

Hurlbut Speech 2023

Thank you very much for the kind intro, Gustavo.

So, the first comment I got from many people about this was, didn't you just do this? I got a slight variation on this from my wife, who said, "I'm not going to graduation again."

Some people suggested that I just reuse my speech from a few years back, since really only the people up here were around for that, and I guarantee you none of them remembers what I said. Or perhaps I could just have ChatGPT write the speech and then "reveal" its true authorship, then launch into a think piece about AI—like every single NYTimes and Washington Post columnist last summer. Marisa Lowe urged me to use the speech to point out that she's *still* waiting on her student activity fee refund from 1L.

But I'll confess, the world looks pretty different now that it did when I did this four years ago. Part of this, as the 1Ls continually remind me, is that I'm getting older. But, when I learned about this award, I also thought back on all the things that have happened since you arrived in law school.

I thought back to the first time I taught any of you. It was January 5, 2021. The class was, of course, virtual, the way that everything was, since we were at the height of the pandemic. I was sitting at my in-law's dining room table in Virginia; I saw you as faces on Zoom, or even worse, as the dreaded black boxes. And then literally the next day, insurrectionists hopped up on a false narrative of a stolen election invaded the U.S. Capitol.

Two days later, I flew back to California. When I landed and turned on my phone, I learned that our beloved colleague, Prof. Deborah Rhode--an SLS institution, the second woman on the law faculty, and friend to generations of Stanford students and faculty—had passed away.

Your 2L year, we returned to in-person instruction—though all masked, and with a bewildering array of contradictory rules. And then in January—just a little over a year after Prof. Rhode's passing—Dylan Simmons, a 3L, died, leaving another deep wound in the law school community.

And then, finally, for the J.D.s, your 3L year arrived; while for many of the LL.M.s, you arrived at SLS for the first time. Life in the law school slowly returned closer to the before times. And fortunately, it proved to be the calm, peaceful, uneventful year that

we all really needed. (And parents, if you're wondering why everyone is laughing, that's sarcasm. Ask your kids.)

All of which is to say, the last three years have been hard. And I think they call for a different kind of speech from the one I gave four years ago.

Now, I'm under no illusions about why I'm up here. I know that one of the reasons people like my classes is because I have a reputation for being nice and for having fun classes. I get it: I mean, can you honestly tell me that you had any other SLS classes in which one of the on-call questions was to explain the Nickelodeon gameshow *Legends of the Hidden Temple*? And I believe that this silliness serves an important purpose in the classroom.

But I'm also reminded of a quote in a play I once saw. Actually, it was a musical. Not a musical that featured a giant Learned Hand costume; it wasn't that cool. It was Stephen Sondheim's *Into the Woods*. My wife drags me to a *lot* of Sondheim musicals, particularly *Into the Woods*, which is perhaps her favorite. But, as we've already established, she's not here. So I can safely reveal, to only a few hundred of my closest friends, that I was actually learning things while I was there.

So here's the quote. After being deceived by the wolf, Little Red Riding Hood sings, "nice is different than good." I've been thinking a lot lately about those words--in particular, about what it means to do good in the world of profound loss and rancor that we confront.

You've already encountered one model for how to do good in the law. I spoke about our first class together, but the first time I met some of you was Fall 2020, during orientation, when we discussed Bryan Stevenson's memoir *Just Mercy*. For those of you who haven't read the book, Bryan is a heroic attorney who works against insurmountable odds to help free people on death row in Alabama. And the whole time, I think about what Prof. Rabia Belt once observed to me--that Bryan really needs to take up yoga or something. I mean, you're exhausted just reading it.

So, now that you're on the other side of law school and we have your tuition dollars, I can admit the cold, hard truth for all of you. We lied to you. You will not become Bryan Stevenson. Michael B. Jordan will not play you in a blockbuster film. You will not stand alone for justice against a cruel system.

Obviously, I would love to be proved wrong. But here's what I predict, with some confidence, will actually happen to you. Whatever you do—whether you do public interest, or work in private practice or in government or in academia—you will find

yourself embedded in a complex set of institutions. You will play a role. With luck, you will get good at that role, prove yourself, build networks. And as that happens, you will assume, or have thrust on you, ever-more responsibilities and obligations.

What this looks like day-to-day is that there will be some set of tasks that await you—your never-ending to-do list. Meetings to arrange, things to write, emails to send. Some of them are important, some of them need to get done right now, some of them are boring but necessary, some of them are interesting—like, say, writing a graduation speech. But they are all demands on your time and attention, pulling you in different directions, and they all involve labor of some sort.

And, importantly, you will fail. You will shirk some responsibilities and fall short on others; you will disappoint colleagues, friends, and family. I know this will shock you, but even Profs. Ouellette and Lemley drop emails and texts sometimes.

Now, I can imagine many of you thinking, this is a particular experience of the privileged and powerful. And that's right. I suspect this is how many privileged and powerful people feel. And that makes it especially relevant to you, who are in various ways already privileged, and will likely soon have power of different sorts. That privilege and power make all the more pressing the question that we began with—how to do good in this world of institutions and responsibilities that I've described.

I can't pretend to have a full answer to this question. But I want to offer you three partial answers.

First, don't let institutions warp you. What do I mean by this? Well, let me start with this key insight that you don't often hear in graduation speeches: none of you deserves to be here. Now, before I feed into any lingering imposter syndrome, let me make clear: I don't deserve to be here, either, nor does any of us up here, or anyone else.

