

Yale Law School Commencement Remarks

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I.

Distinguished guests; faculty colleagues; families and friends; members of the graduating class: welcome, all of you, to the Yale Law School's 2004 commencement exercises.

We are here this afternoon to mark a moment of consequence in the lives of the men and women of the Yale Law School Class of 2004. They have completed--or will soon complete--all that must be done to earn their Law School degrees. It is for their sake that we have gathered here today. This splendid ceremony is for them, the flags and regalia, the medieval costumes with their ancient badges of

distinction, the music and marching--all of this is for them, and for them, too, the affection and pride of everyone in this courtyard, gathered from all corners of the country and the world, to recognize what our graduates have done, and with pleasure and pride to salute their achievement.

One cannot help but feel that there is more meaning in this moment than the moment can contain. This is true, I think, of all of life's great rituals of transition. Each attempts to concentrate in a drop of time the long-distilled significance of something much longer and larger. Of course all such attempts must fail. But yet we make them anyway, and always will. The ceremonial instinct--the drive to express in concentrated form some inexpressibly large portion of experience, to summon its meaning and give it clarity and voice with words and gestures different from the ordinary kind--this instinct is as old as the human heart, and futile as the effort is, our persistence in it gives the human race a common nobility that is as strong a bond as I can think of among the peoples of different times and places. We are creatures whose appetite for meaning is too large to be fulfilled, and nowhere is the gap between this longing and its fulfillment clearer than in the ceremonial moments that every culture invents to close it.

This is such a moment. More is happening here than we can express. Who could capture the full meaning of this day for a single graduate, let alone an entire class? Who could trace all the lines of one young person's character, as it took shape, and acquired independence, and through some tangled web of accidents and necessities brought that young person to the law, and to Yale, and to this day? Who could possibly account for the lines of uncertainty and aspiration, vibrating with anxiety and hope, that lead away from this day, into a future that can scarcely be imagined even though it has been the subject of constant scrutiny and prolonged preparation? Who could capture all the friendships in this courtyard, or explain what they have meant and will mean in years to come? A library of novels would not be sufficient. And who can say how this hard-won day will be remembered, when we glance back at it, in a later hour? This day has been constructed for the sake of memory. Its pageantry shouts, "Remember this moment! Save it in your mind and preserve it against the forgetfulness that swallows most of what we do and say!" But who can say how this day will be remembered, a year from now, or ten, or fifty, when we and the world have changed?

These are unanswerable questions, and they give our proceedings here today a kind of noble futility, for nothing we do or say this afternoon can possibly be adequate to the meaning of the moment. But that is not a cause for disappointment or regret. Only animals and gods are never inadequate in this way. We human beings, by contrast, seem always to be measuring the meaning of our lives in ceremonial cups too small to hold what we have designed them to contain, in overflowing cups whose very inadequacy is the source of those contrary feelings--which we commonly call bittersweet--that characterize all of life's great ceremonies, this one included, and that anchor our proceedings here this afternoon in the human condition.

In a moment, the names of the graduating students will be read and we will have the chance to recognize their individual achievements. This is the moment the graduates and their families have awaited. But before the students' names are read, I know that everyone here would want me to say a special word of thanks to those whose efforts have helped to make this day so memorable.

To all of you who have worked so hard, behind the scenes, to insure that the

stage was well-set, I offer my heartfelt thanks. To Dean of Students Natalia Martín, on whose compassionate decency every one of us relies; to Associate Dean Mike Thompson, whose inventiveness, and attentiveness, and sympathy for every concern large or small, keeps this place running smoothly from day to day; to the dedicated and imaginative staff of the Yale Law School, who contribute so much to our community; and of course, to Judith Calvert, the Law School's devoted and patient registrar, whose gentle sense of order is essential to the School's effective working, or indeed to its working at all; to all of you I say thanks, from the bottom of my heart.

