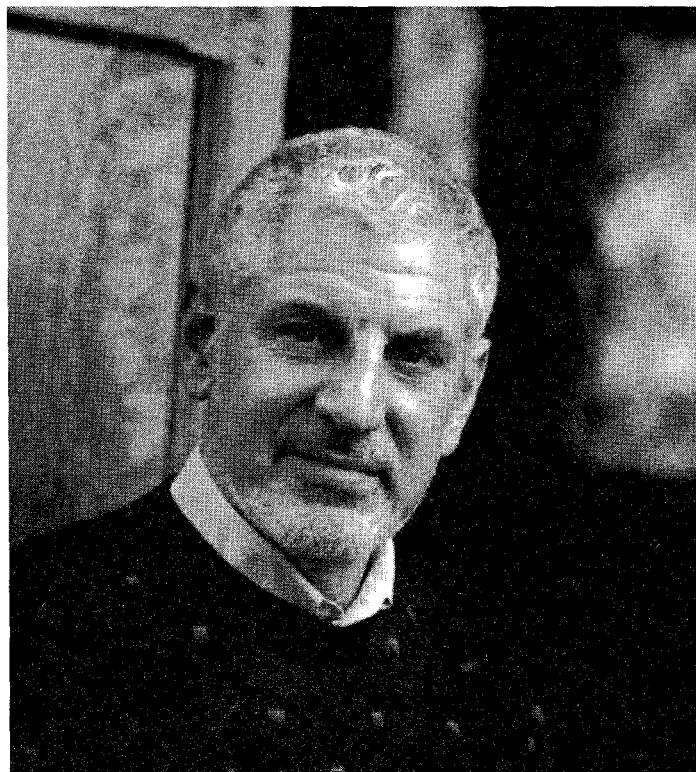




TRIBUTES

In Memoriam: Robert A. Burt



Robert A. Burt was a member of the Yale Law School Class of 1964, a Note and Comment Editor for Volume 73 of the *Yale Law Journal*, and a member of the Yale faculty for thirty-nine years. To honor Professor Burt, the *Journal* is proud to print this collection of Tributes to his life, career, and legacy. Unless otherwise noted, each Tribute is adapted from remarks delivered at Professor Burt's memorial service, held at the Yale Law School on November 1, 2015.

THE YALE LAW JOURNAL

ROBERT C. POST

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.

THE YALE LAW JOURNAL

OWEN M. FISS

The Odd Couple

In June 1988, Bo traveled to Santiago, Chile. The trip was sponsored by the Fulbright Commission and its stated purpose was to celebrate the two hundredth anniversary of the United States Constitution. Bo was accompanied by Abner Mikva, then a judge on the D.C. Circuit and by William Van Alstyne, a law professor at Duke. In a series of public lectures, Bo described the marvels of our Constitution, though he did so in a way that boldly and bravely discredited the orthodoxy that had long nurtured the dictatorship of General Augusto Pinochet.

Later that year, the Chilean people were asked, as their constitution required, to decide if they wanted the General to continue in office. Miracle of miracles, in spite of the all-encompassing power of the dictatorship, the noes won, and then to compound the miracle, Pinochet actually stepped down.

In paying tribute to a dear friend, the temptation is great to attribute the collapse of the Pinochet regime to Bo's eloquent defense of democracy. But that would be too much, even for me. I mention Bo's trip to Santiago because it marked the beginning of a new phase in our relationship—a phase that lasted for more than twenty-five years and ended only this past August on his death.

Bo and I had known each other for ages. We met in Washington in the mid-1960s. Bo had just finished a clerkship with Chief Judge David Bazelon, famous for his rulings on the insanity defense, and he had just begun to work for Senator Joseph Tydings, a leading sponsor of the measure that would eventually become the Civil Rights Act of 1968. I had come to Washington for a clerkship, and when that was over I joined the Civil Rights Division of the Department of Justice. The matchmaker was Peter Strauss, a classmate of Bo's who had clerked for Chief Judge Bazelon with him.

In the early months of 1968, Bo told me that he had just accepted a teaching position at the University of Chicago. I then confessed that I was about to leave the Justice Department and was considering the possibility of

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teaching. The next thing I knew, presumably thanks to a helping hand from Bo, the Dean of the Chicago law faculty was knocking on my door. So, we both began teaching law at Chicago in the summer of 1968.

Chicago turned out to be too much for Bo. After two years, he left and joined the University of Michigan faculty. For quite different reasons—I loved the high pressure and competitive atmosphere of Chicago—I left the school in 1974 to join the Yale faculty. In 1976, Bo joined me in New Haven, and we were colleagues here at Yale until his death. We read drafts of each other's works and spent countless hours participating in the public events of the school, most notably the Legal Theory Workshop. For years, we were also members of an informal discussion group that met off campus once a month. We even taught seminars together—one on the rights of the mentally disabled, the other on the death penalty.

In the late 1970s, soon after Bo joined the Yale faculty, we both became actively engaged in supporting an amendment, originally sponsored by a group of gay and lesbian students, that would change the regulations governing the Law School's career placement services. The amendment denied the use of those services to any employer who discriminated on the basis of sexual orientation. As a result, the Department of Defense was barred from participating in the job interviews scheduled by the Law School, even after the Department's policies shifted from one of outright exclusion of gays and lesbians to one of "Don't Ask, Don't Tell."

In 2001, the Bush Administration threatened to terminate all federal financial assistance to the University if the Law School kept this policy in place. Tony Kronman, then the Dean of the Law School, appointed Bo to chair a faculty committee to formulate a response. Bo counseled resistance. Soon after it became clear that the University, in the person of Rick Levin, the President, was of another mind altogether, a lawsuit was launched by the law faculty to enjoin the Secretary of Defense from carrying out his threat.

More than forty members of the faculty, all acting in their individual capacities, joined the suit as plaintiffs. We were as diverse, outspoken, and quarrelsome a group as any. Order, or at least the appearance of order, was maintained by our lawyer, Paul Dodyk of Cravath, and even more importantly, by a steering committee consisting of Harold Koh, Kenji Yoshino, myself, and of course Bo. Bo chaired the committee and acted as our spokesman. In deference to Bo's leadership, this hard fought lawsuit would become known as *Burt v. Rumsfeld*.

Although the day-to-day management of this lawsuit allowed me to work closely with Bo, our most extensive collaboration had begun much earlier, stemming from a shared interest in Latin America that even predated Bo's 1988 journey to Santiago. In June of 1985, I had taken a trip to Buenos Aires to witness the historic human rights trials then in progress. There I met Carlos

Nino, an analytic philosopher who was an architect of Argentina's transition to democracy. Nino, in turn, began to visit the Yale Law School. Very quickly, he and Bo became good friends, and the three of us soon formulated a plan to bring Raúl Alfonsín, the President of Argentina, to campus for a Chubb Fellowship—though I must admit that in saying this I'm using the word "bring" rather loosely.

The welcoming party was to consist of Bo, myself, and Bob Thompson, then the Master of Timothy Dwight College and the Director of the Chubb Fellowship program. Bob drove. We arrived at the Hartford airport early and were shown to a lounge that had a clear view of the runway where the Argentine military transport was to arrive. The three of us got into an extended discussion, probably about tango (a subject of special academic interest to Bob and a subject of great personal interest to Bo, who loved to dance).

After a while one of us glanced out of the window, only to notice that the Argentine transport had already landed and that a caravan flanked by Secret Service vans had started its trip down I-91. Frantically, we ran to Bob's car, raced down the highway, abandoned his car at the corner of Temple and Wall, and hurried to the front door of Timothy Dwight to welcome—breathlessly—the President of Argentina.

Although President Alfonsín's visit and the friendship with Carlos Nino had piqued Bo's interest in Latin America, the dramatic visit to Santiago in June 1988 turned what might have been passing curiosity into a firm commitment—a new chapter in our friendship was opened. Shortly after the visit to Santiago, Bo and I developed a student exchange program known as Linkages. Soon after the death of Carlos Nino in 1994, we launched SELA (the Seminario en Latinoamérica de Teoría Constitucional y Política)—a never-ending faculty seminar that brought over 125 scholars from Yale and the entire region together each year for a discussion of issues relating to democratic values and human rights. Through SELA and the network that it created and sustained, Bo and I mentored a new generation of Latin American scholars.

Although the leadership of these programs is now in the brilliant hands of Daniel Markovits, for two decades, Bo and I were at the helm, and that responsibility drew us even closer. We always had a good excuse to knock on each other's door or to call one another on the phone as we confronted one crisis or another. We also had occasion to travel together to Latin America, sometimes to check in on our students, sometimes to participate in the SELA proceedings, and sometimes to give lectures or attend conferences at the various law schools we had brought within the orbit of Yale's Latin America programs.

As a result of these trips, we spent hours and hours with each other in conversation—now no more. There were the car rides to the airport; the wait for flights, many of which were cancelled or delayed; and the flights

themselves, which to Santiago or Buenos Aires, or even Mexico City seemed to go on forever. We also often found ourselves alone after a dinner or a lecture, when we explored the city in which we were, sometimes walking aimlessly, sometimes with the purpose of getting to our hotel. We exchanged our impressions of the place and the people we met, and occasionally even found the strength to discuss the ideas presented in the lecture we had just heard.

