



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Praeses Elit Award Acceptance Speech

Delivered by Mr Justice Donal O'Donnell, Chief Justice, at the Praeses Elit Award Ceremony, Trinity College Dublin, on 29 September 2022

It is a great honour to receive this Praeses Elit award from the Law Society of Trinity College Dublin and to be invited to speak to you.

Everything about this moment – the recital of my achievements, the podium, the lecture format, the conferring of an award with an impressive Latin title – all implies that the recipient has some particular insights to impart, some wisdom that justifies you giving up the time to listen to me, and it is not just some contrarian impulse which wants me to warn you against that and to challenge everything you hear. Seamus Heaney put it nicely when he said that the covenant between the teacher and the taught demands a certain protectiveness on the part of the empowered figure of the teacher. It means the teacher or speaker should be careful, but it also means the student, or the listener should be too.

The structure of the event, the teacher and the taught, the award recipient and the audience, implies something of which I think you should be sceptical. It may be, and I hope it will be, that something I say to you now may make sense to you. And if that happens you will be wiser and I will be relieved, but you should not, I think, assume that everything I or anybody else says to you is right or at least so right that it should be accepted on sight or on first hearing. It is, I think, appropriate to be sceptical, to want to be persuaded to make up your own mind. I always thought that Doubting Thomas gets a bad press in the Bible – what's so wrong with wanting proof? Maybe he should be the patron saint of lawyers, rather than St Thomas More – it is the late and much lamented Hilary Mantel who is responsible for my feeling that he was too sure about some things and that such certitude was not always a virtue.

Maybe the literal minded among you are already asking if this is right, then should you be sceptical about the advice to be sceptical? And if so, does scepticism multiplied by scepticism become optimism in the same slightly miraculous way that in maths a negative multiplied by a negative becomes a positive. I know that this is the sort of philosophical brainteaser that some people in university enjoy, but we are not in the maths school or the school of philosophy, and it has been said that the life blood of the law is not logic. So, I think we can just proceed on the basis that it is worthwhile to be sceptical. But scepticism is not cynicism; a sceptic simply asks for things to be proved to their own satisfaction before accepting them. Cynicism often masquerades as intelligence. But a cynic, I think, insists on thinking the worst about people and then is happy on those occasions when people lived down to their expectations. It is not a case – as someone once put it to me – of whether you are bullish or bearish about people, and that cynicism is the only adult reaction to the Panglossian insistence that everything and everyone is good. It is perfectly possible to look around the world and reach some gloomy conclusions about our fellow human beings, but that doesn't mean that it is not possible to believe that there are lots of people who are trying to live good lives, to do the right thing, and to believe, as I do, that its part of the job of the law to make it easier for them to do so and to make it more difficult for those who are tempted not to.

I cannot pretend that it is not both an honour and very flattering to be included in a list that contains people like Lord Reed, Lady Hale, President Mary Robinson, President de Klerk, and therefore to be compared to them, but I do not feel like those admirable people; the truth is that I am probably more similar to the person I was at 20 years of age as a law student than I am to any of the distinguished recipients of the Praeses Elit award. Of course, as you get older, you get, I hope, more mature, and it is certainly said that you get a little bit happier or more contented in your 60s, which is not a great trade-off for no longer being a 20 year old student, but it's not bad. But, fundamentally, you remain the person you are all your life. If you'll forgive the self-parody of a golfing analogy, there is a saying attributed to Lee Trevino, "*that you gotta dance with who brung you*", that you have to make the best of what you've got rather than wish or try to make yourself something that you just are not. So do not expect to become something or

someone else, and think that you have plenty of time to do so: the job is really to make the best of what you've got.

