

Graduation Speech May 2013
Dean Robert C. Post

GRADUATION

It is now my great pleasure to welcome all of you, distinguished guests, faculty colleagues, families, friends, and members of the graduating class, to the 2013 Commencement Exercises of the Yale Law School.

We gather today to celebrate a moment of consequence in the lives of **207** JD candidates, **21** LLM candidates, **2** MSL candidates, and **3** JSD candidates. When these **233** individuals finish their academic requirements, when the final staple goes through the final paper, and when the last examination is at last graded, they will be, quite simply, the finest new law graduates on the planet.

All the music, all the marching, all the medieval badges, robes, and ceremony that surround us this day, are meant to mark this single, decisive moment of high transition in the lives of these **233** graduates. As with all such moments of transition, it is an occasion *both* to take stock of the past *and* to assess the bright but inscrutable future that lies before us.

If we gaze backwards to the past, we can see that there is a long and winding pathway that has led to this graduation. Members of the graduating class have had to accomplish a great deal to arrive at this moment.

It is important to stress at the outset that these accomplishments, however heroic, are not those of our graduates alone. Behind each and every one of our graduates is a story of family and friends: of parents who nourished and sacrificed, who hovered and let go; of grandparents, uncles and aunts who supported and sustained them; of brothers, sisters, cousins, and friends, who stood by them and with them; of partners, spouses, children, and other loved ones who strengthened and inspired them.

The real education of our graduates was earned long before they arrived here at the Yale Law School. We are latecomers in their lives, and we have had them in our care only for an instant.

So, as we call to mind the past that has brought our graduates to this precious time, let us remember first and foremost those who truly made this

moment possible. Would the families and friends of the Class of 2013, many of whom traveled long distances to be here today, please rise, so that we may honor and welcome you?

Let us honor also the faculty of this law school, who sit before you on this stage. It has been their responsibility to educate you, members of the graduating class, in the many intricate ways of the law. On this stage is, by common acclamation, the finest and most influential law faculty in the world. They have worked hard to give you a sense of mastery, so that the law might feel, in your hands, intelligible, familiar and responsive. They have offered you their passion for the law, and in the process they have forever altered the horizons in which you shall sail forward into your life. Let us now, as they are assembled here all together, thank them also.

(applause)

We might take this moment also to thank those many members of the Yale Community who have worked so hard to make your time among us comfortable and secure. They have rescued your computers; piloted you through the maze of our remarkable library; maintained our gem of a building; mailed out your many letters of recommendation; responded—in

all caps—to your room reservation requests; staffed the indispensable dining hall; and performed a myriad of other services, of which you might or might not be aware.

I want to give special thanks today to **Associate Dean Mike Thompson**, whose inventiveness and attentiveness and sympathy for every concern, large or small, keeps this complex place running smoothly; to **Associate Dean Kathleen Overly**, who has spent night and day tending to the many needs of our students; to **Associate Dean Megan Barnett**, whose talented and tireless enterprise has benefitted each and every one of you; to **Associate Dean Asha Rangappa**, who has handled the requirements of your financial aid with tact and assurance; to librarian **Blair Kauffman**, who has catapulted the services of your Library into new heights; to **Assistant Dean Gordon Silverstein**, whose tender care for the Graduate students has nourished our graduate program and made it stronger; and to our devoted and patient registrar, **Assistant Dean Judith Calvert**, who has organized this day, and who works harder than any of you can imagine to make sure your requirements are fulfilled so that in fact you *will* be able to graduate.

To all of you, thank you. (applause)

I'd like to ask the graduating class to cast your minds back to that day when you first arrived at the Law School three years ago. Back then most of you were strangers to each other. Can you recall those first anxious moments during orientation, when you arrived not knowing what sort of place this would be, worried about whether you would languish here or thrive?

At our first meeting I told you that in three years we would assemble again, at your graduation, and I predicted that by that time you would come to appreciate and respect your classmates in ways that you could not begin to imagine. I anticipated that over the next three years you would create intense bonds out of common experiences, shared memories, entangled hopes and mutual loyalties, so that by the time of this day, by the time of your graduation, you would have found some of your dearest friends and your closest colleagues.

