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## Abraham Lincoln and the Cardinal Virtue of Practical Reason

Brett G. Scharffs

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# Abraham Lincoln and the Cardinal Virtue of Practical Reason

Brett G. Scharffs\*

## *Abstract*

*Practical wisdom is an elusive concept. This Article focuses on a case in which Abraham Lincoln, prior to his election as President, participated (or more accurately did not participate) to frame a discussion of what practical wisdom means and how it makes a difference for lawyers.*

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TABLE OF CONTENTS

I. LINCOLN’S MOST IMPORTANT CASE.....	343
II. PRACTICAL WISDOM .....	346
III. SYMPATHY AND DETACHMENT .....	349
IV. JUSTICE, MERCY, HUMILITY .....	351
V. THE DISTINCTION BETWEEN THEORETICAL AND PRACTICAL WISDOM.....	353
VI. THE WISDOM PARADOX.....	354
VII. BEYOND PLATITUDES.....	356
VIII. LINCOLN’S PRACTICAL WISDOM .....	357

## I. LINCOLN'S MOST IMPORTANT CASE

I'd like to tell you about what was arguably Abraham Lincoln's most important case as a practicing lawyer. As odd as it may seem, Lincoln didn't even actually participate in the case, and it may have marked his deepest humiliation as a lawyer. It was Lincoln's response to this lawsuit—years later—that makes it so significant.

*McCormick v. Manny* involved a patent infringement charge brought in 1854 by Cyrus McCormick, the inventor of the grain harvesting mechanical reaper, against the John Manny Company of Rockford, Illinois.<sup>1</sup> The McCormick reaper, developed in the early 1830s and patented in 1834, revolutionized agriculture, but at the Paris Exhibition in 1855, a competitor, the Manny reaper, beat the McCormick reaper in a head-to-head contest.<sup>2</sup> McCormick responded in fine American fashion by filing a lawsuit, claiming the Manny reaper violated its patent.<sup>3</sup>

The stakes for the companies, and even for the future of the U.S. economy, were enormous.<sup>4</sup> Both sides wheeled in the heavy guns. The Manny Company hired George Harding, a patent specialist from Philadelphia with a national reputation.<sup>5</sup> The lawyers representing McCormick included former Attorney General Reverdy Johnson and Edward Dickerson of New York.<sup>6</sup>

Since the trial was slated to take place in Illinois, the defendants believed that Judge Thomas Drummond of the United States Court for the Northern District of Illinois would likely be assigned to hear the case.<sup>7</sup> Harding decided to recruit a local attorney who “understood the judge and had his confidence,” even though he doubted a frontier lawyer could provide any real assistance.<sup>8</sup> When Harding's first choice was unavailable, he set his sights on Abraham

1. *McCormick v. Manny*, 15 F. Cas. 1314, 1315 (C.C.N.D. Ill. 1856), *aff'd sub. nom.* *McCormick v. Talcott*, 61 U.S. 402 (1857). There are many good accounts of the Reaper Case. One of the best is in Doris Kearns Goodwin's magnificent *Team of Rivals: The Political Genius of Abraham Lincoln*, from which this description is largely drawn. See DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN 173–75* (2005). I have also utilized David Herbert Donald's biography of Lincoln. See DAVID HERBERT DONALD, *LINCOLN* (1995).

2. *McCormick*, 15 F. Cas. at 1316 (supporting the patent assertion).

3. *Id.*

4. Joseph Gies, *The Great Reaper War*, 5 AM. HERITAGE: INNOVATION & TECH. 20 (1990), <http://www.inventionandtech.com/content/great-reaper-war-1>.

5. GOODWIN, *supra* note 1, at 173; DONALD, *supra* note 1, at 185.

6. GOODWIN, *supra* note 1, at 173.

7. DONALD, *supra* note 1, at 185–86.

8. GOODWIN, *supra* note 1, at 173; DONALD, *supra* note 1, at 185–86.

Lincoln.<sup>9</sup>

Still stinging from his loss six months earlier to Lyman Trumbull in the 1854 Senate contest, participating in such a high-profile contest was a welcome opportunity for Lincoln.<sup>10</sup> He was paid a retainer of four hundred dollars, sizeable by his standards, and was thrilled with the prospect of going up against lawyers of the caliber and renown of Reverdy Johnson and Edward Dickerson.<sup>11</sup>

But not long after Lincoln was retained, the venue was shifted from Chicago to Cincinnati, which eliminated Lincoln's usefulness in the eyes of Harding.<sup>12</sup> Harding responded to this news by teaming up with the lawyer he really wanted, the brilliant up-and-coming Edwin Stanton of Pittsburgh.<sup>13</sup>

