

# TEXAS TECH LAW REVIEW



VOLUME 34

2003

NUMBER 4

THE ANALECTS FOR LAWYERS: VARIATIONS UPON  
CONFUCIAN WISDOM

*Michael Sean Quinn*

## THE ANALECTS FOR LAWYERS: VARIATIONS UPON CONFUCIAN WISDOM

by Michael Sean Quinn\*

### PREFACE

Legal ethics is either several different, though related, fields of regulation and inquiry, or it is multi-dimensional. Part of legal ethics is a form of social control. It is the ideals, values, visions, norms, principles, rules, and virtues which a society uses to control the conduct of its lawyers. Years ago, most of the social factors controlling the conduct of lawyers were informal. For this reason, the form of social control was called "legal ethics," since ethics—historically—has been identified with morality, and hence almost characteristically an informal method of social control. (An informal method of social control is one which is not enforced by formal institutions but which is maintained through socialization, community pressures, and conscience.)

During the last hundred years, or so, the ethical standards controlling professional activities became institutionalized in several senses. More and more professions and types of employment have ethical standards governing them. Businesses promulgate ethical standards and try to encourage their observance. Legal ethics, specifically, has become more and more law-like.<sup>1</sup>

One can see this from the phraseology customarily used for talking about the social regulation of lawyer conduct. Years ago, it was simply called "legal ethics." In the second half of the Twentieth Century, and especially after the Watergate incident, it began to be called "professional responsibility," still more recently, it has come to be called "the law of lawyering"<sup>2</sup> and "the law governing lawyers."<sup>3</sup> Thus, as the Twenty-First Century dawns, the law of lawyering has become conceptually distinct from legal ethics.

How, then, should legal ethics be conceived, if codes of professional responsibility are now reconceived as law? One way to approach this question is to begin at the beginning—to start over again, conceptually speaking. At its simplest and most fundamental level, ethics has to do with the study of states of affairs which are valuable from the point of view of human flourishing, acts which contribute to human flourishing, acts which

---

\* Attorney at Law, Jordan, Quinn, & Carmona, P.C. B.A., University of Texas at Austin, 1965; M.A., University of Pittsburgh, 1968; Ph.D., University of Pittsburgh, 1972; J.D., University of Missouri at Kansas City School of Law, 1980.

1. This thesis has been developed in two separate articles. See Charles W. Wolfram, *Toward a History of the Legalization of American Legal Ethics—I. Origins*, 8 U. CHI. L. SCH. ROUNDTABLE 469 (2001); Charles W. Wolfram, *Toward a History of the Legalization of American Legal Ethics—II. The Modern Era*, 15 GEO. J. LEGAL ETHICS 205 (2002).

2. GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, *THE LAW OF LAWYERING* (3d ed. 2001).

3. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (2000).

diminish human flourishing, acts which are right, acts which are wrong, acts which are obligatory, acts which are forbidden, and so forth. Sometimes, ethics and morality are distinguished from prudence and self-interest by relating the worth of conduct and the states of affairs it produces to human beings considered as parts of community or considered in relationship to others, as opposed to simply looking at the isolated self-interest of each individual human being. Thus, the central question in the study of prudence is "What should I do to maximize my own self-interest?" while the central question of individual ethics is "What should I do, considering myself to be a human being among others?—a human being related to other sentient beings?" and the central question of social ethics is "What should we all do together?" When ethics is viewed in this way, professional ethics becomes the study of ethics as it regards human beings performing at least some vocational tasks. Thus, the central question for legal ethics becomes "What should I do, morally speaking, insofar as I am a lawyer?"

This last question may pertain to what I should or should not do as a lawyer, *i.e.*, while functioning as a lawyer. More broadly speaking, it may pertain to what should I do as a human being insofar as my actions are those of a lawyer and will impact my life as a lawyer, the legal profession, the public perception of the legal profession, and so on.

One of the central questions of legal theory is "*How are law and morality related?*" In the English speaking world, a large number of legal theorists since the Seventeenth Century have divorced law from morality, at least to the extent that normative proposition can be a law, even if its prescriptions are immoral. Hardly anyone believes, however, that community moral standards do not influence how legal terms and legal norms are understood. Indeed, the idea that they are divorced in that sense is silly. Moreover, no one doubts that prevailing standards of community morality influence how people think about the meaning and scope of legal prescriptions. It could hardly be otherwise. More controversially, it is also probably true that if some moral prescriptions are objectively true, then legal norms should be understood and interpreted in the light of such prescriptions.

Engaged lawyers inevitably experience moral tensions. This is particularly true for any lawyer who has a duty of zealous advocacy. At the same time, every lawyer has a moral responsibility to think about what s/he is doing in moral terms. This means that lawyers also have a moral responsibility to expand their moral consciousnesses. Such expansion involves furthering horizons, deepening conceptions, complicating one's view of the world, and so forth. Many sources can be helpful in this regard: conversation, religiosity, spirituality, literature, art, philosophy, and so forth all have a role to play. Of course, not every lawyer can absorb wisdom from every source.

Much of contemporary philosophy is unhelpful. It is far too academic. It is far too interested in securing the foundations of the obvious, as opposed to exploring what is thought not to be obvious and developing ideas which may not be so obvious.

Classical philosophy is often too difficult for the general reader. It is also often too systematic, too argumentative, and too unconnected to the practical world. Few of the famous philosophers of history were deeply concerned about—or knew much about—the responsibilities of practical people in business life.

Some religious texts are helpful. The so-called "Wisdom Books" of the Hebrew Bible can be stimulating, especially the book of *Proverbs*.

One source which has been unrecognized until fairly recently as a rich source of wisdom for the practicing lawyer is the Chinese philosopher Confucius. His actual Chinese name was Kongfuzi, and he lived from approximately 491 to 479 BCE, approximately 100 years before Socrates. He has been enormously influential in oriental philosophy and American juvenile humor. The truth of the matter is that this "aphoristic-anecdotal" philosopher can be wonderfully stimulating for the contemporary lawyer. The book primarily associated with his name is *The Analects*. He did not write this book. Rather, it is a compilation of brief discourses collected by some of his students over several decades after his death. In this sense, *The Analects* resembles *The Gospels*, although the resemblance ends there. (In particular, there has never been a claim that Confucius is divine.)

Some of the topics which are of concern to lawyers which were also of concern to Confucius are these: The honorable conduct of complex affairs, the honorable administration of complex organizations, the importance of virtue (as opposed to rule), the problem of unfortunate habits as a source of human unhappiness, the refinement of the self, the role of family in creating the good life, the moral implications of music, the pervasive beneficent role in ritual in life, the nature of law, the importance of sex.

What follows is in no sense a translation of *The Analects*.<sup>4</sup> Instead, what follows is more like an adaptation, an application, an attempt at rearticulation, a set of variations, or possibly a reconstruction. It follows the organization of *The Analects* fairly uniformly, with some additions and deletions here and

---

4. A very helpful literal translation is that of CHICHUNG HUANG, *THE ANALECTS OF CONFUCIUS (LUN YU): A LITERAL TRANSLATION WITH AN INTRODUCTION AND NOTES* (1997). The most widely used English translation is probably that of ARTHUR WALEY, *THE ANALECTS OF CONFUCIUS* (Vintage Books 1989) (1938). In the late 1990's, several modern translations appeared. See, e.g., ROGER T. AJMS & HENRY ROSEMONT, JR., *THE ANALECTS OF CONFUCIUS: A PHILOSOPHICAL TRANSLATION* (1998); CONFUCIUS: *THE ANALECT* (David Hinton trans., 1998); *THE ANALECTS OF CONFUCIUS* (Simon Leys trans., 1997). "Simon Leys" is the *nom de plume* of Pierre Ryckmans, an Australian professor of Chinese studies. I have found that translation particularly helpful. See also, E. BRUCE BROKS & A. TAEKO BROOKS, *THE ORIGINAL ANALECTS: SAYINGS OF CONFUCIUS AND HIS SUCCESSORS* (1998) (detailing the historical reconstruction and commentary).

there. My hope is that the lawyer reader will find inspiration, provocation, wisdom, hope, and perhaps reorientation in these pages. Perhaps there is something to the ancient adage that wisdom has a certain timelessness about it.

I.	LAWYERS AND "THE WAY" .....	936
II.	LEADERSHIP .....	941
III.	LAWYERS AND RITUAL .....	945
IV.	ON BEING ROBUSTLY HUMANE .....	949
V.	APTNES AND GOODNESS .....	952
VI.	LOVING LEARNEDNESS .....	956
VII.	THE TRULY ELITE LAWYER .....	959
VIII.	LAWYERING AND ETHICS .....	965
IX.	ERROR AND THE WAY .....	969
X.	APTNES, APTITUDE, AND ATTITUDE .....	972
XI.	DEATH, LIFE ACTIVITIES, AND THE WAY .....	974
XII.	PRACTICING ROBUST HUMANITY .....	977
XIII.	FIRM MANAGEMENT AND THE WAY .....	980
XIV.	SOME VIRTUES AND THE WAY .....	983
XV.	DANGEROUS DISTRACTIONS .....	987
XVI.	DIMENSIONS OF THE WAY .....	990
XVII.	INTERCONNECTEDNESS .....	992
XVIII.	FLEXIBILITY AND THE WAY .....	994
XIX.	BALANCE, FLEXIBILITY, AND LIMITS .....	995
XX.	WISDOM AND THE WAY .....	998

### I. LAWYERS AND "THE WAY"<sup>5</sup>

These are some observations of *Q*, a masterful and wise lawyer, if ever there was one, and a few of his most thoughtful students. *Q* was the paradigm of a civilized lawyer.

1.1 Here is something which brings joy: to learn the law lovingly and then practice it in the right way at the right time. Isn't this part of the meaning of the cliché "Timing is everything?" Surely the exercise of exquisite judgment is fulfilling—indeed delightful. Aren't other things about the law marvelous? Have you ever seen old lawyers—allies and foes—embrace one another and warmly swap stories? Such pleasures are marks of a civilized person. Here is another one, though much harder to develop and keep: equanimity when one's talents and work go unrecognized.<sup>6</sup>

5. Titles for sections are invariably supplied by translators and editors, though not every translator/editor provides titles.

6. Paragraph numbers follow the conventions of *THE ANALECTS OF CONFUCIUS* (Simon Leys trans., 1997).

1.2 The insightful lawyer knows deeply that continuity is the essence of a truly successful legal order, of the human relationships it regulates, of community, and of civilization itself. Such continuity must be both embodied and argued. The core experience of continuity is in the family. The root of continuity is to be found in one's relations with one's parents and grandparents. Secure these relationships and the Way of Civilized Life—the Way, for short—unfolds. Respect for parents, older people with wisdom, and family in general is the basis of connected-humanity.

Surely all practical training in the law proceeds through mentorship. Family life and excellent mentorship resemble one another, do they not?

1.3 Clever argument, merely ingenious solutions, and superficial or mechanical courtesy are seldom the marks of the good lawyer, and they are never signs of true goodness.

Not all indicators of excellence in lawyering are obvious. Consider this: all excellent lawyers have a deep sense of the importance of ritual and even ceremony. This is true even though they may not be able to articulate why they know it is important. *Q* knew that it was important because of its beauty, because of the sense of mystery and therefore awe it conveys, and because of the patina of sacredness it visits upon that which it touches.

1.4 A very good lawyer, who was also a very good person once remarked that he asked himself these questions several times each day: "Have I been trustworthy? Have I been faithful? Have I practiced what I preached?"

1.5 Law firm governance is much like running a polis. Handle business with dispatch and dignity. Always act in good faith. Don't throw money around. Don't sweat the small stuff. Love those in your path: clients, colleagues, staff, judges, and opponents. Of course, loving is not always easy. Love is to be expressed in care-filled nurturing.

1.6 Young lawyers would be well advised to respect their parents and to treat the senior lawyers who mentor them as if they were parents. This means that they should talk less and listen more, that they should exercise good faith in all their dealings, that they should associate only with good lawyers and good people, *but*—at the same time—they should work on loving all people. If they have any time left over, they should study the best. (Some engagement with literature wouldn't hurt either.)

1.7 Some say that elite lawyers are those who go to the very best schools, obtain prestigious clerkships, and go to famous—or, at least, very large—law firms. This is the wrong idea of what it is to be elite. Really elite lawyers are civilized lawyers. They achieve a synthesis of worldly pragmatism and a sensibility for the importance of ritual. Elite lawyers are almost never mechanical in their approach to anything. They are those who respect their parents and enter fully into family life, those who keep faith with their friends and other lawyers. They are those who understand the rituals of

civilized life, and those who strive to serve their firms and publicly significant institutions.

Really elite lawyers follow the Way. The stereotype of the elite lawyer is that of a celebrity. We often associate being a celebrity with being handsome, beautiful, or at least somehow good-looking. This idea is entirely false. The truly elite lawyer forgets—or, at least, subordinates—the superficial and the cosmetic to the practice of his craft. Virtue is better than beauty anyway. This point is true even if good-looking people tend to make more money. A truly elite lawyer loves wisdom not pulchritude.

1.8 Truly elite lawyers keep in mind that one's outward demeanor should reflect the seriousness of his actions. In representing a client, it is well to remember that the client takes the matter seriously. His affairs are important to him. Hence, the lawyer should take them seriously, and he should reflect that seriousness outwardly. Hence, measuredness and gravity should be projected as appropriate. If a lawyer can't do this, he (or she) will lack authority, and all of his marvelous education will come to nothing. This sense of measuredness requires that a lawyer know when to keep his mouth shut. Untoward flippancy is not at home in the excellent lawyer.

Elite lawyers almost always have a sense of humor. This is particularly true of those who try lawsuits. It is a particular kind of humor, however. It is not meanspirited humor. Indeed, it does not turn on biting irony or sarcasm. It is rich and warm. Smart aleck lawyers are seldom elite lawyers.

Gossiping about a client's business is forbidden, and for good reason. A sense of the gravity of things implies a sense of faithfulness and a sense of loyalty. It also implies a spirit of service. Because of these qualities, the elite lawyer will be willing to admit errors and correct them promptly. Following through with this sensibility in everyday life is extremely difficult. In our age it requires the support of others as well as one's own efforts. Consequently, it is best to seek out those who embrace these ideas and principles and shun those who reject them (or whose actions imply that they do).

1.9 First-rate lawyering requires a strong sense of tradition. The best legal arguments almost invariably emphasize continuity with the best of the past. Elite lawyers tend to emphasize all sorts of continuities. They see people as parts of social webs. Linkages and relationships are always important to the excellent lawyer.

More broadly, a legal system can have integrity only if it has at least the appearance of meaningful coherence over time. More broadly still, if people are cut off from a strong sense of the past, they will be less stable, less inclined to be moral, and less happy. Even drastic revisions in the law reflect continuity with some important themes of the past. Elite lawyers should cultivate a sense of the past and should cherish tradition. One important component of this is family history. The good lawyer has a strong sense of family tradition.

1.10 Good lawyers set an example for others in the community. When there is genuine affection for family tradition and a sense of roots, the moral tone of the community increases, other things being equal. Lawyers can help with this, and it fits with the basic vision of their profession.

1.11 When the consummate lawyer takes on a problem in a new jurisdiction, he always becomes knowledgeable about its court system, its politics, its mores, its key personalities, its institutional traditions, and its customs. He knows that local knowledge is important. He does this not so much by grilling anybody, or even by asking pointed questions, but by connecting through warmth, cordiality, a genuine interest in the people he deals with, a respectful and caring attitude, and a certain humility which bespeaks a willingness to learn. People want to tell him things. They want to help him. There is nothing overtly compelling about his approach, but it is remarkable, nevertheless. (Reading about the jurisdiction does not hurt, so long as the learning is not shown off. It alone is never enough, however. It does not convey *feel*.)

1.12 In looking for a good lawyer, find a person who fits well into his own family. First, ask whether the parents are sound. Determine how the aims of the young lawyer fit with those of his parents. If the parents are dead, find out what kind of changes the child has undergone. A family is solid, if it started sound and if the child maintains its values for at least three years after his parents are gone. Skepticism about an unsound background, of course, is not dispositive. It only generates questions. Still, even in litigators, an intuitive affinity for harmony in the right places and with some groups is a virtue.

1.13 Lawyering must contribute to the good of society. If it does not, the profession and the practice should be abolished, or at least modified until it does. Living a good life in a worthy group is impossible without cultivated civility. This is impossible without nearly impeccable manners, insight, good personal skills, and sound morals. Look for these things in a lawyer. They cannot be achieved without a sense of continuity—a sense of connectedness. Look for that. These things are not truly attained if they are not practiced with grace, balance, and a surefooted sense of harmony. Look for that too. Civility is easy to recognize, because it makes a person's conduct beautiful to behold. In former times, men who had these qualities were called "gentlemen." Look for authentic and age-appropriate courtliness. This duty applies to both men and women, *mutatis mutandis*.

1.14 Superciliousness plays no role in courtliness. Ostentatiousness is invariably avoided by lawyers who follow the Way. A devotion to civilized living is an end in itself. Of course, this does not imply weakness or servility. Strength and even aggressive conduct, when necessary (if measured and restrained), are perfectly consistent with the values of civility and balance. This is a very subtle matter. Manners, social skills, and parts of morality involve ritual. Most people in the modern world don't think much about that



fact, but many elite lawyers intuitively recognize the importance of ritual. Lawyers should have a rich sense of naturally practiced ritual. A good lawyer accepts the importance of ritual (and therefore mystery) in social life and does not try to undermine it. In judging a lawyer, notice how he treats clients, judges, witnesses, and other lawyers both in and out of the courtroom. If the two modes are vastly different, have nothing to do with him.

Common sense morality plays a role somewhat like the rituals of daily life. If the conduct of a lawyer flies in the face of common sense morality, stay away from him. If he gives gifts to public officials which are too large (say, more than lunch), or makes promises which are at variance with what the community regards as decent, think twice about dealing with him. If a lawyer fails to stand by his word on anything which is not a matter of life or death, shy away. Try to see whether a lawyer has a sense of shame. Try to see if the idea of disgrace means anything to him. See if he glides easily and genuinely through his family. If not, beware.

1.15 What sort of lawyer do you want to have around? It makes no difference whether you are the client or a firm, the answer is the same. You want lawyers whose deep virtues pervade both their personal lives and their professional lives. Be wary of even occasional drunkenness—and this is a big problem. It has ruined many an otherwise fabulous lawyer. (The life of Earl Rogers should be studied in law schools.) Distrust the glutton. Food is not as big a problem as alcohol and drugs, but if you observe a person's eating habits, you can learn a lot. Be shy of the lawyer who loves comfort too much. Comfort and discipline do not fit together easily. Opulent living is also a question mark. (Consider the sad case of F. Lee Bailey.) The gossip and the fire-eater are also to be shunned; you have no idea what they will say and to whom. Does a lawyer acknowledge his mistakes? No acknowledgment connotes no recognition. No recognition means no learning. No learning equals no growth. Try to figure out how a lawyer makes amends when he makes a mistake and injures someone. See how he tries to transform his own character. Shun the lawyer who knows the law up and down—backwards and forwards—but who lacks character, virtue, and a sense of fitness.

1.16 Wealth should make no difference in these qualities. The impoverished lawyer should stick to the Way and not be tempted by sleazy work—of which there is always a lot around—and the wealthy lawyer should not forget about manners and morals, even though pride and wealth often go together. If circumstances do not impact these things, then the lawyer will not have to worry about the great thematic sins which infect the profession: manipulation and arrogance. (Sleazy work is not the same as defending the sleazy. It has to do with doing sleazy things and making life unnecessarily harder for the already afflicted.)

1.17 The virtuous lawyer does not worry about recognition and ultimate fame. He worries about his own incompetence and ignorance. Ignorance, of course, comes in many forms: ignorance of doctrine, of the practical mores of humanity in general, of particular people. Lawyers should try to come to know those in their community who influence public outcomes. Access is important. The business of lawyers is solving problems. This involves wisdom and relationships. (Oddly, if a lawyer can truly focus on overcoming these problems, recognition will follow. The virtuous lawyer should not so much as think about this fact, however, much less dwell on it.)

## II. LEADERSHIP

2.1 The true leader of any law firm is known by the qualities of his character. Such a person is a stationary polestar. All other members of the firm—including its other stars—appear to move while he does not. Integrity is the key to this. It derives from following the Way. Integrity engenders reverence, although moderns are reluctant about that word, although not—oddly enough—its root: *to revere*. Roots are important.

2.2 This sort of leadership is summed up in three serious words from a playful song: "Accentuate the positive."

2.3 If the head of a firm leads by character, the associates in that firm will have a sense of moral propriety, a sense that their work is meaningful, and they will participate. If the head of a firm leads through plots and punishments, the associates of the firm who stick around—and even its lesser partners—will become tricky and manipulative, and they will lack a moral sense both in their practices and in their business. It is difficult for people to keep their self-respect when they are ruled through tyranny. Make no mistake about it: law firms are ruled. Rule by example is best. Following the Way and its rituals should be exemplified.

2.4 In his youth, a lawyer following the Way should devote himself to learning. By thirty, he should have a strong feel for who he is, even if he can't quite say it. By forty, he should be sure of who he is, how he fits in his various communities, and he should—if asked—be able to say a good deal about these things. At fifty, he should have a sense that he is moving along with the grain of the universe. At sixty, the lawyer of the Way should be able to listen to others, take it in, understand what he has heard, and remain who he is. At seventy, the heart of someone following the Way is so tutored that he can simply do as he wishes and be sure of the propriety of his conduct. Such a person can love the good, do as he wishes, and be confident of right action.

