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The Character of Our Community

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The academic calendar, like its solar counterpart, has its own distinctive seasons. For those of us who live by the rhythms of the school year, this is the season of fresh starts. It is the season of high hopes, new beginnings, grand plans, modest anxieties, and large ambitions. It is all of these things for all of us here, teachers and students alike. Some of us have been at Yale for a while. Others are still unpacking. It makes no difference. Today my colleagues and I feel the same thrill of adventure that you do. Today we begin something new together, and among the many novelties that mark the season, the most exciting is that of your company. Yesterday we were strangers. Today we are the Yale Law School community and in the weeks and months and years ahead we shall rediscover and reinvent that community together. You who join the community today will gain much from your time at the Yale Law School, and you will give much to the School in return. But the most important advantage you will gain, and the most lasting treasure you will give, are the bonds of friendship that unite you to each other, and to the place. These are the source of an amazing collegiality that joins even the most fierce intellectual antagonists in a spirit of common endeavor, and the spring from which the School's fellowship of learning grows.

You have all performed with distinction. You have demonstrated extraordinary talent and drive. You have passed every test with a flourish. And now you have been admitted to the Yale Law School and sit in its auditorium. That may seem like a reward in its

own right — and it is an achievement every one of you is entitled to view with pride — but the real prize you’ve won is the pleasure and provocation of each other’s company, which you will enjoy here at the Law School and relish for a lifetime after. To watch these friendships grow, to be a part of them, to see the culture of the school reborn each year in a new and singular way: that is for me, as a teacher, the greatest pleasure I know, and the most thrilling thing about this season of fresh starts. Welcome, all of you, returning veterans and new recruits, graduate students and visiting scholars, and the millennial class of 2000! In the unforgettable words of the most exciting passage in my son Alexander’s favorite book, “Let the wild rumpus start!”

Of course, the sense of starting something new is nicely balanced by the sense of continuing something old: the values and traditions of the Yale Law School community, and beyond that, the values and traditions of the legal profession itself, which many of you join for the first time today.

About the profession of law, I will say only this — that it exists in a tension between past and future. The past bears a weight in law that it lacks in other fields. In the law, the fact that a certain decision was taken in the past is always an argument for following it now — not always a decisive argument, but one that must at least be met even if it is rejected. When and why and to what extent the decisions of the past should be respected is a central question in the law — I am inclined to say it is *the* central question — and forms the topic, whether announced or not, of every course in the law school curriculum. In other disciplines, like philosophy and economics, which seek a kind of abstract truth unweighted by the past, the fact that something was said or done or thought before is no argument at all for saying or doing or thinking it now. These other disciplines run free of the past in a way the law never can. This is the meaning of the claim that the law is a conservative discipline, for it is the task of law, and therefore of lawyers, to carry the past forward and conserve it, to protect the world of norms and institutions that constitutes our cultural inheritance.

But if the law looks with one face to the past, it looks with another to the future. The law is an endlessly ameliorative pursuit, animated by the belief that the ideal of justice, in accordance with which all the rules and institutions of the law must finally be judged, has never been adequately achieved in the world, that justice has always been delayed and denied, and that there is therefore always room for improvement, for a future better than the past. A legal system that was content merely to preserve the fixed forms of the past would be a system of idolatry and not of law. Law is a dynamic institution, purposeful and striving, with an obligation to the future as compelling as its responsibility to the past. To conserve the past and its achievements, to respect the precedents that define the law in every field, but to do this in a spirit of dissatisfaction with the past and the belief that we can do better, that we can narrow the gap between who we are and what we wish to be: that is every lawyer’s duty, and it is a duty as demanding as any I know. Those of you who join the profession today will live in the tension between past and future all your days. You will never resolve it — how could you? — and you can deny it only at great moral peril. But by taking this tension on, and making it your own, you commit yourself to a task on which our conflicting fidelities to both the past and the future depend, and through all the long nights and anguished uncertainties and divided loyalties that lie ahead, the knowledge and experience of that commitment will sustain you.

The legal profession is a vast and varied empire. It offers countless different opportunities and encompasses jobs of every description. From here you will go out into the profession, each along a path of your own. But at the moment we are all here, together, in this one particular place. What is the nature of this place to which you have come by paths as singular as those that you will eventually follow away from it? What kind of place is the Yale Law School?

Of course it is misleading to suggest that there is some short list of essential traits that define the Yale Law School. The School appears in a different light to different people. The nature and pur-

poses of our community are themselves controversial and the subject of endless debate. It would be more accurate to say they are invented — or reinvented — by each new group of students, rather than found or discovered, finished and waiting in advance. But in the great debate that begins again every fall about the character of our community, there are a few recurring themes. These are our polestars, as fixed as anything in the tumultuous life of the Yale Law School, and by these few settled points generations of Yale Law School faculty and students have steered their course.

