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Workshop 1.

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The theme of this workshop is: What does it mean to be and to think as a lawyer? It is difficult to answer this question without speaking about one’s own personal experiences - which is normally not what one is expected to do but what I will have to do now. * I will start with three quotations, and one anecdote, which, since the beginning of my professional life in the sixties, have very much defined my views and convictions as a lawyer. Actually, I hope that these insights may help lawyers, young and old, as they have helped me, to engage in a permanent “Reflexion auf eigenes Tun” - while studying and practicing law, and writing and speaking about it.

1. Three quotations and one anecdote.

The first quotation comes from two American professors at Yale University, one, Harold D. Lasswell, in law and the other, Myres S. McDougal, in sociology. It is an excerpt from an article, published in the early forties, on Legal Education and Public policy.¹ Lasswell and McDougal who are at the source of so-called “value-oriented jurisprudence”, write:

“None who deal with law, however defined, can escape policy when policy is defined as the making of important decisions which affect the distribution of values ... We submit this basic proposition: if legal education in the contemporary world [1943] is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic *training for policy-making*... It should need no re-emphasis that (...) democratic values have been on the wane in different years. The outburst of racialism in Germany is but one of several profound recessions from the ideal of deference for the dignity and worth of the individual. ... The question may be asked whether the lawyer can be held responsible in any significant degree for the plight in which we find ourselves. For a moralist, the question is whether the lawyer can be ‘blamed’; for a scientist, whether he is an important causal variable; for a reformer, whether he can be acted upon to produce change. The answer to all of these questions is: most assuredly, yes.”

* See for a full account W. van Gerven, “Politics, Ethics & the Law, Legal Practice & Scholarship, LSE Law, Society and Economy Working Papers 20/2008, London School of Economics and Political Science, Law department.

¹ “Professional Training in the Public Interest” published in *The Yale Law Journal* 1942-3, 203-295, at 207.

The second quotation is older: it dates from 1869 when a small group of lawyers and philosophers, among whom Oliver W. Holmes, assembled in Cambridge, Mass., to study the impact of evolutionism on non-biological sciences. The group wanted to shift the emphasis from “first things, principles, categories, supposed necessities” to “last things, fruits, consequences, facts”.² The third quotation is an indirect one. It refers to the distinction made by F.A. Hayek³ between *law* seen as a body of rules of behavior with which individuals spontaneously comply long before they are laid down in legal rules, and *legislation* understood as a body of rules promulgated by a number of democratically legitimated legislatures. Law in that sense is endogenous, legislation exogenous. The distinction is well known to lawyers from the common law as it coincides largely with the distinction between common law and statute law.

These three quotations have convinced me of the necessity of value-oriented reasoning in law, of sensitivity for effects, practicality and pragmatism, and of reliance on legal reasoning that has a solid basis in societal human behavior. *Recognition of values* is an attitude shared by all those who, like Lasswell and McDougal, still recall World War II and the post-war reconstruction period. *Sensitivity for effects and societal behavior* are, at least in my case, due to exposure to comparative law during my University studies in Leuven (1952-57) and thereafter as a teaching fellow at the University of Chicago (1959-60) where I was assistant to professor Max Rheinstein⁴ and was his successor in 1968. Rheinstein taught comparative law to American postgraduate students by asking them to find solutions for real cases drawn from different legal systems under English, French or German law. And indeed, in the words of Rudolf von Ihering (1881): “[n]obody has had any experience as an examiner will doubt that a student is only able truly to comprehend those ideas which he can conceptualise in the concrete form of actual cases.”⁵

² Quoted from G. Casper, *Juristische Realismus und Politische Theorie im Amerikanischen Rechtsdenken*, Berlin, 1967; Casper has been professor of law at the University of Chicago and was later President of Stanford University.

³ In his book *Law, Legislation and Liberty* (1973).

⁴ Max Rheinstein first taught in Berlin to be later appointed, after escaping the Nazi regime, at the University of Chicago.

⁵ Taken from the introduction to his book *Zivilrechtsfälle ohne Entscheidungen*, 4th ed., 1881, at 5.

