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I joined The University of Chicago faculty of law in the summer of 1965. David was already there, having joined in 1962. The faculty was small, hiring infrequent, and faculty once hired usually remained for the duration of their careers. David became my academic older brother, although I would not have thought about it that way at the time. It was a good thing he did, because there was no other likely candidate. David's style was to lead by example not by exhortation. This essay is an account of what I learned from him.

In retrospect, it is clear to me that David came to The Law School with settled views of both law and the role of the legal scholar. I will call these views his jurisprudence, although he would have been uneasy with the term. He himself never undertook to articulate his views at length. In the introduction to his *The Constitution in the Supreme Court: The First Hundred Years, 1789–1888*, he says: "I shall not stop to justify these convictions. As a colleague of mine recently remarked, 'scholars who spend too much time debating how to conduct a discourse may never be able to say anything' at all. My aim is not to defend the rule of law but to apply its methodology to the cases."[1]

A striking aspect of David's jurisprudence is that he was disengaged from the two most voluble movements of his generation: critical legal studies and law and economics. It was not that he was hostile; it simply was not what he did. I, in contrast, pursued applied work in law and economics. He was always interested, never disapproving, but it was not something he did himself. Both critical legal studies and law and economics take a stance outside law. For them law is an artifact predetermined by social forces outside of law. For critical legal studies, those forces originate in the distribution of wealth and power; the law is to protect the entrenched against the others. For law and economics, law is an artifact predetermined by the laws of economic production, by an evolutionary process of survival in which the most efficient laws prevail. David was not outside law, he was inside it.

A classifier pausing to place David's work in a niche might group him with the Harvard legal process school of the 1950's. That was, of course, the time and place where he received his legal education and that approach, with its interest in the details of what courts do, had an

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1 David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789–1888* xiii (Chicago 1985). The colleague was Frank Easterbrook.

impact on him. But David, unlike the legal process school, felt no need to justify his stance. For David, what he was doing simply felt right, and he would persuade others that he was right not by argument but by demonstration: he would do it.

Law is something that people do. People sing, people eat, and people want and have laws. Laws are an important reality of the human condition, and "doing law" is an important aspect of being human. Thus an important part of understanding the human condition is to understand how law is done.

Law is language. Words are the tools that lawyers use to create legal documents, and legal documents matter because their words have meaning. David loved language, whether in the form of a Gilbert and Sullivan ditty, a song, a novel, a statute, or a judicial opinion. He fully understood that language is an imperfect tool with which lovers, artists, and lawyers struggle. But he also understood that imperfection is not the same thing as meaninglessness. He had no use for the argument that because words are often ambiguous the enterprise is flawed. He saw that the challenge, indeed the excitement, of doing law well was using words both to create and extract meaning.

He also understood that law uses language in a particular and a specialized way. Lawyers do not use language to communicate thoughts and feelings to others, they use language to change the social relations between people. When a seller delivers a properly prepared deed to a buyer, there is an actual change in the rights of the two people, both as between themselves and as between them and the rest of the world. Even more dramatic is that relatively rare event when social groups promulgate a document that establishes a framework for the operation of an entire society.

He understood that the process of creating and retrieving meaning from words is a human process, and subject to human frailty and the imperfections of language. But he did not respond to frailty with anger and disapproval. He understood that it was inherent to the human condition, and his instinctive reaction was to laugh, not to condemn.

David understood that he was good at law, and as a faculty member at The University of Chicago he enjoyed a position that enabled him to do law free of the many pressures and demands that affect the work of practicing lawyers. He had no clients to please, no political pressures to take into account, and because his material needs were modest, no pressing economic constraints. He understood that others faced those constraints, but that because he did not it gave him the opportunity to demonstrate what it could mean for someone to do law at the very highest level.

When he came up with the idea of reading the opinions of the United States Supreme Court in chronological order and writing

about it, he discussed the idea with a number of colleagues. I remember thinking that the approach would make for a thin understanding of each case, abstracted from its historical, economic, and social context and dependent on the report of the Court itself. Even David, as I remember, was not very clear about why this was the right project for him. In retrospect, the rightness of the project is evident. The Constitution of the United States was a singularly ambitious legal undertaking. Imagine undertaking to create a written document that would provide a governing framework for a significant part of a vast continent, and which would endure in perpetuity. The Supreme Court has a central role in that project. It was a project born in terrible compromises. The Justices, selected through a necessarily political process, would inevitably have their inadequacies. How did it in fact work out? David, like a music critic, sat down to write a review of a two-hundred-year performance. And because David was a perceptive and informed critic, we—the rest of the audience—learned much.