THE WORK THAT CHANGED ME

By Robin I. Mordfin
The artful use of words has long inspired great minds. Thomas Alva Edison decided to become an inventor like his idol, Sir Isaac Newton, after reading *Principia*, while novelist Joyce Carol Oates decided to become a novelist after enjoying *Alice in Wonderland*. But what inspires those who choose to study the weighty problems of law, economics, and society and spend their time attempting to find solutions?

Many members of the Law School faculty have been stimulated by well-constructed prose. Naturally, some of the biggest thinkers started with some of the most well-known documents. Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law and influential constitutional law scholar, was moved by a journal piece on the First Amendment.

“Harry Kalven’s article in the 1965 *Supreme Court Review*, ‘The Concept of the Public Forum: Cox v. Louisiana,’ played a central role in shaping my lifelong interest in the First Amendment,” said Stone. “I first read Kalven’s article in 1971 when I was a student at the University of Chicago Law School. At the time, it exemplified for me the sort of clear-eyed, insightful, and integrative analysis that marked the very best of legal scholarship. It took judicial decisions seriously, but looked beyond them to seek the broader principles they might support.”

Stone returned to the Law School as a member of the faculty in 1973, at which time Professor Philip Kurland invited him to write a piece for the *Supreme Court Review*. He first considered writing about equal protection, but then Professor Kalven suggested that he write about recent decisions involving the public forum doctrine.

“That led to my first piece as a member of the faculty, ‘Fora Americana: Speech in Public Places,’” said Stone. “That article built upon the idea first put forth by Kalven in his 1965 article and took it in new and—I’d like to think—interesting and original directions. Many of my subsequent articles drew upon and further developed the insights of that first piece. Sadly, Kalven died of a sudden heart attack several months after ‘Fora Americana’ was published, but it was his work and his ideas that inspired it. Much of the First Amendment section of my *Constitutional Law* casebook (coedited with Mike Seidman, Cass Sunstein, Mark Tushnet, and Pamela Karlan) is organized around the ideas I first explored in that 1973 article.”

Jennifer Nou, Neubauer Family Assistant Professor of Law, also found writing early on that has strongly affected the trajectory of her career. Nou, who has written extensively on regulation, had this to say about Douglas Rae’s *Equalities*:

“Reading it in college sparked questions for me that I think I’m still trying to answer. In *Equalities*, Rae and his coauthors set out to examine the ways in which the abstract concept of equality fissures into the practical ‘equalities’ (plural) of real life. They were concerned, in other words, with the repeated moments of transition...”
between the theory and practice of equality; for example, in debates over kidney allocation, baseball salaries, language rights, religious freedom. How do actual societies instantiate the ideal of equality, whether between groups or individuals? How do these practical understandings of equality relate to and conflict with each other?”

“It struck me that these same questions could be asked about the idea of efficiency,” Nou continued. “In our economics classes, we were often told that there was a trade-off between equality and efficiency—with the former the realm of philosophers and politicians, the latter the realm of technocrats. But it seemed that in real life the idea of ‘efficiency’ was actually highly contested, political, and value-laden. The concept of efficiency, that is, became various ‘efficiencies’ in practice, from debates about economic growth to the use and abuse of cost-benefit analysis. In this sense, Equalities highlighted for me the value of understanding how ideas actually lived and breathed.”

Naturally, some even more fundamental sources have brought forth an interest in scholarship. Richard Epstein, James Parker Hall Distinguished Service Professor Emeritus, finds Roman law to be a nearly constant source of both new and old ideas.

“The great advantage of the study of Roman law generally is that it gives an alternative system-wide view of legal institutions and doctrines that is still relevant today in modern private and public law,” said Epstein. “The Romans were weak on developing a justificatory apparatus for their rules, whose strength is best measured by their durability. The analytical project is to use the modern tools of philosophy and economics to supply the rationales that explain the great strengths of the Roman system and also give insight to the places in which their rules tend to fail.”

Epstein has found that the one text he has consulted...
more than any other over the past 50 years has been Gaius’s *Institutes*. "I first encountered the book when I began my studies of law at Oxford,” he said. “Roman Law of contracts under the guidance of my then Oriel tutor, Alan Watson, was the first book that I read, and did so in close detail. From those early origins, I expanded my set of Roman law texts to cover much of the law of property, tort, procedure, and the law of persons, where again Gaius was the first source I read. His genius in getting the taxonomy right coupled with his deep awareness of the transactional possibilities under Roman law have influenced my own work in common law systems."

“The theories of contract classification influenced my general view that the American system of consideration plus detrimental reliance is not an adequate framework for promissory obligations,” Epstein related. “The Roman treatment of causation, which does not involve the use of ‘but for’ and proximate causation had profound influence on my early treatment of tort law in my 1973 article ‘The Theory of Strict Liability.’ The Roman approaches to textual interpretation apply in my view not only to the general propositions of Roman law but to many of the broad guarantees of American constitutional law, including my recent work in *The Classical Liberal Constitution*.”

Interestingly, a lack of good writing, in fact a lack of writing at all, has also served as inspiration. Kenneth Dam, Max Pam Professor Emeritus of American and Foreign Law, had already written a book, *The GATT: Law and International Economic Organization*, when he decided to expand his look at the General Agreement on Tariffs and Trade by considering monetary issues as well. Unfortunately, he was faced with enormous challenges in putting together his research because of a lack of documentation.

