

A New Aristocracy

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Thanks, Robert, for that introduction; and thank you enormously to the Yale Law School class of 2015 for inviting me to speak here. It's been a pleasure to teach you; and it's a privilege to address you now.

Countless conversations with you have made vivid that although this is a marvelous occasion, your mood is not triumphalist. You've seemed to me not simply celebratory, but also contemplative. I'll therefore take this opportunity—this point of inflection in your lives—to offer a diagnosis of your (and our collective) condition, not to propose a cure but, more modestly, in the hope that it shines a new light on your own introspection.

Now, the Dean has just observed, that you are “by acclamation the finest new law graduates in the world.” I don't rehearse this praise just as a bromide, to set a mood and swell a speech's emotional progress. Rather, I'll take the fact of your excellence as my starting point today and then recover its causes and pursue its consequences. Some of these are bright and happy; others lower more darkly, both over the broader world and over your distinctive futures. It will be the task of your

* Written to be spoken and therefore without citations.

generation to disperse these clouds and to reclaim the sunshine, including for yourselves.

When I say that you are the country's best new lawyers, I assert a concrete, determinate, and determinable fact; and a fact whose demonstration has dominated a large portion of your lives for a very long time.

Consider how you got to Yale. In the Autumn of 2011 perhaps 75,000 candidates applied to American law schools. Perhaps 3000 of these applied to Yale Law School. The law school takes admissions very seriously—three faculty members independently evaluate each file—and following this process, Yale admitted about 8 percent of JD applicants. Our LLM program similarly admits only about 9 percent of those who apply. Finally, almost 9 out of every 10 people whom we admit eventually enroll. In other words, you are sitting here today because you ranked among the top 3/10ths of one percent of a massive, meritocratic competition; and one in which all the competitors conspicuously agree about which is the biggest prize.

The admissions competition that brought you here wasn't an aberration or an isolated moment, moreover. Rather, most of you (although not all) came to the Law School from highly selective colleges. Acceptance rates at Harvard, Princeton, Stanford, and Yale colleges—to pick some familiar examples—have also averaged around 8 percent in recent years. And not all of you, but again most, came to college from

highly competitive high schools, and indeed in many cases from highly selective elementary schools, and even *pre-schools*.

So our admissions process—in all its patterns of planning and trimming, its rituals of stage-managed self-presentation, its rhythms of ambition, hope, and worry—was, for you, a familiar rite. For your entire lives, you have studied, worked, practiced, trained and drilled; and then you've been inspected, and finally—you made it here, after all—selected.

Nor did the training and competition end when you arrived here. People, including me, are fond of saying—perhaps a little prayerfully—that the rat-race ends at Yale Law School's door; but you don't believe it. More important, you act as if you don't believe it; you do almost whatever is necessary to learn, to produce, to continue to distinguish yourselves.

There's a sense in which you're right—or at least reasonable—to stay in the rat-race. You all know the list of plums that you're competing for and you agree (astonishingly widely) which are sweetest. This intensifies your ongoing competition: the clerkships, executive-branch posts, public interest jobs, elite law-firm partnerships, and professorships that you overwhelmingly most want all have hundreds of aspirants for each opening.

A pervasive, effortful, and studied competition thus dominates and even overwhelms virtually every year of the first three decades of an elite professional's life. The competition has become so ingrained that it is hard for you to imagine life without it.

But the competition is new; a striking innovation in American economic and social life; a stark departure from past practice. Even Yale Law School once admitted nearly a third of those who applied, and by shockingly casual methods: A mid-century graduate recently reported that he came here after Jack Tate (then Dean of Admissions) told him at a college fair (straightway, and on the basis of a single conversation) "you'll get in if you apply."

Things began to change in the 1960s. At Yale College, President Kingman Brewster opened Yale to merit over of birth, saying that he did not "intend to preside over a finishing school on Long Island Sound." Brewster replaced the entire admissions office at once, with a new staff that increased the incoming class's SAT verbal score by 100 points *within a year*. Once the meritocratic genie escaped its bottle, moreover, it grew inexorably and continues to grow ever stronger. The admissions competition at Harvard, Yale, Princeton and Stanford is today three times as intense as it was just 20 years ago. The competition to get into Yale Law School is four times as intense as it was at mid-century.

So you've reached this day by winning, again and again, at an unprecedentedly demanding and single-minded competition. It makes sense to ask, therefore, what victory brings.

Some good and even wonderful things. Others are less wonderful.

But begin with the good.