I hope my predictions have proved true, that during your time here at Yale you have grown close to your classmates; that you have taught each other more than we, your faculty, could ever hope to teach you; and that you

have forged relationships that will last long into your bright future. As you look around at your classmates, you will find them among the most precious gifts that you will carry away from this place.

So now, in this instant, you should take a moment to appreciate each other, and to breathe in the sweetness of being all together one last time. This is not a moment you will forget.

Moments of transition, like this, hang suspended between past and future. They are comforting, because they are familiar; they culminate all that has gone before. But they are also bittersweet, because something must end in order for change to take hold. In every ending is the challenge of a new beginning. Moments like this are therefore *charged*, in part with the excitement of new creation, but also in part with the vague disquiet of the unknown.

Your future is without doubt bright. You are now equipped with one of the great degrees in legal education anywhere in the world. You have acquired magnificent friends and astonishing peers. You have been trained

by masters. And you have earned the support of a school that will stand by you throughout your careers.

And yet, of course, in the nature of things, the future is uncertain. And I can't help but think that this uncertainty may resonate with aspects of your collective history. Most of you were in middle school or high school when the World Trade Towers went down. Many of you were still in college when the bottom went out of the stock market, Lehman Brothers declared bankruptcy, and our economy veered toward an unthinkable precipice.

We have no doubt come a long way since then. The dangers of September 11 seem increasingly distant; the economy, however tentatively, seems to be back on track. The world has begun to assume a semblance of normality.

But the old, oblivious assurance has not returned. There is the quiet, nagging sense that ordinary life is a thin crust laid over a precarious sea. Our politics are in a state of perennial dysfunction; the nation's debts continue to accrue; the threatening crisis of the Euro never seems to dissipate.

The deep fissures of change, the corrosive cracks of adjustment, are everywhere around us.

I thought that at this moment, therefore, I should say a few words about how you might face a future that continues to shift like a kaleidoscope into ever new and unpredictable and uncomfortable patterns and shapes.

You are graduating into a world of national and international insecurity and unrest. From nuclear missiles in North Korea to chemical weapons in Syria; from twenty-eight unthinkable deaths in Newtown to the horror at the Boston Marathon; from the insecurity of global warming to cooling of bilateral relations with Russia; from the hopeful chants of a Cairo Spring to the disenchantment of a domestic tea party—the world is wobbling on its axis, spinning out inexorable and unfathomable challenges.

The old certainties—good and bad—are unraveling. The framework of our constitutional law is shifting before our very eyes; storms we once thought could occur only once in a century, now recur with an alarming regularity. What we thought we knew, we no longer know.

We can be confident only that in the coming decades we will encounter a world of rapid and almost unimaginably profound change.

Today you will begin to face this new and daunting world. And a question that we might consider is how we could possibly have prepared you for the multiple and unforeseeable challenges that await you.

I hope we have done so by giving you three gifts: Knowledge, Vision, and Confidence.

Let me speak first about *knowledge*. It is probable that when most of you arrived at this law school, you imagined that to know the law, you needed to master the statutes set down in the books, the court holdings recorded in the reporters, the regulations published in the federal register, and so on. Of course, you do need to master these things, and I hope that now you have a pretty good grasp of them, or at least a vague sense of what they are.

But I am certain that you have also come to appreciate that to know the law, you must understand far more than texts, however authoritative some texts may be. Rules, regulations and decisions must be interpreted in light of what you think the law is or should be. And this means that knowledge of the law requires an understanding of the deeper integrity and purposes of the law.

Knowledge of law also entails competence in the practice of *effective* governance. You must comprehend the inner workings of institutions, the mysteries of incentives, the murky language of social values. We hope we have also given you an understanding of the rule of law, which is one of civilization's great achievements. We hope that you will remember that the rule of law requires you always to take the long view, never the short view. It requires you to keep in mind that when law is severed from competence, it can not long survive; but that when law is indifferent to justice, it becomes an abomination.

Governing a society under law is a way of expressing respect for the independence of persons, and this respect is indispensable for human flourishing. Law is not merely a means of social co-ordination. As the

philosopher Jeremy Waldron writes, applying law to a person “is not like deciding what to do about a rabid animal or a dilapidated house.” It is instead like addressing someone who thinks and who possesses their own opinions. The application of law is the application of respect. It is this insight that underlies the ideal of due process of law.

