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# THE THOUSAND MILE JOURNEY: TAOISM AND WESTERN LEGAL PHILOSOPHY

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## INTRODUCTION

*Men are men before they are lawyers, or physicians, or merchants or manufacturers; and if you make them capable and sensible men, they will make themselves capable and sensible lawyers or physicians.*

—John Stuart Mill<sup>1</sup>

It was often said of K'ung Fu-tse<sup>2</sup>: “If the mat was not straight, the master would not sit.”<sup>3</sup> This is surely an outlook with which many American lawyers, and those who deal with them, are familiar today.

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\* I would like to thank Professor Ronald Garet for advising me on this Note. It has not been the most conventional of Law Review notes, and I appreciate his taking it on and also his readiness with advice sage enough to make Lao-tse proud. I would also like to acknowledge and praise the wonderful writings of Benjamin Hoff, which I have shamelessly appropriated for my own purposes throughout the following. Also, if I might, I want to give a short shout-out to all my homies keeping it real on the Law Review; one love.

1. JOHN STUART MILL, *Inaugural Address Delivered to the University of St. Andrews, in ESSAYS ON EQUALITY, LAW, AND EDUCATION* 215, 218 (John M. Robson ed., 1984) (1867).

2. Known to the West primarily by the Anglicized name “Confucius.” Kung Fu-tse is pronounced, for those who are interested in such things, as “kung” (or “gung,” halfway between k and g is the ideal, if most difficult, pronunciation, from what I’m told) “FOOdsuh.”

3. This quotation, like many of the quotations and anecdotes that will follow in this Note, is not taken from any one particular source, but rather from my memories of things learned in studying Eastern thought with philosophers, writers, and monks. Many of these quotations and stories do not come from any source other than the plain, oral, and philosophical tradition of a given philosophical or religious regime.

Thus, though it is anathema to do so in most law review articles, there will be times when I will be unable to give direct citations for some of the anecdotes or parables in this Note. Whenever possible, though, I will cite to a direct, primary, or secondary source for any quotation or story I use. If, however, there is a quotation without a citation, the reader may assume that this quotation comes from apocrypha and no direct source.

Though there is, of course, something to be said for keeping the mat straight, especially in an area as specific and particular as the law, the refusal to sit because of minor discrepancies can lead to tired legs and a bad temper. In the legal context, this means that certain “mat-straightening” practices can lead to inefficient procedure, incomprehensible or purposeless laws, and, at worst, miscarriages of justice.

The American legal system, descended as it is from Hebraic, Roman, and British law, is, in spite of the genius of its framers, at times hopelessly mired in the muck of mat-straightening when it should be concerned with simply sitting and getting down to the business of justice. This is due not so much to flaws in the basic structure of the law, but to the immense over-complexity that is largely (though certainly not solely) a phenomenon of the modern era. These days, it seems that the simple purpose of the law has been completely obscured by the practice of it. Fortunately, though much of Western legal scholarship has ignored or simply not recognized this trend toward unnecessary complexity, in the East, particularly in China, political and social philosophers have been dealing with this exact kind of excessive insistence on convolution and bureaucracy for thousands of years. They know it as Confucianism.<sup>4</sup>

Though the United States is not “Confucian” in the sense of a strictly Chinese interpretation of the term, insofar as the legal practice and ethics in this country defer to procedural red tape when they should be examining the underlying issues, our legal system can rightly be placed under the aegis of K’ung Fu-tse’s methodology. In other words, there is a great deal of room for improvement in the form of simplification and streamlining within the American legal system and its ancillaries.

It is the intention of this Note to provide the reader with suggestions for ways in which Eastern thought, specifically the thought of Lao-tse and the Taoists, can be brought to bear on some of the problems at issue in American law. This Note will not provide a comprehensive study of the ways in which American law practice is inefficient, nor the ways in which Eastern philosophies can be applied with beneficial results. Instead, it will deal with several general notions and precepts of Eastern thought, compare them, and attempt to synthesize some general rules from a wide expanse of ideas. Moreover, it will apply this synthesis, and some of the raw theories

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4. Before we go any further, there is something I need to make absolutely clear. I am not addressing the validity of either Taoism or Confucianism as they function as a set of religious beliefs. I am looking at them in a purely socio-philosophical context. It is not my intention to praise or criticize any religion.

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themselves, to various, specific areas of law and legal practice. It is my hope that the precepts and ideals delineated herein can be applied beyond the narrow examples discussed, to wide areas of law, whether it be law as it applies to legal practitioners, or to the rest of us who still must deal with law in everything we do.<sup>5</sup>

Part I of this Note will provide a hopelessly brief primer on the history and important concepts of Eastern thought. It will attempt to lay out the basic ideologies, but the reader should understand that it is in no sense a comprehensive survey. Nevertheless, it will provide enough of a necessary framework to allow the reader to connect the ideologies presented herein with his own experience in the legal field. On the other hand, anyone who finds his curiosity piqued by the issues that are merely touched on herein should go out to his local library and delve more deeply into this subject matter.

Part II deals with several key Taoist<sup>6</sup> ideas in greater depth, among them: the notion of resistanceless efficiency, or *Wu Wei*; and the concept of Taoist virtue, or *Te*. It provides, again, the basics for understanding these ideas and describes briefly some ways in which they can be applied to the Western legal world. However, these ideas are not expanded on or examined in a practical setting until Parts III and IV. Part II also delineates a basic contrast between Confucian and Taoist ideologies in order to highlight further the importance of these crucial principles and to ease the reader's understanding of this essential dichotomy. Furthermore, it provides the reader with several anchoring points in Western philosophy and sociology, through the analogy of which he may be able to come to a quicker grasp of the key concepts that underlie these ideas.

Part III takes some of the concepts examined in Part II and extrapolates some applications for them in a general context. The purpose of this section is partly to acquaint the reader further with the ideas of Taoism, but more importantly to demonstrate in a general sense, the practicalities of these ideas. That is to say, it will demonstrate how some of

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5. There's another thing I need to clear up here. I am not, by any means, one of those people who believes that Western culture is wholly inferior and that the East is the only place to look to find real truth. In fact, quite the opposite is true: I wholeheartedly believe that Western civilization is the greatest there is.

This does not mean, however, that I believe it to be perfect. The hard truth is that it always has had and still does have many flaws, and, especially in certain areas, there is much ground to be gained in repairing these flaws by examining and applying Eastern thought. One of the goals of this Note is to provide a tiny example of what that kind of examination can bring us.

6. The "Tao" in Taoist is pronounced with a D, and sounds a lot like the word "Dow" in Dow-Jones.

the general principles and ideas of Taoist thinking work in a real world setting. In addition, this Part will acclimate the reader to some general (and not so general) principles of K'ung Fu-tse's ideologies and compare and contrast their effectiveness and benefit with their Taoist counterparts. Here, an examination of codes of legal ethics, as well as tried and true but heretofore uncodified practices, will take the limelight as Taoist thinkers help us to debunk some of the more sinister traditions and opinions that have plagued lawyers and clients since time immemorial and remain largely unchanged to this day.

Part IV takes some of the general theories explained in Part III and narrows them down, becoming more specific in both its theoretical and exemplary explanation. It looks at several of our legal customs and linguistic ideas through the lens of Taoist thought, especially as it pertains to the Taoist versus Confucian tension elucidated in the previous section. In particular, the practice of gender neutrality in legal writing and the hideous bluebook system of footnoting are deconstructed and assessed for their true benefits and harms, in both the short and the long run. Having already encountered the general ideologies of Confucianism and Taoism, this Part gets more specific, spotlighting those concepts discussed in Part II: *Wu Wei* and *Te*; demonstrating how they figure into the arguments over these legal issues. This Part propounds more of a Taoist perspective than a Confucian one, specifically discussing only those Confucian ideas that have not been addressed in Part III. Therefore, it is essential to read Part III first in order to fully understand Part IV.

Finally, Part V concludes with a summary of the key concepts and ideas addressed in this Note, relating them to each other and providing an overall schematic for ease of understanding. Also, it proffers suggestions for ways in which the concepts discussed herein can be applied on a larger scale to multiple issues in the legal field. Furthermore, it touches on several other key concepts in Eastern thought that the reader may find helpful in his understanding of how they function in a legal context. It ends with some predictions on the future of Eastern thought in Western law, forecasting an eventual, slow change from a somewhat Confucian to a more Taoist system of practice.

## I. A PRIMER ON EASTERN THOUGHT

*Chinese civilisation is so systematic that wild animals have been abolished on principle.*

—Aleister Crowley<sup>7</sup>

Since Confucianism was the ascendant political ideology in Chinese society until the advent of the Maoists (although some might argue that Maoism is the most radically Confucian political system of all time), Aleister Crowley's pithy statement above is both fair and apt. However, not all of China was Confucian, and some who called themselves Confucians did so only because it was in fashion, not because they were strict practitioners. Indeed, there was a portion of Chinese society that was primarily influenced not by mankind's desire to regulate and codify the world, but instead by the power of nature and heaven as it existed, and sought simply to embrace and work with these as they were. They were known as Taoists, and it is their worldview that helped create the real balance of humanity and nature that made China such a rich and multifaceted civilization. Still, as much as I might be inclined to give a litany of Taoist praises here, I haven't got enough room for a complete history; I'll need something to make my work a little more efficient.

A picture is worth a thousand words, or so the saying goes. In this case though, I hope a certain picture is worth a few more than that, since it is with it that I hope to give you, in the words of many of my law professors, the "quick and dirty" version of a general history of the three major Chinese philosophical/religious regimes. I must admit, however, that I've always found this expression a bit puzzling. This history will be an extremely quick one, that's for certain, but I'm not sure where the dirty part comes in. However, you can be assured that "dirty" is strictly literal. This Note is suitable for the whole family—it's not that sort of picture. To be honest, it's anything but lurid. It's an ancient Chinese print called *The Vinegar Tasters*,<sup>8</sup> which, though quite famous in China, is virtually unknown to most Westerners. The painting shows three men standing

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7. ALEISTER CROWLEY, *THE CONFESSIONS OF ALEISTER CROWLEY* ch. 56 (1970), available at <http://www.hermetic.com/crowley/confess/chapter56.html>.