2.5 If you want to know whether a young lawyer is likely to have a healthy career, look at his relationship with his parents, assuming they loved him and raised him well. Does he do them honor? This broad question contains many components. Does he observe family holidays? Does he speak

well of his parents? Does he see them frequently? Is he pained by the idea of their presence? Does he worry his parents unnecessarily? If his parents have died, did he honor them in death? Was this embodied in appropriate rituals? How did he deal with grief? And so forth. Over the long haul, revealing answers to these questions can be every bit as important as law school grades, law review publications, and prestigious clerkships.

2.6 Then again, assumptions are not enough, in the end. You need to know how the parents have actually treated the child. You need to know how they treat their child now. Do they worry when he is sick? (Shouldn't progeny avoid worrying parents at all other times?) Is it clear that they care about what happens in his career? Do they have a sense of restraint? Do they welcome other appropriate mentors for their child? Discovering these matters is not easy. Direct inquiry is unappealing, usually uninformative, and regarded as obtrusive.

2.7 The head of a law firm who wants robust lawyers for long careers needs to think broadly and deeply about the origins of his lawyers—about their families of origin. Are those families filled with respect? A yes-answer to this question is much more important than an affirmative answer to the question, "Did you serve on the law review?" But how can such facts be discovered gently? Direct questions in interviews do not work.

2.8 Watch out for the young lawyer who only does the minimum for his parents, especially if even that is done grudgingly. Don't simply look at behavior alone. Look at attitude. How a person feels about his family may tell you something about how he will feel about his firm.

2.9 Good talkers—whether in debate or conversation—are not always the best lawyers. Lawyers who follow the Way frequently have a gift for understatement and grasp both nuance and its more burly cousin ambiguity. Look and see whether a person can put what he has learned into action.

2.10 In judging a lawyer, watch what he does; watch how he behaves in the long run; and try to grasp that in which he finds solace. If you have these things, you will have pretty much the whole of the person. If a person takes solace in nothing, if he is nowhere contented, he may well burn out. If he finds repose in alcohol or drugs, watch out.

2.11 The law is a learned profession. It cherishes continuity. It continually applies the old to the new, thereby taming the new and transforming the old. Value the lawyer who studies and restudies the old with an eye towards the new. Good lawyers always learn the new by building upon the old. Distrust a lawyer who learns principally from textbooks and restatements, rather than from cases, histories, local knowledge, and the oral tradition. Textbooks and introductory treatises serve three purposes. First, they introduce a topic. Second, they contain citations to cases. And third, if the author of the text is prestigious, they constitute helpful authority when

dealing with unreflective judges. Advanced treatises are entirely different, but only the best and most learned judges know this.

2.12 Truly civilized lawyers do not regard themselves as specialists. The Way points towards generality, since life involves many facets and thematically unified diversity. Lawyering is not mechanical. Lawyers who see jurisprudence as mechanistic are to be avoided. Creativity and plodding cannot co-exist.

2.13 Nevertheless, truly elite lawyers do not try to teach what they have not already practiced. As every Master Lawyer knows, teaching and mentorship is an essential obligation of senior lawyers in every firm—in every other grouping. They also know that mentorship presupposes principled performance.

2.14 A truly elite lawyer is able to grasp—even if only intuitively—the whole of the law—if only in outline. Consequently, he is able to see the problems of his clients as a whole and from many perspectives. Lesser lawyers consider only the parts of a problem, see problems in fragments, and can never see wholes. Truly elite lawyers know that there is black-letter law; there is caselaw, conceived mechanically; there is textbook law; there is treatise law; and then there is the law which experienced lawyers carry around in their heads. (There is nothing esoteric about this oral tradition. Every practicing lawyer knows it exists and that it is important.)

2.15 Excess is one of the reasons to accept mentorship from a Master Lawyer. Beware the young lawyer who studies and studies without thinking about what he is doing. At the same time, harbor skepticism towards the lawyer who thinks a great deal, but never collects cases. Worry about the lawyer who doesn't puzzle—even fret—over the nature of his calling. Of course, excess has many manifestations and many dimensions.

2.16 When searching for civilized lawyers, observe what a candidate thinks about, and how he goes about it. If a person persistently asks the wrong questions, he is not likely to end up a great lawyer. If he is drawn to heresy, or even exotic positions, rather than mainstream ideas, he is not likely to be an effective advocate, though he may be a fine scholar. Masterful lawyering is hardly ever esoteric. If he spends his thinking time mostly refuting others, rather than meditating or constructing his own thoughts, masterful lawyering is not even possible for him. He is fit only to write replies. There is always tension between creativity and continuity.

2.17 Lawyers are in the business of giving advice. Giving advice presupposes having wisdom. But having wisdom presupposes having knowledge. Does one know when one has knowledge? Strangely enough, having knowledge requires skepticism, courage, and humility. You must be careful not to claim you know when you do not. You must have enough courage to recognize that you know something when you do know it. And you must have the humility to acknowledge that you do not know something

when you do not know it. Knowing when and what you don't know are important forms of knowledge.

2.18 The effective advocate and the effective counselor rely—as often as possible—upon core legal principles which are not subject to much doubt. If a principle is doubtful, first-class lawyers do not rely upon it—unless absolutely necessary. Instead, they look to a deeper or more over-arching principle, which is not subject to doubt. Watch how people treat each other both in business and in personal life. Form generalizations. Do not rely upon generalizations which are shaky, and apply even the best of them with caution. After you have studied and after you have learned restraint, act and advise on instinct. Do not fear tutored improvisation. (There are Duke Ellington's and Charley Parker's of legal performance *i.e.*, practice).

2.19 The best way to govern in a law firm over time is to begin with uniformly intelligent attorneys of character. Advance the honorable. Get rid of the crooked and the mean-spirited. If these things are not done, eventually, the law firm will explode, implode, or, at any rate, collapse. What must be done eventually, need not be done immediately. People can change, and leadership can make a difference. What must be done can be done with compassion.

2.20 Here is how to grow a healthy law firm. Fill it with respect, loyalty, playfulness, and a sense of teamwork. Encourage lawyers to practice with passion and love—as if they did not need the money. This culture cannot be created by hype or by fiat. People must be treated with dignity and respect. There must be reverence for the law and its institutions. Lawyers who follow the Way are reluctant to hypothesize petty politics, irrationality, or corruption along side with legal explanation. The firm must be thought of as a family. People who are good at what they do must be supported, recognized, and where possible promoted. Those who are not so good must be trained and also supported after a fashion and within limits.

2.21 Law firms are a breeding ground for politics. Creating an appropriate law firm culture is therefore a political act. Even running the law firm is a form of governance. Running a law firm well makes a contribution to the body politic. From a political point of view, all effective working units are small. Organizing, motivating, and regulating working units is a form of politics because it is a form of governance.

2.22 When you discover that a lawyer's word cannot be trusted or that he is fundamentally untruthful in some way, ease him out of the firm.

2.23 People don't really change much from generation to generation, in the aggregate. The requirements of justice and fairness hardly change at all, although circumstances certainly do. Probably, what counts as wisdom today is what counted as wisdom generations ago.

2.24 Obsequiousness is now what it was then. Unctuousness has not changed in thousands of years. It wasn't permissible to kick people when they were down in 500 B.C.E., and it's not allowed now. Doing what is right in the

face of the temptations of self-interest requires just as much courage and resolve now as it did a thousand years ago.

### III. LAWYERS AND RITUAL

3.1 Sacrilege is alien to the civilized lawyer. So is shocking people just to upset them. Ritual must always be treated appropriately. It must never be perverted. Ridiculing ritual outside of bracketed, stylized contexts is never a good idea.

3.2 Parvenuishness is unattractive in any lawyer, although a will to self-improvement is always welcome. The parvenu should be unwelcome among the leaders of great law firms.

3.3 It is often said that lawyers must have a killer-instinct. It is also true that they must have an instinct for the humane. Unless a lawyer has some deep love for humanity, excellence will elude him. This unfortunate situation cannot be improved by religion, by good manners, by literature, by managing and training, by up-lifting moral preaching, or even by sublime music. On the other hand, frequently, those with a deep love for humanity, broadly conceived, have a deep feel for the arts and for the role of ritual in human life.

3.4 We all know that the ceremonial aspect of life—whether these be rituals of civility, liturgies, or the conventions of public life—are absolutely necessary in forming a healthy and worthwhile people. What is the foundation of this? Why does it work? How can it be nurtured in busy societies? How can it be made safe for the future? These are big questions. They are also mysterious.

The ceremonial aspects of civility must, of course, have a practical base, as well as an aesthetic dimension. Rituals should probably not be too complicated or too lavish. Simplicity connotes sincerity. Complex formalities make for hollow observance. Genuine feeling should not be suppressed by ritual. A funeral, for example, is a formality designed to express grief, not a formalism to repress it. It is always better to express feeling appropriately, than to observe the letter of the ritual.

3.5 Why is this important to law firms? Every institution has its rituals. Every culture has its ritualistic expressions. An institution with sound rituals can nearly govern itself, whereas an institution with phony or defective rituals will not survive, even if it is profitable and otherwise competently governed. Sometimes, it is tempting to think that the modern world has forgotten these facts.

3.6 Those who run law firms but who have no sense of ritual should be replaced or—better yet—never placed at all. Good manners—a fundamental ritual—are a moral obligation. This is especially so for lawyers.

The natural state for the talented leader is confusion. The talented leader will always be out front and therefore in a kind of wilderness. The reasonable

leader with depth will not immediately know the right direction. The responsible leader must absorb all sorts of things before he makes a decision.

3.7 Lawyers who are healthy in their outlook and who last over the long haul, avoid one-upsmanship. They do not view life as a game. They do not see all transactions in terms of only winning or losing. Lawyers with depth, even litigators, begin by looking for win-win solutions. (Of course, they cannot always be found.) Moreover, elite lawyers know that great victories are not usually won through public confrontation, and never by that alone. They do not subscribe to *confrontationalism* as a philosophy of life.

If a person needs obvious, head-on competition, that need is best restricted to well-established games, with clear boundaries. Those games are best which are nested in elaborate rituals of civility. Golf and cycling are splendid examples, but there are many. A savage sport is probably not the best playground for the civilized lawyer.

3.8 While important to human life, ritual is not absolutely fundamental. The material base—the foundation—must come first. This is true even for art, that most ritualized of all human activities. There was no such thing as style without substance. Without raw movement, for example, there can be no dance. Without a canvas, there can be no painting. No face, no smile. No sound, no music. How does this work for law, legal argument, and law firms? Still form is always extraordinarily important for all sorts of reasons. It creates art for competence and engenders trust.

3.9 Finding the ritualistic components of a group is not always easy. Read a system; determine its folklore; consult with its wise men. They will not always understand what you are asking about, but that's where you will find the evidence. Think like an anthropologist does about cultures. Discerning ritual can be important in representing large firms and large families.

3.10 Even rituals can be misappropriated.

3.11 Meaningful rituals have enormous power. Sometimes people even think of them as magic. Liturgy is like this. The use and abuse of ritual is extremely important in all sorts of cultures, groups, and institutions. Good manners are no exception. Courtesy is *the* crucial ritual in social life and therefore in the law. All established cultures—even business cultures—have embedded rituals.

3.12 Ritual naturally yields the question of religion. A Master Lawyer need not *be* religious. However, he should not *play at* being religious. If a lawyer engages in religious ritual, he should be genuinely present for it. He should take it to be true that any god he worships is present as well. Religion which is less than whole-hearted—or based upon deep yearning—is not worth the trouble. (Of course, religion can be whole-hearted while the mind struggles with skepticism and doubt.) Many, many lawyers utilize religious affiliation as a form of marketing and as a form of networking. This is an abomination. Phoney religion is a curse.

3.13 Lawyers worry a great deal about influence. So do their clients. There is an oft-heard maxim: "Always hire local counsel who is friendly with the judge." Here is another: "Always hire a well-known name. Judges listen more carefully to them." Except when dealing with corrupt or stupid officials, this is a limited truth, at most. A name can be well-known because its bearer is infamous. Still a reputation for expertise and integrity matter.

Most lawsuits are resolved on facts and the law. Still, the solution to most lawsuits is obvious from the beginning. When the facts and the law are lop-sided, poor briefs on behalf of the better position can win. When the facts, the law, and the atmospherics are evenly matched, mostly, at least in the end, the best briefs win when they are supplemented by the best oral argument. Often, overt manipulation offends conscientious decision-makers. The same thing is true in running law firms. Still, respectability, genuine legitimacy, and the right kind of social standing bring access—both actual and psychological. A reputation for wisdom is a powerful tool for legitimacy.

3.14 In running a law firm, wise leaders maintain continuity with the past. Today's leaders should self-consciously study great decisions of the past. A sense of firm history must be kept alive. Today's well-run firm would do well to become acquainted with other firms which were well-run in the past. Much information like this is mostly word of mouth, but it can be had, so long as senior leaders live. Remember, however: the memories of the elderly are not always maximally accurate.

3.15 The civilized lawyer asks many more questions than he makes statements. When visiting a new jurisdiction, he drinks in how it works. When appearing in a new court, he asks everyone how the court functions. What is expected? There is a sacred ritual which characterizes the deep structure of what it is to be a lawyer. It is the asking of questions—questions of the right sort.

3.16 To practice law well, one must understand what one is doing. If one engages in archery, what matters is whether the arrow pierces the bullseye and stays. After that, it does not matter how deep the arrow goes. To judge an archer solely by the depth of the penetration is to miss something.

3.17 When taking on the mantle of leadership, beware changing established rituals. Think about their meaning and their function. Ask yourself, "Who wants to change this interaction and why?" Such decisions extend even to the ostensibly trivial, such as the day of the periodic partner or shareholder luncheon. People love ritual. This proposition is true even if they never say so. It is true even if they deny it.

3.18 There are subtle wrinkles here. Sycophantic slavishness is to be avoided. At the same time, ill-informed, sloppy on-lookers think they see "kissing-up" when what they are really seeing is loyalty.



3.19 Senior people should treat their subordinates with courtesy and respect. Subordinates should treat those for whom they work with loyalty. Every employment—indeed, every relationship—has its rituals.

3.20 The contents of human consciousness are frequently complex, subtle, and blended. Each appropriate state has limits. Think about great poetry. It is frequently joyous yet restrained, sad but not bitter, wistful—even melancholy—but not depressing, and so forth. Life is like that. The life of a law firm recapitulates life itself.

3.21 The exact origin or function of a significant ritual is irrelevant. What is important is the fact that it is socially embedded. People often do not understand why they do what they do, and their explanations are frequently sophisticated nonsense. The meaning and significance of ritual is not to be found in the explanations people give themselves—or each other—for it.

3.22 The great leaders of great law firms are not simply those who wield political power—managerial authority—with excellence. They are people of vision and—invariably—they see their law firms as unities, not fiefdoms. Rituals unify communities. Great leaders know this.

3.23 Leadership can sometimes be understood through obscure analogy. Consider music. Complex structures worked out over time yield pleasure, depth, and beauty. Usually there is continuity—even a unity of sorts—in all great music. Even dissonance has a role, however. There is always resolution, however, in every form of music.

3.24 Those charged with running organizations should pay careful attention to the wisdom which may come from those who study and think about groups. Leaders and wisemen, managers and consultants, line and staff officers are frequently not the same type of people. Leaders, who are invariably relative generalists, know that people differ in their strengths.

3.25 Beauty and goodness are not the same. There is much beauty in conflict and smashing victory. Not so much goodness, however. Peaceful resolution is also beautiful, in a subtle sort of way, and it is almost always good. Perhaps music is an exception. Great music always deepens the listener. Still, even those with depth can be less than virtuous. Some can even be vicious.

3.26 Some parts of the world fit together almost of necessity. True ritual without reverence is phoney. One cannot mourn a loss without grief. So too for governance without generosity. Every Master Lawyer and Lawyer-leader knows these things.<sup>7</sup>

---

7. Section drawn from *THE ANALECTS* (David Hinton trans., 1998).

## IV. ON BEING ROBUSTLY HUMANE

4.1 Leaders should fill their law firms with robustly humane people, for such is the essence of the Way. Involvement with vividly human, passionately involved people, who are at the same time ethical, make life really worth living. Drab, dried-out types—intractably sunken in the everyday—kill the spirits of those nearby. Perhaps it is better to live entirely alone than be afflicted by a herd of people without robust humanity. Technicians beware. Robust humanity often yields enlightenment and wisdom.

4.2 Expansive, robust humanity makes it possible to deal with adversity and thrive upon joy. Moral goodness rests upon engaged humanity. It is also a prime source of wisdom.

4.3 Only the good can really love. Only the good can truly hate. The notion that no one should hate anyone is pernicious and unnatural. Some people, some things, and some situations deserve being hated. Paradoxically enough, the more a person genuinely and fully embraces robust humanity—the more he approximates that end state—the less likely he will actually and in fact hate anyone.

4.4 Robust humanity is not a given, although some people seem to have it and some people just do not. It is something to be achieved. It is something to seek. It is something to be cultivated—even strived for. The person who focuses on full-blown humanity has no time to focus upon evil.

4.5 Everyone wants money, status, and power. If the only ways to get them, however, require violating ethical principle, one should forget them. Everyone hates poverty, impotence, and having been forgotten. If avoiding them, however, requires violating ethical principle, take what you get. When a lawyer has a passionate love for any one (or more) of the "Big Three"—money, status and power—his reputation will eventually be destroyed. Under no circumstances, should a lawyer ever relinquish any part of his or her robust humanity. Passionately loving any of the Big Three and following the Way are not consistent.

4.6 We are talking about ideals here. No one—much less a person of affairs—loves goodness with such passion and purity that evil is in all ways always excluded. In the real world, motives are always mixed. Temptation always seeps in. Still, sound teaching helps. Try to display goodness to the young and tell them to want it.

4.7 In running law firms and gauging lawyers—as in life itself—try to identify a person's faults. The spirit of this inquiry is not to denigrate. One should judge others carefully and with restraint. Critique should be constructive. Suggestive and loving mentoring is best. Forgiveness is not always wrong. A person's qualities are always to be found in relation to his faults. The mark of self-transformation is the engagement of a person's good qualities with his faults. One's virtues and strengths are often a complex unity. So are one's vices.

4.8 Once one has appreciated the Way—the essence of right practice—life acquires meaning. The Way is discovered in fragments, at first. Fortunately, pieces of the fragmented Way are, by analogy, applicable to the rest of life. Thereby, apprehension of the Way grows.

4.9 Once a lawyer commits himself to the Way any number of temptations and dangers slide away. If a lawyer thinks she has grasped the essence of right conduct in law practice, and she still thinks that possessions and earthly delights matter, she has not gotten it yet. Stay away from such people. There is another paradox here. Much of the law is to regulate matters related to material wealth—like government and governance itself. At the same time a lawyer fully imbued with the Way transcends just those things.

4.10 One of the great tensions facing every civilized lawyer who has any depth at all, is the tension between advocacy and justice. Every good lawyer, of course, strives to conceive and present his side as the just one. Self-deception is always a danger in this context. Truly civilized lawyers actually care about actual justice, not just its appearance. Often this requires subtlety.

4.11 The elite lawyer loves justice; the ordinary lawyer loves wealth. The elite lawyer loves justice; the small-souled lawyer loves bonus fees.

4.12 Another tension every civilized lawyer faces is that between professionalism on the one hand and self-interest on the other. Capitalism extolls self-interest, and self-interested conduct is widely-approved in the business world. Nevertheless, the lawyer who acts principally on behalf of his own self-interest is to be both distrusted and resented. Inside his firm, if a lawyer pursues his own self-interest at the expense of his colleagues or at the expense of the group, he will be despised, even if he is a rain-maker. It is well to remember that healthy law firms resemble healthy families. Healthy states, also.

4.13 Client relations, internal firm relations, and successful bar politics all require sensitivity to ritual and to deference. Yielding and striving are constantly in tension. Manipulativeness can easily seep in here.

4.14 The truly devoted lawyer cares much more about whether he has done a good job than whether his good job is recognized.

4.15 Healthy law firms are all communities. This means that the members are loyal to one another, that they respect one another, that they treat one another as persons worthy of respect, and that they recognize that they are "in it" together. At the same time, healthy law firms are hierarchical communities. Experienced lawyers lead the way. Holmes was right: the soul of the law is not formalistic logic but richer, more fluid experience. Juniors must not only be loyal to each other, they must be loyal to their seniors and to the institution. Seniors lawyers in healthy law firms will naturally be loyal to their juniors, as well as the institution. This is why recruiting needs to be

done carefully. They will all be considerate of one another. A law firm without at least internal altruism is not a healthy one.

4.16 One of the most significant transitions in the life of the adult lawyer is from focusing on what is practical in the shorter run to what is overall just. Because permanent senior lawyers attend more to the latter than the former, some younger lawyers, who think of nothing but winning today and tomorrow, do not understand these lawyers and regard them soft.

4.17 If a lawyer cares about self-improvement, he can learn from just about everyone. When he sees a lawyer who is worthy, he should empathetically and creatively imitate him. When he sees a lawyer who is unworthy, he discerns his faults, and then compares himself to what he sees.

4.18 Law firms are inevitably hierarchical. One learns the proper way of dealing with hierarchy by dealing with one's parents. It is perfectly permissible to suggest to one's parents that they are veering off towards error. This must be done appropriately, however. If a parent does not take a child's advice, the child must treat the parent no less respectfully—perhaps even more so—and must let the matter pass. One should not necessarily be disappointed when decision-makers do not take sound advice. After all, it is their decision. One should certainly not become angry or embittered merely because one's excellent advice is ignored. The appropriate response is almost always gentle.

4.19 In firm recruiting, determine where the prospective lawyer's parents live. If the recruit is leaving his parents far behind, try to find out why. If he is no longer in touch with his parents, ask yourself whether you really want this lawyer. Ask yourself what this alienation means. Try to find out his true attitudes about his family.

4.20 If a recruit's parents have died, find out how he is dealing with the loss. Find out if he now lives a completely different life. Remember: in recruiting the young: hire for *being*; train for *doing*. In lateral recruiting, hire for *being*; hire for *having done*. With this approach, the current client list is not crucial. This adage is especially true in recruiting the young.

