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## **“A Scout is Trustworthy”: Applying Virtue Ethics to Lawyer Professionalism.**

Jeff Brown

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# ARTICLE

Justice Jeff Brown

## “A Scout Is Trustworthy”: Applying Virtue Ethics to Lawyer Professionalism

**Abstract.** This Article advocates the employment of the twelve-point Scout Law of the Boy Scouts of America as a professional ethics guide for lawyers. The Article begins by briefly relating the history of virtue ethics as a philosophical field of study and comparing and contrasting it with rule-based ethics. The Article continues with a brief history of the Scout Law. Finally, the Article explores how each of the twelve points of the Scout Law identifies a virtue relevant to the practice of law and how seeking to adhere to these virtues is crucial for attorneys hoping to lead a life of professional excellence.

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## I. INTRODUCTION

In 1958, an article called *Modern Moral Philosophy* by Elisabeth Anscombe appeared in *Philosophy*, the scholarly journal of the Royal Institute of Philosophy.<sup>1</sup> In this influential article, Anscombe criticized both the utilitarianism of John Stuart Mill and Immanuel Kant's categorical imperative and called instead for a return to Aristotelian ethics. In so doing, she ushered in a movement in modern philosophical theory that became known as "virtue ethics."<sup>2</sup>

The reemergence of virtue ethics in the last century sparked a debate in philosophical circles concerning whether virtue ethics or rule ethics provides a more effective system for addressing moral dilemmas.<sup>3</sup> This Article explores the plausibility of applying a virtue-ethics approach to lawyer professionalism,<sup>4</sup> as opposed to focusing exclusively on the rules-

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1. See generally G.E.M. Anscombe, *Modern Moral Philosophy*, 33 *PHILOSOPHY* 1 (1958) (arguing for a departure from moral philosophy, asserting that we should reject the categorization of obligations and duties as moral obligations and duties, and criticizing contemporary notions of moral philosophy developed by English philosophers).

2. NAFSIKA ATHANASSOULIS, *VIRTUE ETHICS* 13–14 (2013) (noting Anscombe's work rejects the value of consequentialism and deontology because the theories do not account for the force of morality and encourages a revival of elements of Aristotelian theory). Deontology and consequentialism completely ignored key topics that should be included in philosophical discussion. ROSALIND HURSTHOUSE, *ON VIRTUE ETHICS* 2–3 (1999). Other examples of neglected ethical concerns are the following: "moral education, moral wisdom or discernment, friendship and family relationships, a deep concept of happiness, the role of the emotions in our moral life, and the questions of what sort of person I should be, and of how we should live." *Id.* at 3.

3. See Robert C. Roberts, *Virtues and Rules*, 51 *PHIL. AND PHENOMENOLOGICAL RES.* 325, 325 & n.1 (1991) ("[W]hile virtues are compatible with rules[,] . . . philosophical reflection on the virtues leads to a richer conception of moral rules than ethics has enjoyed in modern philosophy."); see also P. Gardiner, *A Virtue Ethics Approach to Moral Dilemmas in Medicine*, 29 *J. MED. ETHICS* 297, 301 (2003) (stating "virtue ethics has a number of advantages over" the guiding rules followed by general practitioners).

4. This is not the first attempt to apply virtue ethics to the practice of law. See, e.g., Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 *N.D. L. REV.* 19, 30 (2011) (discussing how "one form[s] the good character necessary to become a virtuous lawyer" and how a "lawyer remain[s] virtuous in the practice of law"); Robert F. Blomquist, *The Pragmatically Virtuous Lawyer?*, 15 *WIDENER L. REV.* 93, 94 (2009) ("[I]t is time for lawyers to return to the ancient philosophical pursuit of Plato and Aristotle, and tradition of other authors . . . who have had an ongoing conversation about the nature and dimensions of worldly virtue."); R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About a Prosecutor's Ethical Duty to "Seek Justice,"* 82 *NOTRE DAME L. REV.* 635, 636 (2006) (focusing on the applicability of virtue ethics to the work of public prosecutors); Marianne M. Jennings, *The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex*, 1 *U. ST. THOMAS L.J.* 995, 996 (2004) (arguing for the return to virtue ethics to create a simple guide for lawyers and business executives in their roles and duties).

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based approach that predominates over legal ethics.<sup>5</sup> Specifically, this Article suggests that in practicing their profession, lawyers should strive to live by the twelve virtues listed in the Boy Scouts of America's "Scout Law."<sup>6</sup> Ultimately, this Article demonstrates how the Scout Law provides lawyers with a simple and useful guide for accomplishing the very goal for which ethical rules are written—"maintain[ing] the highest standards of ethical conduct."<sup>7</sup>

## II. VIRTUE ETHICS: UNDERSTANDING ITS ORIGINS, HOW IT COMPARES TO RULE ETHICS, AND EXAMINING ITS APPLICABILITY TO LEGAL ETHICS

### A. *From Aristotle to Anscombe: A Brief History of Virtue Ethics*

Virtue ethics<sup>8</sup> has its beginnings as a field of philosophy in ancient Greece arising from the teachings of Plato and Aristotle.<sup>9</sup> From that origin,<sup>10</sup> virtue ethics "persisted as the dominant approach in Western

5. See Maria Castilla, Note, *Client Confidentiality and the External Regulation of the Legal Profession: Reporting Requirements in the United States and United Kingdom*, 10 CARDOZO PUB. L. POL'Y & ETHICS J. 321, 331 & n.66 (2012) ("As of September 14, 2011, forty-five states and Washington, D.C. have adopted the revised ABA Model Rules of Professional Conduct.").

6. The following are the twelve points of the Scout Law, as learned by any new Boy Scout: "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent." THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009) (emphasis added). The Girl Scout Law is very similar: "I will do my best to be honest and fair, friendly and helpful, considerate and caring, courageous and strong, and responsible for what I say and do, and to respect myself and others, respect authority, use resources wisely, make the world a better place, and be a sister to every Girl Scout." *Girl Scout Promise and Law*, GIRL SCOUTS OF THE U.S., [http://www.girlscouts.org/program/basics/promise\\_law/](http://www.girlscouts.org/program/basics/promise_law/) (last visited Mar. 27, 2013).

7. TEX. DISCIPLINARY RULES PROF'L CONDUCT Preamble ¶ 1, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2005) (Tex. State Bar R. art. X, § 9).

8. Virtue ethics is an umbrella term "for theories that emphasize the role of character and virtue in moral philosophy rather than either doing one's duty [deontology] or acting in order to bring about good consequences [consequentialism]." See Nafsika Athanassoulis, *Virtue Ethics*, INTERNET ENCYCLOPEDIA OF PHIL., at para. 1 (July 7, 2010), <http://www.iep.utm.edu/virtue/>.

9. See ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 1–2 (1999) (discussing the evolution of virtue ethics); see also David W. Opderbeck, *A Virtue-Centered Approach to the Biotechnology Commons (or, the Virtuous Penguin)*, 59 ME. L. REV. 315, 321–22 (2007) (separating the distinct roles that Plato and Aristotle had in forming the basis of virtue ethics). For example, it was Plato who "enumerated the four 'cardinal' virtues of 'fortitude, temperance, justice[,] and wisdom.'" *Id.* at 321. On the other hand, Aristotle is credited with "develop[ing] the virtues into a practical ethical system." *Id.*

10. Natural law theorists would dispute that virtue ethics originated with the Greeks. They would instead acknowledge that while Plato and Aristotle may have first identified virtue in philosophical terms, the notion that people should live virtuous lives is timeless. Cf. Louis W. Hensler III, *A Modest Reading of St. Thomas Aquinas on the Connection Between Natural Law and Human Law*, 43 CREIGHTON L. REV. 153, 154 (2009) (discussing the "most influential natural law

moral philosophy until at least the Enlightenment.”<sup>11</sup>

Ultimately, Anscombe was among the handful of pioneering philosophers<sup>12</sup> who revived the notion of virtue ethics in the middle of the twentieth century.<sup>13</sup> Today, this ancient approach has been completely restored and virtue ethics “has acquired full status, [and is] recognized as a rival to deontological and utilitarian approaches.”<sup>14</sup>

### B. *How Does Virtue Ethics Differ from Rule Ethics?*

Perhaps the best way to understand virtue ethics is to examine how it differs from the other two ethical approaches. At its most basic, the distinction between virtue ethics on the one hand, and deontology and consequentialism on the other, is the question that one asks when posed with a moral decision. Deontologists and consequentialists both ask,

theorist of all time, . . . St. Thomas Aquinas” and the scope of the natural law he described as commanding every act of virtue). St. Thomas Aquinas, the great thirteenth-century theologian and philosopher, and caretaker of the virtue-ethics tradition in the Dark Ages, taught that “the natural law literally commands, in a sense, every act of virtue and prohibits every vice.” *Id.*; see David W. Opderbeck, *A Virtue-Centered Approach to the Biotechnology Commons (or, the Virtuous Penguin)*, 59 ME. L. REV. 315, 322 (2007) (“Aristotelian virtue ethics were incorporated into Western thought by Aquinas in connection with natural law theory, as part of the ‘Aristotelian synthesis’”); BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 581–82 (2d ed. 1995) (noting the modern prevailing definition of natural law, especially “in legal contexts, is ‘law that determines what is right and wrong and that has power or is valid by nature, inherently, hence everywhere and always’” (quoting Leo Strauss, *Natural Law*, 11 INT’L ENCYCLOPEDIA OF SOC. SCI. 80, 80 (1968))).

