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Remarks for Robert Burt

The following remarks by Dean Post were delivered at Professor Burt's funeral. The remaining Tributes are drawn from remarks delivered at a memorial service held at the Yale Law School on November 1, 2015.

I am here today as Dean of the Yale Law School, where Bo has been an honored member of the faculty since 1976, having previously served on the faculties of the University of Michigan and the University of Chicago.

I am here, that is to say, in something of a representative capacity. It is my privilege to offer on behalf of the entire Yale community our deepest condolences to Linda, to Anne and to Jessica, to Jeffrey, to Carolyn, to Tessa, Delayna, and Ella. Our broken hearts go out to you in support and love.

As Dean, it is my particular privilege to express the affection and the esteem in which Bo was held by his peers and colleagues at the Law School. This is a subject about which I could say a great deal.

I could, for example, discuss Bo's exemplary scholarly originality and courage. Bo is the last true representative of the perspective, once strong at Yale in the personages of Bo's mentors Joseph Goldstein and Jay Katz, of a psychoanalytically informed understanding of persons. Bo was deeply steeped in psychoanalysis, and he used that perspective to write with wisdom and subtlety about human interactions in the face of extreme conditions like death and medical necessity. He also used the insights of psychoanalysis to form a strikingly original theory about the role of law in public social ordering.

Bo adopted a paradoxical perspective on law, a perspective that informed virtually all of his work. Most law professors regard law as a dispute-settlement mechanism. When there is conflict in society, law intervenes to provide the just resolution of disagreement. But Bo believed that law should not be conceived as a mere repository of answers that resolve and settle social conflicts.

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For Bo, social conflict was unavoidable and pervasive; it ceaselessly derived from psychological needs that always reside in persons. What mattered to Bo, therefore, was not so much the *resolution* of conflict but the *process* of conflict resolution. He conceptualized law as a method of channeling conflicts in ways likely to make disputes constructive.

Bo was drawn to those aspects of law that could create pathways of conflict allowing the full play of human ambivalence and interdependence to be expressed under conditions of agonistic equality. He learned from psychoanalysis that only under such conditions could the process of conflict resolution be truly constructive. Bo also learned from psychoanalysis that although processes could not end conflict, they could make the relationship between contending parties more educational, more socially beneficial, and more likely to achieve a psychologically stable adjustment. That is what mattered most to Bo.

For Bo law did not merely settle disputes, it enabled disputes to follow the most beneficial possible paths, with no guarantee that in the end justice, abstractly considered, would be served. At the very end of his life, in his wonderful study of the *Book of Job* entitled *In the Whirlwind: God and Humanity in Conflict*, Bo expressed this point as analogous to the theological paradox of a God who seeks to command the love of his subjects. Even an omnipotent God cannot command this, because love that is commanded is not freely given and therefore not truly love.

Bo regarded the fundamental object of law as the creation of respect among persons. Bo understood that we would eternally disagree, but he insisted that we could disagree with respect. Equality of respect, like love, cannot be commanded. It can only be encouraged, by requiring persons to engage on equal terms. Such engagement always runs the risks entailed by mutual acknowledgment. Mutual acknowledgment can end up in mortal antagonism. But Bo was willing to take such risks, I think, because in his heart he believed in the goodness of all of us, despite his unrelenting insight into our darker sides.

The profound influence of Bo's perspective on the Yale Law School is obvious in the work of an entire generation of younger public-law scholars, like Paul Kahn, Jack Balkin, Reva Siegel, Heather Gerken, or myself. None of us derives our work from psychoanalytic premises, as did Bo, but all of us, in one way or another, imagine law less as a series of answers than as a method of channeling conflict.

In my capacity as Dean I could talk to you today about Bo's courage as a citizen of Yale Law School, of his leadership in the lawsuit aptly named *Burt v. Rumsfeld*, which challenged the application to YLS of the Solomon Amendment. The Amendment forced us to allow military recruiters on our campus, recruiters who would not recognize the rights of our gay students.

Bo's commitment to civil rights, dating back to the heady days of the 1960s when he clerked for Chief Judge David Bazelon and later worked on civil rights legislation as a legislative assistant to Senator Joseph D. Tydings, was always fierce and unyielding.

As Dean, I could talk to you today about Bo's astonishing range of expertise that spanned psychiatry, neuroscience, theology, Jewish history, constitutional law, medical ethics, and psychoanalysis. More than almost anyone I know, Bo was at home, and, more importantly, he *made home*, in many disciplines. As a Dean, I could also speak of Bo's ongoing work as a pillar of the Jewish community in New Haven. The Slifka Center owes a great deal to Bo, as does our more general understanding of the relationship of Jewish culture to American law. What other law professor in America would year after year offer a course on the *Book of Job*? From this perspective, Bo was the last figure in a great Yale tradition exemplified by Robert Cover.

But I confess to you today that I cannot speak in the voice of a Dean. I haven't the heart for it; I'm not strong enough. Bo was a dear friend to me, and I miss him too much. I have known Bo for a very long time, because I also clerked for Chief Judge Bazelon. And invariably I found in Bo someone who was utterly honest, empathetic, and open to all nuances of personal feeling and social interaction. Talking to Bo was comforting, because I always came away affirmed as a human being, with no part of me denied, and yet somehow the best parts of me affirmed.

I mourn with my whole being the loss of Bo's wisdom, his capacity for connection, and his gentle and but firm prompts to self-examination and self-recognition, prompts that were always grounded in mutual personal revelation. To talk with Bo was like drinking water in a desert. It was nourishing; it was refreshing; it was sweet.

Many years ago, I forget how many—but at the time I was teaching at Berkeley, not Yale—I was at a conference with Bo. We somehow ended up in a taxi together coming in from the airport. In the taxi we were talking about death, and in particular about the death of Bo's father. Bo said to me—and I have never forgotten it—that when his father died he felt he was a soldier in World War I.

You recall that in World War I soldiers went “over the top” of their trenches in waves that crashed against the withering and almost invariably lethal fire of the enemy. First one wave, and then another, and another. Bo said that while his father lived, he had always felt that there was a wave of soldiers who would be required to go over the top before him. He was safe, albeit the safety was temporary. But Bo said that when his father died, he suddenly felt vulnerable, like it was his turn to go over the top of the trench and into the fields of death.

So now Bo has been called. He has gone over the top. And it leaves me feeling alone and vulnerable. It leaves me with a miserable blankness, as though someone had taken down from the wall a portrait I loved to study. There is nothing in the place of that portrait now—only cold white plaster, where before I had had a friend in whom I could see reflected, in soft and compassionate understanding, the complexity of my own humanity. Death is a thief, and it has stolen my friend.

For this crime, I can offer as consolation only that we do still retain our own fallen humanity, that we still have with us Bo's remarkable texts to help us in the difficult task of acknowledging the ambiguous fullness of our own humanity, and that we still have the precious memories of Bo to help us retain faith in the capacity of our humanity to meet whatever exigencies we must face on this earth. Bo would have wanted us to hold fast to these hopeful but unyielding consolations.

So goodbye, my friend. We shall do our best to maintain faith with you.