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Zen and the Art of Becoming (and Being) a Lawyer

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ESSAY

Zen and the Art of Becoming (and Being) a Lawyer

*John Nivala**

I. "I HOPE YOU ARE TEACHING QUALITY TO YOUR STUDENTS"[1]

That statement—whether idly or intentionally put—marked the beginning of the strange and wonderful quest chronicled in Robert Pirsig's *Zen and the Art of Motorcycle Maintenance*. The speaker was not a Zen master nor was Pirsig a Zen disciple. Yet the statement led Pirsig on a Zen-like quest for a definition of quality.[2] The answer gave him, as it can give the lawyer, a Zen-like insight and understanding.[3]

Pirsig, a rhetoric teacher, began his quest with his students. He asked for an essay on "what is *quality* in thought and statement," an assignment that made them furious, fearful, and frustrated.[4] Eventually, he gave the students a definition:

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1. ROBERT M. PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE 160 (Bantam New Age Books 1974).

2. The statement became a Zen-like "*koan* . . . a question from the Unknown." JANWILLEM VAN DE WETERING, A GLIMPSE OF NOTHINGNESS 15 (1975). *See also* Williamson B. C. Chang, *Zen, Law, and Language: Of Power and Paradigms*, 16 N.M. L. REV. 543 (1986), describing a Koan "as the primary methodological vehicle for achieving enlightenment." It "is a heuristic device designed to attack the structure of normal conceptual thinking." *Id.*

3. *See* JANWILLEM VAN DE WETERING, THE EMPTY MIRROR 127 (1973). *See also* Chang, *supra* note 2, at 544, noting that the goal of Zen practice "is satori or enlightenment," which "is characterized by a complete shift in the student's perception of the world." A lawyer's education and practice can also be characterized as a quest for understanding and enlightenment. *See* James R. Elkins, *The Quest for Meaning: Narrative Accounts of Legal Education*, 38 J. LEGAL EDUC. 577 (1988).

4. PIRSIG, *supra* note 1, at 163-64, 183-84. *See* Kenney Hegland, *Goodbye to Deconstruction*, 58 S. CAL. L. REV. 1203, 1209 n.19 (1985), describing this "marvelous

> Quality is a characteristic of thought and statement that is recognized by a nonthinking process. Because definitions are a product of rigid, formal thinking, Quality cannot be defined.[5]

Then below this he wrote: "But even though Quality cannot be defined, *you know what Quality is!*"[6]

Using their own work, Pirsig convinced his students that quality, although undefinable, existed. He demonstrated that rhetorical rules, like legal rules, were tools "for producing what really counted and stood independently of the techniques—Quality."[7] Quality work is mysterious and individual; it is the goal of those who care about their work. To work without a concern for quality would be to work without value, without purpose.[8] Pirsig gave his students confidence that they had the ability to do quality work.[9]

Rhetoric, like law, is an art, an art of persuasion.[10] And,

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scene" and its conclusion when Pirsig persuaded his students they could recognize quality work:

> Perhaps the same thing occurs when we recognize a lousy legal argument: first we sense it, and only then can we define it. If we do in fact share these intuitions, then perhaps subjectivity is not the irrational, arbitrary, individualistic beast it is made out to be.

5. PIRSIG, *supra* note 1, at 184-85.

6. *Id.* at 185.

7. *Id.* at 186. *See* Jerry Frug, *Argument As Character*, 40 STAN. L. REV. 869, 872 (1988), suggesting that

> [W]e look at legal argument as an example of rhetoric. A rhetorical analysis of legal argument involves examining its elements . . . in terms of how they form attitudes or induce actions in others. . . . It doesn't matter, from a rhetorical point of view, that each of these elements of legal argument is contestable; what matters is how these elements are combined to constitute an appeal to an audience—how they present a view of the world which others are asked to share.

See also Gerald Wetlaufer, *Rhetoric and its Denial in Legal Discourse*, 76 VA. L. REV. 1545, 1547-48 (1990): "Rhetoric has long had strong connections with advocacy and the study of law. . . . Rhetoric offers us a set of tools for thinking about the discursive conventions within which we work. Just as important, it also offers us a series of specific insights."

8. PIRSIG, *supra* note 1, at 187, 194. Lawyers should seek for value, for purpose in what they do. *See* Sally Payton, *Is Thinking Like a Lawyer Enough?*, 18 U. MICH. J.L. REF. 233, 246 (1985).

9. PIRSIG, *supra* note 1, at 185-87. *See also* Richard B. Parker, *A Review of Zen and the Art of Motorcycle Maintenance with Some Remarks on the Teaching of Law*, 29 RUTGERS L. REV. 318, 326 (1976): "[W]hatever it is we teach, we do it by building the student's confidence in his ability to perform."

10. *See* James B. White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 684-85 (1985):

> The ancient rhetorician Gorgias . . . defined rhetoric as the art of persuading the people about matters of justice and injustice in the public places of the

like Pirsig's rhetoric students, we lawyers—students, teachers, practitioners—have the ability to do quality work. However, like Pirsig's students, we become furious, fearful, or frustrated when challenged to do so.[11] We are puzzled when challenged to pursue something as elusive as quality.[12] How often in our education or practice are we asked to describe, much less pursue, the ideal?[13] But should not our quest, like Pirsig's, be for quality?

II. THE CHAUTAUQUA

To describe his quest, Pirsig used a Chautauqua, a popular talk intended to entertain while enlightening the audience.[14] His talk explored channels "silted in with the debris of thoughts grown stale and platitudes too often repeated."[15] It cut "deeply rather than broadly," and its answers moved "the silt downstream."[16] Pirsig, like many lawyers, began with a structure of concepts, a framework for approaching a defini-

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state, and one could hardly imagine a more compendious statement of the art of the lawyer than that. . . . And the commitment of the rhetorician to the cause of his client presents him . . . with serious (and similar) problems of intellectual and personal integrity.

11. *See* Wetlaufer, *supra* note 7, at 1583:

Our students have an interesting and complicated relationship to the Kingsfieldian tradition. They may well resent the victimization that is characteristic of the hard Socratic method, but they respect the authority which makes it work. Indeed, within a range of circumstances and victims, the assault is approved, even revered. . . . Where the students differ from their Kingsfieldian teachers is in their demand for a particular kind of authoritative speaking—for clarity, closure, certainty, and the one true meaning of the text. Even in criticizing certain aspects of our Kingsfieldian rhetoric, they invoke the norms of authority, hierarchy, clarity, the one right answer, and closure.

12. *See* James B. White, *Doctrine in a Vacuum: Reflections on What a Law School Ought (And Ought Not) to Be*, 18 U. MICH. J.L. REF. 251, 253-54 (1985).

13. *See* Robert S. Redmount, *Law Learning, Teacher-Student Relations, and the Legal Process*, 59 WASH. U. L.Q. 853, 860-61 (1981):

The professional person is an idealized figure in Western society and thought to be something more than a skillful methodologist. The desirable lawyer . . . might be seen as knowledgeable, virtuous, and learned in dialectical inquiry. He is a guardian for society and a leader of humankind. He is concerned with practical action and skilled in the use of language as a prime mover of social interest. He is, withal, tolerant and magnanimous, and he shows a breadth of perspective. Though disciplined and educated, he is also a vital and feeling person. He is open minded, reflective, and inquiring, with strong moral purpose. He values meaningful and considerate relationships with others.

14. *See* PIRSIG, *supra* note 1, at 7.

