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LAW AVOIDING REALITY: JOURNEY THROUGH THE VOID TO THE REAL

*Richard Briles Moriarty**

Few facets of existence escape the attention of the law. Concerning itself with everything, how does the law respond to nothing? Confronted with nothingness, particularly in its own midst, the law strives to corral it within defined boundaries.

That the legal system, society's fastidious rule-maker, endeavors to control nothingness through categorization is characteristic and astonishing. The DePaul community is invited to look back at the law itself, and its pretense of logic and realism, through the literally empty window created by this endeavor. As inhabitants of the void – viewing law as framed by, and exposed through, this window – we may detect when and how the legal system can co-exist comfortably with the nebulous concept of reality.

The ultimate message may be clearly stated. The law can persist through inertia and the enormous power accorded to it by society. To thrive, and to further social evolution, requires far more. Judges and lawyers should, in the manner of good scientists, continually question and test assumptions. Prior decisional law should be respected to the extent it retains ongoing persuasiveness and relevance. That respect should never mask mindless repetition as a substitute for current reasoning. Most importantly, decisions and actions must be explained with as much precision, publicly acceptable rationale and humility as can be mustered.

Judges and lawyers, routinely expecting supervisors in employment discrimination cases to explain their decisions, view testimony by those supervisors skeptically, unless supported by articulated persuasive rationales. The standards for the law's sentinels should be much higher.

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In disputes with teenagers, parents may prevail, without expressing reasons meaningful to those teenagers, by relying on sheer power. Like parents who force teenagers to obedience, the law utterly fails unless it justifies its views with clarity and humility, and conveys an ongoing readiness to change and adapt. This vital task is often avoided precisely because it is difficult and exhausting. It is difficult and exhausting precisely because it is vital.

The chief societal benefit of the recent judicial debacle entitled *Bush v. Gore*,[1] is how well it confirms these points. The majority, surprising seasoned Court observers, unnecessarily drained the Court's deep reservoir of public respect. That reservoir was carefully filled in increments, and nurtured over many decades, by prior Courts attending to what was so glaringly absent in *Bush*: rationales publicly accepted as authoritative because they were persuasive rather than dependent on raw power. The majority's shocking inability, or unwillingness, to articulate publicly acceptable reasons for short-circuiting established judicial processes, and the democratic processes created by the Founders, left the country staring into that drained reservoir and, unexpectedly, a constitutional void.

We will return to *Bush v. Gore* to consider alternatives readily available to the majority. For now, we should step through the window in which the law has framed nothingness and begin our journey. After stepping through that window, we should stop and sit awhile – not from exhaustion, but to get our bearings and allow our minds to clear. Worthwhile journeys only occur after allowing distractions, and prior concerns, to fall away. They are not marked by distances traveled or sights recorded. Sitting, and allowing the mental journey to begin by looking back at the frame of that window, reveals the varying ways that the law responds when the actions of its own agents should be deemed void and what that tells us about the law itself.

When legal bodies act without jurisdiction – the lifeblood of legal existence – those actions must, necessarily, be "void." The law's facility for alternately applying and avoiding that conclusion, while pretending consistency, might baffle a Houdini. Examining how the law declares life to exist within some of those empty shells discloses irreconcilable disparities between the solemn mask worn by the law and the fragile human face beneath that mask.

If a legal body acts without jurisdiction and that absence of power is transparent in the records of the proceedings in which the action was attempted, the law says that the action never occurred. The action is

1. 531 U.S. 98 (2000) (per curiam).

not simply branded illegal or unworthy of enforcement. A "void" action, and by inference the court or agency itself while engaging in the action, actually do not exist. They are black holes in the law.

As with black holes in space, little can be learned from scrutinizing the seeming emptiness of these legal black holes. The human mind finds direct contemplation of nothingness exceedingly difficult. Far more fruitful, both for astronomers and lawyers, is to examine the effects of these perceived non-entities on what surrounds them. Orders that are "void from entry" usually drag all activities relying on those orders down into the abyss of nothingness. This delinquent behavior is strikingly similar to the effect that spacial black holes have on their neighborhoods.

