

BOTH: The Legal Profession's Struggle to Leverage Stability and Change

Betsy A. Miller*

ABSTRACT

This article proposes the framework of Polarity Thinking¹ to build the legal profession's capacity for seeing and utilizing the power of interdependent opposites, particularly Stability and Change. The polarities model was developed by Barry Johnson, PhD.²

Part One explores the inherent tension between Stability and Change, identifying the failure to foster Change as a root cause of suffering in the legal profession. Part Two explains the Polarity Thinking framework, the relationship between the benefits and over-uses of polarities, and key distinctions that separate polarities (which can be navigated but never resolved) from problems and dilemmas

* Betsy A. Miller is a Lecturer on Law at Harvard Law School, where she teaches a course entitled "Polarities: The Power of Both/And in Law and Leadership," (course description available at <https://hls.harvard.edu/courses/polarities-the-power-of-both-and-in-law-and-leadership/>, archived at <https://perma.cc/4J6W-CD2D>). The author thanks Harvard Law School, and particularly the Program on Negotiation, for its unwavering dedication to coursework teaching students to expand the capacity for holding multiple perspectives. Ms. Miller also is a law firm partner, an ICF-certified leadership coach, and a frequent writer, speaker and commentator on leadership and transformation in the legal profession. For more information, see <https://www.linkedin.com/in/betsy-a-miller/>, archived at <https://perma.cc/2BXE-CTB4>. This article, and the Polarities course, would not be possible without the extraordinary generosity and encouragement of Brian Emerson and Kelly Lewis from Andiron, Cliff Kayser from Polarity Partnerships, Lisa Banks, Caryn Kaftal, Sheila Heen, Victoria Nugent, J.F. Scarborough, and David Wilkins. "BOTH" is dedicated to the late Roger Fisher, who showed so many of us how to lawyer differently.

1. The author respectfully offers Polarity Thinking as an important lens, but not the only lens, for diagnosing the legal profession's struggle to evolve.

2. Barry Johnson, PhD, is universally credited with creating the framework for mapping polarities. To learn more about Johnson's approach to identifying and mapping polarities, see BARRY JOHNSON, POLARITY MANAGEMENT: IDENTIFYING AND MANAGING UNSOLVABLE PROBLEMS (Human Resource Development Press, 2nd ed. 1996); see also <https://www.polaritypartnerships.com>, archived at <https://perma.cc/AR5W-JK2W>.

(which involve answers and choices). Part Three examines the connection between the legal profession's overuse of Stability and its resistance to Change. Using the polarities framework, this section identifies three challenges facing the legal profession today; (A) a deepening generational divide that increasingly strains our professional culture, (B) the pervasive experience of burnout across all levels of seniority, and (C) an ongoing deficit of diversity. The article examines each through the lens of the Stability and Change polarity. Part Four reflects on the author's own experience with Stability and Change in law firm governance and offers a path forward.

I. EXPLORING THE TENSION BETWEEN STABILITY AND CHANGE IN THE LEGAL PROFESSION

Lawyers have a sacred duty to follow the law as it exists *and* a responsibility to evolve it. This dual calling reflects an inherent tension of opposites. Each time lawyers file a brief or argue in court, we assert *either* that the desired outcome is supported by precedent, *or* we argue that existing precedent is no longer valid and must be replaced with a new rule. This mindset teaches us to choose between arguing for stability and arguing for change; it does not show us how stability and change can be woven together.

Our education and training thus prepare us to advocate only for one side, and, as a result, lawyers are underprepared to realize when opposite values are equally right, mutually necessary, and individually insufficient. These special pairs of opposing and interdependent values are called "polarities." Stability and Change is one such example. When dealing with polarities, the natural instinct is to choose one over the other, but the only path to success is through integrating BOTH.

A framework like Polarity Thinking enhances the profession's capacity to adapt to evolving priorities and demands. In the aftermath of the global pandemic, lawyers are facing a major economic and psychological realignment in the way we work. Traditional values held by the profession (*e.g.*, a linear career path through a hierarchical system that favors rules and predictability) are not appealing to the increasing number of lawyers who crave progress beyond the status quo. This new reality is contributing to a growing generational friction, heightened levels of burnout, and an ongoing exodus of women and other underrepresented groups from the practice of law.³

3. See, *e.g.*, JAMES W. JONES et al. 2022 REPORT ON THE STATE OF THE LEGAL MARKET: A CHALLENGING ROAD TO RECOVERY (GEO. UNIV. L. CTR. ON ETHICS AND THE

The aforementioned dynamics provoke the need to reassess the answers to these fundamental questions: Which core aspects of the profession should we preserve and carry forward (Stability), and what new and valuable attributes should we add and incorporate (Change)? The polarities framework has a clear recommendation: keep the essential DNA that represents the profession's highest purpose and values (*e.g.*, an impassioned commitment to serving clients and causes); *and* augment this with new elements designed to make the profession more effective and sustainable, (*e.g.*, increased openness to innovation, heightened commitment to wellbeing, and deeper appreciation for diversity of thought, background, race, and gender).

For the legal profession to thrive, it must adapt and evolve. The most vital predictor of successful evolution—for every organism in nature and organization in society—is the ability to support both stability and change. In fact, this duality is the foundation of all evolution. Changing too much too soon creates chaos. Failing to adjust quickly enough produces stagnation or, eventually, extinction. How successfully the legal profession will evolve depends, in part, on its ability to integrate BOTH Stability and Change. Lawyers must train themselves to see how these contradictory forces must merge to form a better path forward. To do this, we need a new lens: Polarities.

II. WHAT IS A POLARITY?

“Polarities are interdependent pairs that need each other over time.”⁴ Polarity Thinking helps us make sense of dynamics where two opposing values create a perceived conflict, and yet, any successful plan requires the inclusion of both.⁵ Polarities are energy systems

LEGAL PRO. & THOMPSON REUTERS INST. 2022), https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/01/State-of-Legal-Market-Report_Final.pdf, archived at <https://perma.cc/5EDQ-5MCF>; ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, WALKING OUT THE DOOR, (Am. Bar Ass'n 2019), https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/, archived at <https://perma.cc/8JT3-U6NV>; Emma Ziercke & Markus Hartung, *Ok, Boomer! Intergenerational Conflict in Law Firms*, LEGAL BUS. WORLD, (May 27, 2021), <https://www.legalbusinessworld.com/post/ok-boomer-intergenerational-conflict-in-law-firms>, archived at <https://perma.cc/9C3M-5436>; YOLANDA CARTUSCIELLO, ET AL., MULTIPLE GENERATIONS IN LAW FIRMS: WORKING TOGETHER 30, 33–34 (National Association for Law Placement 2020), <https://www.nalp.org/uploads/GenerationsSurvey/MultipleGenerationsFinalReportMarch2020.pdf>, archived at <https://perma.cc/TX4Q-UDEX>.