11. Rosalind Hursthouse, *Virtue Ethics*, STANFORD ENCYCLOPEDIA OF PHIL., at para. 1 (Mar. 8, 2012), <http://plato.stanford.edu/archives/sum2012/entries/ethics-virtue>; see also PHILIPPA FOOT, VIRTUES AND VICES AND OTHER ESSAYS IN MORAL PHILOSOPHY 1 (Univ. of Cal. Press 1978) (“For many years the subject of the virtues and vices was strangely neglected by moralists working within the school of analytic philosophy.”).

12. See ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 2 (1999) (listing “modern philosophers whom we think of as having put virtue ethics on the map—Anscombe, Foot, Murdoch, Williams, MacIntyre, McDowell, Nussbaum, [and] Slote”).

13. See NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 14 (2013) (discussing how Anscombe’s call for change in moral philosophy would “lead to the development of a group of theories that fall under the term ‘virtue ethics’”). Athanassoulis also credits philosophers Bernard Williams and Alisdair MacIntyre as “instrumental in changing our understanding of moral philosophy” due to their call for virtue-centered ethical theories. Nafsika Athanassoulis, *Virtue Ethics*, INTERNET ENCYCLOPEDIA OF PHIL., at Pt. 1(a) (July 7, 2010), <http://www.iep.utm.edu/virtue/>. See generally BERNARD WILLIAMS, MORALITY: AN INTRODUCTION TO ETHICS 56 (1972) (reasoning that “[Aristotle] makes it clear that since man is man . . . his life cannot solely be devoted to [intellectual inquiry] . . . he must also have a life to which the virtues of character are necessary” but “Aristotle does not . . . provide any account of how the intellectual activities . . . are to be brought into relation to . . . the virtues of character”); ALASDAIR MACINTYRE, AFTER VIRTUE 2 (2d ed. 1984) (arguing that while terms of art describing notions of morality find common uses in contemporary society, their theoretical or practical uses are no longer understood by society).

14. ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 2 (1999).

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“What should I do?”<sup>15</sup> A deontologist will then consult a rule or inquire into what some specific duty requires of him.<sup>16</sup> Meanwhile, a consequentialist—specifically, a utilitarian—will act in an outcome-based fashion to maximize well-being and “do whatever brings about the greatest happiness for the greatest number of people.”<sup>17</sup> The virtue ethicist, however, seeks not what action to take, but instead asks, “How should I live? What kind of person should I be?”<sup>18</sup> For a virtue ethicist, the answer to how one should live is that one should strive to “be a person of good and virtuous character.”<sup>19</sup>

### C. The Applicability of Virtue Ethics in the Legal Profession

Virtue ethics is certainly not without its critics. One of the most common reproaches is often referred to as “the application problem.”<sup>20</sup> Virtue ethics, as many critics maintain, fails to provide action-guidance—it tells one what kind of person he *should* be, but cannot provide a clear answer in response to a specific moral dilemma.<sup>21</sup> After all, “one of the roles of ethical theories is to . . . give us some guidance on what we should do when faced with practical ethical problems.”<sup>22</sup>

Rules, on the other hand, as developed and applied by deontologists and consequentialists, give the decision-maker “clear guidance on what should be done.”<sup>23</sup> As long as one knows the rules, one can apply a set of rules and have straightforward guidance.<sup>24</sup> Facing what appears to be such sure-footed guidance, the principle to act as a virtuous person seems to pale in comparison.<sup>25</sup>

15. NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 16 (2013).

16. See ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 1 (1999) (pointing out that deontology is an approach that emphasizes duties or rules).

17. See NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 16 (2013) (describing the “Greatest Happiness Principle”).

18. *Id.* at 20 (emphasis added).

19. Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N.D. L. Rev. 19, 32 (2011).

20. See Rosalind Hursthouse, *Virtue Ethics*, STANFORD ENCYCLOPEDIA OF PHIL., at Pt. 3(i) (Mar. 8, 2012), <http://plato.stanford.edu/archives/sum2012/entries/ethics-virtue> (noting “the application problem” as one of the major objections to virtue ethics).

21. See *id.* (discussing the “complaint that virtue ethics does not produce codifiable principles is still a commonly voiced criticism of the approach, expressed as the objection that it is, in principle, unable to provide action-guidance”).

22. NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 15 (2013).

23. See *id.* at 19 (examining both the advantages and the disadvantages of a rigid set of rules).

24. See *id.* (emphasizing that as long as individuals can reference certain rules, they should be able to apply them to the circumstances faced and be properly guided by them).

25. See *id.* at 77 (discussing the actions of a virtuous person to do the right thing).

However, the application problem coin has two sides. Aristotle warned that ethics are imprecise, and “[i]f you investigate an imprecise subject matter, you should expect to arrive at an imprecise answer.”<sup>26</sup> Because rules are inflexible, they cannot “ever capture the variety and diversity of ethics.”<sup>27</sup> This concept is known as the “uncodifiability of ethics thesis”<sup>28</sup>—the idea that ethics cannot be captured in “a set of clear and incontestable rules.”<sup>29</sup>

In their book, *Practical Wisdom: The Right Way to Do the Right Thing*,<sup>30</sup> Barry Schwartz and Kenneth Sharpe confront the uncodifiability issue head-on.<sup>31</sup> Their thesis is that society today has become too reliant on rules as a guide for behavior, and that we need to return to Aristotelian virtues—in particular, the virtue of “practical wisdom.”<sup>32</sup> According to Schwartz and Sharpe, “Good rules might be useful as guides . . . but they will never be subtle enough and nuanced enough to apply in every situation.”<sup>33</sup> Thus, rules are insufficient.

Most experienced practitioners know that rules only take them so far. Rules can’t tell practitioners how to do the constant interpretation and balancing that is part of their everyday work. Consider the doctor who has been well educated in the rules of how to practice medicine but is constantly called on to make more complicated decisions . . . .

Doctors—and teachers attempting to teach *and* inspire, or lawyers attempting to provide proper counsel *and* serve justice—are not puzzling over a choice between the “right” thing and the “wrong” thing. The common quandaries they face are choices among right things that clash, or between better and best, or sometimes between bad and worse.<sup>34</sup>

The practical wisdom that Schwartz and Sharpe call for a return to is the same Aristotelian virtue Professor Anthony Kronman identifies as the

26. *Id.* at 15.

27. *Id.* at 18 (establishing the idea that rules may be too rigid and simplistic to properly comprehend the complexities of a given moral dilemma).

28. Nafsika Athanassoulis, *Virtue Ethics*, INTERNET ENCYCLOPEDIA OF PHIL., at Pt. 2(c) (July 7, 2010), <http://www.iep.utm.edu/virtue/>.

29. See NAFSIKA ATHANASSOULIS, *VIRTUE ETHICS* 15, 18–19 (2013) (analyzing the imprecise nature of virtue ethics).

30. BARRY SCHWARTZ & KENNETH SHARPE, *PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING* (2010).

31. See *id.* at 10 (“This book is about the urgency of making ourselves more practically wise and about the importance of institutional change if we are to learn how to do that.”).

32. See *id.* at 4–12 (explaining the need for society to build upon established, codified rules by adopting a series of virtuous traits—especially “practical wisdom”—in making everyday decisions).

33. *Id.* at 7.

34. *Id.* at 6–7.



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essential element of a seemingly lost ideal—“the lawyer-statesman.”<sup>35</sup> In his book, *The Lost Lawyer*,<sup>36</sup> Kronman paints the picture of a nineteenth-century lawyer, possessed with “exceptional persuasive powers, devoted to the public good,” admired by lawyers of that time “as a standard of professional excellence” and a model they invoked “when they wanted to express, in concrete terms, their common aspirations.”<sup>37</sup>

Preeminent among these [traits of the lawyer-statesman] was the trait of prudence or practical wisdom, which even today we view as a quality of character. When we attribute good judgment to a person, we imply more than that he has broad knowledge and a quick intelligence. We mean also to suggest that he shows a certain calmness in his deliberations, together with a balanced sympathy toward the various concerns of which his situation (or the situation of his client) requires that he take account. These are qualities as much of feeling as of thought. They are qualities of character, and the role they play in the trait we call good judgment is an essentially important one. . . . The classical portrait of the lawyer-statesman as a person of good judgment carried a similar implication, and when those who eulogized him praised his practical wisdom, they meant to praise more than just his learned understanding of the law’s arcane requirements. They meant also to commend his character and to suggest that the lawyer-statesman’s professional standing is as much to be explained by who he is as what he knows. They meant to praise him for his virtue . . . .<sup>38</sup>

### III. THE SCOUT LAW AS A SYSTEM OF LAWYERLY VIRTUES

#### A. *Choosing Specific Virtues to Govern Ethical Decisions*

Assuming that we should apply a virtue-ethics approach to lawyer ethics, the question then becomes—what virtues should we use? Schwartz, Sharpe, and Kronman identified practical wisdom, but there are certainly others. The ancient Greeks identified four “cardinal virtues,” and other philosophers have identified several other worthy contenders.<sup>39</sup> But

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35. See ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 11–17 (1993) (summarizing the idea of the “lawyer-statesman” and the importance of it possessing the virtue of wisdom).

