

Remarks

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I have had a miraculous career. I mean that in a literal sense, like Jesus restoring the use of limbs to the lame or raising Lazarus from the dead; my career has been punctuated by miracles.

I grew up in a lower middle class suburb of Denver. I did well in high school, but there was no essential college counseling; only twenty-five percent of my graduating class went to college. I was the first in my high school to be admitted to Harvard and Princeton; one other guy had been admitted to Yale, but I didn't know him or what happened to him. I visited Harvard and Yale, but didn't notice a difference between Cambridge and New Haven and didn't know that Harvard had a women's school affiliated with it, unlike Yale, though I wouldn't have met my dear wife if I hadn't gone to Yale, the first of the miracles.

At Yale, I was in way over my head. Because I was good at standardized tests, I had tested out of many subjects. This was a big mistake because I only have a high school education in many subjects, such as world history, American history, and many other subjects, which I have had to correct over the years. Also, as in high school, I took the hardest courses believing that when you take an advanced course, you learn the basics by presumption. This was another big mistake. A third mistake was focusing on political science. I did relatively poorly in those classes and came to the conclusion, thirty years later, that I really don't understand political science.

My senior paper was on political science, but it was an empirical study. I saw some science in empirical studies. The paper was naïve, but I learned a lot from the empirical study. In those days, I had to calculate regressions on calculators in a math building on Whitney Avenue.

The principal concern of my graduating class was dealing with the military. In those days—the Viet Nam war days—you were deferred from service as long as you were in college; after graduation, you were subject to the draft. I was married and we had a child, so this was a real issue. I decided that, if I were to go into the military, I should make some use of it. So I enlisted in the Naval Officer Training Program. There was an exam; I went down to NY; took an oath; thus enlisted.

Shortly after that, for no particular reason, I took the LSAT exam. I had no intention of becoming a lawyer. My father was a lawyer and then a Judge; my mother, who should have gone to law school, had worked as a

legal secretary. The LSAT was the most fun exam I had ever taken, so I began to think about law school.

Later, I learned of the Naval Officer Jag Program which paid your way through Law School, for an extra year of service. My parents had paid tuition and room and board at Yale, but nothing later, so I was on my own. So, I applied to shift from Naval Officer School to the Naval Jag Program.

Second Miracle: It is not generally remembered, but when Nixon was elected, in his first year he wanted to reduce military expenditures. One thing they cut was Naval Officers. The response to my request to withdraw from Naval Officer Candidate School to the Jag Program was to issue me a complete discharge from service. I became a veteran, not subject to the draft, overnight.

After a great deal of self-searching, I called up my local draft board to explain to them the mistake, but they said it was too difficult to reprocess it.

Now, what to do? I had read that the City of Chicago needed teachers for inner-city schools, so I applied for that job. I was rejected because I had taken no education courses at Yale, which probably didn't have education courses.

So, I went to law school at Chicago. I hated it. In our first year, we had only two good teachers: Owen Fiss, who is the best teacher that I've ever had, and Harry Kalven. But the general approach of the School was to train students and celebrate becoming an appellate lawyer in which I had no interest. So, I dropped out. Owen mentions that I took a leave, which is how it worked out. But my view was that I was finished with law school.

After that, I tried to start a business. I had an idea to hire workers among the vast unemployed in Chicago to work on construction projects of which there were many in Chicago. Now, I knew nothing about actual building, construction. But I had had a couple of jobs, arranged by Kathy's father, in demolition, taking out previous materials prior to actual new construction. He had referred me to a few small jobs for which I hired unskilled workers, and I had made a little money.

When I tried to scale up the enterprise, however, I ran into problems. Even though, in most public projects, the demolition phase was separately bid, I never got a contract even though I was the low bidder, often by a lot. And the reason was that my company was not a union shop. So to get the job, I had to pay union wages to those I was hiring who were unskilled workers. So this became a non-viable business plan.

The rest of the year proved to be something of a gap year for me. Kathy and Tom and I along with Kathy's brother and our sister-in-law drove to Alaska as Owen has mentioned and largely based on information provided by Owen to check out homesteading possibilities, but that didn't work out. After the Alaska trip, based upon my previous demolition

earnings, we moved to an area north of Seattle, which we liked a lot. I took a course and did a lot of mountain climbing.