4. BARRY JOHNSON, AND: MAKING A DIFFERENCE BY LEVERAGING POLARITY, PARADOX OR DILEMMA, VOLUME ONE: FOUNDATIONS 11 (Human Resource Development Press, 2020).

5. BRIAN EMERSON & KELLY LEWIS, NAVIGATING POLARITIES: USING BOTH/AND THINKING TO LEAD TRANSFORMATION 8 (Paradoxical Press, 2019).

that persist; they cannot be destroyed, avoided or solved.⁶ They “have been a driving force in cultures throughout history.”⁷ And, although polarities always have existed, it wasn’t until Barry Johnson, PhD created the first Polarity Map® in 1975 that this framework became replicable, teachable, and mappable.

To be clear, not all opposites are polarities. Take, for instance, Good and Evil. The human brain might need one to understand the other (*i.e.*, to have meaning, the concept of “Good” requires a contrast to something that is “not Good” (or “Evil”)), but society does not need Good and Evil to flourish over time, and there are few (if any) benefits to Evil. With polarities, the singular use of one pole ultimately leads to failure; success requires both. There are plentiful examples in our everyday lives: Breathing is a polarity (Inhale::Exhale⁸),⁹ as is the natural cycle of performance and recuperation (Activity::Rest)¹⁰, and the core tension between acting as an individual and functioning within a society is also a polarity (Focus on Self::Focus on Others). To identify when a polarity is present, Johnson developed two questions:¹¹

1. Is the situation ongoing?
2. Are there two alternatives that are interdependent (*i.e.*, over time, do you need the benefits of both)?

If the answer to both of Johnson’s questions is “yes,” the opposites likely are a polarity pair.

To illustrate how this works, return to the example of Focus on Self::Focus on Others. This is a tension everyone manages, each time we make a decision about whose needs to prioritize (our own or someone else’s). When this tension is treated as an either / or choice (*i.e.*, where one pole is utilized to the exclusion of the other), there are negative consequences. Imagine a colleague who never makes herself

6. JOHNSON, *supra* note 4, at 11.

7. EMERSON & LEWIS, *supra* note 5, at 3.

8. EMERSON and Lewis use the double colon (“::”) between the poles in a polarity pair because it “allows for the closest representation of concepts that are simultaneously distinct *and* connected.” *Id.* at 17. For the same reasons, this article will use “::” when referring to a polarity pair. For example, “Inhale::Exhale.”

9. INHALE::EXHALE. Imagine if you only inhaled. You would burst. If you only exhaled, you would hyperventilate. Do one without the other for very long, and you would not survive.

10. ACTIVITY::REST. It is not feasible to be working and moving constantly; nor is the opposite possible. Our bodies require both activity and rest to function over time.

11. JOHNSON, *supra* note 2, at 81.

available to help the team; or an exhausted family member who caters to everyone else's needs at the expense of his own. If we attend solely to our own needs, we are selfish; but if we attend only to the needs of others, we lose ourselves entirely. By contrast, when we leverage the benefits of *both* Focus on Self (meeting our own needs) *and* Focus on Others (responding to the needs of others), this fosters a healthy commitment to self-care that also creates space for supporting our loved ones and colleagues. "Instead of contradicting each other's view, the task [with a polarity] is to supplement each other's view . . . to see the whole picture."¹²

Polarities exist at the individual, organizational, and societal levels. Consider the philosophy behind our criminal legal system. What would happen if society only valued Justice (accountability without exceptions)? Conversely, what would the outcome be if society only rewarded Mercy (forgiveness without consequences)? Both scenarios would lead to failure in the form of societal collapse. Justice without Mercy would incite rebellion, and Mercy without Justice would invite anarchy. We want the benefits of Justice (evenhanded accountability) *and* the benefits of Mercy (compassionate forgiveness), without the overuses of either (Justice overuse = inflexible punishment; Mercy overuse = irresponsible indulgence).¹³ By integrating the upsides of both, we create a "The Third Way"¹⁴—a "virtuous cycle"¹⁵—that "combines both . . . while excluding neither."¹⁶

12. *Id.* at 45.

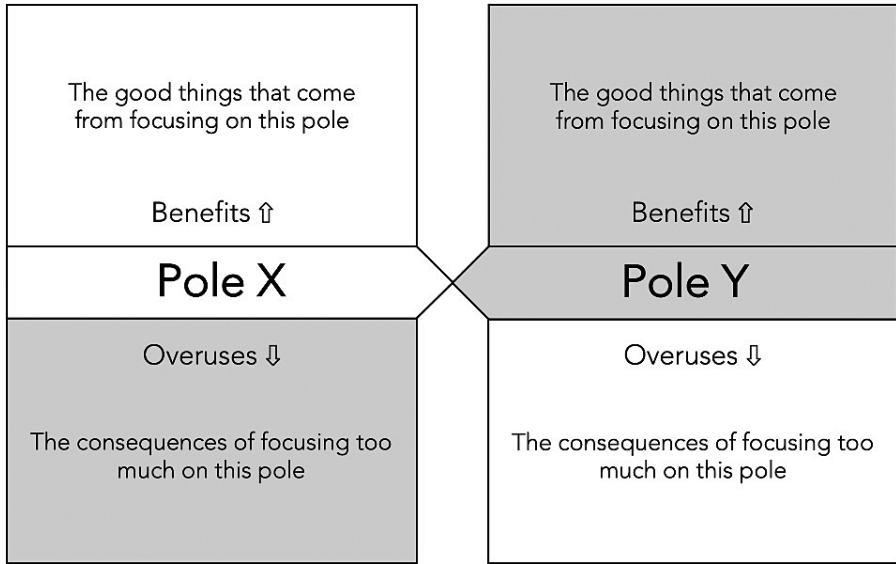
13. The creation of the Federal Sentencing Guidelines in 1984 offers a familiar, and fraught, example of the tension between Justice and Mercy in the American legal system. The main goals of the Guidelines were to increase objectivity, fairness, and predictability in criminal sentencing, while preserving sufficient flexibility to account for both mitigating and aggravating factors. *See*, "An Overview of the United States Sentencing Commission" at 1, available at https://www.uscc.gov/sites/default/files/pdf/about/overview/USSC_Overview.pdf [<https://perma.cc/F7RR-DVXA>]. The intent of the Guidelines was to leverage the benefits of Justice and Mercy, some of which has been achieved. However, the legacy of the Guidelines also is rife with concerns about inherent flaws in its structure and implementation, which, arguably, over-value the benefits of the Justice pole (equitable accountability in sentencing) due to a fear of over-using the Mercy pole (uncontrolled subjectivity in sentencing). That discussion—Federal Sentencing Guidelines through the lens of Polarity Thinking—is a worthy topic for a different article.