Now, the anecdote. It relates to my first public office (1970-76) as vice-rector human sciences of my university, the Catholic University of Leuven (Belgium). The rector at the time was a well known virologist whilst my colleague vice-rector for natural sciences was a physics professor. We met every week to discuss and decide university matters at the proposal of the vice-rector concerned. Most decisions were taken by consensus, sometimes we disagreed. When the rector virologist disagreed with one of his vice-rectors' proposals, he sometimes responded that it is not because a similar issue was resolved, last week, in a certain way, that the present one could not be decided differently. In other words, "precedents" did not always count for him as they always did for the physics professor. Much to my own surprise, I sometimes agreed with the rector's attitude, sometimes with that of the other vice-rector - which I then saw as a matter of choosing between two conflicting versions of justice, known in German as "Normgerechtigkeit" v. "Einzelfallgerechtigkeit". Or, between two conflicting ways of legal reasoning, known in French as "esprit de géométrie" v. "esprit de finesse", or in American as "system-oriented" v. "problem-oriented" reasoning, or in English as the "law of the rule" v. the "equity of the case". The experience fascinated me so much that it brought me to write a short essay on it in Dutch under the title "Het beleid van de rechter", i.e., the policy of the judge, published in 1973.⁶

The main subject of the essay was to analyze the way in which judges (or lawyers generally) decide a case when they must choose between different, sometimes diametrically opposed solutions which, at first sight, are based on equally valid, or at least equally arguable arguments. The question then arises whether there is some "kind of policy" argument, or "value-oriented" argumentation, that makes him or her choose for one or the other position. To be sure, any decision making process develops in a similar way: facts are sorted out in light of presumably relevant rules, precedents are selected which may serve as reference, interests of the parties are considered and conflicting arguments are weighed one against another. Not only legal

⁶ *Het beleid van de rechter*, SWU & Tjeenk Willink, Antwerpen, Zwolle, 1973, 167 p. The book has been rather influential for having been compulsory reading in the law curricula of some Belgian and Dutch universities. The title is interesting from a linguistic point of view because, translated in French as *La politique du juge*, it appears that in French there is no correct translation for the word "beleid", i.e., "policy". In French, the word "politics" has a double meaning: compared with English and Dutch, it means both "policy", or "beleid", and "politics", or "politiek", the latter often being used to refer to party politics. See also footnote 8 hereinafter.

arguments will enter into play but also meta-legal arguments (societal, economic, ethical, political), and underlying values. In the end, the outcome or solution reached will be assessed, often collegially within a court of law, to find out whether it is correct and fair, adequate and equitable, and in conformity with general principles or common attitudes from which perspires a certain consensus, or at least a capability to reach one (“Konzensfähigkeit”). How, one may wonder, can the judge find his way through this amalgam and how functions his brain to reach the final and hopefully most acceptable and desirable solution?

The manner of judging is an issue which keeps lawyers and psychologists busy for ages. Thus, for example, in a recent article published in 2007, three U.S. academics/judges examined judicial decision making on the basis of empirical research. They compared the so-called realist model [based on intuition] with the formalist model [based on deliberation].⁷ They found, not unexpectedly, that neither model proves satisfactory, concluding that: “[j]udges surely rely on intuition, rendering a purely formalist model of judging clearly wrong, yet they also appear able to apply legal rules to facts, similarly disproving a purely realist model of judging”. They finally proposed “a blend of the two which [they] called the “intuitive-override” model of judging” and described as follows:

“Supported by contemporary psychological research on the human mind and by our own empirical evidence, this model posits that judges generally make intuitive decisions but sometimes override their intuition with deliberation. Less idealistic than the formalist model and less cynical than the realist model, our model is best described as “realistic formalism.” The model is “realist” in the sense that it recognizes the important role of the judicial hunch and “formalist” in the sense that it recognizes the importance of deliberation in constraining the inevitable, but often undesirable, influence of intuition.”

That, indeed, would seem to be the better conclusion: that “intuition” (or “judicial hunch”) is kept in check and sometimes “overridden” by “deliberation” – a conclusion that is not very much different from what (many) others have concluded before.⁸

⁷ Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, “Blinking on the Bench: How Judges decide Cases,” 93 *Cornell Law Review* [Vol. 93:1 2007], 1-44. The excerpts in the text are at p. 2 and 3 respectively.

