

**YALE LAW SCHOOL**

**Guido Calabresi  
Graduation Remarks**

**Delivered June 1, 2011**

Dear Friends,

First and foremost, I want to apologize to you, your parents, and everyone else for the disaster that happened on Commencement Day. I, myself, the Dean, and Sharon, most of all, are going to do everything in our power to see to it that something like that never happens again. And there are ways of avoiding it, even taking advantage of trying to be in the courtyard, which is much nicer than going someplace else, and yet, being ready and coping if it turns into a rain storm of that sort. So, though your class has suffered, at least you can know that because of what you went through, this won't happen again. And I thank you for that.

As for my own part in the debacle, I guess I could have gone on and talked, but I just couldn't see myself doing that, standing under a tent, dry, when all of you and your parents and friends were soaking. I couldn't do it. While I know that for some people it might have been better to have the talk be then, it wouldn't be me. So, here we are.

There's something nice about doing it today, because today's the day that you actually get your degrees. As soon as I finish, the faculty votes, and you will

actually be graduates. “By the authority vested in me, I admit you to all their rights and responsibilities”, will actually be true! And, that’s a good thing about the talk being today.

I said the other day that I wasn’t going to give a formal talk, that I was going to tell stories, because I’m a storyteller, and that’s what I’ll do today. I won’t repeat the story about rain, because, blessedly, here we don’t need to worry about that. I will say again how on occasions of significance in London University they wheel out the mummy of Bentham to preside, and how at Yale Law School not having a mummy of Bentham, they tend to wheel me out. There is one problem with that: when Bentham’s mummy is wheeled out, Bentham doesn’t have anything to say. So, you can just look at him and be blessed and left alone. When they wheel me out, you may have to listen.

I want to tell a few stories, and like all my stories, they involve me directly, or people close to me, my family, people I have worked with. They’re all stories that have to do with choices because, as you get out of this place, you will, over your life, face any number of choices. At the end I’ll add a couple of words about choices and what they mean.

My first story involves my father. As I was growing up, I wondered about the fact that this man had become an active anti-Fascist, a revolutionary. He was a moderately conservative fellow, but he became a revolutionary. As a result of that, of his taking a public stand against Fascism, he had to leave an incredibly comfortable life, a career that seemed to be destined for the highest of things, and

come with his family to America without a penny. It was against the law under penalty of death to bring any money out. And I wondered, not whether I would have been an anti-Fascist—that's easy enough, terrible stuff was going on and you didn't want to be part of it—but whether I, too, would have had the guts to be an active anti-Fascist as he had been.

So, one day I asked him, how did you choose to become an active anti-Fascist? He looked at me with a smile and said, "Everybody talks about the banality of evil; nobody talks about the banality of good." I liked the phrase; in fact I mentioned it to a student years later, who wrote a book about that. The banality of good.

My father began, "I didn't choose to become an active anti-Fascist. It sort of happened. And here is how. It was 1924; I was a student in the university, and the Fascists, who had recently come to power, had removed the president of the university, because he was tough. He was kind of pig-headed and wouldn't do what they wanted. They put in his place our Professor of Anatomy, who was a very decent man, a nice person. We liked him as a teacher. But he was weaker, more pliable. He wouldn't fight back. And for that reason the Fascists had put him in as president of the university. I, and lots of my classmates, went to the inauguration. We went because this was our teacher, and we liked him. So we went to see him inaugurated as president; he gave a speech, which was a perfectly decent speech; we all applauded, and he sat down. Then the Fascist Minister of Education got up and gave a perfectly horrible speech, saying everybody would do this and do that, you know, just a typical dictator's speech. In the middle, like any politician, he stopped

for applause. And people applauded.”

My father then said, “I didn’t applaud. Why didn’t I applaud? There was nothing to applaud. I didn’t hiss or boo. I was much too well brought up to do anything like that,” he added rather wistfully. “At that point, somebody behind me tapped me on the shoulder and said, the next time he stops, you’d better applaud. You’d better applaud because there are some goons at the back who are taking the names down of those who don’t applaud.”

My father said “I was twenty-one years old. I was twenty-one years old. If somebody had told me if I went and didn’t applaud, I would get into trouble, I would have stayed home. I didn’t want to get into trouble. Or I might even have gone and applauded with everyone else if I really had wanted to see my teacher. But I had not applauded, and now somebody behind me said, ‘If you don’t applaud, you’re going to get into trouble.’ I was twenty-one years old. I couldn’t do it. And so, the next time he stopped, I still didn’t applaud.”