My point is not that you're not all talented, smart people—you are, and I'm impressed by SLS students every day. The problem is with the word “deserve.” This rests on the meritocratic myth—the same one that undergirds the current challenges to affirmative action—that there are certain people who *deserve* to be at places like Stanford, and certain people who don't. I just don't think that is true. I've served on both appointments and admissions committees, and so I've come to see that the decision about who to admit and who to hire is not only necessarily subjective, but also only tangentially about the particular *person*. The outcome turns on luck and balancing different methods and the school's needs in a particular area.

Every so often I catch myself falling into this error of deserving. Honestly, it's easy to do, when people are impressed not by you, but just by the role you play. We might call this “don't you know who I am?” fallacy. And the answer, of course, is just someone who got very lucky. And so instead of deserving, I like to think of earning. That is, if we start from the premise that none of us *deserves* to be somewhere, then the relevant question is, what have you done to *earn* being there?

The second answer to the question of how to be good is the flip side of the first. Institutions, like people, will fail and disappoint you; they will fall short. What does that mean for you? We hear a lot these days about “complicity,” and about how institutions are tainted by their origins. As a historian, I think a lot about this issue and I feel of two minds about it. On the one hand, returning to Bryan Stevenson, I visited his Legacy Museum in Montgomery, Alabama last summer. No one who has toured that museum could deny the clear throughline between the brutal, white supremacist past and the often brutal, often white supremacist present.

But on the other hand, I refuse to capitulate to the dead hand of the past. Origins are not destiny, and institutions don't have an essence or a DNA. Let me give an example. Along with Professor Liz Reese, I've taken quite a number of you up to present research to the Tribal Council of the Yurok Tribe, the largest federally recognized Native community in California. What would Leland Stanford, Sr., think about a member of the Nambé Pueblo and the child of Russian Jewish refugees leading a bunch of Native, Latine, white, Black, and Asian students to work with a Native nation that survived California's genocide? Having read some of Stanford's speeches, I have a pretty good sense. But you know what? He's long gone. *We* have to decide what Stanford and other institutions are for, today. This is a choice that *we* make.

This brings me to my third and final point, which may seem a bit meta, though is really just what I've been saying all along. It is this: At the end of the day, institutions aren't real; people are. Look around. What exactly is Stanford Law? The buildings? All the fancy banners? The delicious hors d'oeuvres that we'll soon be enjoying? It turns out that SLS isn't really much more than the people who have gathered here together as part of a collective endeavor.

Now, acknowledging this reality doesn't necessarily make things easier. Sometimes, it makes things harder. None of us who've been at SLS this past year need to be reminded that people disagree—or that it hurts more when you disagree with people you like and respect, with your friends and mentors and colleagues. For me, this was the most frustrating part of seeing our school be the topic of a gazillion op-eds and hot takes—it completely ignored the reality that everyone involved, whatever their

perspective, is an actual *person* with feelings, and that we are bound together by the fact that we are all here *together*, at least for a little while.

This value—which often masquerades under “community” or “collegiality,” which both feel warm and vague--doesn’t require agreement. In fact, agreement is, I think, the opposite of respect. And I’m not even sure this value requires respecting one another’s positions. Since I’m spilling a lot of secrets today, I’ll tell you one more: Sometimes, my very-smart colleagues and students hold views that strike me as short-sighted, ideological, or just wrong, prompting long text rants from me. And I suspect—in fact, I know—the same is sometimes true about my own views, and perhaps there are equally long text rants about me. What I think these disagreements actually require is a different kind of respect, one rooted in humility and equality. It requires a recognition of the right of each of us to decisional autonomy—in other words, to be flawed and wrong, and still be worthy of belonging.

Now, all of this may make the work that awaits you all out in the world sound bleak. But actually, I think this third point—that institutions are, at the end of the day, just people--is the source of tremendous meaning and even joy.

To explain, let me return to the never-ending to-do list I recounted earlier. When viewed through this lens, all the mundane, institutional, bureaucratic tasks I described—the long emails, the meetings, the letters, the phone calls—become acts of commitment. In other words, your life will not be split between the tedium of the daily grind and the deep meaning that comes from serving others. It will not feel like it on many days, but they are actually the same thing. Your labor will be a form of love. And that, I would argue, is one way to be good in a constrained and difficult world.

I’d like to close with a story about one of you that I think illustrates this. A couple of years ago, it was my own graduation of sorts—the moment when I received tenure, and my parents came to town. As some of you who were in that class may remember, they came to my class. And Royce Chang took them aside and thanked them for raising such a kind son.

Now, this story says much more about Royce than it does about me, and explains why he was up here a bit earlier. Still, I don’t think my parents have ever been prouder of me than at that moment. Hell, I don’t know if I’ve ever been prouder of me than at that moment.

So two things. First, I'd like to take this moment to pay Royce's favor forward—to congratulate all of *your* families on what wonderful and exceptional and *kind* children they have raised, and I look forward to continuing to do so during the reception.

Second, I'll be honest: looking back, I couldn't tell you what I did that was particularly kind. I just woke up, held my class, replied to emails, met with students—in other words, I did my job, just like you'll soon be doing yours. And I really hope all of you will have people as thoughtful and kind as Royce there to encourage you along the way. But even if you're not so lucky, I hope that nonetheless you take the time in the midst of everything to appreciate what you're doing: that, not just despite but *because* of the to-do list and the demands and responsibilities, you are more than nice; you're good, too.

Thank you.