8. *The Vinegar Tasters* is an ancient scroll painting. The artist is unknown and his identity quite hotly debated. It is very famous and as such, many, many reproductions of it exist. If you find my description somewhat less than adequate and are interested in viewing the painting itself, it is available at [http://www.hackvan.com/pub/stig/spirit/The\\_Vinegar\\_Tasters.htm](http://www.hackvan.com/pub/stig/spirit/The_Vinegar_Tasters.htm). I must warn you, however, the painting loses quite a bit of its force (not to mention its clarity) when shrunk and pixilated on a web page.

around a vat that contains, we are to assume, vinegar. From left to right the men wear a sour, a bitter, and a sweet expression, respectively. That is to say, one man purses his lips, another frowns in disgust, and the third grins with pleasure.

The painting is, of course, an allegory and, as such, has a bit more story to it than the opinions of three old men as to the taste sensations in a particular batch of vinegar. We are to understand the vinegar in the vat is life. Not “life force” in some ontological sense of the term, but real life in the real world: human existence on Earth. The three men each represent a particular philosophy of ancient China. The man with the sour expression is K’ung Fu-tse; the bitter-faced man is Siddhartha Gautama, the Buddha; and the smiling man is Lao-tse,<sup>9</sup> author of the oldest extant work on Taoism, the *Tao de Ching*.<sup>10</sup>

The Confucian school saw the world as disorderly and chaotic: Life in this world was harsh, sour. Confucians sought to “sweeten the pot” by adding their own ingredients to the mix. These ingredients came in the form of laws, bureaucracies, prescribed phrases and gestures, even specifically measured and scripted court music.<sup>11</sup> To quote K’ung Fu-tse, “Things have their order. Events have their sequence. . . . Those [ancient leaders] who desired to set an example of good character for everyone first established moral order in their states.”<sup>12</sup> The vinegar in the pot is unsweetened and, without his additives, K’ung Fu-tse would have found it very unpleasant.

The Buddha believed that all life was suffering and that this world exists merely as a stopping place in the continual karmic struggle on the way to nirvana.<sup>13</sup> His bitter expression displays the displeasure he shows

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9. Pronounced “LAOdsuh.” Like many Chinese words and names, his is transliterated variously as Lao-tse, Lao Tzu, Laodsu, etc.

10. Pronounced “TAO DEH CHIng.” Roughly translated, the title means Tao Virtue Book, or Book of Virtues of the Way.

11. BENJAMIN HOFF, *THE TAO OF POOH* 3 (Penguin Books 1983) [hereinafter HOFF, POOH].

12. K’UNG FU-TSE, *Great Wisdom*, in *THE HEART OF CONFUCIUS, INTERPRETATION OF GENUINE LIVING AND GREAT WISDOM* 127, 129–30 (Archie J. Bahm trans., Asian Humanities Press 1992) [hereinafter K’UNG FU-TSE, *Great Wisdom*] (citations omitted). The citations to Mr. Bahm’s work need a little explanation, because the bluebook solution for dealing with the situation it raises is confusing. Contained within Bahm’s book are two full, independent works by K’ung Fu-tse. Each of these has its own title: *Genuine Living (Chung Yung)* and *Great Wisdom (Ta Hsueh)*. I often cite to these, giving credit to Mr. Bahm as the translator, but to K’ung Fu-tse as the author. However, a large portion of the collection is taken up by Mr. Bahm’s own, very informative introduction, and when I cite to this I give Mr. Bahm himself credit as the author and use the anthology’s title.

13. *The Word of the Buddha*, in *A BUDDHIST BIBLE* 22, 22–31 (Dwight Goddard ed., 1994).

in having to deal with the constant struggle against desire and the continual spiritual pain that is existence.

Lao-tse, however, wears a smiling expression because, like most Taoists, he believes that the world, nature, and humanity are perfect in their own existence.<sup>14</sup> Unlike K'ung Fu-tse, who believed that the world was chaotic and in need of reshaping, Lao-tse taught:

[T]he more man interfered with the natural balance produced and governed by the universal laws [of heaven and earth], the further away the harmony retreated into the distance. The more forcing, the more trouble. Whether heavy or light, wet or dry, fast or slow, everything had its own nature already within it, which could not be violated without causing difficulties. When abstract and arbitrary rules were imposed from the outside, struggle was inevitable. Only then did life become sour.<sup>15</sup>

Taoism, then, is a philosophy of simplicity and acceptance. It is a philosophy that treasures “going with the flow,” over resistance and force. Confucians are concerned with making sure everything has its proper place, but Taoism recognizes that most things in the world are in their proper places to start with.<sup>16</sup> Lao-tse believed that a single force, already perfect in its ordering and structure, motivated all things in the universe.<sup>17</sup> He also believed that this force could not be described in words, and that it would be insulting both to the force itself and to human intelligence to make an attempt at such an artificial codification.<sup>18</sup> However, one can't exactly go about writing a philosophical treatise about “that force that animates the universe and supports all life, but which doesn't have a name that we can describe in words” because it's just inconvenient—especially when you have to write in Chinese. Therefore, Lao-tse called this force “Tao,” which means simply “the Way.”<sup>19</sup> Lao-tse did not say, though, that just because the force is unnamable that it is necessarily ineffable as well. Indeed, he maintained quite the opposite viewpoint, saying that those who strive to live in harmony with the universe and the Tao will understand its workings much more readily than those who attempt to dilute or distill it for some improper purpose.<sup>20</sup> In the work of Lao-tse, and a second major Taoist writer, Chuang-tse (not to mention most of the others), a feeling of pliancy

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14. HOFF, POOH, *supra* note 11, at 4-5.

15. *Id.* at 4.

16. See LAO TZU, TAO TEH CHING 19-20 (John C. H. Wu trans., Shambhala 1990).

17. See *id.* at 1.

18. See *id.*; HOFF, POOH, *supra* note 11, at 5.

19. HOFF, POOH, *supra* note 11, at 5.

20. See *id.* at 4-5.

and acceptance rather than didactic lecture permeates the text. The works of K'ung fu-tse and his disciples are the antithesis of this, feeling stilted and staid.<sup>21</sup>

As you can imagine, then, Taoism exists under manifold and numerous headings throughout China (and elsewhere)—sometimes a religion, sometimes a philosophy, sometimes a political ideology. Like the Tao it tries to elucidate, Taoism can take many forms. But the Taoism we are concerned with here is none of those listed above. For us, it is nothing more than a simple understanding of basic, general principles that motivate all things and can be put to use beneficially in the legal world. We are concerned with the crucial concept of Taoist thought: Living in harmony with the universe leads to efficiency, order, and happiness without the need for some grave external struggle for understanding. By examining what we can already see, by learning from that, rather than trying to apply an artificial analysis, or “fix what ain't broke,” we can achieve the maximum level of efficiency and harmony with the minimum effort. This is what Lao-tse, Chuang-tse, and other Taoist writers teach us is the path to understanding and living in harmony with the Tao.

## II. THE WHITENESS OF THE WHALE

*Simplicity doesn't mean to live in misery and poverty. You have what you need, and you don't want to have what you don't need.*

—Charan Singh<sup>22</sup>

Now that we've gone over the general gist of things and we've seen the lay of the land, it's time to delve a bit deeper into several of the key concepts of Taoism that are going to play the major roles in our later legal analysis. Unfortunately, there's no nicely inked painting to help us through the tougher parts this time, so strap on your philosophy helmet and beware of syllogisms.

The first concept we need to tackle is *Wu Wei*. A literal translation of the Chinese characters renders this term as “without action” or “without doing.” Taoist scholar Benjamin Hoff expands further on this literal analysis by describing the radicals, or component pictographs, of the Chinese characters: “It seems rather significant that the character *Wei* derived from the symbols for a clawing hand and a monkey, since the term *Wu Wei* means no going against the nature of things; no clever tampering;

21. See, e.g., K'UNG FU-TSE, *Great Wisdom*, *supra* note 12, at 129–53.

22. Charan Singh, *quoted in* Quotes of Wisdom, at <http://nyail.com/wisdom.htm>.

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no Monkeying Around.”<sup>23</sup> As interesting as this is, literal translations never really get to the core of the meaning because literal translations exist outside of context. We need to establish a context in order to see *Wu Wei* as it should be seen. Therefore, for our purposes *Wu Wei* should simply be understood to mean without extraneous, senseless, or egocentric effort.

For now, though we'll get to some concrete examples of practical application later, it will be helpful and illustrative here to talk about the practicalities of *Wu Wei* in the abstract for a bit. The first and most important characteristic of *Wu Wei* in action is that it increases efficiency by decreasing resistance and effort. This may seem counter-intuitive to many people, especially lawyers, because we are trained by science and technology to doubt that anything is perfect or useful in its original, “unrefined” state. Why settle for iron when you can mix it with other substances and make steel? Why settle for a steam powered paddleboat when you can have a fission-reactor-powered submarine? Americans, most of us at any rate, believe that something can always be improved with a little elbow grease and some inspiration.

This ideology is not necessarily wrong, but it is dangerous to believe that it is right all of the time, and for much of legal practice today, it has gone much too far. Interestingly enough, technology itself can provide us with an example from the other side of viewing things. Any electrical engineer will tell you that it is in fact a law of physics that if one decreases the resistance in a conductor (a telephone line, e.g.), the electrons moving through that conductor (perhaps in the form of binary data) will flow more freely and more efficiently. The concept (and reality) of the superconductor is the existence of a material through which electrons can flow and encounter absolutely no resistance, the perfect electrical environment.<sup>24</sup> The concept of superconductivity in electricity is exactly the same (though in a more tangible form, perhaps) as the ideal state of activity that one strives at through the practice of *Wu Wei*.