36. *Id.*

37. *Id.* at 12.

38. *Id.* at 15–16.

39. The ancient Greek philosophers gave us the “cardinal virtues” of prudence, courage, temperance, and justice to add to the theological virtues of faith, hope, and charity. See P. Gardiner, *A Virtue Ethics Approach to Moral Dilemmas in Medicine*, 29 *J. MED. ETHICS* 297, 298 (2003) (identifying a wide variety of virtues developed by Greek philosophers, theologians, medical practitioners, and modern philosophers throughout the years). Professor André Comte-Sponville of

Reverend William A. Lawson—pastor emeritus of Wheeler Avenue Baptist Church in Houston, Texas—suggested a list of virtues compiled not by a philosopher, but by a British military officer.<sup>40</sup> At a conference of state-court trial judges in Austin, Texas, Reverend Lawson gave a lunchtime talk on professional ethics for lawyers. His thesis was simple: the only ethical guide any attorney or businessperson should require is the twelve-point Scout Law of the Boy Scouts of America.<sup>41</sup>

### B. *Scout Law*

Lord Robert Baden-Powell, a lieutenant general in the British Army, founded the Boy Scout movement in 1908 with the publication of his book, *Scouting for Boys*.<sup>42</sup> The book contained the first version of the Scout Law, which Baden-Powell drew from the Samurai Bushido code, the European code of chivalry, and honor codes evident in the cultures of both American Indians and the Zulu warriors of South Africa.<sup>43</sup> Boy Scouting

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the Sorbonne, on the other hand, lists eighteen virtues: politeness, fidelity, prudence, temperance, courage, justice, generosity, compassion, mercy, gratitude, humility, simplicity, tolerance, purity, gentleness, good faith, humor, and love. See generally ANDRÉ COMTE-SPONVILLE, A SMALL TREATISE ON THE GREAT VIRTUES (1st Am. ed. 2002) (1996) (outlining numerous philosophical virtues useful to possess in life).

40. See generally *About Us: Reverend William A. Lawson*, WHEELER AVENUE BAPTIST CHURCH, [http://www.wheeleravebc.org/about\\_us/bio\\_lawson.html](http://www.wheeleravebc.org/about_us/bio_lawson.html) (last visited May 8, 2013) (addressing the life and achievements of Reverend William A. Lawson); Tyler White, *Houston Civil Rights Leader Reflects on Time with MLK*, MYWESTTEXAS.COM (Jan. 20, 2013, 8:45 PM), [http://www.mywesttexas.com/top\\_stories/article\\_be11e43d-a363-5841-b971-f388c1d27d58.html](http://www.mywesttexas.com/top_stories/article_be11e43d-a363-5841-b971-f388c1d27d58.html) (recognizing the relationship between Lawson and MLK and the virtues that both men strived to live by); *Rev. Bill Lawson*, HISTORY MAKERS (May 11, 2010), <http://www.thehistorymakers.com/biography/rev-bill-lawson-41> (discussing Lawson's association with the Boy Scouts of America).

41. See generally AMERICAN CIVIL LIBERTIES UNION OF TEXAS, ANNUAL MEETING PROGRAM 2–3 (Nov. 5–6, 2011), available at <http://aclutx.org/documents/ammprogram.pdf> (noting Reverend Lawson as the keynote speaker for the annual membership meeting of the American Civil Liberties Union of Texas and providing a short biography).

42. David C. Scott, *The Origins of the Scout Law: Part 1*, INT'L SCOUTING COLLECTORS ASS'N J., June 2007, at 37, 37 (acknowledging that General Robert Baden-Powell “officially launched Scouting in 1908”).

43. See *id.* at 37 (citing ROBERT BADEN-POWELL, SCOUTING FOR BOYS 48 (1909)) (pointing to what Baden-Powell thought aided his development of the points of Scout Law); see also MICHAEL ROSENTHAL, THE CHARACTER FACTORY: BADEN-POWELL AND THE ORIGINS OF THE BOY SCOUT MOVEMENT 108–12 (1986) (noting that “the earliest form of law and oath . . . appeared in the first edition of *Scouting for Boys* (1908)” and reproducing it with commentary regarding the origins of Scout Law). Baden-Powell's friendship with Rudyard Kipling may have provided an additional inspiration for the Scout Law. See David C. Scott, *The Origins of the Scout Law: Part 1*, INT'L SCOUTING COLLECTORS ASS'N J., June 2007, at 37, 37 (mentioning a friendship “with the writer Rudyard Kipling may also be relevant since his [*Jungle Book*] encouraged all to obey the ‘Laws of the Jungle’”).

came to the United States in 1910,<sup>44</sup> and the Boy Scouts of America's version of the Scout Law has remained unchanged since 1911.<sup>45</sup>

Virtue ethics is about building character,<sup>46</sup> and building character is the primary aim of Scouting.<sup>47</sup> The character traits that Scouting aspires to instill in its members are contained in the precepts of the Scout Oath and the Scout Law.<sup>48</sup> The following are the twelve points of the Scout Law, as learned by any new Boy Scout: "*A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent.*"<sup>49</sup> The remainder of this Article focuses on how each one of these points, or virtues, serves as a resource for the ethical practice of law. To demonstrate each point's relevance, this Article explains how practicing each one of the twelve virtues will simultaneously lead a lawyer toward compliance with the Texas Disciplinary Rules of Professional Conduct<sup>50</sup> and the Texas Lawyer's Creed.<sup>51</sup>

44. See David C. Scott, *The Origins of the Scout Law: Part 1*, INT'L SCOUTING COLLECTORS ASS'N J., June 2007, at 37, 38 (recognizing the Boy Scouts of America was incorporated in Washington, D.C., in 1910).

45. See, e.g., David C. Scott, *The Origins of the Scout Law: Part 2*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 22, 23–26 (demonstrating the Scout Law has only experienced small changes since its inception in 1911).

46. See NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 53–55, 76–78 (2013) (discussing the basics of the theory of virtue ethics and the important aspect of applying the school of thought to one's life in order to build character and make better moral decisions).

47. See THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 15 (12th ed. 2009) ("The mission of the Boy Scouts of America is to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Scout Law.").

48. *Id.* at 15. The Scout Oath or Promise includes a promise to follow the Scout Law:

On my honor I will do my best  
To do my duty to God and my country  
and to obey the Scout Law;  
To help other people at all times;  
To keep myself physically strong,  
mentally awake, and morally straight.

*Id.* at 22.

49. *Id.* at 24 (emphasis added). The Girl Scout Law is very similar: "I will do my best to be honest and fair, friendly and helpful, considerate and caring, courageous and strong, and responsible for what I say and do, and to respect myself and others, respect authority, use resources wisely, make the world a better place, and be a sister to every Girl Scout." *Girl Scout Promise and Law*, GIRL SCOUTS OF THE U.S., [http://www.girlscouts.org/program/basics/promise\\_law/](http://www.girlscouts.org/program/basics/promise_law/) (last visited May 8, 2013).

50. The Texas Disciplinary Rules of Professional Conduct were adopted on October 17, 1989, and became effective on January 1, 1990. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01–.15.

51. The Texas Lawyer's Creed was adopted by the Supreme Court of Texas and the Court of Criminal Appeals on November 7, 1989, in an effort to eliminate "abusive tactics" practiced by "a

1. "A Scout Is Trustworthy."

"A Scout is trustworthy. A Scout tells the truth. He is honest, and he keeps his promises. People can depend on him."<sup>52</sup> Trustworthiness is a synonym for integrity,<sup>53</sup> and integrity has been suggested as "the unifying virtue for the practice of law."<sup>54</sup> Integrity implies stability and predictability in character, which narrates an individual's life. Thus, a person with integrity can be depended on to act in a reliable manner and be constant and true.<sup>55</sup> The Texas Lawyer's Creed calls lawyers to act with integrity: "A lawyer owes to the administration of justice personal dignity, integrity, and independence."<sup>56</sup> Ultimately, because a lawyer is "passionately proud of [the] profession," he should adhere to the notion that, "My word is my bond."<sup>57</sup>

Persons who must be able to rely on the integrity of lawyers fall into five categories: (1) clients;<sup>58</sup> (2) courts;<sup>59</sup> (3) non-clients;<sup>60</sup> (4) other

minority of lawyers" ranging from "lack of civility to outright hostility and obstructionism." THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012).

52. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

53. WILLIAM C. BURTON, LEGAL THESAURUS 291 (2d ed. 1992).

54. Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N.D. L. REV. 19, 38 (2011).

55. *See id.* at 46 (emphasizing the importance of integrity in the legal profession).

56. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012).

57. *Id.*

58. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01–.15 (governing the relationship between lawyers and their clients). The disciplinary rules illustrate how clients must rely on attorneys. For example, Rule 1.01 discusses the importance of "Competent and Diligent Representation," and provides that attorneys "shall not accept or continue employment which the lawyer knows or should know is beyond the lawyer's competence." *Id.* R. 1.01(a). Furthermore, the Rule mandates attorneys must diligently perform tasks, and should take caution not to: "(1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients." *Id.* R. 1.01(b)(1)–(2).

59. *See id.* R. 3.03 (governing "Candor Toward the Tribunal"). This rule emphasizes the crucial role of honesty in court proceedings and specifically cautions that lawyers should avoid deceiving the court. *Id.* Additionally, the Texas Lawyer's Creed states: "A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism." THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012).

60. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 4.01–.04 (governing relationships with non-clients). The ethics rules clarify that a lawyer's duties do not simply extend to the client and the court, but also apply to third parties. *See, e.g., id.* R. 4.01 (providing attorneys should refrain from "mak[ing] a false statement of material fact or law to a third person" and disclosure of material facts is mandatory to third persons "when disclosure is necessary to avoid making the lawyer a party

lawyers;<sup>61</sup> and (5) the public at large. In his description of the lawyer-statesman, Kronman addressed the fifth category—the idea that society itself must be able to place its trust in lawyers.<sup>62</sup>

The outstanding lawyer, as this ideal presents him, is, to begin with, a devoted citizen. He cares about the public good and is prepared to sacrifice his own well-being for it, unlike those who use the law merely to advance their private ends. The spirit of citizenship that sets the lawyer-statesman apart from the purely self-interested practitioner of law can to that extent be understood in motivational terms. But it is not only his motives that make him a better citizen than most. He is distinguished, too, by his special talent for discovering where the public good lies and for fashioning those arrangements needed to secure it. The lawyer-statesman is a leader in the realm of public life, and other citizens look to him for guidance and advice, as do his private clients.<sup>63</sup>

The ethics rules also make note of this essential duty of lawyers:

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.<sup>64</sup>

It is not accidental that trustworthiness is the first point of the Scout Law. Baden-Powell's first version of the Scout Law, published in 1908, stated as its first point that "[a] Scout's honour is to be trusted."<sup>65</sup> Just as integrity has been called "the unifying virtue for the practice of law,"<sup>66</sup>

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to a criminal act").

61. See THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), reprinted in TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012) ("A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings.").

62. See ANTHONY KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 11–17 (1993) (describing the "lawyer-statesman" ideal).

63. *Id.* at 14–15. Kronman's lawyer-statesman ideal is an excellent example of the application of virtue ethics to the legal profession: "The ideal of the lawyer-statesman was an ideal of character. This meant that as one moved toward it, one became not just an accomplished technician but a distinctive and estimable type of human being—a person of practical wisdom." *Id.* at 16–17. Russell Kirk notes that today the very meaning of the word "virtue" strongly suggests the notion of "public leadership." Russell Kirk, *Foreword* to PETER KREEFT, BACK TO VIRTUE 5, 9–10 (1992).

64. TEX. DISCIPLINARY RULES PROF'L CONDUCT Preamble ¶ 1.

65. David C. Scott, *The Origins of the Scout Law: Part 2*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 22, 22 (quoting ROBERT BADEN-POWELL, SCOUTING FOR BOYS 49–51 (1908)).

66. Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human*

trustworthiness is the linchpin of a Scout's character. Baden-Powell's first Scout handbook described trustworthiness this way:

If a scout says, "On my honour it is so," that means that it *is* so, just as if he had taken a most solemn oath. Similarly, if a scout officer says to a scout, "I trust you on your honour to do this," the scout is bound to carry out the order to the very best of his ability, and to let nothing interfere with his doing so. If a scout were to break his honour by telling a lie, or by not carrying out an order exactly when trusted on his honour to do so, he would cease to be a scout, and must hand over his scout badge, and never be allowed to wear it again—he loses his life.<sup>67</sup>

Baden-Powell took an admittedly draconian approach to trustworthiness. Yet, attorneys should strive to be just as unyielding: "The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness."<sup>68</sup>

## 2. "A Scout Is Loyal."

"A Scout is loyal. A Scout is loyal to those to whom loyalty is due."<sup>69</sup> Of course, "loyalty is an essential element" of lawyer ethics.<sup>70</sup> A lawyer's fiduciary duties to clients are divided into two categories: (1) duties of competence and diligence; and (2) duties of loyalty.<sup>71</sup> Yet, it is interesting how the Texas Lawyer's Creed addresses loyalty: "I will be loyal and committed to my client's lawful objectives, *but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.*"<sup>72</sup>

Thus, a lawyer owes his client not blind loyalty, but a loyalty that

*Flourishing in a Legal Community*, 87 N.D. L. REV. 19, 38 (2011).

67. David C. Scott, *The Origins of the Scout Law: Part 2*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 22, 22 (quoting ROBERT BADEN-POWELL, SCOUTING FOR BOYS 49 (1908)). It is presumed that the Scout would only metaphorically lose his life—his life as a Scout.

68. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), reprinted in TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012).

69. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

70. See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.06 cmt. 1 ("Loyalty is an essential element in the lawyer's relationship to a client.").

71. See Sande Buhai, *Lawyers As Fiduciaries*, 53 ST. LOUIS U. L.J. 553, 554–55 (2009) (warning "that the lawyer's role as fiduciary has been inappropriately deemphasized in the consideration of legal ethical questions"). "The Model Rules are designed primarily to govern disciplinary proceedings. They should not be read to authorize or insulate from liability actions not explicitly prohibited." *Id.* at 554.

72. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), reprinted in TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012) (emphasis added).

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requires frank advice developed after careful deliberation.<sup>73</sup> In his famous “Speech to the Electors of Bristol” in 1774, British statesman Edmund Burke described that particular kind of loyalty. Burke was speaking of a Parliament member’s duty to his constituents, but it translates well to the loyalty a lawyer owes his client:

[I]t ought to be the happiness and glory of a representative, to live in . . . the most unreserved communication with his constituents. . . . It is his duty . . . above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. . . . They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.<sup>74</sup>

The Texas Disciplinary Rules put it this way:

A client is entitled to straightforward advice expressing the lawyer’s honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. . . . However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.<sup>75</sup>

The film producer Samuel Goldwyn once said, “I’ll take fifty percent efficiency to get one hundred percent loyalty.”<sup>76</sup> President Harry S. Truman similarly sniped, “If you want a friend in Washington, get a dog.”<sup>77</sup> Loyalty is a valuable commodity, and like many valuable commodities, its rarity renders it even more deeply cherished. To a client who trusts so much to his lawyer, loyalty is indispensable.

### 3. “A Scout Is Helpful.”

“A Scout cares about other people. He helps others without expecting payment or reward. He fulfills his duties to his family by helping at

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73. See TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.02 (providing situations that illustrate when a lawyer’s ethical duties can conflict with the client’s behavior or requests). “When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer’s conduct.” *Id.* R. 1.02(f).

74. EDMUND BURKE, THE WORKS OF EDMUND BURKE: WITH A MEMOIR—VOL. 1, at 221 (Harper & Brothers 1860).

75. TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 2.01 cmt. 1.

76. ROBERT ANDREWS, THE COLUMBIA DICTIONARY OF QUOTATIONS 550 (1993).

77. CARL SFERRAZZA ANTHONY, AMERICA’S FIRST FAMILIES 250 (2000).

home.”<sup>78</sup> The application of this point to the legal profession quickly calls to mind a lawyer’s pro bono obligation.

Every lawyer, regardless of professional prominence or professional workload, should find time to participate or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally.<sup>79</sup>

While some states mandate lawyers provide a certain amount of services pro bono, Texas does not.<sup>80</sup> Nevertheless, the State Bar of Texas adopted a pro bono policy in 2000, “which establishes an aspirational goal of [fifty] hours of pro bono legal services to the poor for each Texas attorney.”<sup>81</sup>

The need is almost overwhelming. According to the Texas Access to Justice Commission, “there are more than [6] million people [in Texas] who qualify for legal aid,” but there is “only one legal aid lawyer for every 11,512 Texans who qualify.”<sup>82</sup> In addition, “[d]ue to a lack of resources, only about 20–25 percent of the civil legal needs of low-income and poor Texans are being met.”<sup>83</sup> Legal aid lawyers cannot handle the demand by themselves. As lawyers, we believe and understand that the rule of law and access to the courts are essential to the American way of life.<sup>84</sup> Should these advantages be available to only those who can afford them?<sup>85</sup>

78. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

79. TEX. DISCIPLINARY RULES PROF'L CONDUCT Preamble ¶ 6. The rules also provide that “[a] lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf.” *Id.* Preamble ¶ 5.