“When the speech was over and we left, the goons picked me, and a few other people who hadn’t applauded, up, and beat us up. They beat us up, because we hadn’t applauded.”

I asked him, “What did you do then?”

He said, “We went to wash.”

And I said, “Why did you do that?”

He said, “We didn’t want to go home bloody and scare our parents.” In Italy one lived at home when one was at the university, and he didn’t want to scare his

mother and his father by showing up all beaten up.

I asked, “Where did you wash?” He answered, “There was a fountain there in the square. We went there and washed to go home.”

I then said, “Did you wash there in the square so that people could see that you had been beaten up by the Fascists?”

He became slightly edgy, and said, “No, no, I don’t think so. I don’t think so. I think we washed there only because it was the nearest fountain. But the Fascists thought that we washed there as a provocation. So, they picked us up again, and really beat the tar out of us”—and did all sorts of other awful things to them—“and threw us in jail.”

“At that point, I was an active anti-Fascist. I was a marked person. I hadn’t made a choice. But there it was.” And so he started delivering the first underground newspaper of the anti-Fascist resistance, being involved with a small group of anti-Fascists who were democrats, with a small d, and finally, when, after the leader of that group had fled—gone to Harvard, actually, and become a great friend of Frankfurter’s, which was the reason I was able to become a friend of Frankfurter’s, because of this link – and the people who had become the leaders of this group, who were my father’s two closest friends, were murdered by the Fascists in 1937, while my grandfather, who had said one should stay and fight rather than leave one’s country, had died ... we left, we fled. All this happened because of my Dad’s “non-choice.”

Non-choice?

Fast forward forty years—1963. 1963 and the Civil Rights movement. Great activity, 1963, the march on Washington. A million people go to Washington to demonstrate for Civil Rights. Today we think of that as a Sunday school picnic. Lovely thing. The great Martin Luther King speech. All sorts of people. Peaceful. Joyous. Happy. No sweat. That wasn't the way it was before the march. It was scary. I was planning to go to the march, and then, I got frightened. There were bombings in Birmingham. Children were killed. Congress fled town, very typically. They were afraid of what might happen—a million people, many of them black, good heavens, what!—and went off. Would the National Guard have to be called in? What would happen and so on. And I got scared. I had been married just two years and had a one-year-old daughter. Why should I go, get killed? The march would go on anyway whether I was there or not. It didn't really matter. So, I decided to stay home.

During that week, I talked to my father on the phone, as I always did, with my father and my mother. These stories are about my father. As I had mentioned at Commencement, I was wearing the gown of the University of Bologna, because that was my mother's university—and I could tell you as many great stories of that remarkable woman ... scholar, teacher, mother, any number of things, and a great lady—but this story is about my Dad. I called him on the phone and we were talking. In the middle of the conversation, he said, "Oh, by the way, I'm going to be in Washington this weekend."

I asked, "Why are you going to Washington?"

He answered, “I’m going to the march.”

And I said, “But Papa, it’s dangerous.”

He replied, “Well, I’m going anyway.”

I thought, I can’t let this old man go by himself – he was all of sixty, and that seemed very old to me at the time, now, good heavens! – I can’t let this old man go by himself.

So I said, “I’m going with you.”

He just said, “I thought you would.”

And that was a non-choice that made an enormous difference to my life. I went down with him. We walked with all the people who were marching: an African-American on one side, my Dad on the other side. Who knows where this guy came from who was on my side. Wonderful elderly man walking for freedom. All of us marched along, listened to Martin Luther King that great day. It made a difference in my life, which, if not as dramatic—because choices and non-choices aren’t always as dramatic as the non-choice my Dad made in 1924 – made me a very different person than I would have been had I not gone, had my father, knowing as he did about choices and non-choices, not helped me make a non-choice that mattered.

My third story involves a terrible choice, an awful choice, made by three very good people. I’m talking about *Korematsu*. I’m talking about the Japanese exclusion. I’m talking about the placement of Americans of Japanese descent in concentration camps during the Second World War. One of the worst things ... we’ve done many bad things—every country has, and we’re not exempt. We’ve done many great

things, but we've done some awful things. And among the awful things we have done, this was one of the worst.