Not knowing of the change of locale, or indeed of Harding's narrow reasons for hiring him, Lincoln went to work.<sup>14</sup> Harding did not even send Lincoln a copy of the pleadings, as promised, and Lincoln's written pleas for information went unacknowledged.<sup>15</sup> Ever resourceful, Lincoln obtained copies on his own from the federal courthouse when he had business in Chicago.<sup>16</sup> He also went to the Manning headquarters in Rockford to examine first-hand the reaping machine at the center of the dispute.<sup>17</sup>

Eventually, Lincoln learned from the newspapers where and when the trial was scheduled, and although he had not heard a word from Harding, he arrived in Cincinnati with a lengthy brief, ready for battle.<sup>18</sup> He tracked down the lawyers at a guest house where they were staying, just as they were leaving for court.<sup>19</sup> Neither Harding nor Stanton would give Lincoln the time of day.<sup>20</sup> Years later, Harding recalled his shock at seeing the "tall rawly boned, ungainly back woodsman, with coarse, ill-fitting clothing, . . . holding in his hands a blue cotton umbrella with a ball on the end of the handle."<sup>21</sup> Stanton

9. DONALD, *supra* note 1, at 186.

10. GOODWIN, *supra* note 1, at 173; DONALD, *supra* note 1, at 185.

11. GOODWIN, *supra* note 1, at 174; DONALD, *supra* note 1, at 186.

12. GOODWIN, *supra* note 1, at 174; DONALD, *supra* note 1, at 186.

13. GOODWIN, *supra* note 1, at 174.

14. GOODWIN, *supra* note 1, at 174; DONALD, *supra* note 1, at 186.

15. GOODWIN, *supra* note 1, at 174; DONALD, *supra* note 1, at 186.

16. GOODWIN, *supra* note 1, at 174; DONALD, *supra* note 1, at 186.

17. DONALD, *supra* note 1, at 186.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

was possibly even less impressed and more caustic. Stanton pulled Harding aside and said, “Why did you bring that [damned] long armed Ape here . . . he does not know any thing [sic] and can do you no good.”<sup>22</sup>

At Stanton’s insistence, Lincoln withdrew from the case, but remarkably, he decided to stay in Cincinnati to listen to the arguments.<sup>23</sup> Harding did not even look at Lincoln’s brief, “so sure that it would be only trash.”<sup>24</sup> Heaping insult upon indignity, after the trial, it was returned to Lincoln in the envelope in which he delivered it, unopened.<sup>25</sup> When the judge assigned to the case, future U.S. Supreme Court Justice John McLean, invited the lawyers on both sides to his house for dinner, Lincoln was excluded.<sup>26</sup>

For his part, Lincoln was impressed with the lawyers on both sides, and in particular, with Stanton.<sup>27</sup> Lincoln stood in “rapt attention . . . drinking in his words.”<sup>28</sup> According to Lincoln, he had never “seen anything so finished and elaborated, and so thoroughly prepared.”<sup>29</sup> Lincoln realized that these lawyers were in a different league than him, and although he had been practicing for twenty years, he vowed to return home “to study law.”<sup>30</sup>

Due in no part to Lincoln, Manny won the case. Lincoln left Cincinnati chastened, and even returned the balance of his fee (which he eventually cashed after the Philadelphia lawyers sent it again with a note telling Lincoln he had earned it).<sup>31</sup> Lincoln did not talk much about the incident, although he did admit to his partner William Herndon that he had been “roughly handled by that man Stanton.”<sup>32</sup>

A short six years later, Lincoln had been elected President of the United States, and it was Edwin Stanton to whom he offered the post of secretary of war during the dark days of the Civil War.<sup>33</sup> Doris Kearns Goodwin describes this astonishing decision:

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22. *Id.*

23. *Id.*

24. GOODWIN, *supra* note 1, at 174.

25. 2 CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS 42 (1926).

26. GOODWIN, *supra* note 1, at 175.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. DONALD, *supra* note 1, at 186–87.

