

## TRUTH AND BEAUTY: A LEGAL TRANSLATION

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Awake! for Morning in the Bowl of Night  
Has flung the Stone that puts the Stars to Flight:  
And Lo! the Hunter of the East has caught  
The Sultán's Turret in a Noose of Light.

—EDWARD FITZGERALD, THE RUBÁIYÁT OF OMAR KHAYYÁM<sup>1</sup>

Translations, according to conventional wisdom, are like lovers. Though the most faithful translations may be plain, the most beautiful translations tend to be unfaithful.

The opening words of Edward FitzGerald's translation of *The Rubáiyát of Omar Khayyám* place FitzGerald's interpretation of the *Rubáiyát's* seventy-five quatrains among the most beautiful pieces of English verse. How *faithful* FitzGerald was to the original Farsi is, to put it mildly, a different matter: "The Moving Finger writes; and, having writ, / Moves on."<sup>2</sup>

What concerns me here is the question of fidelity in translation in a realm far removed from poetry. Law, which is after all a truth-seeking enterprise, is so thoroughly dedicated to the disciplinary and organizational functions of government that it must banish "falsity, irrationality, and seductiveness"<sup>3</sup>—the very traits that make all literature irresistibly beautiful.

This essay addresses questions of truth and beauty, of poetry and fidelity, as applied to legal education and ultimately to law. After discussing how law schools can most faithfully translate their teachings to lawyers' real concerns, I shall ponder how the law itself reconciles its duty to truth with its practitioners' longing for beauty.

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1. OMAR KHAYYÁM, THE RUBÁIYÁT quatrain 1, *reprinted in* RUBÁIYÁT OF OMAR KHAYYÁM AND SIX PLAYS OF CALDERON 11 (Edward FitzGerald trans., J.M. Dent & Sons 1942).

2. *Id.* at quatrain 51.

3. Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1838 (2005). *Cf.* Jim Chen, *Poetic Justice*, 28 CARDOZO L. REV. 581, 592-94 (2006) (applying Yoshino's theory of law and literature to "all deliberate speed," the remedial formula adopted in *Brown v. Board of Education of Topeka*, 349 U.S. 294, 301 (1955)).

I. FIDELITY IN TRANSLATION<sup>4</sup>

Even among fields in which lawyers work, an admittedly quotidian set of activities relative to poetry, legal education and academic management put a strong premium on fidelity in translation. Law schools owe their primary allegiance to those whose tuition dollars, taxes, and donations enable the entire project of legal education. We owe these students, taxpayers, and benefactors some measure of good faith.

Indeed, it is no exaggeration to state this proposition in ethical terms. Law schools, no less than the lawyers they train, owe the profession an obligation to behave ethically. Within the realm of teaching and educational administration, that ethical duty requires faithful translation. Legal educators should strive to translate their knowledge about law into real-world applications and outcomes. This act of faithful translation is to the legal academy as zealous representation and fiduciary obligation are to the practicing bar.

Law is an applied discipline, not a pure science. There are divisions of the ideal university that ponder quantum chromodynamics,<sup>5</sup> universal grammar,<sup>6</sup> and number theory.<sup>7</sup> There are other divisions that design new devices, teach Spanish to otherwise monolingual Anglophones, or develop new encryption algorithms. Law schools emphatically belong to the latter category.

As in the health sciences, the greatest challenge facing law schools lies in translating the work of law professors, as teachers and as scholars, into real-world results. Medical schools aspire to perfect their programs for translational research.<sup>8</sup> There is a legal equivalent to the medical profession's desire to deliver health care from bench to bedside. Law schools succeed to the extent that they train skilled social engineers. The term "social engineering" carries no pejorative connotation. It describes the conscious, purposeful, and ultimately noble project of avoiding, resolving, and mitigating disputes, and of designing institutions to accomplish goals beyond the reach of individuals. Social engineering is the work of lawyers and allied professionals trained in law.<sup>9</sup>

I shall translate this admittedly florid and abstract thesis into a set of blunt, pragmatic statements about legal education. Law schools have a single mission: we train people to become lawyers or to leverage their legal training into gainful

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4. See generally Lawrence Lessig, *Fidelity in Translation*, 71 TEX. L. REV. 1165 (1993).