On occasion these endless conversations extended to the personal—our children and wives. This was inevitable, since Anne and Jessica were the same age as my children and Linda and Irene were friends. Conversations about personal matters were especially appropriate since the directors of SELA, in their infinite wisdom, managed to change the date of the annual meeting from August to June to coincide with the weekend of Bo and Linda's wedding anniversary. Once, in a moment of weakness, the higher powers excused Bo from attending SELA so he could celebrate his anniversary with Linda—their fiftieth.

Despite these shared experiences, we were constantly reminded of the differences between us: height, an issue that sadly always seemed to bother Bo; Bo's affinity for facial hair, which in one period resulted in a moustache and in another a full beard; and differences in our dress. I always wore the standard issue for our generation—a dress shirt, tie, and blazer—even on the long overnight flights to South America. Once in a while, I would get really wild and wear a blue shirt, but for the most part it was white. Bo, on the other hand, always bristled at the academic uniform. In his early years of teaching, Bo wore a bowtie, handmade by Linda; he eventually settled on the open shirt with a gorgeous, colorful knit sweater, also made by Linda.

In June 2000, Bo and I traveled together to Buenos Aires for the presentation of the Spanish translation of his book, *The Constitution in Conflict*. Bo's luggage was lost, but not mine. At the formal presentation at the University of Buenos Aires I appeared as I usually did, while Bo wore the clothes in which he had traveled and, in fact, slept.

Bo told the story of this event many times, searching for an explanation why his luggage was lost and mine not. In telling this story, he often spoke with a touch of resentment, though I knew in my heart of hearts that he was quite pleased with how things turned out. He just loved the contrast in our appearances and the opportunity to appear in the august Sala Roja at the University of Buenos Aires without a tie or jacket.

There was also a difference in our education. We both graduated from law school in June 1964. Bo was a graduate of Yale, and loved the Law School. I was a graduate of Harvard. I have come to love Yale as my own, but I have always suspected that Bo attributed many of my eccentricities to my time in Cambridge.

Monroe Price has been the perennial Secretary of Bo's Law School Class. Once, in the 1990s, Monroe and I were at a conference together in Budapest, and, over the course of a long bus ride, I described my late-in-life attachment to Yale. On the spot, and with his customary flair, Monroe conferred on me an honorary membership in the Yale Law School Class of 1964.

In the end, Monroe's strategy did not work. Soon after the trip to Budapest, Bo and I were strolling through the streets of Buenos Aires after a lecture, and for some strange reason I yet again found myself proclaiming my love for Yale. What other institution in all the world, I said, would so generously support all our endeavors in Latin America—so ambitious, so unprecedented, and so expensive? Bo looked at me quizzically and then changed the subject. He knew that he was the elder son.

There was also a difference in our approach to religion. We were both Jewish, and proud of our heritage, but Bo engaged in ceremonies and rituals that had, over the years, ceased to be part of my life. He had served on the Board of the Slifka Center for Jewish Life at Yale, and once chaired it.

Bo made religion and his Jewish identity a subject of scholarly inquiry. In his early years, he published a book on Louis Brandeis and Felix Frankfurter entitled *Two Jewish Justices*. Over the last decade or two, Bo taught a seminar with Rabbi James Ponet and more recently with Paul Schwaber on the *Book of Job*. Spurred by that seminar, in 2012 Bo published *In the Whirlwind: God and Humanity in Conflict*, in which he sought to extract a political theory from the Bible.

In the preface to *In the Whirlwind*, Bo tells how, growing up, his father had wanted him to become a rabbi. Years later, Bo's father announced how proud he was of his son's professional accomplishments. At that point, Bo saw the need to explain that he was a law professor, not a rabbi. To which his father responded, "I've read what you've written in your law review articles. You are a rabbi."

There was, finally, an important difference in our outlook on legal issues, particularly on the role of the judiciary. Often drawing on psychoanalytic theory, Bo thought that the judge should be the handmaiden of what he called an "egalitarian conversation." The judge might have to use the power at his or her disposal to jump-start the conversation or to bring into the conversation those who have been systematically excluded from it. The judge might even have to enhance the position of some of the participants in the conversation, so that their voices could be heard and their grievances taken seriously. Yet according to Bo, the judge must never dictate the outcome: the warring parties must work it out for themselves.

I, on the other hand, have always saddled the judiciary with a much more grandiose, perhaps impossible, task: not just to facilitate and enhance a conversation, but rather to discover what justice requires, and then, even if the

world must be turned upside down, to make certain that the dictates of justice become a living truth.

In March 1965, shortly before Bo and I met one another, a play opened on Broadway that would prove emblematic of our relationship. That play, written by Neil Simon, was entitled, *The Odd Couple*. It was a big hit, later becoming a successful movie, and still later, an endless television series—somewhere, I imagine, the reruns are still being broadcast.

The play is about two friends—Oscar Madison and Felix Ungar—who through the force of circumstance suddenly become roommates. At the start of the play, Felix's wife had just thrown him out, while Oscar's wife had left months before. The action begins when Felix moves into Oscar's spacious Westside apartment. Friends they are, but the differences are sharp, and the bickering never ending. Oscar is a slob; Felix is fastidious. Oscar is eager for new adventures; Felix longs for his wife and is forever feeling sorry for himself.

With just the right touch of comic sarcasm, Oscar—played by the inimitable Walter Matthau—repeatedly complains about how Felix has taken over his life and rearranged the apartment. Oscar resents the changes and blames Felix for the collapse of a weekly poker game and even more for the disastrous conclusion of a dinner party with two sisters who lived upstairs.

The play concludes when the sisters invite Felix to move in with them, and Felix hastily accepts their invitation. The audience knows full well, however, that this arrangement is only temporary. The two roommates, tied by the bonds of friendship, will soon be back together. As the curtain comes down, Neil Simon asks us to imagine the possibility of a deep and enduring friendship, even love, in the face of difference.

At the core of the relationship between Bo and myself was a shared commitment to equal justice through law. In searching for a shorthand to describe our approaches to law, Bo once said that I believed in *Brown I* and that he believed in *Brown II*. In saying this, Bo intended not to underscore a difference but rather our agreement on basic values—the profound affirmation of equality that *Brown* represents.

Although this agreement on an issue of fundamental principle lies at the heart of a lifelong friendship, it should not obscure the differences that existed between us. As with Oscar and Felix, we were very different—in appearance, in manner, in schooling, in our views about religion and about psychoanalysis, and in how we sought to achieve equal justice. We were, indeed, an odd couple. We never argued, nor even bickered, but we often disagreed.

Bo and I were keenly aware of our differences and, even more importantly, we respected these differences and managed to turn them into the timbres of our friendship. These differences gave us reason to seek each other out and to get the benefit of the other's views. These differences added surprise and often

joyful dimensions to our common ventures. These differences provided a standard by which we measured ourselves.

I never dared to speak for Bo, and I will not now. My hunch, however, is that he was bemused, sometimes even intrigued, by my longing for certainty and desire for absolutes. But I can surely speak for myself, and now confess that whenever I felt I had discovered what justice requires, I thought of Bo and wondered whether I had grasped all of the complexities and subtleties of the situation at hand. I did that for almost fifty years, and will continue doing so. Sadly, the last curtain has fallen on our play, but in my mind's eye, and in my heart, the reruns will continue, forever.



THE YALE LAW JOURNAL

MONROE E. PRICE

Bo Burt: In the Whirlwind of His Own Making

Bo Burt was multiple conversations in process, so daring in ideas, so important to so many, so generative of ways of thinking. My vantage point is as a classmate and a friend, fortunate to have interacted with Bo as part of a rich and interesting cohort of (almost entirely) young men augmented by marriages and families. Already ambitious and with dreams of future accomplishment, our class, brought together through chance and skill, would together be reshaped and repositioned through the intense funnel of the Yale Law School. We could not then foresee how our friendships intersecting with major events would affect the arcs of our careers.¹

Now we have hindsight, for all it is worth. Even the fiftieth reunion of our law school class, the Class of 1964, is receding into memory. Increasingly, the stories of our classmates have not only beginnings, but ends. We can see how members, Bo included, negotiated political and cultural changes (Bo starting, after law school, with that most engaged of all federal judges, Chief Judge David Bazelon, and staying true to Bazelon-like principles of involvement). Still, we fight to adjust to the abrupt caesura of a man with such staggering vitality and range of ideas, mindful of how much he brought to meaningful realization in his books, articles, lectures, and those many conversations where he would happily guide those of us lucky enough to be his friends.