33. GOODWIN, *supra* note 1, at 175.

Unimaginable as it might seem, after Stanton's bearish behavior, at their next encounter six years later, Lincoln would offer Stanton "the most powerful civilian post within his gift"—the post of secretary of war. Lincoln's choice of Stanton would reveal . . . a singular ability to transcend personal vendetta, humiliation, or bitterness. As for Stanton, despite his initial contempt for the "long armed Ape," he would not only accept the offer but come to respect and love Lincoln more than any person outside of his immediate family.<sup>34</sup>

In a similar magnanimous gesture, Lincoln appointed Harding head of the Patent Office.<sup>35</sup>

## II. PRACTICAL WISDOM

I have elsewhere defended the view that legal reasoning involves an integration of craft, rhetoric, and practical wisdom.<sup>36</sup> Craft is the art of making; rhetoric, the art of persuading; and practical wisdom, the art of exercising good judgment. My focus here will be on practical wisdom.

Practical wisdom is not best understood as a theory, and indeed in some sense it may be viewed as an anti-theory, since it cannot be reduced to a system of rules.<sup>37</sup> Nonetheless, a number of writers have recognized the centrality of practical wisdom to adjudication and legal reasoning in general.<sup>38</sup> While practical wisdom looks to the insights of philosophy, it conceives of legal reasoning and adjudication, in an important sense, as an autonomous discipline.<sup>39</sup>

34. *Id.* at 175.

35. *Id.* at 412.

36. The material in this section is adapted from my article, *The Role of Humility in Exercising Practical Wisdom*. See Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 U.C. DAVIS L. REV. 127 (1998).

37. *Id.* at 131 n.15.

38. See, e.g., ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 109–28 (1993); RICHARD POSNER, *THE PROBLEMS OF JURISPRUDENCE* 71–78 (1990); Steven J. Burton, *Law as Practical Reason*, 62 S. CAL. L. REV. 747 (1989); William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 352 (1990); Daniel A. Farber, *The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law*, 45 VAND. L. REV. 533–41 (1992); Lawrence B. Solum, *The Virtues and Vices of a Judge: An Aristotelian Guide to Judicial Selection*, 61 S. CAL. L. REV. 1735, 1752–54 (1988); Vincent A. Wellman, *Practical Reasoning and Judicial Justification: Toward an Adequate Theory*, 57 U. COLO. L. REV. 45 (1985). Also noteworthy is John Finnis's discussion of practical reasonableness in JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 100–33 (1980).

39. Scharffs, *supra* note 36, at 131–32.

The primary problem with practical wisdom is that it is almost impossible to pin down what it means, much less what its implications are for lawyers or judges. At times, one is tempted to conclude that appeals to the centrality of the virtue of practical wisdom should be relegated to law school commencement addresses and funeral orations, occasions for celebrating the vague, inspiring, and possibly defunct ideals of the legal profession. Such a temptation, I maintain, should be resisted.

The view that legal reasoning and, in particular, judicial decision making is an exercise in practical wisdom is usually traced back from Aristotle, through Edmund Burke, Karl Llewellyn, and Alexander Bickel.<sup>40</sup> It has found a recent and provocative defense in the work of Yale Law School professor and former dean, Anthony Kronman.<sup>41</sup> In his noteworthy book, *The Lost Lawyer*, Kronman argues that practical wisdom is the lost ideal of the legal profession, as well as the paradigm for good judicial decision making.<sup>42</sup>

What exactly does it mean to have or exercise practical wisdom? Aristotle's answer to this question is notoriously cryptic:

- Aristotle tells us that practical reason is reasoning about what should be done on each particular occasion, and involves deliberation, desire, choice, and action.<sup>43</sup>
- He defines practical wisdom as the virtue of practical reasoning, and maintains that virtue is a state of character that lies in a mean.<sup>44</sup>

But how does the person of practical wisdom decide on the appropriate thing to do? Does she engage in calculations based upon the possible consequences of each alternative? Does she apply certain general principles? Is it simply a matter of exercising commendable all-things-considered judgments? Aristotle's answer is not clear, and literally millennia of debate has not resulted in a definitive conclusion about what Aristotle's answer was, to say nothing of what the correct answer is.

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40. KRONMAN, *supra* note 38, at 24–25, 41–43.

41. *See generally* KRONMAN, *supra* note 38.

42. *Id.* at 3–4.

43. ARISTOTLE, *NICOMACHEAN ETHICS* bk. III, at 1756–57 (Jonathan Barnes ed., 1984) (c. 384 B.C.E.); KRONMAN, *supra* note 38, at 41.