This idea of no resistance, or no force, does not mean, of course, that human beings should just sit around and never interact with our environment. Human beings want to accomplish things and the Tao does not in any way mandate or suggest that this should not be the case. Rather, *Wu Wei* means that when we go with the flow—cut with the grain—our work becomes much easier and we accomplish whatever interaction we

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23. HOFF, POOH, *supra* note 11, at 68.

24. For more information on how electricity, resistors, conductors, and superconductivity all work, see Fundamentals of Superconductors, at <http://www.ornl.gov/reports/m/ornlm3063r1/pt3.html>.

want much more efficiently; we reduce the resistance. A story by Chuang-tse will help illustrate this point:

At the gorge of Lü, the great waterfall plunges for thousands of feet, its spray visible for miles. In the churning waters below, no living creature can be seen.

One day, K'ung Fu-tse was standing at a distance from the pool's edge, when he saw an old man being tossed about in the turbulent water. He called to his disciples, and together they ran to rescue the victim. But by the time they reached the water, the old man had climbed out onto the bank and was walking along, singing to himself.

K'ung Fu-tse hurried up to him. "You would have to be a ghost to survive that," he said, "but you seem to be a man, instead. What secret power do you have?"

"Nothing special," the old man replied. "I began to learn while very young, and grew up practicing it. Now I am certain of success. I go down with the water and come up with the water. I follow it and forget myself. I survive because I don't struggle against the water's superior power. That's all."<sup>25</sup>

As with many Chinese didactic or semi-didactic stories this one can be read in several ways. One way is to read it as saying "practice makes perfect." That would be the Confucian way of reading it, but it would also be rather shortsighted. The old man did not learn to survive the churning waters because he practiced certain techniques until he learned them and then applied them in action. He learned to survive the churning waters because, after years of experience, he found that the practice of no technique, that is to say no effort or exercise of skill, led to success. The "practice" here was not for the purpose of mastering some technology or procedure. It was simply to gain knowledge of the true nature of the waterfall and, knowing that, to realize that the simplest route to success is the easiest one: *Wu Wei*. Perhaps Lao-tse himself put it most succinctly:

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25. HOFF, POOH, *supra* note 11, at 68–69. One thing about these stories: Though the citations are almost always to the books of Benjamin Hoff, it should be noted that he did not author these stories himself, only translated them from the Chinese and anthologized them. Most of these stories come from the teachings of Taoist scholars (often Chuang-tse), and I give the name of the original author if it is known. I used Hoff's books rather than original texts because they provide a convenient clearing-house for these stories (many of which are not available elsewhere in English) and because I like his translations.

I would also like to point out that, in many ways, Taoism is a philosophy that spreads its teachings via "popularizations" such as parables, stories, and proverbs. Though this may not seem like rigorous scholarship if you're used to seeing complicated wording and sharp logic in philosophical treatises, these stories have served to communicate ideals through many centuries, and I believe them to be the best means of communication of these ideals even to this day.

“Tao never makes any ado, [a]nd yet it does everything.”<sup>26</sup> The Tao does not interfere with things or force them to work unnaturally and as a result, whatever needs to be done is done.

The other idea we need to go over is a complex and multi-faceted one. The Chinese word for this concept is *Te*,<sup>27</sup> which essentially means virtue, but, again, a breakdown of the pictography of the character will serve to clear up some initial ambiguities before we move to a more meaningful definition. The primary radical in this character is a synthesis of the character for noble or righteous and the character for heart.<sup>28</sup> In Chinese, *Te* is often written as this synthesis alone and, as mentioned above, is translated as virtue or rectitude.<sup>29</sup> In Japanese, however, and less frequently in Chinese, the synthesis adds one more element and the character appears in combination with a radical signifying activity or movement (literally the radical can be construed to mean foot, indicating walking, motion, or doing) and can be translated as “virtue in action.”<sup>30</sup> This second definition is more important for our purposes, and it is this one, virtue in doing rather than being, that we shall focus on.

As usual, though, there’s more to this whole thing than just etymological origins. Unlike the word “virtue” in English, *Te* does not connote a sort of all-encompassing ethical excellence which is universal and recognizable in any form or in any person. Rather, the Chinese word connotes a sort of hidden, potential excellence that lies dormant within an individual, ready to be accessed when he is presented with an ethical dilemma.<sup>31</sup> This should not be construed as some kind of inner gumption or bravery that can only be triggered under the right circumstances, but rather, as a motivating power from the individual’s Inner Nature<sup>32</sup> that is continually in existence, of which the individual may not even be aware.<sup>33</sup> The crucial factor for *Te* in human beings is the transition of it from its basic form, “standalone” virtue, into its realized form: virtue-in-action.

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26. LAO TZU, *supra* note 16, at 55. Mr. Hoff provides an alternate translation that is more apt and specific, if a bit more confusing because of the multiple negatives: “‘Tao does not do, but nothing is not done.’” HOFF, POOH, *supra* note 11, at 70.

27. Pronounced DEhr, or DUhr, or halfway in between those two, with the R on the end pronounced very slightly, like an afterthought.

28. BENJAMIN HOFF, THE TE OF PIGLET 22–23 (Penguin Books 1993) [hereinafter HOFF, PIGLET].

29. *Id.*

30. *Id.*

31. *See id.* at 23.

32. Throughout this Note, certain terms are capitalized, such as “Inner Nature,” indicating that they are specific concepts to a particular philosophy.

33. HOFF, PIGLET, *supra* note 28, at 23.

This transformation, like *Te* itself, may be obscure or hidden, but it is really only as a result of this transformation, no matter how gradual it may be, that the changes suggested by any Taoist system can be effective.

In addition to a general virtue, one of the most important aspects of *Te* is that of natural harmony.<sup>34</sup> This means both harmony with Nature, that is, the external world as to the individual, and harmony between the diametrically opposed forces within the individual himself, emotions versus logic, for example.<sup>35</sup> *Te* is both at its strongest and its most recognizable when this balance is achieved. This idea of balance has a long history in Eastern thought, most readily known to Westerners in the popular symbol of the Yin-Yang, the divided black-and-white circle that symbolizes the concordance of forces. However, Eastern peoples, at least the Taoists, have generally been more readily capable than Westerners of finding virtue in things as they exist, without throwing off the balance. This story by Chuang-tse will serve to illustrate both the nature of *Te* and the importance of recognizing it:

Hui-tse said to Chuang-tse, "I have a large tree which no carpenter can cut into lumber. Its branches and trunk are crooked and tough, covered with bumps and depressions. No builder would turn his head to look at it. Your teachings are the same—useless, without value. Therefore, no one pays attention to them."

"As you know," Chuang-tse replied, "a cat is very skilled at capturing its prey. Crouching low, it can leap in any direction, pursuing whatever it is after. But when its attention is focused on such things, it can be easily caught with a net. On the other hand, a huge yak is not easily caught or overcome. It stands like a stone, or a cloud in the sky. But for all its strength, it cannot catch a mouse.

"You complain that your tree is not valuable as lumber. But you could make use of the shade it provides, rest under its sheltering branches, and stroll beneath it, admiring its character and appearance. Since it would not be endangered by an axe, what could threaten its existence? It is useless to you only because you want to make it into something else and do not use it in its proper way."<sup>36</sup>

Striving for harmony with our surroundings and within ourselves is the fundamental characteristic of Taoist philosophy and of *Te*. As we delve more deeply into practical applications and analysis of Taoism and the law, it will be essential to keep this ideal balance in mind.

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34. See *id.* at 53–106 (discussing the concept of Natural Harmony through story).

35. See *id.*

36. HOFF, POOH, *supra* note 11, at 40.

## III. A GRANDER VIEW

*What do you call a thousand lawyers at the bottom of the ocean?*

*A good start.*

—*Old Joke*

Everyone loves lawyer jokes, especially lawyers. But their prevalence in this country and, in some cases, their thinly disguised venom, indicates that it's not all in good fun all the time. Why do everyday citizens seem to hate lawyers so much? One reason is that the everyday citizen always has been in closer contact with the Tao than your average high official or bureaucrat. The more educated and more expert at politics one gets, the less likely he is to recognize forces outside himself as moving things along, and the more likely he is to become egocentric and arrogant.<sup>37</sup> On some level, perhaps unconsciously, the everyday citizen senses this disregard and feels as though he has lost control of his own destiny to people who have no respect for the basic workings of the world.

To some extent, this is just the nature of the beast. Laws can't please everyone all the time, and some people are bound to gripe—fair enough. Still, though it's sad to say, there are lots of good reasons that everyday citizens have to disparage lawyers and their practices.<sup>38</sup> Perhaps the most important of these reasons are the lawyers and politicians themselves, or more specifically, their disregard, whether conscious or unconscious, of certain crucial, governing principles of the universe. Perhaps K'ung Fu-tse put it best, "[G]ood government depends upon good men. Such men should be chosen on the basis of character. Good character is developed by following [Inner] nature. By following [Inner] nature, one acquires good will."<sup>39</sup>

Of the many concepts crucial to Taoist thinkers and actually all of Eastern thought, perhaps the most important and widely debated, is the notion of Respecting Inner Nature.<sup>40</sup> Indeed, so central is this idea to the East, that K'ung Fu-tse himself makes it the opening premise of his treatise, *Genuine Living*: "What Nature provides is called 'one's own

37. See LAO TZU, *supra* note 16, at 72.

38. For a whole slew of annoyed citizens' comments on lawyers, check out <http://www.aquanet.co.il/web/lawyers/>.

39. K'UNG FU-TSE, *Genuine Living*, in THE HEART OF CONFUCIUS, INTERPRETATION OF GENUINE LIVING AND GREAT WISDOM 67, 91 (Archie J. Bahm trans., Asian Humanities Press 1992) [hereinafter K'UNG FU-TSE, *Genuine Living*]. I have inserted the word "Inner" before Mr. Bahm's translation of the word "nature" to highlight the emphasis in the Chinese.

