

KEYNOTE SPEECH*

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Congratulations LLM, Masters and JSD class of 2023!

I'm not used to speaking at a graduation of this magnitude. It's overwhelming.

I am thrilled to be back at NYU on this day of elation and celebration.

We are here to celebrate you and your outstanding accomplishments after years of hard work, rendered even harder by the unprecedented circumstances we all went through.

I feel proud for each of you! And for each of your families!
What a gratification and what a relief!

A new page, a new chapter begins today.

We are all full jurists. People in law.

Whatever our professional field is and will be, we will work for justice.

Be it on the bench, at the bar, in business, in social work, in law firms, in public administration or in public service.

Your professional life can take many different forms. Law is everywhere and permeates every aspect of life. You can do many different things with this invaluable degree, earned at such a prestigious Law School.

Whatever your talent and whatever your field of interest may be, you will work for justice.

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Yet, what is justice?

It is hard to believe, but even after completing an outstanding course of studies in law, this question is almost impossible to answer.

Who is able to say what is justice?

We are not able to provide a persuasive answer, and yet this is an unavoidable question.

So, let us slightly rephrase it: what kind of justice do we want to work for?

This is more accessible.

We might not be able to spell out our idea of justice, but we have some images in mind.

Let me recall some turning points in my career where I was struck by “fragments of justice” that inspired my work as an academic, as a judge, as a minister of justice as well as in my personal life.

First picture.

I was in a seminar in Florence at the European University Institute listening to a young professor Joseph Weiler speaking about the origins of the European Union. He was telling us, PhD students, that European integration was born out of the intuition of three people: the German Konrad Adenauer, the French Robert Schuman and the Italian Alcide de Gasperi. It was the aftermath of World War II.

France, Germany and Italy had all been involved in the war, on different sides.

France and Germany had been long-time enemies. Yet they decided to try a common enterprise, right after the end of the war. They had learned from the previous experience that humiliating the loser was a lose-lose game. Even when the loser is the Nazi regime. The victim of humiliation would react with rage, resentment, aggression. Exacerbating conflict brings about more conflict.

If they wanted, as they did want, to preserve peace on the continent, they had to try a new experiment. So, they decided to take a counter-intuitive move. Three enemies became the main partners of a new legal community for the common regulation of a strategic economic sector. That small community based on solidarity and common interests is still there, it has grown, and it has developed, and it persists.

Even with war at its borders, now.

This ethos echoed the spirit of the founding of the Italian Republic in 1948, as I had learned from my professors in Law School. This is the reason why I studied Constitutional Law.

In the Constitutional Assembly, the political parties were dramatically polarized along the lines of the incipient Cold War. They had fought one against the other. Yet, despite all the reasons for conflict and disagreement, they were able to say all together a resounding “never again” to the fascist regime and were able to find a common ground for the construction of a new polity based on human dignity, democratic institutions, the separation of powers and the rule of law. The Constitution was written in some 18 months and approved by a large majority. Many points were left open, undecided. But that Constitution has always provided the necessary points of orientation throughout the history of the Republic, even during the most dramatic of times.

Building bridges between rivals: what kind of justice is this?

It left me disoriented, uneasy and disconcerted. And yet it also captured me.

Second picture.

NYU Law School, academic year 2009-10 – what a wonderful memory!

Albie Sachs, a former justice of the Constitutional Court of South Africa, was invited to give a lecture. He was a freedom fighter against apartheid in South Africa. He was a target of the apartheid regime and became a victim of an attack where he was severely injured, losing an eye and an arm. I remember him telling us that after the attack he was surrounded in the hospital by friends and people who were fighting alongside him for the same cause. One of them, who had spent twelve years on Robben Island (a maximum-security prison), told him not to worry, the attack on him «would be fully avenged».

Judge Sachs appreciated the devotion of this friend and was even moved; but he felt uncomfortable with the idea of vengeance.