44. KRONMAN, *supra* note 38, at 41.



Aristotle does say much that is helpful:

- He observes that choosing what to do involves both deliberation and desire, and thus choosing well will involve both deliberating well and having the right desires.<sup>45</sup>
- Practical reason involves choice and action in concrete, particular situations, not just apprehending or understanding universal rules.<sup>46</sup>
- Aristotle sensibly advises that if we want to know what to do in a difficult situation, we should seek the advice of a good and wise person. A person of practical wisdom may be able to give good advice about what should be done, even if she cannot explain with precision all the reasons for the advice.<sup>47</sup>
- Aristotle also advises that with respect to the most difficult practical problems, we should be disinclined to trust our own judgments alone, but rather we should reason together with others.<sup>48</sup>

Perhaps most importantly, Aristotle maintains that practical wisdom is a synthesis of two different types of virtue—virtue of intellect, and virtue of character.<sup>49</sup> Aristotle contrasts practical wisdom with cleverness, the ability to “do the things that tend towards the mark we have set before ourselves, and to hit it.”<sup>50</sup> This may be laudable “if the mark be noble,” but if “the mark be bad, the cleverness is mere villainy.”<sup>51</sup> The person of practical wisdom will be clever, but not merely clever; in addition, he will also have virtue of character, which will make the aim right.<sup>52</sup> Aristotle concludes that “it is not possible to be good in the strict sense without practical wisdom, nor practically

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45. ARISTOTLE, *supra* note 43.

46. *See* KRONMAN, *supra* note 38, at 45.

47. *See id.*

48. *See id.*

49. *See id.*

50. ARISTOTLE, NICOMACHEAN ETHICS bk. VI, at 1807 (Jonathan Barnes ed., 1984) (c. 384 B.C.E.).

51. *Id.*

52. *Id.* at 1759–60.

wise without moral excellence.”<sup>53</sup> Thus, practical wisdom is always embodied, particularly in people of a certain sort—individuals who combine excellence in reasoning with the right traits of character and moral equilibrium.

### III. SYMPATHY AND DETACHMENT

But what are the particular virtues of character that a person of practical wisdom will have? Although Aristotle provides a catalogue of moral virtues, he does not articulate which particular habits of character are crucial to practical wisdom.<sup>54</sup> In an attempt to elucidate Aristotle’s thinking, Professor Kronman has thoughtfully identified two moral virtues or habits of character that will distinguish the person of practical wisdom.<sup>55</sup> Kronman begins with the observation that deliberative inquiry always involves a measure of moral imagination.<sup>56</sup> As Kronman puts it,

A person who is attempting to choose among commensurable goods must use imagination to anticipate the costs and benefits of each alternative. And the person who is deliberating about incomparably different options, of the sort we face at crucial turning points in life, needs imagination . . . to construct a concrete mental image of the choices he might make.<sup>57</sup>

Only by exploring, in imagination, the implications and effects of each option can we acquire an adequate understanding for making a choice.

Kronman suggests that the first habit of character needed for imaginative deliberation is “a certain measure of sympathy or compassion, in the literal sense of ‘feeling with.’”<sup>58</sup> Kronman describes sympathy as an attitude midway between observation and identification or endorsement.<sup>59</sup> “To sympathize with the values represented by a particular choice is to do more than observe their association with a given way of life, to take note of the fact that those living the life in question typically affirm values of a certain sort.”<sup>60</sup>

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53. *Id.* at 1808.

54. KRONMAN, *supra* note 38, at 45.

55. *Id.* at 70–71.

56. *Id.* at 69.

57. KRONMAN, *supra* note 38, at 69.

58. *Id.* at 70.

59. *Id.* at 71.

60. *Id.*

This “may be a first step toward a sympathetic consideration of these values,” but genuine sympathy requires more<sup>61</sup>:

Only those who have experienced something of the power and appeal of a value and who understand why others are drawn to it even if they themselves ultimately are not, may be said to have sympathetically considered it—to have *entertained* the value rather than merely noted its existence as an anthropological fact.<sup>62</sup>

While sympathy goes beyond mere observation, says Kronman, it also falls short of outright acceptance: “It is possible to entertain a point of view without making it one’s own, in the sense of giving the values associated with that point of view one’s full endorsement.”<sup>63</sup> Thus, the second habit of character or virtue that a person of practical wisdom will have is detachment:

A person who is faced, let us say, with a difficult choice between two careers must make an effort to see the claims of each in its best light and to feel for himself their power and appeal. At the same time, he must preserve a certain distance or detachment from them. From each imaginative foray into the possible future lives that his choices represent, he must be able to withdraw to the standpoint of decision, the position he occupies at present. At least he must be able to do this if he is genuinely to choose among the alternatives and not merely be swept along by the tide of feeling that any sympathetic identification with a particular way of life—even an imagined one—can arouse.<sup>64</sup>

Kronman compares the combination of sympathy and detachment that is needed in practical deliberation and decision making to wearing bifocal glasses: “Through one lens the alternatives are seen not merely at close range but (in contrast to the attitude of observation) from within, from the normative and affective points of view that the alternatives themselves afford. Through the other lens, each of the alternatives appears at an equally great distance.”<sup>65</sup>

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61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 72.

