Faculty Meditations on Life at the Law School

Chess Rules

by Richard A. Epstein

My first experiences at the University of Chicago long antedate my joining the faculty thirty years ago. My older sister Alice spent two years in college at the University of Rochester before she transferred to the University of Chicago. My younger sister JoAnn spent one year at New York University before she transferred here as well. I had therefore over a dozen years of continuous exposure to the intellectual life at the University of Chicago before I transferred here as a faculty member from the University of Southern California Law School in the fall of 1972.

My period of constant engagement with the University has thus carried over my entire adult life, and I continue to marvel at how institutions develop certain personalities that seem to survive a complete turnover of the individuals who populate them. Even as a college student in the 1950s, I sensed the intense intellectual pace that defined life at this University, and at this Law School. People pushed, tested, and probed almost at will. Yet all of these exchanges took place by an invisible set of legal rules that would have made the Marquis of Queensbury proud. There are many low blows that can be inflicted in argument, of which the most common is the appeal to rank and position when reason starts to fail. Our house rules guarded against that risk. Discussion at the University of Chicago follows, it might be said, a form of the first possession rule. Those who get the floor are allowed to keep it. The shy will have to remain silent on the sidelines. But keeping the floor is not simply a matter of moving one's jaw. You have to say something that was worth hearing, or else you find yourself quieted under our local version of the gong show.

Sounds harsh? Well, consider that the flip side of this norm is a complete disdain for the artificial pretensions of rank and authority. Contests in life can be scored, as it were, by bridge rules or chess rules. In bridge, master ratings are achieved by cumulative points. One can therefore have a very high ranking even if well past one's prime. That does not happen in chess, where ranking reflects current performance, not historical highs. Chicago operates on chess rules. Young people therefore enter into this formidable world knowing that they will be judged by what they have to say, not by their age or their credentials. This dominant cultural feature liberates debate by creating, as we Chicagoans like to say, the right kind of incentive structure. Senior faculty members are kept on their toes because they know that rank has few, if any, privileges. Junior faculty members get on their toes because they know that they can participate from the get-go in the life of the community.

The resulting mix is not for all comers. Casual visitors to Chicago are often tempted to describe our distinctive norms as a laboratory for Social Darwinism, red in tooth and claw. But in so doing, they miss one of the key strengths of the Law School's culture. The sharp level of interchange, more often than not, leads to an increased respect and cooperation across the faculty. It encourages people to try out ideas that become the basis of future articles. It leads them to read each other's work, and to collaborate easily on joint projects in the great tradition of Walter Blum and Harry Kalven's work on Progressive Taxation. It carries over to teaching by legitimating the Socratic method: the students know that the faculty who fire questions from the podium are often on the receiving end of such spirited inquiry at lunch and in workshops.

Most of all, this culture helps keep us young as we get older. There is no mystery behind the extraordinary productivity of the scholars at the University and the Law School. Chess rules govern so long as we participate. Then bridge rules take over to record a lifetime of achievement. We work in an environment in which we have both strong support and face stiff competition. The culture of the Law School will not allow us to be complacent today, any more than it allowed our predecessors to be complacent when the doors first opened a century ago.
Sticking It Out

by Geoffrey Stone, '71

Three days after I arrived at the Law School as a first-year student in the fall of 1968, I called home. "I don't like it here," I informed my none-too-pleased parents. "I want to come home."

I had plenty of reasons to be miserable. A native New Yorker, I was in Chicago primarily because I wanted to be near my girlfriend, a student at Northwestern. She broke up with me the day before I arrived on the Midway. Less than six weeks earlier, I had my selective service physical examination with a bunch of pimply faced eighteen-year-olds from Brooklyn and the Bronx. I fully expected to be drafted before the year was out, with all the painful choices that would present. And after three days of classes, I hadn't the faintest idea what was going on. Replevin? Stare decisis?

Assumpsit? What were these people talking about? The questions and answers flew back and forth, and I was in a fog. It was perfectly evident that I wasn't cut out for this thing they called "the law." (The only other time I can recall being so utterly befuddled was some months ago when I decided to take up the banjo.) In any event, my parents dreaded the thought of having a draft eligible, politically disaffected law school dropout back under their roof, beseeched me to "stick it out for another week."

This was sound advice. The next day I had three classes: Torts with Harry Kalven, Contracts with Grant Gilmore, and Elements with Soia Mentschikoff. (Not a bad line-up for a day's education.) That day, for the first time, it began to make sense. Suddenly, the professors' questions seemed almost intelligible.