15. *Id.*

16. *Id.*

tion of quality.[17] His concepts, like the lawyer's, formed a system, for he knew, as the lawyer does, that the mind cannot instantly comprehend the whole; it needs a system to help it manage the components of the whole.[18] The system enabled Pirsig, as it does the lawyer, to go past perception to conception, to increase the range of his thoughts.[19]

Pirsig used motorcycle maintenance as the overall structure for his Chautauqua. Pirsig distinguished the physical labor of maintenance ("the smallest and easiest part of what the mechanic does")[20] from the need for "careful observation and precise thinking," its greater and more important part:[21]

> By asking the right questions and choosing the right tests and drawing the right conclusions the mechanic works his way down the echelons of the motorcycle hierarchy until he has found the exact specific cause or causes of the engine failure, and then he changes them so that they no longer cause the failure.[22]

Asking the right questions, choosing the right tests, drawing the right conclusions: this process is as much the lawyer's work as the mechanic's.[23] The questions we ask in defining a problem shape the legal theories we explore to resolve it; those theories necessarily shape the solutions we devise.

What happens when the mechanic or lawyer gets stuck, when questions do not come or tests are not apparent or conclusions do not follow?[24] For Pirsig, "[i]f your mind is truly, profoundly stuck, then you may be much better off than when it is loaded with ideas."[25] You reevaluate and expand what you

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17. *Id.* at 87. This process should be familiar to any problem solver, including the lawyer. When confronted with a problem, all able lawyers develop a framework for acquiring, analyzing, and arranging information. *See* Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 289 (1981).

18. *See* PIRSIG, *supra* note 1, at 87. *See also* Robert Keeton, *Teaching and Testing for Competence in Law Schools*, 40 MD. L. REV. 203, 205-06 (1981).

19. *See* Alan D. Hornstein, *The Myth of Legal Reasoning*, 40 MD. L. REV. 338, 342 (1981).

20. PIRSIG, *supra* note 1, at 96.

21. *Id.*

22. *Id.*

23. *See* James R. Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 VA. L. REV. 735, 744 (1978).

24. And who has not had this happen? *See* James B. White, *The Study of Law as an Intellectual Activity*, 32 J. LEGAL EDUC. 1, 8-9 (1982).

25. PIRSIG, *supra* note 1, at 256. *See also* David Blum, *Profiles: A Process Larger*

do know; you concentrate on why you are stuck and see it in a new way; you not only survive being stuck but grow from it. Being stuck is an opportunity to focus, to identify and avoid traps, to move on.[26]

One of Pirsig's more extended Chautauquas on motorcycle maintenance dealt with gumption, a homely word that "describes exactly what happens to someone who connects with Quality. He gets filled with gumption," filled with enthusiasm for the task.[27] Gumption is "psychic gasoline," a mental relationship between machine and mechanic, the problem and the person; it is "a reservoir of good spirits that can be added to or subtracted from."[28]

Anything causing a loss of enthusiasm or good spirits is a gumption trap; it is either external ("in which you're thrown off the Quality track by conditions that arise from external circumstances" such as unavailable parts) or internal (in which "you're thrown off . . . by conditions primarily within yourself").[29] The lawyer is more likely to be trapped by the internal gumption trap, which Pirsig subdivided into value traps ("those that block affective understanding"), truth traps ("those that block cognitive understanding"), and muscle traps ("those that block psychomotor behavior").[30]

For Pirsig, as for the lawyer, the most dangerous trap is the value trap, the blind spot. It results in the inability, whether from inheritance or instruction, to view the problem

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Than Oneself, THE NEW YORKER, May 1, 1989, at 48, where the cellist Yo-Yo Ma describes his approach to technique problems:

> When a problem is complex, you become tense, but when you break it down into basic components you can approach each element without stress. Then, when you put it all together, you do something that seems externally complex, but you don't feel it that way. You know it from several different angles.

26. PIRSIG, *supra* note 1, at 249-58. *See also* VAN DEWETERING, A GLIMPSE OF NOTHINGNESS, *supra* note 2, at 165, describing the Zen method of teaching:

> No shortcuts and no simplicity. Only one part of the teaching is simple. The disciple has to meditate. . . . Meditation is the Zen master's recipe, the base of his teaching. And for the rest he forces you to do the impossible and makes you jump through walls or off the precipice. Let go! Let go! Don't hold on to anything. And don't disregard your doubts. Let your doubts move you on. Don't think that you have found something because it's about time that you have found something. Go on, do the best you can. And know that there is no guarantee whatever that you will ever make it.

27. PIRSIG, *supra* note 1, at 272.

28. *Id.* at 274.

29. *Id.* at 275.

30. *Id.* at 279.

cleanly, openly.[31] There are five components: value rigidity, ego, anxiety, boredom, impatience. The first, value rigidity, is "an inability to revalue what one sees because of commitment to previous values."[32] If you are value rigid, you cannot ask fresh questions, acquire new facts, adopt new theories. You will not, as the good mechanic or lawyer must, continue to discover as you go. Value rigidity

> often shows up in premature diagnosis, when you're sure you know what the trouble is, and then when it isn't, you're stuck. Then you've got to find some new clues, but before you can find them you've got to clear your head of old opinions. If you're plagued with value rigidity you can fail to see the real answer even when it's staring you right in the face because you can't see the new answer's importance.[33]

The mechanic or the lawyer caught in this trap must slow down, go back, reexamine, reevaluate.

The second component of the value trap is ego. The dangers to the mechanic or lawyer are apparent:

> If you have a high evaluation of yourself then your ability to recognize new facts is weakened. Your ego isolates you from the Quality reality. When the facts show that you've just

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31. *Id.* See Payton, *supra* note 8, at 238:

> [F]ormal legal education, in addition to being by no means an education in lawyering, affirmatively inculcates in law students a characteristic pattern of blind spots that a good lawyer must overcome if he or she is to represent clients competently, assuming that the goal is to serve clients and not to exploit them. . . .

See also Toni M. Massaro, *Empathy, Legal Storytelling, and The Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099, 2126 (1989):

> [T]he call to context, at its best, simply counsels against complacency. We are admonished to revisit our experience and feelings, along with other guides to reasoned judgments, and to guard against empathic or intellectual blind spots when we construct and critique the legal institutions and standards that govern us. Foolish formalism, they caution, is to be feared. But so too, I would demur, is unguided emotion.

32. PIRSIG, *supra* note 1, at 279-80. This trap is present in any creative work. *See* K. Robert Schwarz, *How to Succeed at Success*, N.Y. TIMES, Oct. 2, 1988, at H23, quoting Itzhak Perlman:

> If I start saying "I'm at the top," then I might as well quit, because where can I go from there? What I think about is that I have a responsibility to keep on growing musically, and not fall into the trap of saying, "Well, this works, and I might as well just keep making a Xerox of myself". . . . The trap that one can fall into is the lack of asking questions, when you put yourself on automatic and you start to play like you've played before. That's one of the dangers, and it is a result of not listening well to oneself, of not asking, "is it sounding the way I want it to sound?"

33. PIRSIG, *supra* note 1, at 280.

> goofed, you're not as likely to admit it. When false information makes you look good, you're likely to believe it.[34]

The way out is to cultivate a problem-solving approach which "genuinely feels and reasons and acts, rather than any false, blown up personality images your ego may conjure up."[35]

The third component of the value trap is anxiety. Here, in contrast to ego, the mechanic or lawyer becomes afraid to do anything because he or she assumes it will turn out wrong. It leads to "errors of excessive fussiness."[36] Pirsig had a two step remedy. First, work out the anxiety through preparation: read, list, organize, reorganize. Second, remember that everyone makes mistakes in working through problems. The benefit for the mechanic and the lawyer is the knowledge gained. Making mistakes is not bad; making mistakes and not learning from them is.

The fourth component of the value trap is boredom, the opposite of anxiety. The bored mechanic or lawyer is not seeing things freshly.[37] The task has been done before. How many times have you changed the oil, washed the machine; how many times have you argued the motion, written the memo? The remedy? Stop. Do something else: walk, run, read, sleep.

The final component is impatience, a result of underestimating how long a job will take. Pirsig handled impatience by being flexible. If he did not have an indefinite or an adequate amount of time for the job planned, he limited the scope of what he wanted to do. If necessary, he scaled down his overall goal and scaled up his immediate goal.[38] All lawyers will recognize this component. Law school does prepare for practice here. Lawyers are list makers; we want to see who wants what when. We divide and subdivide our assignments into manageable parts. When the unexpected arises, we pause, redo the list, and get on with the most immediate task.