5. See generally MURRAY GELL-MANN, *THE QUARK AND THE JAGUAR: ADVENTURES IN THE SIMPLE AND THE COMPLEX* (1994) (discussing quark behavior).

6. See generally, e.g., MARK C. BAKER, *THE ATOMS OF LANGUAGE: THE MIND'S HIDDEN RULES OF GRAMMAR* (2001) (advancing Chomsky's parametric theory of linguistic diversity); NOAM CHOMSKY, *ASPECTS OF THE THEORY OF SYNTAX* (1965) (discussing transformational grammar).

7. See generally, e.g., H. DAVENPORT, *THE HIGHER ARITHMETIC: AN INTRODUCTION TO THE THEORY OF NUMBERS* (7th ed. 1999); RICHARD DEDEKIND, *ESSAYS ON THE THEORY OF NUMBERS* (3d prtg. 1963).

8. See generally, e.g., *TRANSLATIONAL AND EXPERIMENTAL CLINICAL RESEARCH* (Daniel P. Schuster et al. eds., 2005).

9. Cf. C.P. SNOW, *THE TWO CULTURES: AND A SECOND LOOK* 70 (2d ed. 1964) (identifying a "third culture" beyond those of science and literature, that of social scientists "concerned with how human beings are living or have lived").

employment in business, government, philanthropy, or education. Our students represent our ultimate product; their accomplishments, our greatest pride.

Law students—who often arrive at school with more ambition and raw generalized intelligence than anything resembling a marketable skill—have every right to expect a material, measurable return on their investment. Legal education at the University of Louisville remains one of the profession's greatest bargains. Many law students throughout the rest of the United States nevertheless shoulder tuition in the neighborhood of \$40,000 per year and living expenses in communities that are costly precisely because they surround universities. Many law students graduate with six-figure debt loads. This is to say nothing of debts from undergraduate education, family formation, and the ordinary business of life.

American legal education today faces stiff challenges. A significant portion of each year's new crop of law school graduates will be fortunate to find employment, if at all, in the neighborhood of \$40,000 per year in salary.<sup>10</sup> The convergence of high tuition and low salaries is a sign that law schools need to deliver more on their promises. Mere job-hunting may not pose worries for students at the very best schools or for the very best students at most other schools, and unemployment certainly lies outside the experience of most law professors. But the vast majority of law students pay tuition and forgo at least three years of other opportunities in order to secure jobs that are more rewarding, in intellectual and financial terms, than those they might otherwise have held.

Employers often report that many law school graduates need three to five years of on-the-job training to become truly effective. In private practice, the turning point is profitability. Law schools must be able to guarantee that their newest graduates will represent leverage, not liabilities. The University of Louisville strives to prepare its graduates to be ready for work in every conceivable placement setting, immediately upon graduation and bar exam passage, or at least as quickly as possible thereafter.

Today's legal academy often seems to wage war against itself. On one hand, genuine reform efforts stress improvements in teaching that are consciously designed to improve law graduates' skills and marketability.<sup>11</sup> Novel approaches to the first year, experiential learning, interdisciplinary education, and capstone courses represent merely some of the ideas that more enterprising schools have begun to explore and implement. The newly announced University of Louisville Law Clinic represents our school's most significant innovation in recent memory.

By the same token, many other law schools are prone to chasing the latest intellectual fads and pouring enormous amounts of money into collateral projects whose connection to the core mission of training lawyers and other legally sophisticated professionals is apparent, if at all, only to the proponents of those projects. Law schools often tout these maneuvers in glossy publications aimed not so much at graduates, donors, and prospective employers of our students, but at

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10. See Empirical Legal Studies: Bringing Methods to Our Madness, [http://www.elsblog.org/the\\_empirical\\_legal\\_studi/2007/09/distribution-of.html](http://www.elsblog.org/the_empirical_legal_studi/2007/09/distribution-of.html) (last visited Nov. 14, 2009).

11. See generally, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

other law professors. The legal academy can, should, and does blame much of this imprudence on the *U.S. News and World Report* rankings, particularly that survey's subjective, reputational components. Legal educators as a class, however, cannot afford to ignore the realities facing our students or to neglect our duty to address those realities on their behalf. Law schools exist not as playgrounds for abstract intellectual pursuits, but as training grounds for future lawyers.

