Commencement Remarks
The Honorable Guido Calabresi '58
Monday, May 20, 2019 at 12:30pm
Lanman Center at the Payne Whitney Gymnasium

My dear friends,

It's said that at University College London, on great occasions like this, they wheel out the mummy of Jeremy Bentham to address the crowd. The Yale Law School does not have anything like Bentham, alive or dead, and so they wheel me out. But there's an advantage to Bentham: when wheeled out, he can't say anything. I'm here, and you have to listen to me.

Seriously, my very, very special thanks to you for asking me to speak today. You've all heard me say that there are two things that make life beautiful.

The first is finding something to do which is fun and useful. You all know how much I love to talk and how much fun that is for me. But the fact that you've selected me suggests that perhaps I am still useful.

The second thing is more important, and that is to find someone to spend your life with, someone you truly admire and love, and who loves, cherishes, and, yes, admires you. On this day, fifty-eight years ago, Anne and I were married. She is the reason for my joy. She's here with me today, of course. What a blessing. I only hope that you are as lucky. Some of you bringing up your children clearly are. Those of you who are not there yet, find the time to find someone whom you cherish and love and admire as much.

I'm a storyteller. So I'm going to tell you a couple stories, with perhaps a moral. Sixty-one years ago, when I graduated, I went down to Washington to clerk for Justice Black. When we got there, before the term began, the Court heard the great case of *Cooper v. Aaron*. The governor of Arkansas, Orval Faubus, had tried to block the Court's order desegregating the schools, and the Solicitor General, Lee Rankin, and the Attorney General, a graduate of this place, Herbert Brownell, convinced President Eisenhower, who was not particularly anxious to send troops to desegregate the schools, to do so. Arkansas argued this could not be done, and the case was argued just when I got there.

In the middle of Rankin's argument, one of the justices said: "Little Rock says if troops are needed to desegregate the schools, education will suffer. Do you concede that, General Rankin?" Rankin stopped, spun around three times, and said: "I concede that. I concede more. I concede that lives will be lost if troops are sent. I want this Court to tell the nation and the world that there are values greater than life itself, and that equality is one." And so that Court held, unanimously, in an extraordinary opinion, which each justice signed.

I was immensely proud of that Court and of that statement then—and I am now. I wonder whether our courts today would do the same. I am immensely proud of that Court. And yet, over the years, I also have come to have a worry. Whose lives would be lost? It would not be the justices'. It would not be their children's. It would not be those of the evil people who were blocking desegregation. It would be some children's; their lives would be lost. Their lives would be lost.

And here, my second story. When I was courting Anne, I went to her house, and I saw a print, an ugly looking fellow, reading something from the light of a torch. I asked my future father-in-law who that was. And he said, proudly: "That is my great-grandfather, Anne's great-great-grandfather"—whose mace, by the way, is the mace we use here at the Law School for other reasons—"and he is reading the Riot Act against the Draft Rioters, because he, like all his family, was a great believer in Lincoln's cause." They were very proud of their anti-slavery. A collateral ancestor, way, way back in the 18th century, Abraham Tyler, had signed the first anti-slavery petition in the United States. And my future father-in-law was very proud of the fact that Morris Tyler, the mayor, had done this.

But I asked him: "Who were the Draft Rioters?" And my father-in-law to-be said: "I don't really know." I said: "I know. I know who they were. They were poor Irish who had come to America to avoid the potato famine. And who didn't want to die in some swamp in Georgia for a cause that was not theirs when"—I said rather rudely—"the Tylers, Daggetts, Colbys, and Hookers, the old New Haveners, could buy substitutes and not go." And that reminds me of something that my oral historian has told me. That his wife's great-great-grandfather, something like that, received a commendation from the War Department, because his substitute died so gloriously in the Civil War.

Well, my father-in-law was a great person—the Moot Court is named after him, a great person—and he took me to the Grove Street Cemetery to show me how many Tylers actually went and died. But then he said: "I can't say I know the same about the Daggetts, Colbys, and Hookers." Now, the Draft Rioters were not nice. They did not do

nice things. They burnt down the houses of African Americans. They blamed them for the draft. Not nice. Not nice. Their resentment was horrible, and the cause great and necessarily worth doing.

What do we learn from this? All too often, the decision makers, the elite, do good but do it on someone else's back. And those on whose back the good is done resent it and harm those whom the elite tried to help. Not the elite! They go after the minorities. They go after the immigrants. They go after those whom the elite try to help. You can call it populism. You can call it Thucydides. You can call it Mustard Plaster. I don't care. But it happens all the time.

So, what to do? What should we do? Well, there are times when the good that the decision makers want to do, what the elite want, is not a moral imperative. And in that case you can do a true cost-benefit analysis. Do we really want it, if we bear the cost?

And, by the way, this isn't a matter of right or left. Do we want to search for drugs, horrible things, if we do it not just in public housing, but also in Woodbridge, where I live? Do we want wind power, if we don't only do it where the poor live, but also in Martha's Vineyard? Not right, not left. In these things, one can choose what is worth doing; one can decide what is wanted even if the elite also have to pay. It's easy enough to want to build a park if you don't have to pay to those whose land is taken.

But, more crucial and fundamental, is what to do when what the decision makers seek, what the elite seek, is a moral imperative. When it is something that must be done, when no cost-benefit can say: "No!" Lincoln's cause, defeating slavery. Desegregation. You name it! You know what the great causes are. On those there can be no cost-benefit analysis. It must be done.

And what do we do then? Do we do it anyway? Putting the burden on those who are not us, and suffer the consequences we have all seen? Do we not do what is morally imperative? That society, my dear friends, is cursed. If we stop doing what is morally imperative, that society is cursed. Or do we bear the burden ourselves? Do we bear the burden of what we think is right and necessary ourselves? That is all too rare.

Well, why am I saying this at commencement? You know, at commencement, we're supposed to tell people nice things and what they are supposed to do. But it is just that which makes all this worth saying.

I'm telling you these stories because you, my dears, are now the decision makers. You are now the elite. Whether you like it or not! Whether you'd like to be what you came from, which often was not the elite. Don't ever forget where and what you came from. Keep it in mind! Remember who you are! I am an immigrant. I am a refugee. The best, most important, part of my legal education is the fact that I am an immigrant and a refugee. I will never forget that. And yet how foolish would be of me to think that I have not been among those who make decisions, who decide where the burdens will be put, ever since I graduated from this school years and years ago.

And so, it is with all of you! Remember who you are and where you came from. Never forget that. But remember also that now you bear the burden of making decisions. Will you do what we too rarely have done and say: "On my back! In my backyard! Risking the very lives of those I love!" Will you do that? Will you do that just once? Even just once? If so, you will make the world better. And you will make this place, which has given you that opportunity, very, very proud. And you will make me, whether I live to see it or not, extraordinarily proud. Do it. And bless you.