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YALE LAW SCHOOL COMMENCEMENT
REMARKS MAY 23, 2005 by Professor Yoshino

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**YALE LAW SCHOOL COMMENCEMENT REMARKS
MAY 23, 2005**

ON IDEAL READERS

**KENJI YOSHINO
DEPUTY DEAN FOR INTELLECTUAL LIFE AND PROFESSOR OF LAW**

What does it mean to become a lawyer in the year 2005? As someone who thinks about law and literature, I will answer that it is to become one of the master narrators of the age. You are now among the most powerful storytellers in America. Just as Aesop drove his fables into morals, some of you will press facts into holdings when you begin clerking in a few months. Just as Scheherazade told mesmerizing stories to her sultan night after night to prolong her life, some of you will tell stories to the state so that your clients may live. And just as Amphion built the walls of Thebes by making stones dance into place to the tune of his lyre, some of you will build cities, neighborhoods, and communities with your words. We are fortunate: Every age has its reigning discourse, and the reigning discourse of this one is law.

Even as we celebrate the narrative power you have attained, we should elegeize what you have lost. For many of you, becoming a lawyer has been expensive to the spirit, not least because it has required you to forgo other stories, and has even dulled your capacity to tell them. One of you told me during her first year that she had switched from reading fiction to reading poetry because she could inhale poems between classes, as a swimmer takes breaths. The comment made its peculiar strike at my heart because it recalled the many conversations I had had over the years with students who experienced their legal education as a violence to the voices they brought to law school.

To the extent that we have taught you that you must set aside all other stories to tell the story of the law, I urge you today to unlearn that lesson. Your success as lawyers and human beings will depend on your capacity to tell not just the story that is the law, but the stories that lie outside it. This is difficult. To tell even one kind of story, let alone many kinds of stories, let alone the story appropriate to the occasion, requires discipline and judgment. Indeed, because I believe all writing is ultimately epistolary, that is, addressed to some determinate reader, I want to posit that expert storytelling requires an Ideal Reader. But here is the catch: The Ideal Reader does not exist. This is our common predicament. I will try to tell my way out of that predicament with a story of my own.

I arrived at Yale Law School in 1993 as a first-year student. I was a literary person: As an English major, I had written a collection of poems for my undergraduate thesis. During my senior year, I walked the campus knowing that the only reason anything had to be, was to be a poem: the icicles making their small clear points on the eaves, the gate that clacked double-knuckled on its hinge, the bitter flesh star at the heart of a lemon. That year was one of the happiest of my life.

Nonetheless, I knew I would go to law school. I took Auden's dictum that "poetry makes nothing happen" at face value, not seeing then how ironically he meant those words. I wanted a more potent language, a language more capable of protecting me, and, less selfishly, a language better suited to changing the world as I knew it had to be changed. "Poets are the unacknowledged legislators of the world," cries Shelley at the end of his *Defence of Poetry*. I loved the sentiment, but could not share it. I was more

persuaded by George Oppen's revision. Poets are not "the unacknowledged legislators of the world," he said, so much as they are "the legislators of the unacknowledged world."

I wanted to be an acknowledged legislator of an acknowledged world. But the language of the law came hard to me. Here was the problem: I was interested in the wrong part of every case. When we read *Marbury v. Madison* in Constitutional Law, I only vaguely apprehended that the case established judicial review in this country. I spent much more time wondering what happened to William Marbury, that little nobody justice of the peace whose commission was signed and sealed, but not delivered. What did he do after the case was decided? Did he set up shop as a justice on the strength of the Supreme Court's offhand statement that his commission had vested? Or did he find other work? Did he marry and have children? Did he know that his suit had bought him a little piece of everlasting life? When we read *Bowers v. Hardwick*, the case in which the police arrest a man in his own bedroom for having sexual relations with another man, I was less curious about how the case elaborated privacy doctrine than in how the police officer had gotten into that bedroom in the first place. And that tort case where the hospital sends the son his father's amputated leg in a bag—I'm sorry, but how, exactly, does this happen?

"No answer is what the wrong question begets," Alexander Bickel says, and I was asking the wrong questions. But at least I knew what I needed to do. I needed to find an Ideal Reader. I needed to find an interlocutor in law who could tell me where I succeeded and where I fell off, a person who would become the judge in my head. I knew that if I could find this person, I would be able to find the right questions, and perhaps even an answer or two.

I could describe my search for an Ideal Reader a number of ways. I choose to tell it today as a tale, which is to say, a stylized account of three potential Ideal Readers, as we all know tales turn on the number three.