There is one more group I want to thank. For those of us on the faculty, it is a deep pleasure to see our students reach this point of completion and be honored for their work, and it is a source of personal satisfaction to feel that we have contributed, in some measure, to their success. But there is no day on which my colleagues and I feel more keenly the marginal character of the contribution that we have made to the lives of our students. Yes, we have taught them some things. Yes, we have given them counsel and advice. Yes, we have initiated them into the profession of law. But the men and women who come here to study with us are

already adults with developed talents and strongly-held values and high ambitions for themselves and for the world. We on the faculty can take no credit for these things. We are latecomers in our students' lives, and have them in our care for just a moment. The credit properly belongs to those of you who have been looking after them all along--to those who are here today to witness the graduation of your sons and daughters and grandsons and granddaughters and nieces and nephews and cousins and spouses and partners and friends--for truly, your love and support and encouragement and restraint have been the most enduring educational forces in the lives of today's graduates. And so, before we continue, I would like to ask all the graduating students to join me in saluting their oldest and most devoted educators, the teachers to whom their success is really due: their families and friends, who have nurtured them and put up with them and given them the love that has afforded them the independence to achieve the things we have come here to celebrate today.

II.

Every year, the graduating students elect a member of the faculty to address them at commencement. The choice is entirely theirs, and for just that reason a special honor to the faculty member chosen. This year, the graduating students have elected my colleague John Langbein to be their commencement speaker.

Even on a faculty of distinguished scholars, John stands out as a master of the scholar's craft. Most of us are lucky to make a contribution to a single field of research. John is a leading scholar in four--the fields of pension law, comparative law, trusts and estates and legal history. When describing John's deeply original work in legal history to a group of Law School graduates, I've often been asked whether the Langbein I am referring to could possibly be the distinguished pension law scholar. This has happened to me more than once, and when it does, I'm always reminded of the literature professor who, after giving a lecture on Nabokov's novels, was approached by someone in the audience--a member of the

department of biology--who asked if this Nabokov fellow was any relation to the famous lepidopterist.

The students who have been lucky enough to sit in John's classes know that he is a great teacher as well. A teacher's first assignment is to communicate, in a clear and accessible way, some body of knowledge to his or her students. This is tremendously important, and without it no teaching can succeed. But there is a second and higher task that lies beyond this first one. A truly great teacher, like John Langbein, helps his students feel the excitement of their subject, to see what makes it interesting in human terms and worthy of sustained study, and to share the intellectual passion that is the secret source of everything that happens in the world of ideas. Whatever his subject--whether it be the early history of the law of evidence or the function of formalities in the law of wills--John Langbein's classroom crackles with excitement and many of John's students have had the experience of falling in love, most improbably, with a branch of the law they had no reason to suspect they would even enjoy.

I know this is true because I have had the experience myself. Some years

ago, when John and I were colleagues at the University of Chicago, I sat in on a course that he was teaching on the history of the Anglo-American legal system. More than a quarter century has passed, but the sense of wonder that John awakened in me then--my sheer amazement at the evolution of the legal institutions we possess and the thrilling sense of seeing, for the first time, the landscape of our law in historical relief--that sensation is with me still. Indeed it is renewed every time I talk with John, who remains my teacher now as he was then. How lucky we are--all of us at the Yale Law School--to be John Langbein's students. Passionate teacher, master scholar and your 2004 commencement speaker--please join me in welcoming John Langbein, Sterling Professor of Law.

III.

For each of our graduating students, this day marks a transition of consequence in his or her life. It also marks a transition in the life of the Law School. On June 30th, I will step down as dean and Harold Koh will take my place. I have loved being the dean of the Yale Law School. Every aspect of the job has brought me pleasure. But ten years in the deanship is, as my Southern friends would say, precious plenty enough--both for the dean and for the School. When I retire from the deanship and resume my professorial life, I will be returning to my natural condition, the one in which I have always felt most at home, and will be doing again the work of teaching and writing which it is the first duty of deans to support. I look forward to my homecoming with joy.