14. EMERSON & LEWIS, *supra* note 5, at 31.

15. JOHNSON, *supra* note 4, at 6.

16. EMERSON & LEWIS, *supra* note 5, at 31.

A. Polarities Have Benefits and Overuses



17

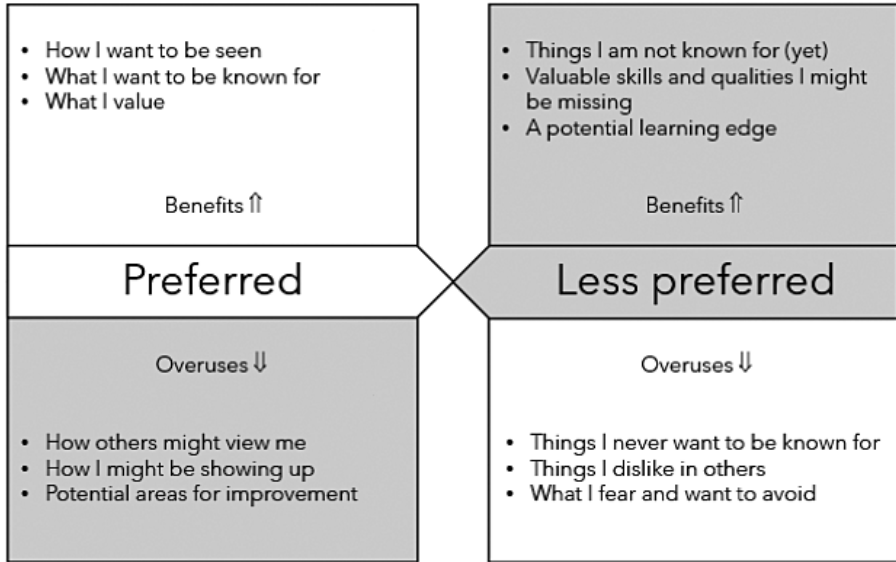
Every polarity pair includes opposing poles¹⁸ that are co-extensive and equally important. When a polarity is navigated effectively, it becomes possible to reap the benefits of both poles without falling far into the overuses of either one. The goal is to maximize the benefits and minimize the overuses; however, it is natural and inevitable to experience some overuse, particularly with a pole we favor strongly. We can detect signs of overuse by noticing an over-attachment to one of the poles. A common and clear indicator of this over-attachment is an urge to dismiss or criticize the opposing viewpoint. The Structure::Flexibility polarity provides a useful example. If you are a person who favors Structure, you may find yourself impatient and annoyed with colleagues who prefer to leave things open and loose (and vice versa).

It is normal to gravitate toward one pole over the other. But when this preference is strong, we also become invested in seeing ourselves—and being known by others—as embodying only the benefits of that pole. The benefits of our preferred pole become part of our identity, and we form blind spots to the overuses of our preferred

17. Polarity Navigator reprinted with the authors' permission. *Id.* at 29 (fig. 2.2 "Benefits and Overuses").

18. Polarities always have two poles. Multilarities, which are beyond the scope of this article, have three or more poles that exist in opposition but need each other over time to thrive. An example is Mind-Body-Spirit.

pole. Holding on so tightly to our preferred pole causes us to discount or ignore important qualities, skills and behaviors that the benefits of our less preferred pole offer. And, when the preference for our preferred pole becomes part of our identity, we tend to neglect, reject, or even demonize our less-preferred pole—justifying our reaction by pointing to the downsides of that pole’s overuses. This is what creates the urge to resist the less-preferred pole.¹⁹



20

The overuses of our less-preferred pole often are attributes that we dislike in others and fear developing in ourselves. And, when preferences from either pole fall into overuse, they become “too much of a good thing.” Think about a friend who is brutally honest. It is refreshing and informative to hear her straight talk; but taken to overuse, the intensity of unfiltered, raw candor lands with unproductive cruelty. By contrast, soliciting feedback from an excessively diplomatic friend is unhelpful because it offers no meaningful

19. Here is another example, using the STRUCTURE::FLEXIBILITY polarity: A junior associate who only sees the upsides Flexibility in the workplace (autonomy, creativity, and agility), might ignore or dismiss the importance of Structure (order, predictability, efficiency). If confronted by a partner who imposes Structure, the associate is likely to resist that dynamic. The reason for the resistance is that the associate is focused the *overuses* of Structure (rigidity, boredom, restriction).

20. This diagram is adapted with permission of the authors. *Id.* at 144 (fig. 62 “Increasing Leadership Awareness”).

information or insight. What we want is a friend who is Diplomatically Candid—in other words, someone who exudes the benefits of the Candor::Diplomacy polarity without exhibiting the overuses of either pole. Nobody wants a friend who is savagely unfiltered or uselessly polite.

With polarities, our rejection of the opposite pole can be triggered by a worry of falling into its overuse as soon as we begin to practice behaviors that support its benefits. This fear isn't rational, but it can be difficult to overcome. The savagely candid friend has difficulty imagining the benefits of Diplomacy (tact, decorum, respect), partly because she is so allergic to Diplomacy's overuses (lack of integrity, dishonesty, and obfuscation). The uselessly diplomatic friend cannot imagine the benefits of Candor (integrity, honesty, and transparency) because he is intensely averse to its overuses (emotional cruelty, unprofessionalism, disrespectfulness). Although it is counter-intuitive, the antidote for the overuse of one pole is the augmentation of behaviors and mindsets that support and reflect the benefits of the other. In this way, "opposition becomes resource."²¹

Thus, the advice to each of these friends—to the extent they remain on speaking terms—is to develop behaviors that support the values of their less-preferred pole, while continuing the behaviors that support the benefits (not overuses) of their preferred pole. The savagely candid friend should practice being honest in a more tactful way, and the uselessly diplomatic friend should practice speaking more directly, while remaining considerate in the delivery.

B. *Polarities Are Not Problems or Dilemmas*

Polarities are distinct from the dilemmas and problems our lawyer brains are accustomed to solving; therefore, the rules of engagement are different. When we treat a polarity like a dilemma²² or problem²³, we fail to leverage the synergy of the interdependent opposites. Dilemmas and problems have endpoints and answers. Polarities do not. For example, deciding whether a government should take sides in a war between two other countries presents a dilemma. Creating a strategy to fund refugee camps made necessary by that war is a problem to solve. Neither situation is a polarity. However,

21. JOHNSON, *supra* note 2, at 45.

22. A dilemma presents difficult choice between two alternatives. Although there may not be an appealing choice in a dilemma, the dilemma concludes once a choice has been made.