40. For a discussion of the concept of Inner Nature, see HOFF, POOH, *supra* note 11, at 37–65.

[Inner] nature.' . . . One's own nature cannot be disowned. . . . Hence, a wise man pays attention to it and is concerned about it, even when it is not apparent."<sup>41</sup> It can be difficult to tell what constitutes Inner Nature, especially with complex concepts, and many scholars have spent lifetimes trying to grasp and codify it. But codification is the Confucian approach,<sup>42</sup> and it is, of course, a foolish waste of time. Trying to understand what Inner Nature is in general is not only totally pointless but also is more than likely beyond the realm of human reason to comprehend and itemize.<sup>43</sup> However, it is possible to understand, either through intuition or just plain common sense, what the Inner Nature of a given thing is in its proper context.<sup>44</sup> This can be difficult with complex concepts, but with the law it is easy. The law has one purpose and one purpose only, and that is to serve Justice.<sup>45</sup> Thus, the Inner Nature of the law is to be Just.

Confucians, however, would not be inclined to care what the Inner Nature of the law was. K'ung Fu-tse argues somewhat Kierkegaardianly that the Inner Nature of one's own self is the most important thing—that development and understanding of one's own Inner Nature as it applies to the world around us is the paramount concern for efficient activity.<sup>46</sup> While Taoist thought does not dispute the importance of recognizing one's own Inner Nature, it expands this idea and teaches respect not only for one's own Inner Nature but for that of all the things that one interacts with, in order to achieve the best results and the highest level of excellence.<sup>47</sup> The Confucian system advocates trying to shape the world to fit one's own Inner Nature, whereas the Taoist system advocates compromise and the practice of *Wu Wei*. As a result, the Confucian way of doing things is inherently myopic because it does not allow for the potential conflict that

41. K'UNG FU-TSE, *Genuine Living*, *supra* note 39, at 69.

42. *See id.* at 69–75.

43. *See* HOFF, POOH, *supra* note 11, at 38–39.

44. *See id.* at 40–41.

45. An argument as to whether or not this is essentially true could be the basis for a whole other Note, to say the least, but it is certainly the case as far as Taoist and Confucian legal structures are concerned. *See* LAO TZU, *supra* note 16, at 45–48 (describing the ruler as the agent of justice and his duties not to be self-serving); ARCHIE J. BAHM, *Introduction to THE HEART OF CONFUCIUS: INTERPRETATION OF GENUINE LIVING AND GREAT WISDOM* 13, 26–50 (Archie J. Bahm trans., Asian Humanities Press 1992) [hereinafter BAHM, *Introduction to THE HEART OF CONFUCIUS*].

To offer some more support for this argument, see generally PLATO, *THE REPUBLIC* (Raymond Larson ed. & trans., 1979); ARISTOTLE, *THE ETHICS OF ARISTOTLE: THE NICOMACHEAN ETHICS* (J.A.K. Thomson trans., Penguin Books 1976); JOHN STUART MILL, *ON LIBERTY AND OTHER ESSAYS* (John Gray ed., 1991).

46. *See* K'UNG FU-TSE, *Genuine Living*, *supra* note 39, at 70–71.

47. HOFF, POOH, *supra* note 11, at 37–65 (discussing the importance of respecting Inner Nature in oneself and in the beings with which one interacts).

exists between the individual and those things with which one must interact.

K'ung Fu-tse would counter here that the perfectly virtuous person, with a perfect Inner Nature, would not need to change anything in his world because he would automatically exist in harmony with the Tao.<sup>48</sup> Indeed, he goes so far as to say that a completely virtuous man would be able to actually see the future because his understanding of Tao would be so great: "It is natural for a completely genuine man to be able to predict [the course of things]."<sup>49</sup> Though the clairvoyance is probably suspect, even Chuang-tse would be forced to agree that the proposition that the perfect man will not need to affect Nature is inarguably true. If you are perfect in your Nature (and therefore in your relation to the outside world) you have no call to affect anything because everything is set up in just the right way for you to start with. But Taoists recognize that this person of perfect virtue is a synthetic and hypothetical creation in the minds of those who would make everything in their own image. It is impractical for regular, fallible people to keep this goal at the fore, when they must deal with the day-to-day workings of Nature from the perspective of a man of imperfect virtue. Therefore, the Taoist seeks to shape himself to the world, not vice-versa. This episode from the life of Chuang-tse illustrates the difference in thinking between the Confucian Prince of Ch'u and a Taoist philosophy and points out how simply taking a step back and looking at things from a commonsensical standpoint can make Inner Nature clear:

While sitting on the banks of the P'u River, Chuang-tse was approached by two representatives of the Prince of Ch'u, who offered him a position at court. Chuang-tse watched the water flowing by as if he had not heard. Finally, he remarked, "I am told that the prince has a sacred tortoise, over two thousand years old, which is kept in a box, wrapped in silk and brocade." "That is true," the officials replied. "If the tortoise had been given a choice," Chuang-tse continued, "which do you think he would have liked better—to have been alive in the mud, or dead within the palace?" "To have been alive in the mud, of course," the men answered. "I too prefer the mud," said Chuang-tse. "Good-bye."<sup>50</sup>

Everything has its place and its function. To remove something from its natural state, no matter how hard you may strive to fool, coddle or disguise it, is to go against the natural order of things. The Prince attempts to apply his own Inner Nature by ornamenting a turtle in the way that the

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48. See K'UNG FU-TSE, *Genuine Living*, *supra* note 39, at 75–76.

49. *Id.* at 108 (citations omitted).

50. HOFF, POOH, *supra* note 11, at 41.

Prince himself would expect to be decorated. But it is not in the Nature of the tortoise to wither away in some palace. The Prince has taken the tortoise out of the wilds and forced its domestication, removing its freedom. This, no doubt, recalls Aleister Crowley's statement about China from the beginning of Part I of this Note; the Prince has, in a sense, "abolished wild animals on principle."<sup>51</sup> No Taoist would have cooped the tortoise up in a box, no matter how honorific the animal's position and treatment, because Taoists respect the Inner Nature of things as they are, not as they want them to be. Unfortunately, many lawyers and politicians have completely lost sight of this.

To return to a more pertinent context, the problem is that politicians and lawyers have failed, consistently, to follow the Inner Nature of the law and seek Justice. Since Taoist thought teaches us that the first step towards global change is to change oneself,<sup>52</sup> the best place for our analysis and commentary on ignoring Inner Nature to start is with laws concerning lawyers themselves. Many everyday citizens see lawyers as manipulators of the law rather than upholders of it, and a large part of this must be due to the extreme leeway given by lawyers to themselves in the field of legal ethics. Legal ethics have become so lackadaisical that the term is almost an oxymoron.

For example, in my Legal Profession class, I was taught that the best answer to any question on the Multi-State Professional Responsibility Exam<sup>53</sup> is not the ethical (with a capital "E" as my professor used to say) one, but the one that pushed ethics to its limit without actually breaking any laws. That is to say, the best answer is the one that involves the most conniving with the least possible jail time if caught. That's a system of ethics that only a kleptocracy could love. Since the laws, including those governing legal ethics, are crafted by lawyers and politicians (most of whom were themselves lawyers at one time), is it any wonder that the average man draws the conclusion that lawyers are inherently corrupt? Trying to eke out as much evil as possible before you're forced to confront justice strikes most of us as intuitively distasteful, but there's more that's wrong with it than just that: It's against the Tao. Here, Confucianism and Taoism are, for once, in complete agreement: "The wise man neither

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51. See *supra* text accompanying note 7.

52. See LAO TZU, *supra* note 16, at 9.

53. The MPRE is the exam that most states give to make sure that a law student is a good ethical candidate to practice law. It is currently used by all U.S. jurisdictions except Maryland, Puerto Rico, Washington, and Wisconsin. MPRE Exam Information, <http://www.cpe-cbr.com/BarReview/mpreexam.htm>.

deviates from the way inherent in his own inner nature nor causes others to stray from the ways of their own inner natures.”<sup>54</sup> Both Lao Tzu and Confucius agreed on this point. “When a *tao* has *teh*, then *yi* prevails. When *yi* prevails, then a *tao* has *teh*. . . . This is the best way of doing things.”<sup>55</sup> Loopholes and purposefully lackadaisical lawmaking allow unethical lawyers to skirt the concerns of justice in favor of their concerns for a victory at trial and offend both Confucian and Taoist minds.

A quick excerpt from the American Bar Association’s Model Rules of Professional Conduct will serve to show how and why changes should be made.<sup>56</sup> In this particular instance, the removal of just one word from the law can alter an entire idea, and this is more frequently the case than many people may imagine. Frequently it is the insertion of one niggling “hedge” word in a law that keeps the “e” in legal ethics lower case. For example:

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act[.]<sup>57</sup>

The word that I’m referring to here is, of course, “unlawfully.” Why is this adverb even present in the above paragraph? Though it may seem innocuous enough, it in fact provides a loophole, an escape clause, by allowing lawyers to engage in “lawful” obstruction of other parties’ access to evidence or “lawful” destruction of it. This is exactly the type of avoidance of morals in favor of legalities that everyday people attribute to

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54. K’ung Fu-tse would construe “others” to mean only other people, whereas a Taoist would construe it to mean all things, human or otherwise, including the law. Nevertheless, the two are on the same page on a basic level.

55. BAHM, *Introduction* to THE HEART OF CONFUCIUS, *supra* note 45, at 27. Mr. Bahm uses a couple of terms here that need clarification. He spells “tao” with a small “t” and refers to it with an indefinite article because he uses it in the Confucian manner to just mean “system” or “means.” For our purposes, we can understand “tao” with a small “t” to mean a system of laws or government. “Teh” is just another spelling of “te,” virtue, as defined above in Part II. “Yi” is a very complex Confucian concept that is addressed indirectly by Lao-tse and other Taoist writers to some extent. It has no English equivalent, but according to Mr. Bahm, it symbolizes “the best way of doing things.” *Id.* We can understand it here as a kind of analog to *Wu Wei*, or rather to the results of *Wu Wei*, efficiency and excellence.