As matters stand, law schools have a very hard time accomplishing their core mission. The real cost of solid legal education is very substantial, and there are no obvious places to cut costs. Most law schools depend almost entirely on tuition or on some blend of tuition and precarious public support. It is not at all unusual for unrestricted giving to a law school to hover in the neighborhood of one percent of the overall budget. Donors can be persuaded to support a wide variety of causes, ranging from physical facilities, scholarships, and faculty chairs to moot courts and clinics. Most donors are law school graduates who had to work hard for relatively low pay before achieving the financial security that now enables them to be generous. They will support their alma maters, in some cases with extraordinary passion, precisely to the extent they feel that they were able to translate their law school experiences into real-world success.

The message for legal educators is clear. Remaining true to the process by which law school graduates transform themselves for good—in both senses of that phrase—represents fidelity in translation.

## II. LAW'S DOUBLE HELIX

Let us now turn to the related but distinct problem of reconciling truth and beauty within the law itself. As a springboard for discussion, I invoke a different source of poetic inspiration:

“Beauty is truth, truth beauty,”—that is all  
Ye know on earth, and all ye need to know.<sup>12</sup>

The concluding couplet in *Ode on a Grecian Urn* is arguably the most famous passage in John Keats's body of work, perhaps in all of English poetry in the Romantic tradition. The possible unity of truth and beauty has proved so seductive that mathematicians and physicists often rely on unverified links between truth, beauty, and symmetry to frame their hypotheses.<sup>13</sup>

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12. John Keats, *Ode on a Grecian Urn*, in *A KEATS SELECTION* 166 (Norman Howlings ed., 1966). Cf. ANNIE DILLARD, *THE MAYTREES* 38 (2008) (quoting Keats: “Who shall say / between Man and Woman / which is the ... [more] delighted?”).

13. Cf. RICHARD FEYNMAN, *THE CHARACTER OF PHYSICAL LAW* 165 (The Modern Library 1994) (1965).

You can recognize truth by its beauty and simplicity. It is always easy when you have made a guess, and done two or three little calculations to make sure that it is not obviously wrong, to know that it is right/.... If you cannot see immediately that it is wrong, and it is simpler than it was before, then it is right/.... [T]he inexperienced ... make guesses that are very complicated, and it sort of looks as if it is all right, but I know it is not true because the truth always turns out to be simpler than you thought.

Although Keats may have stated the unity of truth and beauty in memorable literary terms, mathematics may be the discipline that relies most heavily on it. Often enough, though not invariably, the unity of truth and beauty holds. What is beautiful is true, and in turn, what is true is beautiful. Exceptions do arise—the computer-assisted proof of the four-color theorem<sup>14</sup> and Andrew Wiles’s proof of Fermat’s Last Theorem<sup>15</sup> are salient examples of mathematical proofs that look more like rambling narratives or even telephone directories than odes.

Nevertheless, philosophers, poets, and physicists wax rhapsodic in lauding the points in intellectual space where truth achieves what Bertrand Russell called “a beauty cold and austere, like that of sculpture, without any appeal to any part of our weaker nature, without the gorgeous trappings of painting or music, yet sublimely pure, and capable of a stern perfection such as only the greatest art can show.”<sup>16</sup> Edna St. Vincent Millay echoed this sentiment: “Euclid alone has looked on Beauty bare.”<sup>17</sup> According to the physicist Hermann Weyl, the best scientific work has “always tried to unite the true with the beautiful.” But when he “had to choose one or the other,” Weyl “usually chose the beautiful.”<sup>18</sup>

How firmly does Keats’s unity—the unity of truth and beauty—hold in law?

Law, as I averred in the first half of this essay, is an applied rather than a pure science. But the constituent parts of that science are principally literary and secondarily logical. Words are the stuff of which law is made; rules and logical relations lay out the structure by which law applies the letter of the law to the spirit of a particular time and place. Law does not live by words alone, but by every value given voice through human culture. “Tyger! Tyger! burning bright”: one of the fundamental projects of literary analysis is to demonstrate “fearful symmetr[ies],” or structural similarities across literary idioms and genres.<sup>19</sup> That project applies with full force in law as in literature.