80. See *State Bar of Texas Pro Bono Policy—FAQs 2009*, STATE BAR OF TEX., <http://www.texasbar.com/Content/NavigationMenu/LawyersGivingBack/LegalAccessDivision/ProBonoPolicyFAQ2009.pdf> (last visited May 8, 2013) (clarifying that pro bono work is encouraged, but not required).

81. See *id.* (providing more details about what qualifies as pro bono services, why these services are needed in Texas, and reiterating that attorneys will not be disciplined if they fail to complete the hours).

82. *Facts & Figures*, TEX. ACCESS TO JUSTICE COMMISSION, <http://www.texasatj.org/facts> (last visited May 8, 2013).

83. *Id.*

84. See *id.* (recognizing access to courts is crucial to ensure justice, so “Texas attorneys donate financial resources and provide pro bono and reduced rate services to address the need”). Unfortunately, pro bono hours and reduced rates are not enough to provide all Americans with access to the courts. “For every one person helped by legal aid, a qualifying individual is turned away.” *Id.*

85. The importance of giving back to the community is not a new principle. Aristotle observed, “A citizen who contributes nothing of value to the common stock is not held in honour, for the common property is given to those who benefit the community, and honour is a part of the common property.” ARISTOTLE, NICOMACHEAN ETHICS bk. VIII, at 226 (Harris Rackham trans.,



## 4. "A Scout Is Friendly."

"A Scout is friendly. A Scout is a friend to all. He is a brother to other Scouts. He offers his friendship to people of all races, religions, and nations, and respects them even if their beliefs and customs are different from his own."<sup>86</sup> Including friendliness in a list of virtues may seem odd. However, as we have learned, living a life of virtue is an attempt to live well,<sup>87</sup> and many would say friendship is essential to living the good life.<sup>88</sup> As C.S. Lewis said, "Friendship is unnecessary, like philosophy, like art . . . . It has no survival value; rather it is one of those things that give value to survival."<sup>89</sup>

The law is a collegial profession, so it would seem that living up to this particular virtue would not be difficult for lawyers. The Scout Law, however, does not limit its call to friendliness to just those with whom we have a natural affinity. Instead, a Scout is expected to be "a friend to all," even to those with "beliefs and customs [that] are different from his own."<sup>90</sup> It is reminiscent of Jesus's command from the Sermon on the Mount to "love your enemies":

You have heard that it was said, "Love your neighbor and hate your enemy." But I tell you: Love your enemies. . . . If you love those who love you, what reward will you get? Are not even the tax collectors doing that? And if you greet only your own people, what are you doing more than others? Do not even pagans do that?<sup>91</sup>

Abraham Lincoln described it more succinctly: "Am I not destroying my enemies when I make friends of them?"<sup>92</sup>

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Wordsworth ed. 1996) (c. 384 B.C.E.).

86. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

87. See ARISTOTLE, NICOMACHEAN ETHICS bk. I, at 14 (Harris Rackham trans., Wordsworth ed. 1996) (c. 384 B.C.E.) (equating happiness with living a "good life or doing well").

88. See, e.g., *id.* bk. VIII, at 205 (categorizing friendship as a virtue that is "one of the most indispensable requirements of life."). The benefits of friendship make life worth living, and Aristotle posits that neither age nor financial well-being can diminish the importance of friendship. *Id.*

89. C.S. LEWIS, THE FOUR LOVES 71 (Houghton Mifflin Harcourt 1991) (1960).

90. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

91. *Matthew* 5: 43–44, 46–47 (New International Version). The Lawyer's Creed alludes to another principle of the Sermon on the Mount—the command to turn the other cheek: "A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct." THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), reprinted in TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012); see *Matthew* 5:38–39 (New International Version) ("You have heard that it was said, 'Eye for eye, and tooth for tooth.' But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also.").

92. ROD MARTIN, FUTURE POETS: HELP FOR ASPIRING WRITERS 60 (2011).

The Texas Lawyer's Creed mandates that lawyers should be friendly even when their clients are not:

I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel. . . . Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel.<sup>93</sup>

Much of what is expected of lawyers regarding friendliness toward opposing counsel is just common courtesy, which leads to the next point of the Scout Law.

5. "A Scout Is Courteous."

"A Scout is polite to people of all ages and positions. He understands that using good manners makes it easier for people to get along."<sup>94</sup> Applying this virtue to legal ethics, perhaps it is no coincidence that "[t]he term 'courtesy' derives from the word 'court.'"<sup>95</sup> The Texas Lawyer's Creed can be boiled down to a plea for simple professional courtesy and an agreement to disagree:

"I will be courteous, civil, and prompt in oral and written communications."<sup>96</sup>

"I will advise my client that civility and courtesy are expected and are not a sign of weakness."<sup>97</sup>

"I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by

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93. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012). The Creed also maintains that "[a] lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings." *Id.*

94. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009).

95. *See* DONALD DEMARCO, THE HEART OF VIRTUE: LESSONS FROM LIFE AND LITERATURE ILLUSTRATING THE BEAUTY AND VALUE OF MORAL CHARACTER 49 (1996) (providing the etymology for "courtesy"). Historically speaking, a courteous person "behaves in a manner befitting a prince." *Id.*

96. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012).

97. *Id.*

me."<sup>98</sup>

At first glance, such professional courtesy may seem impractical in the middle of heated litigation. However, it is precisely these "small kindnesses and seemingly trivial considerations that . . . can provide the gateway to firm and enduring friendships, and they can also provide the world with much needed warmth and wit."<sup>99</sup>

But is courtesy truly a virtue? André Comte-Sponville, a professor of philosophy at the Sorbonne, maintains it is not:

There is more to life than good manners; and politeness is not morality . . . .

Politeness is not a virtue but a quality, and a purely formal one at that. Taken on its own, it is secondary, negligible, nearly insignificant; next to virtue or intelligence it is nothing . . . . It is quite clear, however, that intelligent, virtuous persons are not exempt from its obligations.<sup>100</sup>

Yet if politeness is but a quality, why does Comte-Sponville list it as one of "the great virtues"? Indeed, he marks it as the first on a list of eighteen.<sup>101</sup> Comte-Sponville answers the question directly: "But why is politeness the *first*? The priority I have in mind is not cardinal but temporal: politeness comes before the other virtues in the sense that it serves as a foundation for the moral development of the individual."<sup>102</sup> Comte-Sponville explains that we teach manners and courtesy to children because they do not yet have the faculties to make moral judgments for themselves.<sup>103</sup> Thus, we teach them the "right" way to behave.

Don't say bad words; don't interrupt people; don't shove; don't steal; don't lie. To the child, all these prohibitions appear identical ("It's not nice"). The distinction between the ethical and aesthetic will come only later, and gradually. Politeness thus precedes morality, or rather, morality at first is nothing more than politeness: a compliance with usage and its established rules, with the normative play of appearances—a compliance with the world and the ways of the world.<sup>104</sup>

98. *Id.* at 867.

99. DONALD DEMARCO, THE HEART OF VIRTUE: LESSONS FROM LIFE AND LITERATURE ILLUSTRATING THE BEAUTY AND VALUE OF MORAL CHARACTER 52 (1996).

100. ANDRÉ COMTE-SPONVILLE, A SMALL TREATISE ON THE GREAT VIRTUES 14 (Catherine Temerson trans., Metropolitan Books 2001) (1996).

101. *See id.* at ix–x (listing the eighteen virtues in the following order: politeness, fidelity, prudence, temperance, courage, justice, generosity, compassion, mercy, gratitude, humility, simplicity, tolerance, purity, gentleness, good faith, humor, and love).

102. *Id.* at 9.

103. *Id.*

104. *Id.* at 9–10.

Comte-Sponville downplays the role of courtesy as a mere training ground for learning the other virtues; hundreds of years earlier, however, Thomas Hobbes saw it differently. In his treatise *De Cive*,<sup>105</sup> Hobbes reflects on the importance of good manners.<sup>106</sup> Unlike Comte-Sponville, who views courtesy as “purely formal” and “nearly insignificant,”<sup>107</sup> Hobbes elevates the significance of courtesy by explaining its purpose. Though manners may seem purely formal, they are actually responsible for “promot[ing] peace and unity.”<sup>108</sup> Their importance, therefore, “is not found in the way they protect us against petty annoyance,” but in “their contribution to peace.”<sup>109</sup>

#### 6. “A Scout Is Kind.”

“A Scout is kind. A Scout treats others as he wants to be treated. He knows there is strength in being gentle. He does not harm or kill any living thing without good reason.”<sup>110</sup> The class of kindness to which the Scout Law seems to refer concerns how one treats those over whom he wields power. The notion that “there is strength in being gentle” brings to mind Robert E. Lee’s description of a true gentleman:

The forbearing use of power . . . is a test of a *true gentleman*. The power which the strong have over the weak, the magistrate over the citizen, the employer over the employed, the educated over the unlettered, the experienced over the confiding, even the clever over the silly—the forbearing and inoffensive use of all this power or authority . . . will show

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105. THOMAS HOBBS, *DE CIVE* (Howard Warrender ed., Oxford: Clarendon Press 1983) (1691).