4.21 In recruiting lawyers and in monitoring their careers, determine whether a lawyer attends to his parents as they get older. If aging parents are not both a joy and a source of concern, ask yourself what this means.

4.22 The practice of law ends in doings. The test of law practice is getting things done. When lawyers boast about what they are sure to get done, disgrace is likely. The world of human affairs is a very uncertain place. It is filled with anomalies, surprises, and sometimes deceptions. In the practice of law, it is better not to speak at all than to brag about what you can do. Then again, the best predictor of the future is the past.

4.23 Self-restraint is the foundation of civilized lawyering.

4.24 Good lawyers know when to act quickly and when to keep quiet.

4.25 If a person possesses one of the traits which makes for excellent lawyering, he probably has several of them. For some reason, these traits are seldom found alone. Interestingly, the same thing is true of moral character.

4.26 Keep resentment out of the firm. It ruins client relationships; it destroys community; it alienates friends. Envy corrupts.

4.27 Yet another paradox. In law firms hierarchy and community must fully and thoroughly co-exist.

#### V. APTNESS AND GOODNESS

5.1 In recruiting for a law firm, don't just look at where (metaphorically) a person has been. Ask whether he deserves to have been there.

5.2 In measuring the worth of the civilized lawyer, ask yourself, "How well will this person do in dealing with uncivilized lawyers?"

5.3 Hardly anyone can become a civilized lawyer without having been reared properly and without having been trained correctly. Miracles can happen, however.

5.4 If the lawyer ends up a specialist, he should try to be an extraordinary and exquisite one. Brilliant specialization is seldom possible without roots in the general.

5.5 Moral goodness in a lawyer is certainly better than eloquence, and more persuasive. Moral goodness shines through. Moreover, hardly any one truly resents moral goodness, whereas glib eloquence can easily breed distaste, distrust, aversion, and even hatred. A person doesn't even have to be supremely good for others to recognize what he does have.

5.6 Humility is a virtue. Often, a civilized lawyer—who is invariably self-aware—is hesitant about accepting positions of authority. Often, he does not feel worthy. Often, he does not feel prepared.

5.7 When the wise and discerning lawyer contemplates the low state of practice, he feels tempted to chuck it, build a boat, and go sailing for a very long time. Other times, he feels like retiring to a law school, in the hopes of teaching novitiates the Way. At still other times, he wishes he taught at an undergraduate college: "By the time these kids get to law school, it's already too late," he says to himself. The civilized lawyer never—well, hardly ever—leaves practice. Still, it's good that he keeps these things in mind.

5.8 Civilized lawyering is linked to moral goodness. They go hand-in-hand. Nevertheless, supreme moral goodness is not required for true achievements as a lawyer. Nor is goodness alone enough. There must be technical expertise as well. Legal achievement is possible in the presence of some, but not profound, moral goodness. Goodness is not an all-or-nothing matter. There are levels; there are stages. It is extremely difficult to tell when someone has reached the higher stages of moral goodness.

5.9 Learnedness in the law is an absolute prerequisite for civilized lawyering. Reasoning—whether deductive, inductive, or analogical—is a necessary component of learnedness. Nevertheless, showy, razzle-dazzle exercises in reasoning avail little. Still, they are not completely worthless. Elegance in argument can be attractive, although it breeds suspicion and skepticism.

5.10 In the creation of civilized lawyers, pedagogy is almost everything. Notice the "almost." Some people simply don't have the right stuff. There is no point blaming such people for who they are or torturing them with pointless training. What cannot be done, cannot be done.

It is worth remembering that even barbarian lawyers can—within limits—learn to sound like civilized lawyers. It is not a good idea to listen to what people say and then trust that they will act in conformity with their speech. Nor is it a good idea to ignore what people say. Rather, listen to what they say, and, at the same time, remain attentive to what they do. This is especially important in dealing with barbarian lawyers who talk a good game. Sometimes, they don't even realize what they are doing.

5.11 A supremely civilized lawyer would be steadfast in all things. He would have an iron-sense of duty and an unswerving devotion to its dictates. Its yoke would be quite light, however. There are no such people, of course. When a person appears to be one hundred percent devoted to duty, the chances are he is doing what he wants to do, rather than purely what duty dictates.

5.12 Here is perhaps the deepest insight of the Way: "Refrain from doing to others that which you would not want done to yourself." It takes much study before this principle is truly understood.

5.13 The Way rests upon a theory of human nature and a theory of culture. In turn, it has a great deal to say about human beings and social intercourse. Every truth about the physical world is consistent with the Way, and the Way is not a theory of physics, chemistry, or biology. Moreover, it has nothing to do with metaphysics or theology, whether those topics are regarded as sciences, arts, or philosophies.

5.14 Here is a form of overdoing it. When you learn something you are afraid you may not be able to apply what you have learned, before you learn something else. Still, this is error in the right direction.

5.15 A lawyer may be civilized if he has a good and nimble mind, loves learning the law and is delighted to learn from those who know less than he does. Such a lawyer is civilized, even if he has substantial flaws in his personal life.

5.16 Here are four significant characteristics of the Way in lawyering: dignity, respectfulness, generosity, and justice. Reverence may be a fifth.

5.17 Here is another aspect of the Way: a sense of aptness in social relations. Not much can be said about this. It starts with an intuitive sense of what not to do next. To some extent, a sense of the apt is a gift—sort of god-given. Nevertheless, at least some people can develop this sensibility. There are very few helpful principles expressing the sense of aptness. Here is an important one, however, which many people forget: dealing with someone over a long period of time does not entail the presence of friendship. Or, what comes to the same thing: a lengthy course of dealing does not create a right to intimacy. There is such a thing as inappropriate familiarity even with people with whom one has worked for a very long time. Knowing where boundaries are and what they mean is crucial to the civilized lawyer.

5.18 Civilized lawyers have not only this sensibility, but also an intuitively nuanced sense for their position in hierarchy. This is necessary in all sorts of ways. One needs it in firm life; one needs it in dealing with clients; and one sometimes needs it in dealing with courts. Often times, dealing with opposing counsel is a different matter, as is dealing with lying or otherwise recalcitrant witnesses.

Once, a brand new, independently wealthy partner in a well-run law firm undertook to furnish his office with the finest antiques and the most expensive wall coverings made of exquisite fabric. Everyone thought this fellow had lost his mind.

5.19 Inferring that a lawyer is a good lawyer or a good person from how he handles business matters is by no means straightforward.

Consider this story. Patrick was a senior partner in a well known firm. His partners asked him several times to be the managing partner. He agreed to do so each time, although he did not show any elation. Three times he was not re-elected. Each time he trained his successor without any display of resentment or even disappointment. Patrick was a model of restraint and cooperation. Clearly Patrick has to be rated a loyal person, but can we infer that he is a good lawyer or a good person on the basis of this story? We cannot.

Consider another story. Prudence overthrew the managing partner of her firm. Indeed, she had him indicted for corruption, and he was ultimately disbarred. Prudence was so disgusted with her firm and the people there that she moved to another. She concluded that it was no better and that the people in it were not different than those in her previous firm. She left and joined a third, where she found the same thing. Eventually, Prudence left the practice of law. Obviously, Prudence must be thought of as a person of purity. At the same time, there is nothing in this story which says that she is either a good lawyer or a morally good person.

Do not both of those ideas imply realism and engagement?

5.20 Good lawyering requires care, attention, thought, and review. It also requires action. There is such a thing as thinking too long, although perhaps not too hard. "Think well, and think deeply," said the Sage. "Just

don't take too long at it." Practical life requires well-timed action. Procrastination is sometimes perfect.

5.21 If a social system—whether it's a court or a law firm—is open, rational, humane, and fair, intelligence can flourish. If a system is the opposite—tyrannical, irrational, inhumane, and unfair—appearing to be stupid is the order of the day.

Practicing law almost always demands oppositional conduct, or—at least—it demands people who are willing to be conflictual. Still, under some circumstances it is best not to buck the system yourself, and occasionally it is even best to disappear into the woodwork.

Feigning stupidity is an important and subtle art form in both law and life. The wise lawyer knows how to avoid unnecessary confrontation, to reduce the appearance of conflict, and to manage disagreement smoothly. The wisest of lawyers can make the most profound disagreements look like they are working with the other side to obtain justice. There are exceptions. Consider the lying witness. Consider the lying lawyer.

5.22 If a lawyer wants to be part of a truly enlightened, humane, and civilized practice, it is best to train the young lawyers around him in the proper ways to practice law and to live. It is hopeless to shift from firm to firm in search of a better culture. Some cultures, of course, are simply impossible, and have to be abandoned. The experienced lawyer should remember that many young lawyers have fire in their bellies and talents worth burnishing; what must be taught is judgment, insight, humanity, balance, and restraint.

5.23 One of the hallmarks of a good lawyer is that he is seldom motivated by rage, anger, or its cousin, resentment. This requires that he not bear grudges.

5.24 One of the hallmarks of the good lawyer as a business person is that he does favors. In doing favors for others, it is important not to suggest that the performance is onerous. Also, doing favors is simply a part of business. One should not resent to being asked to do a few. The first rule of politics is, "Help your friends." Law and politics overlap considerably. There is a politics of business. At the same time, the elite lawyer is not devoted to receiving favors.

5.25 If resentment cannot be eliminated, it must be controlled and it should not lead to duplicity. A good lawyer cannot embrace those whom she truly resents. This is no way to do business, and it is no way to live. This principle implies that obsequiousness and "kissing up" have no role in the life of a good lawyer. A near-paradox: How is smooth hierarchy possible without kissing up?

5.26 Here is a noble aspiration for the good lawyer: less self-promotion and no bragging. Here is another: share your wealth with those you love; enjoy the process; and don't look back. Here is a third: act always so that the old are at peace with you; your friends trust you; and the young



love you. If you can't actually fulfill these principles, come as close as you can. Not an easy task for the trial lawyer. Bullying is always a vice.

5.27 The only chance one has is to be civilized is to be honest with oneself through and through. No person can do this completely, and many cannot do it at all.

5.28 There are three keys to goodness in lawyering: love of truth, consequent hatred of self-deception, and love of learning. If one finds a lawyer who has all of these, one has probably found a lawyer who follows the Way, and would be well-advised to learn much from him. (But how can the lawyer who loves truth embrace the centrality of persuasion to practice? Should not truth speak for itself? Does not the truth shine forth? Does the truth need help to be embraced by others?)

## VI. LOVING LEARNEDNESS

6.1 Among elite lawyers, fame should mean little. Only merit and performance matter.

6.2 Excellence requires self-discipline—indeed, self-overcoming. These things can be difficult. At the same time, it is best to make them look easy. Thus some deception in self-presentation is not always bad. Why? Even when one is hard on oneself, however, it is best to be tolerant of the less disciplined.

6.3 What are the hallmarks of those who are lovingly learned in the law and human affairs? For one thing, they do not repeat the same mistake very often. For another, learnedness and spirit pervades their conduct. For example, they do not take out their frustration on others, and they do not blame others for their own difficulties. Learning alone, of course, will not do this. Learnedness must come in the right spirit.

6.4 Being lovingly learned in the law requires cultivation in human affairs and deep sense of moral rectitude. This implies that a really good lawyer will also be a learnedly charitable person. This means that he will make sure that his giving genuinely helps the actually needy. He is not interested in enriching the already wealthy. Not even philanthropy may be done sloppily. *Q* not only knows this but loves the fact.

6.5 This does not mean that the wealthy should refuse to be compensated.

6.6 Remember: children of the justly despised may themselves be perfectly marvelous. Remember this when thinking about clients. Remember it when hiring associates. Thinking about family is a complicated matter. Always determine how a young lawyer treats a miscreant parent.

6.7 The capacity for prolonged concentration is another hallmark of a good lawyer. It is also one usual mark of a good person. Concentration entails self-forgetting. Only a few are really capable of this at a high level. What should you expect to find in the elite, mature lawyer? Versatile talent,

insight, a sense of engagement, and the ability to be resolute in the right things and at the right time.

6.8 In evaluating and managing a younger lawyer always ask what difficulties they have. A resolute person may not be perceptive. A perceptive person may not be engaged. An engaged person may not be versatile. Asking about difficulties, however, should be done in the right way and without malice.

6.9 If an unacceptable client solicits an engagement from an elite lawyer, he will tactfully decline. If the prospective client persists, the lawyer will be remote and unavailable. This is better than lying and saying you are too busy. It is far better than getting involved with a client who really is unacceptable.

6.10 Lawyers become accustomed to resolution through reasoning, logic, order, and sometimes even justice. It is difficult to reconcile this sensibility with the anomalies of the world. After all the good sometimes die young. Honorable leaders contract diseases. Disappointment and a sense of mystery are both appropriate. Injurious or self-defeating inference is not.

6.11 Here is a rare virtue: a person who remains hopeful when he has limited means. How many lawyers could take delight living in a shack or eating only simple meals? Not many can do this. Only the best.

6.12 The Way is one method of obtaining this kind of profound affability. Even those who follow the Way may not have the strength to get that far. That's no reason not to try. That's no reason to give up before you have even begun.

6.13 Those who are lovingly learned in the law will end up large-spirited. Those whose learning is limited or forced, will end up small-minded technicians.

6.14 Those who are lovingly learned in the law will not take unfair advantage; they do not engage in the ceaseless self-promotion of the herd; they have an intuitive sense of restraint.

6.15 The good lawyer, like the good man, never brags. If he takes a more thorough deposition, he does not say it is because he is more carefully prepared and has a larger vision of the case. He says it is because he thinks slowly and his notes—like his memory—are none too good. Then again, many lawyers say things like this. One can often tell that they are bragging precisely through ostentatious self-effacement. This too is to be avoided. Still, the right sort of restrained deception in this context comes with living the Way.

6.16 Have you ever noticed how many elite lawyers are not only eloquent, but appear also to be good looking? Physical presence can be commanding. In the same way, profound rhetoric can be convincing.

6.17 Houses are for living in, going into, and going out of. Houses have doors. Sensible people use them. They do not climb in through

windows, and they do not egress through tunnels. Life, and the practice of law, are both like houses. Why is it that people will not follow the Way?

6.18 For centuries, there has been clangor about nature versus nurture. The Way teaches that they must be kept in balance. Is that not really obvious when you think about it? When a matter comes up in legal context, does not every wise lawyer know to strike that balance in argument?

6.19 Integrity, virtue, and the Way enhance the likelihood of flourishing. Of course, there is another approach: luck might do it.

6.20 Knowing that there is the Way is better than total ignorance. Knowing the Way is better than simply knowing that it exists. Living in the Way surpasses knowing about it, and loving the Way exceeds living in it. Taking joy in the Way, which implies living in it, is the best of all. What is true of the Way is also true of other worthy things.

6.21 There is a natural heirarchy in intelligence. Dolts cannot be taught deep things. The brilliant can learn almost anything. Then again, almost nothing in the law requires the brilliance of the physicist or the mathematician. Probably, there is nothing in the law so deep or so complex that it cannot be taught to the average lawyer. Resistance to the lure of the exotic, the merely clever, and the arcane is more difficult.

6.22 In running a law firm, the essence of wisdom is three-fold. First, make sure that those who serve in the law firm are respected and never trampled. Second, respect tradition and things of the spirit. Third, do not let management become less than impartial. Fairness in administration requires some distance. It does not require removed unavailability.

The essence of robust humanity—full-blooded humaneness, if you like—in managing a law firm is this: Hard work is to be respected. Hard work is to be rewarded. Meaning is in the work, however, and not in the reward.

6.23 Many things which appear to be opposites are really not. Wisdom and goodness, for example, complement one another, even though the focus of wisdom is on practical affairs and the focus of goodness is upon inner strength and insight. Peacefulness and activity can be reconciled. This is one of the proper functions of the Way.

6.24 The Way cannot be reached all at once. One does not approach the Way through transformative conversion. There are stages along the road to the Way, just as the Way is itself a road of sorts. There are good basketball players who are not Michael Jordan. There are extraordinarily civilized lawyers who are not also masterful lawyers. The path to the Way requires effort and self-overcoming. Nevertheless, even such days are to be loved and enjoyed. Eventually, they will be cherished.

6.25 Civilized life is to be found not simply in conviviality and commitment but also in ritual. Ritual entails rectitude. Ritual and ceremony go together. Remember: ceremony implies celebration.

There are right ways to do something and there are wrong ways to do it. This is true even in the use of language. Perhaps it is true especially in the use

of language. Words matter. Everyone who has ever asked a question knows that formulation is important. Consider the following:

- ▶ Your conduct *drastically* changed the situation, didn't it?
- ▶ What you did drastically affected the situation, did it not?
- ▶ What you did had a *major* effect on the situation, didn't it?
- ▶ Your conduct *substantially* changed the situation, didn't it?
- ▶ Your conduct changed the situation, didn't it?
- ▶ Did your conduct have *some* effect on the situation?
- ▶ Did your conduct affect the situation?
- ▶ Did your conduct affect the situation *at all*?
- ▶ Did your conduct have *any* impact at all?

Which question gets asked, how many of these questions are asked, in what order these questions are asked could have a substantial impact on, say, a deposition.

6.26 Robust goodness does not imply gullibility. Moderate skepticism is always appropriate. When told that someone is drowning at the end of the pier, it is best to look down before one jumps in.

6.27 The civilized lawyer is lovingly learned not only in the law but in the best literature and in the best cultural studies. This enlarges his insight into mankind and human affairs. He also restrains himself through good manners and other rituals. This combination enhances living in the Way.

6.28 The civilized lawyer knows that obsequiousness in the face of unreason is unnecessary. This applies to powerful clients, powerful judges, and powerful people. The civilized lawyer knows that if he is wrongly accused of improper conduct, he should deny it forthrightly without hesitation.

6.29 The essential truth about the Way has been spoken many times. It involves the Golden Mean. Indeed, the Way might also be called the "Middle Way." It involves holding tensions. It involves synthesizing opposites. It involves holding steady between opposing radical temptations. Heights, extravagances, and bold exuberance may seem sublime. In fact, it is the Way which is sublime. It is more easily recognized in the ancients than it is in the present. It even prescribes theories of negotiation, although they too must be mediated by ritual.

6.30 Here is the essence of the Way when it comes to leadership in a law firm. Discipline yourself so that you can achieve what you can envision. Display this talent. Encourage it in others.

## VII. THE TRULY ELITE LAWYER

7.1 Most wisdom is transmission, not invention. Creativity in practical affairs is seldom startlingly original; it derives more from variations. Increments and refinements matter.

Lots of music is like this. Knowledge of music impacts wisdom in practical affairs. Imagine *Clair de Lune* being played flat-fingered, loudly, and without lyricism. Imagine it being played to a boogy-woogy beat. Music appreciation and performance both require *feel*. So does excellent lawyering. It requires a feel for limits, appropriateness, rhythm, tone, volume, and much more. Can this be taught? How? Has hard rock and its culture adversely impacted law practice?

The elite lawyer loves the past. The elite lawyer has heros. Law school fails when it does not hold up elegant and just transactions as models to be emulated. Does not law school fail when it omits to provide students with briefs which are exemplars? Cannot the critical spirit be engendered too indiscriminately? Does not the professoriat spend too much effort extolling the ingeniously clever?

7.2 Elite lawyers love to know (although they do not brag about it). Elite lawyers love much they know and hunger for more. They teach younger lawyers without reserve.

7.3 Here are some short-falls the elite lawyer loses sleep over: the inability to convert knowledge into wisdom, the inability to recognize what is right, the inability to do what you know is right, the inability to improve. Here is another worry of the elite lawyer: the inability to transmit virtue and character to clients.

7.4 The virtues of the elite lawyer will seldom seemed forced. Indeed, he will appear natural in a variety of circumstances. Even in relaxation he will be naturally pleasant and composed.

7.5 Even older, already successful elite lawyers, keep their heroes in mind. There is always work left undone. There are always disappointments. The mark of the elite lawyer is equanimity, even then.

7.6 What is the recipe for a good life? Follow the Way joyfully. Take character seriously both in legal affairs and outside them. Permit yourself to be drawn to goodness in all things both in the law and outside it. Take delight in participating in and observing activities which require both depth and skill.

7.7 Elite lawyers mentor younger lawyers, even if there is no return.

7.8 One should not bother mentoring lawyers who do not have a passion for it, however, or those who do not really have a head for it. Mentoring should always encourage—indeed, require—those who are mentored to teach three-quarters of the material to themselves. Excellent prospects just need a little over a hint to get started. Often one small key trips many locks.

7.9 Elite lawyers are sensitive to the significant emotions of others. For example, they do not feast with gusto in the presence of someone stricken with grief.

7.10 Elite lawyers also recognize and honor apt feelings in themselves. For example, they do not—or, at most seldom—sing with jubilation on the same day bitter tears have flowed.

7.11 The truly elite lawyer knows when to be present and when to be absent. Too much of either one reduces effectiveness.

The elite lawyer also knows that significant conflicts are better won through strategy than through strength. In litigation, for example, out-spending the other side is frequently unjust and stupid. Golf may be a better metaphor for lawyering than war.

The elite lawyer also knows that courage without apprehension is brash and dangerous. It is best to worry about the unknown, especially when one has an opponent.

7.12 Elite lawyers do not make wealth and power their explicit goals. Wealth and power either come, or they don't. It is much better to do a good job and focus upon the Way. Do what you love and the money will follow, someone said. Or not, someone else replied.

7.13 Elite lawyers approach a number of things with caution. These include matters of religion, extraordinarily onerous litigation where lives may be ruined, and estate planning during illness. Elite lawyers are extraordinarily circumspect when advising on these matters.

