2016 Commencement
Dean's Message to Students
May 23, 2016

These last several years have been remarkable. Inside the medieval walls that define Yale Law School, you, the Class of 2016, have participated in a political awakening. You have been more alert to the maladies and injustices of our society than any generation of students in recent memory. There is nothing more exhilarating than students who are committed to changing institutions for the better. Your energy and drive have helped to make this School a better place than you found it when you entered, and for that we are very grateful.

This graduation, however, marks the moment when you must depart from the Gothic walls of the Yale Law School and enter the larger world. It is not a pretty picture. Our globe is burning. From acts of wanton violence in Paris and San Bernardino and Charleston and Ankara, to the killing fields of Iraq and Syria; from the fierce storms of an overheated planet to the bloodlands of Ukraine; from refugees braving high seas for the shores of Europe to the cities of West Africa emptied by Ebola; from the threats of Grexit and Brexit to the revanchist regimes of Poland and Hungary; our world grows each year more dangerous and threatening.

These are challenges that you must face after graduation. Of course this will not be easy, because my generation has bequeathed to you a world falling into fragments, even as it shrinks and grows more interdependent. As you become leaders in your respective countries, I hope that what you have learned here will help in your struggle to hold our fragile globe together.

The challenge will be especially difficult here in the United States. In my lifetime I have not seen a political atmosphere more angry, more poisonous, or more baleful. There are no doubt many causes of our political distemper, and these certainly include increasing inequality, anemic economic growth, and gaping cultural divides.

But this afternoon I want to focus on one cause that you, the Graduating Class of 2016, have within your control to moderate, at least with respect to your own attitudes and conduct. I am referring to the rise of extreme partisanship. American political life is now divided into camps so mutually antagonistic that ordinary political life has become all but impossible.

A 2014 study by two political scientists found that "hostile feelings for the opposing party are ingrained or automatic in voters' minds, and that affective

polarization based on party is just as strong as polarization based on race." In a frightening conclusion, the study notes that elites now have a greater incentive "to engage in confrontation . . . than [in] cooperation."

Just to give you some sense of how profoundly divisive our political life has become, consider that in 1960 only about 5 percent of Americans expressed a negative reaction to the prospect of their child marrying someone from the opposite party. By 2010 this figure had risen eightfold to 40 percent, including both Republicans and Democrats. It is plain, I think, that politics has become too personal; it has become a matter of identity.

What worries me is that such extreme identitarian division is potentially fatal in a diverse nation that can be held together only by common politics. We cannot govern ourselves if we remain balkanized into narrow, tribal attitudes.

I am reminded of a very old story told to us by Thucydides, the great Athenian general and historian from the fifth century BC. Thucydides recounts the tale of the disastrous Peloponnesian War between Athens and Sparta. All of Greece at the time was broken into two political parties. One party advocated for an aristocratic oligarchy; the other favored democracy. The struggle between these

two parties was violent and fanatic, and the result, Thucydides recounts, was that "society became divided into two ideologically hostile camps, and each side viewed the other with suspicion."

This partisanship could not be ended, says Thucydides, because "no guarantee could be given that would be trusted, no oath sworn that people would fear to break; everyone had come to the conclusion that it was hopeless to expect a permanent settlement and so, instead of being able to feel confident in others, they devoted their energies to providing against being injured themselves."

The upshot of this breakdown of trust among the Greeks was that atrocity followed atrocity. Men became beasts. In words that should be remembered forever, Thucydides lamented the loss of what he called "the ordinary conventions of civilized life," because Greeks had begun "the process of repealing those general laws of humanity which are there to give a hope of salvation to all who are in distress, instead of . . . remembering that there may come a time when they, too, will be in danger and will need their protection."

We are not, I hope, in danger of atrocities, but we are certainly within sight of losing trust in those general laws of governance that require us to work *together* despite our disagreements, however passionate those disagreements might become.

The loss of trust in our society is corrosive and every day it becomes more and more widespread. Nearly fifty years ago, almost half of all Americans agreed that "most people can be trusted"; but today that number has fallen to less than one in three. In the 1960s, 80 percent of Americans trusted their government;[1] but today that number hovers around 20 percent. Only about a third of Americans trust our criminal justice system or our Supreme Court. When asked, Americans report a lower opinion of Congress than of root canals, colonoscopies, Brussels sprouts or traffic jams. Congress did manage a higher approval rating than telemarketers, North Korea, or the Ebola virus.[2]

This would be humorous, were it not tragic. Consider: we live in a representative democracy. Our government represents *us*. The House of Representatives is the People's House. If we detest our own government, what does that say about us? Do we loathe ourselves, or do we despise our neighbors? If

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[1] http://www.npr.org/2015/11/23/457063796/poll-only-1-in-5-americans-say-they-trust-the-government

[2] http://www.gallup.com/poll/1597/confidence-institutions.aspx
http://www.publicpolicypolling.com/main/2013/01/congress-somewhere-below-cockroaches-traffic-jams-and-nickleback-in-americans-esteem.html

we disavow all institutions of governance, we shall have accomplished nothing but the certainty of our own vulnerability.