23. A problem is a situation where a solution is possible and, once the solution is achieved, the problem is resolved. Problems, like dilemmas, have endpoints.

the tension between offering forgiveness (after a war) and demanding responsibility (for the bad actions undertaken during that war) is a polarity. Indeed, this polarity of Forgiveness and Responsibility is as ancient as society itself.

Dilemmas typically involve choices. Do we do this or that? Problems, even when complicated, have answers. Is the solution X, or perhaps a better solution is Y? “They can be approached with Either / Or Thinking Once we figure it out, it’s solved, and we can move on to the next thing.”²⁴ The instinct to choose between different alternatives isn’t wrong; in fact, it is a key survival skill. The ability to make either / or²⁵ decisions allows us to decide where to eat dinner, which law school to attend, and—in the case of a threat to our physical safety—whether to fight or flee. The human brain evolved to make life-or-death decisions quickly so that we could take decisive action.²⁶ The impulse to select one action over another is appropriate and essential to making decisions in many circumstances (such as bringing dilemmas and problems to closure), but it does not work when managing polarities.²⁷ Why? Because an either / or mindset inherently triggers a decision to neglect or reject the pole we do not choose, creating a separation that “prevents us from seeing the inherent wisdom and value of the excluded opposite.”²⁸ When confronted by a polarity, we should focus on Both.

24. EMERSON & LEWIS, *supra* note 5, at 7.

25. In fact, Either/Or and Both/And are a polarity (Either/Or::Both/And). We need Either/Or thinking *and* Both/And thinking to thrive over time. They are interdependent opposites.

26. Daniel Kahneman’s book, *THINKING FAST AND SLOW*, provides an interesting overlay. It discusses the importance of accessing “fast” thinking (intuition) and “slow” thinking (deliberation). Indeed, this duo is a polarity because we need both to navigate the world around us successfully. See DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* (Farrar, Straus and Giroux, 2013). The polarities framework requires the discipline of “slow” (deliberative) thinking; however, the polarities framework does not reject “fast” (intuitive, often Either / Or, thinking). Instead, the polarities framework recognizes that necessary benefits of both.

27. “*And-* thinking is a supplement to *Or-* thinking, not a replacement.” JOHNSON, *supra* note 4, at 6. In fact, Either/Or thinking and Both/And thinking are themselves a polarity. We need both over time to thrive.

28. BEENA SHARMA & SUSANNE COOK-GREUTER, *POLARITIES AND EGO DEVELOPMENT: POLARITY THINKING IN EGO DEVELOPMENT THEORY AND DEVELOPMENTAL COACHING* 10–11 (2010), <https://www.integralesforum.org/attachments/Sharma%20Cook-Greuter%20paper%20EAIF%20SUNY.pdf>, archived at <https://perma.cc/2QQ9-2KEC>.

Failure to incorporate the benefits of both poles will create a Suffering Paradox,²⁹ producing outcomes that are incomplete, insufficient, and destructive. The Suffering Paradox occurs when we encounter a polarity but treat it, incorrectly, like a problem to solve or a dilemma to decide. We form an attachment to our preferred pole as the “right” choice and begin looking for evidence to support the conclusion that the other pole is “wrong.” This leads to an either / or mindset that makes it impossible to see and leverage the value of both.

III. THE LEGAL PROFESSION SUFFERS BY OVERUSING STABILITY AND RESISTING CHANGE

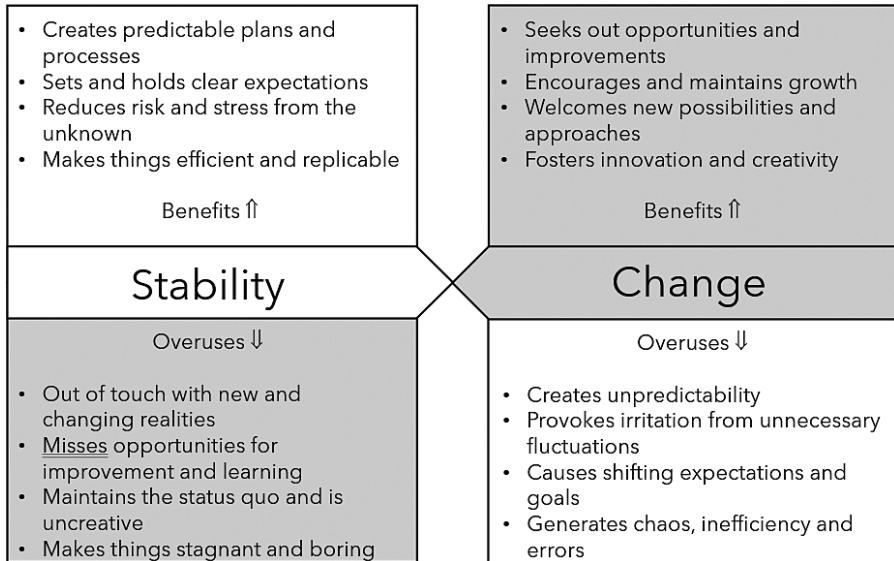
The legal profession is over-attached to Stability and, as a result, forgoes the benefits of Change. The benefits of Stability have become part of our identity to the point that many lawyers resist, or even fear, Change. Instead of seeing how the benefits of Change could augment the benefits of Stability (by valuing continuity while fostering adaptability), the profession often reacts as if Change must come at the expense of Stability. This is a false choice that prevents us from navigating the polarity.

Without question, the American legal system is steeped in an important and beneficial tradition of continuity. Judicial opinions written decades ago helpfully inform and guide the outcomes of cases decided today. The principle of *stare decisis* produces enduring benefits of stability, predictability, and clarity. These values help society to function, through the establishment of coherent laws and rights, and by enabling lawyers to pass specialized knowledge efficiently from one generation to the next.

However, an over-attachment to Stability also permeates the foundational architecture of our profession: the modern law firm’s basic structure has remained constant for more than 100 years; the billable hours model continues despite episodic challenges to it; most law firms continue to be self-governed by lawyers who lack formal education or training in running businesses or leading people; and, notwithstanding the fact that the numbers of women and lawyers of color entering the profession have grown exponentially, representation of these groups in senior positions has not increased proportionally.

29. See Brian Emerson, *Alleviating the Suffering of Paradox by Mapping Polarities*, in AND: MAKING A DIFFERENCE BY LEVERAGING POLARITY, PARADOX OR DILEMMA VOLUME TWO: APPLICATIONS 280.