I also look forward to serving on the faculty under the inspiring leadership of my friend and colleague Harold Koh. There is no one in the world who loves the Yale Law School more than Harold does, or who understands its culture and

ambitions better. There is no one who defends with greater force, or embodies more completely, the Yale Law School's aspiration to be a place of learning and of service--of learning for the sake of service--a School passionately devoted to the life of the mind yet always mindful that the law exists to make the world a better place for the men and women in it. Harold knows all this. He feels all this. His affection for the School is complete. With intelligence and warmth and a seemingly bottomless reserve of energy, he stands poised to lead us toward that golden age which, as my teacher Grant Gilmore once remarked, at the Yale Law School always lies ahead.

It is fitting that on this most ceremonial of days we should have a ceremony to mark the transition in the deanship. We do in fact have such a ceremony, and I would like to be able to report that it is an ancient one whose origins--like that of the costumes we are wearing--is lost in the reaches of time. But that is not the case. To my knowledge, the ceremony we are about to enact was first employed on the occasion of my own appointment to the deanship ten years ago. That makes this enactment its second. But if the first was an experiment, this second is at least a repetition, and the third, when it comes, will constitute a tradition. And so, as a

symbol of the transfer of the authority of the deanship (which I have found on occasion to be less than compelling) and of the power of the office (for many purposes, powerlessness might be a better word) I now transfer to Harold two maces, each representing an aspect of the Law School's character, and discovered (or perhaps rediscovered, such traditions being by their nature rather vague) in my predecessor Guido Calabresi's closet on the eve of my own appointment as dean in 1994.

The first of the two maces is a walking stick with an elaborate gold handle. It once belonged to Morris Tyler, the great-great-grandfather of Anne Calabresi, Guido's lovely and distinguished wife. Morris Tyler was a shoe merchant in New Haven, and served as mayor of the city in 1863 and 1864. He was a war democrat--a supporter of Lincoln and the Union cause--a position unpopular with others in his party. This, and the fact that he read the Riot Act to the draft rioters in New Haven who refused to serve in the Union Army, brought Morris Tyler's short career as mayor to an end, but he returned to the political arena in 1871-73, serving a term as Lieutenant Governor of Connecticut. The walking stick I now hold in my hand was given to Morris Tyler by the members of the Connecticut State Senate in

recognition of his service as Lieutenant Governor. Tyler was not himself a graduate of Yale, but he played a crucial role in the early history of the Law School, for he led the commission that built the New Haven County Courthouse, and personally insisted that room be made in the building for the Yale Law School--the School's first permanent home. In later generations, his family's connections to the School multiplied. His son Morris F. Tyler attended both Yale College and the Yale Law School, from which he received his degree a hundred and thirty one years ago, in 1873, and on whose faculty he served for many years. It is the grandson of this second Morris Tyler--Guido Calabresi's father-in-law, also named Morris Tyler and also a graduate of the Yale Law School, Class of 1929--after whom the School's Moot Court program is now named. The walking stick that once belonged to the great-grandfather of Guido Calabresi's father-in-law thus carries us back deep into the history of this state and of our school. It represents, one might say, the old and local roots of the Yale Law School, the Connecticut soil in which it was planted long ago, and from which it has grown up to become one of the greatest law schools in the world.

The second mace is the staff of a chief of the Samburo tribe in Kenya,

Africa, and it represents the world toward which the Yale Law School has been growing all these years, the cosmopolis of law that constitutes the inheritance not just of one people but of all peoples and on which our last best hope of peace on earth depends. Between its Yankee beginnings and its global responsibilities the Yale Law School remains suspended, and anyone who grasps these two maces must feel the current that runs from the past represented by the one to the future suggested by the other. That is the current from which the Yale Law School draws its life. Every dean moves in the current. The current is larger than us all. But the dean remains, in a special sense, the custodian of the life of the School, and now, as I hand these two emblems of office to Harold, I do so with affection and trust and perfect confidence that he will guard the traditions of this precious place and carry them intact, a further step along, toward the goal we've been approaching for longer than anyone can recall.