We shall be vulnerable because without institutions of governance we cannot act together. We cannot build a common future or ensure our common security. Institutions of governance, and the laws through which they act, are necessary if we are to enjoy the immense goods of cooperation. Excessive partisanship undercuts the social trust required for the political processes that underwrite both governance and law. Whatever kind of society you wish to build, whether it is conservative or liberal, it must be accomplished through political processes that depend upon trust.

Thucydides described the hell produced by the absence of that trust; he said: "Human nature, always ready to offend even where laws exist, show[s] itself proudly in its true colours, as something incapable of controlling passion, insubordinate to the idea of justice, [and as] the enemy to anything superior to itself." Without trust there can be no law, no justice, no security. There is only self-preservation. There is only a dreadful war of all against all.

The question is not whether we should trust the particular decisions of government, which can be right or can be wrong. The question is rather whether we have any option but to trust the political processes by which we engage, each to the other, to determine how we shall act together and how we shall make our laws. I know that these very political processes can often be perversely slow and slanted and unresponsive. They may even be corrupt. But these political processes are all we have, and therefore we must, paradoxically, use them to make these very processes better and fairer.

Politics in a democracy must be open to all. You cannot enter politics without encountering those who disagree with you, and who perhaps disagree radically. It is therefore essential that we find a way to structure such encounters in a manner that does not involve excessive partisanship. Thucydides gave us a clue about how this delicate balance might be maintained. He put his thoughts into the mouth of Pericles, the great Athenian leader.

In his famous funeral oration for the Athenian war dead, Thucydides has Pericles praise Athens as “a democracy because power is in the hands not of a minority but of the whole people.” In Athens, says Pericles, “we are free and

tolerant in our private lives; but in public affairs we keep to the law. This is because it commands our deep respect."

Athenians respected law because they were all involved in fashioning it. So Pericles pointedly observes:

> Here each individual is interested not only in his own affairs but in the affairs of the state as well: even those who are mostly occupied with their own business are extremely well informed on general politics—this is a peculiarity of ours: we do not say that a man who takes no interest in politics is a man who minds his own business; we say that he has no business here at all.

Politics in fifth century Athens was a deadly serious business, far more so than in the United States today. Failed politicians could be exiled or ostracized or worse. But Pericles nevertheless summoned Athenians to full participation in the political process, arguing "that happiness depends on being free, and freedom depends on being courageous."

Being free means being self-governing; it means that we have the capacity to fashion our own future according to our own ideals. It is a miraculous and wonderful thing to enter democratic politics in order to realize our convictions. But to the extent that we loathe our political adversaries and seek to exclude them from the common political space that the Greeks called the *agora,* we abandon the possibility of a shared future. It is not possible to sustain a democracy that includes "the whole people" if we refuse to deal with our adversaries. Democracy fails if we seek advantage only for ourselves, or only for our tribe or for our party.

Of course it is possible that our adversaries may be so awful that we come to believe that we cannot share a future with them. This happened during the American Civil War. But such times must necessarily be very rare insofar as we treasure the ongoing practice of democracy. That is why Pericles emphasizes that democracy requires *courage*.

Democracy requires the courage to *persist* in pursuing our ideals while at the same time to *resist* the temptation to an excessive partisanship that excludes adversaries from the agora, from the purview of democratic politics. This is a rare kind of courage. It requires patience and endurance. But it must be maintained

even as democratic politics fails repeatedly, and even as it falls under the control of those who oppose our ideals.

The poet in the 20th century who most tellingly articulated what it might mean to lose faith in a common political future was the Nobel Laureate Czeslaw Milosz. Milosz, whose papers are in the Beinecke Library, was a Lithuanian who wrote in Polish. He tried to understand the havoc caused by World War II. He believed that Eastern Europeans had lost trust in one another and hence that they had abandoned the possibility of political engagement.

In his monumental poem *Child of Europe*, Milosz describes the cynical world created by the War in Eastern Europe:

> We, from the fiery furnaces, from behind barbed wires
> On which the winds of endless autumns howled,
> We, who remember battles where the wounded air roared in paroxysms of pain.
> We, saved by our own cunning and knowledge. . . .
>
> Having the choice of our own death and that of a friend

We chose his, coldly thinking: Let it be done quickly.

We sealed gas chamber doors, stole bread

Knowing the next day would be harder to bear than the day before. . .

Love no country: countries soon disappear

Love no city: cities are soon rubble. . . .

Do not love people: people soon perish.

Or they are wronged and call for your help. . . .