Not all legal black holes, however, are as they seem. Though logic requires that all orders entered without jurisdiction must be "void from entry," many such orders are not favored with this elegant status. An order is merely "voidable" – not "void" – if the jurisdictional defect is hidden beneath translucent or opaque public records. If evidence must be presented before the defect can be detected, the order is simply "voidable."

Mere semantics? Not in the law – where words, quite literally, govern life and death. One might suppose that voidable orders are just void orders awaiting discovery since, entered without jurisdiction, they similarly lack the essential ingredient for legal existence. Significant difference is declared to obtain, however, between apples with unblemished skin that are rotten inside, and apples no more corrupted internally whose skin discloses rot.

Void orders may be challenged at any time, in the same case or any other case. They have no legal effect – no existence – whether challenged or not. Voidable orders are deemed valid until evidence shows that they were entered without jurisdiction, although their hidden jurisdictional defects may be more substantial than defects in orders deemed "void from entry." More startling, voidable orders must be challenged within the time limits, and in the manner, required to correct mere judicial mistakes. If not attacked soon enough, or in the right way, within the same court case, those subject to voidable orders will find themselves irrevocably and irreparably controlled by those orders even though – had the same jurisdictional defects appeared on the face of the proceedings – the orders would be deemed completely non-existent in perpetuity.

This distinction between void and voidable orders makes no logical sense. One is as jurisdictionally deficient – as much an empty shell – as the other. The apple analogy discloses the law's true motivation

and, more generally, the underlying operating principle for most legal decisions: the distinction makes superb practical sense. To state that, regardless of outward appearance, any apple which turns out to be rotten was always "void" would be extremely destabilizing to society. No apple could be trusted. Limiting actual voidness to those apples detectably rotten upon inspection of their outer skins is a workable compromise for society's governor. Each day, its paper produce may be delivered with confidence, through thousands of outlets, to markets across the country.

The problem - the inner rot in legal thought - arises when the law expounds this distinction, and many other critical distinctions, as if they were logically sound rather than perfectly reasonable and practical compromises in which logic is acknowledged and ignored. This undercuts the primary goal of the law: to create and maintain rules that will, hopefully, govern society and the interaction of its members in ways that sustain societal stability and development. Citizens can only be expected to accept legal pronouncements if they perceive at least surface validity in whatever reasoning the law uses to justify its rules.

A considerable amount of contradiction and illogic necessarily pervades the law. Practical compromises and, more deeply, the true nature of reality as we are coming to understand it, make this inevitable. Properly articulated and explained, societal members would accept rationales that openly recognize these limitations. To the extent that the law instead contends that logic and consistency underlies its rules when they do not, it invites skepticism about the legitimacy of the rules and of the law itself. The pretense that judges dip into pools of universal truth behind their benches - rather than expound rationales that should humbly commence with acknowledgments of how little we actually know - is contrary to reality and to the law's viability as a positive social tool.

Looking back at *Bush v. Gore*, for example, we can easily construct alternative decisions that would have merited public acceptance while placing the controversy in proper constitutional context. Ironically, under those alternative dispositions, Governor Bush would still have prevailed, through the structures contemplated by the Founders, the Electoral College or Congress, rather than having his Presidency tarnished with the charge of having been selected by a conservative majority of the Court for ideological reasons.

Start with an opinion attributed to its author and drafted to achieve public acceptance rather than end results. (As Linda Greenhouse cogently characterized the majority view, it was a "conclusion in search

of a rationale."[2]) Had the opinion concluded that Florida's recount procedures fell far short of the Court's newly articulated stiff Equal Protection standards and that those standards were mandated for this and future similarly situated elections, it would have resonated well with the public. With its long-term positive implications for the very people disenfranchised in Florida, such conclusions would have had healing, rather than disruptive, effects on the country.