First, you join a community suffused with astonishing energy and talent. This shows itself in the ordinary, everyday life of the school. Your skill and dedication as students make teaching here almost effortless; you obliterate the line between pedagogy properly-so-called and ordinary communication. Your immense talents also show themselves at exceptional moments: for example, at the Die-In Demonstration that you organized last Winter, in the wake of police killings in Ferguson, Missouri and on Staten Island. You assembled over 500 people and over 30 organizations to concerted, forceful, insistently demanding yet responsible public action, on short notice and at a time of great distress. Set aside the rightness of the end and pause, for a moment, to marvel at the incredible effort and talent required to marshal these means.

Second, your successes bring you immense wealth and status.

First-year associates in New York, as you likely all know, today earn over \$160,000 thousand per year. A law firm now exists that

generates profits per partner exceeding \$5 million annually; and 70 firms now generate more than \$1 million of profits per partner every year. These vast sums are also new. Elite lawyers' real incomes have roughly *tripled* in the past-half century, which is more than *ten times* the rate of income-growth experienced by the median American.

Moreover, this explosion in elite lawyers' incomes is not an eccentric or even isolated phenomenon. Instead, it fits into a wider pattern of rising elite labor incomes across our economy. You probably know that the share of total national income going to the top one percent of earners has roughly doubled in the past three decades. But it is perhaps less familiar that fully 4/5ths of that increase comes from rising wages paid to elite *labor*. And it may be more surprising still to learn that the top one percent of earners, and indeed even the top 1/10th of one percent, today owe fully 4/5ths of their total income to labor. That is unprecedented in all of human history: American meritocracy has created a state of affairs in which the richest person out of every *thousand* overwhelmingly works for a living. This perhaps explains the otherwise incomprehensible measure of agreement among applicants for elite-training about which plums are most desirable.

Finally, the immense incomes on offer to you co-mingle with high social status. The older hereditary caste order for centuries imposed a social taint on those who work—not from passion, for exploit, or as a calling—but industriously, for wages. But that stigma, which remained at mid-century, has today been entirely erased. More directly and

immediately, elite lawyers' incomes, including when diluted by sabbaticals from private practice and into public service, will place you comfortably above the economic dividing line that comprehensively separates the rich from the rest in an increasingly unequal America. Perhaps most critically, your lawyerly skills will finance training your children—through private schools and myriad other enrichments—to thrive in the hyper-competition that you have yourselves, in effect, just won.

This, then, is where things stand. We have become a profession and a society constituted by meritocracy. Massively intensified and massively competitive elite training meets massively inflated economic and social rewards to elite work. You, in virtue of sitting here today, belong to the elite—to the new, superordinate working class.

This structure, whatever its virtues, also imposes enormous costs.

Most obviously, it is a catastrophe for our broader society—for the many (the nearly 99 percent) who are excluded from the increasingly narrow elite.

There is an irony here. Brewster and others embraced meritocracy self-consciously in order to defeat hereditary privilege. Under the prior regime, pedigree so dominated university admissions that the privileged excruciatingly under-performed once on campus. At Yale, the traditional feeder prep schools, which accounted for perhaps a

quarter of the class, were under-represented in Phi Beta Kappa by a factor of nearly twenty to one. William F. Buckley, Jr., in seeking to mock meritocracy, instead presented an object-lesson in the unfairness that meritocracy sought to redress. “You will laugh,” he wrote in attacking Brewster’s admissions revolution, “but it is true that a Mexican-American from El Paso High with identical scores on the achievement test, and identically ardent recommendations from the headmaster, has a better chance of being admitted to Yale than Jonathan Edwards the Sixteenth from Saint Paul’s School.” *Just so*. The meritocrat replies.

But although it was once the engine of American social mobility, meritocracy today *blocks* equality of opportunity. The student bodies at elite colleges once again skew massively towards wealth: students from households in the top quarter of the income distribution outweigh those from the bottom quarter by 14 to 1 and outweigh those from the middle two quarters *combined* by nearly 3 to 1. The skew towards wealth at the *most* elite universities is almost inconceivably greater still. At Harvard College and here, at Yale Law School (two places where students have skillfully and bravely compiled data that their Universities suppress), as many students come from households in the top one percent as from *the entire bottom half* of the income distribution.

These facts will shock, as they are designed to do; but a moment’s clear reflection should render them unsurprising and even inevitable.

The excess educational investment (over and above what middle class families can provide) that children born into a typical one percent household receive is equivalent, economically, to a traditional inheritance of between 5 and 10 million dollars per child. Exceptional cases always exist—as some of you sitting here prove—but in general, children from poor or even middle class households cannot possibly compete—when they apply to places like Yale—with people who have imbibed this massive, sustained, planned, and practiced investment, from birth or even in the womb. And workers with ordinary training cannot possibly compete—in the labor market—with super-skilled workers possessed of the remarkable training that places like Yale Law School provide.

American meritocracy has thus become precisely what it was invented to combat: a mechanism for the dynastic transmission of wealth and privilege across generations. Meritocracy now constitutes a *modern-day aristocracy*, one might even say, purpose-built for a world in which the greatest source of wealth is not land or factories but human capital, the free labor of skilled workers.