7.14 The truly elite lawyer is not just a lawyer. Other parts of life are significant. Sometimes they are so significant that all thoughts of the law, not to mention other mundane matters, are driven out. One managing partner finds poetry intensely inspiring, although he keeps this secret from many of his colleagues. Another senior litigator studies Handel's *Messiah* at night, and sings it every Christmas when she takes a week off from work.

7.15 In advising hierarchies, such as corporations, elite lawyers know that they sometimes need to obtain information indirectly. Sometimes, it is necessary to ask an executive about one thing in order to find out about another. Perhaps the informant dares not speak directly. Sometimes, both the lawyer and the person being interviewed know what is going on, sometimes not. Developing good judgment about the reliability of indirectly obtained information is one hallmark of the truly elite lawyer. Sometimes, she needs to communicate information in the same way she acquires it.

Communication by indirection seldom works in a fully developed, truly free political process. Similarly, it seldom works in court. Indirection is usually not required or even appropriate in these arenas, although some tact never hurts. The rooms are too large; too many people are included; the rule-structured process is too clumsy.

7.16 Wealth, glory, and power acquired without following the Way—without justice and without righteousness—are like clouds driven by the wind. Few believe this, and even fewer know it. Nevertheless, when justice is present, one can be perfectly happy eating pot pies, drinking water,

and if necessary, sleeping on the floor. Blessed monastics have done it for centuries.

7.17 Committed study can help keep a good lawyer from egregious error. This kind of study cannot be superficial, however, and it takes decades. Study also brings stability. Ritual too.

7.18 Many litigating lawyers vary their pronunciation and accent according to the courthouse. Many make passing references to local notables. One wonders how far this ploy should be deployed.

7.19 The elite lawyer is reaching the pinnacle when his passion for a case drives out all thought of lunch, when his joy in preparation drives out all worry, and when his enthusiasm for his cases replaces all concern about aging.

7.20 For the most part, elite lawyers are not born. For the most part they love law and are committed to exploring it. Elite lawyers therefore develop.

7.21 Elite lawyers, when advising, never speak of miracles, spirits, and other matters involving the supernatural. Lawyers cannot be helpful in such matters. Thoughtful lawyers will also be wary of advising clients about corporate insurgency. Similarly, they will be careful about advising governments as to the use of force against the people. They will never—insofar as they are lawyers—advise a sect to rise up against the government in rebellion. Lawyering is about the semi-predictable and about the lawful.

7.22 *Q* once remarked of himself that if two people were chosen at random, at least one of them would have something to teach him. Most elite lawyers know that they can learn something from almost everyone. The difference between the elite lawyer and the ordinary person is that the elite lawyer can recognize quickly what he should be taught. The essence of advocacy by elite lawyers is not substantive knowledge, say, about engineering or finance or criminalistics. It is presentational ability mixed with the aura of authority. Is there paradox here? Can authority mixed with something superficial be genuinely genuine?

7.23 Those who live in the Way have moral authority. Consequently, they have nothing to fear from their enemies.

7.24 Mentorship does not occur through generalizations, sermonizing, or noticeable exertion. Elite lawyers teach by focusing on particular problems. Some do it in detail, while some do it through precept. This is a matter of taste, aptness, and fit. Intuitive grasp is important. Mentorship implies full disclosure, however. *Q* kept no secrets from those he taught.

7.25 When *Q* taught the Way he emphasized tactful truthfulness (including sincerity), the true and expansive meaning of what it is to be a fiduciary, and the nuances of moral conduct in excess of the minimum requirements of moral rules. The materials he uses are frequently literature and stories drawn from life itself. He is not much on abstractly stated

hypotheticals and truncated cases. It was anathema to *Q* to say things like, "Faithless fiduciaries forfeit fees." He thought maxims useless, for they always lacked context and they were always *very* brief—too much so, in general. That is the nature of a maxim. This maxim, in particular, was offensive, even if often true.

It takes "feel," multi-dimensional intuition, a grasp of proportion, and a profound sense of limits to apply maxims. For people without these powers, maxims can mislead. For people with these powers, maxims are often not really informative except as something like an index or perhaps a metaphoric table of contents. *K* often wondered how to distinguish between "feel" and impulse, on the one hand, and prejudice on the other. In the end he could not find objective, *rulish*-criteria. He emphasized the activity of rational meditation and the virtue of objectivity. He wondered how to avoid collapsing into pure, relativistic subjectivity.

7.26 Supremely civilized lawyers are so rare, one hardly ever meets them. One should be satisfied if one is able to commune from time to time with run-of-the-mill elite lawyers. (That very notion may itself be a contradiction.)

There are no perfect lawyers, so one should not hope to meet one. If one meets a consistently principled lawyer, give thanks. (Of course, "principled" does not mean rigidly rule-bound.) Alas, the world is full of pretense. Those who are poor pretend to be affluent. Those who are shallow pretend to have rich, deep, and complex personalities. Those who haven't a clue as to the elements of the Way pretend to moral righteousness. No wonder it is difficult to have principles.

7.27 Never trust a lawyer who pretends to be a sportsman but fishes with a net or shoots ducks sitting on the water.

7.28 Elite lawyers know that the writings and teachings of the inexperienced or unreflective are worthless. (Consider the procedure professor who has never practiced. Is it any wonder such people spend too much time on subject-matter jurisdiction?) The same is true about the Way. Listen only to those who follow it, who think about it, and who have mulled it over for many years. Listen only to those who have seen much, remember what they have seen, and have thought about their experiences over and over again. How are such people to be recognized? Usually, they will not explicitly identify themselves because such talk is too close to bragging, even if confident self-knowledge in these matters is possible.

Interestingly, there are excellent lawyers who do great work but cannot articulate what they do and who do not think about lawyering. These people are seldom good mentors. Alas.

7.29 Elite lawyers should not insist upon mentoring only those who have clean records. Sometimes, sinners come around. One should not judge harshly in these matters. At the same time, mentors should not take



responsibility for a student's future conduct. Matters of will and matters of motivation can only be imparted imperfectly.

7.30 Following the Way is extremely difficult. Nevertheless, robust humanity is close at hand. All it takes is focus, concentration, and twin inner abilities: insight and in-listening.

7.31 No one is ever completely free of error. Certainly this principle applies to the Way. It was true of *Q*. It is therefore true of every elite lawyer. One wonders why this principle does not apply to politics and governance. Yet by tradition it seems not to. Sovereigns seldom truly admitted their errors. Is it possible that some significant fact about human life precludes this? Does this observation apply to past decisions of courts? Is this why courts seldom overrule themselves? Is this a problem in law firm management?

7.32 In teaching rhetoric, as in many other things, if the elite lawyer approves of a performance, he will not only report his approval, he will cherish the performance. Often this can be done by asking for a repeat performance and then by somehow joining in. The process also embodies reciprocity, something important to all communities and all rituals. Notice how the informal performance of music is like this.

7.33 Athletic prowess is an approachable goal for many. Psychological and cultural insight can frequently be obtained. Continuous nobility in living is not possible for anyone, but it remains a worthy goal, and it is the animating soul of the Way.

7.34 A truly elite lawyer knows that learning the Way, living in it, and instructing others, all with an eye to endless improvement, is the ideal for humanity. Ultimate mastery is impossible. Perfection is unattainable. The unflagging pursuit of wisdom is the ideal. Steer clear of those who expressly claim to have obtained it. *Q* thought these ideas consistent with humility.

7.35 Excellence in essentially and joyfully following the Way is inconsistent with a profound sense of some need for grace. Those who follow the Way are puzzled about the nature of prayer. Nevertheless, many truly civilized lawyers take it seriously and participate. *Q* certainly did. One wonders if *Q* was right about this. Perhaps striving is not enough. Perhaps grace can come in small increments. Perhaps it assists striving in the Way.

7.36 Remember: the Way calls for dealings, intuitions, perceptions, "feel," and actions at the mean. Polar opposites generate vices. Wealth, for example, often engenders arrogance, while frugality frequently engenders stinginess. Not all of the defects of character occasioned by polar opposites are equal, however. Prefer stinginess to arrogance—the archetypal tragic flaw in elite lawyers.

7.37 In his dealing with others, the elite lawyer is always easy going and genteel. He loves expansively and understands that many are worthy of respect. These characteristics result from following the Way. Those who do not follow the Way tend to be tense, anxious, suspicious, and narrow in their

outlook. Perhaps this results from not having transcended passions of selfishness.

7.38 *Q* was affably restrained in his demeanor, yet almost stern at the same time. He inspired awe in others, but he was not fierce. He conveyed a sense of authority, without being oppressive. He was dignified without being stiff or remote. He was invariably composed, and had a sense of moderation about him. Of course, no one can be all these things all of the time. *Q* was also provocative from time to time.

#### VIII. LAWYERING AND ETHICS

8.1 The elite lawyer values and practices both subtlety and indirection. She also recognizes that both of these thematic values have limits and temptations of their own. Subtlety is often ineffective because it is missed. Indirection implies effecting one state of affairs in order to obtain another. Often, one cannot control a chain of events once it begins. Smug arrogance is *the* temptation of both subtlety and indirection.

These observations apply to the exercise of power, to administration, and to management as much as they apply to lawyering itself. Many elite lawyers are not gifted administrators. Proficiency and even wisdom in giving advice, designing systems, and resolving conflicts, does not make one a wise and proficient manager. Excellent lawyering does engender tenacity, however, and that is often a virtue.

8.2 The elite lawyer who follows the Way, realizes the centrality of ritual and rite in communal living. Ritual makes courtesy meaningful. Ritual bolsters prudence. At the same time, it prevents the brave man from becoming quarrelsome and otherwise hurtful.

Ritual can connect the wise lawyer to everyone else. Communally approved rites engender expansiveness, generosity, loyalty, a sense of continuity, and civility. In this way, those attached to ritual—including the elite lawyer—attract others to goodness, set a good example for the community, and contribute to social stability. Aesthetics in the service of ethics.

Without a sense of deep respectfulness—even holiness—the rituals of courtesy and good manners become tiresome. Prudence yields timidity; bravery slops over into brashness; honesty becomes a form of brutality. Leading lawyers are watched by other lawyers and by the general public. Defects of character diminish the quality of social life. Loyalty to both family and firm sets a good example and is not forgotten.

8.3 Setting an example does not imply that one should *try* to set an example. That simply happens if one follows the Way. Composure is the natural consequence of following the Way, as is recognition. These things are not sought. What is sought are goodness and equanimity.

Even those who are critically ill, to the extent that they are able, should follow the Way and remember that they are being observed. (For one who is not comfortable with the Way, this observation will create tension, apprehension, and a sense of oppression. For one who takes joy in the Way, it is welcome news.) Community implies mutual awareness.

8.4 In following the Middle Way, an elite lawyer focuses on avoiding arrogance in all his attitudes, on good faith and fairness in all his dealings, and on meaningful speech. The elite lawyer is never vulgar, although he need not be priggish, either.

The Middle Way prescribes that its followers be able to distinguish between important matters and trivial ones. Followers of the Way, and this includes civilized lawyers, focus upon three things: attitude, speech, and countenance. Right attitude focuses on the mean, emphasizes restraint, and celebrates moderation. Arrogance is alien to right attitude. So is timidity. If a person has the right attitude, the chances are his actions will be unproblematic. Thus, a man should love the Way, take it in deeply, and then act as he sees fit. According to the Way, right speech requires courtesy, honesty, precision, and the avoidance of vulgarity. Humor is not to be rejected. Ridicule is. Right countenance, should be organized around truthfulness and civility. A follower of the Way does not lie through his physical expressions, nor does he hurt people needlessly.

The fact that an institutional practice is important, does not imply that every detail about it is important. To use the language of the playground, the follower of the Way does not "sweat the nickel dime stuff."

Still *Q* worried about the compatibility of the Way and the needs of negotiating.

8.5 Able and talented lawyers listen carefully to a great many people. They never know from where accurate observation, truth, and insight—even about lawyering—will come. Lawyers who follow the Way, never wear their talents on their sleeves. They always *appear* to be receptive to being taught—indeed, they *are* in fact always receptive to being taught. Their civility and their confidence are so deep that they are able to receive insults without taking offense. This is not just affability; it is true depth.

If even *Q* sometimes had something to learn from his inferiors, then how could the same point be any less true of his advanced followers?

Learning from one's lessers requires careful presentation. One should not ostentatiously display competence, talent, skills, virtues, intelligence, and learnedness. However, moderation in gentility can frequently be confused with a lack of talent, an emptiness with respect to virtues, and shallowness. Remember: deception and misrepresentation are also to be avoided, generally speaking.

For the elite lawyer, swallowing insult without retaliation is sometimes required. One who delivers an insult and thinks he can go further,

occasionally takes it upon himself to instruct the person he regards as his inferior. Even from this person, sometimes, something can be learned.

8.6 The lawyer who follows the Way can be trusted with both small things and large. He can be trusted with the helpless or the grand. He can be trusted with the simple or the enormously complex. Given the vicissitudes of life, however, the reverse is not always true.

8.7 The lawyer who follows the Way realizes that it is her burden to deal with truly human problems. These may come in the form of business problems; they may come in the form of institutional conflicts; nevertheless, in the end, humanity is at stake. The person who is able to do this work must be willing to find the truth; she must have a strong and resolute character; and she must be able to recognize heavy burdens but bear them lightly.

In all likelihood, the lawyer who follows the Way—the lawyer who can assume these burdens—will not retire early. Elite lawyers are not only moralists, they are moral trustees. Legal argument, legal advice, and legal decision-making are shot through with moral considerations, so the Way is always relevant. Insofar as elite lawyers carry the burdens of their clients, they carry human—and therefore moral—burdens. Lawyers are also moral teachers.

8.8 *Q* has suggested that following the Way involves attending to the literature of great wisdom, attending carefully to the rituals of life, and finding meaning in music.

Perhaps he meant this: the burdens lawyers carry imply a need for solace. Sacred texts help; rituals bring a certain steady rhythm to life; and music—through some extraordinary mystery—expands the soul.

8.9 *Q* also observed that people cannot be forced to embrace the Way, nor can they be forced to understand it. You can lead people to the Way. You can even make them follow it. You cannot, however, make them understand it, and you cannot make them love it. You also cannot make them internalize it. The key to the moral life is to be found in habits, inclination, and virtues, not in commands and rules. In the end, the same is probably true of the law, although rules are more prominent in the law.

8.10 For those attempting to manage law firms, two truths are fundamental. First, substantially underpaid lawyers will not remain loyal. Second, lawyers without moral scruple will overthrow the existing order just for the fun of it.

Insurgency in a law firm is like rebellion in the body politic. A person who has courage and who sees himself as poor will rebel. A person who does not understand the restraints of morality and who is resentful will also rebel.

8.11 Here is a third truth. Talent accounts for a lot, but even stunning talent is very little over time in the lawyer who is arrogant and mean-spirited. The arrogant lawyer who is also narrow-hearted should not be kept around, even if he is magnificently talented.

8.12 "Be realistic," said *Q*, "law students are not simply focusing on their studies. They are also dwelling on their careers." Even among elite lawyers, it is hard to find one who studies the law merely for the love of it. For the most part, lawyers, like almost everybody else, care more for their careers than for truth and insight. Sometimes however, some lawyers have tiny slivers of insight. It can grow into a way of life.

8.13 *Q* once gave this advice to law students: "Love the law. Keep the faith. Follow the Way. Defend it when others are critical. Stay out of unstable law firms. Plan your career to include only law firms which follow the Way. (Of course, a solo practice constitutes a law firm.) Take pride in flourishing only in contexts where the Way is honored. If you lose the Way, feel the shame, learn from the loss, and recover the Way.<sup>8</sup>

8.14 In a speech to the bar association, *Q* once remarked: "Lawyers following the Way will focus on their own activities. They will not be critical of those carrying out completely different tasks. They will not engage in political gossip while trying to run their firms."

In law firms, it is usually best to stick to your niche. If the firm has embraced the Way, things will take care of themselves. If the firm has not embraced the Way, excessive commentary on the activities of others is dangerous.

8.15 Music is not simply one of the highest pleasures. In some amorphously mysterious way it can inspire. One of the great blessings of music is that it gives one a sense of what it is like to be full of life. Great music is the paradigm of fulfillment. Even larger is the huge historical tapestry of great music. In a way, this is like the history of the best parts of the common law.

8.16 Here are some opposites often found together: truthfulness and insincerity, idealism and deviousness, innocence and dishonesty. *Q* said that he did not understand how opposites like these could appear in one person, though he knew they often did in someone who does not grasp the kind of moderation characteristic of the Middle Way.

8.17 Learnedness in the law is not like riding a bicycle. One can lose what one has acquired.

---

8. The following is a variant rendition: The very best lawyer—and these are not always the lawyers most seen on television—believe firmly in the Way. They learn it with passion. Once they have discovered it, they generally adhere to it for the rest of their lives. Such lawyers stay away from unstable law firms. They stay away from firms that are in turmoil. Lawyers who follow the Way do not try to use it in any obvious way to straighten out hopeless situations. Inside situations, elite lawyers work quietly, or they depart. Elite lawyers let the Way shine only in situations where it is appropriate. Following the Way occasionally requires sacrifice. Brandishing the Way like a sword is seldom transformative, much less redemptive. When a firm follows the Way, the meritorious and the virtuous rise and are rewarded. The opposite is true in firms which have lost the Way, or never had it. In such firms, those with riches and power should frequently be ashamed of themselves.

8.18 Here is the greatest achievement for any lawyer following the Way (indeed, for any person following the Way): to own a great deal and to control a great deal but to be detached from everything owned and everything controlled. This detachment, however, must not be cold or uncaring. Here is a great paradox: how does one have *caring detachment*. Surely the key here is humility.

8.19 Every great leader of law firms has achievements of her own, engenders a meaningful and profitable practice, designs or maintains institutions within the law firm which inspire confidence, and, in general, induces awe in those who know her.

8.20 A great leader does not necessarily require a great entourage.

8.21 True leaders are much more interested in taking care of their followers and fostering cohesive communities than they are in sumptuous living.

#### IX. ERROR AND THE WAY

9.1 For all of his wisdom, *Q* seldom spoke of either the really profane or the genuinely sacred. Thus, he hardly ever spoke of money, and he almost never spoke of God. He was seldom didactic about the Way. He embodied it. He did not sermonize about it.

9.2 *Q* understood that lawyers who become true leaders are usually generalists. Wisdom comes from a full range of experience. It does not come from narrow technical expertise. So there is another paradox. How does the occupant of a niche become a generalist?

9.3 *Q* was regarded as a traditionalist. This was only partly true. He recognized how important long-standing rituals were to showing respect. These could not be changed easily. On the other hand, he was enthusiastic about technical changes that made work-life easier.

9.4 A lawyer who is accomplished in following the Way will have absolutely nothing to do with these five things: hurtful arbitrariness, unreasoned dogmatism, petulance, capricious practice, and arrogance.

9.5 Civilized culture should be nurtured through careful transitions, including the advent of new techniques and technologies.

9.6 *Q* was sometimes recognized as not only an extraordinary lawyer and a gentleman but as a sage as well. Some people even revered him. Many thought him a genius with diverse aptitudes and many, varied accomplishments. *Q* thought that these resulted from necessity (poverty), and not from genius in any form. *Q* revered energetic and good-natured responses to necessity.

9.7 Diverse competences and varied accomplishments frequently result from temporary failures, including the failure of others to recognize credible—even extraordinary—effort. Sometimes refusal masquerades as failure. What motivates such refusals? Envy? Fear?

9.8 *Q* did not see himself as a fountain of knowledge. Rather, he saw himself as someone who could analyze a problem in community with others—analyze it from all sides. It was amazing how often such groups worked out answers. Is this not leadership? Cannot groups today mentored and led wisely do the same thing?

9.9 Do not expect the wise to be recognized by signs and wonders. Although common, such expectations are superstitious folly.

9.10 *Q* was always very respectful of those in mourning, those beset by continuing affliction, and those who hold high office.

9.11 The Way is both subtle and wispy. It is not difficult, like abstruse mathematics, but every time you think you have grasped it with fixity, it slips away. At the same time, it is inspiring, and once you are in its grip there is no going back. *Q* was especially good at leading people in the Way one step at a time. It was amazing how he mixed literature, ritual, music, and inspiration. The Way, of course, is not simply a mode of lawyering. It is a way of life.

9.12 Pretense should be avoided in all things, even the most solemn and the most high. Negotiation, too, *Q* thought, but he wondered how.

9.13 At the same time, there is no point in hiding one's accomplishments. There is no point in not putting them to good use. The trick is how to do this with humility.

9.14 Vulgarly recedes before virtue and true civility.

9.15 Sometimes, sages themselves expect signs and wonders. Sometimes even sages believe that true wisdom leads to worldly success. This is a profound temptation. It may be the last refuge of arrogance, even in the great man.

9.16 Some things come naturally to elite lawyers. These include service, allegiance, and proper deference. Wise lawyers do not always agree on who deserve allegiance or deference, however.

9.17 Everything changes without ceasing. What does this imply about the Way? What does it imply about the vicissitudes of "feel?" Is it not unfortunate that many substitute opportunism for flexibility? Manipulation for situationally-centered responses?

9.18 Love the law. Love the Way. Love your fellow man. Be realistic, however. After all, no one loves virtue more than sex.

9.19 *Q* had a simple account of how to get complicated tasks done. You do the first thing first. You do the next thing next. You keep going until you're done. If you don't do the last thing, the task is not accomplished. But how does one know what is the last thing?

9.20 The capacity to listen attentively is rare and valuable. It comes with cultivating the Way.

9.21 One can discourse deeply only with a few. The fact that you cannot discourse deeply with someone without tiring, does not mean that it can't be done at all.

9.22 In one sense, wisdom and longevity go together. After all, the young cannot already be wise. However, the desire for wisdom does not necessarily lead to longevity. There is an element of luck, fate, or something of the sort. With the relationship between wisdom and age is a perplexing problem for lawyering. All wise lawyers are older. Not all old lawyers are wise. Sophistication and wisdom are easily confused by those who are not themselves wise.

