Talk to the First Year Class

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In recent years, the Law School has established a tradition of asking a member of the faculty to address the first year class on the role of law and lawyers in contemporary society at the annual First Year Dinner. Paul M. Bator, John P. Wilson Professor of Law, delivered this address to the Class of 1990 in October, 1987. Professor Bator died on February 24, 1989. In the last week of his life, he sent the speech to Dean Geoffrey Stone with the question whether it might be appropriate for publication in the Law School Record.

It is the way of the world that when you enter upon a new endeavor, you are inundated by speeches: welcoming speeches, information speeches, advice-giving speeches, warning speeches, encouraging speeches. It is our tradition that, at this opening dinner which celebrates your joining the University of Chicago Law School family, you are to be subjected to yet another speech, and it has fallen to me to be tonight’s messenger.

I will abandon the advice-giving line right now, making only one recommendation, inescutiable but heartfelt. The eccentric French poet Germaine de Nerval made a habit of walking along the Champs Elysées leading a lobster on a leash. He was asked: why a lobster? He replied: “Because the lobster does not bark, and knows the secrets of the deep.” And so my advice to you, friends, is: do not bark, and know the secrets of the deep, and all will be well.

Let me turn to a different subject. Surely some of the questions that underlie your mood today must relate not just to Law School, but to larger questions about the kind of life you are committing yourselves to. Will you find, in the law, the kind of intellectual and moral and aesthetic excellences that are the essential constituents of a satisfying or even noble life?

It is a happy coincidence that the issue of the University of Chicago Law Review that hit the stands a few days ago has a piece by Professor Anthony Kronman, who used to teach here but now teaches at Yale, called “Living in the Law.” I happened on this piece this afternoon, and would like to recommend it to you; it is subtle and interesting and, I think, fundamentally truthful; and it is devoted to just this question. It is a rather elaborate, even fancy, piece, and I will not try to summarize it for you. But it evoked some thoughts of my own, which I would like to convey to you. Essentially these thoughts are optimistic and cheerful, and therefore appropriate to a festive occasion. But they are quite sincere too. I am absolutely certain that, notwithstanding what you read in the papers, the law offers remarkable opportunities for lives that are full of intellectual, moral and aesthetic excellences, and that you can find them (if only you have the wit to remember Yogi Berra’s words, that you can observe a lot by just watching).

Remember, first, two complementary things. One, the House of the Law Has Many Mansions; but, two, that is not enough. It is sometimes thought that the virtue of pluralism itself constitutes the excellence of legal studies and the law—that there are many paths and many views that are legitimate and worthy—and that it is this fact that gives moral and intellectual sustenance to a life in the law. I myself do not believe it. It is essential to remember that in law it is the case that diversity of views can be seen as a good rather than a weakness; and attempts to excommunicate as heretical divergent views should be denounced. But allowing a thousand flowers to bloom is not a sufficient basis for the actual inner experience of finding and living a life in the law that is morally and intellectually enriching. The house of the law does have many mansions; but it remains to be seen whether life in them is what we want.

Nevertheless, the fact that there are many different forms of life in the law is an important constituent of the situation, because it does mean that differences in tastes, gifts, and preferences can be satisfied. It is significant and reassuring that we are talking about excellences, not just a single form of excellence, in the law.

Let me say a word about the law's material rewards. Some of you—maybe many of you—will aspire to the management of large financial affairs and will enjoy correspondingly large material rewards. It is customary among law professors to try to make you feel guilty and embarrassed about this. My advice is: do not feel unduly guilty and embarrassed. There are lawyers for whom the thrill of providing leadership in financial and business matters of high moment—the sense of action and mastery over events—is an essential and even sufficient element for happiness and fulfillment. If in fact that is your temperament, do not allow the Pecksniffs of the world to make you feel too guilty about it.

Some of you, on the other hand, will find fulfillment in the law by committing yourselves to good public causes. I do think all lawyers have an important obligation to devote some of their lives to good public causes (although I also think that what those causes are is sometimes defined in too narrow and partisan a way). And some of you will find that it is this commitment that becomes the center, the mainspring, of whatever satisfaction you find in the law.

But I venture to predict that for most of you, the problem of finding moral and intellectual and aesthetic excellences in the life of law cannot be wholly solved, either by devoting yourself to those great financial affairs that produce rich rewards, or by committing yourself to worthy public causes. You will need to find something inside the actual activity of doing law, of being a lawyer, that provides some inner form of ethical and intellectual and aesthetic satisfaction.

Are these available?