There is a transcendent goal in working through these value traps, these blind spots. In working on a mechanical or a legal problem, the individual also works on him or herself. The machine and the mechanic, the problem and the lawyer,

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34. *Id.* at 283.
35. *Id.* at 284.
36. *Id.*
37. *Id.* at 285.
38. *Id.* at 286.

are not divisible. Many opportunities encourage them to move toward quality together.[39]

III. THE QUESTION

When he began the inquiry into quality, Pirsig's colleagues, whether in bemusement or bitterness, presented him with a reasonable question: " 'Does this undefined 'quality' of yours exist in the things we observe?' they asked. 'Or is it subjective, existing only in the observer?' "[40] Pirsig recognized this as a tough question. If quality exists in observable things then why is it undetectable by instrument, unmeasurable by science? But if it is personal to the observer, then is it not just "a fancy name for whatever you like?"[41]

Pirsig had a dilemma which lawyers share. Lawyers, like Pirsig's colleagues, tend to view things exclusively as either/or: either quality was objective or subjective; either rational and demonstrable or intuitive and sensed.[42]

> What you've got here, really, are *two* realities, one of immediate artistic appearance and one of underlying scientific explanation, and they don't match and they don't fit and they don't really have much of anything to do with one another. That's quite a situation. You might say there's a little problem here.[43]

Some people look at a motorcycle and see a shape, others see

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39. *See id.* at 293. *See also* Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME LAW. 231 (1979).

40. PIRSIG, *supra* note 1, at 205. We in the law are likewise faced with that question. *See* John E. Dunsford, *Nihilism and Legal Education - A Response to Sanford Levinson*, 31 ST. LOUIS U. L.J. 27, 31-33 (1986). Like Pirsig's colleagues, some lawyers assume that this question exhausts the "two categorical possibilities for the workings of language and rationality." Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 1105, 1129 (1989).

41. PIRSIG, *supra* note 1, at 205. This is also a tough question in the law. *See* Pierre Schlag, *Missing Pieces: A Cognitive Approach to Law*, 67 TEX. L. REV. 1195, 1197-98 (1989):

> [I]f (as the rationalist maintains) the only significant order in law rests in its formal expression, the realist attacks on traditional doctrinalist jurisprudence are tantamount to a rejection of order—pure and simple. Similarly, if it is only the articulation of doctrine and rules that can constrain legal decisions (as the rationalist maintains), the realist claims that doctrinal argument is undecidable must be an endorsement of the untenable view that anything goes. And more globally, if rationalism is the only sensible approach to law, then the realist rejection of rationalism is indeed a plunge into nihilism.

42. *See* Parker, *supra* note 9, at 320.

43. PIRSIG, *supra* note 1, at 49.

ideas; a cook reads recipes, a chef sees possibilities. The former sees parts; the latter sees concepts.[44] Pirsig labeled this dichotomy "the classic-romantic barrier," a barrier that is equally present in the law; classical law is rational, systemic, fixed; romantic law is intuitive, situational, fluid.[45]

The Classic person—mechanic or lawyer—"sees the world as underlying form itself."[46] Given a blueprint, the Classic becomes "fascinated by it because he sees that within the lines and shapes and symbols is a tremendous richness of underlying form."[47] The Classic "is straightforward, unadorned, unemotional, economical and carefully proportioned."[48] The Classic orders chaos, is restrained and controlled.

The Romantic person—mechanic or lawyer—sees the world "primarily in terms of immediate appearance," with feelings rather than as fact.[49] The Romantic is "inspirational, imaginative, creative, intuitive."[50] Rather than proceeding by rule or reason, the Romantic relies on feeling and intuition.

The Classic and Romantic do not have much of anything to do with each other. The Classic views the Romantic as

> [f]rivolous, irrational, erratic, untrustworthy, interested primarily in pleasure seeking. Shallow. Of no substance. Often a parasite who cannot or will not carry his own weight. A real drag on society.[51]

The Romantic sees the Classic as

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44. *See* George Steiner, *Uneasy Rider*, THE NEW YORKER, April 15, 1974, at 147-48 (reviewing ROBERT M. PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE (1974)):

> Pirsig's work is, like so much of classic American literature, Manichaean. It is formed of dualities, binary oppositions, presences, values, codes of utterance in conflict. Father against son; the architectures of the mind against those of the machine; a modernity of speed, uniformity, and consumption (of fuel, of space, of political gimmicks) against conservancy, against the patience of true thought. But these confrontations are themselves ambiguous; they keep us off balance and straining for poise as do the swerves of the motorcycle.

45. PIRSIG, *supra* note 1, at 84. *See* Edgar Bodenheimer, *Classicism and Romanticism in the Law*, 15 UCLA L. REV. 915, 915 (1968), showing that "classical and romantic views of life have a definite bearing not only on the understanding and analysis of legal thought but also on some practical aspects of the administration of justice." The author concluded that the law's traditional classical rationality needed to be balanced by realizing that the interests of justice often demand romantic fluidity.

46. PIRSIG, *supra* note 1, at 61.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 62.

> dull, awkward and ugly . . . . Everything is in terms of pieces and parts and components and relationships. Nothing is figured out until it's run through the computer a dozen times. Everything's got to be measured and proved. Oppressive. Heavy. Endlessly grey. The death force.[52]

Pirsig's classic-romantic barrier exists in the law, inside and outside law school. Inside, teachers and students wrestle with the persistent tension between intellectual determinacy and real life indeterminacy.[53] Outside, practitioners don a professional mask to hide a human face.[54] Inside, we engage in the techniques of traditional legal reasoning without acknowledging the world outside where legal reasoning will operate.[55] Inside, we deal with law as if it were determinate, objective, and structured, knowing that outside it is indeterminate, subjective, and chaotic.[56] Inside, we intellectualize the law, cut out its emotional content; outside, we know that feeling, intuition, creativity, and spontaneity are so important.[57] Inside, legal problems are dealt with in the abstract; outside, they are dealt with in the flesh.

If lawyers are to find quality in the law, we must, like Pirsig, come to grips with the split. We are Classic and Romantic. We want coherence and consistency, but we must understand there is always chaos and complexity.[58]

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52. *Id.* at 61-62.

53. *See* Thomas F. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637 (1968). *See also* Joseph P. Tomain, *Faith, Hope, and the Law Teacher: A Reaction to Professor Levinson*, 31 ST. LOUIS U. L.J. 101, 103 (1986).

54. *See* Elkins, *The Legal Persona*, *supra* note 23.

55. *See* Payton, *supra* note 8, at 235, arguing that law schools do not emphasize enough that the law is a craft, a blend of reasoning and action, a confluence of detached intellect and direct involvement in individual problem-solving.

56. *See* White, *Law as Rhetoric*, *supra* note 10, at 685:

> [T]he law is at present usually spoken of . . . as if it were a body of more or less determinate rules, or rules and principles, that are more or less perfectly intelligible to the trained reader. Law is in this sense objectified and made a structure. The question "What is law?" is answered by defining what its rules are, or by analyzing the kinds of rules that characterize it. The law is thus abstracted and conceptualized.

Professor White believes (as I do) that if this were true, "both law school and the practice of law would be intolerably boring." White, *The Study of Law*, *supra* note 24, at 2.

57. *See* Marc Feldman & Jay M. Feinman, *Legal Education: Its Cause and Cure*, 82 MICH. L. REV. 914, 926 (1984).