Given these many contributions, I focus on what those early Yale and post-Yale years might have meant to Bo, and what course they helped to set. Doing so might help us see again the magic in the fact that we were at *that* Yale Law School, interacting with *those* faculty and *that* extraordinary combination of

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1. One example: when we arrived at the law school, John F. Kennedy was President, and Earl Warren, Chief Justice; when we left, the President was Lyndon B. Johnson, and the kaleidoscope of American law and society had refigured itself. The '60s were beginning as we were leaving in 1964.

fellow law students. It might refresh our sense of racing up and down those New Haven staircases, from Coke Lounge to the library, working through the night in a decidedly predigital age, always in a cauldron of strong personalities, clanging ideas, and wrestling intellects. We get a glimpse of what it meant that we lunched together and launched together. How did our interactions at 127 Wall Street help forge a path? How did that path turn or pivot with our initial ventures after graduation, like Bo's with Chief Judge Bazelon and, just afterwards, Senator Joseph Tydings? How did we function as a group, classmates checking in with each other, collaborating, becoming family friends, often being mutually supportive? Surely, those precious years together engendered ideas and vectors traceable in the lives that unfolded.

A convenient starting place, oddly, is Bo's very last public presentation, preternaturally elegiac, which he gave two weeks before his death. The title was resonant with valedictory, bringing him and us back to our formative student days. The site of his talk was the Sigmund Freud University, the audience scholars of law and mental health, and the subject *The Yale School of Law and Psychoanalysis, from 1963 Onward*. I like the title especially because he describes an epoch defined as starting when we were students. And I like it because it makes the task of eulogizing easier: Bo was given to elegant, subtle, and satisfying self-eulogy.

"Here we were," he wrote in his Vienna talk, "in an intimate seminar room with Anna Freud, the founder of the discipline of child psychoanalysis and the daughter of Sigmund Freud, the founder of the entire enterprise of psychoanalysis." He recounted, somewhat breathlessly, that "[t]his was the beginning for me of a long fascination and engagement with psychoanalytic thought. It was an exhilarating beginning." Of course, Bo's suggestion that we were part of an about-to-be significant moment, if not an already historic one, is nicely typical of how we were acculturated at the law school and thereafter, how we were encouraged to think, and of how things were. His talk resonated with a recollected perception: we were persuaded that what we were doing at the Yale Law School was, or would be, thunderingly consequential—though just how and when that might be was shielded from view. Bo captured that tone of expectation in his talk and captured that fulfillment in his life.

Bo recounted how we were witness to Anna Freud's thinking, as it had evolved in the not quite two decades since World War II. A main feature, Bo recalled, was her concept of "the psychological parent," which followed from the child's need—"purportedly according to psychoanalytic thinking," as Bo gently distilled it—"for a single, physically engaged caretaker."²

2. Bo recognized that Freud was perfecting and testing her thoughts for what would later become *Beyond the Best Interests of the Child*, a book published in 1973 and coauthored with

In the seminar, Freud and her colleagues argued “that this concept of ‘the psychological parent’ should trump any claims to child custody by biological parents who had not been physically engaged with the child, especially [during] infancy.” Something about this gnawed at Bo, as it did for many, both in the seminar and later on. Should there be such a conclusive rule? Could it effectively counter other human impulses? Bo’s Vienna talk indicates how nettled he was, in a constructive and creative way, even during the seminar. The talk celebrates how he and fellow students debated these propositions every week, mentions how he organized rump sessions in Max’s (the law school’s then-dining facility), describes how he and his fellows tried to confront their famous instructor, and also notes how puzzled he was at the calm and authoritative way in which Freud tamped down students’ objections upon their return to the seminar room.

Of course, most of us in the seminar left it at this, satisfied with an engaging and interesting course. But the thing about Bo, as we could come to know from his later thinking and writing, was that he saw the largest, most consequential issues in various human interactions. And he cared deeply about them. The 1963 seminar lingered in his mind, engaging him for the rest of his life.

A half century later, he would bring these worries to a dramatic Viennese conclusion. “I tell you this account of our seminar with Anna Freud,” Bo wrote, “because it illustrates one reason that led, soon after 1963, to the precipitate decline of the intellectual influence of psychoanalytic thinking in America.” Linking our Yale experience to something as substantial as the global fate of an intellectual movement might reflect some Yale-centrism, but why not?

More importantly, what it reveals is that Bo’s writings were often scholarship in the grip of autobiography. To make his major point, Bo faulted what he called “our deferential awe and Miss Freud’s self-confidence, even dogmatism, in providing answers to every puzzling question about human behavior. Miss Freud was polite,” he wrote, “attentive, gracious to us—but she also appeared certain that she could understand the psychological functioning of the individuals we studied.” This certainty and claim to definitive authority, which Bo noticed at a young age, would not only be a flaw in the seminar, but a disaster as an approach to psychoanalysis. As he said in Vienna, breaking from his teacher, “The great intellectual contribution of psychoanalysis is not in its certainty, not in its capacity to answer questions about individuals’ psychological functioning, but in its uncertainty, its capacity to see questions, contradictions and complexities that lie beneath the ordinary surface of rational thinking.”

Joe Goldstein and Albert Solnit. See JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973).

It is an insight into Bo's life and mind that his talk was a critique of certainty, finality, and authority. His all-encompassing interpretation justified the sweeping title of the remarks. For him, this truly was the story from 1963 onward, "a progression from an authoritarian conception of the analyst's role, in which he was all-knowing and his patient was expected to defer to his superior scientific pronouncements." Bo was able to see this progress, grasp its importance, and help us see it, too.

In the end, a bold and illuminating thesis emerged from that seminar and the ensuing history. Bo, of course, puts it best:

Psychoanalysis never provides the basis for imposing final resolution of conflict on anyone. Psychoanalysis can only build from one tentative hypothesis to another. . . . This is the core proposition that I derive from my career-long effort to understand the possible uses of psychoanalytic thinking in legal analysis—an effort that began with my teachers in New Haven in the early 1960s and continues today.

The Freud seminar was but one example of how our Yale Law School was a site from which the future Bo could and did flourish. I could trace many more consequences of the collegueship, budding scholarship, friendship, and modes of influence that mark that time. I am slightly reluctant to attempt the great leap from the authority and finality of psychoanalysis to the authority and finality of courts and constitutions. But that is just the sort of leap that Bo could make look so effortless, and it provides another way to link parts of his work back again to our time as law students.

On the questionnaire distributed to classmates for our fiftieth reunion, Bo listed Alexander Bickel alongside Joseph Goldstein and Jay Katz as his favorite professors—quite an unusual combination. But common characteristics of our days at the Yale Law School were the many moments we spent with the arguments that Bickel had just put forth in *The Least Dangerous Branch*, published in 1962.³

Indeed Professor Bickel could have been a model for Bo: a living, breathing goad, questioning and simultaneously enhancing the legitimacy of established institutions. Just as every one of Napoleon's soldiers carried a marshal's baton in his knapsack, so did every Yale Law graduate from that era carry forth a piece of Bickel's institutional critique, seized by the questions of power and authority that are in the law professor's normal quiver of concerns. One of his first books, *The Constitution in Conflict*,⁴ might be read as a long address to his

3. ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (1962).

4. ROBERT A. BURT, *THE CONSTITUTION IN CONFLICT* (1992).

teacher. Bickel was considered bold for assessing the legitimacy of the Supreme Court in *The Least Dangerous Branch*. He stopped before taking on God. Bo did not.

Bo's enormously ambitious and elegant *In the Whirlwind*, his 2012 tour de force through the Hebrew and Christian Bibles, can be read as the ultimate inquiry into finality and authority, inquiries that very well may have begun in Bickel's class. Bo's book is, again, characteristically bold. Its task is no less than to challenge what Bo considered the conflict between standard Biblical exegesis and "the core claim of modern secular Western political theory," namely that "[n]o authority, whether divine or secular, deserves automatic obedience."⁵

Bo was arguing against a conventional account that "the biblical God deserves obedience simply because he is God, not because he is just or righteous as judged by some external standard." Along the way, he plays mercilessly with comparisons between God's authority and that of the Supreme Court, seeking to determine which, if either, is infallible; which, if either, is final; and when. He writes, "The Court rarely admits its weakness and its dependence on voluntarily offered, conscience-based compliance, and it almost never approaches popularly elected officials with the same elaborate display of deference with which Abraham, Moses and Jesus encircled their moral critiques of God."⁶

Long before *In the Whirlwind*, there was *Two Jewish Justices*, which Bo published in 1986.⁷ It is also, in its way, about authority. Bo's cherished classmate, Charlie Halpern, had asked him to give a lecture in honor of Charlie's late father, the distinguished New York Judge Philip Halpern. Charlie asked Bo to speak about the "role of Jews in American law."

What a fruitful challenge that turned out to be! Just as Anna Freud's seminar had sparked a lifelong occupation with psychoanalysis and the law, just as Bickel's fabled classes bred inquiries into judicial authority, Charlie's assignment opened lines of inquiry about Jewish identity and thought that would pervade Bo's marvelously productive years.

The Halpern Lecture also gave Bo additional warrant to couple self-realization with academic inquiry. In *Two Jewish Justices*, the quite personal book that came out of the lecture, Bo presented Frankfurter and Brandeis through the lens of their common religious heritage—common, but significantly distinct in practice, with Brandeis much more publicly associated, for example, with Zionism. This was a profound sociology of law, combining American history, the immigrant experience, and Jewishness and using his two

5. ROBERT A. BURT, *IN THE WHIRLWIND: HUMANITY AND GOD IN CONFLICT* 1 (2012).

6. *Id.* at 303.