First I would mention the School's longstanding commitment to join the worlds of thought and action, with their very different requirements and ambitions — or more exactly perhaps, to live in the generative conflict between these worlds and never to neglect the insistent claims that each makes upon the other. The Yale Law School is an academic institution, devoted to the life of the mind. We have come here, all of us, to study the law, to investigate its powers and preconditions, to inquire about the meaning of justice and authority and precedent, to examine the relationship of law to politics and morals and the forces of economic life. Ours is a community of reflection and speech, one branch of a great university dedicated to the nonpartisan promotion of scholarship, teaching, and thought. Responsibility in thinking requires a disengagement from the world of action, with its intense practical concerns. It demands a freedom from consequences that can only be secured if the demand for action — the demand that you act on your thoughts — is suspended. It encourages the habit — it enforces the habit — of following your thoughts wherever they may lead, of trying them on and testing them out, however dangerous or disturbing or eccentric they seem. In the world of thought, this inattention to consequences, which from the standpoint of the world of action is bound to seem highly irresponsible, is the very soul of responsibility itself. No law school in the world takes the responsibility of thought more seriously than this one, and none has a stronger or more exuberant tradition of

uninhibited intellectualism, of sheer free thinking, which is the only kind of thinking worthy of the name.

And yet: the Yale Law School is not just a place of scholarship and study. It is also a professional school, dedicated to the training of lawyers. The law is a great theater of action — in our law-filled society, perhaps the greatest one of all — and you have come here not merely out of an abstract curiosity about the law, but because you want to be an actor in its drama, because you want to do something in the world, with the law and through it. Holmes once said that those who live but play no part in the great issues of their day do not really live at all. There are philosophers and mystics and monks who would disagree, but I suspect that most of you feel the force of Holmes' dictum and have come to this place of study and thought because you know that law is where the action is, and want badly to be in it.

There is enough practical moral ambition in this room today to change the entire world, if each of you were simply to hold onto the hopes and convictions and dreams about which you have written so eloquently in your applications. You must hold onto them, and never let the seductions of the world, which will be spread gloriously before you, tempt you to believe that the moral passions that have propelled you here are impotent or naive. You must protect these passions and nourish them. You must give them scope and range. Every day that you are here, you must reaffirm what you know in your hearts to be true: that you have come here to the Yale Law School not merely to study the world but to change it, to make it more fair and humane, to meet the real practical needs of other men and women, whose claim on you, on your talents and good fortune, is the spring from which all your responsibilities in the world of action flow.

But you must meet these responsibilities in a thoughtful and self-critical way. You must ask whether your moral and political convictions are theoretically and empirically well-grounded. You must test your practical ideals in a free intellectual inquiry that suspends the requirement of action which gives your thinking its urgency and moral force and you must run the risk, as all such

inquirers do, that your practical beliefs — and even your selves — will be transformed in the process. You must find a way, in short, to join your passion for action with the high intellectualism of this place, which draws its energy from the effort to connect these two things. The Yale Law School is devoted neither to the *vita activa* nor to the *vita contemplativa*. It is devoted to something more difficult and demanding than either. It is devoted to the endless task of building a bridge between the worlds of thought and action, a bridge capable of carrying traffic in both directions, in order that our public life be shaped by reason, and our scholarly pursuits by a moral power born of the passionate conviction that law really matters. The culture of the Yale Law School supports our faith in this endeavor. It supports our belief that the connection between thought and action is important and our hope that it can be achieved. No law school has a stronger tradition of adventuresomeness in the realm of theory, and none a stronger tradition of encouraging the active use of law to reform the world. This is not a paradox or symptom of division within the School. It is an expression of the School's perennial insistence on the interdependence of action and thought, and on the responsibility of lawyers to find the path that joins them. The deepest faith of the Yale Law School is the faith that this path exists, and its oldest and most powerful tradition, which you inherit today and must now do your own part to sustain, is the tradition of searching together to find it.

There is a second feature of our community that I want briefly to mention. Perhaps the easiest way to describe it is simply to observe that we are a community, and not a collection of individuals indifferently pursuing our own projects and gathered merely for external and contingent reasons, like the passengers on a bus. This may seem to you an unremarkable proposition. “Of course we are a community,” you will say. “How could anyone think otherwise?” But I have to admit that every year my own sense of wonder and appreciation at

the existence of our community deepens. We are, after all, a group of very independent-minded men and women — it would be hard to find a group more vocally disputatious than this one — and a skeptical observer might ask how we can possibly be a community of any kind when all we do is argue. And yet we are a community, and the reason we are has a lot to do with the way in which we argue, and the special meaning that the idea of free expression has acquired at the Yale Law School.

We are gathered, in this place, to discuss the most controversial issues of the day, those that matter most in personal and political terms. These are the issues, of course, that provoke the greatest passion and the most intense disputes. As one approaches them, the pressure builds to substitute action for thought, to stop talking and do something instead. And since words are actions and have a real effect, it is common to hear demands, as one nears this zone of danger, that some words be forbidden, or sanitized, on the realistic assumption that an action of one kind can only be effectively countered by an action of another. But however powerful the urge to do this, and however plausible the arguments that support it, the traditions of the Yale Law School tell us to resist, to keep talking, to keep our community of speech open and free, especially as we approach the most volatile questions of all — the questions of abortion and execution, of race and gender, of equality and freedom, of law's complicated relation to religion, sex and love, that divide us and the nation.