This observation re-focuses the argument on you—on the modern-day aristocrats.

You are not—nor, for that matter, am I—natural objects of moral or political sympathy. Nevertheless, this system does not serve you well, either.

To begin with, life at the top today requires immense and sustained effort—extraordinarily hard work. This, also, is new. In 1962, the American Bar Association could confidently declare that “there are approximately 1300 fee earning hours per year” available to the normal lawyer. Today, by contrast, a major law firm pronounces, with equal confidence, that a quota of 2400 billable hours “if properly managed” is “not unreasonable.” Billing 2400 hours requires working from 8 a.m. until 8 p.m., six days a week, without vacation or sick-days, for every week of the year. Nor are these Stakahnovite hours the peculiar property of large private practice. Elite public interest lawyers, elite government lawyers, and even elite law professors all work hours that would have been thought unimaginable, because degrading, by an earlier American elite that constituted itself, self-consciously, as a leisure class.

Embracing long hours reflects an adjustment to a new economic necessity. A rich landowner might extract rents from his estate idly, as a *rentier*. But where the source of a person’s wealth is her human capital—her skills—she cannot get income except by mixing this capital with her own contemporaneous labor. Nevertheless, these hours—just by their flat, dispassionate, unyielding length—inflict a heavy human burden on those who work them.

The *imaginative* requirements of living as a super-ordinate worker impose a second and profound burden on the new elite—a

burden whose full weight you are the first generation to feel. The social and economic caste order in which we are embedded—including through our celebrations today—demands that you comprehend yourselves on instrumental terms. Your own talents, training, and skills—your self-same persons—today constitute your greatest assets, the overwhelmingly dominant source of your wealth and status. To promote your eliteness—to secure your caste—you must ruthlessly manage your training and labor. Moreover, (and you’re the first generation in this position) you’ve had to do this—to act as asset-managers whose portfolios contain *yourselves*—for your whole lives, certainly for as long as you can recall.

To manage an asset not for its own sake but rather as a means to an end is to alienate oneself from that asset’s true nature and intrinsic value. The older *rentier*-elite might administer its lands and factories in this way without bearing any significant cost. But administering one’s capacities—one’s own person—in this instrumental mode is another thing entirely. To live in this way is, quite literally, to *use oneself up*. Such a life proceeds under a pervasive shadow: at its worst, it squanders the capacity to set and pursue authentically embraced, intrinsically valued, goals; even at its best, this life invites deep alienation. Finally, the choices that you’ve faced, again and again over the course of your lives, have trained you to measuring your life in this way, as with coffee-spoons. It can seem, with warrant, as if there is no alternative to the bright, unreal path that has led you here.

Once more, the elite should not—they have no right to—expect sympathy on this account from those who remain excluded from the privileges and benefits of high caste. And yet, the human burdens of life as *rentier* of one's own human capital remain real, and weighty. I believe, from our many conversations, that they explain why you approach our celebrations in a contemplative mood.

So this is where we've arrived today. We've constructed a gilded cage that ensnares the rich and excludes the rest. What, then, is the way forward?

I wish that I knew. I could tell you—and I would mean it—that when you find an opportunity to trade a little money or status for a lot of freedom, you should take it . . . *you should take it every time*. But that thought—although honest and heartfelt—is a chicanery, akin to insisting that the rat-race is over. The fact remains that, for each of you individually, all the forces that have brought you to this point remain in play. Every incentive is wrong.

But the broader picture is more hopeful. The new aristocracy promotes human flourishing for *no one*: certainly not for the excluded rest; nor even for the ensnared rich. We are trained to think of economic inequality as presenting a zero sum game: to suppose that redistribution to benefit the bottom *must* burden the top. But this is not such a case: reforms that democratize training and talent would benefit *everybody*. Such democratic reforms would restore the bulk of

Americans to full participation in an economic and social order from which they have been, for several decades now, increasingly excluded. And democratic reforms invite the elite—you all—to accept an almost costless diminution in wealth and status in exchange for a massive, precious increase in leisure and liberty, a reclaiming of your authentic selves.

The problem remains how to make the global trade, how to re-establish a democratic social order. Again, I don't know. But I do know that a winning trade—winning for everyone—exists. And I also know that you—with your vast talents, enormous discipline, and immense energy—are better-placed than anyone else to conceive and to broker the deal. You should keep a reborn democratic equality always in mind as you go forth, in your small decisions as well as your large ones. You should support and sustain one another whenever you chose equality and freedom over caste and wealth. And you should demand that Yale Law School loyally supports you as you make these choices.

The democratic project has no better midwife; and so much turns on your efforts now; including, not least of all, your own futures.

Thank you, and Godspeed.