65. *Id.*

Kronman observes that seeing through bifocal lenses can be difficult and disorienting, and it takes practice to get used to shifting between perspectives and combining them in a single field of vision.<sup>66</sup> So, too, it is with deliberation:

It is difficult to be compassionate, and often just as difficult to be detached, but what is most difficult of all is to be both at once. Compassion and detachment pull in opposite directions and we are not always able to combine them, nor is everyone equally good at doing so.<sup>67</sup>

Kronman observes that, nonetheless, it is “just this combination of opposing dispositions that deliberation demands.”<sup>68</sup>

#### IV. JUSTICE, MERCY, HUMILITY

The most meaningful and formative experience I had as a student at Yale Law School was working as Professor Kronman’s research assistant on *The Lost Lawyer*. One of the most rewarding parts of the job was the weekly session that seemed like a graduate seminar, where the roles were reversed, and the student got to press and prod the professor on his draft manuscript. To say I benefitted from these tutorials would be a serious understatement. But, try as I might, I could not convince Professor Kronman that there was something important missing from his account of practical wisdom. Perhaps in an effort to get me to stand down, one afternoon, he suggested that maybe I had a good topic for a law review article. Whether he was serious or not, I cannot say, but I took his advice.

The first article I wrote as a law professor, *The Role of Humility in Exercising Practical Wisdom*, argued that Kronman’s claim that sympathy and detachment are the cardinal virtues of practical wisdom is only partly correct.<sup>69</sup> I suggested that Kronman’s advocacy of sympathy in legal terms is translatable into a call for mercy, and that his advocacy of detachment is a call for

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66. *Id.*

67. *Id.*

68. *Id.*

69. Scharffs, *supra* note 36.

justice.<sup>70</sup> Being merciful and just, of course, is central to the ideal of good legal judgment, but often the claims of mercy and the claims of justice pull us, or even the person of practical wisdom, in different directions.<sup>71</sup> Taking my cue from a divine lawsuit recounted in the Old Testament book of Micah, I argued that there is a third virtue that helps us adjudicate these competing claims, and that virtue is humility.<sup>72</sup> In the climax of the confrontation between God and the Children of Israel recounted in *Micah* 6:1–8, God issues a tender and moving injunction: “He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God.”<sup>73</sup>

Thus, while Kronman would list sympathy and detachment as the cardinal virtues of practical wisdom, my list would be slightly different, and include justice, mercy, and humility.

Psychologists Mihaly Csikszentmihalyi and Kevin Rathunde reach a similar conclusion about the components of practical wisdom. In *The Psychology of Wisdom: Evolutionary Interpretation*, Csikszentmihalyi and Rathunde summarize their view of what empirical research about the psychology of wisdom has taught us:

From work thus far one might tentatively suggest the following: the great “width” (empathy), “height” (intelligence), and “depth” (reflectivity) of the wise person allows him or her to form a more complex or concrete and abstract perspective on some problem and thus attain the possibility of seeing the wisest course of action.<sup>74</sup>

Perhaps because I am attracted to visual metaphors, I like this description of wisdom as including spatial dimensions of height, breadth, and depth, aspects associated with reason, emotion, and an inclination to reflect. Utilizing

70. See *id.* at 134 (arguing that the conflicts that arise from sympathy and detachment “are analogous to the conflicts that arise when one tries to be at once merciful and just”).

71. *Id.* (“While it is commonplace to recognize that we want judges who are both merciful and just, it is less common to acknowledge that the requirements of mercy and justice may be in opposition to each other.”).

72. *Id.*

73. *Micah* 6:8 (King James Version).

74. Mihaly Csikszentmihalyi & Kevin Rathunde, *The Psychology of Wisdom: An Evolutionary Interpretation*, in *WISDOM: ITS NATURE, ORIGINS AND DEVELOPMENT* (Robert J. Stenberg ed., Cambridge Univ. Press 1990).

different terminology, I would again translate these three capacities or dispositions, when they are developed in habits that can be counted as traits of character, as being just, merciful, and humble. I also appreciate the suggestion that exercising practical wisdom often involves something akin to perception or seeing.