I thought about what I wanted to do with my life and decided that I wanted to learn about how the legal system operates and how the economic system operates, basically themes that have dominated my career. I talked with the Dean of the University of Washington Law School, who indicated I could transfer there, but also to the Chair of the Economics Department, Steven Cheung, a former protégé of Ronald Coase, who told me that, if I wanted to learn more about law and economics (I don't know that I had heard the term before), I should return to Chicago.

So I went back to Chicago and immediately pursued courses in legal history, not realizing that they didn't tell us too much about the foundations of our legal system. In one of the courses though, as the class was discussing placing liability on an upstream property owner for downstream flooding, one of the students, who was older and a smart guy said that, "You know, a Professor at the Law School has shown that whatever the liability ruling in this case, it will have no effect on ultimate land use."

This was a shock. I pursued the issue out of class, spending two weeks reading Ronald Coase's "The Problem of Social Cost." It was really the start of my interest in law and economics.

The next miracle occurred that summer. I had no interest in working at a law firm, but I needed some money, so I decided to work as a research assistant. I applied first to Stanley Katz, the colonial legal historian, but he wouldn't make a decision to hire me, so as the summer approached, basically desperate, I applied to Dick Posner. He hired me and put me on a paper he had promised to write for Ronald Coase, *The History of the U.S. Postal Monopoly*. He didn't give me much direction, and I talked with him only a few times over the summer, and at the end of the summer, turned in probably a 100-page memo describing the history up to about the 1840s. Dick then talked to Ronald who agreed for me to take over authorship of the paper. Ronald, himself, was interested in the postal monopoly as, at least in the U.S., the last vestige of socialism. Posner didn't care that much about socialism versus the market, and had only agreed to write the paper as a favor.

This was a great benefit to me. Posner had also published an empirical study of mine that I had written for Katz's Legal History course on debt collection in the 1840s in Illinois in the first issue of the *Journal of Legal Studies*. (Actually, in the process of doing research for that paper, in the Archives of the State of Illinois in Springfield, I came across many filings of Abraham Lincoln, totally unprotected. I could have taken 100 of them. I notified the head of the Archives to protect them, which I hope happened.)

With these two articles, however, I decided that I liked writing papers and to enter academics. I applied to the Economics Ph.D. Program at

Chicago and was admitted with a full tuition scholarship, but no extra money. I turned it down, tired of being a student, entering the legal academic market.

I did very poorly. I finally got a job at the University of Puget Sound Law School which was going into its second year, then unaccredited.

If I knew then what I know now about the Law School business, I would have gone for the Economics Ph.D. But for subsequent miracles, I could have been lost in that Law School. Think of it, my law school classmates, Frank Easterbrook and Doug Ginsburg, were going the more traditional route: prominent clerkships; government service. Both received offers from Harvard Law School; only one from Yale, I don't remember which; both from Chicago. Ginsburg went to Harvard; Easterbrook to Chicago. I was heading off to the unaccredited University of Puget Sound.

I thought that I didn't need a Ph.D. If Dick Posner can succeed in the field without a Ph.D., why not me, not realizing that I was not Dick Posner.

It will be hard for most of you to appreciate the School. Faculty members, or at least, junior faculty, had no long term contract. No 6-years until a tenure decision. It was year-to-year. After the first year, I received a letter from the President of the University informing me that, if my student evaluations didn't improve the next year, I was out. The Law School building was not on campus, but in a shopping mall with a building that had been remodeled to have classrooms and a library. My first semester of teaching consisted of three sections, three times a week of all of the students in the second-year class at 9:00 and 1:00, and 6:30 for the night students.

The next miracle happened when Ronald Coase called me and offered a Research Fellow position in his Law and Economics Program. This was great. We sold our house in Gig Harbor and bought a home in Hyde Park. The Research Fellowship was terrific. I wore a coat and tie to work every day. The Faculty treated me as almost-faculty. Lots of workshops. Got to know George Stigler and Gary Becker, who became a friend. I also met there Tony Kronman and Michael Trebilcock. Tony Kronman, very important for my career as it turned out, convinced me that I should take up the field of Commercial Law which I did and taught a Commercial Law course at Chicago.

After the Fellowship, I went on the market again. I didn't do so well. Compared to two years earlier, at least I got turned down by better schools. I was interviewed and turned down by USC; UCLA didn't give me the time of day: I was invited to give my job talk by the Economics Department. I don't think one member of the Law School Faculty came to the talk. I was also interviewed and turned down by Wisconsin and Indiana.

