

## Charge to the SLS Class of 2019

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Our ceremony is almost concluded, and you will soon be released into this brilliant blue California day to enjoy the reception and celebrate with your classmates, teachers, friends and family. But before you go, it is traditional here at Stanford Law School, as it is at many universities, for the Dean to conclude with a “charge to the graduating class” – a last piece of guidance from the school as you set out into the world as our alumni.

This is my first commencement as Dean and therefore the first charge I have given, and I wondered a bit about the origins of the term and what it means. Because we are all textualists now, I began with the dictionary. The dictionary told me that “charge” has many potentially relevant meanings. Two of the possible definitions are very legal, but I do not think either of them apply here: first, “an official instruction, especially one given by a judge to a jury regarding points of law” and second, “an accusation, typically one formally made against a prisoner brought to trial.” I would like to reassure you, and your parents, that I am not charging you with a crime. Rather, today I plan to employ a third meaning of charge: to “entrust (someone) with a task as a duty or responsibility.”

So, the purpose of a charge is not to give you advice, though if it came right down to it, I would have many pieces of advice for you -- exercise, eat your vegetables, get enough sleep, pay attention to your relationships with friends and family, don't be afraid to take risks, and follow your dreams. Standard graduation stuff. But my task is not to merely give you advice, but instead to entrust you with a duty or responsibility.

So here is my charge to you: **uphold the rule of law**. As lawyers, it is your duty and responsibility to uphold the rule of law, and in so doing you fulfill a crucial role in society, for the rule of law is a vital though sometimes invisible thread that is woven through the fabric of society and gives it stability and strength.

High-sounding language for a profession that sometimes gets a bad reputation. This probably isn't the right crowd or occasion for a lawyer joke – okay just a few? How can you tell the difference between a good lawyer and a bad lawyer? A bad lawyer can let a case drag on for five years, but a good lawyer can make it last for ten. How can you tell a lawyer is lying? His lips are moving. What do you call a hundred lawyers at the bottom of the ocean? A good start.

I think we can all admit that lawyers are not always held in high esteem. In Thomas More's Utopia, they “have no lawyers among them. For they esteem them a class, whose profession it is to disguise matters.” In Shakespeare's *Henry the Sixth, Part II*, the rebel Dick the Butcher asserts “The first thing we do, let's kill all the lawyers,” a line which drew laughs in Elizabethan England just as it does today.

But societies without lawyers are not utopian paradises. The World Justice Project, an organization founded by our own alum Bill Neukom, attempts to measure rule of law around the world. The countries at the bottom of the Rule of Law Index – Afghanistan, the Democratic Republic of Congo, Cambodia, and Venezuela this year – are deeply troubled societies. Public health, infant mortality, economic growth, the numbers don't look good. Correlation is not causation, and social scientists here at Stanford and other universities are engaged in important research on the mechanisms by which rule of law makes a difference in human lives, but at a rough cut, it is safe to say countries with low rule of law scores are not places where humans are flourishing by any measure.

Worryingly, in the 2019 Rule of Law index, “more countries declined than improved in overall rule of law performance for a second year in a row, continuing a negative slide toward weaker rule of law around the world.” Moreover, “in a trend that may suggest rising authoritarianism, ‘Constraints on Government Powers’ declined in more countries than any other factor worldwide over the last year (61 countries declined, 23 stayed the same, 29 improved).” Declines were also seen in more countries than advances in the areas of “Criminal Justice,” “Open Government” and “Fundamental Rights.” Countries from Argentina to Venezuela, Bosnia to the Philippines, Poland to Honduras, Egypt to Bangladesh, faced declines after past progress. In the later part of the 20<sup>th</sup> century the world saw a trend towards greater democracy. The early 1990s was the first time in human history that more than half the world's population was living in democracy. But history didn't end in the 1990s, and it is not clear where the world will go in the future.

In this moment, calling for upholding the rule of law can sound like a political statement. But I don't mean it in that way. I mean it as a description of the professional responsibility of lawyers.

What is the role of lawyers in the rule of law? Some months from now, after you pass the bar exam, many of you will return to campus to be sworn into the California Bar. You will take the attorney's oath:

“I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”

From then on, throughout your professional lives, it will be your sworn duty to uphold the Constitution. If you plan not to practice in California, but in some other state, you will take a similar oath.

And the same is true in many other countries. If you seek admission to practice in Queensland, Australia, for example, you will “sincerely promise and swear that I will truly and honestly conduct myself, in the practice of a lawyer of this court, according to law to the best of my knowledge and ability.”

In Germany, the Federal Lawyers Act provides that new lawyers swear “to honour the Constitution and to conscientiously perform the duties of a lawyer.”

In Rwanda, the law re-establishing the Law Society, that is the Bar, in 1997 following the genocide that had torn the country apart two years earlier, provides that new trainee lawyers swear:

“to respect and obey the Fundamental Law and all other laws, to defend and counsel with dignity, conscientiousness, impartiality and humanity, to respect at all times the courts of law and other state institutions and to never counsel or defend that within my spirit and conscience I do not believe to be a just cause.”

The rule of law is foundational to American society, and to societies around the world where people seek to live in peace and security. It is the principle on which this country was founded. In 1776, Thomas Paine, writing in his pamphlet *Common Sense* asserted that “in America the law is king. For as in absolute governments the King is law, so in free countries the law ought to be king: and there ought to be no other.”