7. ROBERT A. BURT, *TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND* (1988).

illustrious subjects to detail their decisional consequences. Bo posited a Jewishness of the time that was distinctively associated with outsider status—he used the term homelessness, though today we might use rootlessness. That conception in hand, Bo demonstrated that the two Justices assigned conflicting values to their status and their Jewishness, both in their personal lives and in their conduct as Supreme Court Justices.

Bo's heart was with Brandeis. His depiction of the Justice emphasized characteristics that, of course, were reflected in Bo's own history and values. Brandeis, Bo writes, "tried . . . to carve a different social space for himself that confounded the distinction between insider and outsider." Significantly for Bo, he "did not thereby attempt to become an insider. Nor did he accept the continued existence of the social status of outsider as a thoroughgoing pariah would do. Brandeis implicitly sought instead to dissolve the distinction."

When he saw an "outsider," Brandeis "would strive to interpret this outsider's needs and concerns to the insiders of the day, to dissolve social boundaries by inspiring sympathy and fellow feeling on both sides. His role . . . was to stand at the boundary of insider status and work toward its dissolution." The same can be said, lovingly, of Bo as well.

Two Jewish Justices was perhaps Bo's warmest public embrace of our time at Yale Law School. In the preface, he says that "[w]hen I arrived at the Yale Law School as a student in 1962, I felt somehow that I had found a home."⁸

We were all fortunate to be part of that home, that home that Bo enriched. As the class scribe for a half century, I appreciated what good copy he was. Whenever I needed to demonstrate what a fabulous class we were, I could cite what Bo was doing or had recently accomplished. He was always on the verge of major initiatives, creating a new generation of Latin American constitutional scholars, or shaping professional ethics by taking a batch of obtuse lawyers to Auschwitz and challenging their sensitivities, or lack thereof. He was opening a new field of social science related to neuroscience. He was advising foundations on how to create a world more understanding of the medical-care needs for the aging and at the end of life.

But it was his commitment, his curiosity, his deliberative nature, and his scope of knowledge that truly made not only the Yale Law School but also his

8. The reason he gave was telling, and marks a difference between the Yale Law School of the day and contemporary Oxford and Princeton, Bo's two previous academic roosts: "Though I made no precise count at Yale, it seemed to me that almost half my law school classmates were Jews; and I was startled by this sudden experience of being so much surrounded by Jews in a place other than a synagogue." Later, he was intrigued anew by the demographics of his colleagues, and their influence on the scholarship, when he returned to Yale to teach in 1976. "I discussed this with a few friends," Bo wrote. "All agreed on the relevance of the Jewish talmudic tradition and the special reliance by our parents and grandparents on professional education as a vehicle for assimilation in America."

broader environment a better home to all. To borrow a term from his old teacher, Anna Freud, Bo was a psychological parent; to borrow his language, he was an insider breaking down barriers in Brandeisian terms, and an outsider seeking comfort in Frankfurterian perspective. In the preface to *Whirlwind*, he famously describes his first stilted effort, at his bar mitzvah, exercising his role as a Kohen,⁹ the inherited function as a member of the Jewish priestly class. He considered that he failed at that moment, fraudulently mouthing the words. But Bo *was* a Kohen, of a special sort: a High Priest trying to ply his craft in a secular academic world.

9. Bo opens *In the Whirlwind* with a story about his father and his grandfather, who was a Kohen, or member of the tribe of high priests. "Your grandfather wanted me to be a rabbi," Bo's father said to him. "I failed. But now you've succeeded in achieving grandfather's wishes." Bo demurred, insisting he was merely a law professor. But his father insisted: "I've read what you've written in your law review articles *You are a rabbi.*"



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MARTHA MINOW

Connecting to What Matters: Remembering Bo Burt

Bo Burt was gentle and passionate; supportive and forceful; larger than life and committed to improving death and dying. I am honored to be here, and to join Linda, Anne and Jessica, and all the families of Bo as we pay tribute to him and mourn together.

I was not officially his student in law school. Instead, I was his student for life. As a reader of his work, as a member of the extended family of law clerks of Judge David Bazelon, as a fellow board member for the Bazelon Center for Mental Health, and as a friend, I learned from him. His students, colleagues, family, and friends are not the only ones diminished by his passing. All who learn from paradox should feel his loss. The same is true for all who think we human beings are at our best when grappling with the hardest problems. I always think of him with his sleeves rolled up – literally and figuratively – ready to wrestle, gently yet persistently, with directly engaging tough questions.

Bo asked: what is the dark side of benevolence? This was on his mind when we first met; he was writing what became the book, *Taking Care of Strangers*.¹ I read the manuscript and discovered a searching and often agonized voice. He did not spare the reader details about physical and emotional pain. I had never encountered legal scholarship like this. The text is passionate, vivid, and indifferent to the lines so often separating law, psychology, ethics, and meaning. In that book, Bo looked hard at what happens between doctors and patients. He found too often hypocrisy and abuse.

He concluded, “[B]oth physicians and patients equally need protection to assure that the benevolent intentions each brings to their mutual encounter with illness and death are not transformed, however unintentionally, into their destructive counterparts.”² With his distinctive psychoanalytic lens, Bo interpreted Stanley Milgram’s studies to exemplify his own conclusion: by

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1. ROBERT A. BURT, *TAKING CARE OF STRANGERS* (1979).
2. *Id.* at vii.

treating relations between people as if they were objects of science, people can “lose common empathetic identifications with one another and engage in brutally hurtful conduct.”³

Some years later, he asked: why do great judicial efforts to pursue justice fail? Why did *Brown v. Board of Education* fail to end racial hierarchy in law and practice? Bo located at least part of the problem in the Court’s replication of the very relationship of domination and subordination it meant to undo. He explained, the Court squandered opportunities “for promoting relations based on mutual respect for equality among social adversaries.”⁴ Progress could come only when the Court stops this pattern and opens “the previously coerced conclusion of this warfare embodied in the race segregation regime and requiring that some new settlement be reached that would adequately honor the equal status of both parties.”⁵ He embraced the constitutional stance of Abraham Lincoln, questioning judicial supremacy in constitutional interpretation.⁶ Here, he drew on psychological and political insights, finding in egalitarian authority not only a desirable set of relationships, but relations more meaningful and more workable than relations of hierarchy and control.⁷ He argued that we must see and dive into the conflicting experiences of unity and conflict.⁸

Earlier this year, Bo questioned how tolerance can work if it depends on keeping one’s differences private. Bo commented on President George Washington’s letter to the Hebrew Congregation in Newport, Rhode Island. President Washington offered a vision of tolerance for religious difference not as an indulgence but as a governmental guarantee.⁹ Bo found precursors of

3. *Id.* at 89.

4. ROBERT A. BURT, *THE CONSTITUTION IN CONFLICT* 309 (1992).

5. *Id.* at 293.

6. *Id.* at 3.

7. *Id.* at 365-75.

8. *Id.* at 30.

9. Washington wrote the letter after a visit to Newport, Rhode Island, where he was greeted by community leaders, including Moses Seixas, one of the officials of Yeshuat Israel, the first Jewish congregation in Newport. Seixas addressed President Washington with this statement:

Deprived as we heretofore have been of the invaluable rights of free Citizens, we now (with a deep sense of gratitude to the Almighty disposer of all events) behold a Government, erected by the Majesty of the People—a Government, which to bigotry gives no sanction, to persecution no assistance—but generously affording to All liberty of conscience, and immunities of Citizenship: deeming every one, of whatever Nation, tongue, or language, equal parts of the great governmental Machine.

current conflicts between religious freedoms and protections for people who identify as lesbian, gay, bisexual, or trans. Empathetically imagining views not his own, he wrote, “[I]f opponents can claim nothing more than a privacy right, then they may not seek public endorsement of their religious objections to same-sex marriage.”¹⁰ He warned that retreating into private corners does not work if diverse groups are all to enjoy equal respect and exercise equal ownership of the society. But the alternative may be polarized controversies, with irresolvable clashes of intolerant views. Rather than suggesting a legal or political solution, Bo called for personal efforts at self-control by people on all sides of disputes. He wrote, “In a society equally owned by everyone, all disputants (no matter how convinced they may be of the superior morality or justice of their positions) must refrain from pursuing complete and conclusive victory over their opponents.”¹¹ Perhaps he learned something about this from decades as a law professor.

Bo’s questions reached into his own Jewish identity and how to make sense of what is particular and what is universal in human experience.¹² Looking at Justice Felix Frankfurter, he delved into the double-experience of being an insider and an outsider.¹³ He brought his knowledge of psychology, history, and Jewish and Christian texts to bear on profound questions about the relationships between God and human beings.¹⁴

Over the course of many years, Bo asked questions about death. He asked how to prepare for it. He asked how to reduce the pain of it. He focused not just on the dying but also on those left behind, including family and friends

Letter from Moses Seixas, Warden, Yeshuat Israel, to President Washington (Aug. 17, 1790) in 6 THE PAPERS OF GEORGE WASHINGTON: PRESIDENTIAL SERIES, JULY-NOVEMBER 1790, 286, 286 n.1 (Dorothy Twohig et. al. eds., 1986). The original copy of Washington’s letter is held at the synagogue. See Letter from President Washington to the Hebrew Congregation of Newport (Aug. 21, 1790), <http://www.tourosynagogue.org/history-learning/tsf-intro-menu/slom-scholarship/86-washington-letter> [<https://perma.cc/9AQX-QQP8>].