What was indefensible and unexplainable – or at least unexplained in acceptable terms – was the majority's refusal to trust the State court to play out the last, and virtually inevitable, act in the play. The proof is in the pudding. The State court, on remand from the high court's unseemly and anonymous imposition, in the dead of night, of a deadline for democracy two hours from its issuance, was entitled to simply noted that remand was meaningless and dismiss on that basis. If correctly cast as incorrigible partisans, as the majority apparently assumed, the State court would undoubtedly have transformed its opportunity to have the last word to partisan advantage. In that event, the constitutional structures, driven by the factions fully recognized by the Founders, would have been called on to expend political capital to put Governor Bush in the White House, all part of the constitutional plan.

Instead, the State court took care to articulate a more compelling rationale for dismissal. It declared that only deliberative legislative action could develop standards that would pass Equal Protection muster, that the broken eggs of this election simply could not be reassembled and that, as a result, no meaningful recount process was feasible.[3] The State court, down to a bare majority favoring the Gore campaign before being reversed by the high court, would undoubtedly have reached that same conclusion on a true remand. The judicial conclusion that human frailties and constitutional realities required a premature end to counting the ballots (some for the first time) was inevitable. It would have been better accepted from the State court that had ruled twice for the Gore campaign rather than the federal high court that, inexplicably, stayed the relatively orderly counting process directed by Judge Lewis. Unlike what actually occurred, this alternative coda would have garnered grudging understanding from most Gore supporters, particularly if accompanied by the marvelous judicial acknowledgment of human frailty noted earlier by Justice Harding: "The circumstances of this election call to mind a quote from

2. Linda Greenhouse, *A Special Report: Election Case a Test and a Trauma for Justice*, N.Y. TIMES, Feb. 20, 2001, at A1.

3. Gore v. Harris, 773 So. 2d 524, 526 (Fla. 2000) (per curiam).

football coaching legend Vince Lombardi: 'We didn't lose the game, we just ran out of time.'"[4]

Remarkably, apologists for the *Bush v. Gore* majority eschew any ideological or political motivation by proposing that the majority instead believed the State court had to be brought to heel and could not be trusted. When a parent grounds a teenager without either explaining why or exploring less domineering alternatives, the relationship between the parent and teenager suffers. The majority needlessly punished the State court by grounding the entire country.

Had the *Bush v. Gore* majority trusted to the processes by which we are governed, articulated persuasive rationales for the decisions it made and, most importantly, refrained from imperious declarations such as Justice Scalia remarking that the recounts were stopped simply because five Justices thought they should be, the country might now be recovering, rather than reeling, from the election. The *Bush* majority derailed this national drama, which was proceeding according to the Constitutional plan, from ending in ways that comported with that plan. No political spin can hide the festering wound that the Court could easily have healed. With the "irreparable harm" inflicted by the majority, the nation must endure, half-seething and half-afraid.

Many debilitating impacts result from judges pretending that practical solutions, deriving from individual circumstances arising from historical frameworks, remain permanently grounded in timeless rationality. When false images cloak practical compromises that the law refrains from acknowledging, not only is public acceptance of the law's legitimacy sapped, but alteration or abandonment of those compromises, if later exposed as unreasonable or inhumane, is made dramatically more wrenching and arduous.

Any thought system, for example, which declares black and female human beings to be objects owned by others, declares lifeless corporate entities to be persons and declares contracts designed to oppress workers to be sacred, as the law has done, should find the mantle of consistency and rationality an ill-fitting garment. Immense struggles have been, and continue to be, waged over these issues largely because the law, in the past, convinced large sections of society that its pronouncements were expressions of discovered truth and wisdom.

Slavery would still have been visited on this country had the law not imbued it with sanctity. The blame for corrupting this continent with four centuries of slavery and its devastating aftermath is hardly reserved to the legal profession. Nonetheless, its abolition would have

4. Gore v. Harris, 772 So. 2d 1243, 1273 (Fla. 2000) (Harding and Shaw, JJ., dissenting).

been far less ruinous if the economic and social motivations for slavery were left to stand on their own – subject to unfettered reassessments as society changed – without the law's false shields of truth and rationality.