58. *See* Christine B. Whitman, *Thoughts on Teaching*, 18 U. MICH. J.L. REF. 267, 271 (1985), and Massaro, *supra* note 31, at 2120:

> We are presented with the ancient and perpetual task of balancing two important yet conflicting desires, both of which are essential to our sense of "justice" or "fairness." We have always desired rule predictability/clarity/

Our training must acknowledge that the study of law can dull sensibility rather than enlarge it; the goal should be the education, not the eradication, of feeling.[59] Our practice must recognize that the law is mutable yet responsible.[60] The Classic lawyer must recognize that the law is not an abstract intellectual exercise but a craft with immediate real world implications; the Romantic lawyer must recognize that the law is not merely situational but must be structured and stable.[61] Law is not the application of pure reason, nor is it whatever we like. It is the interaction of the rational and emotional, the classic and the romantic. It is a complex, often mysterious process, unique to the individual. That is its joy and its challenge.

Pirsig's own classic/romantic split created difficulties in finding an answer to his colleagues' question about the nature of quality: is it objective or subjective? To begin, he sorted his world into piles. His classic side was concerned with the framework for sorting and relating the piles.[62] His romantic side was concerned with the world before the sorting began.[63] Pirsig wanted to find a way of looking at his world that would accommodate these two kinds of understanding and, with luck,

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consistency yet also valued rule flexibility/responsiveness. . . . The tension between our competing, even contradictory, desires for clarity and fluidity never will disappear.

59. Terrence Sandalow, *The Moral Responsibility of Law Schools*, 34 J. LEGAL EDUC. 163, 172 (1984). *See also* Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990).

60. White, *Law as Rhetoric*, *supra* note 10, at 690. *See also* Winter, *supra* note 40, at 1112 n. 21:

> No counselor worth her salt would fail to advise a client of the grey areas. And no advocate who cares to win would be content merely with generating "plausible" arguments. In each case, the challenge of the lawyer's craft is to devise *ex ante* (i.e. with predictability) a position that will prevail *ex post*. This requires a sense of both the pliability of legal materials available to a judge and the kinds of constraints that she will find persuasive. To be successful either as a counselor or as advocate, one must simultaneously understand both the partial predictability and relative indeterminacy of law.

61. Parker, *supra* note 9, at 323. *See also* William J. Brennan Jr., *Reason, Passion, and "The Progress of the Law,"* 10 CARDOZO L. REV. 3 (1988):

> From [Cardozo] we learned that judging could not properly be characterized as simply the application of pure reason to legal problems, nor, at the other extreme, as the application of the personal will or passion of the judge. Cardozo drew our attention to a complex interplay of forces—rational and emotional, conscious and unconscious—by which no judge could remain unaffected. . . . [T]his interplay of forces, this internal dialogue of reason and passion, does not taint the judicial process, but is in fact central to its vitality.

62. PIRSIG, *supra* note 1, at 70.

63. *Id.*

provide an answer to his colleagues' question.[64]

He was also motivated by "the strange separation" of who we are from what we do, the sense that caring about what we do is either unimportant or taken for granted.[65] That strange separation should likewise motivate us as lawyers. We should, in both our education and practice, encourage "the responsibilities of the self"; we should insist upon "the reality of both the individual person and the community at large."[66] Who we are, what we do, are inseparable. As lawyers, we have the opportunity to exercise our individual talents and initiative on behalf of someone or something in need. We can make a difference in our world. But, perhaps, like Pirsig, we must begin by sorting out our world.

To sort his world, Pirsig used the image of a knife which he wanted to place on quality:

> What every intellectual analyst looks for. You take your analytic knife, put the point directly on the term Quality and just tap, not hard, gently, and the whole world splits, cleaves, right in two—hip and square, classic and romantic, technological and humanistic—and the split is clean.[67]

Quality was to be a cleavage point and a point of common understanding.[68]

We lawyers should likewise search for the point of common understanding between the doctrinal and the doing, between the education and the experience. Why is there this cleavage; where is the point of common understanding? Law school is an inviting target; we do not have to swing a bass fiddle at its backside to insure a hit. It forges an incisive but

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64. *Id.*

65. *Id.* at 25.

66. White, *Doctrine in a Vacuum*, *supra* note 12, at 261-62. This responsibility of self and the potential for accountable action is for me the challenge and the joy of a life with the law. *See* James B. White, *Law as Language: Reading Law and Reading Literature*, 60 TEX. L. REV. 415, 436 (1982):

> It is the aim of our law not to obliterate individual judicial judgments in favor of a scheme, but to structure and discipline them, to render them public and accountable. This is true of the lawyer as well as the judge, and the client knows it; he pays not for skill in determining mechanical consequences, but for highly complex individual judgments. . . . The reconstitution of our legal culture and its language must always be done, if it is to be done at all, by individual minds, and that means with individual differences. These differences, when properly publicized and disciplined, are not to be lamented but celebrated.

67. PIRSIG, *supra* note 1, at 196.

68. *Id.* at 200.

unidimensional thinking style—the focused, not the open-ended inquiry.[69] It drives out the emotional, the personal. It views the profession "through the mist of legal rules and legal problems."[70] It wants clarity, not vagueness; specifics, not generalities; structure, not flexibility; toughness, not sensitivity.

Law school training has been criticized for its failings, its lack of relevance to practice.[71] The result has been likened to a vast intellectual wasteland: arid, barren, not worth the crossing.[72] It produces a person capable of detached analysis, but the side effects of that production on the person have been described in terms that would make a frontal lobotomy a positive alternative.[73]

We lawyers must be concerned with our Classic and our Romantic selves. An unleavened classical training can so imbue lawyers with the law's purely rational aspects that they forget that the practice of law is foremost a human enterprise.[74] We must be concerned that "neglect of self and abrogation of one's personal values is an outgrowth of the process of learning the law; and that learning to 'talk like a lawyer' and 'think like a lawyer' may encourage some to forget that [we] are first and foremost human beings."[75] We must recognize the rational and emotional, our outer and inner selves.[76] There must not be that strange separation of who we are from what we do.

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69. *See* Redmount, *supra* note 13, at 872.

70. Elkins, *The Legal Persona*, *supra* note 23, at 739-40. Professor Elkins said that "[i]n essence, a lawyer's way of thinking and representing certain events in the world consists of a dislike of vague generalities, the structuring of all possible human relations into the form of claims and counterclaims, and the belief that human conflicts can be settled under established rules in a judicial proceeding."

71. *See* Marin Roger Scordato, *The Dualist Model of Legal Teaching and Scholarship,* 40 AM. U. L. REV. 367, 394-95 (1990).

72. *See* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

73. Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 NOTRE DAME LAW. 190, 197 (1976).

74. Peter W. Gross, *Intellect Beyond Law: The Case of Legal Education*, 33 CLEV. ST. L. REV. 391, 395-97 (1985).

75. Harvey M. Weinstein, *The Integration of Intellect and Feeling in the Study of Law*, 32 J. LEGAL EDUC. 87, 97-98 (1982).

76. *See* James R. Elkins, *The Paradox of a Life in Law*, 40 U. PITT. L. REV. 129, 159 (1979):

> The paradox for the law student/teacher/lawyer is that the legal world is at the same time a pragmatic world of technical skills and craftlike precision and a world of theories and ideals of legal justice, fairness, and equality. In such a paradoxical world, the lawyer-artist is our guide.

IV. THE TRANSCENDENCE OF QUALITY

The very strangeness of that separation led Pirsig to look for a different reality. Neither the Classic nor the Romantic explanation was satisfactory, nor could he find an adequate in-between.[77] The two had to be joined into one. Pirsig thought that quality, "a term that can split a world into . . . classic and romantic . . . is an entity that can unite a world already split along these lines into one."[78] However, the more Pirsig applied his knife to quality, the more confused the picture became. Quality, like the sorcerer's apprentice's broom, divided and subdivided, got completely out of control, and Pirsig, like the apprentice, forgot the incantation.[79]

Pirsig ultimately refused to define quality as either objective or subjective. It was not objective; it did not reside in the material world. It was not subjective; it did not reside merely in individual preference. For Pirsig, quality was another entity, independent of the two,[80] but which could be found in their relationship.[81] It does not result from a collision between objective and subjective but "is the *cause* of the subject and object which are then mistakenly presumed to be the cause of

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77. *See* Parker, *supra* note 9, at 321:

> The conclusion that [Pirsig] reached was that the problem of whether Quality was subjective or objective was itself a misconception resulting from the classic-romantic split. Instead of seeing the world as made up of what is out there, objective and definable, plus our subjective reactions to it, one needed to realize that the subjective and the objective were simply aspects of reality.