I didn't have that many offers, but I finally took a job at SUNY at Buffalo which was fine. Buffalo viewed itself as an interdisciplinary school; it's previous Dean had been Red Schwartz, who had some connection to Yale, not a lawyer but a sociologist.

In my second year there, I was elected Chair of the Appointments Committee and so was given access to all candidate files. I looked at my file and saw why I hadn't done better earlier on the market. Ronald Coase hadn't written. Dick Posner wrote a one-paragraph recommendation saying that I had published 3 articles, but they were all inconsequential—which they were, though he had had a role in each of them: One was the empirical study of debt relief which he had published basically as filler in the *Journal of Legal Studies*; the second was the Postal Monopoly paper; the third was a short paper that followed Dick asking me to be a referee of a paper by Paul Rubin on the evolution of efficient rules, which I couldn't get him to generalize so Dick asked me to write it up. Ed Kitch wrote a recommendation letter saying I was teaching Commercial Law, but was “uncomfortable” teaching it, which was true: I had never taken the course. Second, he said he couldn't recommend further because he was going through a divorce. No wonder I hadn't done so well.

At any rate, two miracles happened thereafter. Buffalo had a program of bringing in luminaries from major law schools to give a talk on a weekend day for a modest honorarium—my daughter Claire has recently done this, though I've never been invited. They brought in Frank Michelman of Harvard. I had never met Michelman, but the talk he gave was about my paper on the evolution of efficient rules. Of course, he was surprised that the author of the paper was in the audience.

But this helped in two ways. First, it vastly enhanced my standing in the Buffalo faculty. The second miracle was that I had written a paper on commercial law, again encouraged by Tony. I sent it out and it was accepted by the Harvard Law Review, or at least partially accepted. It was an efficiency-of-the-law paper, and I have later renounced it. But a couple of weeks after receiving the acceptance, the editors called and said they were revoking acceptance because, having read the many cases I cited, there were no references of costs and benefits. They obviously didn't know the efficiency-of-the-law literature. I went through the cases with them explaining that an increase in information was a benefit and so forth, in the end suggesting that they talk to Frank Michelman about the paper. I presume that Frank looked at it, though I never asked him about it.

They published it and that was big. First, because 99% of law school faculty members have never published in the Harvard Law Review; second, because the paper was on commercial law and the Harvard Law Review chiefly publishes constitutional law papers, not commercial law papers.

Things really opened up after that. I received a ton of visiting offers. Vanderbilt, and they talked about making it a permanent offer; Texas; UCLA, which had treated me like dirt two years earlier; University of Washington; Iowa, which later made it a permanent offer. I accepted the offers from UCLA and Washington. The day after I accepted the UCLA

offer, I got a call from Harry Wellington, Dean at Yale, making me a visiting offer, I'm sure engineered by Tony.

My view then was that if I didn't get a permanent offer from UCLA, I wouldn't get one from Yale, and that Washington was a good fall back.

But it led to a ridiculous burden on the family. We sold our house in Buffalo and bought one in Los Angeles—a good move because of the subsequent appreciation in LA. When we left Buffalo, Kathy was about to have a baby. Her delivery was delayed, so we had to move out of our home and stay with some law school friends. She delivered the baby in the late afternoon and was on a flight to Chicago at 9:30 the next morning. I drove a U-Haul truck with all our furniture, towing a car, to Chicago. The next day, Kathy, nursing all the way, drove to Chicago from Buffalo. My father drove Kathy's car from Denver to LA. We moved into the new home in LA, and two weeks later drove to Seattle for my Washington visit.

At any rate, I did get a permanent offer from UCLA which we loved, and moved to New Haven the next year.

The next miracle—I'm not going to say final; I'm not dead yet—was coming to Yale Law School. With the exception of Jim Huffman who has been a dear friend since law school; Owen who I met at Chicago, though we didn't become close friends until I came to Yale; Tony and Michael Trebilcock who I met during the Law and Economics Fellowship; all of you I've met through Yale in some form.

This has been a terrific benefit. I am grateful to all of you for attending and to the organizers—Alex Lee, John Donohue, Danny Sokol, Roberta Romano, my daughter Claire, and Karen Crocco—for putting this conference together, and to the *Yale Journal on Regulation* for publishing the conference papers.