56. It should be noted that the ABA rules are not binding authority anywhere; most professional responsibility law is state law. However, most states, including California, track the ABA rules relatively closely, and the Model Rules themselves are often used as persuasive evidence or guiding principles at trial.

57. MODEL RULES OF PROF’L CONDUCT R. 3.4(a) (2001).

an inherent prurience in lawyers. The word “unlawfully” should simply be removed from the above clause, and lawyers held to a standard of pure individual conduct. Forcing the law away from its Inner Nature, often called the “spirit of the law” in the West, by inserting artificial hedge terms like “unlawfully” or “improperly” in ethics codes can only lead to mistrust and inefficiency.

Many people might argue that the desire to hedge and protect themselves in illicit activities comes from the fact that lawyers are greedy. This is perhaps true, though there is no logical reason to assume that they are any greedier on average than doctors or janitors or anyone else. The truth is that this type of desire really stems from pride. Pride is all too common a sin among those of much education, and it is perhaps the single most pervasive and dangerous failing of lawyers and politicians. K’ung Fu-tse discusses this point, purporting to advocate humility, but the Confucian argument here ultimately comes off as condescending and patronizing: “When [the wise man] finds himself amid wealth and dignity, he conducts himself as one who is worthy and esteemed. When he finds himself among the poor and despised, he behaves in ways appropriate to poverty and disdain.”<sup>58</sup> Taoists would respond to this by saying, “Well and good, but why must the wise man attempt to alter his Inner (or Outer) Nature in order to please those around him?”<sup>59</sup> Taoism teaches us that there is one Way for all purposes and for all situations. Exhibiting artificial pride or affected humility is not the path of the Tao.

Taoist thought warns against the power of intellectual pride to throw things out of whack. As Mr. Hoff puts it, “[D]own through the centuries, man has developed a mind that separates him from the world of reality, the world of natural laws. . . . Such a mind, even if of high intelligence, is inefficient.”<sup>60</sup> By recognizing and working with Inner Nature, by focusing on the spirit and not the letter of the laws and their Just purpose, we can make the laws efficient and virtuous, rather than manipulative and “Confusing.” Pride can take many forms and can be the hidden cause of many problems, as this story illustrates:

On a trip to Sung, Yang-tse spent the night at an inn. The innkeeper had two wives, one beautiful, the other very plain. The plain one was treated with honor and affection, but the beautiful one was ignored. The next day, Yang-tse asked a boy of the household why. He replied, “The

58. K’UNG FU-TSE, *Genuine Living*, *supra* note 39, at 82.

59. See LAO TZU, *supra* note 16, at 10–11.

60. HOFF, POOH, *supra* note 11, at 77.

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beautiful one knows that she is beautiful; the plain one knows that she is plain.”

When Yang-tse returned, he addressed his disciples: “Remember this, my followers. Put away your pride, and act upon your Virtue. If you do this, how can you not be loved?”<sup>61</sup>

Let us not forget that a beautiful mind can foster arrogance as easily as a beautiful aspect, if not more so. We must swallow our pride and abandon our desire, striving to pursue the Inner Nature of the law without fear of how low we may have to “stoop” in our dealings with everyday citizens. This is not, however, a plea to alter our behavior so that we may achieve a cessation of jokes and jibes and become popular with non-lawyers; that goal would be one of pride. In fact, it is a method designed to cure the disease of lawyers’ and politicians’ notoriety: unethical behavior as a result of unnecessary pride. The symptom is immaterial.

All this discussion of high-minded ideals and sins of pride and greed may put some in the mind of St. Augustine’s *City of God*, but as always with the Tao, things are simpler than they may appear. Once we’ve recognized what the problem is, all we have to do is avoid it. All we have to do is keep our laws rigorous in their pursuit of honesty, scrupulous in their ambition for Justice. The problem is right in front of us, yet some seem unable to figure out how to defeat it. We addressed *Wu Wei* earlier, and discussed the power of no force, of circumvention, to overcome even the most difficult dilemmas. The Ancient Chinese story of “The Old Master and the Horse” will demonstrate how this principle can function in general practice:

A horse was tied outside a shop in a narrow Chinese village street. Whenever anyone would try to walk by, the horse would kick him. Before long, a small crowd of villagers had gathered near the shop, arguing about how best to get past the dangerous horse. Suddenly, someone came running. “The Old Master is coming!” he shouted. “He’ll know what to do!”

The crowd watched eagerly as the Old Master came around the corner, saw the horse, turned, and walked down another street.<sup>62</sup>

Applying Taoist reasoning to real life is just that simple. In fact, many Westerners would call it common sense. We don’t need complex Confucian systems that distance from the Inner Nature of other beings and things. The Old Master did not waste time elucidating his ideals to the

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61. HOFF, PIGLET, *supra* note 28, at 189-90.

62. *Id.* at 156-57.

people and lecturing them on the best way to avoid errant horses. He didn't try to give them a lesson about the forces of nature inside the horse and how they could be tamed or controlled by the application of some external system. And he did not try to bolster his pride and personal interests by making excuses and hedging. He just went around all of it, the horse included, demonstrating the ability of the principle of *Wu Wei* to let his problem solve itself, rather than forcing it with unnecessary and prideful effort. Like it or not, and whether or not they will admit it, lawyers and politicians are the "Old Masters" of everyday life in this country. When lawyers lead by example, when the laws have no escape clauses for the unethical, when they keep Inner Nature of all things in their minds instead of some artificial image of self, problems of the law and lawyering will solve themselves.

Keep *Te*, virtue, in your mind and achieve it through the practice of *Wu Wei*, no force, and you cannot fail because you are working with your own Inner Nature and that of the things around you. Some of those deeply entrenched in the wrong way of doing things will no doubt mock this attitude (and indeed this whole Note) as unworkable, juvenile, or impossibly idealistic. When they do, recall the words of Lao-tse: "When they hear of the Way, The highest minds practice it; The average minds think about it And try it now and then; The lowest minds laugh at it. If they did not laugh at it, It would not be the Way."<sup>63</sup>

#### IV. CULTURE SHOCK

*The Westerner has been able to move forward in ordered steps, while we [East Asians] have met superior civilization and have had to surrender to it, and we have had to leave a road we have followed for thousands of years. The missteps and inconveniences this has caused have, I think, been many.*

—Jun'ichiro Tanizaki<sup>64</sup>

Like all political/philosophical systems, the nonmetaphysical aspects of Taoism need to be put into practice, at least hypothetically, before we can assess the level of their usefulness or even whether they work at all. Since, as the old Taoist saying goes, "A journey of a thousand miles begins with a single step," we'll condense our analysis, considering two seemingly innocuous, minor, even ancillary, areas of legal practice. From here,

63. *Id.* at 60 (emphasis omitted).

64. JUN'ICHIRO TANIZAKI, IN PRAISE OF SHADOWS 8 (Thomas J. Harper & Edward G. Seidensticker trans., 1977).

though, like the good logicians that we are, we'll induce general precepts and guidelines that can be applied to much larger contexts and synthesized with those concepts covered in the previous section. The two items on the menu today are: gender neutrality in legal and political writing, and the "bluebook"<sup>65</sup> system of footnoting that everyone from Supreme Court Justices to humble law review note writers uses to make our citations look so professional. Though these topics may seem so procedural as to be of no cause for concern for so multifaceted a philosophy as Taoism, nothing could be further from the truth. Every grain of sand is the Tao, after all.

First, we'll take up one of the most pernicious, disharmony-causing trends in modern language, be it legal or otherwise: gender neutrality. But, you might ask, how can something that's *neutral* be bad? Surely neutrality is inherently neither bad nor good! Well, as the coming to light of various bank records from World War II Switzerland have shown us, neutrality is largely an illusion.<sup>66</sup> Taoists have known this for years: Balance does not mean merely neutralizing energies, it means harmonizing and harnessing them.

Gender-neutrality causes discord in legal language for just this reason. Rather than harmonize, it neutralizes. Rather than harness order, it unleashes chaos. One of the most important and basic goals of the laws and the language used to enumerate and describe them is clarity. It has long been a complaint of non-lawyers and law students alike that the "legalese" of politicians and judges is indecipherable because of ambiguity and over-complexity.<sup>67</sup> The problem is pervasive.

Still, unsatisfied with even the current level of confusion and indistinctness in legal language (and language in general for that matter) some groups are now calling for, and succeeding in acquiring, a complete gender-neutralization of all nouns and adjectives in any type of writing, be it legal, formal, or casual.<sup>68</sup> In fact, when first tasked with writing this Note, I was admonished by both a memorandum and the handbook for the

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65. See generally THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000) [hereinafter THE BLUEBOOK].

66. See, e.g., Jerrold Kessel, *Study: Swiss Bank Stashed Gold Taken from Nazi Camp Victims*, CNN Online, available at <http://www.cnn.com/WORLD/europe/9805/25/nazi.gold/> (May 25, 1998).

67. Legalese has become such a problem that many law professors are now attempting to wean their students away from it (although case reporters and statutes show no sign of following this trend). One such professor is Eugene Volokh of UCLA Law School, who maintains a website that posits alternate ways of putting common legalese terms. The address is: <http://www.law.ucla.edu/faculty/volokh/legalese.htm>.