The profession’s over-attachment to stability is limiting the way we prepare lawyers—and the institutions employing them—to see and capitalize on opportunities for developmental growth and industry innovation. The legal workplace remains exceptionally hierarchical³⁰, further reinforcing the status quo³¹ and making change difficult. Lawyers have been trained to over-value Stability, causing the profession to stagnate and overlook the antidote: incorporate more Change, without overusing it.



32

In considering how the overuses of Stability manifest in our profession, three examples provide a serious warning and simultaneous opportunity for evolution: the deepening generational divide, an accelerating burnout across all seniority levels, and a persistent diversity deficit.

30. To some extent, this hierarchy is understandable and necessary. Lawyers belong to a learned profession, in which the early years of practice serve as an apprenticeship of sorts. Done well, the purpose of the hierarchy is to mentor and teach. Taken to overuse, however, the hierarchy stifles progress and new insights.

31. The question is sometimes asked, “Can we use the words ‘stability’ and ‘status quo’ interchangeably?” When mapping a polarity, the answer is no, because the poles should have neutral names so that it is possible to see the benefits of both. For many people, the term “status quo” has a negative connotation, making it harder to acknowledge the value of that pole.

32. Polarity Navigator adapted with permission from Andiron, LLC.

A. *Stability::Change as a Lens to Understand the Generational Divide*

In 2022, Deloitte conducted a survey of 14,808 Gen Z and 8,412 Millennial professionals across 46 countries.³³ The results “present a picture of vivid contrasts, as these generations strive to balance their desire to drive change with the challenges of their everyday lives.”³⁴ Millennials and Gen Z want dynamic careers that align their pursuit of personal purpose,³⁵ societal impact,³⁶ and workplace flexibility.³⁷ They desire a professional experience that is both meaningful and manageable.³⁸ They seek to change the status quo but are struggling to be heard in that effort.³⁹ These goals are admirable and legitimate, but they cannot be achieved unless they are communicated effectively. All lawyers, and especially new lawyers, should be taught how to initiate Change while honoring the Stability of the system in which they are operating. Unfortunately, most law school do not teach these skills, setting their graduates up for dissatisfaction and, on some level, failure. When Change is demanded without valuing the benefits of Stability, the message lands as entitled and immature. This risks alienating employers and creates an undesirable chasm in a profession where the early years function as an apprenticeship that depends on intensive mentoring. Without access to senior lawyers willing to invest in the next generation by sharing their knowledge and skills, junior lawyers would miss critical elements of their training.

33. See DELOITTE, STRIVING FOR BALANCE, ADVOCATING FOR CHANGE 3 (2022).

34. *Id.*

35. *Id.* at 13 (“Purpose is also critical. Gen Zs and millennials are willing to turn down jobs and assignments which don’t align with their values. This is particularly true among Gen Zs and millennials in leadership positions. . . . Nearly half (46%) of Gen Zs and millennials in senior positions have rejected a job and/or assignment based on their personal ethics[.]”)

36. *Id.* (“[S]ocietal and environmental impact, along with a diverse and inclusive culture . . . continue to be critical issues in terms of retention.”).

37. *Id.* at 17 (“In addition to where they work, Gen Zs and millennials want flexibility in how and when they work. They’d like their organizations to offer flexible working hours and potentially reduced work weeks. They see flexible work as an important strategy to enable better work/life balance.”).

38. *Id.* at 13 (“[W]hen it comes to what makes them choose an organization to work for, good work/life balance and learning and development opportunities are their top priorities.”).

39. *Id.* at 15 (“Gen Zs and millennials aren’t afraid to speak up to ask for change, but . . . roughly a third [of survey respondents] don’t feel empowered to drive change. . . . This suggests that organizations have work to do to ensure that all professionals feel empowered to speak up and drive change within their workplaces. . . . When people feel their voices are heard, they tend to feel more connected and loyal to their organizations.”).

There is, however, another side to the coin. Senior lawyers (Gen X and Baby Boomers) worked tirelessly throughout their early years before attaining even a modicum of the flexibility and autonomy that junior lawyers now seem to expect so quickly. The law firms that reared Gen X and Baby Boomers were designed to financially reward⁴⁰ and physically exhaust. There was a culture of “paying your dues” and “earning your stripes.” It is no surprise that senior lawyers often are more reticent to embrace Change, because they were taught to fear its overuse (*e.g.*, disruption, disrespect, and unpredictability), and they were rewarded with promotions and raises for playing by the stable rules of hard work and hierarchy. As a result, many Gen X and Baby Boomer bosses hold on too tightly to the status quo, wanting to benefit (finally) from being at the top of the heap. Unfortunately, this leaves senior lawyers vulnerable to dismissing valuable, new perspectives that could modernize, revitalize, and improve ways for all lawyers to work more sustainably and collaboratively. Both ends of the generational spectrum act as if they are limited by a choice between Stability and Change. This erroneous frame, which misdiagnoses the polarity as a dilemma, stifles much-needed discourse between generations about the synergistic benefits of Both.

In a study of 200 European lawyers, researchers identified some paradoxical results. According to the Millennials, the law firm of the future should be “innovative, family friendly, have a flat hierarchy, pro bono work, work-life balance, personal development opportunities and equal career opportunities.”⁴¹ At the same time,

a majority did not believe that large international law firms could fulfil these wishes Despite these beliefs, such firms were the most preferred legal market employer by a strong margin. In other words, the Millennial Lawyer wants work-life balance, equality, and puts purpose before profit however, he or she deliberately chooses to work in an environment which he or she believes to be hierarchical, profit-orientated and where long-hours are the norm.⁴²

40. In the nonprofit and government sectors, the financial reward is replaced with access to earlier responsibility.

41. Ziercke & Hartung, *supra* note 3, at 13 (quoting Ziercke’s “Next Generation” study of 200 German lawyers, translation available at: https://www.law-school.de/fileadmin/content/law-school.de/de/units/abt_education/pdf/Next_Generation_Article_English_EZ_CK_Final.pdf, archived at <https://perma.cc/D89H-9RBL>).

42. *Id.*

Meanwhile, a 2020 study conducted by the National Association of Law Placement, Inc. (NALP) found that, of the nearly 2,500 lawyers surveyed,⁴³ “a substantial percentage of partners appear to be disappointed in their associates. A majority don’t think today’s young lawyers work as hard as they did. A substantial minority think young lawyers are not as skilled as they were. And about a third find their associates selfish.”⁴⁴

These studies underscore the concern that the profession is stunted by its own inability to leverage Stability and Change as a polarity.⁴⁵ The story of generational friction is as old as time, and it persists as suffering because we handle it poorly. The contradictory values fueling the divide are not either / or competitive choices, they are interdependent opposites that can be harnessed together for a brighter future.

