On February 7, 2013, Martha Nussbaum, the Ernst Freund Distinguished Service Professor of Law and Ethics, delivered this speech to the Class of 2014 at the annual Midway Dinner. The Midway Dinner, as many alumni will remember, takes place in the fifth week of the second quarter of students’ second year, thus the midpoint of their careers at the Law School. It is traditional for the faculty speaker to talk about the virtues of an interdisciplinary education—of “crossing the Midway.” Professor Nussbaum is, even by our faculty’s standards, unusually well qualified to deliver this message, as she is appointed in both the Law School and Philosophy Department and is an Associate in the Classics Department, the Divinity School, and the Political Science Department, a Member of the Committee on Southern Asian Studies, and a Board Member of the Human Rights Program.

In 1893, a new anthology entitled “Great Comic Songs—Thousands Sold” was published in New York. It included one song that definitely has a Chicago pedigree. I offer a few of the timeless lyrics:

Once I walked about the Fair, And quite by Chance
A big wide street that open’d there Caught my glance.
Of all the places that ever came, The joy of life to enhance,
I shall never forget its name, Midway Plaisance.

As the narrative continues, this traveler from far-off Manhattan reports amazing sights on this joyous street: a “Lulu bird from far-off France,” a “Crocodile do[ing] a shadow dance,” and even, shockingly, a “Nautch girl do[ing] a Nautchy dance, quite like a French quadrille, only worser still.” He ends with a refrain that frames the Midway as a kind of dream of paradise: “Midway Plaisance, Midway Plaisance, I’ll get there by and by.”

The song is of course about the Columbian Exposition of 1892–3, where all the sober exhibits displaying industrial accomplishment took place in temporary buildings near the lakeshore known as the “White City,” architecturally
pristine, sober and humorless in tone. But outside, on the Midway, there was much more fun to be had: the world’s first Ferris Wheel; Buffalo Bill’s Wild West Show; and a whole range of booths with circus and carnival aspects, some of which the song literally describes.

All of this took place in the middle of our new university, from its inception a sober-minded and idealistic place. But the color and life spilled over in a lasting way, and to this day the University of Chicago has always been special—if not exactly for Nautch girls and crocodiles, still for the bold ways in which it mingles the disciplines and pushes their boundaries, challenging accepted ideas of what is disciplinarily proper and sober. Uniquely among the great universities of our nation, ours makes it easy and normal for professors to co-teach with faculty in other departments or even schools, for them to offer, without bureaucratic impediment, courses available to multiple units, and even, rarest of all, to invite students to cross over that symbolic strip of grass to take courses that mingle professional school students with students pursuing degrees in humanities, social science, and science. These characteristics are true in spades of our Law School.

As a law student here, you can right away, even before thinking about electives, count for full law credit any class taught by any member of our Law School faculty, even if that class is on Cicero, or John Rawls, or Nietzsche. When we add to this the electives you can choose from any part of the university, it really does begin to look like that magical and subversive dreamscape. Law students can, and some do, study the Kama Sutra with the great scholar of Hinduism, Wendy Doniger; investigate Buddhist ideas of the self with Steve Collins; consider under what conditions monkeys abuse their offspring, under the guidance of primatologist Dario Maestripieri; delve into the neuroscience of empathy under the tutelage of neuropsychologist Jean Decety; join Nobel Laureate James Heckman’s projects involving intervention in early childhood education; study Roman drama with the amazing classicist Shadi Bartsch; or investigate many different areas of world history with the resources of our rich history department. It’s indeed a carnival of interdisciplinary delights, and what’s unknown at any other law school is the ease with which you can enjoy it (not prohibited by calendar differences or bureaucratic impediments). Even if until now you have not crossed that symbolic strip of grass to take a class, your legal education, in your last four quarters, can “get there by and by,” partaking in the advantages of that magical place.

When I began thinking about this speech and about the history of the Midway as both divider and uniter in our university’s history, a number of themes came to mind. One is the theme of time. The Fountain of Time, that large sculpture at the West end of the Midway, was designed by Lorado Taft, who said that he was inspired by a poem by Henry Austin called “The Paradox of Time.” It begins with the immortal words: “Time goes, you say? Ah no! / Alas, Time stays, we go.” You are all probably thinking about that already, hopefully in a less sentimental style. That’s too obvious a theme, however, and I rejected it.

As I pondered, events overtook me. A new set of assaults on the very idea of an interdisciplinary Midway-crossing legal education made me decide to revisit that issue in our law school’s history and to say something about why I feel that the recent assaults are misguided and the education you are receiving here is so precious.

What’s in the air—in a new curriculum designed by alumni at NYU; in an op-ed in the New York Times by two leading legal educators, one the Dean at Northwestern; and, more informally, in numerous law schools I’ve recently visited—is the idea that we cannot afford the old three-year curriculum, with its invitations to elective
courses and hence to interdisciplinarity. We need to offer a stripped-down two-year legal education, aimed narrowly at legal practice (or, in the NYU variant, a third year devoted to practice-oriented study). All these proposals involve cutting out what those two eminent authorities in the *Times* amazingly call “the third year, those famous semesters in which, as the saying goes, law schools ‘bore you to death.’” Given the general courses that a legal education must include, dropping the third year offers no time for interdisciplinary electives, but the new wisdom is that this would be no loss. Proponents of the NYU curriculum, quoted in an earlier *Times* article, singled out “Nietzsche and the Law” as a particularly pointless and allegedly boring exercise—not understanding, apparently, how such a class, if our Nietzsche expert Brian Leiter taught it, would be extremely germane to thinking critically about the historical and cultural origins of many of law’s most sacred concepts. (In fact, Leiter doesn’t offer such a course, and he is not aware of anyone who does, so the example was presumably made up to make fun of what the NYU folks thought we should consider irrelevant.)