68. See, e.g., JOSEPH M. WILLIAMS, *STYLE: TEN LESSONS IN CLARITY AND GRACE* 34–36 (6th ed. 2000).

Southern California Law Review to be fastidious in my use of gender-neutrality within this Note, lest some party “take offense.”<sup>69</sup>

Regardless of anyone’s personal feelings about the benefits or penalties of gender-neutrality, the fact remains that adding complexity and confusion is patently diametrically opposed to the tenets of simplicity and clarity that underlie all Taoist thought.<sup>70</sup> Gender-neutrality, by its nature, complicates things because it causes grammatical constructions to be either less specific (such as pairing a singular noun with a plural pronoun) or just longer (by adding pronouns or portmanteau suffixes to keep things gender nonspecific, for example).<sup>71</sup> Therefore, this gender-neutralization provides the perfect example of how to apply some Taoist principles to an area of legal practice, and end up with an improved state of things.

Recall the concept of *Te*, virtue. Recall that it emphasizes balance between contravening forces in nature. Of the vast array of these opposing forces, perhaps the most primal conflict, both externally and internally, is that between masculine and feminine. Followers of the Way have been trying to resolve this discord for years by striving to achieve a virtuous balance between these two forces within the human spirit. In fact, the practice is so old that Lao-tse himself addresses it quite specifically in *Tao Te Ching*, saying, “Know the masculine, Keep to the feminine, And be the Brook of the World.”<sup>72</sup> Even Confucianism recognizes this fundamental difference, but, characteristically, it focuses not on harmony between the two forces, but the antagonistic nature of the opposites themselves.<sup>73</sup>

Let’s take a look at some examples, to see just what gender-neutrality has gotten us into. Here is just one sentence from an agricultural commerce law recently added to Oregon’s Vehicle Code. Note that the use of “updated” gender-neutral language precluded the drafters from daring to consider the use of “controversial” pronouns:

*“The vehicles may be used in transporting the farmer’s own agricultural commodities, agricultural products or livestock that were originally grown or raised by the farmer on the farmer’s own farm.”*<sup>74</sup>

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69. S. CAL. LAW REVIEW VOLUME 76, STAFF MANUAL app. G (2002–2003) (quoting LINDA HOLDEMAN EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS AND ORGANIZATION (1996)).

70. See discussion *supra* Parts II, III.

71. See WILLIAMS, *supra* note 68, at 35.

72. LAO TZU, *supra* note 16, at 42.

73. See BAHM, *Introduction* to THE HEART OF CONFUCIUS, *supra* note 45, at 23–26.

74. OR. REV. STAT. § 805.390(1) (2001).

This sentence, like many in today's laws, is confusing enough, even with the use of the most specific and clear language possible—especially to a farmer who just wants to get his goods to market. Let's not forget that those people who are affected by laws are the ones who should be most readily able to understand them. This type of aggressive neutrality at the cost of clarity (not to mention aesthetics) stems from the worst kind of masculine energy imbalance, the very thing that the Taoist notion of *Te* warns against.<sup>75</sup> Over-complexity and favoring “length before strength” in rhetoric are characteristic elements of the masculine force so dominant in Confucian thought.<sup>76</sup> It is for a wholly analogous reason that so many people find reading and understanding Confucius' *Analects* and many other Confucian writings to be dense, difficult, and nonsensical.<sup>77</sup> Surely the above sentence is clearer if we abandon masculine aggression for neutrality and allow a few minor “regressions” back to the use of the old default pronoun system:

*“The vehicles may be used in transporting his agricultural commodities, agricultural products or livestock that were originally grown or raised on his farm.”*

Much better. Still obscure, but for other reasons, and we are only addressing gender-neutrality here; the law is obviously clearer without it, and this is only a relatively minor example.

The real question, however, is not so much about gender-neutrality in the laws as about the laws mandating gender-neutrality themselves. Many women's groups and other organizations demand the removal of words they find demeaning to women from the legal lexicon (essentially these words are “he,” “him,” and “his”), and the substitution of words that are so unclear and meaningless as to be demeaning to everyone.<sup>78</sup> In the West, we are somewhat used to overbearing politicians and complexity seemingly for its own sake, but it may come as a surprise to learn that the same thing is true of the East. China was, after all, a heavily Confucian country, and the follower of K'ung Fu-tse was never one to favor paring down of language or laws. But, then as now, Taoists had an answer. Lao-tse saw

75. See HOFF, PIGLET, *supra* note 28, at 78–79.

76. See *id.*; HOFF, POOH, *supra* note 11, at 2–4, 24–26.

77. See *supra* text accompanying note 21. See also BAHM, *Introduction to THE HEART OF CONFUCIUS*, *supra* note 45, at 14–15 (commenting on the difficulty and complexity of Confucius' major works).

78. See, e.g., *New Yorkers Approve Making Constitution Gender-Neutral*, Fox News Online, available at <http://www.foxnews.com/story/0,2933,38209,00.html> (Nov. 7, 2001). New York is not the only state to have forced gender-neutrality in its constitution. Five other states, including California, also have similar mandates, with a sixth state, Florida, to join in 2003. See *id.*

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that these desires came from nothing more than an improper aggressiveness, a disconnection from the feminine, too much masculinity, not enough *Te*:

He who knows how to guide a ruler in the path of Tao  
Does not try to override the world with force of arms.

....

What you want is to protect efficiently your own state,  
But not to aim at self-aggrandisement.

....

You must never think of conquering others by force.  
For to be over-developed is to hasten decay,  
And this is against Tao[.]<sup>79</sup>

If we simply apply this same principle to our own laws, we need not suffer through unintelligible prose and unnecessary bandying about with various makeshift phraseologies. Ultimately abandoning the feminine side of the equation and wholeheartedly barreling forward with only the masculine (despite any number of arguments that gender-neutrality is “feminist”), these laws force us all to say things we don’t mean and be things we don’t want to. We need to recognize that things in their natural, default state are ideal.

If we continue down this road, what will be next? A complete ban on all Romance languages in the laws, no doubt, since these languages have mandatory gender-specificity in *all* their nouns, not just pronouns, and so must be offensive to women (or, alternatively, men depending on the gender of the noun) by their very natures. And how about after that? A ban on all English words ending in -or, -er, and -eur (these being masculine suffixes borrowed from Greek, German, and French, respectively) or -trix, -eress and -euse (these being their feminine equivalents)?<sup>80</sup> Soon there’ll be no more using “offensive” words like actor or heiress or amateur; we’ll have to replace them with ridiculous circumlocutions like “stage speaker” and “heirperson” and “amat.”

Now then, you may be thinking to yourself at this point, particularly if you disagree with my position: “He’s ignoring the obvious historical and sociological contexts that gender-neutrality has arisen from—he’s treating

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79. LAO TZU, *supra* note 16, at 45–46.

80. For etymological definitions of these and other suffixes, see the appropriate entries in THE COMPACT OXFORD ENGLISH DICTIONARY (Edmund S. Weiner & John Simpson eds., 1991).

it like a random linguistic oddity or the product of some caprice.” Yes and no. I certainly do not believe that gender-neutrality suddenly appeared on the rhetorical scene like a *deus ex machina*; however, the historical and social contexts from which it has arisen are immaterial. This is why: Earlier I described that, from a Taoist perspective, the desire for this kind of linguistic amendment can only stem from a basic imbalance in the masculine and feminine forces within the spirits of those who advocate it.<sup>81</sup> This imbalance precedes and overrides all historical or sociological concerns, because it is this very imbalance that drives these concerns in the first place. What this means, essentially, is that those social tensions (i.e., sexism, and other forms of prejudice) that gave rise to the desire for neutrality really themselves are the product of this larger imbalance. To address that directly, therefore, would be like addressing a single symptom of a disease rather than the cause of it. Gender neutrality and other modern inventions of its ilk (i.e., so-called “political correctness”) are a form of what I like to call “pendulum swingers.” They are designed to combat prejudice not by addressing prejudice itself, but rather by swinging the pendulum in the other way; fighting fire with fire. This approach cannot possibly lead to an efficient outcome. It would be like trying to breach a fortress wall by piling more stones on top of it. Sure, it might collapse eventually, but even if it does, the breach will instantly be filled up with an enormous pile of rock. An old Western aphorism teaches that “two wrongs don’t make a right.” Unquestionably, this is in line with a Taoist ideology. Therefore, I am not seeking to excise gender-neutrality and leave all the other products of this imbalance alone because I dislike gender-neutrality. I’m using gender-neutrality as a particularly apt example of how this imbalance causes inefficiency and imprecision, and as a case in point as to why the imbalance needs to be addressed now, before things get worse. Therefore, no, I am *not* treating gender-neutrality as if it were a capricious preference, but I *am* ignoring the historical and social contexts from which it arose because these are superseded by a larger, more fundamental concern.

In sum, gender-neutrality characteristically represents the type of unnecessary manipulation that can only lead to more dissatisfaction and more restriction of free speech in the long run. Making changes to an efficient, correct system for capricious, untenable reasons leads to a downward spiral of anti-Natural behavior. Fighting the Tao and the inherent state of things is always a vicious circle, and it can only end in a

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81. See *supra* text accompanying note 72.

revolving door of dissatisfaction and, at the end of the day, to disappointment, as this ancient Chinese story illustrates:

There was once a stonemason, who was dissatisfied with himself and with his position in life.

One day, he passed a wealthy merchant's house, and through the open gateway, saw many fine possessions and important visitors. "How powerful that merchant must be!" thought the stonemason. He became very envious, and wished that he could be like the merchant. Then he would no longer have to live the life of a mere stonemason.

To his great surprise, he suddenly became the merchant, enjoying more luxuries and power than he had ever dreamed of, envied and detested by those less wealthy than himself. But soon a high official passed by, carried in a sedan chair, accompanied by attendants, and escorted by soldiers beating gongs. Everyone, no matter how wealthy, had to bow low before the procession. "How powerful that official is!" he thought. "I wish that *I* could be a high official!"

Then he became the high official, carried everywhere in his embroidered sedan chair, feared and hated by the people all around, who had to bow down before him as he passed. It was a hot summer day, and the official felt very uncomfortable in the sticky sedan chair. He looked up at the sun. It shone proudly in the sky, unaffected by his presence. "How powerful the sun is!" he thought. "I wish that *I* could be the sun!"