“After having access to the published documents of the GATT, the relative dearth of documents about the International Monetary Fund in the period before Joseph Gold became the Fund’s General Counsel was frustrating. I therefore made many trips to Washington to access unpublished IMF documents,” he noted.

Some publications were of interest to faculty members not only for what they say, but also for how they say it. Lior Strahilevitz, Sidley Austin Professor of Law, was a second-year law student when he read “Crystals and Mud in Property Law,” by Carol Rose, ’77, which was first published in the *Stanford Law Review* in 1988.

“‘We’re allowed to write that way?’ was the first thing I thought when I put down the article,” Strahilevitz mused. “So much of the legal scholarship that I had read as a student was dull, jargon-filled, and lifeless. There was nothing literary about it. Carol’s writing, by contrast, was conversational, unpretentious, clear … even funny. I already had a strong suspicion that I wanted to be a law professor, and I remember promising myself that I would strive to write articles that were a pleasure to read and analytically rich, just like Carol’s.”

“As 3Ls on the law review board, my classmate and future Chicago faculty colleague Alison LaCroix and I were assigned the task of editing an essay by Carol,” said Strahilevitz. “I am ashamed to admit that I was an overly zealous editor of faculty prose during my time on the *Law Journal*. That said, as I progressed through the first draft of Carol’s essay, ‘Canons of Property Talk, or, Blackstone’s Anxiety,’ I could not identify a single sentence that needed fixing. How was I to prove that I had read the darn thing? Alison had essentially the same reaction. I think when
all was said and done, we decided to save face by moving a comma and maybe italicizing something.” He added, “Carol Rose needs editors like Frank Easterbrook needs law clerks.”

Fortunately, Rose’s example has served Strahilevitz well as he has kept to his promise and published a number of accessible law articles, including “How’s My Driving? For Everyone (and Everything?)” and “The Right to Destroy.”

Professor Alison LaCroix, who has already published dozens of articles and a book, was also inspired by beautiful prose, but of a very different sort. The essay that keeps her motivated to continue her work is historian Samuel Eliot Morison’s essay “History as a Literary Art: An Appeal to Young Historians,” which was first published in 1946.

“Yes, it’s dated in some ways (for example, references to ‘your wife’ and ‘your baby’ as forces orbiting outside the scholar’s study),” she said, “but the message that has always stuck with me is this—short, straightforward, and so hard to put into practice: ‘First and foremost, get writing!’ And then the nice historical image: ‘Young scholars generally wish to secure the last fact before writing anything, just as General McClellan refused to advance until the last mule was shod.’”

“Historians necessarily spend a great deal of time in the archive, but Morison (a rear admiral in World War II who reportedly also rode a horse to his office in Harvard Yard) urged historians to plunge into the writing, even when the lure of the research continues to beckon,” said LaCroix. “But this is what stays with me: ‘When you once
are writing, go on writing as long as you can; there will be plenty of time later to shove in the footnotes or return to the library for extra information. Writing is how we figure out the story and the argument, so every scholar—young or otherwise—has to find a way to start marching, even with a mule or two unshod.”

Unsurprisingly, with a faculty as knowledgeable and prolific as that of the Law School’s, some of our best scholars have used other members as beacons in finding their ways in the world of academia. Much as Geoffrey Stone found Harry Kalven’s work motivating, so law and economics expert Anup Malani, Lee and Brena Freeman Professor of Law, sees the writing of Gary Becker.

“The work that changed me is Gary Becker’s The Economic Approach to Human Behavior,” Malani said. “I picked it up at a bookstore as a senior in college. I had taken economics courses and done so-so. None of the classes really gave me a sense of the power of economics. This book did. It made me apply not just to law schools—as most kids at Georgetown did—but also to economics departments. I consider myself fortunate that I got into Chicago. Gary’s Price Theory class was the best class I took in grad school, and he was on my thesis committee. (He even assigned my PhD thesis as a problem set in Price Theory—rare praise he gave his students.) I did not get a chance to tell him how he inspired me to study economics until very recently: you could approach Gary about work anytime, but he didn’t seem so open to social conversations. Fortunately, I had a chance to tell him at a dinner we had after a festschrift for him a few years ago. I will miss Gary now that he is gone.”

Similarly, Tom Ginsburg, Leo Spitz Professor of International Law, found a new way of looking at the world by reading The Clash Within by Martha Nussbaum. “Reading Martha Nussbaum’s 2007 book on India had a big effect on me,” he said. “The book is an important reminder that the main political struggles of our time are not between civilizations but within them, and even within the individuals that compose them. Every society, and indeed every person, is engaged in a struggle between openness and fear, between tolerance and intolerance. I sometimes come back to the book like a mantra when confronted with the sometimes ugly realities of our world,” Ginsburg explained.

Each year, the researchers and teachers on the faculty of the University of Chicago Law School put out hundreds of articles, chapters, and books that find their way into the hands of eager young thinkers all over the world. Just as each member of the faculty has found inspiration in the work of scholars who came before or worked with them, a work by our faculty members that could change the course of an academic career could be going to print right now.