When I was at university at your age, judges used to come to speak at the student debating societies and I still cringe at the memory of Mr Justice Brian Walsh, a lovely gentleman who looked like he could be on Mount Rushmore, no doubt recalling his own more serious time in university, and earnestly delivering a paper that went on for nearly an hour (and felt like much more) and which we considered to be beyond boring. So, I am wary about speaking to a student audience with, by all accounts, an even shorter attention span. As a student I was perhaps precocious, talkative and socially awkward – so much the same as I am now – and, to be honest, not without ambition, but I honestly did not think I would become a Supreme Court judge, let alone Chief Justice. But if I was in the audience today and wondering how you got to be a judge of the Supreme Court or Chief Justice – and we can just leave to one side the question of why anyone in their right mind would want to be Chief Justice – one thing I would try to be aware of is that, in memory, there is a sort of accordion effect and a career looked at in the rear view mirror can give quite a distorted impression.

It is much like the way the summers of our childhoods seem to be a procession of sunny days, when any objective evidence is that the weather was, if anything, worse than it is today. I would encourage you to be ambitious, to chase what F.E. Smith famously called "the glittering prizes", as I did and I admit I won my share of them. But anyone's life gets compressed into a few moments and a few achievements and looking in from the outside, you see only the peaks and you don't see anything of the many, many dark valleys and troughs and moments of doubt, despair and even what feels like professional disaster. There are regular periods in everyone's life when we try our very best and everything goes wrong and at those times it is not good to think that a career is meant to be all glittering prizes – a lot of the time is spent in the slough of despond. Abraham Lincoln failed in two businesses and eight elections before he became President, and was a season ticket holder in the slough of despond. So, if you are feeling depressed about your progress, take heart and book a date in your diary forty or more years from now to accept the Praeses Elit award.

What should you be sceptical about? I think you should be sceptical of posturing, of received wisdom. In Philip Roth's masterpiece 'American Pastoral', he describes one character as being *"all talk – always had been: senseless ostentatious talk, words with the sole purpose of scandalously exhibiting themselves, uncompromising, quarrelsome words expressing little more than [her] intellectual vanity and her odd belief that all her posturing added up to an independent mind"*.

The great virtue of obtaining an education and being in a university is to question all received wisdom, to test it out and not to accept it unless it satisfies you, but if it does, to be willing to change your mind. Daniel Kahneman, the Nobel Prize winner, said that *"if I change my mind, it means that I have learned something"*. Simone Weil said, *"doubt is a virtue of intelligence"*. The great benefit of changing your mind is that it proves you have one.

You have the great good fortune to be receiving a university education in a system where that is more accessible than it is in many countries and in a country where the standard of general education is high and third level education quite widely available. I think the standard of the teaching of law in Ireland has never been higher - but in fairness in that respect we are starting from a low enough base. A graduate of this university, Edmund Burke, said, *"[t]he study of our jurisprudence presented to the liberal and well-educated minds, even in the best authors, is hardly anything but barbarous terms ill explained ... Young men were sent away with an incurable, and if we regard the manner of handling rather than the substance, a very well founded disgust"*. So an absence of disgust is not maybe the highest praise – I can't see it on the letter head of the law school or its promotional literature – but you have been given the opportunity to study to learn but also and, most importantly, to think.

A lot of legal education involves reading judgments, and that's like having your own home gym for the brain. Struggling with judgments, often from the best judges, not just from this jurisdiction and now, but from many different jurisdictions and times, is like a form of resistance training, and it builds up muscle in the brain. So read the judgments and not just the headnotes, and read them to try to understand the reasoning process. Previously, the naturalist and scientist T.H. Huxley said every orthodoxy begins life as a heresy, and one of the benefits of age is to see how the orthodoxies of even the recent past have been abandoned.

So why accept received wisdom, why not live on the wild side and think for yourself, and be aware that you might be wrong? Learned Hand said the one thing judges should think of every day is consider that you may be mistaken. Reading something to reinforce your prejudices is a waste of valuable time.

In thinking for yourself, you could, I think, begin with being sceptical about the prevailing cynicism about the practice of law and the legal profession.