So we hope that the *knowledge* we have given you is not just an understanding of how to use law, but also an understanding of law’s intrinsic value. As you encounter the many formidable challenges that undoubtedly await you, we hope that you will be able to bring to bear the humane and effective wisdom that lies latent within the institution of the law.

A second gift I hope we have given you is the encouragement to unleash your *vision*. It is not enough to know the world as it is. When you leave this place you must be able imagine the world as it might be. You must be able to glimpse the possibilities of change, of improvement, of that city on a hill that we all yearn to inhabit.

Without vision of what might be, of what *must* be, we will be condemned to inhabit a world that is merely dreary, anonymous and fateful. So you must simultaneously know how things *actually are*, etched with acid fidelity to the facts, and you must always also be able to imagine things as they *might be*.

Vision must be *motivated*. You must have a reason to look up from your books, from your career, from your daily life, and to ask why things can or should be different.

I hope we have offered you such motivation while you are here, so that you will not, as my predecessor Dean Harold Koh used to say, die with your options open. I hope that during your time here you have experienced outrage and a concomitant conviction that things must change for the better.

In her poem *An Atlas of the Difficult World*, the poet Adrienne Rich writes:

A patriot is one who wrestles for the
soul of her country
as she wrestles for her own being . . . A patriot is a citizen trying to

to remember her true country . . . remember
that blessing and cursing are born as twins and separated at birth
to meet again in mourning
that the internal emigrant is the most homesick of all women and
of all men
that every flag that flies today is a cry of pain.

Where are we moored?

What are the bindings?

What behooves us?

I hope that during your sojourn with us you have been forced to ask these questions. I hope that we have made you an internal emigrant, so that you have seen things you could not previously have imagined, and that you cannot now tolerate. I hope we have endowed you with the vision to see the pain beneath the flags, and to have acquired the internal conviction that *you must* make it better.

And, finally, I hope we have given you the gift of *confidence*. It is not enough that when you leave here you *understand* the challenges you will face, or even that in facing them you are able to *envision* new possibilities of improvement. You must also believe, deep in your souls, that you matter, that your response to these challenges will make a difference to the world. You must have the *confidence* to respect your own considerable capacities, and this will inspire you to act, whenever action is needed.

For some of you, your introduction to law may have been disorienting. You may have experienced great anxiety about your capacity to master law and to find your own place in it. As you sit here on this glorious day, think how *misplaced* those initial anxieties were. Each of you has accomplished great feats in your time here. Each of you has overcome challenges that once seemed insurmountable. Each of you has found your own way to thrive. Glean from this the gift of *confidence*.

Here at Yale, we have endeavored to nourish your faith in yourselves as carefully and as lovingly, as we have tended to your knowledge and to your vision. We have striven to give you opportunities to experience yourselves as capable and effective men and women.

On this day, as you depart from our immediate care, I invite you to consider that the uncertainties, the risks, the dangers, the opportunities that lie before you in the future—that these are all simply the raw materials out of which you will fashion your own new worlds. You do *not* need to be confident about *what* events might bring, but you *do* need to be confident in your own *capacity* to master events and to respond to them with grace and with intelligence, whatever events might occur.

When you leave here, you will become leaders in your chosen fields. You will no doubt face insoluble problems. But it is the wish of all your teachers here on this stage that you may encounter the unimaginable adventures that lie before you with the same verve and intelligence, with the same unfailing self-respect, with the same moral courage, with the same pleasure and delight, that you have displayed during your time here among us.

I cannot express how excited we all are to watch you from afar. Come back and see us, and when you do, bring stories.

But for now, on behalf of this Faculty, this community, and the proud profession of which you shall soon be a part:

Congratulations!

Introduction of Gordon Silverstein who will present Graduate Program

Degrees

We presently have three graduate degree programs at Yale Law School. The students in these programs have already been trained as professionals, and they have come to us seeking to engage in the advanced study of law.

This year **3** students will receive the high degree of Doctor of the Science of Law – the J.S.D. These are students who have previously received an LL.M. degree at Yale Law School, and who have maintained their course of study in order to compose a rigorous dissertation, which constitutes a “substantial contribution to legal scholarship.”

This year **21** students will receive the degree of Master of Laws –the LL.M. Each of these students has studied here during the past year, taking courses and working closely with faculty members in order to meet the strenuous requirements of this advanced degree.