#### V. THE DISTINCTION BETWEEN THEORETICAL AND PRACTICAL WISDOM

Two additional aspects of Aristotle's discussion of practical wisdom are worth emphasizing. The first is the distinction Aristotle draws between theoretical wisdom (*sophia*) and practical wisdom (*phronesis*).<sup>75</sup> Theoretical wisdom rests upon two concepts, *nous*, which Aristotle describes as the ability to discern reality, and *episteme*, a type of knowledge that is based upon logic, and is sometimes equated with science.<sup>76</sup> The point is not that practical wisdom is superior to theoretical wisdom; if anything, Aristotle takes the opposite point of view.<sup>77</sup> But *sophia* follows from grasping first principles and reasoning from them; Aristotle conceives of theoretical wisdom as a kind of deductive system; it is concerned with things that cannot be otherwise.<sup>78</sup> Its primary concern is knowledge and truth, whereas practical wisdom is concerned with planning, understanding, judgment, and action.<sup>79</sup>

For the philosopher, *sophia* is the nobler, or at least more central, virtue, but for the politician and lawyer, *phronesis* is.<sup>80</sup> Practical wisdom reaches beyond mere curiosity and the desire to know or understand.<sup>81</sup> Curiosity is a valuable trait of character for the lawyer, but curiosity is also bounded by the particular practical situations a lawyer faces, and the people (the clients, or the

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75. See ARISTOTLE, NICOMACHEAN ETHICS bk. I, at 7–8 (F.H. Peters trans., Kegan Paul, Trench, Trubner & Co. 1891) (c. 384 B.C.E.) (noting the difference between a life seeking honor through practical wisdom and a “life of contemplation”).

76. See *id.* at 12–18 (explaining these concepts, particularly the difference between perceiving and “obeying” reason and exercising reason).

77. See *id.*

78. See *id.* bk. VI, at 181–82 (explaining that the “scientific or demonstrative” faculty depends on invariable factors).

79. See generally *id.* at 182–84 (explaining the broad themes underlying theoretical wisdom and practical wisdom).

80. See *id.* at 338–39 (explaining the “of all knowable things those that reason deals with are the highest,” but “practical virtues are exercised either in politics or in war”).

81. See *id.* at 339 (noting that a life of theoretical wisdom “alone is desired solely for its own sake; for it yields no result beyond the contemplation, but from the practical activities we get something more or less besides action”).

accused) whose lives are affected in concrete ways by what the lawyer does.<sup>82</sup> Matthew Crawford notes that a mechanic, quite literally, cannot afford to pursue inquiries on the basis of simple curiosity.<sup>83</sup> Explains Crawford:

The problem with such fixation is that the mechanic's activity, properly understood, is *practical* in character, rather than curious or theoretical. As such it must be disciplined by a circumspect regard for others, a kind of fiduciary consciousness. Amy Gilbert writes that practical wisdom entails "the full appreciation of the salient moral features of the particular situations we confront. Our awareness of these features enables us to respond properly to them." Acquiring practical wisdom, then, entails overcoming the self-absorption of the idiot, but also the tunnel vision of the curious man whose attention is indeed directed outside of himself, but who sees only his own goal.<sup>84</sup>

As lawyers, we are always acting as a fiduciary. This means that we must act with a moral awareness of the duties and obligations we owe to others.<sup>85</sup> The list of others is likely long—client, partners, the legal system, the other side, among others.

## VI. THE WISDOM PARADOX

The final point that deserves emphasis is the importance of experience to practical wisdom. Aristotle notes that genius is associated with youth, practical wisdom with age.<sup>86</sup> We are used to seeing child prodigies in fields such as mathematics, but not so with wisdom.<sup>87</sup>

This does not mean that wisdom is simply a function of getting old. The

82. See MATTHEW B. CRAWFORD, *SHOP CLASS AS SOUL CRAFT* 124 (2009).

83. See *id.*

84. *Id.* (quoting Amy Gilbert, *Vigilance and Virtue: In Search of Practical Wisdom*, 2 *CULTURE* 6, 8 (2008)).

85. See CRAWFORD, *supra* note 82 (noting that courts require lawyers to "place the interests of their clients before their own, and often find implicit in fee agreements a promise by the lawyer to exercise ordinary judgment, care, and diligence in the rendition of legal services").

86. See ARISTOTLE, *supra* note 75, at 200–01 (explaining that wisdom is "believed to accompany certain periods of life, and that a certain age is said to bring wisdom and judgment").