Then he became the sun, shining fiercely down on everyone, scorching the fields, cursed by the farmers and laborers. But a huge black cloud moved between him and the earth, so that his light could no longer shine on everything below. "How powerful that storm cloud is!" he thought. "I wish that *I* could be a cloud!"

Then he became the cloud, flooding the fields and villages, shouted at by everyone. But soon he found that he was being pushed away by some great force, and realized that it was the wind. "How powerful it is!" he thought. "I wish that *I* could be the wind!"

Then he became the wind, blowing tiles off the roofs of houses, uprooting trees, hated and feared by all below him. But after a while, he ran up against something that would not move, no matter how forcefully he blew against it—a huge, towering stone. "How powerful that stone is!" he thought. "I wish that *I* could be a stone!"

Then he became the stone, more powerful than anything else on earth. But as he stood there, he heard the sound of a hammer pounding a chisel into the solid rock, and felt himself being changed. "What could be

more powerful than I, the stone?" he thought. He looked down and saw far below him the figure of a stonecutter.<sup>82</sup>

We must not follow the stonecutter's example and chase our tails. Forcing gender-neutral language into our laws will only start us down the road to more and more outlandish bastardizations of the language, until the statutes and cases we read are so complex as to be unintelligible. We have tolerated it thus far, I think, primarily because in the West we are used to Confusion. But it doesn't have to be that way.

Another example of the worst kind of unnecessary Confusion comes in a benign-looking, wire-bound volume with the amiable name of the "bluebook."<sup>83</sup> I hope that you're not familiar with this book, but it's my guess that if you're reading this, you're only too familiar with it. Just in case, though: The bluebook purports to be a logical system of citation, designed to make it easy and quick to craft references and then to be able to find the referenced work, should you desire to do so from a footnote.<sup>84</sup> This is far from the reality of the situation. It may not be too much of an exaggeration to say that this book could be considered, if not the Bible, then certainly an archetype, of the Confucian system of writing taken to its logical limits. If you have a lot of experience with reading these types of Law Review notes, you'll notice that the note you're reading now has far fewer footnotes and citations than most. This is not merely because the practice of attaching, by footnote, a caveat or superfluous citation to every single sentence breaks up the flow of any writer's prose. It's not merely because hundreds of footnotes make concision virtually impossible by unnecessarily wasting space and padding the length of articles like these. It's also because the system that we must use to write these footnotes, the bluebook system, is straight out of some Orwellian nightmare of Confusion and disorganization. The bluebook is a perfect example of how trying too hard to systematize everything, to put it all into order, by forcing things to be done only in the one "correct" way leads to uncertainty and *disorder*.<sup>85</sup>

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82. HOFF, POOH, *supra* note 11, at 118–19.

83. The complete title (because nothing this complex could do with a title of just two words) is: THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION. There is no author given, which makes sense since it is far too disjointed and nonsensical to have been written by one person, no matter how scatterbrained, but it says that it was "Compiled by the editors of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*" THE BLUEBOOK, *supra* note 65, at iii. Mary Miles Prince is credited as the coordinating editor. *See id.* at ii.

84. *See id.* at 4.

85. If you're familiar with bluebooking, you've probably recognized that my footnotes appear to be in conformity with bluebook standards, so you're probably asking yourself right now, "If he thinks it's so bad, why is he using it?" The answer is that for the purposes of this Note, it's just the easiest route to take. The basic nature of my footnotes (you'll note I have made almost no compound or string

An excerpt from some of the “guidance” the bluebook gives us in how to make proper citations will serve to show how its sort of over-complexity is self-defeating:

(b) *Supra*. Include the author’s last name before “*supra*”; when there is no author, use the title of the piece, or, if listed before or instead of a title, the designation of the piece. However, if the first citation to the work gives a hereinafter form (rule 4.2(b)), use the hereinafter form in place of the author’s name, title, or designation. Give the footnote in which the full citation appears unless the full citation is in the same footnote, in which case “*supra*” without a footnote reference may be used. In using a “*supra*” form, always indicate the page or pages cited except when citing the work in its entirety[.]<sup>86</sup>

But wait! What to do if the citation to a hereinafter for the *supra* when the author’s last name does not appear until after the first citation has already been cited is not covered!? What do we do now?

Hopelessly convoluted and reflexive paragraphs like the above excerpt abound throughout the “bluebook.” Small wonder that law students toil for hours trying to perfect footnotes for publication in law reviews, and even smaller wonder that the professors who write the articles rarely give a second thought to whether or not their footnotes are properly “bluebooked.” Indeed, why should they? Is anyone who is interested in looking up the works cited in a law review note confused because the “*supra*” comes before the author’s last name instead of after it? Has anyone ever given up on his research because the comma in the citation he is looking at is italicized instead of in normal type? Surely this strict adherence to detail is nothing but a manifestation of exactly the type of narcissistic effort discussed by Taoist scholars for centuries.

My editors often tell me, when I ask (that is to say, whine) about why we use the bluebook, that “everybody else does it” or that “it’s tradition.” These answers leave me with a bad taste in my mouth. Even Confucian thought rejects this attitude of blind adherence: “No matter how excellent the ancient customs, [if they cannot be tried out today, their value] cannot be demonstrated. . . . Therefore, the regulations promulgated by a sagely

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citations, and I have very few parentheticals) make the bluebook system just about as good as any other. Also, since I’ve spent my entire law school career learning it, I figured I ought to put it to practical use before I forget it altogether. Nevertheless, even with my very simple footnotes, I have ignored or altered many of the bluebook’s rules as I have cited throughout this Note, changing them whenever I felt them to be unclear, too complex, or just unnecessary. For example, I don’t include extraneous information, such as the date I visited websites or the original publication date of reprinted books, etc. I use the bluebook system only insofar as I find it to be clear and intelligible.

86. THE BLUEBOOK, *supra* note 65, R. 16.7(b), at 125–26.

leader should be founded upon his own character and experience, and [they should be] adequately demonstrated in the lives of the people.”<sup>87</sup> Taoism, though, goes one step further, saying that even if these types of complexities are demonstrably understandable to the people, they can’t be allowed to exist unless they follow the most practical and efficient route. Things that are not in harmony with the Way are “called ‘unwanted food and extraneous growths,’ Which are loathed by all things. Hence, a man of Tao does not set his heart upon them.”<sup>88</sup> Even here, the Confucian system allows for the existence of something that is potentially inferior, so long as “the people” find it useful. Taoist thinking, though, rejects a populist view and takes a universal one, saying that the Way is the supreme decisionmaker when it comes to which system should be used.

This all leads up to one basic question: Why are we wedded to such a rigorously detailed citation system as the bluebook in the first place? We don’t need to be. Too often lawyers try to create complex language and constructions for the sole purpose of seeming smart to their clients when they turn around and decode it. An entire book of various rules and regulations, mandating where, when, and how to craft every possible stylistic device is wholly unnecessary. The bluebook is 389 pages long.<sup>89</sup> Another handbook on grammar and style deals with the entire process of footnoting by giving a nine-page guide to the basics and letting the writer deal with more complex situations in his own way.<sup>90</sup> The principle of *Wu Wei* mandates no force—no putting square pegs in round holes.<sup>91</sup> But the bluebook runs counter to this by forcing *all* pegs, no matter what shape, into round holes because it tries to create a rule for every situation. A better way to do things is to let the writer choose for himself when a footnote is appropriate, where it should go, and how he should craft it. General, easy-to-follow guidelines are much more effective than intricate, difficult-to-understand directives. Writers, even legal writers, aren’t machines, after all.

We spend far too much time and effort on unnecessary concerns like proper bluebooking. The wasted energy is just that, wasted, when it could be put to much more productive use. Whenever I hear the complaints of my classmates, having spent countless hours toiling to get “enough”

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87. K’UNG FU-TSE, *Genuine Living*, *supra* note 39, at 118.

88. LAO TZU, *supra* note 16, at 36.

89. THE BLUEBOOK, *supra* note 65, at 1–389. Actually, it runs 391 pages, but the last two pages have nothing on them. Just one of those things, I guess.

90. See H. RAMSEY FOWLER & JANE E. AARON, *THE LITTLE, BROWN HANDBOOK* 621–29 (5th ed. 1992).

91. See discussion *supra* Part II.

citations for their papers, or whenever I receive an admonition to improve my bluebooking “skills” at some area or another, I am reminded of the words of Chuang-tse:

There was a man who disliked seeing his footprints and his shadow. He decided to escape from them, and began to run. But as he ran along, more footprints appeared, while his shadow easily kept up with him. Thinking he was going too slowly, he ran faster and faster without stopping, until he finally collapsed from exhaustion and died.

If he had stood still, there would have been no footprints. If he had rested in the shade, his shadow would have disappeared.<sup>92</sup>

There is no reason to chase a wild goose and become Confused, when we can do away with the awkward, inefficient system and just go with the flow. Lao-tse drives this point home to the Confucians by saying, “Failing morality, man resorts to ceremony.”<sup>93</sup> Let us strive for morality, for clarity, and not the superficial appearance thereof.

Doubtless some of those who have spent many years memorizing the bluebook and seem expert at applying and recognizing the rules the rest of us find Confusing will disagree with the simple guideline system. “The complex nature of legal writing demands as multifarious a system as possible!” they will cry. Nonsense. The complex “nature” of legal writing is only so because over the years lawyers have made it that way through the creation and perpetuation of systems and conventions like those demanded by the bluebook. Why would this be the case? What could be the motivation for such a thing? There’s a simple answer, and it takes us back to the previous section: pride. Bad lawyers and bad politicians, being far too full of the kind of useless and pedantic knowledge that comes with too much time drafting statutes and not enough time reading books, desire to create a system whereby they can appear to the layman to be possessed of some critical linguistic decoding technique that he does not have. Systems like the bluebook are symptomatic of an age-old disease of the elite: always choosing the complex over the simple, so that they can seem “smarter” to people who aren’t as educated (and, no doubt, to themselves as well). Not only does this fall into the classic logical fallacy of equating erudition with intelligence, it simply flies in the face of common sense. William of Ockham noticed a lot of this type of foolish thinking going around in the science and philosophy of his time and, with his now famous razor, demonstrated that keeping it simple whenever you can is superior to

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92. HOFF, POOH, *supra* note 11, at 92–93.