I began to understand that the students' answers were as wrong-headed and charmingly naïve as they seemed. The fog began to lift, and a sense of excitement set in. That night I called home to say, "never mind."

I could not have dreamed in those first days of anxiety and exhilaration at the Law School that I would spend my life here. For me, this has been, truly, a labor of love. From that fourth day of classes in 1968, I was smitten. At first, it was a dizzying crush; then, by the time I returned to join the faculty, it had matured into a take-your-breath-away infatuation; by the late 70s, it was a full-blown romance; and, finally, by the late 80s, when I was dean, it was a head-over-heels, love-of-a-lifetime, "I'll do anything for you, baby," passion. My fervor has continued—unabated—ever since.

We strive for intellectual honesty and academic rigor. We take seriously our responsibility to ask the hard question and resist the easy answer. We set for ourselves—faculty, students, staff, and alumni—the highest standards of legal education. As Edward Levi reminded my class at his inauguration as president of the University in the fall of 1968, this University must constantly renew its commitment to "searching intellectual honesty," for "our path is not an easy one." That commitment, as much as anything, has made this, for me, the adventure of a lifetime.
Four Wishes for the Next Century

by Martha C. Nussbaum

It is common to praise the Law School for an intellectual culture that welcomes diverse perspectives and follows critical argument wherever it leads. But how often is this questioning spirit applied to the Law School itself? The essays in this series talk a lot about frank criticism, but they don't do it. Of course, this is a celebratory occasion. But in all the congratulation, I sense plain everyday complacency. Since I was brought here by Dean Baird to be a philosophical gadfly, I think I might play that role.

I came to the Law School (and the Philosophy Department and the Divinity School) in 1995, after nineteen years teaching philosophy at Harvard and Brown. In the Law School, I found some big things that delight me. It is indeed true that our faculty are more than usually involved in exchanging ideas. I get more helpful criticisms on my work in progress from my Law School colleagues, whether the topic is a law-related or not, than from any group of people with whom I've ever been involved. And I learn a tremendous amount from daily exposure to the wide-ranging work of our faculty.

In four areas, however, we have a lot more work to do. First, our range of perspectives is really not as wide as it should be. Politically, we range from the libertarian right to the moderate liberal. We lack radical viewpoints and (currently) religious-conservative viewpoints. We need to work harder on recruitment that fosters true diversity.

Second, the dominant economic perspective on the law is too dominant, and too rarely criticized from the perspective of normative ethics and social justice. We need to expose students to critical theories of justice at a formative stage in their education and in their required courses. A course Douglas Baird and I created on decision making, which sets up a critical dialogue between economic and ethical approaches, is one step in the right direction, but we can do more.

Third, our culture is sometimes argumentative in a deliberative way, but sometimes it favors macho point-scoring and takes too little time for the subtleties and silences of genuine reflection. Sometimes I feel I'm in a courtroom rather than a room where scholars search for the truth. We need to keep our eyes on that difference, remembering that in the search for truth quick sharp answers are often a bad thing and hesitation often the mark of a fine mind.

Finally, and perhaps most importantly, we have done much too little to incorporate the study of international law, human rights, and a comparative global perspective into our curriculum. In today's world, where interactions across national borders are a daily reality, this is an old-fashioned insufficiently critical approach to legal education. It produces students who are not even well prepared to confront the workings of multinational corporations, far less to deal resourcefully with the staggering problems of inequality, misery, and injustice that the world puts before us.

Patriotism can be a good thing, but its most dangerous and weakest form is uncritical flag-waving. We have the strength to know, and criticize, ourselves.
My First Day of Class

by Kenneth Dam, '57

In the first minute of my first class on the opening day of my Law School education, I encountered for the first time Edward Levi, then-Dean of the Law School.

Levi glared, looking at each and every one of us disparagingly. Finally, he spoke. "This," he said loudly and threateningly, "is intellectual boot camp!" In the silence that followed we all wanted to look at one another to be sure we had the advantage of numbers, as we believed we faced a maniac.

"You," he shouted again. "You will never be the same!"

And we weren’t. The Law School fundamentally changed me. Let me count a few of the ways.

First, the Law School was actually the beginning of my education, though I had learned a great deal at a state university. The focus on analysis, especially rigorous analysis, rather than on learning and memory transformed my way of approaching almost every professional issue.

The Chicago Experience

by Tracey Meares, '91

I have been a part of the Law School community for over a third of my life as a student, an alum, and a faculty member.