Similarly, the paradigms of male dominance that strangled social evolution over the past several centuries would have largely prevailed even if the law had not rendered its imprimatur. Without the law's pretense that eternal verity underlay male dominance (enlisting religious support from biblical passages authored by patriarchal thinkers), this incredibly debilitating paradigm might have been more effectively challenged and discarded long ago. Instead, the concept of women as sub-humans was woven deeply into the law's internal structures. As a result, even lawyers of both genders who consciously and strenuously work towards equal treatment of women unknowingly perpetuate this nefarious myth through seemingly innocuous legal principles, tools and language. A minor example of the dangerously insidious effects of the law's past support of slavery, patriarchy and other social hierarchies is cogently summed up in a topic found in every West Digest – "Master and Servant" – to encompass decisions that could be more neutrally categorized as "Employment" or "Labor and Employment."

Less charged examples of the dangers of rationalizing the law's societal choices as if they were discovered rather than chosen are plentiful. Requiring medical doctors to testify to a "reasonable degree of medical certainty" and divorcing spouses to assert under oath that they were subjected to cruelty without "any cause or provocation" attributable to the testifying spouse – when lawyers, judges and the affected members of the public know that neither can truthfully say any such thing – is sanctioned perjury that breeds contempt for the law. That both requirements are now more relaxed only underscores why they should never have been imposed in the first place.

Throughout history, some of the law's goals were achievable through focused holdings publicly acknowledged as practical compromises appropriate, at that time, for the limited purposes involved. Other goals sanctified by the law were never justifiable and should never have been adopted. Indeed, the legal practice of disseminating sanctifying rationales, rather than genuine ones, may well have developed precisely to disguise actions that were nothing more than raw power grabs.

If so, our modern democratic republic should not be trapped by reasoning systems that supported those raw power grabs in earlier times. If legal declarations are publicly understood to represent practical compromises appropriate to the circumstances, that facilitates respect

for those declarations. Such understandings would also facilitate adhering to those declared principles only so long as they are rationally justified while inviting adjustments or abandonment, without unnecessarily wrenching consequences, when circumstances change. Some, in society, will always see legal rationalizations as nothing other than covers for raw power grabs. That cynical attitude can best be countered, or marginalized, by articulating the often practical reasons for legal action, and their potentially limited application, without any pretense of greater wisdom. This does not mean, as in *Bush v. Gore*, declaring a broad constitutional principle and then, seemingly fearful of that principle, arbitrarily rendering it toothless even in the case on review. It means both engaging in a genuine, intelligent dialogue with the public and appearing to do so. Judges, as public servants, should speak to, and never down to, the public.

Judicial facades of timeless logic and consistancy can ring harshly in the everyday world. It may appear logical, in the rarified air within judicial chambers, to apply the same standards to attacks on affirmative action plans as are applied to discrimination claims made by blacks, women, and other historical outsiders. The mathematical precision with which this equation can be expressed presents a symmetry that is almost irresistibly compelling to judges who delude themselves into thinking like mathematicians.

Were we mere digits in a world governed by mathematics, the analysis might have surface validity. Even then, it would be appropriate to recognize the failure to include important factors in the "equation." Centuries of racial suppression, millennia of ingrained biases against women, ongoing networks of support for dominant cultures which actively and subtly exclude others (and provide unlabeled "affirmative action" to dominant group members), and many other factors would lengthen and complicate the equation.

The real error, however, is in thinking mathematically at all. Judges imbued with the arrogance of certainty can declare this symmetry to exist. Wiser judges recognize that we have only a tenuous grasp on reality and must construct our values from the dynamic interaction of relativity, relationality, uncertainty, impermanence and uniqueness.

Those hallmarks of reality that we have, in the past, teased out of the darkness mirror the actual driving forces of the law. Despite the veneer of majesty, eternal verities and sanctity, the law functions most effectively when abiding by the principles of relativity (all things are relative to one another), relationality (all things are related to one another), uncertainty (all things are, at some level, incapable of being definitively predicted or categorized), impermanence (all things

change) and uniqueness (all things are different from one another) within a universe in which the totality of existence is a mere shadow in the wind.