78. PIRSIG, *supra* note 1, at 200. *See also* W.T. Lhamon Jr., *A Fine Fiction*, NEW REPUBLIC, June 29, 1974 (reviewing ROBERT M. PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE (1974)), at 25-26:

> Both [romantic and classical] voices are inadequate: two halves of one larger vision each arrogating all truth and reality to its own method. . . . However, Pirsig and other new writers hope to surmount the battle neither by joining one side to vanquish the other, nor by staking out a golden mean, but by imagining, living and yoking the extremes.

79. PIRSIG, *supra* note 1, at 211-12.

80. *Id.* at 213.

81. *Id.* at 215. *See* Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2229 (1989), rejecting

> both the belief that meaning has foundation in objective correspondence with the world and the contrasting view that meaning can be nothing more than the arbitrary result either of social convention or of uncontrolled subjectivity. Instead, I . . . describe meaning as located in the process through which the human organism interacts with its world and employs its existence imaginatively to elaborate meaning through the use of experientially grounded image-schemata, models, metaphors, and metonymies.

the Quality."[82]

Quality is not subordinate, it is superordinate; it does not result, it creates. It is not an aspect of reality, it is reality; it is the source and the substance. It comes, as Roger Cramton so eloquently said about justice and love, from a source beyond, call it what you will.[83] There is a transcending force that relates the interplay of classic and romantic, of justice and love, ennobling us. By accepting this view of quality, Pirsig transcended the classic-romantic split, that strange separation between thinking and feeling.[84] He did not abandon reason. He expanded its nature "to include elements that had previously been unassimilable and thus have been considered irrational."[85]

For Pirsig, quality became a source.[86] Quality was "*not* capricious, it is the force that opposes capriciousness; the ordering principle of all . . . thought which *destroys* capriciousness and without which no . . . thought can proceed."[87] Pirsig saw that in every problem-solving situation, mechanical or legal,

> there's a beautiful way of doing it and an ugly way of doing it, and in arriving at the high-quality, beautiful way of doing it, both an ability to see what "looks good" and an ability to understand the underlying methods to arrive at that "good" are needed. Both Classic and Romantic understanding of Quality must be combined.[88]

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82. Pirsig, *supra* note 1, at 215.

83. *See* Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509, 518 (1987):

> In an ultimate sense, both love and justice come from a source beyond us—a transforming, ennobling source that some call God. Love and justice are gifts that come to us by grace; they are not things given by government or institutional arrangements. . . . Law, the efforts of lawyers, and the character of our social and legal arrangements can further them or frustrate them. In this view, love and justice are related: justice must always be informed by love if it is to be just; and love must always meet the demands of justice if it is to be loving.

See also Milner S. Ball, *Stories of Origin and Constitutional Possibilities*, 87 MICH. L. REV. 2280, 2317 (1989): "Polyphony realized in politics—fully, authentically, externally as well as internally—bears witness not to the human imagination's aesthetic self-transformation through narrative but to the redemptive power of a beyond in the midst of our life."

84. PIRSIG, *supra* note 1, at 149.

85. *Id.* at 230.

86. *Id.*

87. *Id.* at 242.

88. *Id.* at 262. *See* Christopher D. Stone, *Introduction: Interpreting the Symposium*, 58 S. CAL. L. REV. 1, 3 (1985), rejecting the "mindless vogue" that all interpretations, all analyses are as good as any other and asking a Pirsig-like question

The solution is not subordinating Classic to Romantic or Romantic to Classic; they should be united.[89]

Lawyers must also unite their classic and romantic selves. For too long, we paid sole heed to the myth of rationality, refusing to see that being a lawyer unavoidably implicates our intuition, our feelings, both as individuals and as members of a professional community; we lost sight "of the dynamic reciprocity between the conscious and the unconscious modes of thought."[90] Perhaps in our need to legitimize law as an intellectual discipline, we forgot that the law is also an activity, a doing, "more like painting than archaeology . . . more a process of creation than pure discovery."[91]

For Pirsig, quality is neither objective nor subjective; it is neither form nor technique. Quality informs both and is reflected in the proper conjunction of both. Quality is mysterious and individual.[92] The individual is a participant in its creation; quality emerges as a relationship between the individual and his or her experience.[93] Pirsig had come close to being gored by the horns of his colleagues' question. His escape was to leap between the horns, to vault over and beyond. The answer to his colleagues' question was not objective or subjective, Classic or Romantic. He broke out of those narrow alleys; he saw a new way.

We lawyers have trouble breaking out of our alleys.[94] We do not think about or promote thinking about what quality is in our professional culture. We do not see or encourage a view beyond the immediate.[95] We do not understand or make

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of the reader: "Perhaps this should be our common quarry: What makes one of several acceptable interpretations the best?"

89. PIRSIG, *supra* note 1, at 264.

90. Elkins, *The Legal Persona*, *supra* note 23, at 739 n. 20.

91. Dennis M. Patterson, *Law's Pragmatism: Law as Practice & Narrative*, 76 VA. L. REV. 937, 983 (1990). *See also* Eric Mills Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 560 (1976).

92. PIRSIG, *supra* note 1, at 305.

93. *Id.* at 338. *See* Winter, *supra* note 40, at 1112-13:

> [N]either objectivism . . . nor subjectivism or relativism . . . captures the complex reality of law as the product of a human rationality that, although grounded in human experience, is largely imaginative and metaphoric. . . . The process is, rather, situated in the experiences of actual human beings and is shaped by the ways they understand their experience.

94. *See* Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).

95. *See* Payton, *supra* note 8, at 246:

> When we speak of a purposive decision maker as having "judgment" we really mean to say that he or she has an ability to see the likely consequences of

known that the law is a process, is constantly being remade, and we as lawyers are present at that creation.[96]

We are not a class of intellectual robots. We are not doctrinal drones; we put that doctrine to work on the specific problems of real people.[97] And, like Pirsig's mechanic, when we work on problems, we also work on ourselves.[98]

We must consider what motivates us as lawyers. We must demand the ethical as well as the merely efficient.[99] We must consider whether we are doing quality work, making quality decisions, "building on a foundation of Quality within the individuals involved," returning, as Pirsig's work urges us, to "individual integrity, self-reliance and old-fashioned gumption."[100]

The quest for quality is not soft-headed; it demands more than just good enough. Zen teaches that when "there is a choice, choose. Pick the best there is."[101] Whenever we do

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present actions; this kind of judgment translates into an ability to design and implement successful courses of action. When we speak of a lawyer as having "judgment" we mean much the same thing.

96. *See* White, *Law as Rhetoric*, *supra* note 10, at 691. *See also* Irvin C. Rutter, *A Jurisprudence of Lawyers' Operations*, 13 J. LEGAL EDUC. 301, 303 (1961).

97. *See* Kreiling, *supra* note 17, at 288:

> [C]linical education should teach students a method: how to develop theories of problem-solving by utilizing established lawyering theory and by generalizing from experience; how to apply these theories in the actual performance of lawyering tasks; [and] how to analyze the result of performance in order to test the effectiveness of the action taken and thereby improve one's theory.

98. *See* White, *Doctrine in a Vacuum*, *supra* note 12, at 259:

> The most valuable attainment that a student will carry with her from our law school into the great world is not intellectual baggage in the form of boxes and trunks full of rules, distinctions, argument, and so on but a more fully educated mind. And her mind is also the organ by which she will claim to find or make meaning in her life—including moral meaning—the organ by which she will organize her own experience into a coherent and tolerable whole.