Now of course the issue of cost is huge, and I do not mean to brush it aside. I think all law schools owe it to their students to find more resources to help them complete a three-year degree without saddling themselves with a debt burden that will cripple them for life. That, however, would be a topic for a different talk. Means follow ends, and we must first get clear about whether, and why, our traditional goals are valuable—as the experts from NYU and Northwestern say they are not. So, to defend our own approach, let me go back to the founding of our Law School, not long after that famous carnival.

University of Chicago President Harper initially thought not of a law school, but of a research department of Jurisprudence. He feared that a genuine professional school would be too intellectually thin to contribute to ongoing debates about the goals of our society and the nature of social justice. And indeed, as practiced at that time at Harvard and elsewhere, legal education was both thin and narrow. It had little to say about broader social questions. However, Harper’s leading advisor on law, German political scientist Ernst Freund, then a professor in our department of Political Science and the main architect of our law school, persuaded Harper that things could be otherwise. Freund, with degrees in both political science and law, was a distinguished scholar who had practiced law for some time, and who wrote on such issues as the police power and the rights of political dissidents in wartime. He was the first eminent legal thinker to argue that the speech rights of dissidents are protected by the First Amendment (a position that is by now universally accepted but that was considered pretty shocking in 1918, when he advocated it).

Contacted by Harper about the future of law in the University, Freund argued that the University of Chicago should not content itself with creating a research department of jurisprudence. Instead, it should think of a new and richer way of training lawyers for the profession. Our country, he argued, needs lawyers who can think broadly about social issues, and that what they need from their education includes both excellent technical legal instruction and also the input of social science and political philosophy. He emphasized the importance of public law, which was at that time not taught in major law schools. This type of study was not just for researchers, but for practitioners themselves, so that they could serve the public good with a widely informed and critical perspective. He wrote:

“Unless … a university law school explores all the resources of law, learns from history, and inspires itself by university ideals, it does not do its full duty to the legal profession; but if, inspired by these ideals, it succeeds in broadening and deepening the law-consciousness of the legal profession, and indirectly thereby of the community, that will … be the most valuable contribution that a university can make to law and to legal science.”

Harper agreed, with the result that the first curricular proposal for the new law school, drafted by Freund, included a good deal of constitutional law and administrative law,
along with criminology, experimental psychology, comparative politics, and the history of political ethics. Interestingly, both constitutional and international law were required in the first year.

There were hiccups along the way. As his first Dean Harper hired a scholar trained at Harvard, who did not like Freund or his ideas, which he referred to as “foreign ideas”—despite the fact that Freund, though educated in Germany, was actually born in New York and had practiced law in the US for some years. I am guessing that this reference to “foreign ideas” was a coded way of alluding to a distaste for Jews, a prevalent sentiment. Freund was the first Jewish law professor in the US and one of the few Jews prominent in social science anywhere in the country. (We see here something very interesting about Harper, who entrusted his cherished plan to someone who would not even have been appointed to any post in most universities at the time.) So the Harvard man fought with Freund, and came to Chicago with a guarantee that he, not Freund, would run the show. And yet, at the end of the day, when the new school opened in 1902, its curriculum was basically the plan that Freund had designed, and Freund was firmly ensconced as a leading faculty member. At the first convocation, President Harper defended the broad curriculum, saying that legal training is incomplete unless it includes “a clear comprehension of the historic forces of which [laws] are the product, and of the social environment with which they are in living contact. A scientific study of law involves the related science of history, economics, philosophy—the whole field of man as a social being.” (I note that this last phrase was recently quoted by a member of our 2L class in a published letter to the editor in the New York Times responding to that op ed I’ve mentioned.)

The Law School continued on its course, unswerving. Freund’s subsequent rise to national eminence with his work on the First Amendment, hailed by Learned Hand and ultimately even by Holmes, only deepened his influence. In 1932 at the age of almost 70, in a convocation speech, looking back at the history of the Law School, he judged that his ambitious interdisciplinary plan had been successfully achieved.

The Freund plan, as we may call it, has only deepened and broadened from that time until the present day, gradually attracting imitators around the country. It explains why philosophers, psychologists, economists, political scientists, and other scholars from “outside” fields, or with dual degrees, now teach in law schools and why many law schools encourage law students to take courses outside the law school—though ours much more successfully than others because of our low quotient of bureaucracy and our uniform calendar. Now the Freund-Harper idea has come under attack.

I believe we should answer today’s attackers in just the way Freund and Harper answered their critics. Our society is not perfect, to put it mildly. Nor are its laws perfect. Lawyers should not just be instruments of the status quo, obeying its norms without reflection. (That’s basically what I think the two-year curriculum produces.) They should be independent and critical participants, who work to shape a future that is better than the past. Far more than many nations, ours has realized broad social objectives through lawyering. Both the Civil Rights movement and the feminist movement offer stirring examples of how lawyers who think outside the box can do something major that benefits us all. But it doesn’t need to be splashy and major, or even connected with justice. In every area of law, there is irrationality, waste, stupidity, and possibly injustice afoot, and you are all going to be able to ferret these defects out and to set to work changing them. And this is so in large part because you will have the broad interdisciplinary perspective made possible by our model of legal education, including its invitation to join the carnival across the Midway.

I think the traveler in the song is correct: the Midway is not an achievement, it is an enticing life destination—a way, for all of us, of continually moving toward life’s most inclusive goals, with broad purpose, with reflection, and also with joy. It’s not just about law school, it’s about how we live lives in the law. Let’s hope we all “get there by and by.”