10. Robert A. Burt, *Between Toleration and Rights: Echoes of the George Washington Letter in Contemporary Legal Debates*, in FACING HISTORY AND OURSELVES, WASHINGTON’S REBUKE TO BIGOTRY: REFLECTIONS ON OUR FIRST PRESIDENT’S FAMOUS 1790 LETTER TO THE HEBREW CONGREGATION IN NEWPORT, RHODE ISLAND 173, 177 (Adam Strom et al. eds., 2015).
11. *Id.*
12. ROBERT A. BURT, TWO JEWISH JUSTICES 3 (1988).
13. *Id.* at 56.
14. ROBERT A. BURT, IN THE WHIRLWIND, at xi-xii, 347-48 (2012) [hereinafter BURT, IN THE WHIRLWIND].

and also the health-care providers.¹⁵ He asked how society and professions should regulate physician-assisted suicide, abortion, and capital punishment.¹⁶

Given Bo's penchant for dialogue, it is fitting to look at responses to this work. Dr. Timothy Quill disagreed with some of Bo's analysis, but he commended Bo for "remind[ing] us that irrational forces come into play in all end-of-life practices and that we deny them at peril to our patients and our profession." An anonymous reviewer on the Amazon site wrote:

As an ordained minister, I found that I am able to speak on a much higher level, being able to eliminate the typical reactionary responses we are typical of hearing in this country surrounding the ethics of death. Particularly, for me as it relates to the issue of abortion, has the book been a god-send. Burt has systematically outlined the historical attitudes and public mores surrounding abortion by locating the moment the controversies began. Like most things in society at-large, there are competing interests for every aspect of life. Someone always wants to be in control. I will refrain from giving away too much so that you will be as intrigued as I while reading a couple years ago.¹⁷

Another reviewer offered comments that apply not just here but also to much of Bo's work: "This book challenges its readers to think deeply about topics that most people would rather not confront at all."¹⁸ This comment captures well Bo's emphasis on investing as much reason and self-control as we can while we learn to live with what we cannot understand.¹⁹

Bo pursued his questions as a scholar and teacher and also as an advocate. Through the Open Society's Project on Death in America, he worked hard to change the medical and cultural treatments of death in the United States.²⁰ He worked for access to palliative care and changes in the training of health-care providers.²¹

15. ROBERT A. BURT, *DEATH IS THAT MAN TAKING NAMES: INTERSECTIONS OF MEDICINE, LAW, AND CULTURE* (2004) [hereinafter BURT, *DEATH IS THAT MAN TAKING NAMES*].

16. *Id.*

17. TheProfessor, Review of *Death Is That Man Taking Names: Intersections of Medicine, Law, and Culture*, AMAZON (Sept. 25, 2006), <http://www.amazon.com/Death-That-Taking-Names-Intersections/dp/0520243242> [<https://perma.cc/A7U8-3A7C>].

18. William J. Winslade, *Death Is That Man Taking Names*, 78 BULL. HIST. MED. 925, 925-926 (2004) (book review).

19. *DEATH IS THAT MAN TAKING NAMES*, *supra* note 15, at 182-84.

20. Kathleen Foley, *The Open Society Remembers "Bo" Burt*, OPEN SOC'Y FOUND. (Aug. 19, 2015), <http://www.opensocietyfoundations.org/voices/open-society-foundationsremembers-bo-burt> [<https://perma.cc/DSK7-G9A6>].

21. *Id.*

He also worked on behalf of persons with mental disabilities. As an engaged trustee for the Bazelon Center for Mental Health Law, he urged the staff to face, not avoid tensions, conflicts, and complexity. He probed possible avenues for reforming laws and bureaucracies while never losing sight of the human beings on all sides of the issues. Once we traveled together to advance the case for more funding for mental health law advocacy. Bo was passionate and persuasive. We secured the funding. Rud Turnbull, fellow board member, wrote Linda in August, "It was one of the highlights of my personal life (as father of a man with several disabilities) and professional career . . . to have known Bo. . . . He was extraordinarily sensitive about other people, thoughtful in responding to their points of view, careful in his role as trustee and chair of the board to assure that the Center did not waver from its core mission when tempted by funding sources to do so, and grateful to each of the members of the Center's staff, including especially the support staff."²²

Bo pressed questions about authority with uncanny attention to psychodynamics. He explored the relationship between sons and fathers and between people and their ideas of God.²³ He had no questions, though, in his devotion to his families—his Yale Law School colleagues and students, his fellow travelers working to change death and dying and to transform rights and treatment of persons with mental disabilities, his colleagues pursuing justice all over the world, and above all, his wife and his daughters. He lit up when he talked about Linda, Anne, and Jessica. I think he could face the hardest, darkest questions because he loved and was loved so deeply. I venture this speculation because it is the kind of insight Bo offered over and over again: connecting the personal and the intellectual, the private and the public, unity and conflict, particular and universal, endings and beginnings—and life and death. Missing arguments and discussions with him, I will try hard to see the other side as he would. I will try to bridge the unbridgeable, to embrace paradox and struggle, and to resist temptations to look away from what is right, what is painful, and what is most human.

22. Letter from H. Rutherford Turbull, III to Linda Burt and Daughters (Aug. 10, 2013) (on file with author).

23. BURT, IN THE WHIRLWIND, *supra* note 14, at 343-44, 347-48.



MARTÍN BÖHMER

Robert Burt: Repetition and Insistence

“What’s in a name?” Juliet wished there was nothing in it, but there was Romeo, a Montague. What’s in Bo’s name? It seems that here also there is nothing in it, but there is: a strange sound, a faint echo, a repetition. Robert Amsterdam Burt, Robert Burt, Bert Burt!

I have always wondered about that sound. It may have been my foreign ear that picked up something nobody ever realized was there. So I cautiously asked Linda about it a few days ago and she answered with this story, in fact, with Bo’s story about his own name—because, as she correctly points out, with Bo there is always a story.

It goes like this: Bo’s mother liked the looks of an actor named Barry and decided to give her son his name, but as soon as she saw the looks of her son she decided otherwise. Not Barry anymore, but Robert. And she added her family name, Amsterdam, in between her son’s and her husband’s names, thus hiding the repetition: Bert Burt. This echo in his name sounds like someone calling him insistently, someone eager to get his attention, to engage or to reengage in conversation with Bo. One has to wonder how such a calling inscribed in your name would affect your life.

Although Bo was my J.S.D. supervisor, I was never his student—never a formal one, anyway. I only sat for a couple of months in his famous *Book of Job* course. That transforming experience is still with me, and I am indebted to Bo and Jim¹ for it. Now we have a book, *In the Whirlwind*, where many of those wonderful insights we learned about in the classroom are displayed for everyone to enjoy in print.²

They are there to be found and especially one: the rhythmic succession of fateful interactions between God and Humanity. God’s longing for

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1. Rabbi James Ponet.

2. ROBERT A. BURT, *IN THE WHIRLWIND: GOD AND HUMANITY IN CONFLICT* (2012).

companionship, Humanity's attempt at autonomy. God's anger, Humanity's expulsion. God's arbitrariness, Humanity's anger. God's punishment, Humanity's guilt. God's forgiveness, Humanity's doubts. God's promises, Humanity's hope. And so on. Bo underlined this ongoing cycle, not the fact that it was a cycle, but the fact that it kept going on and on.

Whenever the cycle seems to have stopped, the narrative of the Bible uses repetition to start the process again. In the beginning, for example, instead of one, final attempt at creation, we have two, tentative, unstable Geneses. When the first did not work out, God did not keep resting, but insisted and started again. And then he could not resume resting; he had to deal with Humanity, and the task was not easy. Humanity disobeyed; God banished us and made us mortals. God preferred Abel; Cain killed him. God banished Cain; God regrets that Cain's descendants' evil "was great on the earth and . . . every scheme of [their] heart's devising was only perpetually evil," and so eventually He flooded the earth.

Thus far the narrative shows the failure of a scheme of command and punishment to achieve the results God is seeking to accomplish: to walk again in the garden with us. But the threat of punishment did not work and obedience to avoid punishment was obedience for the wrong reason. Thus the rainbow, that ominous "mnemonic tool" as Bo calls it, assured Noah that destruction was, from then on, out of the question.

What next? With Abraham we witness the arrival of the basic twin institutions that deal with the uncertainties of human action. We cannot undo past wrongs and we cannot secure future behavior; thus God shows us in Abraham a possibility forward: to forgive and to promise. God forgives Abraham for past wrongdoings and promises to make of his descendants a "great people." Will Abraham walk again with God? He did, at least for a short while, when he bargained for the innocent in Sodom and Gomorrah. But will God keep His promises? Abraham did not know, and became mistrustful. He thought his sons had died, and Isaac, his only one remaining, was about to be killed by Abraham's own hand to comply with God's command of sacrifice.