My first candidate for Ideal Reader was Harold Koh. Harold was my company town in law school: I took his classes, then became his research assistant, then became his teaching assistant. Harold taught me not just *how* to think like a lawyer, but *why* I would want to do such a thing. From the summer of 1994 when I worked as his research assistant on a post-mortem of the Haitian refugee case he litigated in the Supreme Court, to the summer of 2003 when I worked with him as a colleague on a brief to that tribunal in the *Lawrence v. Texas* case, Harold consistently showed me the world-making power of the law. And the price of that power. To borrow Seamus Heaney's beautifully doubled phrase, Harold taught me about "the government of the tongue"—because the tongue governs, it must be governed. I learned to discipline myself—to flatten my prose, to substitute lawyerly questions for my poetic ones.

Nonetheless, even as a student, I saw that Harold was not my Ideal Reader. Unlike my student who switched to poetry, I chain-read novels in law school. One writer, was particularly important to me during those years, and will figure prominently in the rest of my speech. This was the British novelist A.S. Byatt, who is perhaps best known for her novel *Possession*, which I read just before my first year. I found her prose—to borrow another critic's phrase—to be as "supple as consciousness itself"—and in *Possession* alone, I found many a phrase that I would invoke during that year. I took comfort in her description of the vocation as that thing which "survive[s] our education," and waited with some curiosity to see what would survive mine. I also just liked her

portraits of people: She describes one scholar as “a kind of verbal Cleopatra, creating appetite where most she satisfied.” This seemed to capture many Yale Law School professors, and it gave me hours of joy to listen to Bruce Ackerman urge us toward his particular pet theory of Constitutional Law and to think: “Bruce Ackerman: The Verbal Cleopatra.”

By the time I returned to the Law School as a junior professor, I knew my Ideal Reader would care as much about literature as he or she did about law. Fortunately for me, there were and are many such people on this faculty, so I will fix on only one of them. It might surprise some of you that the person I chose as my second candidate for Ideal Reader was Ian Ayres. Ian has always been a wonderful reader of my legal work, as he too works on antidiscrimination law. But what I’ve particularly appreciated about him is that our conversations about law often end up as conversations about literature, for Ian, besides being a redoubtable economist, is a passionate reader of fiction. He has what Byatt would call an almost “insulting catholicity” of mind.

One day we were walking down the hall to the faculty lounge, trading book suggestions, as we sometimes do. Ian was recommending Penelope Fitzgerald, another modern British writer.

“And isn’t it amazing,” Ian said, “that Fitzgerald has won the Booker Prize twice?”

“It doesn’t really matter,” I said, “but I’m pretty sure she’s only won it once.”

We walked down the hall in meditative silence.

“It doesn’t really matter,” Ian said, “but I’m quite sure she’s won it twice.”

“It doesn’t really matter,” I replied, “but I’m quite sure she hasn’t.”

We were almost to the lounge.

“It doesn’t really matter,” Ian said, “but I’ll bet you anything you want that she’s won it twice.”

So we bet dinner and raced back to our offices at a pace beneath all adult dignity to let Google resolve the dispute.

I was right, of course—and by that I mean that if I hadn’t been, you would have had to wait for Ian’s commencement speech to hear this story. Ian had been misled by the caption “Winner of the Booker Prize” which appeared on more than one book, but which referred to the author rather than to the books themselves. He handsomely agreed to pay up, but I would have none of it.

“I don’t want dinner, Ian,” I said. “What I want is an acknowledgement that our little exchange reflects a deeper pathology on this faculty. The humanists always defer to the economists, but the economists never defer to the humanists.”

“What do you mean?” Ian asked.

“Ian, if I had said—‘Isn’t it amazing that Amartya Sen has won the Nobel Prize twice?’—and you had said ‘No, he’s only won it once,’ do you think my first and instinctive response would be to say ‘I’ll bet you anything under the canopy he’s won it twice?’”

“I don’t get that,” Ian responded. “I mean, you can’t run a regression, but I can read a novel as well as you.”

There was a brief ringing silence, during which I decided that Ian Ayres was not my Ideal Reader.

“About that dinner, Ian” I said.

Not so long thereafter, it struck me that my Ideal Reader might be Byatt herself. After all, I had gotten the idea of the Ideal Reader from her early short story *Racine and the Tablecloth*. In that story, a precocious child, like the child you all once were, is sent to boarding school. The principal of that school, Miss Crichton-Walker, takes an immediate, savage, and unreasoning dislike to her. The girl, whose name is Emily Bray, invents the Ideal Reader to secure her own survival, writing past the principal to this more sympathetic imaginary audience. When I thought of how Byatt had captured my desire for such a reader, it seemed obvious that she should be my third and final candidate.