9.23 The energy of youth is awe-inspiring, as is its idealism. Why then do we frequently feel that the younger generation is inferior? Sometimes this must be true. Usually, it is not. Why is it that older lawyers invariably complain that younger lawyers can neither write nor reason? Why is it that the older generation always sees itself as having worked harder and better?

If a lawyer has not made a name for himself by the age of 45 or 50, it's too late—assuming, of course, that he went to law school as a young person.

9.24 Action trumps understanding. What good is it to understand and appreciate reproof, if reform does not follow? What good is it to understand and cherish words of praise, without meditating upon them and letting them inspire even better actions. *Q* simply could not understand how anyone could let this happen, whether in the law or in life.

9.25 Being able to correct mistakes and following the Way: these are central to the practice of law and to living life well. Loyalty, trust, truthfulness, and fairness: put these above everything else, both in law and in life. It is unwise to hang around with those who are not as good as you are. This point applies to morals. Corruption spreads. It also applies to wisdom and technical competence. There is a natural aristocracy of the technically capable, at least among lawyers. Those that follow the Way cultivate the best. "Elitist" is not necessarily a derogatory term. Also keep in mind: technical capability is not the only measure of excellence in the lawyer. Devotion to the ideals of the legal system and to justice is also a factor.

9.26 The highest, the mightiest, and the best can be murdered. All human life ends sometime. However, while there is life, there is free-will. The poorest of people have free will, even if they do not have the material basis to effectuate their choices. One of the jobs of the lawyer is to help people effectuate their free decisions in a social context. Thus, lawyers are social architects.

The Way tells us that a truly good man can, without any embarrassment, wear humble clothes among those that dress expensively. The completely good man is utterly without either greed or envy. At the same time, no mantra, no slogan, no single value, no virtue, and no principle exhausts the Way. It is contrary to the Way to search for short slates of rules, simple-minded systems, creedal statements, or anything of the like. Life is messy. The Way is subtle, nuanced, and moves in many directions all at once. The law is like this too. The life of the law at its best is as well.



9.27 Maxims are useless. Still, those who follow the Way tend not to be envious, and they tend not to be greedy. These are necessary conditions for the presence of goodness, however; they are not sufficient.

9.28 It is in desolate times that true goodness shines forth. The color of the evergreen is never more striking than in the dead of winter. Excellent lawyering is like this.

9.29 Wisdom drives out illusion. Goodness drives out guilt and shame; courage drives out fear. As lawyers become wise, they are more and more seldom deceived by clients, witnesses, and appearances. Similarly, they are less frequently bewitched by fantasies about what the law really is.

9.30 Not everything is for everyone. Wise lawyers know this. The wise lawyer will not counsel the truly wicked client. The wise lawyer will not form partnerships with inferior lawyers. There are people with whom no information whatever—not even the time of day—should be shared. There are people with whom the Way cannot even be discussed.

9.31 Noble accomplishments are often far removed. Energetic commitment is itself a form of nobility.

#### X. APTNESS, APTITUDE, AND ATTITUDE

10.1 Wise lawyers know that diction is important. In general, one should pattern one's speech to the appropriate context. When at home or amongst friends, one speaks modestly and naturally. Often, this requires a halting and meandering diction. In giving speeches, the wise lawyer speaks eloquently. Some contexts require direct speech; others require circumspection. Indiscretion in speech is never appropriate.

10.2 The wise lawyer also knows that countenance is important. Jovial occasions call for cheerfulness. Affable negotiations call forth geniality. Difficult negotiations call for solemnity. Dealings with superiors call for something slightly different. When dealing with senior judges (or other senior officials) humility, restraint, dignity, and just possibly a touch of awe is appropriate.

Something like these same principles apply when junior lawyers are dealing with senior lawyers from their own firms.

10.3 Opposing counsel—whether in litigation or in negotiations—should be treated like guests. This requires not only cordiality, but also ritual and ceremony in apt amounts. None of these connote weakness.

10.4 Every situation requires appropriate ritual. There are no exceptions. The wise lawyer observes carefully and adopts the best appropriate ritual. Imagination may be used here, but with restraint.

10.5 Every situation evokes a different and appropriate demeanor. Contrast executing a will with delivering political contributions or with private meetings.

10.6 Different situations require a different dress. However, the wise lawyer does not dress for success. He does not dress to demonstrate power or dominance. He dresses appropriately for the circumstances. It is hard to imagine that anything but a suit should be worn, for example, to argue an appeal. At the same time, one dresses within one's means.

10.7 Even eating invokes appropriate rituals. These vary with the context.

10.8 What does not vary with eating is the existence of some ceremony and the requirement of moderation. Wise lawyers do not eat like pigs.

10.9 If a lawyer travels from country to country, he inquires about the dietary habits and restrictions of his hosts.

10.10 He also inquires about appropriate conversation at meals.

10.11 Appropriate meal time ceremonies almost always and everywhere include prayer.

10.12 The wise lawyer knows that every social context has informal rules governing the details of every day life: how you sit, how you walk, how you stand. The wise lawyer knows to inquire about these and not flout them. The wise lawyer knows how to navigate such norms and that they need not be oppressive.

10.13 Every group has rules on whether you come early, whether you come late, whether you leave early, whether you leave late. The wise lawyer follows these.

10.14 Every ceremony has rules of appropriate dress. The wise lawyer learns these.

10.15 Effective communication generally requires appropriate ceremony.

10.16 Obviously, tradition, ceremony, and ritual bow before some science. Thus, one does not accept medicine from unworthy doctors. But how does one decline a gift of medicine? One does not, even if one does not then actually use it.

10.17 When a client reports a disaster, the lawyer who follows the Way will have concern first for human life. This reaction is immediate and reflexive in the mature lawyer who follows the Way.

10.18 For every gift, there is an appropriate mode of receipt. Cooked food should be eaten at once. Raw food must be prepared at once. Live animals must be reared, and not given away. It goes similarly for other gifts. At the same time, one should never give a live animal as an instrument of torture. For example, if someone hates cats, you should not give him one.

10.19 Even when one is ill, there is an appropriate way to receive visitors.

10.20 The wise lawyer knows that when a superior summons, he must go at once.

10.21 When visiting a new place, which the locals regard as important, the wise lawyer inquires about everything. This truth applies to buildings, grounds, rooms, and even parts of rooms.

10.22 The wise lawyer knows well to honor the dead. This is an integral part of the Way.

10.23 Sometimes, one receives gifts which are sacred: statues, pictures, relics, author-inscribed rare books, and family heirlooms. There is an appropriate, individualized mode of receipt.

10.24 Lounging around in bed is sometimes entirely appropriate. Informality is a way in the Way. The wise man is not the stiff man. The elite lawyer adjusts his posture to the context.

10.25 Respect for the grieving and the afflicted is part of the Way. Respect for exquisite craftsmanship is also a part of the Way, as is respect for nature in all its variations.

10.26 There is appropriate behavior for every enclosed space. This includes cars.

10.27 The wise lawyer has an intuitive sense of the right moment and of the appropriate time. Of course, everyone misses now and then.

#### XI. DEATH, LIFE ACTIVITIES, AND THE WAY

11.1 In many ways, middle class people and people from working class families make better elite lawyers than those from the upper class. The former learn in order to arrive. The latter have already arrived, so they learn about what is important only later, if at all. At the same time, the parvenu seldom makes an effective lawyer.

11.2 Wisdom comes with age, and that is a great solace. At the same time, however, the wise lawyer loses to death many of those he has taught—juniors and clients alike. Grief can deepen wisdom.

11.3 What is it that one remembers most about one's teachers? Unquestionably it is their virtue, talent, and accomplishment. For the lawyer, perhaps the greatest talents and accomplishments lie in the area of eloquence, social design, negotiation, administration, and imagination.

11.4 Critical skills are helpful too. A valuable student is one from whom the teacher can learn. All wise lawyers know this.

11.5 A wise, patient, and imaginative lawyer can transform many sorts of (even dreadful) situations. He can transform even his own family. This is true persuasion, and it requires detachment in the midst of loving intimacy. No one, except the wisest of men, even questions kind words about him said by his parents. Isn't it obvious that these words cannot be trusted?

11.6 There are many kinds of defects. Some are trivial, some are not. Some can be polished away, some cannot. For the lawyer, of all the specifically lawyerly defects, the most serious are to be found in the errors of rhetoric, broadly understood.

11.7 For the teacher, a truly devastating loss is the death of a favorite student. Obviously, this applies to the mentoring lawyer.

11.8 Still, the dead are dead. The living—even the loving living—should not impoverish themselves to bury the dead.

11.9 When one loses a trusted colleague to death it feels like a personal assault.

11.10 For such a death, substantial grief is appropriate. It's opposite is not.

11.11 The rites surrounding every death should accord with the circumstances of the family. Neither firm nor friends should provide a grandiose funeral which is not in keeping with the position and means of the family.

11.12 One must be able to serve people before one can serve God. Similarly, one must grasp life before one can understand death.

11.13 Studying the Way is not necessarily transformative. People will still, in many ways, be who they are. It should show itself somehow, though whether it is through respectfulness, strength, cheerfulness, or what not. In general, affability is a good thing, although that is difficult to blend with resoluteness. Epiphanies are not necessarily large-scaled.

11.14 Wise lawyers try to prevent their firms from being seduced by grandiosity and glitz.

11.15 Learnedness in the law can be compared to a large house. There is the entry hallway; there is the formal living room; and there's the intimate library where few are received. In mentoring young lawyers, it is extremely important for the teacher and for the student to know what room she is currently in and how far she can go through the house.

11.16 In many ways, advocacy is like archery. Overshooting is as bad as undershooting, and vice versa. Hitting the mark and staying put: that is the thing.

11.17 Following the Way implies moderating the desire for wealth. Extravagance in the pursuit of wealth is inconsistent with the Way. Oppressing others in order to obtain wealth is a cardinal sin. Senior lawyers who oppress others to line their own pockets are uncivilized and should be overthrown.

11.18 Here are some traits of character which tend to be inconsistent with excellence in lawyering: foolishness, slow-wittedness, propensity to extremes, single-mindedness, clumsiness, naivete, cynicism and impassioned immoderation. Does this mean that a blind man or a paraplegic cannot be an excellent lawyer? It does not.

11.19 Following the Way does not guarantee the avoidance of poverty. Nor does following the Way guarantee poverty. One can go into business, (substantially) follow the Way, and do well. Or not. Try not to conflate luck with sound judgment, however.

11.20 What should one expect in the good person who follows the Way? Such a person will think for himself and will not follow automatically what others do. He or she is unlikely to be seduced by evil posing as good. The good person who follows the Way is not necessarily either artistic or religious. This is a limitation. Moral goodness is not everything. A good man who follows the Way will have another limitation: he will not necessarily be admitted to all councils in which decisions are made. Hopefully, this will not apply to the judiciary. Does it follow that clients should sometimes hire lawyers who are less than scrupulous? Lawyers who do not follow the Way?

11.21 Lawyers should always be truthful. Truthfulness implies sincerity. Trained lawyers, especially those with certain kinds of backgrounds, are adept at looking sincere. One can look a part, however, and only be pretending. Many lawyers are good at this. Is this a good thing? If the convincing advocate is a convinced advocate, is this not an invitation to self-deception? Of course, even an insincere person can have sound opinions. Dedicated liars cannot have insight, however.

11.22 When training younger lawyers the civilized lawyer must be familiar with the temperament of each. Lawyers who are overly cautious must be pushed to make decisions and take action. Lawyers who are adventuresome (or even impetuous) must be taught judiciousness and moderation. There is an axiom of pedagogy: teach to weakness; strengths will take care of themselves. (*Q* wondered why axioms like this are not merely maxims.)

11.23 It is not uncommon for father-son, mother-daughter, uncle-nephew relationships to develop between senior lawyers and more junior ones. There is honor in these relationships, but they must be tended carefully by everyone.

11.24 The civilized lawyer who runs a law firm, and the managers he hires to assist him, should follow the Way. If a lawyer cannot run a law firm and follow the Way, he should resign his post as Managing Whatever. Similarly, if a lawyer demands conduct from a manager inconsistent with the Way, the manager should resign and work elsewhere. Many people cannot bring themselves to do this. To the extent that they cannot, they are not following the Way. This does not mean that they have repudiated the Way, or that they are bad people through and through. Simply because someone is a less than perfect (or even a not-very-good) firm manager doesn't mean he would murder his parents.

11.25 Every civilized lawyer knows several things. First, one does not help lawyers by giving them assignments in excess of their experience, wisdom, and readiness. Second, in learning how to practice law, no one can skip any steps. (Sometimes, talented lawyers have to spend less time on a given step than others, but no step can be completely skipped.) Third, theatrical experience is important, but it is no substitute for learnedness in the

law. Learnedness is the foundation for wise lawyering. Fourth, superficial lawyers can always make it look like someone is ready for practical experience, when they're really not. Fifth, sophistry is to be loathed. (Isn't it odd that an advocate would loath sophistry?)

11.26 Elite lawyers, in their ambition for achievement and recognition, often forget about the inward side of life: about music played softly by oneself, about the breeze blowing on one's face, about swimming in a beautiful place with a few close friends, about passing a mild afternoon in good company.

How can ambition be reconciled to the Way, which demands modesty? How can the burning desires to succeed be reconciled to humility, which is also required by the Way? What about the burning desire to win?

This paradox runs deep. When an elite lawyer articulates merely modest ambition, one should doubt what he has heard.

## XII. PRACTICING ROBUST HUMANITY

12.1 One of the points in following the Way is to achieve a sense of humanity. One can even be said to *practice robust humanity*. The essence of this practice is self-restraint and civility. The world recognizes these with a kind of awestruck wonder. If a person actually achieves self-restraint with equanimity and cultivates genuine civility around him, the world recognizes and esteems it. The practice of humanity emerges from the self of each person, however. It cannot be gleaned, obtained, or even learned from someone else. Discipleship has its limits.

If one wants to know the recipe for practicing humanity, here it is. If something does not cohere comfortably with civility, don't look at it, don't listen to it, don't say it, and don't do it. Conforming to this canon does not require intelligence. It requires strength and perseverance. In some ways, the clever are at a disadvantage. They can rationalize all the more easily.

12.2 The practice of *robust* humanity has other aspects. One should recognize his place. This is nothing if not the virtue of humility. Reverence is important as well. Recognizing fundamental equality is also important: one should not inflict upon others what one would not wish for one's self. One should never be animated by resentment, and one should not carry out tasks in such a way as to cause resentment in others, if possible.

12.3 Intellectually, these ideas are all obvious. Carrying them out is not so easy. This is particularly true for the lawyer. How can a lawyer avoid arrogance when he works for capricious clients of substantial means? How can a lawyer avoid inflicting resentment, when the opponent is churlish and must be contained? There is a fair chance that if one is a compulsive talker, the practice of robust humanity will require more silence.

12.4 The truly civilized lawyer will be without either anxiety or fear. The wise lawyer is unlikely to be subject to much reproach.

12.5 The wise lawyer—the lawyer who follows the Way—knows that life and death are a matter of fate and that wealth and rank hinge upon chance, to a considerable degree. At the same time, he knows that if he approaches his life with reverence, devotion to right conduct, and treats other people with respect and courtesy, he will have done all he can do, and he will have the good opinion of others, no matter what.

12.6 The wise lawyer is both clear- and far-sighted. This requires maintaining both vision and balance even in the face of slanderous critique. "Remember," *Q* once remarked, "every legal system is to some degree an adversary system." How can clear-sightedness be unwavering, and yet subject to internal revision?

12.7 The elite law firm is built upon public recognition, investment, and internal trust. They should be jettisoned in that order, if necessary.

12.8 The elite lawyer is a delicate combination of learned sophistication and heart-felt simplicity.

12.9 Those at the top of elite law firms should be very, very chary of over-harvesting profits.

12.10 *Q* once suggested the following: make sincerity and truthfulness your principal values. Strive for justice. Moreover, try to be clear about your actual emotions towards other people. The former constitutes the Way when it comes to right conduct. The latter constitutes the foundation of right attitude. Don't be fooled. The emotions you actually have towards people don't change over night. *Q* thought these were not maxims. He hated maxims.

12.11 Roles are important. Let them be. Let them flourish. For every role there is a set of rituals. Observe them. If roles and rituals collapse, pervasive social skepticism results, and both loyalty and trust become impossible.

12.12 Judges who are highly intuitive and highly accurate are rare. Usually, adjudication requires the facts. Will an intuitive grasp of appropriate justice always be accompanied by pervasive right conduct?

12.13 *Q* recognized that he was as good a judge as anyone was likely to find. However, he thought that really masterful lawyers would learn how to dispense with lawsuits. Only the wise can do this.

12.14 Flourishing in a law firm requires both thoughtfulness and loyalty.

12.15 The wise lawyer knows her culture; she has steeped herself in its customs and rituals; she has in fact internalized them. Consequently, she is not likely to betray those who are loyal to her and those to whom she owes loyalty. Indeed, she will usually do the right thing.

12.16 *Q* taught that the wise lawyer brings out the good in others and assists them in achieving their already acceptable ends. He does not bring out the bad in people, and he discourages them from seeking ignoble ends, even if lawful. The shyster does the opposite.

12.17 Governing a law firm is simple, but it's not easy. Good governance is right conduct. Of course, ruling partly through example requires the ruled to know what is happening.

12.18 Sometimes lawyers steal from their law firms. Fabricated client development expenses are like this. Sometimes, lawyers steal from their clients. Fabricated expenses and over-billing are like this. Those who run law firms should keep in mind that such conduct is minimized if the firm is sound and resources are distributed reasonably.

12.19 The hierarchies endemic to large law firms must be used for good. Senior lawyers must set good examples. Each must set an example of goodness. This is to be found in following the Way. A wise lawyer's moral character is like the wind, while the moral character of the novice lawyer is like the grass. When wind blows upon grass, it bends.

12.20 Understanding and being recognized are quite different. The wise lawyer has deep and diverse understanding. He may or may not have the fame which goes with recognition. True distinction is to be found in the former not the latter.

Here is something *Q* said: "The wise lawyer is morally upright and in love with justice. He knows how to listen carefully, and he knows how to observe speakers. He is appropriately humble, through and through, and prepared to defer when appropriate. In contrast, fame is but appearance. It encompasses neither a love of humanity nor a dedication to principle."

12.21 Once, *Q* was asked how the wise lawyer can increase virtue, reduce malice, and eliminate self-deception. *Q* loved this question, and here is how he answered it: "Focus on doing not receiving. Focus on getting the job done, not upon being rewarded. Get clear about your own vices, and try to eliminate them, step by step. Do not focus upon the vices of others. Anger is a particularly important vice. Eliminating rage will help eliminate self-deception." Rage creates a kind of stupid forgetfulness which welcomes self-deception, thought *Q*.

12.22 When asked about the essence of the practice of humanity, *Q* said, "Loving everyone." When asked about the essence of wisdom, *Q* said, "Knowing people deeply."

When asked about the essence of wise management, *Q* said "Promote the good and encourage by example."

Are these principles consistent with democratic governments in law firms?

12.23 When asked how to treat one's partners, *Q* said, "Get the facts gently and apply the Way. Advise tactfully and set a good—but unintrusive—example. If advice is rejected, don't push it."

12.24 For the wise lawyer, learning, culture, and friendship all interweave to promote the practice of robust humanity.



## XIII. FIRM MANAGEMENT AND THE WAY

13.1 Leadership in a law firm is hard work. Guidance is to be preferred to command. Encouragement is to be preferred to domination. Restraint and even ritual are the order of the day.

13.2 In managing a law firm over a generation a rising star should be guided; small mistakes should be forgiven; and talent, when combined with character should be rewarded. No one should be brought into the firm in a senior position unless he is known well by someone who is trusted.

13.3 Language is central to the law. Terminology must be used correctly. Sloppy saying creates sloppy thinking. Waiver is not estoppel, and estoppel is not waiver, for example. Only the unlearned misuse language in a systematic way. Good talk is right talk. Wise lawyers avoid negligence in the use of language and demand appropriate clarity wherever possible, *i.e.*, when language won't permit and the parties don't agree on its opposite. The language of the law, of course, is not the language of physics, mathematics, or formal logic. The language of common sense always includes generative vagueness, enriching ambiguity, and (near) redundancy. The contract law concept of ambiguity, of course, is much narrower.

13.4 Young lawyers need technical training. They can get this training from lawyers a few steps ahead of them and also from books. What they cannot get either from their near-peers or from the books is wisdom, a sense of justice, a feel for honest dealings and so on. The wise lawyer should educate new lawyers concerning these things.

13.5 Rote learning in the law will never lead to lawyerly wisdom. It may even impede it, since the black-letter, dry, and crusted mind is never wise. Be skeptical of the young lawyer who can recite the elements for all of the torts and who can state all of the affirmative defenses available in both tort and contract, but who lacks proportionate perception and who cannot converse.

13.6 When running a law firm, monitor which directives are followed and which are not. This can be a fairly good index for which of them are correct and which are not. In law firm governance, getting things right is more important than having power.

13.7 There are many ways to govern a law firm badly. They all lead to the same result over time: wreckage and disaster.

13.8 When one follows the Way, one is content with what one has. This is true even if one's possessions increase. The focus of the wise lawyer is elsewhere. As the saying goes, "Do what you love, and the money will follow." It is hard to keep this observation in mind, and not think about the reward. It is best to focus on the practice and forget about money.

13.9 In many cases, the influential practice of law requires large firms. How is this to be done? *Q* held the following view. First, attract worthy people. Second, make sure they are paid enough. Third, educate them

to the Way. Thus, the wise lawyer who takes social design seriously is not likely to be monastic.