99. Marvin E. Frankel, *The Search For Truth: An Umpireal View*, 123 U. PA. L. REV. 1031, 1051 (1975). *See also* Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1077 (1976):

> The lawyer-client relation is a personal relation, and legal counsel is a personal service. This explains directly why, once the relation has been contracted, considerations of efficiency or fair distribution cannot be allowed to weaken it. The relation itself is not a creature of social expediency . . . it is the creature of moral right, and therefore expediency may not compromise the nature of the relation.

100. PIRSIG, *supra* note 1, at 322. *See also* Keeton, *supra* note 18, at 211; Shaffer, *supra* note 39, at 249.

101. VAN DE WETERING, A GLIMPSE OF NOTHINGNESS, *supra* note 2, at 30. *See also* Donal Henahan, *At Carnegie: The Best vs. Just O.K.*, N.Y. TIMES, Oct. 16, 1988, at H1, 27:

something we should look for quality options and pursue them; that raises what we do out of the mundane and gives it value.[102] Quality changes the job, the worker, the atmosphere "because the Quality tends to fan out like waves."[103]

This is certainly true of the law. A good legal education will teach people how to recognize and pursue quality options.[104] It is rigorous, demanding an acceptance of nothing less than the best from the individual. It does not show the individual "a particular set of questions and dialectical responses, to be repeated on other occasions, but . . . how to ask questions of one's own."[105] Able lawyers are creative, and they create for a client a solution for a specific situation.[106] Able lawyers also know how to "separate what merely looks good from what lasts."[107]

But lawyers must keep the right attitude. We must remain interested in the mystery of what we do. Pirsig found mysteries in the most mundane of tasks, even in tuning his motorcycle. It was a ritual he had been through a hundred times, but he remained alert, looking for the new, the novel.[108] What Pirsig had, what able lawyers have, is an openness to "the kind of truth you see laterally, out of the corner of your

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> It is not hard to acquire a taste for less than the best. A soft-headed acceptance of the perfectly O.K. and the routinely blameless usually comes first. From there it is a slippery slope: a grudging tolerance for mediocrity and, when the bottom is reached, an unembarrassed affection for whatever is. . . . Critics are notably susceptible to this progressive illness of the spirit. . . . The temptation is to stay friendly with everyone and acquire a taste for less than the best. But then, what is left to be said when something better turns up? . . . Good enough, let alone bad enough, will not do.

102. PIRSIG, *supra* note 1, at 323.

103. *Id.*

104. Parker, *supra* note 9, at 326.

105. James B. White, *The Ethics of Argument: Plato's Gorgias and the Modern Lawyer*, 50 U. CHI. L. REV. 849, 869 (1983).

106. *See* White, *Law as Rhetoric*, *supra* note 10, at 695:

> Like law, rhetoric invents; and, like law, it invents out of something rather than out of nothing. It always starts in a particular culture and among other particular people. There is always one speaker addressing others in a particular situation, about concerns that are real and important to somebody, and speaking a particular language.

107. Robert Pirsig, *Cruising Blues and Their Cure*, ESQUIRE, May 1977, at 68.

108. PIRSIG, *supra* note 1, at 84. While all of us live by routine, "the moments of change are of importance. At those moments we are forced to wake up and look around. And only when we are awake do we see something, and there is much to be seen. We live in a miraculous world." VAN DE WETERING, THE EMPTY MIRROR, *supra* note 2, at 62.

eye."[109] It is more than repetition of what has gone before; it is about what can be.[110]

Pirsig's quest led him to that strange separation of what we are from what we do. That separation results from a lack of caring, a lack of appreciation for quality. Care and quality are not divisible.[111] A person working toward quality is one who cares. A person caring about what is done can produce quality results.[112]

Able lawyers care; they know that their practice, their activity, affects more than just the legal community. It affects the community at large.[113] Able legal educators care; they know their students will join that community.[114] They care about expanding vision as well as increasing intelligence,[115] care about educating in a way that develops "a broad sequence of related and dependent qualities,"[116] care about providing students "a method for future learning from their experiences."[117]

Law has quality, has value, and lawyers have a constructive role to play.[118] Lawyers help clients develop a better

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109. PIRSIG, *supra* note 1, at 106.

110. *Id.*

111. *Id.* at 247.

112. *See* Parker, *supra* note 9, at 325:

> What enables the craftsman to make adjustments in the way he describes the world is his involvment in his work. . . . This involvement, which makes the problems which seem to impede progress just as interesting and rewarding as the work proceeding without "problems," is a necessary condition for quality results. One must "care."

113. *See* Fried, *The Lawyer as Friend*, *supra* note 99, at 1068-69:

> Before there is morality, there must be the person. We must attain and maintain in our morality a concept of personality such that it makes sense to posit choosing, valuing entities—free, moral beings. . . . [O]ne wishes to develop a conception of a responsible, valuable, and valuing agent, and such an agent must first of all be dear to himself. It is from the kernel of individuality that the other things we value radiate. . . . [A]ny concern for others which is a *human* concern must presuppose a concern for ourselves. The human concern which we then show others is a concern which first of all recognizes the concrete individuality of that other person just as we recognize our own.

See also White, *The Study of Law*, *supra* note 24, at 3.

114. Parker, *supra* note 9, at 327.

115. *See* Payton, *supra* note 8, at 237.

116. Holmes, *supra* note 91, at 562.

117. Kreiling, *supra* note 17, at 284.

118. *See* Charles Fried, *The Artificial Reason of the Law, or: What Lawyers Know*, 60 TEX. L. REV. 35, 57 (1981):

> It is the peculiar task of law to complete [the] structure of ideals and values, to bring it down to earth; to complete it so that it is seated firmly and

informed basis for choices that have value implications; we use our knowledge and skills to insure that our clients make informed choices.[119] We help to make and remake the law constantly; our creation and recreation must be done with a concern for quality. As lawyers, we know that the decisions we make, the actions we take, say much about how we, as a society, are to live.[120]

V. PUTTING THE GARDEN BACK INTO THE LEGAL MACHINE[121]

Pirsig provided guides for making quality decisions (although the more classic reader may find the guides too vague). The first is inner quietness. "The way to see what looks good and understand the reason it looks good, and *to be at one with this goodness* as the work proceeds, is to cultivate an inner quietness, a peace of mind so the goodness can shine through."[122]

Pirsig saw a reflection of inner quietness in the work of skilled mechanics; we should also see it in the work of able lawyers who, like skilled mechanics, not only spot problems but do something about them.[123] They are involved in their work; they do not separate self and surrounding. They are patient, careful, attentive. Their serenity will produce right values that will produce right thoughts that will produce right

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> concretely and shelters real human beings against the storms of passion and conflict. . . . [I]f the legal foundation is to support the whole, then ideals and values must constrain, limit, inform, and inspire the foundation—but no more. The law really is an independent, distinct part of the structure of value.

119. Keeton, *supra* note 18, at 211.

120. Patterson, *supra* note 91, at 995. *See also* White, *Law as Rhetoric*, *supra* note 10, at 696.

121. *See* Lhamon, *supra* note 78, at 25: "Pirsig is one of many writers now worried about slipping the garden back into the machine—art back into artifice, romantic back into classical. . . ."

122. PIRSIG, *supra* note 1, at 265. *See also* VAN DE WETERING, THE EMPTY MIRROR, *supra* note 3, at 24: "To be able to concentrate well your spirit has to be in balance; when your spirit is in balance your body has to be in balance as well."

123. *See* PIRSIG, *supra* note 1, at 266:

> To say that they are not artists is to misunderstand the nature of art. They have patience, care and attentiveness to what they're doing, but more than this—there's a kind of inner peace of mind that isn't contrived but results from a kind of harmony with the work in which there's no leader and no follower. The material and the craftsman's thoughts change together in a progression of smooth, even changes until his mind is at rest at the exact instant that the material is right.