Comprehending each of these forces and how they interact in the midst of nothingness could produce a mental map by which we understand where we are and prepare ourselves for where we may be going. Graduates of DePaul, like the law's other practitioners, work with and use these forces, perhaps unconsciously, on a daily basis. Recognizing, and openly acknowledging, this fact may allow the legal profession to wean itself of its dependence on any pretense to timeless truth and rationality and to operate with the flexibility and honesty that can genuinely serve society well.

A century ago, the human mind was unlocked by a functionary in the Swiss legal system, a patent clerk, and, to put it simplistically, by one word. Once the implications were acknowledged, that one word, "relativity," transformed our perceptions of the universe, ourselves and everything on which we can contemplate. No area of human thought is immune from the highly contagious virus of relativity unleashed by Einstein. The virus was so pervasive, disruptive and permanent that Einstein himself refused to fully accept the consequences, leaving his followers to prove that his hesitation was unwarranted. Philosophies which, before Einstein, centered exclusively and unequivocally on a particular certainty may still do so. They must, however, now maintain constant vigilance against reality through a persistent, and often militant, focus on that centering process to the exclusion of contrary evidence.

The concept of relativity, while transforming, is ultimately debilitating and destructive of motivations to be value-oriented (a central failing of certain forms of situation ethics) unless meshed with another crucial concept, relationality. Not only are all things relative to one another, they are related to one another. The interplay between relativity and relationality is what gives meaning and direction to our lives and existence. Regardless of whether our names and deeds last much beyond our individual lifetimes, or whether, after death, we disperse without trace into particles, we would each still, due to the interaction between relativity and relationality, have been of great consequence to the universe.

This is not narrow homocentrism. It is equally true that each lifeform and expression of matter, due to the interaction between relativity and relationality, is of great consequence to the universe. In

Fritjof Capra's fine phrasing, we are more than cousins to all life.[5] We have a relation to each lifeform that is dependent on the relative positions of that lifeform and ourselves at any given time - and we each have many varied positions, and many given times, during our lifetimes.

Mundane examples of the interaction between relativity and relationality arise from noting the interplay between differing tires and surfaces. Wide balloon tires may skid uselessly on ice but glide effortlessly through sand. High bicycle tires on a Model T may cut through deep snow - while lower vehicles with larger tires would flounder - but would be unsteady support for a Chevy on dry pavement.

A magnificent expression of the interaction between relativity and relationality was rendered by the Reverend Martin Luther King, Jr., in his *Letter from Birmingham Jail*: "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly."[6] Becoming imbued with this principle could adequately govern one's life.

Constitutional and legal practitioners may be easily led astray if, in their efforts to justify legal structures, they appreciate relativity, and even the importance of valuing the negative, without recognizing our relatedness:

> The necessary consequence of taking the sense of the community by the concurrent majority is . . . to give each interest or portion of the community a negative on the others. It is this mutual negative among its various conflicting interests which invests each with the power of protecting itself, and places the rights and safety of each where they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others; and without this there can be no constitution. It is this negative power-the power of preventing or arresting the action of the government, be it called by what term it may, veto, interposition, nullification, check, or balance of power-which in fact forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results from the concurrent majority. Without this there can be no negative, and without a negative, no constitution. The assertion is true in reference to all constitutional governments, be their form what they may. It is, indeed, the *negative* power which makes the constitution, and the *positive* which makes the government. The one is the power of

5. *See generally* FRITJOF CAPRA, UNCOMMON WISDOM: CONVERSATIONS WITH REMARKABLE PEOPLE 71-89 (1988).

6. MARTIN LUTHER KING, JR., *Letter from Birmingham Jail, in* I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD 85 (James M. Washington ed., 1992).

> acting, and the other the power of preventing or arresting action. The two, combined, makes constitutional governments.[7]

The mind which expressed these critical principles, ironically, failed to detect the sty in the eye of the human in whom that mind resided. John C. Calhoun instead enlisted those mental energies in the service of perpetuating slavery as if it were an institution sanctioned by the heavens. His clear vision of the complexities of relativity, unmoored from relatedness, led to tragedy.

Spiraling closer to understanding reality requires an expansion beyond the interplay between relativity and relationality to encompass dynamic interplays with three other factors - uncertainty, impermanence and uniqueness – in a universe in which matter hardly seems to matter at all. Returning again to voidness as it actually is, rather than as, rather laughably, it is confined by the law, allows us to draw these three factors into the mix.