87. *Id.* at 194 ("[T]his is attested by the fact that a young man may become proficient in geometry or mathematics and wise in these matters, but cannot possibly, it is thought, become prudent. The reason of this is that prudence deals with particular facts, with which experience alone can familiarize us; but a young man must be inexperienced, for experience is the fruit of years.")

neuropsychologist Elkhonon Goldberg has written a fascinating account of the connection between wisdom and aging, *The Wisdom Paradox*.<sup>88</sup> In his book, Goldberg contrasts two types of problem solving, one based upon sheer mental horsepower, involving calculation and computation, and the other a kind of pattern-recognition.<sup>89</sup> The first he associates with intelligence, and the second, with wisdom.<sup>90</sup>

He notes that as a young man, his powers of sheer mental energy and capacity were much greater, but that as he has gotten older, the pattern-recognition mode of intelligence has emerged as more significant: “What used to be the subject of involved problem-solving has become more akin to pattern recognition. I am not nearly as good at laborious, grinding, focused mental computations; but then again I do not experience the need to resort to them nearly as often.”<sup>91</sup> He recounts being able in his twenties to follow a complex lecture in mathematics without taking notes, and to pass a test a few months later.<sup>92</sup> In his mid-fifties, Goldberg admits, he would not attempt such a feat: “It’s simply too hard[.]”<sup>93</sup>

But other things, Goldberg notes, have become easier:

Frequently, when I am faced with what would appear from the outside to be a challenging problem, the grinding mental computation is somehow circumvented, rendered, as if by magic, unnecessary. The solution comes effortlessly, seamlessly, seemingly by itself. What I have lost with age in my capacity for hard mental work, I seem to have gained in my capacity for instantaneous, almost unfairly easy insight.<sup>94</sup>

From his research in neuroscience, Goldberg concludes that as humans age, problem-solving becomes more a series of pattern recognitions rather than the creation of new, complex mental constructs.<sup>95</sup> Decision-making also becomes a form of pattern recognition. As our number of “cognitive templates” grows,

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88. See ELKHONON GOLDBERG, *THE WISDOM PARADOX* (2005).

89. See generally *id.*

90. See generally *id.*

91. See *id.* at 8–9.

92. See *id.* at 9.

93. See *id.*

94. See *id.*

95. See *id.*



it becomes increasingly likely that any new situation we encounter will be covered by one of the templates we have already formed.<sup>96</sup> This description coheres with the earlier description of practical wisdom as a kind of seeing.

Matthew Crawford observes something similar in the development of expertise as a motorcycle mechanic:

The experienced mind can get good at integrating an extraordinarily large number of variables and detecting a coherent pattern. It is the pattern that is attended to, not the individual variables. Our ability to make good judgments is holistic in character, and arises from repeated confrontations with real things: comprehensive entities that are grasped all at once, in a manner that may be incapable of explicit articulation.<sup>97</sup>

This description, with only slight modification, could also be applied to depict the expert judgment of a skilled and savvy counselor of the law.

Both Goldberg and Crawford, of course, are building upon insights had by Aristotle, who observed, “We ought to pay the same respect to the undemonstrated assertions and opinions of men of age and experience and prudence as to their demonstrations. For experience has given them a faculty of vision which enables them to see correctly.”<sup>98</sup>

## VII. BEYOND PLATITUDES

But, we have to admit that when speaking about practical wisdom, it is difficult to get beyond platitudes. This is partly because nearly everything we can say on the subject is only a partial truth. Whatever we say, it seems, there is an important counterpoint pulling in the opposite direction.

- Wisdom requires knowledge, but it cannot be reduced to a system of knowledge.
- Wisdom requires emotions such as sympathy, yet detachment is also necessary.

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96. *See id.*

97. CRAWFORD, *supra* note 82, at 168–69.

98. *See* ARISTOTLE, *supra* note 75, at 201.

- Practical wisdom is concerned with action, but judicious inaction is sometimes the wisest course.
- Being mindful and thorough are important, yet in *The Principle of Psychology*, William James defines “the art of being wise [as] the art of knowing what to overlook.”<sup>99</sup>

Journalist Stephen S. Hall has described this as the “yin-yang to the idea that makes it difficult to pin down.”<sup>100</sup>

Nevertheless, we should not let what we cannot say stand in the way of what we can. The basic features of practical wisdom are clear, even if the exact details are not. This may just be an irreducible feature of the subject matter. Aristotle himself insisted that we cannot demand greater precision than an area of inquiry permits itself.<sup>101</sup> Thus, we can say

- that practical wisdom involves both intellect and character;
- that it may not be codified into a system of rules;
- that it differs from theoretical wisdom;
- that it is situational;
- and that it rests upon experience.