True to the serendipitous way in which law arises, I stumbled unto what I believe to be the best description of Keats’s unity in a memoir described as a uniquely powerful first-personal account of science in action. In the opening pages of *The Double Helix: A Personal Account of the Discovery of the Structure of DNA*,<sup>20</sup> James D. Watson explained how the quest for beauty and the quirks of human culture bent the trajectory of the quest for the double helix:

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*Id.*

14. See Neil Robertson et al., *A New Proof of the Four-Colour Theorem*, 2 ELEC. RES. ANNOUNCEMENTS AM. MATHEMATICAL SOC’Y 17 (1996).

15. See generally Andrew John Wiles, *Modular Elliptic Curves and Fermat’s Last Theorem*, 141 ANNALS MATHEMATICS 443 (1995).

16. Bertrand Russell, *The Study of Mathematics*, in MYSTICISM AND LOGIC, AND OTHER ESSAYS 49 (1981).

17. Edna St. Vincent Millay, *Euclid Alone Has Looked on Beauty Bare*, in EDNA ST. VINCENT MILLAY SELECTED POEMS 52 (J.D. McClatchy ed., American Poets Project 2003).

18. EDWARD O. WILSON, BIOPHILIA 61 (1984) (quoting Hermann Weyl).

19. William Blake, *The Tyger*, in DE/COMPOSITIONS: 101 GOOD POEMS GONE WRONG 158 (W.D. Snodgrass ed., 2001).

20. JAMES D. WATSON, *THE DOUBLE HELIX: A PERSONAL ACCOUNT OF THE DISCOVERY OF THE STRUCTURE OF DNA* (Touchstone Books 2001) (1968).

[S]cience seldom proceeds in the straightforward logical manner imagined by outsiders. Instead, its steps forward (and sometimes backward) are often very human events in which personalities and cultural traditions play major roles. To this end I have attempted to re-create my first impressions of the relevant events and personalities rather than present an assessment which takes into account the many facts I have learned since the structure was found. Although the latter approach might be more objective, it would fail to convey the spirit of an adventure characterized both by youthful arrogance and by the belief that the truth, once found, would be simple as well as pretty. Thus many of the comments may seem one-sided and unfair, but this is often the case in the incomplete and hurried way in which human beings frequently decide to like or dislike a new idea or acquaintance.<sup>21</sup>

Law proceeds on terms somewhere between the extremes of Euclid's airtight *Elements* and the comprehensive computer-aided proof of the four-color theorem. As Francis Crick and James Watson discovered when they sought to unlock the structure of DNA, the quest for the social truth that law embodies may begin in "the belief that the truth, once found, would be simple as well as pretty."<sup>22</sup> That gesture of "youthful arrogance,"<sup>23</sup> however, rarely, if ever, yields the truth on its own. No less than their scientific counterparts, lawyers follow an "incomplete and hurried" protocol by which they "frequently decide to like or dislike a new idea or acquaintance."<sup>24</sup>

Like other outsiders, law students often envision the formation, interpretation, and enforcement of law as a straightforward, even logical process. They soon learn, as Oliver Wendell Holmes observed in the opening lines of *The Common Law*, that "[t]he life of the law has not been logic: it has been experience."<sup>25</sup> Even as Watson acknowledged how science lurched "forward (and sometimes backward)" in response to "very human events in which personalities and cultural traditions play major roles,"<sup>26</sup> Holmes recognized that law does not so much observe syllogisms as reflect "[t]he felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow" citizens.<sup>27</sup>

Two intertwined strands run through all law. One strand represents the cold mathematical logic that the Law School Admission Test purports to measure, the austere beauty of legal reason deduced without regard to the social circumstances in which law must be made, enforced, and lived. The other strand speaks in historical, even literary or lyrical terms. That manifestation of truth in law, as Holmes explained, "embodies the story of a nation's development through many centuries,

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21. *Id.* at xi-xii.

22. *Id.* at xi.

23. *Id.*

24. *Id.* at xi-xii.

25. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

26. WATSON, *supra* note 20, at xi.

27. HOLMES, *supra* note 25, at 1.

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and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.”<sup>28</sup> That is all you know in law, and all you need to know.

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28. *Id.*