⁸ In my essay of 1973 referred to supra n. 6, I examined judicial decision-making from a viewpoint of values underlying the court’s judgment. Those are values for which the court must find a foundation in so-called “topoi” (principles, rules, case law, etc.) of its legal system suggesting a common belief and somehow recognized consensus that is rooted in societal behavior. Even then it is for the judge, in the face of conflicting values, to make an enlightened choice, that is, knowing that there are contradicting

2. The policy (and transparency) of a judge or, more generally, of a lawyer.

In general ‘policy’ refers to a course of action adopted or proposed by an organization or person, more specifically an action which implies a choice of one action among several. Choices need to be made because of the multiplicity of objectives, or plurality of values, and the scarcity of means or resources. In that broad sense also lawyers and more specifically judges make choices when alternative solutions are submitted to their judgment which they can alternatively adopt depending on the room for interpretation inherent in the legal system. In making these choices they are guided by underlying values laid down in written or unwritten rules, or principles, of a procedural or a substantive nature. An example of the former is the need to pursue legal certainty through consistency of terminology and coherence of the legal system as a whole. An example of the latter is the need to provide equal protection in law and pursue justice. Judges will be tempted to realize more or less of those, or choose a different kind of justice, distributive instead of corrective justice, for example.⁹

Obviously, in making such choices - see also supra - judges should not follow their subjective preferences but follow preferences presumably based on some societal consensus or capability to reach one. In a democracy, policy-making goes hand in hand with transparency: that includes “policy” decisions made by judges which must reveal - if not to the public at large, then at least to the parties directly involved or to the legal community directly concerned - the reasons, arguments and ways of reasoning adopted to make up their mind and come to conclusions. In this context, motivation of judicial decisions is an essential requirement which should not be limited to strictly legal reasoning but should also relate as much as possible to the (underlying or concomitant) meta-legal reasoning (“Vorentscheidung” in Esser’s

values which have also a societal foundation, therefore knowing that his view is not infallible. See at pp. 154-158 of the book.

⁹ See Lord Steyn’s speech in the House of Lords in *Macfarlane v. Tayside Health Board* (25 November 1999) concerning a damage claim for a healthy child born as a result of an unsuccessful vasectomy. “Simply from a perspective of corrective justice”, Lord Steyn observed, “the case requires somebody who has been harmed another without justification to indemnify the other.” But, he pursued, “from the vantage point of distributive justice, it requires a focus on the just distribution of burdens and losses among members of a society. If the matter is approached in this way (...) an overwhelming number of ordinary men and women may be of the opinion that the compensation of harm consisting in the birth of a healthy child is not a priority.”

terminology). In this respect, that is from a viewpoint of transparency, there are large differences between legal families,¹⁰ although one should not jump too soon to conclusions, for example that decisions of the French *Cour de cassation*, are not transparent. For indeed, for that Court a double discourse of argumentation is at play, one cryptic published and open to the public, and another argumentative but hidden and only open to the magistrates.¹¹ In such a case of apparent un-transparency the gap between the two discourses will often be filled in Opinions or reports of Procurators General, Advocates-General, or Commissaires du gouvernement. In fact those opinions and reports play often the same role as annotations, but in a more authoritative way, or even of concurring or dissenting opinions.

3. Converging laws *and* mentalities.

The EU of 27 Member States is a showplace of legal diversity. Diversity is not an evil in itself, no more or less than unity is a good in itself. Within the EU uniformity of Union laws or, in a lesser form, harmonization of national laws is only required when needed to achieve the objectives of the Union, that is mainly, in order to realize and maintain the establishment and functioning of the internal market (Articles 114 and 115 TFEU) and to avoid distortions of competition in interstate relations (Articles 101-103 TFEU). Beyond these objectives which necessitate binding Community legislation, regulations or directives in particular, diversity will continue to exist. That, however, should not prevent public and private actors (mainly educators) from promoting (non-binding) *convergence* of legal systems and mentalities, as it facilitates communication between EU citizens and residents in the many professions and occupations where frequent contacts increasingly occur.¹² Convergence is especially needed in the legal field because of the large differences in mentalities between

¹⁰ See W. van Gerven, "Bringing (Private) Laws Closer to each other at the European Level" in *The Institutional Framework of European Private Law* (ed. By Fabrizio Cafaggi), Oxford University Press, 2006, 37-77, at 40-43. See *infra*, the quotation in the text accompanying n. 13.