He said – and I am quoting his words: «Perhaps there is something wrong with me, but the idea of an eye for an eye, a tooth for a tooth, an arm for an arm, fills me with anguish. Is that what we are fighting for, a South Africa filled with armless and partly

blind people? Is that what freedom means?» (A. Sachs, *Soft Vengeance*, p. 77).

Years later, Albie Sachs actually agreed to meet with his attacker.

It was the same spirit that some years later I recognized in my own country. A group of people, composed of both victims and perpetrators of the terrorist attacks by the “Red Brigades” in Italy during the 1970s and 80s, who had targeted the state and even kidnapped and killed Aldo Moro, an outstanding statesman and former Prime Minister. They agreed to meet each other- the victims and the perpetrators -, to look one another in the eyes, to spend time together and talk, with the help of a mediator. They have been meeting for eight years, in order to understand what happened on the other side, what moved the perpetrators to do what they did; to find out what happened to the families of the victims. And to restore their memories and their lives.

It is hard to believe, unless you do not listen to their own voice. Taming the instinct of revenge. Meeting with the author of an attack that caused you a permanent disability or costed the life of your father: what kind of justice is this?

Again, I was disoriented, uneasy, and disconcerted. And yet captured.

Some years later, I was sitting on the Constitutional Court of Italy.

It has been an honor and a privilege to serve my country in the Constitutional Court, with the mission of defending and disseminating the basic values of our Constitution.

During my nine years of service, I realized that, even unintentionally, the language of my reasoning included expressions like balancing rights, reasonableness, reasonable accommodation, judicial dialogue, institutional cooperation, law’s relations. And so on.

It is a language that bears the imprints of those fragments of justice that shocked me so much and yet captured me.

As a judge, I learned that even when we are confronted with hard cases and, sometimes, tragic choices, the solution is not an either/or option. There is always room for a third way out. Or even a fourth or fifth one....

A courtroom is not a comfort zone.

In fact, there are almost no easy cases. And make no mistake: there are no small cases at all. Each case is a serious one, for the people involved. And each case may be an opportunity for the judge to develop an important doctrine, for the lawyer to defend a right.

Hard cases push us to think harder, and to think more deeply, and to think more widely.

Taking seriously the discomfort that comes from hard cases: that's where new forms of justice come from. And often they are grounded in a «both/and» approach, rather than an «either/or approach».

The need for justice is always the same, but the responses to injustice change. Ancient Greek civilization shows this: from private vengeance to courts, from an eye for an eye to restorative justice – friends, do not miss the opportunity to read Aeschylus' *Oresteia*.

In my capacity of Minister of Justice of Italy, I was confronted with the problems of the administration of justice, I met the victims of a number of serious crimes, I visited a number of prisons and witnessed the miserable conditions of life therein.

The unquenchable thirst for justice for the victims calls for “a word of justice”. They need to have the courts promptly pronounce a judgment.

And yet even that is never enough.

I dedicated my best efforts to reforming the Italian criminal justice system, with the purpose of delivering justice to the victims while also giving the perpetrators of crimes a second chance, for the sake of everybody's human dignity and for the sake of a safe and secure life for our community.

That is why I turned my attention to restorative justice based on the experience of the South African Commission for Truth and Reconciliation.

Now, the paradigm of restorative justice is a new chapter of criminal justice in the Italian legal system and the European institutions strongly recommend it.

I am not a politician. I am a constitutional scholar, happy to be back with my first-year students in Bocconi University Milan.

But when I was asked to serve my country I never declined.

I took those public responsibilities without a political agenda, but with the legacy I was given by outstanding people like Joseph Weiler, Albie Sachs, and many others who intentionally or unintentionally helped me understand what I was looking for, what kind of justice I was seeking.

Dear NYU Law class of 2023, you are all destined for great things.

Law is your profession. It is also an extraordinary possibility to serve your country.

My wish for you is that you keep looking for the kind of justice on which you want to spend your personal and professional energies. Never give in.

Allow yourselves to be both disconcerted and also captured by the fragments of justice that come into your life.

Stay uneasy. Follow your stars!