B. *Stability::Change as a Lens to Explain Burnout*

A second dynamic has emerged in recent years: extraordinary burnout in the legal profession across all levels of seniority. Since the onset of the global pandemic in 2020, we have been forced to adjust quickly to unpredictable disruptions, immense uncertainty, and increasingly blurred lines between work and home. In mid-2020, the International Bar Association conducted a survey of more than 3,000 attorneys under the age of 40⁴⁶ and found that more than fifty-four percent of these lawyers are “leaving or thinking about leaving their current legal job.”⁴⁷ Older lawyers also are unhappy and fatigued, with high rates of depression and substance abuse that are well-documented throughout the profession.

43. CARTUSCIELLO, ET AL., *supra* note 3, at 30, 33–34.

44. *Id.* at 30.

45. Of course, this suffering does not stem solely from a single polarity; other under-leveraged polarities amplify the generational divide. These include conflicting preferences for Structure or Flexibility, Challenge or Support, and Direct or Empower. Seeing these other dynamics as polarities would provide additional entry points for fruitful collaboration.

46. LEGAL POL’Y & RSCH. UNIT, INT’L BAR ASS’N, IBA YOUNG LAWYERS REPORT 8 (2022), <https://www.ibanet.org/document?id=IBA-Young-Lawyers-Report-2022>, archived at <https://perma.cc/5HFL-4744> (from April to August 2020, a total of 3,056 young lawyers around the world took part in the survey, which was available in both English and Spanish).

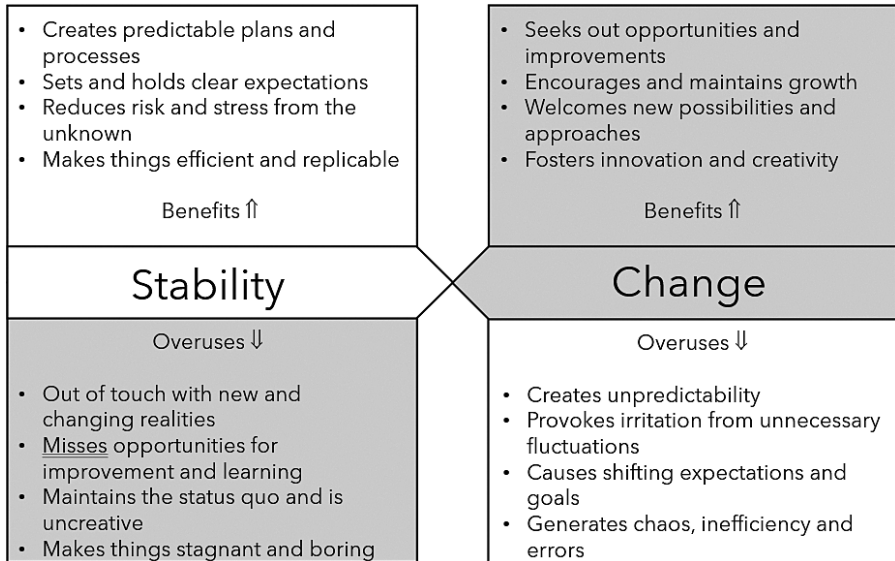
47. *Id.* at 18 (“A significant majority of young lawyers are leaving or thinking about leaving their current legal job. In the next five years, 54 per cent of young lawyers are somewhat or highly likely to move to a new but comparable workplace, and 33 per cent feel they will be moving to a new legal profession. One in five (20 per cent) are somewhat or highly likely to leave the profession entirely.”).

Cross-generational burnout should be experienced as common ground, a shared circumstance that could foster greater empathy, collaboration, and innovation. Instead, it has driven us further apart. This is partly because we experience a vicious cycle⁴⁸ of Either / Or Thinking in which we are failing to leverage Stability and Change together. The profession's overuse of Stability is undeniable. But cataclysmic events—like the pandemic—also reflect Change in a state of overuse (*e.g.*, turmoil and intense levels of uncertainty). Our internal toolset has remained relatively static, while our external world has transformed dramatically and suddenly. This is a terrible mismatch. We are ill-equipped to address this reality without a framework like Polarity Thinking.

Indeed, the profession's ingrained fear of Change's overuse has become a reality in this situation; yet, lawyers lack the tools to form a comprehensive and workable response because we have not been trained properly to do so. By looking at this dynamic through the lens of Polarity Thinking, it is clear the profession's efforts should focus on retaining behaviors to support the benefits of Stability (*e.g.*, carrying forward the core values of the profession, such as a commitment to service and advocacy), while *adding* new behaviors to support an emerging appreciation for the necessity of Change (*e.g.*, acknowledging and incorporating the shift in priorities around work flexibility and wellbeing). We should bring the values of Stability and Change together as a sustainable way to address burnout.

Burnout is a state of depletion that occurs when sustained overexertion overlaps with a persistent lack of replenishment. The result: profound loss of motivation. What does this have to do with Stability and Change? Through the polarity lens, the burnout lawyers are experiencing can be seen partly as the result of the profession's failure to adapt and evolve. If evolutionary success is the result of leveraging benefits of Stability *and* Change, then evolutionary failure (*e.g.*, burnout to the point of collapse), is the result of overusing both Stability and Change to the extreme. During the pandemic, the legal profession missed important opportunities to capitalize on new realities in the workforce (*see supra*, discussion of Generational Divide and *infra*, discussion of the ongoing Diversity Deficit). At the same time, our lives were thrown into extended disruption and uncertainty. These dynamics are captured in both overuse quadrants of the Stability and Change diagram below.

48. JOHNSON, *supra* note 4, at 6.



It is no wonder that lawyers are suffering. Adding fuel to the fire, we have been “[mis]prescrib[ing] *self-care* as the cure for burnout”,⁵⁰ by placing responsibility for addressing the issue “squarely on the shoulders of individual[s]”⁵¹ who are suffering through it. That is the wrong approach because it does not address burnout’s interconnected causes. “When it comes to preventing burnout [w]e desperately need upstream interventions, not downstream tactics.”⁵² To alleviate individual suffering, the profession should focus on adapting and evolving at the organizational and cultural levels, by recognizing the need to incorporate changes that support lawyer wellbeing without undermining the core deliverables of the profession: excellence in the form of dedicated, responsive, and effective advocacy for our clients. With that as a guiding principle, we can begin rowing in the same direction. We can start to replenish the motivation deficit by consciously cultivating the benefits of Stability and Change, and we can amplify the impact by leveraging other polarities to further reduce burnout. For example, lawyers also could engage more intentionally with the polarities of Activity::Rest,⁵³

49. Adapted with permission from Andiron, LLC.

50. Jennifer Moss, *Beyond Burned Out*, HARV. BUS. REV., Feb. 10, 2021 at 2, <https://hbr.org/2021/02/beyond-burned-out>, archived at <https://perma.cc/7YMN-7FSP>.