See also James R. Elkins, *Professing Law: Does Teaching Matter?*, 31 ST. LOUIS U. L.J. 35, 46 (1986).

actions that will produce quality work.[124]

The second guide is caring, trying to do everything as well as possible.[125] You identify with what you are doing. You are aware, concentrated. There is no separation between who you are and what you do; you work for the best, for quality itself.[126] Good mechanics and able lawyers want to do as well as they can.[127] Good mechanics and able lawyers have a feeling for and care about that personally satisfying and outwardly pleasing fusion of intellect and action in their work.[128]

The final guide is that there is no one true path to quality. Quality is achieved in as many ways as there are people striving for it. Pirsig saw that the "selection from among many choices, the *art* of the work is just as dependent upon your own mind and spirit as it is upon the material of the machine."[129] Again, he looked to the craftsman

> who isn't ever following a single line of instruction. He's making decisions as he goes along. For that reason he'll be absorbed and attentive to what he's doing even though he doesn't deliberately contrive this. His motions and the machine are in a kind of harmony. He isn't following any set of written instructions because the nature of the material at hand determines his thoughts and motions, which simultaneously change the nature of the material at hand.[130]

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124. PIRSIG, *supra* note 1, at 267.

125. *Id.* at 253-67.

126. *Id.* at 267. *See also* VAN DE WETERING, THE EMPTY MIRROR, *supra* note 3, at 35.

127. PIRSIG, *supra* note 1, at 253. *See also* VAN DE WETERING, THE EMPTY MIRROR, *supra* note 3, at 61, where the author is being instructed by the head monk:

> The monastic training tries to wake us up, but when it is time to sleep you may sleep. But when you are not asleep, be awake. When you are cleaning vegetables, you really have to clean them. The idea is to throw the good pieces into the pot and the rotten pieces into the tin, not the other way around. Whatever you do, do it well, as well as you can, and be aware of what you are doing.

128. *See* Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145, 210-11 (1985):

> To the extent that legal theory is narrative, however, it is also art. Therefore we must decide not whether the worlds we envision are true or false, right or wrong. Rather, we must decide whether they are attractive or repulsive, beautiful or ugly. . . . The aesthetic quality of our art . . . deeply affects our lives: our imaginings are not only a part of our present, but a way of determining the limits of our future. . . . [W]e have a pronounced habit of quickly becoming the legal actors we like to imagine.

129. PIRSIG, *supra* note 1, at 147-48.

130. *Id.* at 148. *See* Ernest J. Weinrib, *Law as Myth: Reflections on Plato's*

This is more art than mechanics. This is the exciting relationship of intellect and action. It is dealing with the surprising, the spontaneous, the unexpected. This is not mimicry; it is creativity.

The same applies in the law. The able lawyer is an artist, capable of improvisation. The able lawyer is not formulaic but responds to every new situation. The able lawyer is well-grounded in tradition but open to the opportunities in each new problem.[131] The practice of law is an art; it commits us to "a life time of continuous adaptation and learning"; to produce quality, we must work with a disciplined imagination.[132] The law is malleable and capricious. It constantly requires us to learn and adapt, to be critically self-reflective. This enables us to judge our own performance, to identify where we need to develop, and to evaluate the effect of what we have done and what we propose to do.[133] Again, this is not mimicry; it is creativity. By caring, we can bring true quality to this creativity.

In frightful words, one commentator said it is possible to reduce law to

> two features: policy choices and techniques for their implementation. Our questions are "What do we want?" and "How do we get it?" In this way, the conception of the law as a set of rules merges with the conception of law as a set of institutions and processes. The overriding metaphor is that of the machine; the overriding value is that of efficiency, conceived of as the attainment of certain ends with the smallest possible costs.[134]

That is not how I see my profession. We must be more concerned with the quality of what we do.[135] We are not

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Gorgias, 74 IOWA L. REV. 787, 794-95 (1989). *See also* Whitney Balliett, *Bob's Your Uncle*, THE NEW YORKER, Feb. 23, 1987, at 126, quoting jazz pianist George Shearing:

> When you improvise, in addition to your tone production you must have a musical atmosphere in your head—a musical climate. . . . The gift of improvisation is being able to weave from one chord to another. It's a question of immediately getting what's in your mind into your fingers. If you could explain it, which I can't, all the surprise and spontaneity and unexpectedness would disappear.

131. Patterson, *supra* note 91, at 988.

132. Geoffrey C. Hazard, Jr., *Competing Aims of Legal Education*, 59 N.D. L. REV. 533, 544 (1983).

133. *See* Feldman & Feinman, *supra* note 57, at 929.

134. White, *Law as Rhetoric*, *supra* note 10, at 686. This is not what Professor White wants. *See* White, *Doctrine in a Vacuum*, *supra* note 12, at 253-54.

135. *See* Deborah L. Rhode, *The Rhetoric of Professional Reform*, 45 MD. L. REV. 274, 288-93 (1986) and Holmes, *supra* note 91, at 542.

amoral rational robots; we deal with the law's operations and effects in society, and with the nature and meaning of the personal and social behavior with which the law deals.[136] The problems with which the law

> deals, the ways in which it deals with them, and . . . the issues with which it fails to deal are expressions of the ideas, values and tensions that may be found within society. [O]ne studies it for the same reason that one studies anything else, to acquire knowledge of the world. That knowledge is both an end in itself and a condition for intelligent, purposeful, and therefore moral action.[137]

I learned in practice, and I now try to teach, that the law is a way of learning about things, including ourselves.[138]

Legal education and, by implication, legal practice, has been characterized as serving neither the person's, nor the profession's, nor society's best interests.[139] That critique, made shortly after Pirsig's book was published, continues to echo.[140]

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136. *See* James B. White, *Law and Literature: "No Manifesto,"* 39 MERCER L. REV. 739, 748-49 (1988):

> The central question for us as lawyers is how legal power ought to be exercised: upon what conception of oneself, of the litigants, of one's audience, of the prior texts that bear upon the case, of the culture of argument that is the law. Real-world answers to such questions cannot be merely theoretical in character, but must be performative, actual enactments in the texts . . . .

137. Sandalow, *supra* note 59, at 172-73. *See also* Cramton, *supra* note 83, at 511:

> I believe that a sense of calling is essential for law teachers and students. The search for truth, with all that implies concerning the meaningfulness of objective reality and the importance of the procedures by which we attempt to describe and talk about it, is a central commitment of the legal scholar. Is there not also a commitment, both for the law teacher and student, to search for the good? A renewed understanding of what it means to be a professional should include a commitment to something other than acquisition and success. If so, law schools have an educational responsibility to deal with the larger normative issues that infuse the application and use of legal technique.

138. *See* Elkins, *The Quest*, *supra* note 3, at 597:

> Teachers of law need ways of thinking and talking about legal education that will help us and help our students to confront, critique, and "see through" the prosaic, technical legalism of law school. We need a language that makes rather than denies meaning. To engage in the everyday reality of becoming a lawyer without reflecting on where it is taking us and what kind of journey it may turn out to be, or on how we are remaking ourselves to serve purposes we abhor, means that we give up our own souls.

139. Robert S. Redmount & Thomas L. Shaffer, *Learning the Law—Thoughts Toward a Human Perspective*, 51 NOTRE DAME L. REV. 956, 969 (1976). The authors wanted "to stimulate an interest in significant change in legal education, a change in the direction of greater humanism and greater contact with interpersonal and social reality." *Id.*

140. *See* Sandalow, *supra* note 59, at 167-68:

> The notion that a legal education is merely instrumental . . . rests upon a

Legal education and practice should enhance our capacity "to think clearly, to feel intelligently and to act knowingly."[141] No law student, no lawyer, should be so concerned with exercising intellectual power that he or she becomes numb to the results of that exercise; no law student, no lawyer, should learn or practice in a one-sided, restricted, indifferent manner.[142] A lawyer's education and practice must reflect more than that; it should be attended by "[j]udgments of value that recognize the legitimacy of moral concerns, provide the means for moral analysis, and accept the validity and even the primacy of moral experience and judgments. . . ."[143]

Able lawyers are explicators and creators; they know that the important knowledge is not only scientific, rational, theoretical but also "practical, experiential—the sense that one knows how to do things with language and with others."[144]

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confusion of thought. It does not follow from the fact that our students will shortly undertake professional obligations of service that we are entitled to treat them as instruments. Their status as persons, as sources of value rather than merely a means by which value is attained, is diminished if we abstract from them the roles that they later will play in relation to others, seeking only to equip them for those roles. Appropriate respect for them as persons requires that we take as the main object of legal education the enhancement of their capacity to realize their human potential as it is understood in our culture.