In these lines, Milosz evokes what it is like to inhabit the bleak and cruel world long ago described by Thucydides. It is a world in which persons are out for themselves alone. It is a world in which cunning and calculation reign. It is a world without trust and therefore without hope for a future. No politics are possible in such a world, because no bargains can be struck. No one would freely choose to live in such a world.

As he grew older, Milosz began slowly to heal from the mighty blows of the War. In his poem *What I Learned from Jeanne Hersch*, he enumerated some of the

lessons that he had painfully gleaned from his formidable historical experience. The poem consists of 12 numbered propositions, but I will read you only three:

> 2. That they have been wrong who undermined our confidence in reason by enumerating the forces that want to usurp it: class struggle, libido, will to power. . . .
>
> 5. That the proper attitude toward being is respect . . . .
>
> 12. That in our lives we should not succumb to despair . . . for the past is never closed down and receives the meaning we give it by our subsequent acts.

These are profound insights to contemplate as you begin your lives outside the Sterling Law Building. First, have confidence in your reason. You have received the best legal education available anywhere in the world. Use that education to light your way and to guide others. Do not believe in the crude ideologies that reduce everything to the sham play of false consciousness. In this world there are rights and there are wrongs, and know that it matters whether you correctly perceive the difference.

Second, as you use your reason to fashion the ideals that you will pursue, *respect being*, which means, respect the facticity of the world. The world is as it is, regardless of what you might wish it to be. Have humility before the facts of the world.

Milosz lived in Eastern Europe, which suffered unspeakable horrors because, in the ideology of both the Nazis and the Soviet Union, facts counted for nothing; the world could be reshaped at will. In a poem called *Faith,* Milosz rejects this perspective:

> The word Faith means when someone sees
> A dew-drop or a floating leaf, and knows
> That they are, because they have to be.
> And even if you dreamed, or closed your eyes
> And wished, the world would still be what it was,
> And the leaf would still be carried down the river.

Respect for being requires faith that there is a world outside of you and that it matters. It cannot be remade according to your desire.

This is a particularly important insight when it comes to other people. Other people are also facts in the world, and they must be respected just as all other facts are respected. One expression of this respect is to engage other people through politics, as distinct from excluding them from the agora in the hope that they will simply vanish. Other people will not disappear even if you close your eyes and wish them away. This is true even when other people have opinions that you regard as obnoxious or wrong-headed or violently incorrect. Respect for being means accepting the fundamental alterity of others, which is the foundation of all politics. And without politics, none of us can be free.

We are thrown willy-nilly into a common lifeboat, and we flourish *together* or we do not flourish at all. That is why political ideology counts for much, but not for everything. Excessive partisanship denies this basic truth. And, I remind you, this is also why race, ethnicity, gender, sexual orientation, socio-economic status, and all such categories, count for a great deal, but they do not count for everything. If they did, our common lifeboat would break into fragments and be swamped.

Third, and last, do not despair of the present. I know that it may, at times, appear bleak. But if there is hope for the future, you are that hope. The present is

never shut down. You can remake the meaning of the present by changing the future. Respect for being is not a recipe for passivity; it does not demand that injustices be endured. That is why Milosz ends the poem *Faith* with these remarkable lines:

> Look, see the long shadow cast by the tree;
> And flowers and people throw shadows on the earth:
> What has no shadow has no strength to live.

Your strength to live is a fact of your being. Respect it. Cast your shadows upon the earth. Love your country; love your city; love one another. Engage in politics to improve your country and your city. But do know that whatever future you hope to create, we must all inhabit it together. Stand firmly balanced in the tension between your own ideals and your respect for the alterity of others. It is an equilibrium as fragile and as delicate, and yet as inevitable, as a shadow falling on a leaf floating down a river.

Today you begin your journey down that river. You can exercise the freedom of self-governance only through politics and therefore only through the law that issues from politics. Your teachers on this platform hope that during your

time among us, we have taught you something about how to use law to build your own vision of the future. We hope we have initiated you into the practices of effective governance, and illuminated for you the inner workings of institutions, the mysteries of incentives, the palimpsest 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 you will remember that when law is severed from competence, it cannot long survive; but that when law is indifferent to justice, it becomes an abomination. We hope that we have taught you that law is not merely a means of social co-ordination, but something indispensable for human flourishing.

When you leave here, you will become leaders in your chosen fields. You will no doubt face insoluble problems. But all your teachers and friends on this stage hope 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.

You are the fortunate beneficiaries of an education that many have sought, but that only a few have received. You therefore carry the responsibility of using that education well. That responsibility begins now, as you graduate. As you leave this place, know that you carry with you our faith that you will construct a new future for all of us. We wish you every success.

So on behalf of this faculty, this community, and the proud profession of which you shall soon be a part:

Congratulations!