And this is when God calls out for Abraham to stay his hand, naming him twice. "Abraham, Abraham!" One time is not enough any more. A mistrustful Abraham needs to be reminded that God is talking to him, is delivering His promise to make a great nation of Abraham's descendants. His mistrust may be understandable because although God had spared his other three sons, Abraham did not know about it. God complied, and expected Abraham to believe in Him, no matter what his senses might tell him. But Abraham was too human, and saw what God was capable of, and then they did not talk to each other again. There will be no more walking in the garden for them.

Abraham's grandson Jacob would not walk but bargain and even wrestle with God. The mistrust will stay among Abraham's descendants. Jacob loses

his first wife, whom he loved, and his favorite son, Joseph. Therefore, when he is on his way to Egypt God has to repeat his name “Jacob, Jacob!” and then reintroduce Himself, explaining who He is twice: “I am the god, God of your father,” as if suspecting Jacob had forgotten all about Him.

Then silence and enslavement befall the Jews, as it was promised, for four hundred years. This long period comes to an end when a name is called twice from a burning bush: “Moses, Moses!” And Moses uses the traditional reply, already used by both Abraham and Jacob: “Here I am.” Thus starts one of the most, if not the most, memorable relationships in the Bible, a relationship that will echo in the *Book of Job* and in the Christian Bible’s story of Jesus. God finds in Moses an equal, a fellow in conversation, someone who can walk again with God. But Moses insists in securing God’s part of the bargain. He wants not only to establish an intimate relationship with God but also to assume the leadership of his people. A jealous God does not take this partial loyalty lightly, and Moses dies a wanderer.

With his fascinating reading of the *Book of Job* and the story of King David, Bo prepares us for Jesus. In Job, Humanity calls this time, trying to bring God to the conversation. And it succeeds. God replies angrily at first, but later He replies somewhat remorsefully in order to create a relationship among us based this time in the willingness to repent for our own, and also to forgive the other’s, wrongdoings. In David, this moment is underlined by his calling twice in grief to his dead son, “Absalom, Absalom!” who had offended David, who is in turn guilty of the death of his first son.

The last repetition is Jesus’ call on the cross: “My God, my God, why hast thou forsaken me?” It is a call and a question. For Bo, it is *the* question of the Bible. That is, whether we can keep trying to engage in conversation despite our misgivings, our disillusionings, our broken promises.

The repetition of names was first an insistence on being heard when trust was compromised, then it became a call for reengagement in the hope of creating a bond among equals, and then an assumption of guilt and a disposition to forgive the guilt in the other. But always it was a call to keep the conversation going.

Likewise in law. Bo also heard a name repeated in the best moment of the United States Supreme Court, the call he heard when the Warren Court repeated twice *Brown v. Board of Education*. Bo taught all of us, forever, the many ways judges have to keep the democratic deliberation going. But *Brown* was always in his mind. When the Justices affirmed *Brown* twice they were calling to the oppressors to hear the call of the oppressed: not only the segregationist states, but also the oppressive majority of whites. And they heard, and they came forward, and they marched, making real one of the most beautiful performatives a leader ever pronounced: “I have a dream.” And then

the repeated call in *Brown* became law, and Bo was there, as were Burke,³ and Owen,⁴ my beloved professors of this incredible law school working on the Civil Rights Act, and beyond.

Burt, Burt! The call Bo heard in his name insisted that he should keep listening, and talking back. Now every time we say his name it will make us aware of the call and the insistence in it, and it will prompt us to keep asking, and responding, even when hurt, even when betrayed, even in the darkest hours that, as Bo told us, will certainly come. But then again, in those hours, we will be sure that after calling him twice, his works, his classes, and his memory will tirelessly, relentlessly, respond, as he always did, "Here I am."

3. Burke Marshall.

4. Owen Fiss.

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ANTHONY T. KRONMAN

Two Dreams

The week after Bo died, I dreamt about him twice. The first dream was very short. The second was longer and picked up where the first one left off. I can't recall ever having had two continuous dreams of this kind before. But I felt a tremendous excitement when the second dream began. That's because the first dream was the start of a conversation with Bo and I had another question I was desperate to ask. Describing one's dreams in public carries obvious risks. But I know that Bo, of all people, would have wanted me to go on.

The first dream, as I say, was a short one. I was standing in a room with some other people. I looked over and there was Bo. He seemed tired as one might after a long trip. He was covered with a fine white dust. I remember thinking, "He must have been walking on a long, dry road." "Are you back?" I asked, and Bo replied, "Only for a while." And that was it.

In my second dream, I was in the same room and Bo was there again, but this time the dream lasted long enough for me to get an answer to the question I was burning to ask. I wanted Bo to tell me what it's like to be dead. He looked at me and said, "You wouldn't believe how many people are there." He seemed surprised to have discovered this, but not disheartened. If anything, he looked pleased to have found so many companions in death. After I woke I reflected that perhaps this was because Bo had already met some with whom he could continue the conversation that was for him the highest if always imperfect expression of life. And that made me think of Socrates's concluding speech in Plato's *Apology*, which Bo and I had taught years before and discussed countless times since. After being sentenced to death, Socrates remained strangely calm. How could a man facing death be so serene? Sensing the anxiety especially of his friends, Socrates explained that if death isn't a dreamless sleep (which wouldn't be so bad, he said, after the tempests of life), then all his predecessors—all the great thinkers and poets of the past—would

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be there waiting for him and what joy it would be to ask *them* the questions that had gotten him into such trouble while he was alive! The astonishment with which Bo reported his discovery that so many people were already dead made me think, on waking, that in my dream Bo had become Socrates himself, which to those of us who knew and loved him will not seem an implausible confusion.

But that wasn't all. I had one last question to ask and Bo's answer caused me to laugh so loudly that I woke myself up, which I also don't remember ever happening before. I asked Bo if God was among the dead. Was He there too in the land of the un-living? Now that is a very serious question. Bo looked at me and his eyes grew wide with astonishment and he said, "Yes He is, God is there too, and the most amazing thing is, He turns out to be a pudgy twenty-six-year-old kid from Israel. Who would have guessed?" And then Bo was gone and I'd shaken myself awake with laughter.

More than my other colleagues and friends—or perhaps I should say more openly and with less embarrassment, for we are all, in some way and at some level, concerned with these things—Bo was preoccupied with death and God. He wrote a book about each. But in truth everything he wrote on every topic reflected his preoccupation with these two. This gave his writing and teaching a theological cast that made Bo a very special citizen of that small but resolutely secular republic we call the Yale Law School, to which he was devoted heart and soul.

I want first to say a word about Bo's preoccupation with death.

Bo was not afraid of death, or at least no more afraid of it than you or I. But it was always on his mind because he understood that it is death that gives life its urgency and depth. Everything we do means what it does and has the value it possesses only because it unfolds in a mortal frame which, could it be erased, would drain our lives of all their point and purpose. Keeping death in mind was for Bo the only way of keeping life in mind and of properly honoring the dumbfounding fact that we are in the world at all, for a time, surrounded by others like ourselves with whom we can converse about our strange condition and perhaps, if we are lucky enough to have interlocutors like Bo, to come to see how strange it is, like the prisoners in Plato's Cave whose journey to the truth begins with the discovery that the shadow-life they have been living, in a thoughtless stupor, is as baffling and wonderful as anything can be. Socrates calls this discovery a "turning about of the soul." Bo's fearless insistence on the death-in-life that shadows and hallows even those moments that seem furthest removed from mortal concerns made him a Socrates among us—affectionate, interested, devoted to his friends and colleagues and students and to the worldly business of our School, yet in Nietzsche's words, "ten thousand feet beyond man and time." Bo's preoccupation with death reminded us of how serious life is. Will we be more likely to forget this now that he is gone?

I want next to say something about Bo's devotion to the idea of conversation. This wasn't explicit in the content of my dreams, like the ideas of death and God. But it was exemplified by their conversational form. Nothing was more important to Bo than the give and take of talking. For him talk was, in a manner of speaking, the middle term between death and God. Or to change the image, it was the hinge on which his thinking about these other topics turned.

Talk may seem a weak word to describe a high ideal unless we understand it in the sense of Freud's "talking cure." This was the original inspiration for Bo's vision of the nature of the encounter between two human beings who have suspended the ordinary demands of life, and the asymmetries of power that always attend them, for the sake of an inquiry into their common condition as thinking, speaking, fearing, hoping, loving, needing, and mortal beings. Conversations of this sort are the rarest thing on earth. Yet only they can illuminate, even for a moment, the true circumstances of our existence as the distracted cave dwellers that Plato describes. They create the only space in which we ever discover the real extent of our freedom and manage to sustain, for however short a time, the honesty to face the shocking fact that we are dying. That we can only do this in the company of another whose predicament is the same as ours, is the root of the spirit of solidarity that alone makes such honesty possible. In this sense, the liberating power of talk, as Bo understood it, is essentially egalitarian, and its perennial enemy is the brutal assertion, by one of those involved, of a superior power to command or confine the other, for every such demand obliterates the space of that elemental conversation in which the truth about us comes to light. Bo was not a fool. He knew perfectly well that the maintenance of our human world depends in countless ways on the exercise of unequal power. But he insisted that these "realities" be measured against and tempered by the ideal of a conversation among equals from whose vantage point we are able, briefly at least, to survey this world itself and the strange but exalted condition of those living in it—to see what we are accustomed to call our humanity, but rarely pause to examine or admire. It was by this ideal that Bo first measured the relation between doctor and patient, then that of judge to litigant, and finally, in his last book, the relation of man to God.