¹¹ See M. Adams and F. Tanghe, "Legitimacy and democracy through adjudication. Comparative reflections on the argumentative practice of the French and Belgian *Cour de cassation*", in N. Huls, M. Adams and J. Bomhoff (eds.), *The Legitimacy of Highest Courts' Rulings. 'Judicial Deliberations' and beyond*, The Hague, TMC Asser Press, 2009, p. 197-222.

¹² See further my contribution on "About Rules and Principles, Codification and Legislation, Harmonization and Convergence, and Education in the area of contract law" to *Continuity and Change in EU Law. Essays in honour of Sir Francis Jacobs* (eds. A. Arnulf, P. Eeckhout and T. Tridimas), OUP, 2008, 400-414, at 409ff.

lawyers from the major and less major legal families (common law, Germanistic, Romanistic, Nordic, ...). Without convergence of mentalities, EU laws – even when laid down in binding rules – will be threatened to lose their homogeneity because of differences in understandings and interpretations. For indeed, speaking of different legal mentalities:

Whoever wonders whether these differences in legal mentality still exist should compare judgments of the House of Lords with those of the French *Cour de cassation* and of the German *Bundesgerichtshof*. Only in a common law system is it possible for a judge to say in his decision that '[t]he state of a man's mind is as much a fact as the state of his digestion or, more prosaically (and more recently), is it possible for a Law Lord to express himself (in *MacFarlane*: fn. 9 above) on a delicate issue of 'wrongful life' in the following terms: 'I have not consulted my fellow travellers on the London Underground but I am firmly of the view that an overwhelming number ... would answer the question with an emphatic No'. By contrast, who would contradict the famous American judge Cardozo when he describes the decisional practice of German judges as 'march[ing] at times to pitiless conclusions under the prod of a remorseless logic which is supposed to leave no alternative'. And, as Cartesian as French judges may be, that does not show in the cryptic judgments of the *Cour de Cassation* which, following the style of legislative pronouncements, expresses its opinion with a minimum of justification or explanation.¹³

4. The European Court of Justice (ECJ)'s 'normative task' as to principles.

Whilst harmonisation through regulations or directives are part of the traditional Community method based on binding legislation, there are recently more and more areas where coordination of policies takes over from harmonization of laws. In those areas binding legislation is often replaced by convergence through soft law instruments and voluntary, even spontaneous, action on the part of public and private actors. One such area in which convergence occurs through principles, i.e., law that is more soft than hard,¹⁴ is referred to in Article 340 (2) TFEU (ex 215 (2) EC) relating to the non-contractual liability of Community institutions and their servants for damage caused by them to individuals in the performance of their duties. According to that Article, in combination with Article 268 TFEU (ex 235 EC), it is for the Court of Justice to decide disputes relating to such compensation "in accordance with the general principles common to the laws of the Member States". As is well known the jurisdiction of the ECJ relating to the granting of compensation in the case of non-contractual liability of Community institutions has been enlarged in the case law of

¹³ For references and further developments, see n. 10, 40-43.

¹⁴ On the difference between rules and principles (according to R. Dworkin), see fn. 12, at 401-403

the Court, starting with the *Francovich* judgment.¹⁵ In this judgment and later case law, the Court declares the principle of State liability to be a Community law principle that is inherent to the treaty. To reach that conclusion, it relied on the duty of the national judges to ensure “the full effectiveness of Community rules and the effective protection of the rights which they confer”, and on “the obligation to cooperate imposed on the Member States by Article 10 (then 5) of the (EC) Treaty”.¹⁶ Both liability systems, the one laid down in 288 (2) EC and the one set out in “*Francovich*” – the first directly applied by the ECJ, the second applied by the domestic courts under the guidance of the ECJ through preliminary rulings – respond in principle, i.e., unless *particular* justification for differentiation, to the same general principles.¹⁷

Another area where it is up to lawyers, judges in particular, to interpret, and uncover, principles which Member States have in common, is the one referred to in Articles 2 and 6 (3) TEU. Article 2 declares that “[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States ...”. Article 6 (3) states that “Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States shall constitute general principles of the Union’s law.” Obviously, with the growing number of Member States the task to find general principles common to the laws of the Member States has become increasingly difficult. It means in essence that comparative research is needed,¹⁸ for which judges do normally not have time or resources - save for judges and advocate generals at the ECJ who can rely on their legal secretaries (‘*référéndaires*’), and on translators and

¹⁵ ECJ, Cases C-6/90 and C-9/90, *Francovich v. Italy*, [1991] ECR I-5357.