Sometimes, and this is in my lower moments, I think the only accounts I come across of good lawyers or good judges is in the obituary columns, and while I would like to be well thought of, this seems like too high a price to pay. There is a tendency also to promote some image that the admirable lawyer is seen as the crusading lawyer of the Hollywood movie or the streaming service. The good judge is one who overthrows precedent and gets to a desired outcome, who is pushing or exceeding boundaries, who pursues activism rather than restraint, is progressive rather than conservative, promotes socio economic rights. I would certainly encourage you to be idealistic. At your age, I wanted to be Atticus Finch, and the truth is I still do. I would certainly encourage you to support and admire lawyers who have demonstrably made a difference in the world, but I think you would be doing a disservice to your own intelligence and education if you did not recognise that these terms are slogans and dog whistles, oversimplifications and heuristics that often reflect an absence of thought rather than its presence.

The version that the only admirable lawyer is the one who pursues a cause is, in fact, an inverted criticism of the profession by judges or practising lawyers or law teachers. I hope some of you will go into NGOs and make a difference, but if we are being realistic, few of you will do that, and even fewer will do it for all of their careers, and if that was the only version of law that could be practised, this law school would be much, much smaller. Most of you are bound for jobs in offices dealing with transactions, maybe the dreaded stock exchange, maybe supposedly boring conveyancing, maybe the administration of estates on death, and if some of you go to the Bar, you may end up dealing with disputes between neighbours over rights of way or family disputes, none of which will ever be reported and where it is often hard to find the right or wrong of some complex tangled circumstance.

But all of this is really something quite important, and it is important that it is part of the same profession that engages in the high profile cases, that sometimes does cases for free, that sometimes challenges power, whether it be economic strength or state power. Because it is really important that everybody who teaches law or practises law, whatever they teach and whatever they practise, holds themselves to the same standard.

It is a mistake to see law as something which oppresses people but which, on some rare occasions, can be used to fight against injustice. If that was the case, how could we argue with someone who said that the balance sheet didn't look so good and that the whole business should be wound up. Law's justification in a liberal rights based democracy is not that it provides a weapon against injustice – it is meant to be what establishes justice, and more importantly, creates a just society in which people can live their own lives as free citizens

You should already have realised that law is more than criminal law, and even criminal law is much more than high profile or dramatic trials. Law is also much more than what happens in courtrooms or offices. Law pervades people's lives even if they never meet a lawyer. It may be that the law punishes the person who drives on the wrong side of the road and causes an accident, and another branch of the law provides compensation for victims, but the law is a large part of why every day we drive on the right side of the road and, as a result, most of us have happily little experience of accidents, and it is law which requires the driver of the car to be insured so that compensation is not limited to the resources. Most people go through their employment without ever darkening the door of the WRC, but workplaces are a better place now than they were because there are comprehensive laws against discrimination and unfair dismissal. To take one other example: people work very hard to be able to rent accommodation and maybe one day own property. The mechanism through which we can do that is legal – loans can be provided and secured, and it is law which maintains the value of the property so that it can be sold. One of the great disruptions of technology was in the field of intellectual property – if you were not able to protect the piece of property, it lost its value perhaps entirely. Obviously, you can challenge the system of protection of property in its detail or fundamentally – but you have to recognise that the law is the operating system on which every developed western

society runs. That's why it's important to pay attention to it, to argue about changes, but the important thing to consider is what would happen if it did not function.

Because what you are engaged in is something that we should not take for granted, particularly in the modern world. It is that the law is applied, and lives are ordered, by rules that have been devised to attempt to achieve just outcomes. That is what the rule of law means. It means that disputes will be resolved and that transactions will be carried out, not depending on whether a party is weak or strong, attractive or repellent, rich or poor, or by reference to what family they come from or by a hereditary principle, or by simple brute strength. Instead, these disputes are resolved, and these transactions are completed by the application of reason, by argument, and sometimes by cooperation. I think that is an important and encouraging thing. When you ask yourself what are the tools you need to practise law, the most important thing is something you are all lucky enough to have: enough intelligence to be able to think and reason for yourself, and the fact that disputes in our world are resolved by the application of reason is the mark of a civilised society and that is something for all its frustrations and frailties is worth defending.