In part, the traditions of the School counsel us to resist because this is an academic institution devoted to reflection and inquiry. But they counsel resistance for another reason too: because this is a school of law, and lawyers have a responsibility to lead the way in our society by acting on the faith that talking and listening, reason and reflection, remain effective even when our passions threaten to overwhelm us. Free expression is an academic ideal, but it is a particularly important ideal for lawyers, and the traditions of the Yale Law School make confidence in the power of speech and reason a central article of faith.

This is not always an easy faith to follow. It makes hard demands on its adherents. One is the demand to be more than merely tolerant, to be a good listener who searches, in a spirit of generosity, for the elements in an opponent's view that make it appealing to the opponent himself, particularly when it is a view one rejects. The habit of tolerance is difficult enough to acquire, but the habit of sympathy for those whose ideas we think wrong or appalling is harder still — sympathy not in the sense of agreement, of condolence or support, but of a commitment to find common ground while (perhaps it would be better to say *by*) carefully, thoughtfully, amicably showing our opponent just how deeply misguided he is. Tolerance is essential to our enterprise but so is sympathy, which asks more and aims higher, at a real community and not just a gathering of individuals who for the sake of peace have agreed to tolerate each other's stupid views: a real community, a huge sprawling argumentative family, whose members are divided in their personal ambitions and political beliefs, but who are bound together by a spirit of friendship and the shared sense of involvement in an adventure of common concern.

Tolerance alone cannot produce this spirit of friendship. Tolerance is the virtue of non-interference. It requires that I refrain from acting on the wish to gag those whose views I think silly or loathsome. But tolerance does not require that I engage my opponent's ideas, that I make an effort to see things from his point of view. If a tolerant person chooses she may remain within the circle of her own beliefs and never expose them to challenge. The practice of tolerance is compatible with smugness, condescension, contempt for others, and intellectual isolation. That is why the freedom it permits, important as it may be, can seem hollow and incomplete. The traditions of the Yale Law School celebrate a richer and more satisfying freedom, a freedom of real engagement, the meaningful encounter of minds and spirits in which our own most deeply held beliefs are always at risk. The stakes in this encounter are very high indeed, which is why most people choose to avoid it, and if our small community — the one you join today — has found a way to sustain

the encounter for an uncommonly long time, to be a real community of argumentative friendship and fractious trust, that is because its tradition is one of sympathy as well as tolerance. The Yale Law School encourages us to speak our minds, to be candid and direct, to reveal our beliefs no matter how odd or unpopular these may seem, and to expose them to the criticism of others. But it also nourishes a culture of generosity and friendship, without which the risks of real free expression would be, for many, unbearably large and the achievement of real community an impossible dream.

There is one last thing I want to say. Do what makes you happy. You are complicated people, and what makes you happy is complicated too. Some of the things that make you happy even conflict with other things that do, so the injunction to be happy is for you itself a kind of challenge. "I wanted only to follow the promptings that came from my true heart," says a character in one of Hermann Hesse's novels. "Why," he asks, "should that have been so very difficult?" I suspect you all understand the difficulty involved.

But however hard it is to be happy, don't be tempted to be anything else. Don't be tempted to accumulate money and power just for their own sake; that would literally be pointless. Be rich and powerful if you wish — these are not bad things in their own right — but be them because they are essential in the life that makes you happy. Don't put the cart before the horse. And, most important, remember the full range of things that gives you pleasure. Remember the satisfaction that comes from service to the world, and the equally great satisfaction that comes from singularity within it. Remember the pleasure of creation, which you have demonstrated over and over again, and which has propelled you forward in your lives, to this day and place. Remember the thrill of your own novelty, of your power to reimagine the world as you found it. This power will be tested in the years ahead, for you are coming into the house of the law, where the oldest and most deeply entrenched habits of humankind prevail, and where the forces of institutional life, with their pressure toward

concession and conformity, are at maximum strength. Your ambitions will be challenged, confined, rebutted and confused, and you will discover that nothing on earth is harder than to create something new. But never give up. Never concede. Never forget who you are. There is no group of men and women anywhere on earth whose opportunities for creation are greater than yours, or for whom the world has larger hopes. You have a *duty* to create, and I know that you will meet it — I am completely confident you will — because I know you will never forget the pleasure in creation that drives your lives and that constitutes an essential part of what makes you happy.

Hannah Arendt says that every human birth marks a new beginning for the world. What she means is that every man and woman born on earth has the capacity to do or think something that has never been done or thought before. Every birth is a fresh start for the world, though its habits and routines begin from the day we are born to limit the innate power of novelty we bring with us from the womb. You have come to this point in your lives with that power intact. You take pleasure in creation and know you possess the ability to make something new under the sun, to start something that has never been started before. That is why the Yale Law School has embraced you. That is what it is here to support. Remember why you have come here. Remember what makes you happy. Remember that you were brought into the world to renew it. And know that this institution — which now belongs to you as fully as it does to all the generations that have gone before — wants you to want this with all your heart.