¹⁶ *Francovich*, supra, rec. 32-37; ECJ, Cases C-46/93 and C-48/93, *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, rec. 39.

¹⁷ *Brasserie*, supra, rec. 39, 42; ECJ, Case C-352/98P, *Bergaderm and Goupil v Commission*, ECR [2000] I-5291, rec. 41.

¹⁸ See W. Wurmnest, *Grundzüge eines europäischen Haftungsrecht*, Mohr Siebeck, 2003, at 1618. On the comparative method of the Court of Justice, see K. Lenaerts, “Interlocking legal orders or the European Union Variant of E Pluribus Unum” in G. Canivet et al. (eds.) *Comparative Law before the Courts*, The British Institute of International and Comparative Law, London, 2004, who writes at p. 105: “the comparative law method, when applied by the Community judge, is driven by a single *leitmotiv*, and that is to find through the examination of other legal orders the solution which best suits the objectives of the Community.”

civil servants in the documentation and research department of the Court.¹⁹ But also these Court civil servants have only time to study issues closely related to the cases on which the Court must render judgment. That means that academics and legal writers will have to step in which brings us to say a final word on education.

5. Educating lawyers and preparing common European teaching materials.

It is not the place here to repeat what I have written elsewhere,²⁰ namely that the best way to promote convergence – as a support for Community legislation and case law – is to educate open minded young lawyers, and to prepare teachings materials which can be used by teachers and students throughout the Union, but also by judges and other practitioners who want to study, and draw benefit from, other legal systems. The most apt material for learning and understanding a legal systems are case- (and other source-) books,²¹ which, in a European context, focus on *actual* cases decided by national and supranational (EU and ECtHR) courts and legislatures, and compare the Member State legal orders in order to discover common traits and explain differences at the pan-European level. Such a “bottom-up” approach is needed to supplement, and support, more concept- and rule-oriented approaches.

In concrete terms, the different stages of such an approach can be described as follows, taking tort law as an example.²² *First*, material, i.e., judgments in the first place, but also statutory rules and excerpts from academic writings, is collected from national legal orders - as many as possible, but at least one for each of the four large families (that is including the Nordic countries) - and adding relevant material from the two supranational (and possibly international) legal orders. The material is selected by reason of its similarity in the factual and legal context of the concrete situation, and is grouped around ten or more selected themes of tort law. *Secondly*, the

¹⁹ Fashioning Community general principles drawn from the different Member States legal orders is of course not only the work of the Court, its members and very diverse staff of researchers, legal secretaries, translators and interpreters, but also the work of the legal staff working at the other Community institutions and of lawyers practicing Community law throughout the Union. As described elsewhere, as a whole it is a dialectical interaction between national laws and Community law. See my article on “The emergence of a common law in the area of tort law: the EU contribution”, in *Tort liability of public authorities in comparative perspective* (D. Fairgrieve, M. Andenas and J. Bell, eds.), The British Institute of International and Comparative Law, London, 2002, 125-147, at 138ff.

²⁰ See my article on “A common Framework of Reference *and* teaching, 1 *European Journal of Legal Education*, 2004, 1.

²¹ See *supra*, the quotation from Rudolf von Ihering in the text accompanying n. 5.

²² See *infra*, in n. 23, the reference to the case book devoted to this branch of the law.

material is placed in the context of the legal system to which it belongs, identifying the procedural, constitutional and political peculiarities of that legal system, and describing the place that the excerpted material takes in the legal system and the contribution it can make to convergence or integration in the wider context of European integration. *Thirdly*, the role that abstract concepts, general principles and specific rules play in reaching the specific judicial or statutory solution in the excerpted material is examined and defined, and compared with the role these elements play in the other legal systems. *Fourthly*, the impact of meta-legal or meta-judicial considerations, often of an ethical, sociological, economic or political nature, on the (judicial or statutory) decision-making process is analysed in connection with the excerpted material and compared with the impact these considerations may have on material from the other systems.