106. *See id.* at 75 (commenting on the nature of courtesy). Specifically, Hobbes stated the following:

Reason declaring Peace to be good, it followes by the same reason, that all the necessary means to Peace be good also, and therefore, that Modesty, Equity, Trust, Humanity, Mercy (which we have demonstrated to be necessary to Peace) are good Manners, or habits, (that is) Vertues. The Law therefore, in the means to Peace, commands also Good Manners, or the practise of Vertue: And therefore it is call'd *Morall*.

*Id.*

107. ANDRÉ COMTE-SPONVILLE, *A SMALL TREATISE ON THE GREAT VIRTUES* 14 (Catherine Temerson trans., Metropolitan Books 2001) (1996).

108. Peter Johnson, *Hobbes on Human Nature and the Necessity of Manners*, 3 *ANGELAKI: J. OF THEORETICAL HUMANITIES* 67, 68 (1998).

109. *Id.* Johnson goes on to note that “in terms of Hobbes’ ethical assumptions [manners] are serious matters.” *Id.*

110. *THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE* 24 (12th ed. 2009). The second sentence of the Handbook’s description of kindness brings to mind the Golden Rule: “So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.” *Matthew* 7:12 (New International Version).

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the gentleman in a plain light. . . . *A true man of honor feels humbled himself when he cannot help humbling others.*<sup>111</sup>

When it comes to wielding power, nothing compares to the power a lawyer holds over a witness on the stand. The Texas Lawyer’s Creed suggests the appropriate action under such circumstances: “I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.”<sup>112</sup>

A virtuous lawyer recognizes that there is strength in kindness, which can be mistaken for weakness. Mark Twain observed, “Kindness is the language which the deaf can hear and the blind can see.”<sup>113</sup> Along the same lines, the Dalai Lama professed, “My religion is very simple. My religion is kindness.”<sup>114</sup> The practice of law would be much improved with the employment of just this single virtue.

#### 7. “A Scout Is Obedient.”

“A Scout is obedient. A Scout follows the rules of his family, school, and troop. He obeys the laws of his community and country. If he thinks these rules and laws are unfair, he seeks to have them changed in an orderly way.”<sup>115</sup> Theodore Roosevelt wisely stated, “No man is above the law and no man is below it.”<sup>116</sup> As lawyers, it is incumbent on us to be followers of the law as well as stewards of the rule of law.

A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. . . . A lawyer should demonstrate respect for the legal system and for those who serve it . . . . While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.<sup>117</sup>

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111. MICHAEL FELLMAN, *THE MAKING OF ROBERT E. LEE* 8 (Johns Hopkins Univ. Press 2003).

112. *THE TEXAS LAWYER’S CREED—A MANDATE FOR PROFESSIONALISM* (1989), reprinted in *TEXAS RULES OF COURT: VOLUME 1—STATE* 866 (West 2012).

113. JOHN P. HOLMS & KARIN BAJI, *BITE-SIZE TWAIN: WIT AND WISDOM FROM THE LEGENDARY LEGEND* 16 (1998).

114. SUSAN SMITH JONES, *THE JOY FACTOR: 10 SACRED PRACTICES FOR RADIANT HEALTH* 29 (2011).

115. *THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE* 25 (12th ed. 2009).

116. DONALD J. DAVIDSON, *THE WISDOM OF THEODORE ROOSEVELT* 45 (Citadel Press Books 2003).

117. TEX. DISCIPLINARY RULES PROF’L CONDUCT Preamble ¶ 4.

The Texas Lawyer's Creed calls on attorneys to act in accordance with the law in both their professional roles and their private lives. Commentators have observed that lawyers who believe they can adopt one character for their work lives and another character at home are dangerously naive.<sup>118</sup>

It is a delusion . . . to think that [lawyers] can separate their personal from their professional lives and their personal from their professional morality. . . . You cannot be a bad person and a good lawyer, nor can you be a good person and a lawyer with sharp practices.<sup>119</sup>

Atticus Finch, the hero of *To Kill a Mockingbird*, succinctly expressed the notion of obedience when he stated, "I can't live one way in town and another in my home."<sup>120</sup>

#### 8. "A Scout Is Cheerful."

"A Scout is cheerful. A Scout looks for the bright side of life. He cheerfully does tasks that come his way and tries his best to make others happy, too."<sup>121</sup>

Comte-Sponville characterizes cheerfulness as an essential virtue: "Taking oneself completely seriously is always a fault. Humor prevents us from doing so and, beyond the pleasure it affords us, is valued for that reason."<sup>122</sup> But there are deeper reasons for believing cheerfulness to be a virtuous goal.

In his book *Happiness Is a Serious Problem: A Human Nature Repair Manual*,<sup>123</sup> radio talk-show host Dennis Prager makes the case for happiness as a virtue. The first chapter is entitled, "Happiness Is a Moral

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118. See, e.g., Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N.D. L. REV. 19, 28–30 (2011) (concluding virtuous character "withers in the face of repeated professional actions inconsistent with good and sound moral convictions"); Daniel R. Coquillette, *Professionalism: The Deep Theory*, 72 N.C. L. REV. 1271, 1272 (1994) (asserting the importance of swearing to a professional oath and maintaining high standards in both one's professional and personal life). After all, "[a] lawyer who behaves like a jerk in court is not an 'aggressive advocate' with an 'assertive strategy,' but a jerk." *Id.*

119. *Id.*

120. HARPER LEE, *TO KILL A MOCKINGBIRD* 315 (HarperCollins 1999) (1960); see also *id.* at 227 (describing Finch's daughter, Scout, recalling a neighbor's description of her father: "He's the same in the courtroom as he is on the public streets").

121. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 25 (12th ed. 2009).

122. ANDRÉ COMTE-SPONVILLE, *A SMALL TREATISE ON THE GREAT VIRTUES* 211 (Catherine Temerson trans., Metropolitan Books 2001) (1996).

123. DENNIS PRAGER, *HAPPINESS IS A SERIOUS PROBLEM: A HUMAN NATURE REPAIR MANUAL* (1998).

Obligation."<sup>124</sup>

Upon a moment's reflection, this becomes obvious. We owe it to our husband or wife, our fellow workers, our children, our friends, indeed to everyone who comes into our lives, to be as happy as we can be. This does not mean acting unreal, and it certainly does not mean refraining from honest and intimate expressions of our feelings to those closest to us. But it does mean that we owe it to others to work on our happiness. We do not enjoy being around others who are usually unhappy. Those who enter our lives feel the same way. Ask a child what it was like to grow up with an unhappy parent, or ask parents what pain they suffer if they have an unhappy child (of any age).<sup>125</sup>

Prager also explains that happiness is hard work<sup>126</sup> and that true happiness comes from seeking meaning and purpose in our lives;<sup>127</sup> doing good deeds;<sup>128</sup> developing self-control;<sup>129</sup> cultivating friendships;<sup>130</sup> religious worship;<sup>131</sup> and practicing "passionate moderation."<sup>132</sup> In other words, the route to happiness is to seek to live a virtuous life.

Prager has an abundance of sound philosophy to support his thesis. Aristotle himself taught that *eudaimonia*—loosely translated as happiness, contentment, and fulfillment—is the purpose of human existence<sup>133</sup> Moreover, the path to *eudaimonia*, Aristotle maintained, was to live a life

124. *Id.* at 3.

125. *Id.* at 3–4.

126. *See id.* at 5–6 (suggesting unhappiness is "the easy way out," because it does not take great strength or courage to wallow in one's own despair; happiness, on the other hand, results from constant hard work).

127. *See id.* at 101–06 (noting that a Nazi death camp prisoner, Viktor Frankl, "observed in the starkest possible way that people need a sense of purpose to maintain a will to live").

128. *See id.* at 146–48 (recognizing bad acts may bring short-term benefits, but people who strive to incorporate good deeds into their lives are happier overall because of their own inner peace).

129. *See id.* at 149–52 (contending that self-control "is the single greatest step toward happiness," and to achieve physical fitness, financial success, and professional development, an individual must be self-disciplined).

130. *See id.* at 153–63 (asserting people are social creatures that need companionship for their survival, and achieve such companionship through their relationships with family members, friends, and marriage partners).

131. *See id.* at 167–69 (arguing that believing in a higher being gives people more purpose in their lives while also providing a "supportive community for life's best and worst moments, teaches gratitude, bonds parents and children, keeps the individual in touch with the past and hopeful for the future, offers the individual regular opportunities to get in touch with the holy, teaches self-control, and provides meaningful holy days—not merely days off").

132. *See id.* at 171–72 (proclaiming that for one to find happiness in his life, a person must exhibit moderation in the things he does).