#### VIII. LINCOLN’S PRACTICAL WISDOM

Let me conclude by returning to Lincoln.

It might seem anomalous to cite as an example of practical wisdom a case in which Abraham Lincoln contributed nothing to the success of his client’s cause, other than standing aside when demanded. But the case illustrates many of Lincoln’s attributes of character and judgment that have defined him as the most captivating and inspiring figure in our nation’s history. In reflecting upon the Reaper Case, three things in particular are worth noting.

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99. WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 865 (1890).

100. Stephen S. Hall, *The Older-and-Wiser Hypothesis*, N.Y. TIMES (May 6, 2007), <https://www.nytimes.com/2007/05/06/magazine/06Wisdom-t.html> [<https://nyti.ms/2sxGeXo>].

101. See generally NICOMACHEAN ETHICS, *supra* note 75, bk. IX, at 289 (“We may, perhaps, say that to law down precise rules for all [questions] is scarcely possible . . .”).

The first is the energy and preparation Lincoln put into the case. Even when his co-counsel were paying no heed to his requests for information, Lincoln found a way—getting copies of the pleadings from the federal courthouse in Chicago, visiting the Manny factory—to prepare himself. Indeed it is remarkable that he even had the gumption to show up on the day of the hearing, ready for work, after being ignored by his co-counsel and having to learn the date and place from reading the newspaper.

The second notable feature of Lincoln's behavior is that rather than leaving town in a huff after being rebuffed by Harding and Stanton, he stayed behind, to listen and learn. Even when the other lawyers treated him with barefaced contempt, as little more than a country bumpkin, Lincoln showed a steady perseverance. When the hearing was over, Lincoln told one of Manny's partners, Ralph Emerson, that he was going to return home to "study law." When Emerson asked what he meant, Lincoln explained,

For any rough-and-tumble case (and a pretty good one, too), I am enough for any man we have out in that country; but these college-trained men are coming West. They have had all the advantages of a life-long training in the law, plenty of time to study and everything, perhaps, to fit them. Soon they will be in Illinois . . . and when they appear I will be ready.<sup>102</sup>

It would have been understandable for Lincoln to conclude that he had nothing to learn from such arrogant and haughty comrades who, after all, had invited him to join their team.

Most impressive, however, was Lincoln's long-term response to Harding, and especially Stanton's, condescending dismissiveness. It would have been entirely understandable for Lincoln to have never given these men a second thought, or to have refused to do so, after he was elected President. But as Doris Kearns Goodwin so masterfully recounts in her book, *Team of Rivals*, Lincoln had the confidence and character to include his chief rivals in his inner circle.<sup>103</sup> His primary competitors for the Republican presidential nomination in 1860, New York Senator William H. Seward, Ohio governor Salmon P. Chase, and the Missouri statesman Edward Bates, were all given a place in Lincoln's cabinet: Seward as secretary of state, Chase as secretary of treasury, and Bates as attorney general. As we might guess, each of these men viewed

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102. GOODWIN, *supra* note 1, at 175.

103. *See generally* GOODWIN, *supra* note 1.

themselves as the political and social superior to Lincoln, and in large and small ways let him know it, but Lincoln had the equanimity to surround himself with the best men he could find. As Goodwin observes, “Every member of this administration was better known, better educated, and more experienced in public life than Lincoln. Their presence in the cabinet might have threatened to eclipse the obscure prairie lawyer from Springfield.”<sup>104</sup> But over time, even Stanton, perhaps the most imperious of them all, “developed a great respect for the commander in chief and was unable to control his tears for weeks after the president’s death.”<sup>105</sup>

This, concludes Goodwin, was the key to Lincoln’s political genius:

[R]evealed through his extraordinary array of personal qualities that enabled him to form friendships with men who had previously opposed him; to repair injured feelings that, left untended, might have escalated into permanent hostility; to assume responsibility for the failures of subordinates; to share credit with ease; and to learn from mistakes. . . . His success in dealing with the strong egos of the men in his cabinet suggests that in the hands of a truly great politician the qualities we generally associate with decency and morality—kindness, sensitivity, compassion, honesty, and empathy—can also be impressive political resources.<sup>106</sup>

It is hard to imagine a more compelling description of the virtues of practical wisdom.

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104. See GOODWIN, *supra* note 1, at xvi.

105. See *id.* at xvii.

106. See *id.*

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*Abraham Lincoln and the Cardinal Virtue*  
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