51. *Id.*

52. *Id.* at 2–3.

53. See *supra* note 14 (discussing ACTIVITY::REST). “Work” can be substituted for “Activity.”

Structure::Flexibility,⁵⁴ and Individual::Collective.⁵⁵ When overlaid onto Stability::Change and leveraged properly, this collection of polarities could produce a healthier legal profession that is better able to address the undeniable burnout we are experiencing.

C. *Stability::Change as Lens for Understanding Why Evolution Requires Diversity*

The persistent diversity deficit in the legal profession is an evolutionary crisis unto itself. The profession's enduring over-attachment to Stability and under-utilization of Change will continue to have negative consequences, including the under-retention and under-promotion of women, lawyers of color, and other underrepresented groups. This outcome can be averted if we leverage the Stability::Change polarity before reaching a tipping point where the exodus and frustration of these groups is too large to reverse.

Ongoing and longstanding obstacles continue to impede the success, retention, and influence of women lawyers, lawyers of color, and all groups underrepresented at the most senior levels of leadership and power.⁵⁶ These issues are well-documented and have received extensive attention and resources; and yet, the difficulties persist. Research "suggests that diversity initiatives may not be successful until we do more to address the way diversity is perceived. When leaders see it first and foremost as a social obligation that makes things difficult and slows progress, they will likely make decisions that undermine the organization's diversity goals."⁵⁷ This approach to diversity distorts the Stability::Change polarity by misusing the benefits of Change (e.g., progress and advancement) to *excuse* the

54. When leveraged well, the STRUCTURE::FLEXIBILITY polarity provides predictable rules that leave room for variation under appropriate circumstances. In this way, Structure::Flexibility is a cousin of JUSTICE::MERCY. See *supra* note 13.

55. INDIVIDUAL::COLLECTIVE is a cousin of FOCUS ON SELF::FOCUS ON OTHERS. When leveraged well, the Individual::Collective polarity meets the needs of the individual while remaining able to support the goals and priorities of the group (or organization or society). See *supra* at 4.

56. See, e.g., Sybil Dunlop & Jenny Gassman-Pines, *Why the Legal Profession is the Nation's Least Diverse (And How to Fix It)*, 47 MITCHELL HAMLINE L. REV. 129, 130 (2021), <https://open.mitchellhamline.edu/mhllr/vol47/iss1/5>, archived at <https://perma.cc/9UG4-HFQ9>; LIEBENBERG & SCHARF, *supra* note 3.

57. David Rock, Heidi Grant, & Jacqui Grey, *Diverse Teams Feel Less Comfortable—And That's Why They Perform Better*, HARV. BUS. REV., Sept. 22, 2016 at 5, <https://hbr.org/2016/09/diverse-teams-feel-less-comfortable-and-thats-why-they-perform-better>, archived at <https://perma.cc/XJX6-55DG>.

overuses of Stability (*e.g.*, missed opportunities and stagnation). Instead, we should be cultivating the benefits of Change to *reduce* the overuses of Stability.

The profession has a long way to go. Despite decades of increasing the numbers of women and people of color who graduate from law school, the legal profession remains “the least diverse in the nation. Eighty-eight percent of lawyers are White and sixty-two percent are male,”⁵⁸ and “the 2019 figures from the National Association for Law Placement show that—at law firms—under one in five equity partners are women (or 19.6 percent), and only 6.6 percent are racial or ethnic minorities.”⁵⁹ The American Bar Association’s landmark report, *Walking Out the Door*, found that women still are not being promoted “to senior levels at the same rate as men”⁶⁰ and concluded that “[w]hat needs fixing is the structure and culture of law firms, so firms can better address the needs of the many women they recruit and seek to retain.”⁶¹

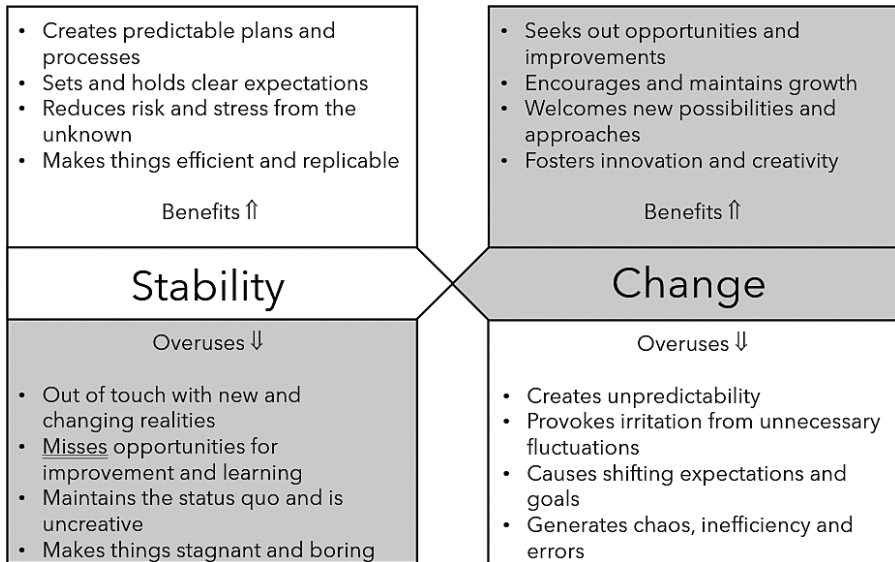
One important way to “fix the structure and culture of law firms” is to educate and train lawyers in the Polarities framework. This lens illuminates the need to integrate Stability and Change, and it explains the consequences of over-using Stability while neglecting Change:

58. Dunlop & Gassman-Pines, *supra* note 56, at 130–131 (internal quotations and citations omitted).

59. *Id.* at 131.

60. LIEBENBERG & SCHARF, *supra* note 3, at 17.

61. *Id.*



Use of the Polarities framework could reduce resistance to much-needed transformation (Change) by emphasizing that evolution also requires a healthy dose of conservation (Stability). Diversity alters the genetic makeup of any organism or organization for the purpose of adapting more effectively to emerging circumstances and stressors. So, while it is true that “adaptation is at least as much a process of conservation as it is of reinvention,”⁶³ it is simultaneously and equally true that “[t]he secret of evolution is variation.”⁶⁴ The process of pursuing both Stability and Change might be challenging and uncomfortable, but it is essential.