133. *See* NAFSIKA ATHANASSOULIS, VIRTUE ETHICS 59–60 (2013) (discussing Aristotle's view that "[i]n order to lead meaningful lives, we need to discover this good for the sake of which we do everything else" and this final good is *eudaimonia*).

of virtue.<sup>134</sup>

As lawyers, we have an excellent model for cheerfulness. In 1999, the Law Society of Great Britain named Thomas More the “Lawyer of the Millennium.”<sup>135</sup> Both the Roman Catholic Church and Anglicans recognize him as the patron saint of lawyers.<sup>136</sup> As an author, lawyer, judge, statesman, royal advisor, theologian, and martyr—More was truly a Renaissance man.<sup>137</sup> He was also a renowned wit, to the point that he was cracking jokes even as he ascended the scaffold where he would meet his death.<sup>138</sup> His friend Erasmus, a Renaissance man himself, said of More: “In human affairs there is nothing from which he does not extract enjoyment, even from things that are most serious. If he converses with the learned and judicious, he delights in their talent; if with the ignorant and foolish, he enjoys their stupidity.”<sup>139</sup>

In 1927, Max Ehrmann, a native of Terre Haute, Indiana, and the son of Bavarian immigrants, wrote a prose poem called *Desiderata*, which in Latin means “desired things.”<sup>140</sup> It is an understated guide for living happily. *Desiderata* did not become well-known until twenty years after Ehrmann’s death when a copy was discovered at Adlai Stevenson’s deathbed.<sup>141</sup> The poem is worth more than a quick glance—it is a guide for cultivating individual happiness:

134. See, e.g., *id.* (pointing out *eudaimonia* “is tantamount to being moral, being virtuous”).

135. GERARD B. WEGEMER, THOMAS MORE: A PORTRAIT OF COURAGE 227 (5th prtg. 2005).

136. See ERNST HIRSCH BALLIN, LAW, JUSTICE, AND THE INDIVIDUAL 6 (2011) (noting four centuries after More was put to death, “the Catholic Church canonized [him] as the patron saint of lawyers, later declaring him also the heavenly patron of statesmen and politicians”).

137. 14 CATHOLIC ENCYCLOPEDIA 689–92 (Charles G. Herbermann et al. eds., Encyclopedia Press spec. ed. 1913) (providing a brief overview of Thomas More’s life).

138. WILLIAM HOLDEN HUTTON, SIR THOMAS MORE 275 (2d ed. 1900) (writing that at his execution, Thomas More told his executioner, “My neck is very short; take heed therefore that thou strike not awry, for saving of thine honesty”).

139. THOMAS EDWARD BRIDGETT, LIFE AND WRITINGS OF BLESSED THOMAS MORE: LORD CHANCELLOR OF ENGLAND AND MARTYR UNDER HENRY VIII 59 (3d ed. 1904) (quoting Desiderius Erasmus).

140. See Brian Boyce, *Max Takes His Seat at the Crossroads of America*, TRIBUNE-STAR (Aug. 27, 2010), <http://tribstar.com/news/x271882312/Max-takes-his-seat-Max-Ehrmann-at-the-Crossroads-stature-unveiled-honoring-Terre-Haute-native-and-world-renowned-poet/> (providing background information on the life and career of Max Ehrmann); see also FRED D. CAVINDER, MORE AMAZING TALES FROM INDIANA 121–23 (2003) (noting how Max Ehrmann “became a giant in Indiana’s rich literature instead of merely a footnote” because of his poem *Desiderata*).

141. See LEIGH ERIC SCHMIDT, RESTLESS SOULS: THE MAKING OF AMERICAN SPIRITUALITY 274–75 (2005) (describing how the popularity of Ehrmann’s poem grew as it became known that Adlai Stevenson enjoyed the poem prior to his death).



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Go placidly amidst the noise and haste, and remember what peace there may be in silence. As far as possible without surrender be on good terms with all persons. Speak your truth quietly and clearly; and listen to others, even the dull and the ignorant; they too have their story.

Avoid loud and aggressive persons, they are vexatious to the spirit. If you compare yourself with others, you may become vain and bitter; for always there will be greater and lesser persons than yourself.

Enjoy your achievements as well as your plans. Keep interested in your own career, however humble; it is a real possession in the changing fortunes of time.

Exercise caution in your business affairs; for the world is full of trickery. But let this not blind you to what virtue there is; many persons strive for high ideals; and everywhere life is full of heroism.

Be yourself. Especially, do not feign affection. Neither be cynical about love; for in the face of all aridity and disenchantment it is as perennial as the grass.

Take kindly the counsel of the years, gracefully surrendering the things of youth. Nurture strength of spirit to shield you in sudden misfortune.

But do not distress yourself with imaginings. Many fears are born of fatigue and loneliness.

Beyond a wholesome discipline, be gentle with yourself. You are a child of the universe, no less than the trees and the stars; you have a right to be here. And whether or not it is clear to you, no doubt the universe is unfolding as it should. Therefore be at peace with God, whatever you conceive Him to be, and whatever your labors and aspirations, in the noisy confusion of life keep peace with your soul. With all its sham, drudgery, and broken dreams, it is still a beautiful world. Be cheerful.

Strive to be happy.<sup>142</sup>

It is worth noting here that Ehrmann was not a professional poet; he was a lawyer.

#### 9. "A Scout Is Thrifty."

"A Scout is thrifty. A Scout works to pay his way and to help others. He saves for the future. He protects and conserves natural resources. He is careful in his use of time and property."<sup>143</sup> There are three things in particular with which lawyers must be thrifty: time, money, and words. Each of these is addressed in the Texas Lawyer's Creed.

142. MAX ERHMANN, *DESIDERATA: A SURVIVAL GUIDE FOR LIFE* (Andrews McMeel Publ'g 2003) (1927); MAX ERHMANN, *DESIDERATA* (Cresendo Publ'g Co. 1972) (1927).

143. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 25 (12th ed. 2009).

i. *Time*

"I will be punctual."<sup>144</sup>

"I will advise my client that we will not pursue tactics which are intended primarily for delay."<sup>145</sup>

"I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes."<sup>146</sup>

ii. *Money*

"I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible."<sup>147</sup>

"I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party."<sup>148</sup>

iii. *Words*

Not surprisingly, a significant portion of the *Texas Lawyer's Creed* addresses discovery abuse, which can be wasteful of both time and money. Discovery abuse is wasteful of words as well:

"I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party."<sup>149</sup>

"I will refrain from excessive and abusive discovery."<sup>150</sup>

"I will comply with all reasonable discovery requests."<sup>151</sup>

"I will not resist discovery requests which are not objectionable."<sup>152</sup>

"I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process."<sup>153</sup>

"I will encourage witnesses to respond to all deposition questions which are

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144. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 867 (West 2012).

145. *Id.* at 866.

146. *Id.* at 867.

147. *Id.* at 866.

148. *Id.*

149. *Id.* at 867.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

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reasonably understandable.”<sup>154</sup>

“I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.”<sup>155</sup>

“I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.”<sup>156</sup>

A lesson in the thrifty employment of words would be incomplete without a reference to the plain-language movement. Bryan Garner, who has done much to advance the plain-language cause, notes that “Albert Einstein once said that his goal in stating an idea was to make it as simple as possible but no simpler. If lawyers everywhere adopted this goal, the world would probably change in dramatic ways.”<sup>157</sup>

#### 10. “A Scout Is Brave.”

“A Scout is brave. A Scout faces danger even if he is afraid.”<sup>158</sup> In *To Kill a Mockingbird*, among the lessons Atticus Finch seeks to impart upon his children concerns the nature of true courage. At one point he says to his son, Jem: “I wanted you to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand. It’s when you know you’re licked before you begin but you begin anyway and you see it through no matter what.”<sup>159</sup>

It is this kind of bravery, rather than physical bravery, that lawyers are primarily expected to practice. The *Texas Lawyer’s Creed* is straightforward about a lawyer’s duty to look past fear in the zealous representation of his client: “A lawyer shall employ all appropriate legal means to protect and advance the client’s legitimate rights, claims, and objectives. *A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.*”<sup>160</sup>

Along with justice, wisdom, and moderation, courage is one of the four

154. *Id.*

155. *Id.*

156. *Id.*

157. BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 661 (2d ed. 1995). In *A Dictionary of Modern Legal Usage*, Garner provides an interesting history of the plain-language movement, a helpful description of plain-language principles, and a list of plain-language resources. *Id.* at 661–65 (2d ed. 1995).

158. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 25 (12th ed. 2009).

159. HARPER LEE, *TO KILL A MOCKINGBIRD* 128 (HarperCollins 1999) (1960).

160. THE TEXAS LAWYER’S CREED—A MANDATE FOR PROFESSIONALISM (1989), *reprinted in* TEXAS RULES OF COURT: VOLUME 1—STATE 866 (West 2012) (emphasis added).

cardinal virtues identified by Plato.<sup>161</sup> Notably, C.S. Lewis said, “[C]ourage is not simply *one* of the virtues, but the form of every virtue at the testing point.”<sup>162</sup>

11. “A Scout Is Clean.”