Finally, in the Class of 2013, we have **two** students who will receive a Master of Studies in Law – the M.S.L. These students are professionals who are not lawyers and who during the past year have explored the relationship between law and another discipline.

To present the candidates for these advanced degrees in law I call upon their advocate, friend, and mentor, Assistant Dean Gordon Silverstein .

Introduction of Kathleen Overly to Present the JD Degree

In the Class of 2013, **207** students will receive the degree of Juris Doctor, the J.D. degree. To earn this degree, students have had to complete three years of difficult coursework as well as to undertake substantial and sustained analytic writing under faculty supervision. To present the candidates for this degree, I now call upon our Associate Dean of Student Affairs, Kathleen Overly, who joined us this last year, and who has served our students with compassion and wisdom during their third year at Yale.

**INTRODUCTION OF
ANNE ALSTOTT**

Each year, the graduating class elects a member of the Faculty to speak at their Commencement. This year, they have made a marvelous selection: the Jacquin D. Bierman Professor in Taxation, Anne Alstott.

Most of our students get to know Anne's reputation long before they meet her. Like all schools, we ask students to evaluate their courses each semester. Let me give you a taste of the comments that students make about Anne. Just to read, almost random, from her evaluations, we find:

"Anne Alstott is the best teacher I have had in my . . . years at YLS."
"[J]ust wonderful." "Professor Alstott's deliberate concentration on pedagogy really pays off." "[She] takes her role as a teacher very seriously."
"[O]ne of the great professors at YLS." "[P]ossibly the best teacher I have had at Yale Law." "[A] gifted lecturer and a fabulous teacher. Without question, she is one of the best professors at YLS."

The student comments go only like, famously, unfailingly, year after year after year. We are blessed with brilliant teachers at this law school, but Anne's students have all but unanimously placed her in a class of her own. Anne's passion and skill as a teacher have earned her the affection of her students and the admiration of her colleagues.

Those of us who have not had the chance to take one of her classes, however, find Anne no less inspiring. And that is because of her writing. She is a tax professor who regards the Tax Code as a primary medium through which lawmakers shape society, and in a discipline where many make their careers lost amid statutory minutia and the narrow implications of text, Anne stands out for her audacity and seriousness of moral purpose.

She writes about fundamental issues of public policy: about welfare reform and redistribution, about social security and state support for families, and about the basic question that underlies them all—what do we owe each other in a fair society? And in her scholarship, Anne offers the world what she gives to her students: clarity and rigor, laced with critical acuity and an ethical urgency that is, quite simply, contagious.

It gives me immense delight to introduce this year's Commencement speaker, by popular demand, Professor Anne Alstott.

INTRODUCTION OF SONIA SOTOMAYOR

It is customary at our graduation to welcome a speaker who has this day received from Yale University an honorary Doctorate of Law. Today it is my privilege to introduce to you a jurist of enormous distinction and a graduate of this school: Justice Sonia Sotomayor.

In your years here, you have no doubt parsed her opinions. You are no doubt also acquainted with her biography, which, in the words of President Obama, shows “that it doesn’t matter where you come from, what you look like, or what challenges life throws your way—no dream is beyond reach in the United States of America.”¹

As a little girl in the Bronx, Justice Sotomayor navigated the adversities of Type 1 diabetes and the death of her father when she was nine-years-old. She grew up in a neighborhood where drugs and crime too often consumed promising young lives. She watched Perry Mason and dreamed of

¹ <http://www.whitehouse.gov/the-press-office/remarks-president-nominating-judge-sonia-sotomayor-united-states-supreme-court>

growing up to be a lawyer or, better yet, that personification of justice itself: a judge.

She graduated from Princeton, *summa cum laude*, and then came here, to the Yale Law School, where she was an editor of the *Yale Law Journal*, managing editor of *Yale Studies in World Public Order*, now the *Yale Journal of International Law*, and co-chair of the Latino, Asian, and Native American student association. (In those days, students from these affinity groups were so few in number in that they shared a single student group.)

She conducted research for then-University General Counsel José Cabranes, later her colleague on the Second Circuit. And she was, in her own words, a “more than adequate bouncer” at GPSCY.