13.10 *Q* espoused this as a fundamental truth: Within one year, whoever employs wise lawyers in appropriate numbers will notice a substantial difference in how things work. Within three years, these lawyers will bring about notable accomplishments.

13.11 It was *Q*'s firm belief that good governance over time supplants poor governance and—indeed—evil over time.

13.12 *Q* thought that this replacement process could be accomplished in approximately one generation.

13.13 Right governance of others requires right governance of one's self. If one cannot set his own course correctly, how can he govern others?

13.14 In the governance of law firms, a personal matter should remain private, and all firm matters should be knowable among all those who own the firm. This means there may be no secret committees. At the same time, such openness is possible only if there is true loyalty.

13.15 Governing a law firm, and being a member of a governed law firm, are both difficult. At the same time, healthy, robust debate is absolutely necessary for the health of the law firm.

13.16 If those in a law firm are happy, good accomplished lawyers and good juniors will flock to the law firm and stay. Huge salaries will bring in recruits, but they won't stay. Many law firms have learned this lesson. Some care. Some don't.

13.17 When asked about the essence of governing law firms, *Q* said: "Timing and vision are everything."

13.18 There is a profound paradox at the heart of integrity. The Way requires honesty. It also requires that you help your friends. The Way requires rectitude. But the honorable father will cover up for his son, while the honorable son will cover for his father. Surely there is integrity to be found in this sort of deviousness. Are there two realms? The public and the private? If so, when and to what extent does the private triumph over the public? Or vice versa?

13.19 *Q* was firmly convinced that a kind of natural law doctrine was correct. To make sense and have context, legal rules must be construed in terms of moral standards. He thought the doctrine of natural law was true in at least this regard. Any jurisprudence that denied this proposition had to be wrong, *Q* thought. He looked to moral values, however, not rigid rules. *Q* looked to vague—not vacuous—principles, whose main purpose was inspiration, not detailed prescriptions. He thought that only moral virtues could generate the kind of trust necessary to a well functioning legal system.

At the same time, *Q* believed that values like courtesy, respect, reverence, sincerity, and loyalty varied somewhat across cultures. He thought that every culture valued some forms of civility, some types of respect, some

forms of saintliness, and so on. He thought that meditating on these matters would help reveal the Way.

13.20 Who may be called the truly wise lawyer? Here is what *Q* said: "A truly wise lawyer avoids disgrace and frequently succeeds on behalf of his client. He is known for family-connectedness and for deference to elder statesmen of various sorts. He keeps his word. He speaks the truth. At the same time, he is flexible. He does not win small points simply for the sake of winning. Pointless obstinacy is alien to him."

13.21 It is best to associate with lawyers who follow the Way. If one cannot find them, do not associate those which are following some other path. Instead, associate with the unpredictable. At least they set no example, and they are interesting. If such people cannot be found, associate with the pure-of-heart. Such people do not follow principles, and they are less interesting, but such people have something to teach, even though they are seldom really competent to practice law.

13.22 Resoluteness without virtue and without restraint is dangerous. It is the stuff of which fanatics are made. Virtue without resolution is chaotic, fragmented, and destined to failure.

13.23 Wise lawyers embrace humanity and discern harmony. The weak but ambitious lawyer conforms to the obvious and seeks comfort.

13.24 Being universally loved is as much a condemnation as being universally hated. The lawyer who follows the Way will be loved by the good and hated by the bad.

13.25 It is difficult to earn accolades from the wise lawyer, but it is not difficult to serve her. The wise lawyer cannot be pleased by cheap means: tricks, mere flashy performance, cleverness, or high profits. She demands that the Way be followed. The wise lawyer seeks perfection for herself and for others. Missing the mark often is to be expected, however, and harsh critique is alien to the wise lawyer. She even knows to go easy on herself.

13.26 Authority shines through the wise lawyer. He is not arrogant, however. Weak lawyers are often arrogant, perhaps precisely because they have no authority.

13.27 Substantive virtues are insufficient to create the wise lawyer. Following the Way requires firm character, resolute spirit, simplicity of mind and heart, and often silence. These things supplement virtues and bring us closer to robust humanity.

13.28 Once, when *Q* was asked about what it took to be a wise lawyer, he said this: "The wise lawyer combines a spirit of genteel critique with a spirit of amiable cordiality." On another occasion, *Q* observed that the spirit of critique—however modified—was seldom appropriate towards parents and siblings. How does the second insight bear on the practice of law?

13.29 Wise lawyers tend to serve long apprenticeships.

13.30 Deploying untrained or ill-trained lawyers is to waste both them and the client's money.

## XIV. SOME VIRTUES AND THE WAY

14.1 There is much unhappiness in the legal profession these days. Perhaps there is an underlying connection to law firms that do not follow the Way.

Outstanding success in following the Way is both extraordinary and difficult to discuss. Obviously, lawyers who have dropped boorish bragging, competitive striving, mutual resentment, envy, and unbridled greed have done something important. The practice of virtue fills voids. Still, this is not fully the practice of robust humanity. It is not complete success in having followed the Way.

14.2 *Q* had little respect for the love of material comfort. He thought it something no wise lawyer could possibly cherish it, even if he had it. He thought that duty and service were what mattered. He did not see their yoke as heavy, however.

14.3 When the Way permeates a law firm both right speech and right conduct are encouraged. When the Way does not pervade a law firm, the right conduct must be required, and speech is only muted. Sometimes, when the Way is not followed, speech is more dangerous than action.

14.4 Those who think that the virtues are interconnected are halfway wrong. The lawyer of robust humanity will always be able to provide good counsel, but the opposite is not always true. The lawyer of humanity will always have the courage of his convictions, but the opposite is not always true.

14.5 Modest, steady accomplishment is a more significant civilized life than fleeting, stellar performances here and there. Surely, resolute virtue is more important than meteoric skill, even if the latter is extraordinary and brings fame.

14.6 A wise lawyer may not actually achieve fully robust humanity. She may not achieve the apogee in following the Way. On the other hand, a weak lawyer hasn't a chance.

14.7 A wise lawyer will not spare his favorites from critique. Loyalty and appropriate admonition are not inconsistent.

14.8 The wise governance of the law firm recognizes that different people can do different things. Here is an example. Patton wrote the rough drafts of all the most important briefs. Jacob revised them. Patrick edited the revisions. Paul added the final polish.

14.9 The wise lawyer does not derogate those he hates. He merely refuses to speak of them. Also, the wise lawyer recognizes that sometimes, what appears to be a curse is in fact a blessing. Such reversals are difficult to discern.

14.10 Most lawyers do not have to be mindful of how difficult it is to be both poor and unresentful. It is important for them to recognize and to

remember that shining accomplishment (and hence wealth) frequently elide into arrogance. Swagging is never a virtue, however.

14.11 It is extremely difficult for middling lawyers—lawyers who are neither wise nor weak—to accept a position in the middle. They are over-qualified to be associates, but under qualified to be senior partners. This kind of poverty, though not penury, creates resentment. Resentment is always a vice, though the same is not true of hatred and disdain.

14.12 *Q* once included the following in a list of characteristics of the truly wise lawyer: Wisdom, no envy, courage, generosity, versatility, and a talent for ritual. The consummate lawyer will hear a discussion of profit, and his mind will turn to right conduct. Upon seeing danger, he would step into the breach without hesitation. He would keep his promises, even old ones.

14.13 In addition, the wise lawyer has both a sense of timing and a sense of proportion. He speaks when appropriate, but not too often and not too long. He laughs at the right times, but doesn't overdo it. He often works at the level of suggestion. He gives and receives only when it is appropriate.

14.14 If something anomalous and very out-of-character happens in a law firm, suspect blackmail. Whether to insist on getting to the truth is another matter.

14.15 How, if at all, are subtlety and uprightness related?

14.16 If it is necessary to assess the degree to which a person succeeds in following the Way, do not judge from a single incident, especially one in which she was young and most especially when there was a crisis.

14.17 Look at the long haul. Look at what else someone who fouls up does. Be sure to look at influence. Martyrdom is not the only way to follow the Way. Indeed, sometimes it's a bad idea.

14.18 Consider the maxim, "Help your friends." Wise lawyers do this with their proteges, and the proteges assist their wise seniors. Both may thereby approximate the Way.

The result of such conduct will be a reputation which survives even the grave, although this should never be the goal. Still, said *Q*, "Beware Maxims."

14.19 If a law firm is run by a board or a council, the law firm can survive even if one of the senior lawyers loses the Way. Such a thing can happen.

14.20 The wise lawyer comes to speech slowly, thoughtfully.

14.21 Nevertheless, under some circumstances, the wise lawyer will speak even when he knows that speech will lead nowhere and may even be dangerous. Some moral outrages demand taking a stand. The trick is to know when, what, and how. Someone approximating the Way will know how to do this. "Feel" is important.

14.22 Similarly, in a law firm, it is one's duty to speak up civilly, even if the speech will cause offense.

14.23 As a general rule, the wise lawyer is not cynical about people and their motivations. She knows that some skepticism is appropriate, however.

14.24 The wise lawyer studies the law in order to improve himself in his mind as well as someone's legal position. He is never interested in learning simply to impress. This is one reason the wise lawyer does not overcite cases or other authorities. The wise lawyer usually does not cite a secondary treatise when an imposing case can be found.

14.25 It is arrogant to say, "I would like to make no mistakes in the future." In contrast, it is wisdom to say "I would like to make fewer mistakes in the future." The height of wisdom is to say, "Sometime ago, I concluded I would like to make fewer mistakes, but I'm not sure I am succeeding, hard though I am trying."

14.26 The wise lawyer never discusses either his client's cases or his firm's business out of context. Moreover, the wise lawyer has a keen sense of mission and purpose.

14.27 The wise lawyer knows that shame should arise when deeds do not match words. This is one reason why silence is often a good thing.

14.28 So we say there are three mandates of the Way. First, the humanity of the wise lawyer is so robust he knows no anxiety. Second, the will to wisdom of the great lawyer knows no hesitation. Third, the courage of the truly wise lawyer knows no fear. (Some people thought that these attributes applied to *Q*, but he did not believe it. In fact, *Q* believed that these three were impossible and dangerous, though inspiring and noble-sounding.)

14.29 *Q* thought that wise lawyers spend their time in self-improvement, rather than endless critique. True education is never the same as aimless critique.

14.30 The wise lawyer worries more about incompetence than about his lack of fame. (Although she should not think about it, genuine competence produces reputation.)

14.31 The wise lawyer is not cynical. He does not expect deception and falsity. At the same time, he is able to recognize them readily. This is one attribute of true wisdom.

14.32 Wise lawyers teach not out of pride but out of a love of the Way.

14.33 Inner strength, virtue, and depth: these are what produce a lasting worthwhile reputation. Mere prowess does not.

14.34 *Q* thought that it was a mistake to repay viciousness with kindness. Instead, he thought that viciousness should be greeted with justice and fairness. Kindness goes together with kindness.

14.35 *Q* did not believe that an example of kindness would convert the vicious man. Indeed, he thought this idea was unrealistic.

14.36 It is extremely difficult for anyone to make himself understood on important matters when he is a stranger to resentment.

14.37 Most people accuse someone of something much of the time. Gossip is permanently ubiquitous. *Q* knew and often said the following: "Those who say, 'Victory belongs to those who follow the Way,' or 'The Way will triumph in the end' are deluded. History is in the hands of several of these: fate, destiny, God, the gods, luck, and chance. Our job is to follow the Way and hope for the best."

14.38 At the same time, wise lawyering is not possible in every place at every time. Wise lawyering is not possible in a corrupt or chaotic state. Wise lawyers will gravitate towards well-run jurisdictions. Wise lawyers will suspect the insincere judge. There are often telltale signs. The wise lawyer avoids those who gossip viciously.

Hardly anyone has succeeded in doing all these things. Even wise lawyers tend to be discomfited by other-worldliness. They may not be entirely right about this. Perhaps it is an occupational seduction.

14.39 Still, the fact that something is impossible doesn't mean it shouldn't be pursued. Complete nobility loves perfection.

14.40 On the one end of the spectrum there is pragmatism and flexibility. An accommodation to the Given. On the other end of the spectrum, there is inflexibility, rectitude, and insistence upon the Good. The wisest of lawyers embraces the Middle Way even here. True wisdom is never gnostic and seldom esoteric although it is often surprising.

14.41 In managing law firms, transitions should not be sudden. This is true even when a leader dies unexpectedly.

14.42 If an example of civility is set at the top of the law firm, junior lawyers and the staff will be loyal. Moreover, outsiders will flock to the firm looking for work.

14.43 Here is a paradox. The wise lawyer improves through self-cultivation. He emphasizes dignity and reverence. Further, the way he cultivates himself will bring peace to his friends and neighbors. Finally, as an example of cultivation, he can bring peace to larger groups. The last step is iffy.

14.44 Here is the true nerd: disobedient and disrespectful in youth, a man of no achievement, a man whom none could truly recommend, and a foolish, graceless babbler in old age, who refused to embrace death thoughtfully. The only thing worse would be this sort of nerd singing loudly and spiritedly at his mother's funeral. Sometimes, weak lawyers are like this as they age. One is tempted to whack them across the knees with large sticks before they get there. Failing that, one would be well rid of them. Why is it that such people seem never to retire from their firms?

14.45 In growing as a lawyer, time is not of the essence. Speed is nothing, wisdom is to be found in growth, progress, and mastery. Things like this happen gradually—a day at a time.

## XV. DANGEROUS DISTRACTIONS

15.1 Many wise lawyers have little or no faith in litigation, so they apply themselves to other things such as advising, negotiating, and designing both practices and institutions. Can dedicated litigators actually be wise lawyers?

15.2 It is wrong to believe that a wise lawyer will never find himself in adversity. What matters is how he deals with it.

15.3 The wise lawyer does not accumulate fragments and bits of knowledge and wisdom and then commit them to memory. Instead, he recovers pearls and then strings them on a few strands. These strands will be central filaments of the Way. This fact may not be recognized while the filaments are unadorned.

15.4 *Q* thought that those who understood virtue and character in wise lawyers were rare. This is one reason why true wisdom and fame do not always go together. Celebrity is often created by the simple for the simple.

15.5 When the governed are following the Way, it is possible to govern through inaction and imagery. *Q* applied this principle to law firms.

15.6 *Q* thought that these values should be exemplified everywhere: loyalty, sincerity, truthfulness, honesty, dedication, and appropriate deference. He also thought that their opposites were to be despised everywhere. When asked, he told people to dedicate themselves to the former set of values. Notice that values were more central than rules.

15.7 The "hail-fellows, well-met," ridicule those whom they describe as "straight-arrows." This is a mistake. The wise lawyer is exactly that, a straight-arrow. (This does not mean he will serve any ostensibly respectable establishment.)

15.8 The wise lawyer has a sense of aptness. He does not share his wisdom with someone who cannot understand it, but he does not hold back from someone who could use it. This sense of fittingness prevents waste and helps create new generations of wise lawyers.

15.9 *Q* thought that, occasionally, wise lawyers had to risk their very lives. Of course, those risks are rare—perhaps more rare in lawyering than in everyday life. Courageous dissent is sometimes required, however.

15.10 When asked how to practice robust humanity in the context of lawyering, *Q* said this: "Learn the law. Learn the practice. Find lawyers who follow the Way. Join them. Befriend non-lawyers who follow the Way. Cultivate communities."

15.11 Here is something *Q* said once about governing the law firm: "Keep tradition in mind. Let things happen in their own time. Have a sense of timeliness. Simplicity—even austerity—is preferable to ornate corpulence. Discourage the wearing of tailored suits. Avoid the merely clever. Avoid corrupting influences. Attend to details: even think about what music to present at firm receptions." On another occasion, *Q* acknowledged that a few



of these precepts are obvious. After all, who could doubt that one should avoid corrupting influences. *Q* knew that applying that precept in particular was much more important than articulating it. He believed that if one assiduously followed the Way, one would be able to sort these things out almost intuitively. Still, he thought, dialogue with the right people—people who follow the Way—helps.

15.12 The wise lawyer thinks about the long-run.

15.13 *Q* taught that learned virtue can triumph over all vices. He took lust as his paradigm. Even here the Way was relevant. "Never with clients!" he used to say.

15.14 *Q* thought that there was much truth in the "Peter Principle"—the idea that people rise one step above their level of competence. He thought once the principle had kicked in, the man who follows the Way will step down one notch, or—at least—share power.

15.15 *Q* thought that one should always demand more from himself than one demanded from others. He thought that in this way some resentment could be avoided.

15.16 People who do not experience confusion, uncertainty, and practical fears are difficult to educate in the Way.

15.17 Wit, scorching cross-examination, repartee, searching discovery—none of these things is worth one whit unless they are harnessed to the service of truth.

15.18 Here is another one of *Q*'s sayings: "The wise lawyer takes justice as his basis: he seeks it in conformity with appropriate rituals, demands it modestly—even gently, speaks the truth at all times, and tries to set a good example."

15.19 The wise lawyer does not worry about her reputation (or lack of it). She worries about her capabilities and her deficiencies.

15.20 When a wise lawyer worries about his reputation, he worries that his example will pass without effect.

15.21 When a wise lawyer thinks about failures, he thinks about his own. The weak lawyer thinks about those of others. If he is a resentful person, he celebrates them.

15.22 The wise lawyer takes pride in her accomplishments without being proud—nor is she contentious, partisan, or boisterous. On the other hand, the wise lawyer may be both sociable and affable.

15.23 The wise lawyer knows that a person is not entitled to approval simply because he holds the right views. He also knows that profoundly immoral people can hold the right views.

15.24 *Q* was once asked whether there was a single word which could guide one's entire life. He responded: "Is it not *mutuality*? Does that not truly express the Golden Rule?"

15.25 *Q* tried never to express blame. He did not always express praise. He kept in mind that people do not change much from generation to generation. He was not so idealistic as to believe he could change humanity.

15.26 In all walks of life, journeymen should defer to experts. Middling experts should defer to accomplished experts. And so on. This idea is no less true for the law than for anything else. A realistic appreciation of how far one has progressed is quite consistent with following the Way—and, indeed, with great accomplishment.

15.27 Flattery undermines virtue. An undisciplined sense of urgency undermines great projects.

15.28 *Q* said this once, "If a man is universally hated, one should look into it. If a man is universally loved, one should look into that too."

15.29 When a man works hard to follow the Way, it gets easier. Usually, following the Way involves indirection, such as the study of culture, music, and so forth. Studying the Way directly—restating it as maxims and rules—does not make following the Way easier or enhance the man.

15.30 *Q* once said this: "The law is a forgiving system. Consequently, to make a mistake and not to try to fix it is to make two mistakes."

15.31 Some young lawyers nowadays approach the law through meditation. After all, it is culturally fashionable. Premature meditation is no use—even if it is accompanied by fasting and sleeplessness. Study first, then contemplate. Experience some, then reflect.

15.32 Here is an observation of *Q*: "The wise lawyer applies himself to learning and craft. He does not worry about hunger; he does not worry about where clients are going to come from; he does not worry about remaining poor. He worries about whether he will find the Way. Most of the time, if one trusts the universe, good things will follow. One can't think about this, however. Wisdom and robust humanity are often required for obtaining leadership in a good law firm. They are certainly required for maintaining it. Appropriate dignity—not to say stiffness or pomposity—is also required. So is a subtle sense of ritual."

15.33 *Q* said a number of things privately he would not say publicly. One of them was that almost any one with nerves, a little knowledge of rules and rhetoric, and enough emotional ballast not to panic could conduct contentious litigation and negotiations. Such lawyers he called "hawks." At a higher level, there were peacemakers who unraveled locked-up, stalemated battles. If people were good at this and not just capitulators, *Q* called these people "doves." *Q* thought that the best lawyers were those which provided wisdom about how to avoid such situations. These lawyers he called "owls," and he distinguished them from the merely clever.

There were other things *Q* would not say in public. He actually had a rather odd—and sometimes juvenile—sense of humor in private. One of his favorites, for example, was "Absinthe makes the heart grow fonder." Some

thought that his disdain for maxims and self-improvement exhortations was that he was somehow tempted by them. He also sometimes said, "Sarcasm need not be sour" and "Taunting is a form of tormenting," but never publically.

15.34 *Q* recognized a central mystery: The wise lawyer may be able to undertake huge projects and yet not be known for virtuosity in some technical skills. Contrariwise, some lawyers who are known for great technical skill, absolutely cannot execute a large project. Wise clients know this. Discerning lawyers know it too. Wise lawyers accept it. Complementarity is often valuable.

15.35 According to *Q*, a sense of robust humanity was more essential to the wise lawyer than virtually anything else.

15.36 Here is a difficult lesson for many lawyers, even wise ones: in pursuing the Way, one should not worry about overtaking the teacher. At the same time, this should not be a goal.

15.37 The wise lawyer is principled but not inflexible. Obviously, a sense of subtlety is required to make this distinction, and it is easily manipulable in the hands of the weak or the corrupt.

15.38 Wise lawyers have loyalty to their law firms. They think first of the larger whole and then only of individual reward (if at all). This ordering requires a sense of real community.

15.39 *Q* took pride in instructing everyone capable of learning, without regard to class, position, temperament, or anything else of that sort. Successful education eradicates fixed distinctions.

15.40 According to *Q*, there is the Way and there are other ways. Followers of divergent visions do not have meaningful exchanges.

15.41 The wise lawyer knows that if language communicates, that is sufficient. She also knows that if it communicates persuasively this is plenty. Embellishment, elaboration, linguistic arabesques, and the like are for showing off, not advocacy.

15.42 *Q* thought that this was deep wisdom: Appropriate assistance to the disabled is not condescension. Those in genuine need usually accept whatever help they really need. It should be delivered properly and discretely.

## XVI. DIMENSIONS OF THE WAY

16.1 Some law firms are led by their strong-willed founders. Often, such men and women are brilliantly intuitive. When they go wrong, however, it can be a disaster. Leadership in such a firm often involves standing firm against error. If the strong-willed founder and head of the firm makes a mistake, and others could have criticized the error beforehand, the blame is partly theirs. Such criticism and resistance must be forthright.