Which brings me back to my dream.

Those who say that God is dead, and mean by this that we ought to dismiss all talk of eternity and salvation as childish prattle, express a view distant from Bo's own. Bo did not believe in an afterlife in the conventional sense. He did not believe in a heaven beyond the world. But he did believe that there is more to the world than we shall ever know and more in one another than we shall ever love as well as we might. The knowledge that this is so defined, for Bo, the

horizon of all human striving—one we can never reach yet without which our finite pursuits would have a lesser value for us and perhaps none at all.

For Bo there is no God opposed to man, with whom we shall come face to face at the end of days. But there is a divinity in our humanity and an eternity in our peculiar way of dying—anxiously, yet mindful of truths and moved by loves that time cannot erase or corrupt. The belief that this is so is the heart of Bo's humanistic theology. It is a theology as remote, on the one side, from the conversation-stopping idea of an all-powerful God who dictates our affairs from afar, as it is on the other from the shallow belief that we could excise all talk of God from our human conversations and still be who we are. It is the theology that underwrites the one fundamental moral injunction that Bo repeated over and over again. "Don't interrupt the conversation. Let it continue. Let it go on forever, though none of us can pursue it forever, because only 'forever' would be long enough to reach the end we human talkers seek."

In his last book on the tribulations of Job, Bo holds the God of Abraham to this humanistic ideal. To some, perhaps, this will seem a reduction—a lowering of God to our level. But I see it in a different light. I see the conversation that Bo imagines between Job and God as the final and highest expression of his conception of the divinity that is in us already—as an elevation of the human being, not, of course, to a position of omnipotence, but to one of enhanced responsibility for the kind of talk that alone has the power to put us in touch with the seriousness of life, which springs from the fact that there is more to life than life itself can contain.

I think this is what Bo meant when he told me, at the end of my second dream, that God was there too, in the land of the dead, and that He turned out to be just a pudgy kid from Israel. He said this not to belittle God but (I thought, on waking) to humanize him instead. "God is just like us!" That is what Bo was telling me. Or rather, "We pudgy kids, with our fleshy and mortal infirmities, we're all just like God! We're divine already—as much and as little as any God can be." When Bo left me for the last time, at the end of my second dream, I felt with absolute assurance that he wanted me to know that he had found a God with whom he could talk as an equal, forever, in a heaven that looks just like earth—because it is the earth, uninterrupted. I feel confident that this was the meaning of my dream because it was the message of Bo's life.

Do we hear it? Can we keep it? Are we fully awake to the life of our great-hearted friend?

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FRANK IACOBUCCI

A Tribute to My Friend, Professor Robert A. Burt

“Please call me Bo.” With those words, spoken some twenty years ago, I was invited into what turned out to be the beginning of a beautiful friendship, with no apologies to Humphrey Bogart and Claude Rains in *Casablanca*.

Our friendship, between an Italo-Canadian originally from British Columbia and an American Jew from Maryland, grew into one of special significance for each of us, both professionally and personally. For our meeting each other, I thank the Yale Global Constitutionalism Seminar and Deans Kronman, Koh, and Post, as well as Professors Paul Gewirtz, Owen Fiss, Bruce Ackerman, Jed Rubinfeld, Judith Resnik, and all others who have inspired, organized, and led what has become the English-speaking world’s leading gathering on constitutional issues.

Despite different national, ethnic, religious, geographic, and educational backgrounds, I was amazed at how much Bo and I had in common, obviously through the connection of the law, but I believe more importantly through our similar values—and maybe similar imperfections in our makeup, which drew us closer for collective self-defense! Of course, Bo and I were greatly fortunate to have our spouses Linda and Nancy a part of our circle, as they made up for some of those imperfections and significantly increased the average intelligence of our group.

Bo Burt was so extraordinary that, in these few minutes, I cannot adequately give an accurate portrait of him, or even summarize all that I feel and admire about him. As a result, what I have are some reflections that I have chosen from a treasure chest of rich memories that I shall cherish forever. If I repeat in some ways what others have said, I apologize. (As you may know, Canadians are well known for two things: hockey and apologies. So that is my required apology.) The truth is, it was difficult to prepare these remarks, and I find it even more difficult to deliver them.

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Throughout the years of the Constitutionalism Seminar, Bo and I had many contacts on various issues, many of which were coming before me as a judge but were also central to Bo's many interests. Our contact and relationship increased considerably when he suggested that we co-teach an intensive course on topics in U.S. and Canadian constitutional law. I jumped at the opportunity, but as I was retired from the bench and had not taught regularly for some years, I was somewhat apprehensive.

Now we all know there are sayings about situations in which you get to know someone better, such as travelling or living with him or her. (Learning what the person does with the toothpaste cap comes to mind.) I would add co-teaching to the list of experiences that provide a closer understanding of someone. I certainly got to know how good Bo really was through co-teaching. Lucid, learned, and committed to teaching and his students, he spun his magic not just on our students but also on me. I believe the seminar was successful—that is not an arrogant self-assessment because the credit for its success goes to Bo. Of course, he said that the success was due to the remarkable students at the Yale Law School. And there is no doubt about the quality of the superb students Yale attracts and for which Yale is rightly famous and envied. From my experience, it is easy to see that there is not a great intellectual gap between those who are in front of the Yale classroom and those in the student audience—arguably the narrowest gap of any law school in the world.

To mention a small example of the outstanding talent of the students, a few years ago Bo taught a first-year small group in constitutional law, having not taught the basic course for a number of years. Again he asked me to participate. It was amazing, if not unheard of, that Bo inserted our comparative course materials into the first year after the students had only five or six weeks of studying law. However, the students handled the challenge with ease.

All this is to say that the teaching collaboration with Bo made for one of the most exciting and enjoyable experiences I have had in more than fifty-five years in the law. For that I owe Bo a psychic debt that is priceless and irrepayable.

In order to describe Bo as teacher or scholar accurately I believe we must begin with the human being. He was blessed with a most impressive intellect; an insatiable appetite for knowledge and understanding; a gift for communicating and writing; a moral and principled compass that, if patentable, would be a best seller; a fascination with the human condition; and a passion for justice. Of course I leave out much when one thinks, for example, of his work ethic that is reminiscent of those who are brought up as though the Great Depression was still going on, or his balance of confidence in his ability, which was tempered by humility and modesty for his many accomplishments and contributions to many causes and social initiatives that others have spoken about.

I wish to refer to the manuscript Bo was working on just prior to his passing. The title he chose was *Our Constitutional Ideal*; his first draft, which he sent to me in late July, had *With Liberty and Justice for All* as its title. Bo admitted he had taken on a huge challenge because of his concern over the variety of perspectives he discussed, including American social history, psychoanalytic premises of legal regulation, idiosyncratic readings of legal texts, classical philosophy, and so on, sprinkled with personal life experiences that I encouraged because they were chosen to illuminate his analysis and normative proposals. He was very sensitive with respect to the inclusion of his personal accounts because Bo never wanted his work to be about him but rather about his mission for the betterment of society through law and justice.

In typical candour, when Bo sent me his draft he wrote: "I'd love to hear your response to all this, but if you choose to read it, you must be full frank, that is highly critical if that's where you are led. See you soon."

Unfortunately, we never saw each other again. But fortunately, after I read the manuscript, we had a long, exciting, and stimulating conversation about his draft, which I shall never forget. The conversation was his last gift to me since he died some ten days later.

Like so much of his scholarship, the manuscript demonstrates Bo's eclectic interests and understanding of subjects beyond the narrow confines of laws as rules. And here we come to Bo's legal transformation and persona, which he writes about in the first chapter of his manuscript. Bo studied law initially at Oxford, and states two years later he couldn't understand why he did so, saying and I quote:

The subject seemed artificial to me, finger exercises in which real people were converted into lifeless puppets who were rational and 'reasonable' or were required to act and think reasonably by exerting will power, though everyone I knew (especially including myself) was struggling with confusion, irrationality, unreasonableness.

Those sentiments changed, Bo continues, when he enrolled at the Yale Law School in September 1962, and found a different conception of law from perhaps a surprising source: the course in family law. Bo discusses the aims of the course and praises its eminent instructors Joseph Goldstein and Jay Katz, and in a most elegant passage describes not only the beginning of a different approach to understanding and studying law but also the goal of his manuscript:

I found a beginning path toward a richer, more deeply rooted and humane reading of law in those [family law] materials—a path I have followed for more than 50 years in my career as a lawyer and law teacher. My goal in this book is to describe this path—to set out the

social, psychological and morally principled premises which I have come to understand as the predicates for a conception of law that aims toward the cultivation of empathy between people in social conflict with one another.