I believe the answer is yes, and that it is one of the important tasks of law school to unlock some of these gates; the law professor who actually believes that he is teaching nothing but technical tricks is cheating his students. I believe that at the University of Chicago Law School there exists special devotion to the task of illuminating these forms of what might be called the inner excellences of the law.

Here are some hints, some probes as it were, on what to keep your ears open for as you go along in your studies.

First: You will notice, very soon, that the First Year classroom is, in a sense, instruction about moral constraints on the right to speak. To speak is to exercise power. It follows, therefore, that you are not entitled to say anything you please. It is our moral duty to ask ourselves, before we speak: have I thought it through? Is it truthful? Is it fair? The First Year class, at its best, with its unrelenting insistence that you explain and justify, is moral instruction designed to make you learn the habit of thinking about consequences even before you speak. To learn and feel the morality of responsibility and care in speech and argumentation is one of the inner excellences of the law.

Second: The law has an intimate relationship with the written language too. Learn, as quickly as you can, that one of the huge aesthetic (and in a deep sense moral) delights of doing law is to engage in an intense romance with the English language. You will constantly be writing—and it is possible to write in the law with precision and elegance and power and wit. Keynes, of course, said that the lawyer turns poetry into prose and prose into jargon. (Unlike the economist?) And it is all too true that many lawyers believe that effective legal expression must be pompous, impersonal, official, euphemistic, and bureaucratic. Don't believe it. In the law, as everywhere, the effective piece is the one that doesn't just do the job, but the one that sings. You may remember Eliot's lines, from the last of the Four Quartets: "Every phrase and sentence that is right, where every word is at home, taking its place to support the others, the word neither deficient nor ostentatious, an easy commerce of the old and the new, the common word exact without vulgarity, the formal word precise but not pedan-
tic, the complete consort dancing together". That doesn't sound like legal writing, I know, but it can be, it should be. The chance to become a master of virtuoso prose is a pleasure available to lawyers; seize it if you can; like all forms of virtuosity, it provides deep satisfactions.

Third: Remember that the lawyer, throughout his or her life, must be a scholar too. That this has its delights will be recalled to you by the words of the old Jewish scholar: "Garbage is garbage: but the history of garbage—that's scholarship."

What are the inner excellences of scholarship that the lawyer participates in? Surely this revolves around the proposition that scholarship stands in a special relationship to truth (or the search for truth)—that it must be animated by reverence for the truth. A sense of responsibility for the truth of your assertions, and for the integrity of the materials which supposedly justify them, are a crucial element in the life of scholarship, and a crucial element in the life of the lawyer as well. Like the scholar, the lawyer must be a truthteller.

Fourth: Is the lawyer's obligation to tell the truth in tension with the obligation to be a vigorous representative of the client? This is a well known conundrum; it is one about which Kronman has particularly interesting and intelligent things to say. He points out that effective advocacy must involve a sympathetic understanding by the advocate of what is likely to be credible and acceptable to the judge; there is a sense in which the lawyer must make himself, vicariously, a judge in order to assess the power and plausibility of his arguments. My own experience as an advocate confirms Kronman's intuition. The worst possible advocate is the one who has a tin ear for what will seem musical to the judge, who has no instinct for what will "go." To be effective, then, the lawyer must train himself to think and feel like a judge, and thus to enter into the inner world of judging.

Is this a merely manipulative strategy? Maybe that is the way it starts; but it soon becomes internalized. A sympathetic transference into a judicial perspective becomes second nature to the sensitive lawyer, and becomes a part of his moral universe. It is one of the inner excellences of a life in the law.

Fifth: Cultivation of the judicial perspective, of judiciousness, is of course also essential for the performance of the lawyer's job as adviser and counselor. The sympathy and detachment essential for giving good advice also become second nature to the fine lawyer, a part of his universe of excellences.

Sixth: Finally, in thinking about whether in the law you will find the pursuit of happiness, remember the most important thing: that doing law is absolutely fascinating, that it is a field full of inherent intellectual fascination. The grand task of the law—the enterprise of governance by rules through processes and institutions that are predictable, fair, efficient, and just—is a hugely challenging, subtle, complex and various endeavor. Kundera once said that every great novel says one thing to the reader: things are not as simple as you think. Maybe that is the key to the law's delights as well.

The inner excellences of doing law, I have said, include moral scruple in expression, virtuoso writing, scholarly truthfulness, cultivation of a judicial perspective, and sympathy and detachment in counseling—all of this in the service of a hugely interesting enterprise. And remember, too, that to find happiness in that enterprise, you must enter upon it with enthusiasm and intensity, with that fierce concentration of attention that in fact constitutes love. In your pursuit of the law, think of yourself a little bit like a suitor. Be ardent.

Let yourself fall in love with the law.