John W Davis was a significant figure in American law in the early 20th century. He was the democratic candidate for president in 1924 and had argued more cases in the United States Supreme Court (140) than anyone else since the days of Daniel Webster. He was a successful corporate lawyer, founded Davis Polk, and towards the end of his life, he was chosen by the State defendants to argue *Brown v. Board of Education*, and as you may know, probably won it the first time it was argued. Chief Justice Vinson died, something Felix Frankfurter said was the first time he had proof of the existence of God, the case was reargued, and Thurgood Marshall for the NAACP succeeded this time around 9 nil. I don't really know what to make of Davis, But he said this, and for the gendered language, my apologies:-

"The lawyer does not build or erect or paint anything, he does not create. All he does is lubricate the wheels of society by implementing the rules of conduct by which the organised life of men must be carried on".

I came across that quotation in circumstances where it was being presented as encapsulating a very downbeat assessment of the legal profession and as the corporate man being compared unfavourably with someone like Louis Brandeis; lawyers were not creators and left nothing of beauty, or even value behind them, but it always struck me as one of those passages that could be used in drama school to illustrate the fact that the same sentence can change its meaning depending upon the emphasis you put on the various words. A lot depends on how you read the words "*all he does*" because lubricating the wheels of society implementing the rules of conduct by which the organised life of men and women must be carried on is no small thing. In fact, it is really quite an important thing. A different US lawyer and poet this time, Archibald MacLeish, said something similar but perhaps less ambiguous:-

"The business of the law is to make sense of the confusion we call human life, to reduce it to order, and to give it possibility, scope and even dignity".

When I started preparing this speech, I wanted to do something inspirational, the sort of valedictory address that would fire you with enthusiasm to do great things in the law and maybe turn into a Ted talk. I find instead that I am encouraging uncertainty, humility, tolerance and doubt. But here, in the alma mater of Samuel Beckett, I think there is something appropriate about that. I grew up in the 1960s and 70s in Northern Ireland and witnessed the fierce argument that eventually turned into violent confrontation, and while violence has subsided, the intransigence and visceral hostility remains. As Seamus Heaney who was living in Belfast at the time put it, "*subtleties and tolerances were at a discount in Northern Ireland in the early 70s*". They weren't much sought after, and it has taken a long time to recognise that they are virtues. But they are, and they are the tools and trademarks of lawyers. As the great American judge Learned Hand put it, "*the spirit of liberty is the spirit that is not too sure it is right*".

When I left university, I really wanted to teach in a law school, and I did a little bit. One of the most important lessons I learned, not in the study of law but in the practice of law, was the truth that was contained in the Latin maxim that is half of the traditional principles of natural justice; *audi alteram partem*. Let the other side be heard. That is not simply an application of some purely procedural step. It has real substance because the other side always has something to be said and

something to be considered and to be thought about, and sometimes to admit that there may be something in what is being said by the other side.

These things are, if anything, even more important today because the structure of the world you have grown up in tends to emphasise the extreme, the superficial, and a binary division between the saved, who have approved views and actions, and the damned, and that is more alert to rooting out supposed heresy and more vindictive in humiliating transgressors than the inhabitants of a 17th century Puritan colony, putting people in the stocks. And it should be lawyers, whatever their discipline, their area of practice, their political world view, it is lawyers who should say: hold on, it's complicated.

This is important to me because in today's world, the position of judges and courts is more vulnerable than it has been in my lifetime, and the traditional judicial virtue of reticence is seen as a weakness that is exploited. It is, I think, important, really important, that lawyers, practitioners, teachers or students be prepared to defend the system, even if they disagree with individual decisions, and defending the value system should involve saying it's a useful thing because every so often, once in a generation, it will surprise you and decide *McGee*.¹ This is a job worth doing.

And so, these are thoughts that I offer you for your sceptical analysis, consideration now or perhaps later, and on which you can make up your mind or change your mind. I think that is something worthwhile, in fact, it is something I am almost sure of.

¹ *McGee v. Attorney General* [1974] IR 284.