After law school, Justice Sotomayor was recruited by the legendary New York prosecutor Robert Morgenthau to work as an Assistant District Attorney for Manhattan. A “fearless and effective prosecutor,” in Morgenthau’s words, she prosecuted crimes from misdemeanors to murder, and served for more than four years before becoming a commercial litigator.

Private practice would not keep her indefinitely, and she soon realized a long-held dream. In 1992, the first President Bush named her to the federal bench, in the Southern District of New York. There, she won the praise of colleagues for her pragmatism and her toughness. Elevated to the Second Circuit by President Clinton in 1998, she authored approximately 400 opinions, earning a reputation for discipline and thoroughness.² Nominated to the United States Supreme Court by President Obama in May 2009 and confirmed in August of the same year, Justice Sotomayor became the Court's 111th Justice, its third woman, and its first Hispanic Justice.

Justice Sotomayor exemplifies the virtues of humanity, insight, courage, and deep respect for the law. To name just a single example, I would call your attention to her succinct and compelling opinion in the 2011 case of *J.D.B. v. North Carolina*. A thirteen-year-old seventh-grader had been pulled from class and questioned by a uniformed school resource officer and administrators about his involvement in two home break-ins. The Court was asked to consider whether the suspect's age could factor into what we call a *Miranda* custody analysis, which asks whether, given the circumstances surrounding an interrogation, a reasonable person would have

² http://www.whitehouse.gov/the_press_office/Background-on-Judge-Sonia-Sotomayor

felt free to end the interrogation and leave. The question was whether this traditionally objective analysis could admit the subjective perspective of a child.

Writing for the majority of the Court, Justice Sotomayor deftly reconciled the objective *Miranda* custody test with a practical acknowledgement of “very real differences between children and adults.” Drawing from the Court’s “commonsense conclusions” and a common-law tradition reaching back to Blackstone, she wrote that “[o]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.” Far from cutting back on the objective *Miranda* custody test, Justice Sotomayor concluded that it was “self-evident to anyone who was a child once himself, including any police officer or judge” that children may feel greater pressure than adults to submit to police questioning. Courts need not “blind themselves” to such a “commonsense reality.”

To me this simple but deep conclusion epitomizes Justice Sotomayor’s jurisprudence. She is *judicious*; she is empathetic; she is firmly grounded in social reality. She is a superb legal craftsman, faithful to the

integrity of the law while shaping the law to be responsive to our shared values.

Justice Sotomayor, you inspire us with your work, your character, and, above all, with the profound and passionate humanity that has defined your remarkable career. You are a *Justice* who does the appellation credit, and we are delighted and proud to welcome you back to Yale.

Guests, colleagues, and fellow alumni, please join me in saluting an exceptional American and a member of our class of 1979: *Dr. Sonia Sotomayor*.

A FEW FINAL WORDS FROM THE MUPPET

We have just one final speaker this afternoon, before we send some of you home to finish your SAWs. It occurs to me that while most everyone here knows the Class of 2013, you have not been introduced to Justice Sotomayor. And I know just the speaker to make that introduction. [*Enter muppet.*]

[Dean Post keeps speaking, but, in an inspiring feat of stagecraft, the muppet's mouth moves at the same time.]

Justice Sotomayor, it is my great privilege to introduce to you the Class of 2013. You see before you the most impressive, most accomplished, most attractive class of graduates ever to pass through the halls of the Yale Law School, or *any* law school, for that matter.

In their short time here, they have sought and secured justice for veterans who have been improperly discharged, and for immigrants who

have been unlawfully detained. They have exposed systemic racism in East Haven. They have worked to bring shopping centers to poor neighborhoods and to reform education in the state of Connecticut. And they have done this all while producing scholarship worthy of publication in the finest law journals in this or any country—which of course, they also have edited.

I know that you are an inspiration to them, but you should know that they have all, without exception, read *Goldberg v. Kelly* at least six times—and they each know that the answer to the question, “how much process is due?” is always “more.”

In their time here, they have enriched us and they have inspired us, and have distinguished themselves and our school. And so, before you all join us for a champagne toast in [if raining—in the back of this gymnasium] [if not raining—back in the courtyard of the law school], I hope you will join me in recognizing the most exceptional, most illustrious, most awe-inspiring class ever to graduate from the Yale Law School:

The Class of 2013