Producing and using a casebook is not an easy matter – more difficult in my experience than writing or using a textbook – but it is worth the effort: it allows the author and the reader to reach a level of understanding which one does not reach when reading a textbook, however well-written it is. The reason is that learning the law through cases helps one to see how rules operate in a concrete situation that looks familiar to the reader because, if the cases are chosen from daily life (and similar daily life cases exist in all legal systems), they are fully recognizable to him or her. Fully to understand the case, the author and reader will have to cope with the peculiarities of the system from which the case is drawn. Moreover, they must try to familiarize themselves with the legal position adopted, and the arguments used, by the litigating parties and with the legal reasoning and arguments which induced the court and/or legislator to decide the case or adopt the rule as it did. That is a question of not just understanding the legal reasoning, but also the underlying interests and value judgments which led the court or legislator to choose one solution over another that could have been reached under a different line of reasoning.

These are the reasons which encouraged me, when I left the Court of Justice in 1994, to initiate, with funding from the University of Maastricht, a project called *Ius commune casebooks for the common law of Europe* which led to a first

publication in 1998.²³ In the foreword the objective of the book, meant to be a pilot project, and of the whole series was formulated as follows:

“[This book ...] the authors hope will be used as teaching material in universities throughout Europe and elsewhere. The objective of this casebook and of the whole series is to help to uncover the common roots of the different legal systems, not to unify them. In other words, to strengthen the common legal heritage of Europe, not to strangle its diversity.”²⁴

That should be a common task for judiciary and scholarship. Now fifteen years later five full (and voluminous) casebooks have been published (Torts, Contracts, Unjustified enrichment, Non-discrimination law and Consumer law). Two of these books, Contracts and Torts are now been revised and a second edition is expected before the end of next year. A next book will be on Property law - an extremely difficult subject - which is almost ready for publication. Others will follow. The books are frequently used in many European countries and the U.S., and the excerpted and commented on materials reproduced in the books, are often quoted by the academia and the judiciary, most prominently by the House of Lords. It is my hope that through these books - produced in a common project between the Universities of Maastricht in the Netherlands and Leuven in Belgium, with contributions from universities around the Union - both students and accomplished lawyers will become aware of the common virtues, objectives and ideals which lawyers within the Union share.

6. Which type of lawyer do I have in mind, and how is he/she perceived?

At the end of this presentation, I need to answer the question which was put to the panel: “What does it mean to be and to think as a lawyer?” The lawyer I have in mind, tentatively, is one who is value-oriented and sensitive for effects, who is practical and pragmatic as well as idealistic, and whose legal reasoning has a solid basis in societal human behavior. His/her legal knowledge should be rooted in one’s own national legal system but should, at the same time, be aware of transnational differences in legal attitudes and mentalities. He/she should be an expert in more than

²³ Walter van Gerven, Jeremy Lever, QC and Pierre Larouche (with the help of C. von Bar and G. Viney) *Cases, Materials and Text on TORT LAW, Scope of protection*, Hart Publishing, Oxford, 1998, at p. v. All the books mentioned below in the text have been published by Hart Publishing. For further information see <http://www.law.kuleuven.ac.be/ccle>. See also my contribution on “Bringing (Private) Laws Closer to each other at the European Level” in *The Institutional Framework of European Private Law* (ed. By Fabrizio Cafaggi), OUP, 2006, 37-77, at 65-73.

²⁴ At p. v of the book.

one field of the law but, at the same time, be an expert in general principles and constitutional values underlying the multi-layer legal system (regional, national, European, international) which functions on the territory of his/her Member State and of the Union of which it is a member. He/she must be aware of the fact that each legal decision has a policy aspect and has economic, political, sociological and psychological implications, and consequences. He/she must have a keen interest and insight in what goes on in the surrounding world, small and large, and have a deep understanding, empathy and compassion for the people he or she deals with, and a modest view of him/herself. He/she should be a peacemaker but be aware that this is not how the outside world perceives him or her. For academics it is doubtful whether lawyers are scientists, and those who believe that they are not, are probably right.