Over the past fourteen years, I have learned a great deal about the Law School—its strengths, its . . . idiosyncrasies, and, of course, how it has changed over the last decade.

Today, the Law School offers many more courses than ever before. Place this year’s course announcements next to those of 1991, when I graduated, and you will see something like ninety more seminars and courses that cover an extremely varied array of topics. Both the faculty and student body are more intellectually diverse than when I went to school here. And we certainly didn’t have "A-Cow-Demia," our fiberglass art cow, to provide comic relief in the Green Lounge on short winter days.

While many changes have occurred in the Law School during the past decade, the changes have occurred on the surface. The essence of this place has remained unchanged over time. And it is this essence that makes the University of Chicago Law School experience so intense and exciting.

Second, under the method used by Levi, Blum, Kalven, and Meltzer—then the four great stars of the Law School—where nearly every case led to a policy discussion, I became interested in public policy issues. My subsequent career in government and in public policy institutions followed quite naturally.

Third (and this does not exhaust the list), under Levi’s deanship, students were directly exposed to a number of leading figures of the day. I particularly recall having dinner with Attorney General Francis Biddell and listening to a talk by an enormously intelligent and compelling lawyer named Abe Fortas—then unknown to the world at large but later a major, albeit in the end somewhat tragic, public figure. Such occasions made me see not just that law was a profession (as opposed to what seems today more like a business) but also that the law could open to us the great political and social issues of the day.

It wasn’t boot camp. For me, it was officer training school.

One must ask then, what is it about Chicago that is so unique? What is it about the Law School that explains why faculty members Frank Easterbrook, Richard Posner, and Diane Wood continue to remain actively involved in teaching here after being appointed to the federal bench? Why do we have the most productive faculty in the country? Why, according to a recent survey conducted by The American Lawyer, are Chicago graduates the law school graduates most sought after by the nation’s top 100 law firms? Why does such a long list of notable lawyers and public servants, whether they went to school here or not, want to be involved in what we do as teachers and supporters?

What is it that draws us here?

We often try to capture what’s distinctive about being here through phrases like "The University of Chicago is dedicated to the life of the mind." Or, "We have an unabashed enthusiasm for rigorous analysis and a love of ideas." These phrases, while evocative, don’t really convey the thrill of being at Chicago. Indeed, no words can really describe the Chicago experience. It is something, quite simply, that must be lived.
On Their Merits

by Cass Sunstein

During my first week as a young faculty member, a few of us had an informal lunch in Hyde Park. It wasn't one of those famous Quadrangle Club lunches, but it was just as intense. I remember that Dick Posner and Frank Easterbrook (not judges yet) were seated across from me, and they were asking my opinion on some large and difficult legal issues. In my late twenties at the time, I said, very firmly, what I thought. We spent the next hour discussing my views (which were undoubtedly very stupid). I had such a mixture of feelings! It was clear that Dick and Frank thought that I was wrong and that it was almost unbelievable that I thought as I did. But it was equally clear—even more clear—that they thought it was extremely important to hear me out, to exchange reasons, to treat me respectfully, entirely as an equal.

This little story seems to me to capture a great deal about the University of Chicago Law School. Ideas are judged on their merits, not because of who said them. Nobel Prize winners, at lunch and at the classroom, are certainly listened to, but they're never seen as "authorities." To an amazing degree, there's no such thing as political correctness, of the right-wing or left-wing kind. We have a bunch of individuals and individualists, to be sure, but they live their lives in a community, and they're entirely dedicated to it.

While Chicago is undoubtedly the most intense and intellectual of American law schools, it's no ivory tower. The Law School's greatest contribution, at least in the last forty years or so, has been to focus attention, at every stage, on the real-world consequences of law. Does the minimum wage really help poor people? What about rent control? Is the earned income tax credit more effective as a way of reducing poverty? Suppose that we want to make the air cleaner. What strategies will actually help to achieve that goal? And if pollution control has unfortunate effects—by, for example, increasing prices or decreasing wages—might it be possible to come up with new and better approaches? Because we always need to know the actual effects of law, it's no surprise that ideas from this institution have played a significant role in both Republican and Democratic administrations.

Much of my own work has involved the theory of constitutional democracy, and in particular the idea of deliberative democracy—a system that combines political accountability and a commitment to reason-giving, one that sees disagreement among political equals not as threatening, but as a constructive force. And I do believe that the idea of deliberative democracy is the organizing principle for our constitutional system. But my own experience with that ideal has come, above all, from the University of Chicago Law School, where disagreement among equals is a constructive force, and where reason-giving is a fact of daily life.

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