IV.

The year before I became the dean, I finished a book, on which I had been working for some time, about lawyers and the legal profession. In the book, I said that the virtue a lawyer most needs is judgment--what, in an older tradition of thought, used to be called "practical wisdom." I described this as the ability to judge how general rules should be applied to the circumstances of practical life, whose vast complexities and conflicting claims no rule can anticipate or settle. I argued that practical wisdom is the quality great lawyers and great judges share in common.

Ten years later, as I prepare to leave the deanship, do I have reason to revise my earlier views?

In one respect I do, for what I said ten years ago about lawyers and the law, though it still seems to me correct so far as it goes, also seems incomplete, and in

need of supplementation. If I were to write my book again, I would say that judgment is one of a lawyer's chief virtues, but that another is courage, and that without courage, which a lawyer's work demands in ways large and small, the responsibilities that one assumes on entering the profession of law can never be discharged.

This may seem to some of you, perhaps, an extravagant thing to say. What does courage have to do with the law? Courage is the virtue of soldiers and, more rarely, of politicians. Law, by contrast, is prosaic. Its battles spill no blood. Lawyers themselves are modest and mild, timid even, professionally disciplined to control their passions not follow them, inveterate peacemakers who fear conflict and love reason and who seek at every turn to convert the one into the other. Where, in all of this, is there need or even occasion for courage?

The answer, I have come to believe, is everywhere. The corporate lawyer who suspects that his client has done something wrong needs courage to confront him. The judge who finds herself persuaded of an argument she knows will make her hated by some needs courage to write it down. When the protections of the law

are compromised for the sake of security or solidarity, it is lawyers whose voices must be raised in protest, and this takes more than a discriminating sense of where the limits of liberty lie--it takes courage, for few will ever suggest that the law's protections are too large or loose except in an emergency, when danger is real and near, and any limits on any instruments of self-defense can easily seem naive or foolish. And if you are thinking that the kind of courage I have in mind is a partisan virtue, that runs only in one political direction, let me quickly add that it also takes courage to say, "Yes, we lawyers have a special duty to guard the law against its rash disfigurement, but we also have a special duty to come to the defense of our civilization of laws when it is attacked by enemies like those we have today, enemies who reject all the most basic premises on which our civilization rests--its commitment to tolerance, and equality, and individual freedom--and who would substitute for these commitments a regime of divine authority and a life not of freedom but fate."

The values of our civilization are embedded, most visibly and durably, in those habits and institutions we summarize in the magisterial phrase "rule of law," and lawyers must always be the first to defend this civilization against those who

attack it from without, on account of their hatred for what it protects, and those who would compromise it from within, on account of their fear of what it permits. Lawyers are guardians of our rule of law. It falls to them, above all others, to honor and protect the immense but fragile achievement it represents. And while this requires judgment, tact, patience and an instinct for conciliation, it also requires courage, for without courage--without the nerve to stand one's ground when conventions and the crowd demand retreat or reckless advance--all the wisdom in the world will be of no avail, and our civilization of laws, so deep and yet so fragile, must ultimately fail.

Have we taught those who are graduating today, and who from this hour on become guardians of the rule of law, how to be courageous in its defense? Can such a thing be taught at all? Perhaps not. But what can be taught is this: that our legal inheritance is the legacy of countless acts of bravery, and that the men and women who have bequeathed it to us give us examples not just of prudence but of courage too, from which we may draw the simple lesson that if they could do it so can we, and must, if we are to honor their memory and discharge the duty they have laid upon us to continue the work and protect it for those who come after.

I hope--and in my heart I believe--that the Yale Law School teaches this lesson, and that those who today cease being students and begin their careers in the law will find it taught again every time they remember the School and recall these days to memory. May that be the School's gift to them, and may it help them find the strength to make courageous use of the limitless opportunities that lie before them.

Good luck and Godspeed.