

The Rule of Law: Judge Gorsuch and David Foster Wallace's Fish

"We're now like David Foster Wallace's fish," said Judge Neil Gorsuch earlier today in his nomination hearing. "We're surrounded by the rule of law, it's in the fabric of our lives."

Gorsuch made a similar claim in an article on "Law's Irony" for the *Harvard Journal of Law & Public Policy*. The judge wondered "whether the law's greatest irony might just be the hope obscured by the cynic's shadow" and "whether cynicism about the law flourishes so freely only because-for all its blemishes-the rule of law in our society is so successful that sometimes it's hard to see." He adds:

I wonder if we're like David Foster Wallace's fish: surrounded by water, yet somehow unable to appreciate its existence. Or like Chesterton's man on the street who is asked out of the blue why he prefers civilization to barbarism and has a hard time stammering out a reply because the "very multiplicity of proof which [should] make reply overwhelming makes [it] impossible.

[...]

Here, then, is the irony I'd like to leave you with. If sometimes the cynic in all of us fails to see our nation's successes when it comes to the rule of law maybe it's because we are like David Foster Wallace's fish that's oblivious to the life-giving water in which it swims. Maybe we overlook our nation's success in living under the rule of law only because, for all our faults, that success is so obvious it's sometimes hard to see.

The reference to “Wallace’s fish” is from the late novelist David Foster Wallace’s 2005 commencement speech at Kenyon College. The video below adds images to Wallace’s recitation of what is often considered one of the greatest commencement speeches of all time.

Note: The man whom Gorsuch is replacing on the Supreme Court—the late Justice Antonin Scalia—was also a fan of Wallace.

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