I was not permitted to inhabit this fantasy for long. Yale being Yale, Byatt soon showed up in the flesh to give a lecture at the Whitney Humanities Center. Through the ruthless machinations of friends, I secured a seat next to her at dinner. She was brilliant and mild and exceedingly kind. I was starstruck by her in a way that I would not have been by any legal figure. I sat through most of the dinner in a stupefied silence.

Over dessert, the Provost leaned over and said—“You’ve been so prolific, Antonia. You must have started young. How old were you when you wrote *The Shadow of the Sun*?”

“I honestly can’t remember,” she said. “Let me think.”

“You were twenty-eight,” I said. “You were twenty-eight.”

She looked up swiftly and our eyes met, but not in the much-hoped-for way. It was not the locked gaze of the Ideal Reader and her Writer, that conduit of perfect human understanding. It was more like the slightly apprehensive gaze of the Eminent Guest looking into the eyes of the Potential Stalker.

Kicking myself all the way home, I tried to figure out what had gone wrong. After all, the economy of tales requires that the third choice be the right one. But when I returned to *Racine and the Tablecloth*, I discovered my error. The point of this story is that the Ideal Reader is never an actual person. As Byatt writes: “If [Emily] had thought for ten minutes she would have known that no such Reader existed, there was only Miss Harvey and beyond Miss Harvey Miss Crichton-Walker. But she never yielded those ten minutes. If the real Reader did not exist, it was necessary to invent Him, and Emily did so.”

I love this refusal which is also an embrace, this denial which is also an affirmation. For I have come to see, with Byatt (and with Nietzsche) that it is because the Ideal Reader does not exist that we must invent her, or him. I reflected on this recently when I learned that the words “cliché” and “stereotype” are linked, “cliché” coming from the French onomatopoeic click that a stereotype printing plate makes as it presses out its numberless copies. The link between the two words helped me see a link between two different periods of my life. For just as the poet manqué in me struggled to resist cliché in writing that undergraduate thesis, so does the law professor in me struggle today to resist stereotype in teaching antidiscrimination law. The common resistance has been to gestures all used up by other people, those substitutes for life and thought. I have been telling one story, inside and outside the law. But I would not have been able to see this if I had relied solely on the actual readers I had at hand, as wise and as kind as those readers were. I needed an Ideal Reader.

So we drive toward the moral. The class of 2005 is assembled here for the last time. You will go off and be master storytellers, inside and outside the law. Most of the

time you will not have the luxury of searching for Ideal Readers—you will be dealing with readers who are all too real—judges and partners and opposing counsel, as well as parents and spouses and children and dogs. And even if you clear the psychic space to think about the home questions, you will realize that the Ideal Reader does not exist, if you think about it for even ten minutes. Here is the moral: Do not yield that ten minutes. Believe that somewhere there is a Reader, stalking in his or her dry air, who can hear the whole story, who can apprehend the totality of your yearning and the pure forms of your aspiration. That is the only way you will tell the story you need to tell.

At the end of *Racine and the Tablecloth*, we find that Emily Bray, who is now grown up, has a precocious daughter of her own, a mathematician, Sarah. Emily is going to do battle with Sarah's principal, who, like Emily's own principal, is the opposite of an Ideal Reader. So we learn that Emily not only failed to find her own Ideal or even Good-Enough Reader in an actual person, but also that she cannot—and this is the more poignant fact—provide her daughter with such a Reader. And the story ends without any promise of happiness for Sarah, but only with a wish.

Here are the last lines: “At home, Sarah drew a neat double line under a geometric proof, laid out for the absent scanning of an unfalteringly accurate mind, to whose presence she required access. What Sarah made of herself, what Sarah saw, is Sarah's story. You can believe, I hope, you can afford to believe, that she made her way into its light.”

We are now truly at the end of our story. This might be a good time to confess what you already know—that we your teachers, who have been your readers for the past three years, have never been, and can never be, your Ideal Readers. It is therefore not in

our power to promise you that you will have your story. But to withhold an empty promise is an honorable thing, especially when accompanied by a hope as urgent as ours is for you.

We face you, this final time. And this is what we say: “What you will make of yourselves, what you will see, is your story. We can believe, I hope, we can afford to believe, that you will make your way into its light.”