Supporting the rule of law can require great sacrifice. Justice Albie Sachs of the Constitutional Court of South Africa, has spoken of what he calls “the soft vengeance of the rule of law.” During the apartheid era, Sachs was a member of the African National Congress and an anti-apartheid activist. In the 1980s, while in exile in Mozambique, Sachs was gravely injured in a car bomb attack orchestrated by the South African government. He described his reaction:

“I’m lying in a hospital bed in London, recovering. I’ve lost my arm, the sight in one eye, and I’m feeling fantastic: I survived! That moment every freedom fighter’s waiting for... Will they come for me today? Tomorrow? If they come, will I be brave? Will I get through? Well, they came for me and here I was. So, one day I’m lying in my bed and I get a note. “Don’t worry, comrade,” it says, ‘we will avenge you.’ Avenge me? Are we going to cut off one arm? Blind someone in one eye? Where will that get us? But if we get freedom, democracy, the rule of law, that would be my soft vengeance. I even remember saying to myself, “If we get democracy and the rule of law, roses and lilies will grow out of my arm.” By achieving our aims, we validated idealism, we validated belief in constitution, rule of law, equal rights for all.”

Justice Sachs went on:

“afterwards when I heard that one of the persons planting the bomb in my car had been arrested, this was in Mozambique, and again I’m lying in the hospital bed and I said myself “if he’s put on trial, and the evidence is insufficient to prove his guilt and he’s acquitted, that will be my soft vengeance. It is more important to live under the rule of law than to have one rascal more or less in jail.”

U.S. Supreme Court Justice Robert Jackson expressed a similar view in a speech to the American Society of International Law on the Rule of Law in 1945, just before he took up the job of prosecutor at the International Military Tribunal of the Nazis in Nuremberg: “The ultimate principle is that you must put no man on trial under the forms of judicial proceedings if you are not willing to see him freed if not proven guilty.” He went on to say that our “profession should see that it is understood that any trials to which lawyers worthy of their calling lend themselves will be trials in fact, not merely trials in name, to ratify a predetermined result.”

My faculty colleague Prof. Bob Gordon has written on the *Role of Lawyers in Producing the Rule of Law*. As Prof. Gordon explains:

“law needs not just courts and judges, but lawyers: agents who communicate the rules through advice to private clients and governments and enable them to organize their businesses and structure their transactions and comply with regulations and tax laws and constitutional limitations; and who can negotiate and if necessary litigate with the state and other private parties when their claims of rights are impaired or disputed.”

Lawyers, Gordon writes, instantiate the “forms and procedures of legality, regularity and due process, the substitution of regular legal processes supervised by an independent judiciary for both official and private violence, predation and corruption; and they help to diffuse the cultural norms of respect for and habitual resort to law and legal authorities, as also of rights-consciousness among the people.”

The late, Asma Jahangir, the first woman president of the Supreme Court Bar Association of Pakistan, similarly wrote about the role of:

“lawyers, bar associations and legal experts” in supporting the rule of law. “They form the first contact in providing access to justice. A legal fraternity that remains exclusive for the affluent isolates victims of injustice who are financially at a disadvantage. Bar associations are important instruments of soft accountability of judicial prejudices . . . . It is vital that bar associations be strengthened and that legal aid is adequately resourced by governments and inter-governmental organizations. Lawyers and legal experts have to be creative so that they can meet the complex challenges of governance without sacrificing the importance of the rule of law.”

Placed under house arrest for leading lawyers’ protests against military dictatorship, Jahangir said “Look at the world, all the suffering ... Being under house arrest is the least I can sacrifice.” On another occasion, she explained “As a lawyer, many a time I took up difficult and sensitive cases dealing with minorities’ and women’s rights. Yes, I constantly receive threats, and to be very honest, at times it is very scary. But I have to continue my work.” And, “I cannot bear to live where there is so much injustice and I cannot do something about it. What kind of a torturous life is that?”

By calling for the rule of law, I do not mean to invoke an empty formalism, but rather a respect for the enduring structures and safeguards that societies have put in place to ensure that rules are made in a fair and democratic way and applied evenly to all. In the same speech on the eve of the Nuremberg tribunal in 1945 that I quoted earlier, Justice Jackson also said:

“Of course, there is a school of cynics in the law schools, at the bar and on the bench who will disagree, and many thoughtless people will see no reason why courts, just like other agencies, should not be policy weapons. It is a popular current philosophy, with adherents and practitioners in this country, that law is anything that can muster the votes to be put in legislation, or directive, or decision and backed with a policeman’s club. Law to those of this school has no foundation in nature, no

necessary harmony with higher principles of right and wrong. They hold that authority is all that makes law, and power is all that is necessary to authority. But we can have nothing in common with the cynics who would have us avoid disillusionment by having no ideals, who think that because they do not believe in anything, they cannot be fooled.”

Soon after I graduated from law school, I had the privilege of clerking for the late Judge Patricia Wald, who passed away this January at age 90, the first woman on the D.C. Circuit and later a judge on the UN International Criminal Tribunal for the Former Yugoslavia, where I clerked for her on cases involving war crimes, genocide and crimes against humanity. Judge Wald saw the breakdown of the rule of law as behind the atrocities she judged in that courtroom, and explained “I see the law as a way to translate our most fundamental aspirations and goals for an open and orderly society that treats all people in the community with respect.” Without the rule of law, those aspirations remain out of reach.

**I therefore charge you, the graduates of Stanford Law School class of 2019, with upholding the rule of law.** The world needs you, and I know you are up to the challenge.