Bo's study at Yale also triggered a profound passion for the Yale Law School which grew over the years. Bo was initially inspired by Goldstein, a lawyer, political scientist, and lay psychoanalyst, and Katz, a psychiatrist and psychoanalyst. They kept asking Bo and his fellow students the same question many times about a claim for financial support by a wife in the context of the state marriage law; that question was: What's going on here?

That question was one that Bo asked in his teaching and research in so many fields of human interaction. That question took Bo on his amazing journey into psychiatry, psychology, neuroscience, medical science, health law, philosophy, history, religion, and ethics. And he was not a superficial sojourner—he studied and invested heavily in what, for him, were cognate disciplines to the law to get a better understanding of “what's going on” and the impact on the individual and society.

Bo's book manuscript in short is a triumphant valedictory of his extraordinary efforts through his scholarship and teaching to gain a richer, fuller understanding of the law and the role of legal actors in our society.

Bo left us far too soon. He was snatched from us, and we mourn our loss. But like you, I celebrate his friendship. I find solace and grace in my huge bundle of memories, and I thank him profoundly for his inspiration to me and countless others. And most importantly, as John Donne reminds us: unlike everything else, only love has no decay, so my love for Bo lives on.

And when I think of his professional career and his example and legacy that also will go on, a story comes to mind. I heard this story decades ago, when Nancy and I were living in New York and attending Plymouth Church of the Pilgrims in Brooklyn Heights, this being the Church of Henry Ward Beecher, the great abolitionist of the nineteenth century. I mention that because Bo would have appreciated the provenance of my hearing this story. In his sermon, our then-Minister told us about three workers and a passerby. The passerby asked one worker what he was doing, and he replied he was making five dollars a day. The passerby asked a second worker the same question, and he answered, “I'm cutting stone.” Finally, the passerby asked the third worker, who responded: “I'm building a cathedral.” Bo Burt was building a magnificent cathedral, which was a quest for justice for all through a constant search for an increased understanding of the human and other issues involved and of the consequences for individuals and society. What a noble mission, what a noble life, what a noble man.

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ANDREW DAVID BURT

Insider, Outsider, Robert A. Burt

My aim here today is to give you a sense of Professor Robert A. Burt—of what he was like as a friend and as a mentor. I'd like to do justice to his role in my life, and in the lives of many others. For Bo, as his friends called him, was my uncle—my father's brother—but he was also so much more than that. He was someone who listened to my ideas, my worries, and my often unpredictable career plans (as with any good Yale Law student), always with deep concern. Always with patience. Always with the same sense of humanity for which Bo was so well known.

How to speak about a relationship, an experience, that can't adequately be placed into words? How to convey to you the sense I had, sitting in the worn, comfortable couch in his office just minutes after my first time being cold-called in Contracts class? How I—shaky and uncertain of my place in the law school—was instantly comforted by his perspective, by his advice?

The truth is that I can't. Ever since Bo died on August 3, swimming in his favorite pond, I have felt the pervading sense that language is inadequate to express my grief as I mourn Bo's passing here today. The Bo that I knew is gone. Words simply cannot do justice to the memories and the legacy he left behind.

And so what I'd like to do instead is to talk about Bo in the context of our family's story. And I'd like to suggest how this story might have shaped aspects of his work and his outlook on the world. For the more I think about Bo, his life, and his work, the more I think about the importance of our shared history.

That story really begins with Bo's grandmother and my great-grandmother, Anna, the moment she stood on American soil for the first time. This was in 1909, on Ellis Island, in the immigrations processing line. She was about fifteen years old. An orphan. She came alone to this country from the Ukraine. She was young, with no prospects, no family here. From the

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government's perspective, she was an undesirable. And so she was rejected, sent back across the ocean she had just traveled.

And yet she persevered.

A few years later, she returned to America, standing in the same customs line on Ellis Island. Still without prospects, but slightly older. The second time she made it through. A few years after that, she married Louis Burt, Bo's grandfather and my great-grandfather, a dirt-poor peddler who sold vegetables on the streets of Philadelphia in a cardboard box, first on his own two feet and later, after much struggle, with the help of a horse and cart. Anna and Louis teetered on the edge of poverty. Louis supported his widowed mother, four siblings, Anna, and himself on the scraps he'd collect selling vegetables. In the evenings, Louis would pour pennies and nickels from that day's labor onto the counter, divvying up the meager proceeds for the next day's food.

Anna's was the life of an outsider. A true outcast. Not at home in Europe. Never truly at home here in the United States. My great-grandparents and their extended family—and soon their children—lived as extremely poor Jews in Philadelphia, without plumbing, without comfort.

This was the world my grandfather, Bo's father, was born into, and the one that helped shape his understanding of this country—and Bo's understanding as well. It was a world in which Jews, by and large, lived near the bottom rungs of society, and in which the struggle wasn't simply to fit in as "Americans"—if even such a thing was possible—but simply to seek economic stability. To own a home. Compared to the type of dreams that are fostered here in the Yale Law School, these were extremely modest ambitions.

And then came Bo.

Bo was the oldest of all of Anna Burt's grandchildren, and the pressures of succeeding, of achieving, and of breaking into American society were high. Growing up in the 1940s and 1950s, Bo was really the first in the family to have the opportunity to perform in this country at the highest level. His acceptance into Princeton in 1956 marked a turning point, one that signaled that the topmost rungs of society were not cut off from Anna Burt's grandchildren.

But Bo's experience at Princeton, and indeed, throughout much of his life, was that of someone forced to contend with his belonging. It was at Princeton where Bo first encountered anti-Semitism; he was excluded from the prestigious eating clubs because he was Jewish. It was at Princeton where Bo took part in the quota system, which restricted the number of Jews that could be admitted to the university (similar quota systems existed at a number of the Ivy League schools at the time).

And what I'd like to suggest is that the role that Bo held as the oldest of Anna's grandchildren helped to shape both his outlook and his intellectual endeavors. As an insider, as a Yale Law School professor for nearly 40 years—

here in this institution that births presidents, Supreme Court justices, and senators—Bo understood the way power works in our society, and he was at home here. And yet he also understood what it meant to be an outsider, deep in his bones.

I believe he learned this from, among others, Anna Burt, the ultimate outcast. The orphan. The fifteen-year-old immigrant. His grandmother.

And so in Bo's scholarship—from his first book, aptly entitled *Taking Care of Strangers*, to his wrestling with authority structures in the Bible, in *Into the Whirlwind*, his last book—what defined Bo's intellectual pursuits was a dedication to the outsider, to the questioning of authority, to seeing the medical profession, for example, through the patient's eyes, and to seeing injustice through the eyes of the oppressed.

I want to suggest that much of Bo's humanity, the kind that all of us saw in his warmth, in his caring, and in his intellect, he learned from the story of his family, of our family.

But I'd also like to suggest a paradox here.

For the fact is that all of us are outsiders. We live in a country defined by successive waves of mass immigration. Our founders were immigrants, many arriving on American shores to flee persecution in the Old World. As Bo himself once wrote, "There is no social role of assimilated insider for anyone [in America]; there is no such reliable, unquestionably secure status in American social life."¹

To focus on outsider status in American society, then, is to perform two simultaneous endeavors. The first is to undertake an exercise in empathy, in looking at the world through the eyes of the overlooked, the forgotten, just as Bo did. But it is also to admit that there really is no such a thing as an insider in American life. That we, as Americans, everyone in this room, are all outsiders. We all hail, in one way or another, from outcasts.

What Bo's example teaches me, then, is the same lesson I learned from him in our countless discussions. It is that to understand our role in American society—as Jews, as Catholics, as atheists, as anything—is also to reaffirm our commitment to equality, to the very tenets underlying our Constitution. Bo took these lessons to heart in his scholarship, in his ideals, and in his teaching.

I'd like to close by highlighting exactly these values, but by using Bo's own words, uttered when, after a 2014 lecture, he was asked what it means to be a professor. In his response you'll hear the same commitment to equality, the same empathy, and the same values that have won him so many friends and devotees around the world. Bo explained:

1. ROBERT A. BURT, TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND 67 (1988).

If you're a professor, at its heart, it means you're a teacher . . . And the most important quality as a teacher is respect for students and engagement with students, and a basic view that his or her role is to bring you to the other side of the podium. You start with the professor presumably knowing a lot and you knowing a little bit. But the important thing is for the professor, in my view, to say that, by the time we're done here, this status difference between us is gone. . . . We are equals. Maybe you are younger than me. But we are equals.²

Bo lived his life striving towards equality, in the classroom and beyond. And if he could send all of us a message today, I think he'd tell us, with a smirk on his lips and a deep seriousness in his eyes, "We have much work left to do."

Bo, may you rest in peace.

2. Università di Macerata, *Robert A. Burt: Disease, Disruption, and Homosexuality*, YOUTUBE (Feb. 13, 2014), <http://www.youtube.com/watch?v=RAvZLhoMKDo> [<http://perma.cc/W4BQ-48XC>].

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