16.2 One of the gravest errors in managing a law firm is raiding another law firm for large injections of talent. Failure is bad enough, but

success may be even worse. Over the long haul, good order in a law firm in the possession of a rich firm culture requires that leaders adhere to the Way. Autocracy is not necessary, and if different departments develop into feudal fiefdoms, chaos will rein.

16.3 An orderly law firm requires unified management. This is true even when the firm has many offices in different cities.

16.4 According to *Q*, three types of friendships among lawyers are beneficial: with the "straight arrow" types, with those who speak the truth, and with those who are learned. Similarly, there are three types of friendships with lawyers which are detrimental: with those who lie either in word or deed, with the clever and the merely witty, and with the obsequious.

16.5 Three forms of pleasure are to be embraced: that of appreciating rituals and music, the delight one finds in guiding people towards the Way, and the pleasure of having worthy friends. Similarly, three forms of pleasure are harmful: the pleasures of extravagance, those of idleness, and those of gluttony.

16.6 Junior lawyers are susceptible to three ordinary faults: rashness, concealment of error, and not listening to those around them.

16.7 Here are three dangers the wise lawyer must watch out for: brashness and lust while in youth, rage at any age, and greed as middle age comes.

16.8 Wise lawyers fear three things: mysterious yet appropriate-feeling failure, the irrational wrath of savage judges and powerful clients, and critiques of the profound. The weak lawyer does not fear negative synchronicity, because he could not recognize it if he tried. He does not fear judges and clients because he does not know his place. He is too ignorant to understand that some men are sages and saints, while others are just lawyers.

16.9 *Q* was driven to the position that there is such a thing as innate knowledge. This is to be found in the wisest of men. On the next rung down are those for whom learning has brought knowledge. On the next rung down, there are those who seem unable and clumsy, but who learn erratically through difficult experience. The lowest down are those who cannot learn anything. These are the truly ignorant and the profoundly dogmatic.

16.10 According to *Q*, the wise lawyer has nine goals in relating to the world: seeing clearly; hearing distinctly; presenting an amiable countenance; being appropriately differential; being loyal in speaking; being appropriately respectful; when in genuine doubt, asking questions; when angry, pondering consequences before acting; and gaining only advantages that are fair.

16.11 The perfectly wise lawyer recognizes potential mentors immediately and pursues them vigorously. Similarly, the wise lawyer recoils from evil as he might from boiling water. Immediate recognition is hardly ever to be seen, however, and asceticism does not seem to help.

16.12 There are many powerful lawyers. Few are remembered. Extraordinarily skilled lawyers are remembered long after they are gone. This is particularly true if they also shine with goodness. Such lawyers have followed the Way.

16.13 *Q*'s son was once asked what his father taught him. He said, "To study the best and to know the culture. When it came to educating me, however, my father kept his distance." Why one wonders?

16.14 Wise lawyers and those on their way to wisdom are extremely careful in how they refer to spouses. In this regard, attend carefully to context.

## XVII. INTERCONNECTEDNESS

17.1 The wise lawyer faces an exquisitely difficult dilemma when he is the member of a badly managed firm. Should he try to help out and avert disaster, or should he let things take their course and help pick up the pieces. Loyalty points in one direction, while wisdom sometimes points in the other.

One temptation will be to appear to help out but in reality to devote oneself to other things. Is such conduct consistent with fundamental values? Is it not a kind of deception?

17.2 Wise lawyers remember that human beings are more similar than they are different. They also remember that most fundamental differences are the product of culture, not nature.

17.3 Only the perfectly wise and the really stupid never change. No one is perfectly wise, of course.

17.4 *Q* himself acknowledged error. Here is an example: even after he was quite educated and thoughtful, *Q* believed that education in literature and the arts helped only the elite. Subsequently, he changed his mind under the influence of one of his students.

17.5 On another occasion, *Q* confessed that he was once tempted to join insurgents and leave a law firm to which he owed some loyalty. Temptation is one thing; action is another.

17.6 At one point, *Q* listed five characteristics of the robustly humane and wise lawyer. They were these: respectfulness, tolerance, truthfulness, commitment, and generosity. Respectfulness tends to deter attempts at humiliation; tolerance attracts the many; truthfulness breeds trust; commitment often leads to success; and generosity breeds loyalty.

17.7 The wise lawyer who is a capable administrator but who goes unrecognized for whatever reason will struggle constantly with resentment. *Q* saw this in his own life. He wondered if it might be a form of envy.

17.8 Powerful virtues sometimes conceal latent defects. If one loves humanity but does not love learning, foolishness will result. If one loves wisdom and does not love learning, emptiness will result. If one loves

truthfulness but does not love learning, the latent defect is lack of tact. If one loves talk but does not love learning, brutality will result. If one loves courage and does not love learning, violence results. If one loves bold, decisive action but does not love learning, rash arbitrariness results.

17.9 Wise lawyers study whatever scripture is central to their culture. In the western world, this is *The Bible*; elsewhere, other texts have that role.

17.10 The wise lawyer knows that there is hardly any better source of wisdom, imagery, and culturally appropriate narrative than culturally central scriptures. They are also a good source of rhetoric.

17.11 Q said, "The wise lawyer organizes his life around a few themes. Music and ritual are to be included." Q always teased his listeners. "Why music?" he would say. He listened attentively to answers, but he himself never spoke. Why not, one wonders.

17.12 The wise lawyer knows that phonies and fakes are usually anxious about being found out. Often, there are tell-tale signs.

17.13 Q thought that wise lawyers should be alert to hypocrisy, especially among other lawyers. He saw that as the ruination of virtue.

17.14 The wise lawyers love the law of evidence, even if they are not litigators. Profitable hours can be passed studying and pondering the wisdom of hearsay rules. It is amazing how frequently even litigators are influenced by gossip. Pondering the growth of new evidence rules in response to the birth of e-mail and the proliferation of the internet is particularly instructive.

17.15 The wise lawyer knows that the overly ambitious lawyer is a curse. He cannot be trusted, even when he obtains some rank. He is too fearful of losing the rank.

17.16 Q sometimes thought that the ancient world was quite different from his world. First, he thought that the ancients exuberantly thought for themselves, whereas the modern world, thinking-for-one's-self is often a shorthand for sexual license. Second, old-time lawyers seemed to him straightforward, even in their pride. Modern lawyers feel guilty about their pride and are somehow oppressed by it. Old time lawyers could be quite naive. Modern lawyers mostly posture naivety, even when they are genuinely naive. Q also laughed ironically at himself. How could ancient lawyers really be different, he asked, if people don't change much from one generation to another?

17.17 Wise lawyers know that witty talk and smooth manners are seldom signs that someone is following the Way. Eloquence in the service of interest, without learning and without a sense of justice, can amount to nothing more than elegant brutality.

17.18 Wise lawyers generally believe that social stability, a necessary precondition for justice, depends upon tradition and traditional practice. They therefore sometimes do not love the new. This makes them appear eccentric, out of step with the times, even reactionary.

17.19 The wise lawyer knows that speech is not always necessary to instruction. Heaven, after all, speaks for itself.

17.20 *Q* once refused to see someone he despised. He had the receptionist say that he was sick. While the fellow was in the waiting room, however, he bellowed for an associate.

An entire afternoon was once spent in a course in legal ethics debating *Q*'s action. The question was: how could what *Q* did possibly be consistent with truthfulness, sincerity, and the Way? At the seminar *Q* uttered a single phrase: "Instructive provocation."

17.21 *Q* thought that anyone who did not know grief and mourning was shallow. At the same time, the Way dictated that these not be overdone.

17.22 *Q* thought that communal activity should always involve the use of mind.

17.23 The proper object for a lawyer's mind is justice, focusing on anything else to the exclusion of justice leads to catastrophe. How does this fit with advocacy?

17.24 *Q* was once asked if he hated anybody. He acknowledged that he did. He said that he hated those who dwell on the vices of others and those obsessed with a critical spirit. He said he hated those who slander and those who were courageous but uncivilized. Lastly he said that he hated both those of irrational resolve and those of irrational stubbornness. A friend of his added more. She said she hated pseudo-intellectuals and lawyers who copy pleadings and arguments out of form books. She said she hated arrogance passing itself off as courage, and she hated malice dissembling as straight-talk.

17.25 Hierarchies in egalitarian cultures create special problems. Condescension and even mild oppression are always inappropriate. Friendliness mixed with distance (or, at least, some detachment) are often appropriate. Developing an apt sensibility about how to deal with hierarchy is a difficult project. Nevertheless, the elite lawyer must master it in the spirit of robust humanity.

17.26 *Q* once remarked: "If a lawyer is widely despised at the age of 40, he will never be anything but loathed, and a successful practice is unlikely."

## XVIII. FLEXIBILITY AND THE WAY

18.1 Sometimes, law firms are run by tyrants. Often, they make martyrs out of the people they run off. This is particularly true if those who leave follow the Way.

18.2 The wise lawyer, like the wise judge, knows what is required of him by the law, by wisdom, and the Way. He then lets the chips fall where they may.

18.3 These knowledges are frequently intuitive. *Q* knew that the past is not a dictator to the present, though history shapes the present.

18.4 The wise lawyer knows that where one starts out frequently strongly influences where one ends up.

18.5 The wise lawyer seeks wisdom wherever she can. Sometimes the vibrantly eccentric have truths to tell. Sometimes they will not speak.

18.6 Leaping from law firm to law firm is in general a bad idea. *Q* himself did not observe this precept. His agenda was different. He was trying to change the world. He wanted to spread the Way.

18.7 Every lawyer who yearns for a better world and for a more honest and decent legal system, will experience the impulse to quit being a lawyer. Some do so. They move to the mountains. They start shops. They go into television broadcasting. They tend bar. They teach. A talented lawyer with a stable psyche probably has a moral obligation not to withdraw from the practice and flee to the mountains. No matter what the sacrifice?

18.8 The wise lawyer knows that those who withdraw from the practice because of its inconsistency with the Way are usually too rigid. They have not learned the lessons of flexibility contained within the Way. Last, they emphasize purity over affection, puritanism over pragmatism.

18.9 Law firm culture is important. Culture will not survive in unstable conditions. Consider politics: have a revolution and musicians leave. Of course, not all culture is high culture. Still, it is important in avoiding skepticism and misdirection.

18.10 *Q* thought he knew something about leadership of a firm. Look and see whether a candidate tends to his family and extended family. To see whether he has picked and kept other associates. Determine whether he has entrusted matters to them. Look over a decade or two of history and see if he has dismissed anybody for arbitrary reasons. Do not appoint a perfectionist. Do not elect the profoundly insecure to leadership positions.

18.11 *Q* used to wonder about the wisdom of having siblings and other close relatives in the same law firms. He thought there were pluses and minuses. As usual, he did not believe in fixed, black-letter rules. He applied the same mode of thinking to married couples.

#### XIX. BALANCE, FLEXIBILITY, AND LIMITS

19.1 *Q* thought that law firms should not simply look at grades, law review, or even clerkships. When thinking about hiring and promotion they should also look at the mental attitudes of how a lawyer responds when the going gets tough. Is he willing to make sacrifices? Does she put the client first? Where does service rank in relation to profits and making of money? Is she reverent and pious towards those things she regards as sacred? Does he know the meaning of grief? What about remorse and regret?



19.2 Does he embrace virtue passionately? Does she follow the Way firmly or tepidly? Remember: do not expect perfection.

19.3 Most people through their lives are going to associate with the "right" sort of people and shun the "wrong" sort. Such people are other-directed, *i.e.*, directed by others. *Q* thought that wise lawyers think for themselves and stand on their own feet. They respect the wise, tolerate the ordinary, and despise the vicious. They praise the good, as appropriate, and show compassion for incompetence and inability. Many of them treat poor conduct as a manifestation of one of these, or both.

19.4 Wise lawyers study the law; they study humanity (both first-hand and through literature); and they study the Way. There is some wisdom to be found almost everywhere. Learning the Way is a life-long project. The dedicated have insufficient time for long detours.

19.5 If there is a key to the Way, it is *balance*. Thus, the wise lawyer keeps in mind what he has yet to learn, but—at the same time—he remembers what he has already learned. Memory and expectancy create a full life. Balance requires attentive focus, coordination of various sorts, and effort which appears effortless. Think *tightwire*.

19.6 The wise lawyer tenaciously embraces service to others. She learns and learns and learns. She studies in detail that which is close to her. About these things and people she asks many, many questions. She directs these both to herself and to others. Queries and growth are part of the foundation of a fully robust commitment to humanity.

19.7 If a lawyer on the rise says that he sleeps in his office sometimes, the wise lawyer will try to find out why. Is he perfecting his craft? Is he obsessed with learning? Is he showing off? Avoiding someone at home? *Q* once said: "Show me a lawyer who cares only for his client's position and nothing for the truth, and I will show you a vulgar fool."

19.8 Weak lawyers err on the side of overstatement and over-argument. Too much! Too much! They tend not to trust others and believe that their rhetoric can win the day. They do not realize that at some point they must let go and let others. Advocates do not decide. They only present.

19.9 The wise lawyer is like a prism. How he appears depends on how you look at him. From a distance, he seems powerful—even threatening. Seen from close up, he appears friendly—even gentle. When heard, he seems to pierce to the heart of matters and at just the right pace.

19.10 In a well-run law firm, leaders are trusted. In a well-run law firm, the wise lawyer offers suggestions only when he knows he is already trusted. The point of advice is to help, not threaten and not to preen.

19.11 The Way tolerates more flexibility in minor matters than in major ones. No one may ever curse his family. On the other hand, even the wise lawyer may occasionally appear disheveled.

19.12 *Q* thought that corpulent recruiting programs were a great mistake. He thought they were really a form of flattery and that they

encourage arrogance and narcissism. He believes that young lawyers should begin at the beginning and learn both the law and the Way from the ground up—block by block.

19.13 *Q* once observed that wise lawyers, who know both the Way and the law, shy away from politics. He thought this a shame. He thought that public life was the highest expression of civilized man.

19.14 An odd fact: *Q* thought that the rituals of everyday life were extremely important, that they should be preserved, enhanced, and observed. With an enriched life, a person contributes to preserving the Way. At the same time, *Q* recognized that many important rituals are for articulating difficult emotions. He thought that grief and the rituals of mourning were like this. He thought that once a set of rituals has expressed and elaborated a significant emotion, enough was enough. He thought this was an important thing for the wise lawyer to know.

19.15 The wise lawyer knows that extraordinary ability and sterling performance are no guarantee that a person has found fully robust humanity. Technical skill and a deep feel for the human are not the same.

19.16 Should a young lawyer always go to the law firm that contains the very best lawyers, with the very best technical skills, and who appear to have the most developed sense of humanity? *Q* answered this question: "Not always. Sometimes, some people make it hard for others to excel in following the Way, even when they don't mean to and even they themselves (for the most part) follow the Way."

Of course, a bright young lawyer should very well wish to go to a solid and stable law firm, with a history of good business, and a history of treating people well. Such a lawyer also wants to be exposed to lawyers with good technical skills and a feel for the Way. More than anything else, this lawyer wants mentorship.

19.17 Wisdom and following the Way require that people be deeply touched by significant deaths. Nothing is deeper than grief, and no grief is deeper than when one loses a parent—real or metaphoric.

19.18 The wise lawyer knows instinctively when to stick to the old ways. Not every old way is a good one. One of the central mysteries of life is how to distinguish morally viable customs and traditions from those which are not. Wise people will swim with the flow created by predecessor wisemen.

19.19 How can one be an adjudicator—the person who assigns responsibility—when a culture has lost the Way, when the leaders have forsaken the Way, and the culture has fallen into malaise? The wise lawyer knows that, under such circumstances, adjudications must be compassionate, solutions humane, and that there is very little satisfaction and less public appreciation. Under these circumstances, the world has not been set aright, even if compensation is paid, fines are levied, and time is done.

19.20 The wise lawyer knows that almost everyone should always stay out of sewers.

19.21 When elite lawyers make mistakes, they become widely known almost at once. Fortunately, when the great lawyer is able to correct an effort, that too is known at once. Correction brings more respect than error brings contempt. In complex matters, to err is easy but reversal is quite another thing.

19.22 The wise lawyer knows that he can learn something from almost anybody, and he knows that there is no single person upon whom he can depend for all or even most learning. *Q* taught this expressly.

19.23 In many respects, the law appears shallow, though, complicated. Indeed, many inferior court decisions and texts express this view, without acknowledging it. The wise lawyer knows, however, that the law has all the depth of humanity. *Q* taught this and thought that it could be taught only through *aperçu*. The wise lawyer knows that details and the precise elements are not what should be memorized over the long haul. Instead, the wise lawyer absorbs gists, essences, themes, and tendencies. Elements can always be readily found and listed.

While the law has genuine depth, it also participates fully in the commonplace. The law cannot transcend common sense morality. It cannot become mathematical economics, for example, without leaving the common man behind. But the law is for everyone and hence the common person too.

## XX. WISDOM AND THE WAY

20.1 *Q* taught that law firms need to be carefully designed and even more carefully managed. These activities must be filled with care. The concept of *care* is extremely important here. Doing with care is *the* right way. Indeed, it is the *Way*. Things should be thought about carefully, that there needs to be enormous attention paid to all sorts of matters, and that it needs to be done in a civilized and loving spirit—the spirit filled with care.

The larger the law firm, the more difficult it is to engage in caring, careful, care-filled and care-full, supervision. All lawyers supervise somebody, and every person needs some supervision. Many lawyers are not very good at supervision. They are either tyrannical, sloppy, pedantic, oppressive, or absent. Lawyers should be taught supervisory skills for the same reason doctors need to be taught good penmanship.

Those who design and manage firms need to think about the relationship between friendship and management within law firms. Law firms without friendship are not worth being in. Then again, it is terribly difficult to manage your friends. *Q* advised insisting upon only civilized and virtuous lawyers. He thought that this made leadership management easier. He also believed that fair, articulated norms, known in advance, were helpful. At the same

time, he knew that this was almost impossible with being flexible, fast-changing law firms.

Although *Q* was deeply suspicious of maxims, he thought they were sometimes a helpful starting place if they were not regarded as axioms and were treated with skepticism. Here are some of the general maxims regarding management *Q* pushed:

- ▶ Money should always be distributed in accordance with merit and production only.
- ▶ If a lawyer goes to seed, for whatever reason, spend money on rehabilitation.
- ▶ Keep alive the memory of outstanding and noble achievements.
- ▶ Reward client development, but also reward insight, character and brains.
- ▶ The client comes first. Alas, not all clients know their own interest or take a long and large view. So putting the client first means putting the clients' true interests first.
- ▶ The people in the law firm come second, but all of them are to be respected. Nobody at the firm comes in lower than second.
- ▶ If anyone finds out that there is substantial suffering in the family of anyone working in the firm, the firm will help. Death-in-the-family leaves are extremely important.
- ▶ The firm will make sacrifices to enhance the education of anyone with the firm for a long period of time.
- ▶ Generosity is important in dealing with loyal and dedicated employees of the firm.
- ▶ Truthfulness and trust go together.
- ▶ Industry and success tend to go together.
- ▶ All decisions should be made impartially. The maxim, "Help your friends!" may be helpful in politics, but not in managing a law firm.
- ▶ The koanic phrase "tactful provocation" deserves attention and meditation.

20.2 *Q* articulated the following list of virtues: generosity (without profligacy), leadership without workaholism, ambition without greed, authority without arrogance, discipline without rigidity, self-possession without pride. *Q* thought these ideas exemplify the fundamental value of *balance*.

At the same time, *Q* believed that in order to govern a law firm, four principal vices needed to be excised: terminating without first attempting to instruct and rehabilitate, demanding immediate completion of tasks which require more attention, issuing instructions late and demanding immediate performance (such as overnight), and keeping pay scales absurdly low. These vices have names. They are tyranny, oppressiveness, workaholic arbitrariness,

and niggardliness. The last of these usually results from greed or manipulateness.

20.3 Q taught that wise lawyers absolutely must have a profound understanding of several things. First, the wise lawyer has a healthy respect for the role of luck in human life. Second, the wise lawyer has a healthy respect for the role of fate. He knows that what goes around also often comes

around, though not always. Third, the wise lawyer has a deep, though intuitive, understanding of how things happen in the social world, and how they do not. Fourth, the wise lawyer has an extensive understanding of the importance of restraint and civility and therefore ritual in human life. Fifth, the wise lawyer understands the tremendous power of music, although he regards it as a mystery. Finally, the wise lawyer has a profound, although usually unscientific, knowledge of how language works, how it influences people, how it provokes them, how it blurs things, and how it often makes them clear.

#### AFTER WORDS

The following are intended to be notes, observations, and queries about the *Analects for Lawyers*, an adaptation of the original for Twenty-First Century lawyers and law firms. Partly these adaptations are my own. One hopes they are derived from the Master, even if only imaginatively. They were certainly inspired by reflecting upon the original *Analects*.