Unfortunately, many law firms still operate as if the goal of diversity were a statistics problem, with success measured solely by the number of partner and leadership positions held by women lawyers, lawyers of color, and LGBTQ+ lawyers. While statistics are an important data point for accountability and transparency, this focus is insufficient on its own. It overlooks and devalues the fundamental reason for diversity: that the introduction of new and varied DNA is

62. Adapted with permission from Andiron, LLC.

63. Ronald Heifetz, Alexander Grashow & Marty Linsky, *Leadership in a (Permanent) Crisis*, HARV. BUS. REV., (July–Aug. 2009) at 4, <https://hbr.org/2009/07/leadership-in-a-permanent-crisis>, archived at <https://perma.cc/UNR3-P58B>.

64. RONALD HEIFETZ ET AL., *THE PRACTICE OF ADAPTIVE LEADERSHIP: TOOLS AND TACTICS FOR CHANGING YOUR ORGANIZATION AND THE WORLD* 16 (Harv. Bus. Press 2009).

critical for the survival of every species, organization, and system. “To generate new leadership and innovative ideas, you need to *leverage diversity*—which, of course, is easier said than done [I]f you do not engage the widest possible range of life experiences and views—including those of younger employees—you risk operating without a nuanced picture of the shifting realities”⁶⁵

The argument in favor of including diverse perspectives, experiences, and preferences is the inherent value of this mix. “On a homogenous team, people readily understand each other and collaboration flows smoothly, giving the sensation of progress. Dealing with outsiders causes friction, which feels counterproductive In fact, working on diverse teams produces better outcomes precisely *because* it’s harder.”⁶⁶ The historical obstacles to embracing this advice are deep-rooted and complex. That is why a fresh lens, like Polarity Thinking, is appropriate and necessary.

IV. REFLECTIONS AND A PATH FORWARD

On a viscerally human level, resistance to change is about the fear of loss: of power, control, relevance, and even identity. “[N]ew adaptations significantly displace, reregulate, and rearrange some old DNA . . . generat[ing] loss. Learning is often painful Not many people like to be ‘rearranged.’”⁶⁷ Polarity Thinking is uniquely useful for counteracting this fear of loss because the framework is additive and inclusive. There is no need to sacrifice core values underpinning either pole. Once that is understood, the threat of loss is tempered, defense mechanisms are quieted, and our brains no longer jump to treat the polarity of Stability::Change as an either / or choice.

The ability to see and leverage polarities creates an effective way to manage dynamics that have been, until now, misdiagnosed as problems. Polarity Thinking fosters curiosity, creativity, agility, and tolerance for discomfort. The framework is a powerful practice that yields real-world impact.

65. Heifetz, Grashow & Linsky, *supra* note 63, at 7.

66. Rock, Grant & Grey, *supra* note 57, at 3. The authors go on to explain, that humans “prefer information that is processed more easily, or fluently, judging it to be truer or more beautiful. . . . confronting opinions you disagree with might not seem like the quickest path to getting things done, but working in groups can be like studying (or exercising): no pain, no gain.”; *see also* Dunlop & Gassman-Pines, *supra* note 56, at 136 (noting a research study finding that the addition of “a diverse voice doubles a group’s chance of arriving at a correct solution, but the group feels less secure in the outcome because diverse voices challenged their decision process”).

67. HEIFETZ ET AL., *supra* note 64, at 16.

At my own law firm, we grappled for many years with questions of succession planning and leadership transition. Our Executive Committee had remained largely unchanged (stagnant / overuse of Stability) for more than a decade. There was no reason for urgent revolution (chaos / overuse of Change), but there also was no outlet for healthy transition (benefits of Stability::Change combined). Historically, my firm's culture had a strong preference for Stability (over Change) and for Diplomacy (over Candor). The combination encouraged opaquely polite conversations (overuse of Diplomacy) at the expense of transparent discussions about potentially controversial topics (fear of Candor's overuse). The partnership repeatedly found itself challenged by the need to address the inevitable changing of the guard in a way that also felt respectful and that could build upon the wisdom of past experiences. We lacked a neutral framework for these conversations, which stymied our ability to prepare for the future. Although these concerns had been on the minds of many partners for a long time, there had been no obvious invitation to raise them (failure to access benefits of Candor), and there was a deep fear of offending long-serving members of our leadership if we did (fear of Candor's overuse). The polarities lens ultimately provided an avenue for frank and respectful discussions that had not been possible previously.

Several colleagues and I decided to try a new approach: framing the challenge as one that valued both Stability and Change. We presented the importance of creating a stable transition, which would benefit from starting before the most senior leaders retired from the firm. We shared our concerns about the unintended consequences of our (overly) stable governing body, *e.g.*, that the firm lacked a clear plan for passing the torch in the near future and for creating a replicable transition process that could work again and again in future. We offered an observation: If we were to wait too long to begin implementing key changes, we would—quite unintentionally—risk sudden and significant destabilization because the most senior members of our leadership could decide to retire within a relatively short window. This possibility, in which the overuse of Change could become the unintended outcome of a strong preference for Stability, was alarming and legitimate. It caught everyone's attention.

Our efforts were not entirely successful, in that the firm's general preference for Stability limited the pace and scope of our initial efforts to transition. However, the polarities framework destigmatized an otherwise high-stakes, uncomfortable subject. It opened the door to significant changes that will endure, including permanent

amendments to our bylaws that now guarantee a leadership committee comprised of longstanding members and new members. Our goal was not to balance Stability with Change *per se*; it was to maximize the benefits of both and to leverage the synergies produced by that pairing. My firm— and the legal profession generally—still has a long way to go before we consistently and optimally leverage the benefits of Stability and Change together.

Polarity Thinking is not an answer or a resolution, because polarities are not problems that can be solved, decided, or eliminated. Instead, polarities are closed-circuit energy systems comprised of interdependent opposites, in which the goal is to focus the energy toward the benefits of both poles and away from the overuses. Polarity Thinking provides a lens for noticing our preferences between two poles, for understanding the consequences of overusing one pole to the neglect of the other, and for identifying the behaviors and perspectives needed to achieve the benefits of both. The polarity of Stability and Change underpins every evolutionary dynamic, including the ability of the legal profession to adapt and thrive in the future that awaits us. Sustainable evolution is never static, nor is it chaotic; it is the best of BOTH Stability and Change.

“Live in the layers,
not on the litter.”
Though I lack the art
to decipher it,
no doubt the next chapter
in my book of transformations
is already written.
I am not done with my changes.”

~ excerpted from Stanley Kunitz’s poem, *The Layers*⁶⁸

68. STANLEY KUNITZ, *The Layers* in THE COLLECTED POEMS OF STANLEY KUNITZ (1978), <https://www.poetryfoundation.org/poems/54897/the-layers>, archived at <https://perma.cc/2NUW-4AS7>.