93. LAO TZU, *supra* note 16, at 57.

needless convolution.<sup>94</sup> By adding senseless and narcissistic effort, by trying too hard, lawyers, judges, and politicians have served to make the laws understandable to people only in their own “class.” But it is humility that divides the truly elite from the merely arrogant.

Let us remember that legal writing is not some *sui generis* form of literature, existing outside the realm of “normal” human prose (at least not unless we strive to make it so). Like all words on paper, it exists within a rhetorical framework that can be used in its original, natural, and complete state, or can be unnecessarily divided up, systematized, and codified until the writing that it produces seems to be coming from a wholly different source. This separate source, this “legal prose,” though, is nothing more than a construct, an illusion, and it’s one that has served to do nothing more than confound since its inception. The bluebook and rule systems like it serve to do nothing more than Confuse anyone who attempts to make use of them, both on the writing and reading fronts, and they should be replaced.

The practice of *Te* cautions against trying to rise above the Natural Way by being too smart for your own good. These words of Chuang-tse, directed at Confucian bureaucrats, serve to demonstrate the dangers of ignoring *Te* in this regard:

When leaders pursue knowledge but do not follow the Way, all who follow them become lost in confusion. How can I say this is so?

Much knowledge is applied in the making of bows, crossbows, arrows, and slingshots, but the birds in the air are disturbed and injured by it. Much knowledge is used in making hooks, nets, and other such devices, but the fish in the waters are disturbed and injured by it. Much knowledge is utilized in the design and placement of traps, meshes, and snares, but the creatures of the ground are disturbed and injured by it.

As knowledge becomes increasingly clever, versatile, and artful, the people all around are disturbed and injured by it. They then struggle to grasp what they do not know, but make no attempt to grasp what they know already. They condemn the misunderstanding of others, but do not condemn their own. From this more confusion comes.

If the sun and moon lost their light, the mountains and rivers abandoned their vitality, and the four seasons came to an end, no insect or plant would retain its true nature. Yet this is the condition produced in men by an obsession for knowledge. Honesty and simplicity are overlooked, and

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94. For a bit more comprehensive definition, see What is Ockham’s Razor?, at [http://phyun5.ucr.edu/~wudka/Physics7/Notes\\_www/node10.html](http://phyun5.ucr.edu/~wudka/Physics7/Notes_www/node10.html).

restlessness is admired. Quiet, effortless action is forgotten, and loud quarreling is heard. Its noise throws the world into chaos.<sup>95</sup>

Embracing *Wu Wei* and *Te* can free lawyers from the shackles of the Byzantine systems of writing (and footnoting) now in place, because they'll help us to realize that, in the end, these shackles are just self-imposed. Realizing this is the first step to a clearer, simpler style of legal writing that will not only make lawyers' lives easier, but will serve more readily their primary purpose: making life better for the people in general. Benjamin Hoff's discussion of *Wu Wei* will help tie these ideas together for us, before we conclude:

When we learn to work with our own Inner Nature, and with the natural laws operating around us, we reach the level of *Wu Wei*. Then we work with the natural order of things and operate on the principle of minimal effort. Since the natural world follows that principle, it does not make mistakes. Mistakes are made—or imagined—by man, the creature with the overloaded Brain who separates himself from the supporting network of natural laws by interfering and trying too hard.<sup>96</sup>

## V. LAST WORDS

*Why should we live with such hurry and waste of life? We are determined to be starved before we are hungry. Men say that a stitch in time saves nine, and so they take a thousand stitches to-day to save nine tomorrow.*

—Henry David Thoreau<sup>97</sup>

K'ung Fu-tse and Lao-tse, *Wu Wei* and *Te*, the Tao Te Ching and the bluebook—it's taken a lot to get to this point. To some, even after having read through this Note, Taoism and legal scholarship may seem like strange bedfellows, and indeed, at this juncture in our history, they are. But there is a huge vein of knowledge to be mined in the East, and, if we're willing to make the effort, the products of that mine can help us achieve a balance never before seen in the West and can bring us that much closer to perfection.

*Wu Wei, Te*, Respecting Inner Nature, Simplicity, the whole of Taoism, and its reaction to Confucianism can have wide applications across the board of Constitutional Law, Legal Ethics, and Criminal Law, to name

95. HOFF, PIGLET, *supra* note 28, at 132–33.

96. HOFF, POOH, *supra* note 11, at 69.

97. HENRY DAVID THOREAU, *Walden*, in *WALDEN AND CIVIL DISOBEDIENCE* 43, 137 (Penguin Books 1986).

just a few areas. Simplification of law codes, accessibility of lawyers, and most importantly, striving for real Justice, will restructure the balance and bring us back to where we should be. It is worth noting here that these ideas are not wholly unprecedented. Some Constitutional scholars (as well as judges and Justices) have long ago aimed at some of the ideals of Taoist thought in a movement of Constitutional interpretation known as “naturalism” or Natural Law. Though naturalism has fallen largely out of favor, and does not track exactly the political and legal goals of Taoism, it does share some theories and conclusions. Thus, anyone too cautious of foreign philosophical regimes being applied, nakedly, to the American legal system should look at naturalist cases as a starting point for a synthetic approach.<sup>98</sup> However, it must be remembered that American naturalism and Chinese Taoism come from very different core philosophical and cultural perspectives; arguments both for and against naturalism may not be at all applicable when aimed at Taoism and the law.

Before we part ways for good, in the tradition of Taoist scholarship throughout history, and in keeping with the pattern of this Note, I’d like to leave you with a story. Applying the concepts of Taoism and other Eastern philosophies to Western legal practice is no small task. The lawyers that practice the law and the politicians who make it are a particularly recalcitrant and traditionalist breed of people. But change through the Tao is gradual, and the thoughts and ideas contained in this Note are nothing but a drop of water in the vast ocean of wisdom that can be applied to our dilemma. The following story comes from old Japan, and it illustrates the manifold path to learning and the subtle ways through which wisdom leads to change:

A certain samurai had a reputation for impatient and hot-tempered behavior. A Zen master, well known for his excellent cooking, decided that the warrior needed to be taught a lesson before he became any more dangerous. He invited the samurai to dinner.

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98. There could be a large amount of scholarship done on the comparison between Taoism and naturalist legal philosophy, but that is outside the scope of this Note. One case that will be useful to study, though, especially in connection with gender-neutrality, would be *Bradwell v. Illinois*, 83 U.S. 130 (1872). In Justice Bradley’s famous concurrence, he discusses the “natural and proper timidity and delicacy which belongs to the female sex.” *Id.* at 141. This is *not* the Taoist perspective. Taoist scholars (at least those in whom I put much stock) hold that there are masculine and feminine forces common to both sexes, as Lao-tse describes in *Tao Te Ching*, and that this balance must be maintained in both sexes. See LAO TZU, *supra* note 16, at 42, 80. Taoism does not hold that males and females have inherent differences in terms of abilities or capacities, and indeed it would not be much of a philosophical system if it did so. Other important and informative cases relating to this issue include: *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Reed v. Reed*, 404 U.S. 71 (1971); *Goesaert v. Cleary*, 335 U.S. 464 (1948); *Nebbia v. New York*, 291 U.S. 502 (1934); and *In re Lockwood*, 154 U.S. 116 (1894).

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The samurai arrived at the appointed time. The Zen master told him to make himself comfortable while he finished preparing the food. A long time passed. The samurai waited impatiently. After a while, he called out: “Zen Master—have you forgotten me?”

The Zen master came out of the kitchen. “I am very sorry,” he said. “Dinner is taking longer to prepare than I had thought.” He went back to the kitchen.

A long time passed. The samurai sat, growing hungrier by the minute. At last he called out, a little softer this time: “Zen Master—please. When will dinner be served?”

The Zen master came out of the kitchen. “I’m sorry. There has been a further delay. It won’t be much longer.” He went back to the kitchen.

A long time passed. Finally, the samurai couldn’t endure the waiting any longer. He rose to his feet, chagrined and ravenously hungry. Just then, the Zen master entered the room with a tray of food. First he served *miso shiru* (soybean soup).

The samurai gratefully drank the soup, enchanted by its flavor. “Oh, Zen Master,” he exclaimed, “this is the finest *miso shiru* I have ever tasted! You truly deserve your reputation as an expert cook!”

“It’s nothing,” replied the Zen master, modestly. “Only *miso shiru*.”

The samurai set down his empty bowl. “Truly magical soup! What secret spices did you use to bring out the flavor?”

“Nothing special,” the Zen master replied.

“No, no—I insist. The soup is extraordinarily delicious!”

“Well, there is one thing . . .”

“I knew it!” exclaimed the samurai, eagerly leaning forward. “There had to be *something* to make it taste so good! Tell me—what is it?”

The Zen master softly spoke: “It took *time*,” he said.<sup>99</sup>

The legal profession today is like the samurai in the story, headstrong and willful, convinced that pushing and struggling hard enough can force the system to fit whatever worldview is desired at the moment. But extraneous and egocentric efforts lead us not to efficiency and excellence, only down the primrose path. Consequently, in spite of the deep entrenchment of the wrong practices discussed in this Note (and many more not touched on), I am convinced that Americans eventually will do away with superfluity and construct laws in concordance with perfection. After all, as Lao-tse said, “Use too much energy, and You will soon be

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99. HOFF, PIGLET, *supra* note 28, at 96–97.

exhausted. That is not the Natural Way. Whatever works against Tao Will not last long.”<sup>100</sup>

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100. *Id.* at 90 (emphasis omitted).