Contemplating voidness in a practical way does not require modern scientific equipment. Unquestionably, philosophical tomes present the subject in forbidding modes. Swimming in oceans of unnecessarily complicated analyses of nothingness by Sartre, Hegel and Aristotle, one can stumble upon insights of intense clarity. Mostly, their analyses obscure rather than enlighten – as even Sartre's inaccessible title, *Being and Nothingness: A Phenomological Essay on Ontology*,[8] confirms.

Not all philosophers, fortunately, weave such tangled webs. Lucretius, in his wonderfully titled *On the Nature of Things*,[9] concluded 2,000 years ago that there had to be voidness because otherwise things would have no room to move about.[10] That wizard of uncommon sense also declared, contrary to mere sensory evidence, that "however solid objects seem, they yet are formed of matter mixed with void."[11] Before biologists and physicists informed us of the vast empty spaces, cellular and galactic, which render insignificant the miniscule amount of matter in the universe, intuition insisted that our bodies are solid. It seems idiotic to look at one's hand, touch it, strike it against a seemingly solid surface and acknowledge and accept – instead of just say – that the hand and surface are barely there. Lucretius perceived that truth without a magnifying lens larger than his own mind.

7. John C. Calhoun, A DISQUISITION ON GOVERNMENT 28 (1953).

8. JEAN PAUL SARTRE, BEING AND NORTHINGNESS: A PHENOMOLOGICAL ESSAY ON ONTOLOGY (Hazel E. Barnes, trans., 1956).

9. TITUS LUCRETIUS CARUS, ON THE NATURE OF THINGS (Anthony M. Escolen trans., 1995).

10. *Id.* at Book I, lines 332-340.

11. *Id.* at Book I, lines 334-350.

We lesser mortals find it difficult to understand the status of solidity in a sea of nothingness although it now seems indisputable that "[a] single grain of sand in the center of Albert Hall would be less lonely than an atom in your desk separated from its neighbors."[12] A more impressionistic, though unintended, expression of this aspect of reality was conveyed by the Beatles: "Now I know how many holes it takes to fill the Albert Hall."[13]

Well, we may say, this has been an interesting walk down the beach so far, but it will have all the relevance of a sandcastle at high tide after we return to our offices and courtrooms. A tenuous connection with existence would hardly suffice as a foundation for a legal structure. The law assumes solidity and stability, while compartmentalizing nothingness within a few relatively harmless boxes, for good practical reasons. It is not just lack of solidity that threatens the legal mind. More unsettling, the law, to accept reality, would have to surrender certainty.

Before returning to the practicalities of our worklifes, walk a bit further down the beach and realize that, at the subatomic level, particles are disturbingly unpredictable – to the point that physicists are convinced that unpredictability is the one thing that is dependable. Reality, if examined closely enough, is frighteningly nebulous. The little matter that does exist is unreliable. The universe itself, some speculate, may have originated from a "vacuum fluctuation" – a blip out of nothingness.

The legal system, fearing uncertainty, may champion and shield the deepest concerns of paranoid humankind. The characteristic that distinguishes humans from other lifeforms may not, ultimately, be speech, thought, memory, toolmaking or any other positive feature that humans are arrogant enough to wrongly deny to other lifeforms. It is, more likely, humans' insatiable urge to control and contain the unknown – primarily by negating, rendering meaningless or objectifying the "other." Only by eliminating all but what humans can assure to be within their grasp, the prevailing paradigm insists, can internal satisfaction ever be achieved.

In actuality, the perceived threats presented by women to men, by blacks to whites, by natural to human-crafted environments, are not nearly as dangerous as those posed by unsatisfied dominant humans who fear the unknown. One alternative – perhaps the ultimate practi-

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12. J. GRIBBEN, IN SEARCH OF THE BIG BANG: QUANTUM PHYSICS AND COSMOLOGY xvi (1986).