“A Scout is clean. A Scout keeps his body and mind fit. He chooses friends who also live by high standards. He avoids profanity and pornography. He helps keep his home and community clean.”<sup>163</sup> For lawyers, this eleventh point of the Scout Law ought to bring to mind the indispensability of a good reputation. More than two thousand years ago, Socrates recognized the value of maintaining a clean reputation and explained its importance in the following way:

Regard your good name as the richest jewel you can possibly be possessed of—for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to gain a good reputation is to endeavor to be what you desire to appear.<sup>164</sup>

A violation of the Texas Disciplinary Rules of Professional Conduct can result in serious consequences for a lawyer—ranging from a private reprimand to disbarment.<sup>165</sup> But even disbarment does not amount to what the rules themselves identify as “the ultimate sanction”:

Each lawyer’s own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue

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161. PETER KREEFT, BACK TO VIRTUE: TRADITIONAL MORAL WISDOM FOR MODERN MORAL CONFUSION 59 (1992).

162. C.S. LEWIS, THE SCREWTAPE LETTERS 148 (Barbour Publ’g Inc. 1992) (1942).

163. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 25 (12th ed. 2009).

164. TRYON EDWARDS, A DICTIONARY OF THOUGHTS: BEING A CYCLOPEDIA OF LACONIC QUOTATIONS FROM THE BEST AUTHORS OF THE WORLD, BOTH ANCIENT AND MODERN 486 (F.B. Dickerson Co. 1908) (quoting Socrates in outlining how reputation is defined by numerous authors).

165. See TEX. DISCIPLINARY RULES PROF’L CONDUCT Preamble ¶ 7 (warning that a lawyer will be subject to disciplinary action when minimum standards of conduct are not met); see also *Anderson Producing Inc. v. Koch Oil Co.*, 929 S.W.2d 416, 421 (Tex. 1996) (stating a violation of the minimum standard of conduct, as outlined in the Texas Disciplinary Rules of Professional Conduct, will subject a lawyer to disciplinary action).

to be a noble profession. This is its greatness and its strength, which permit of no compromise.<sup>166</sup>

12. "A Scout Is Reverent."

"A Scout is reverent. A Scout is reverent toward God. He is faithful in his religious duties. He respects the beliefs of others."<sup>167</sup> Although the Boy Scouts of America adopted a twelve-point Scout Law soon after its founding, British Scouts have always had fewer than twelve points, and "A Scout is Reverent" has never been among them.<sup>168</sup> The last three points of the Boy Scouts of America's Scout Law—brave, clean, and reverent—were added at the organization's first annual meeting at the Willard Hotel in Washington, D.C.<sup>169</sup> James West, the first executive secretary of the Boy Scouts of America, was a member of the committee that suggested the additions.

West . . . took credit for adding the Twelfth Law regarding reverence. He declared that it was "one of the very finest things in the whole scheme of Scouting and one of the reasons we have had such outstanding success." West's influence is clear for two reasons. First, BSA's main backer at the time was the Young Men's Christian Association, for which West had worked for many years while in Washington as a student and later as a lawyer. Second, West noted later on that as an orphan, he had been "brought in close contact with those who were deeply religious [and] had to go to church every Sunday." West's full version of this Law stated that, "A Scout is reverent toward God, he is faithful in his religious duties, and respects the convictions of others in matters of custom and religion."<sup>170</sup>

Regardless of how reverence found its way into the Scout Law, it is an appropriate attribute for a movement dedicated to developing good citizens. Religious freedom is an essential element of the American identity, and the defense by lawyers of the right to worship freely precedes

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166. TEX. DISCIPLINARY RULES PROF'L CONDUCT Preamble ¶ 9.

167. THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 25 (12th ed. 2009).

168. See David C. Scott, *The Origins of Scout Law: Part 1*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 37 (describing the origins of Scout Law in both the British Scouts and Boy Scouts of America); see also *id.* *Part 2*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 22 (listing the various incarnations of Scout Law for both the British Scouts and Boy Scouts of America).

169. *Id.* *Part 1*, INT'L SCOUTING COLLECTORS ASS'N J., Sept. 2007, at 37, 38 (noting the final three Scout Laws for the Boy Scouts of America were added by a panel that was assembled during the organization's first annual meeting in Washington D.C.).

170. *Id.*

even the First Amendment.<sup>171</sup> “In God We Trust” and “one nation under God” are cherished phrases in the American lexicon, and both are enshrined in the law.<sup>172</sup> Presidents and attorneys both end their oaths with the prayer, “So help me God,”<sup>173</sup> and the United States Supreme Court and the Supreme Court of Texas each open their sessions with pleas that “God save . . . this honorable Court.”<sup>174</sup>

The First Amendment’s Establishment Clause perhaps gets an undue amount of attention to the detriment of the Free Exercise Clause when it comes to the everyday practice of law. Although courthouses certainly fall on the “state” side of “the separation of church and state” ideal, that does not mean reverence is an irrelevant virtue for the legal profession.

#### IV. CONCLUSION

A recent trend in law schools is to provide more “skills training” for law students so that graduates enter the profession better prepared to face the nuts-and-bolts attributes of everyday practice.<sup>175</sup> Perhaps advocates of this trend have a point. Legal education since the advent of the modern law school in the nineteenth century has been more of an academic endeavor than a trade-school experience, especially as compared to the legal apprenticeship system that law schools replaced.<sup>176</sup> On the other

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171. See generally Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409 (1990) (providing an in depth discussion of religious freedom in the United States prior to the adoption of the United States Constitution and the First Amendment).

172. See 36 U.S.C. § 302 (2006) (stating the National Motto); 4 U.S.C. § 4 (2006) (outlining the Pledge of Allegiance).

173. Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 COLUM. L. REV. 2083, 2110–11 (1996) (chronicling the history of the use of “so help me God” in United States Presidential Oaths by explaining that George Washington spontaneously added the phrase at his inauguration, and its use has continued ever since); see SUP. CT. OF TEX., [http://www.supreme.courts.state.tx.us/court/atty\\_oath.htm](http://www.supreme.courts.state.tx.us/court/atty_oath.htm) (last visited May 8, 2013) (providing the oath given to attorneys admitted to practice law in the state of Texas).

174. See, e.g., *The Court and Its Procedures*, SUP. CT. OF U.S., <http://www.supremecourt.gov/about/procedures.aspx> (last visited May 8, 2013) (detailing the formal procedures for introducing Supreme Court Justices to public sessions and announcing the plea that “God save the United States and this Honorable Court”).

175. Cf. Debra Cassens Weiss, *Law School Grapples with Student Surplus After Switch to 3L Practical Skill Training*, A.B.A. J. (Jan. 31, 2013, 5:30 AM), [http://www.abajournal.com/news/article/law\\_school\\_grapples\\_with\\_student\\_surplus\\_after\\_switch\\_to\\_3l\\_practical\\_skill/](http://www.abajournal.com/news/article/law_school_grapples_with_student_surplus_after_switch_to_3l_practical_skill/) (describing the success that a newly implemented law school curriculum emphasizing practical skills is having for the respective school).

176. Cf. Patricia Mell, *Law Schools and Their Disciples*, 79 MICH. B.J. 1392, 1392 (2000) (discussing Christopher Columbus Langdell’s introduction of the use of the Socratic method and case law to teach law classes, a doctrine widely implemented in law schools throughout the twentieth

hand, if today's lawyers are going to reassume the mantle of civic leadership our profession once provided, we need more than just well-honed practical skills. According to Kronman:

The lawyer-statesman ideal is an ideal of character. It calls upon the lawyer who adopts it not just to acquire a set of intellectual skills, but to develop certain character traits as well. It engages his affects along with his intellect and forces him to feel as well as think in certain ways. The lawyer-statesman ideal poses a challenge to the whole person, and this helps to explain why it is capable of offering such deep personal meaning to those who view their professional responsibilities in its light.<sup>177</sup>

The Texas Disciplinary Rules of Professional Conduct are "aimed at prohibiting practices which substantially undermine the pursuit of justice"<sup>178</sup>—a noble goal indeed. But are such rules sufficient to induce the type of aspiration Kronman urges our profession to undertake? When it comes to disciplining lawyers for unethical conduct, a solid set of clearly stated rules is hard to beat. It would be imminently difficult, if not impossible, for the State Bar to prosecute a lawyer for failing to be "brave" or "kind." However, as a guide for conduct, rules merely tell us what we cannot do; they are poor guides for what kind of people we should be and what kind of lawyer our profession needs.<sup>179</sup> The strength of virtue is that it holds up an ideal to strive for, a model of professionalism, and—if Aristotle and Dennis Prager are to be believed—a route to happiness.

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century).

177. ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 363 (1993).

178. Edward L. Wilkinson, *If One Is Good, Two Must Be Better: A Comparison of the Texas Standards for Appellate Conduct and the Texas Disciplinary Rules of Professional Conduct*, 41 *ST. MARY'S L.J.* 645, 699 (2010).

179. See NAFSIKA ATHANASSOULIS, *VIRTUE ETHICS* 127–28 (2013) (emphasizing the importance of incorporating virtue ethics into everyday tasks because it "sets the tone for how one behaves when faced with more difficult and challenging moral problems").