141. *Id.* at 173-74. Sandalow continued:

> The intellectual and moral qualities I have been considering are the proper ends of education because they are the qualities that men and women require to realize their human potential and to act as moral beings. . . . Courage, patience, sensibility, knowledge, breadth of perspective, clarity of thought . . . are essential if lawyers are adequately to serve their clients and meet the obligations of public service they are so frequently called upon to undertake.

See also Robert L. Stenger, *Should a Professor of Law Profess Law?*, 31 ST. LOUIS U. L.J. 81, 97 (1986).

142. *See* Erwin N. Griswold, *Law Schools and Human Relations*, 1955 WASH. U. L.Q. 217 (1955). *See also* Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514, 537 (1978), where, in advocating the use of humanistic insights in the law school classroom, the author said such

> an approach is particularly critical if the profession is to address the dehumanization that occurs all too frequently in lawyering and if the lawyer is to appreciate his client and others as whole persons rather than just legal problems. . . . It is, however, particularly hard for the lawyer who is trained to evaluate information, situations, and individuals in terms of their legal relevance rather than their humanity. The professional role he learns and the way in which he learns it fosters the lawyer's "respond[ing] to the client as an object."

143. Redmount, *supra* note 13, at 865. *See also* Kenney Hegland, *Moral Dilemmas in Teaching Trial Advocacy*, 32 J. LEGAL EDUC. 69 (1982).

144. White, *Law as Rhetoric*, *supra* note 10, at 695. *See* Brennan, *supra* note 61, at 10:

They establish a position in the legal culture from which they think clearly, feel intelligently, act knowingly.[145]

If Pirsig's colleagues had been lawyers, their tough question might have been whether an able lawyer can be a good person, can practice in a way that deserves respect, individual and communal.[146] The answer must be yes. The "integrated and autonomous person maintains the capacity, disposition, and sensitivity to respond appropriately when acting in or out of a professional role."[147] Striving for quality is a goal we all can share as lawyers.[148] We lawyers—the lawyer/student, the lawyer/teacher, the lawyer/practitioner—must work as Pirsig did, to achieve insight and understanding about ourselves and about our relations with others.[149] The quest for quality allows

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> "The law has its piercing intuitions," [Cardozo] wrote, "its tense, apocalyptic moments." "Imagination, whether you call it scientific or artistic, is for [both law and science] the faculty that creates." The well-springs of imagination, of course, lie less in logic than in the realm of human experience— the realm in which law ultimately operates and has meaning. Sensitivity to one's intuitive and passionate responses, and awareness of the range of human experience, is therefore not only an inevitable but a desirable part of the judicial process, an aspect more to be nurtured than feared.

Id. (quoting B. CARDOZO, THE PARADOXES OF LEGAL SCIENCE (1928)).

145. White, *The Study of Law*, *supra* note 24, at 4-5. *See also* White, *Law as Language*, *supra* note 66, at 444:

> To conceive of the law as a rhetorical and social system, a way in which we use an inherited language to talk to each other and to maintain a community, suggests in a new way that the heart of law is what we always knew it was: the open hearing in which one point of view, one construction of language and reality, is tested against another. The multiplicity of readings that the law permits is not its weakness, but its strength, for it is this that makes room for different voices, and gives a purchase by which culture may be modified in response to the demands of circumstance. It is a method at once for the recognition of others, for the acknowledgment of ignorance, and for cultural change.

146. Fried, *The Lawyer as Friend*, *supra* note 99, at 1060-61.

147. Steven D. Pepe, *Clinical Education: Is Taking Rites Seriously a Fantasy, Folly or Failure?*, 18 U. MICH. J.L. REF. 307, 312 (1985).

148. *See* Jon O. Newman, *Rethinking Fairness: Perspectives on the Litigation Process*, 94 YALE L.J. 1643, 1659 (1985).

149. Elkins, *The Legal Persona*, *supra* note 23, at 755. *See also* Kari Johnson & Ann Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433, 436 n.4 (1986):

> We can never get beyond where the Realists left off unless we act as if that distinction [between theory and practice] doesn't exist. Because we not only create, but are also created by, the institutions in which we work and live, impasses in thought can be surmounted only by changes in reality. New avenues for theory will remain invisible without transformation of experience.

for no separation of personal and professional self.[150]

By our training and our licensing, we are given great freedom and responsibility. We are independent professionals whose work has substantial social impact. We discover and create within ourselves and in our profession and our society. The quest for quality reminds us that we are responsible for our conduct; our lives as lawyers constantly call up questions of personal as well as professional life.[151]

Can we define quality in law? Probably not to everyone's satisfaction.[152] But we do know what quality in law is. It comes from within; it is not satisfied by the purely rational and analytical. It is individual, internal, intuitive. It is the goal of caring lawyers, a reflection of value and purpose in our profession.[153]

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150. *See* Shaffer, *supra* note 39, at 244; White, *Law as Rhetoric*, *supra* note 10, at 691; and Gross, *supra* note 74, at 398.

151. White, *The Ethics of Argument*, *supra* note 105, at 895.

152. In *Justice, Expediency, and Beauty*, 136 U. PA. L. REV. 141 (1987), Louis B. Schwartz defined justice as

> a complex quality of fitness, proportionateness to the situation, responsiveness to tradition as well as to the need for change, and sensitivity to both individual hardship and the general good. Admittedly, justice so defined is not precisely measurable. But many of the most important aspects of our collective and individual lives, such as love, health, and patriotism, are not quantifiable. They are not, however, on that account, less significant.

Id. at 142. Professor Schwartz faced the same problem in assigning an aesthetic criterion, beauty, to justice, acknowledging that it

> is an example of a concept . . . that is essential and useful although difficult to appraise and impossible to quantify. . . . That [beauty] concept expresses an abiding aspiration for a quality that transcends utility or expediency. It is a quality that evokes in the appropriate audience a recognition of rightness, of fittingness according to a complex of psychological, historical, and political background shared by that audience.

Id. at 145-46. *See also* Chang, *supra* note 2, at 564:

> Zen experiential reality . . . offers the possibility of grasping the whole in a single stroke—yet it denies the ability to describe that experience. This incapability of expression makes the experience seem of limited value. Paradigms that do not offer a normal process of problem solving seem to be merely aesthetic experiences and inappropriate in an arena as pragmatically self-conscious as law. Yet, the experiential leap accompanied by "seeing" [a court decision] directly can have profoundly empowering consequences.

153. *See* Chang, *supra* note 2, at 572:

> [O]ne must not think that this article is urging a kind of individual anarchy created by having each individual choose her own kind of reality. . . . The paradigm shift accomplished by overcoming the world of the conceptual does not lead to anarchy and nihilism. Rather, the experience of satori in Zen would lead one to conclude that a postshift person would see law in its conceptual nature clearly. In such a state there is a potential for self-actualization and the opportunity to experience power over one's experience in life. Law, then, would not be the force that dictates results. Rather, law

There should not be that strange separation of what we are from what we do. What we are and what we do should always be guided by quality, by the relationship between ourselves and our experience.[154] Think clearly, feel intelligently, act knowingly.

would simply be the frame or context, like an empty baseball field, in which one's chosen experiences were about to take place.

154. *See* Cramton, *supra* note 83, at 515:

Being fully human is being rational as well as intuitive and insightful. Openness to new experiences and insights, constant reformulation of beliefs based on new knowledge, a tolerance for other views that are supported by data or rational argument—these are the basic elements of the method by which we can arrive at closer approximations of the truth.