13. THE BEATLES, *A Day in the Life*, *on* SGT. PEPPER'S LONELY HEART'S CLUB BAND (1967).

cal choice - could be to embrace the unknown and, by embracing it, to occasionally make it part of our known world.

This touches on a third startling discovery that, physicists believe, discloses the real world. At the subatomic level, particles appear to make choices, and to come into observable existence, based on whether they are observed or not. If true, nothing sometimes becomes something because it is being observed. Falling trees may shatter the silence of a forest devoid of humanity but a particle detectable only with the most sophisticated equipment may choose to remain in the void if humans are not watching. Was it waiting for us all these eons? Or just for a nanosecond? Are we arrogantly assuming, again, that existence awaits our attention? Or are we opening our minds to the interrelationships between lifeforms that literally rely on one another for existence?

With the visionary intuition of a poet, Rilke's ode to the mental creation of a unicorn is a moving and breathtaking expression of this potential phenomenon:

> This is the creature there never has been.
> They never knew it, and yet, none the less,
> they loved the way it moved, its suppleness,
> its neck, its very gaze, mild and serene.
>
> Not there, because they loved it, it behaved
> as though it were. They always left some space.
> And in that clear unpeopled space they saved
> it lightly reared its head, with scarce a trace
>
> of not being there. They fed it, not with corn,
> but only with the possibility of being.
> And that was able to confer
>
> such strength, its brow put forth a horn. One horn.
> Whitely it stole up to a maid,—to *be*
> within the silver mirror and in her.[14]

Admittedly, the law cannot reside on such quicksand surrounded by nothingness. Societal rules need, at some level, to be grounded on sufficient certainty and substance, even if make-believe, to command compliance. After all, the willingness to comply with legal strictures probably derives from the same part of the human brain which insists that hands, and surfaces struck by hands, are both solid. That grounding principle is wholly practical. If adopted, it is critical that legal

14. RAINER MARIA RILKE, SONNETS TO ORPHEUS 95 (J. Leishman trans. 1949), *quoted in* LIAM HUDSON, THE CULT OF THE FACT: A PSYCHOLOGIST'S AUTOBIOGRAPHICAL CRITIZUE OF HIS DISCIPLINE 19 (1972).

practitioners neither forget that it is contrary to reality nor act otherwise.

Reality as generally accepted in society may, as Jane Wagner succinctly suggested, either be a "collective hunch" or "an ancient form of crowd control that got out of hand."[15] For perspective, and a sorely needed touch of humility, we should remind ourselves from time to time that the primeval Sanskrit word "Dharma" means both "the law" and "the all-encompassing void."[16]

What can members of the DePaul community bring back from our journey? What can seashells, rocks or photographs contribute to our worklifes as reminders of the insights gained on "vacations" – i.e., allowing our minds to vacate? Well, we can realize how close we already are, in our everyday work activities, to applying the interactive principles of relativity, relationality, uncertainty, impermanence and uniqueness. Each day, judges look out at advocates and litigants drawing differing aspects of life, with all of its messiness, uncertainties and vagaries, into timeslots allocated on their dockets. The underlying life experiences of the litigants are, necessarily, jammed into defined legal categories and summarized into familiar terminology to assure the judges' attention and obtain practical resolutions.

Wise judges, and advocates, recognize the myths that allow this structure to continue functioning. Judges, advocates and litigants, each playing roles relative to, and related to, one another during those timeslots, should approach their respective tasks by recognizing that the law, like all human-created institutions, can only try to tease out the best practical solutions to the individualized problems presented. Acknowledging that we are all groping in the darkness, we must carefully use the few tools that allow us to find our way. If we mistake those tools for shining beacons that flood, and fill, the void, we will not likely notice the distinct possibility of a precipice under our next footfall. If we tread forward with a humble appreciation that we are constantly exploring new territory, while calling on the imperfect knowledge we have gained from the past, we will find our way and actually enjoy the journey.

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15. JANE WAGNER, THE SEARCH FOR INTELLIGENT LIFE IN THE UNIVERSE 18, (1986).

16. Robert Aitken, *The Body of the Buddha*, PARABOLA, Vol. X, No. 3, Aug. 1985, at 26.