is time for law to strive for those ends.

111. Cecil A. Wright, *An Extra-Legal Approach to Law*, 10 CANADA B. REV. 1, 17 (1932).

112. Joseph W. Bingham, *supra* note 50. Bingham goes on to write: “Our field of law does not consist of rules and principles only. Similar fields existed before adequate rules and principles were developed to aid in comprehending them, just as the field of geology existed before the science of geology was developed.” *Id.* at 12.

113. LE CORBUSIER, *supra* note 1, at 19.