(1) The kind of ethical discourse presented in *The Analects for Lawyers* is *not* designed to be a text expounding or explaining the common law of lawyering, lawyer-applicable statutes, and the legal and quasi-legal rules of professional conduct—the kind of thing with which courts and grievance committees are immediately concerned and in terms of which they make their decisions. It *is* concerned with how a person might become more the kind of lawyer who will see the point to those rules in difficult and tempting circumstances and obey these rules habitually and happily. It concerns how to be and recognize a person who will by his or her mode of life stay out of or easily navigate tempting circumstances. It is about how lawyers can engage in moral self cultivation.<sup>9</sup> It is about excellence of lawyerly character and

---

9. The idea of moral self cultivation is crucial in Confucian scholarship. See Chung-ying Cheng, *Onto-Hermeneutical Vision and Analytic Discourse: Interpretation and Reconstruction in Chinese Philosophy*, in *TWO ROADS TO WISDOM? CHINESE AND ANALYTIC PHILOSOPHICAL TRADITIONS* 116 (Bo Mou ed., 2001); Kwong-loi Shun, *Self and Self-Cultivation in Early Confucian Thought*, in *TWO ROADS TO WISDOM? CHINESE AND ANALYTIC PHILOSOPHICAL TRADITIONS*, *supra*, at 229.

how to acquire it.<sup>10</sup> It is about how lawyers can become good people and excellent lawyers at the same time—hence the focus on virtues.<sup>11</sup>

(2) According to one commentator, there were two ways of looking at theories of self-started and self-administered moral development in Chinese thought. One of them he calls a "developmental model," while the other he calls a "re-formation model."<sup>12</sup> According to Professor Ivanhoe, moral self cultivation involves a tension "between the inherited wisdom of the past and the original intuitions of contemporary individuals[.]"<sup>13</sup> He believes that this produces "an irreducible yet highly provocative tension."<sup>14</sup> In a way, this tension is very much like the kind of tensions which produce creativity in the thoughtful lawyer accustomed to dealing with the common law. One commentator has described this kind of tension as "creative uncertainty."<sup>15</sup>

(3) Of course, the foregoing is also designed to experiment with novel—from a modern American point of view—ways to manage a law firm, conduct recruiting, and effect a sound mentorship program inside a firm. Confucius is often seen as someone providing advice to rulers. The foregoing conceives Confucius as someone providing advice to the "rulers" of law firms.<sup>16</sup> Could there possibly be such a thing as the moral "self" cultivation of a firm? Or the moral cultivation of a firm by its leading members? If so, should this be understood in the model of development or in the model of re-

10. See JEFFREY WATTLES, *THE GOLDEN RULE* (1996). In the first chapter, Professor Wattles discusses the Confucian conception of the Golden Rule. *Id.* at 15-26. He entitles the chapter "The Confucian Path from Conscientiousness to Spontaneity." *Id.* According to Jeffrey Wattles, self-discipline will eventually yield spontaneity, at least in the fully developed stage. *Id.* at 23. Notice that a fully developed moral person will be part prophet and part poet, and hence a person who possesses wisdom.

11. For a discussion of so-called "virtue ethics" in the context of Confucian thought, see Joel J. Kupperman, *Naturalness Revisited: Why Western Philosophers Should Study Confucius*, in *CONFUCIUS AND THE ANALECTS* 39 (Bryan W. Van Norden ed., 2002). For a summary of recent western arguments on this general matter, see Greg Pence, *Virtue Theory*, in *A COMPANION TO ETHICS* (Peter Singer ed., 1993). There is an extensive current literature created mostly by academic philosophers. Almost none of it is created by lawyers or jurisprudentially oriented law professors. But see the essays in Part IV of *VIRTUE* (John W. Chapman & William A. Galston eds., 1992) ("Nomos" volume focusing on cutting-edge political theory). In academic philosophy, as Pence notes, there is a distinction often drawn these days between virtue-ethics and rule-ethics, which is also sometimes known as duty-ethics. Pence, *supra*. Confucius did not ignore the importance of rules, norms, principles, and the like, but his primary emphasis was probably upon the cultivation of virtues and their subsequent observance. According to Jeffrey Wattles, the virtues at the core of the Master's thinking were loyalty and consideration. Wattles, *supra* note 10, at 17. For a recent discussion of virtue ethics from a variety of points of view together with a detailed discussion of some virtues and some vices, see Richard Taylor, *VIRTUE ETHICS* (2002).

12. Philip J. Ivanhoe, *CONFUCIAN MORAL SELF CULTIVATION I* (2d ed. 2000).

13. *Id.* at 53.

14. *Id.* at 54.

15. ROBERT J. COTTRILL, *Creative Uncertainty*, 81 *TEX. L. REV.* 627 (2002).

16. Robert Cummings Neville, *Methodology, Practices, and Discipline in Chinese and Western Philosophy*, in *TWO ROADS TO WISDOM? CHINESE AND ANALYTIC PHILOSOPHICAL TRADITIONS*, *supra* note 9, at 27. Of course, Confucian political speculations were often ignored. Perhaps this is because Confucian thought contains a genuine moral ideal. See ARTHUR DANTO, *MYSTICISM AND MORALITY: ORIENTAL THOUGHT AND MORAL PHILOSOPHY* 112-14 (1987).

formation. Can institutional moral self cultivation be accomplished without at least a touch of authoritarianism?

The treatise is also designed to articulate a conservative yet novel theory of routes to happiness for the dedicated lawyer. Surely, a fundamental question of legal ethics—though not directly a legal question—is this: How can lawyers dedicate themselves to their work and be happy human beings in relationships with each other, their families, and the larger social world?

(4) From the perspective of time, Confucius is best thought of as an organic political and social conservative who emphasizes continuity, the working out of social intimations, the importance of tradition, the ineradicable realities of hierarchy, and the significance of seeing society and social relations as a complex web which is (paradoxically) both delicate and durable at the same time.<sup>17</sup> In this respect he resembles certain parts of the philosophy of Edmund Burke<sup>18</sup> and that of Michael Oakeshott.<sup>19</sup> His views also resemble the spirit of the common law, to a considerable extent. It is virtually platitudinous to say that the common law involves tradition.<sup>20</sup> It is extremely important to remember that organically developing tradition should never be reviewed as fixed and rigid rules—always clear and to be preserved at all costs. Instead, working with the changing system of traditions requires insight, intuition, and an involving consciousness.<sup>21</sup>

On the other hand, the main difference between Confucius and modern Western organic conservatism is the emphasis of the latter on conceiving of individuals as self-contained entities and conceiving of society in terms of that individualism. For Confucius, community and context were much more important.

According to Confucius, "moral feelings or impulses alone, unguided by learning and untempered by the observance of rites as the norms of past experience, are unlikely to hit the mark in practice . . . . For Confucius,

17. Shu-hsien Liu, *Philosophical Analysis and Hermeneutics: Reflections on Methodology via An Examination of the Evolution of My Understanding of Chinese Philosophy*, in TWO ROADS TO WISDOM? CHINESE AND ANALYTIC PHILOSOPHICAL TRADITIONS, *supra* note 9, at 131.

18. See STANLEY AYLING, EDMUND BURKE: HIS LIFE & OPINIONS (1988); EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE (Conor Cruise O'Brien ed., 1968); TED HONDERICH, CONSERVATISM (1990); JOHN MORLEY, BURKE (1907); ANTHONY QUINTON, *Conservatism*, in A COMPANION TO CONTEMPORARY POLITICAL PHILOSOPHY (Robert E. Goodin and Philip Pettit eds., 1995); BURLEIGH TAYLOR WILKINS, THE PROBLEM OF BURKE'S POLITICAL PHILOSOPHY (1967).

19. MICHAEL OAKESHOTT, MORALITY AND POLITICS IN MODERN EUROPE (Shirley Robin Letwyn ed., 1993); MICHAEL OAKESHOTT, ON HUMAN CONDUCT (1975); MICHAEL OAKESHOTT, RATIONALISM IN POLITICS (1962); POLITICS & EXPERIENCE: ESSAYS PRESENTED TO MICHAEL OAKESHOTT (Preston King & B.C. Parekh eds., 1968). For a contemporary general account of this general approach conservatism, and others, see JOHN KEKES, A CASE FOR CONSERVATISM (1998).

20. As an organic version of traditionalistic political conservatism, Confucian theory is somewhat anti-individualistic, since it is holistic in its social theory. See DAVID L. HALL & ROGER T. AMES, THINKING THROUGH CONFUCIUS 152 (1987).

21. *Id.* at 100-01; see Chad Hansen, *Metaphysical and Moral Transcendence in Chinese Thought*, in TWO ROADS TO WISDOM? CHINESE AND ANALYTIC PHILOSOPHICAL TRADITIONS, *supra* note 9, at 197.

humaneness, riteness, and learning were integral parts of a single ethos."<sup>22</sup> For Confucius, rites imply—or, at least, suggest—rights, even if only weakly.

(5) For Confucius, the concepts of rites and ritual should be conceived broadly in terms of repetition and familiarity. These features of conduct give it the feel (phenomenology) of transformative importance. One scholar says that "ritual completes the natural [and] fulfills it."<sup>23</sup> Another says that ritual has something like a magical quality which can lead to a sense of spiritual nobility and holiness.<sup>24</sup> According to Professor Fingarette, to a considerable extent, nobility is to be found, according to Confucius, through rituals conceived as something like "Holy Rites."<sup>25</sup> "The image of Holy Rite as a metaphor of human existence brings foremost to our attention the dimension of the holy in man's existence."<sup>26</sup> "Explicitly Holy Rite is . . . a luminous point of concentration in the greater and ideally all inclusive ceremonial harmony of the perfectly humane civilization of . . . [the] ideal Way. Human life in its entirety [in the end] appears as one vast, spontaneous and Holy Rite: the community of man."<sup>27</sup> Confucius took this to be important in making one way meaningfully on life's Way.

How do nobility, tradition, community, robust human goodness, and the like fit with the realities of litigation? The savagery often not far under the surface of (un)civil litigation is clearly inconsistent with Confucian ideals. Possibly, someone in the Confucian tradition, with a somewhat more pessimistic view of human nature than Confucius himself, might suggest that ferocious litigation plays an important social role and that one of the functions of ritual and ceremony is to mask some sort of socially beneficial ferocity.<sup>28</sup>

(6) Confucius was completely opposed to seeing human and social relationships in terms of discrete incentives and punishments. Ancient Chinese Legalism saw the world just that way,<sup>29</sup> as does the contemporary "Law-and-Economic Approach" to jurisprudence.<sup>30</sup> Confucius was much

22. WILLIAM THEODORE DE BARY, *THE TROUBLE WITH CONFUCIANISM* 40 (1991).

23. See Neville, *supra* note 16, at 43.

24. HERBERT FINGARETTE, *CONFUCIUS—THE SECULAR AS SACRED* 6 (1972).

25. *Id.* at 16.

26. *Id.*

27. *Id.*

28. JOHN ELDRIDGE, *WILD AT HEART* 82 (2001) (writing a volume of religious and psychological speculation). Many commentators have explored the relationship between rights, traditions, and conventions, on the one hand, and human goodness and happiness, robustly conceived, on the other. One view is that the observance of traditions, is instrumental in bringing back human flourishing. The other view is that in observance of rights, and so forth, is constitutive of human flourishing. Perhaps there are other approaches. Kwong Loi Shun, *REN [GOODNESS] AND LI [RITES] in THE ANALECTS*, in *CONFUCIUS AND THE ANALECTS*, 52 (Bryan W. Van Norden ed., 2002).

29. ZHENGYUAN FU, *CHINA'S LEGALISTS: THE EARLIEST TOTALITARIANS AND THEIR ART OF RULING* (1996); see ARTHUR WALEY, *THREE WAYS OF THOUGHT IN ANCIENT CHINA* (1939).

30. Of course, there is much literature on the so-called "law and economics" approach to jurisprudence. For a recent defense of the orthodox approach, see Gregory Mitchell, *Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal*



more communitarian in his thinking.<sup>31</sup> According to Professor de Bary, there is a "continuity between Confucian self-cultivation and the concept of a fiduciary community."<sup>32</sup> Obviously, a "fiduciary community" must be conceived along communitarian lines. (Usually, of course, the political idea of *community* is rather loose, unstructured, and free wheeling, if not at least tempted by ideals of anarchism.<sup>33</sup>

(7) Confucius also conceived of thinking, including philosophical thinking, in terms of the concrete and the imaginistic. This is why he focused on aphorisms and anecdotes. The highly abstract thought processes of modern Western (especially Anglo-American) philosophy were alien to him. He thought much more in terms of the whole person integrated into a social system, both of which were concretely conceived.<sup>34</sup> This is why ritual in all its concreteness was crucial for learning, teaching, self-improvement, self-definition, self-fulfillment, moral conduct, and creativity itself. Confucius was not a thinker who viewed the world dualistically—mind versus body, odd versus even, abstract versus concrete, and so forth. He did not conceive of human beings as beings in possession of a private subjectivity standing over against and somehow in opposition to an objective reality—which theme, of course, is commonly thought to be central to European philosophy since Descartes.<sup>35</sup>

---

*Incompetence*, 91 GEO. L. J. 67 (2002).

31. For a contemporary account of communitarian thought, see PHILIP SELZNICK, *THE COMMUNITARIAN PERSUASION* (2002).

32. DE BARY *supra* note 22, at 97.

33. At the same time, communitarian political philosophy and Confucianism share a critique of "an overly individualistic conception of the self." DANIEL BELL, *COMMUNITARIANISM AND ITS CRITICS* 4 (1993). At the same time, both Confucianism and communitarianism share the view that human beings are "first and mostly, social beings, deeply bound up in the social world in which we happen to find ourselves." *Id.* at 14. In addition, both approaches to political and legal philosophy would emphasize some of the same dimensions of community, including place, shared memory, shared psychology, and so forth. Confucian thinking, however, would also emphasize shared rites, shared "high culture," and shared allegiance to an acceptable vertical organization. As a general rule, contemporary communitarians are very suspicious of hierarchical political authority. Confucianism is not.

34. See Cheng, *supra* note 1, at 99.

35. *Id.* at 95. Robert B. Loudon, "What Does Heaven Say": *Christian Wolff and Western Interpretations of Confucian Ethics*, in *CONFUCIUS AND THE ANALECTS*, *supra* note 28, at 73. See also David L. Hall and Roger T. Ames, *THINKING THROUGH CONFUCIUS* 40 (1987).

[T]hinking for Confucius is not to be understood as a process of abstract reasoning, but as fundamentally *performative* in that it is an activity whose immediate consequence is the achievement of a practical result. Far from being a means for lifting oneself out of the world of experience, thinking for Confucius is fundamentally integrative, a profoundly concrete activity that seeks to maximize the potential of the existing possibilities and the contributing conditions.

*Id.* at 44. Isn't this a theory of thinking inherently lawyerly in nature? "[T]hinking for Confucius is a process that engages the whole person. Just as the dualistic categories of mind and body are inapplicable, so a theory/praxis dichotomy would also be inappropriate." *Id.* at 49. Thus, human intellectual capabilities are viewed in a holistic way. *Id.* at 54. This is in account of legal reasoning which is very sympathetic to pragmatism and realism, and which is at substantial variance with formalistic deductivism. It is a theory

Consequently, some other features of European philosophy in the Twentieth Century were also alien to Confucian thinking. The importance of radically free choice, the centrality of free will, the significance of *angst*, the ineradicability of alienation, and so forth, are all absent from a Confucian view of the world.<sup>36</sup> Isn't this a system of thought the socially involved and well-integrated lawyer could love?

I suspect it would have been obvious to *Q*, that the Confucian approach is the way most successful lawyers look at the world and at human beings. The world of the dedicated and successful lawyer—whether a deal lawyer, an institutional lawyer, or a litigator—is not a world as depicted by Satre and Heidegger, much less the world depicted by Foucault and post-modernism in general. The world as conceived by much of Twentieth Century European philosophy is much too incoherent and chaotic for the dedicated lawyer. As a matter of psychological imperative, if not out-and-out truth, lawyers must see the world as involving some substantial amount of coherence.

(8) There were no lawyers as we think of them in ancient China.<sup>37</sup> If there were, however, Confucius would have been one of them. In fact, some sources describe some of Confucius's government posts in terms of being a police commissioner,<sup>38</sup> a magistrate, or a minister of justice.<sup>39</sup> In one place, in the *Analects*, 12.13, he remarks that he can try cases as well as any judge. Clearly, he had a legal mind. At the same time, Confucius was far less interested in conflict than in meditative methods of resolving disputes. In a way, this makes him strikingly contemporary. One wonders what Confucius

---

practicing lawyers should love, since it elides strict logic and practical rhetoric.

36. FINGARETTE, *supra* note 24, at 34-36.

Confucius's vision provides no basis for seeing man as a being of tragedy, of inner crisis and guilt; but it does provide a socially oriented, action-oriented view which provides for personal dignity. . . . [T]he images of the inner man and his inner conflict are not essential to a concept of man as a being whose dignity is the consummation of a life of subtlety and sophistication, a life in which human conduct can be intelligible in natural terms and yet be attuned to the sacred, a life in which the practical, the intellectual and the spiritual are equally revered and are harmonized[.]

*Id.* at 36. But see Lee H. Yearley, *An Existentialist Reading of Book 4 of the ANALECTS*, in CONFUCIUS AND THE ANALECTS, *supra* note 28, at 273. Yearley's piece contains an unusual translation of Book IV.

37. Indeed there is some dispute whether China had a legal system at all. The crux of the issue is whether the rule of law is part of the definition of a legal system. See Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179, 181-88 (2002). The issue bringing this matter to the fore is this: "Sometimes, the implicit yardstick for 'real' law is formal legal rationality in the Weberian sense, while at other times it is a liberal legal order that constrains the state in a particular way—a configuration often referred to as 'the rule of law.'" *Id.* at 182.

38. Bryan W. Van Norden, *Introduction*, in CONFUCIUS AND THE ANALECTS, *supra* note 28, at 11.

39. David Hinton, *Introduction to THE ANALECTS [OF] CONFUCIUS* xix (David Hinton trans., 1998) (describing Confucius's role as similar to a minister of justice); LIU WU-CHI, CONFUCIUS, HIS LIFE AND TIME 70, 72, 73-74 (1955) (referring to Confucius as a scholar-magistrate, chief magistrate, and a minister of crime). According to Wu-Chi, "in the heyday of [Confucius's] great power, . . . he became, according to one account, the acting prime minister." *Id.* at 75.

would have thought of so-called "preventive law,"<sup>40</sup> the lawyer-for-the-situation,<sup>41</sup> and their evolving progeny, such as the movement towards mediation as a method of dispute resolution as opposed to purely adversarial litigation.<sup>42</sup>

(9) Professor Joel Kupperman has suggested some major differences between ethics and western philosophy and Confucian ethics. He makes two important suggestions. First, he suggests that western ethics concentrates on "big moments." The idea that western ethics concentrates on big decisions in individual and social life. Correspondingly, western ethics does not concentrate on the ethics of day-to-day life, like how to say "Thank you," graciously and convincingly. Second, Professor Kupperman suggests that western ethical theory conceives ethics as mostly morality, *i.e.*, mostly as the system of standardized, public social rules which govern social conduct. It does not focus on matters of style. In contrast, says Professor Kupperman, Confucian ethics concentrates on the day to day and on matters of style.<sup>43</sup> It seems to me that Professor Kupperman's ideas about what little moment ethics and matters of style have has tremendously important implications for norms of civility in lawyering.

(10) Two of the fundamental axioms of common law jurisprudence are these: (1) That which constitutes a genuine holding of a court is all that is really binding, and (2) Judges decide particular cases, so that binding precedential authority is quite limited. As a result of this tendency in the common law, binding authority for this or that proposition is frequently much thinner than the public often supposes. The fixity, establishedness, embeddedness, or thickness, of the common law as a regulatory system is enhanced by (commercial) custom, and an informal—often unwritten—consensus among elite lawyers as to how the law works and what its content is. Periodically, this consensus is challenged, and occasionally these challenges prevail—often after they have been somewhat undermined by various forms of social and economic change.

40. There is a vast literature on this movement in contemporary law. A good beginning place is the website for the National Center for Preventive Law, which is to be found at [www.preventivelawyer.org](http://www.preventivelawyer.org).

41. LELAND HAZARD, ATTORNEY FOR THE SITUATION (1975).

42. See DENNIS P. STOLLE ET AL., PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (2000).

43. Joel J. Kupperman, *Naturalness Revisited: Why Western Philosophers Should Study Confucius*, in CONFUCIUS AND THE ANALECTS, *supra* note 28, at 39. As nearly as I can make out, treating ethics as morality, is not analogous to treating ethics as an informal legal system. "Big Moment Ethics" is not limited to theories of the right and the good. It is also associated with theories of the wrong and the evil. See RICHARD J. BERNSTEIN, RADICAL EVIL: A PHILOSOPHICAL INTERROGATION (2002); CLAUDIA CARD, THE ATROCITY PARADIGM: A THEORY OF EVIL (2002). See also Susan Neiman, EVIL IN MODERN THOUGHT: AN ALTERNATIVE HISTORY OF PHILOSOPHY (2002) (offering a somewhat more balanced approach, which does not somehow imply that all evil is big). Joel Kupperman has spent a good deal of time trying to integrate western ethical thinking with that of Asia, and his work is quite helpful. See JOEL J. KUPPERMAN, CLASSIC ASIAN PHILOSOPHY 58-75 (2001) (a chapter on Confucius); JOEL J. KUPPERMAN, LEARNING FROM ASIAN PHILOSOPHY (1999).

The common law process which combined written decisions invoking rules with custom and practice strikes the lay public as something of a mystery. Probably, the mystery could be reduced somewhat if the legal consensus were somehow joined to more publicly available conventions, rites, and so forth. Thus, some strains of Confucian thought and the common law of private transactions and disputes fit together quite well.

(11) Many lawyers should take comfort in the fact that Confucius was no great beauty, according to tradition, and he had prominent buck teeth.<sup>44</sup>

---

44. RUSSELL FREEDMAN, *CONFUCIUS: THE GOLDEN RULE* (2002).

Tradition tells us that Confucius was a large man possessed of great physical strength. He has been described as a homely giant with warts on his nose, two long front teeth that protruded over his lower lip, and a wispy beard. What people remembered most, however, wasn't his odd appearance but his undeniable charm.

*Id.* at 6. Freedman's short book is partly a coffee table book and partly a book for youngsters, although they are not like any kids I have ever known—certainly not my own. The book is beautifully illustrated by Frédéric Clément.