That terribly bad things are done by people who are bad, is easy enough to understand. But the important thing to realize about the Japanese exclusion is that, while there were some people involved in it who as far as I can tell were not nice at all, like General DeWitt and some others, three of the people most responsible for what happened, are among my heroes – maybe your heroes too – people I like to think of as very great people. The Attorney General of California, who permitted this to go on, who supported it, was Earl Warren. It was not an accident that when Kenji Yoshino was offered the Earl Warren Professorship at NYU, he would only take that the chair if it was called the Chief Justice Earl Warren Professorship, not the Earl Warren who made this awful choice, but someone who later, tried to redeem himself.

The President of the United States who okayed it was Franklin Roosevelt. And the Justice who wrote the *Korematsu* opinion was Hugo Black, the person I clerked for. He wrote it because he was probably, among those who voted to uphold the exclusion, the one who was least comfortable with it. The others included Rutledge, Douglas, Frankfurter, Stone ... a pretty extraordinary group of people. And Black wrote the opinion.

Now, it would be very easy to say, to think, they weren't really good people; they were bad people and we were just fooled by them. There's a great advantage to looking at it that way, because then we can say: I would never do anything like

that. It's only them, they, who do that. But, unfortunately, that's not the way choices are. Choices involve good people occasionally doing terrible things. I talked to Black about this – actually, I was talking about a different case — and I said to him, “Judge, there was one case in which you weren't true to your philosophy.” (I meant *Bolling v. Sharpe* which was a great decision, but which, because of all sorts of reasons involving his philosophy, presented great problems for him.)

He said, “Guy”—he called me Guy because he couldn't pronounce Guido—“Guy, you going to say *Korematsu*, like all my law clerks?”

I answered, “No, Judge, *in Korematsu*, you weren't untrue to your principles, the structure of *Korematsu* is perfectly fine. We still apply it today in equal protection cases. You just were totally wrong in the way you applied it. I mean, just, horrible.”

He sort of nodded and said, “Well, that's what all my law clerks say.” He continued, “You don't know the pressures that are on you when you're in wartime.” And then he looked at me, and it was clear that he knew he had been terribly wrong. Terribly, terribly wrong. But he had made that choice.

If you think only bad people make bad choices, then you feel safe and comfortable. But then you are likely to make terribly bad choices, because you're not on the lookout for them.

“I don't need to wash, because I'm clean”; and soon you start to stink. And that is something, as you go out in the world, that every one of you has to look out for. Look out for the situation when something pushes you to make a choice that

deep in your soul you know is wrong: whether, it's because it's wartime or because it's this or that, or because the Constitution "is not a suicide pact" or any other such nonsense. For whatever reasons, you may make an awful decision, as did Warren, Roosevelt and Black

My last story is perhaps the most dramatic. And it's the opposite side of the story of *Korematsu*. Fifty years ago—almost precisely today—my wife and I were on our wedding trip in Italy. We went to the house of my cousins in Ferrara. This fantastic collection of buildings from the thirteenth century around courtyards, with frescoes which were painted before 1370 on the walls; a seventeenth century organ, which my cousin's wife played ... a completely different world. There we were in this great house having lunch with my cousin, who was my father's age and closest friend, his wife and daughter. Their son, Marco, was not there; he was studying in Germany. In the middle of lunch, my father's cousin said to me, "Guido, you speak German better than I, could you read this letter for me."

There was something odd about that, because he spoke German perfectly well, and my German is pretty cruddy. But I started to read the letter in German; it began, "My Dear Little Minerbi Family." This was not a family you called "little." They were very self-important. The writer went on to say, how glad he was ... "to have found you after all these years. When the war ended," the letter continued, "I returned home to Germany and opened a butcher shop." As I read, I wondered, who was this person who was speaking in so patronizing a way to this family that was so snobby, so self-important. Nice people, but anything but "little." I looked around,

and everybody in the room—my cousin, his wife and daughter—looked as if they were smelling a bad smell. The letter concluded, “I hope sometime be able to see you.” At the end, my cousin said, “Good, we must tell Marco to go call on him and give him our warmest regards.” All this while still looking as if he smelled a bad smell. Obviously, my cousin had set it up, and had asked me to read the letter, because he wanted to tell me what this was all about.

So, later that afternoon, as we were walking through the streets of Ferrara, wonderful ancient city, walking along, I asked him what the story was. He said, “As you know, until 1943, even though there were racial laws in Italy against Jews (after Mussolini and Hitler signed up together), people, especially people of means who were Jewish or of Jewish ancestry, were able to live still quite comfortably. But when Italy surrendered and the Germans moved in, everyone had to hide.”

Italy—maybe Denmark almost as much, but in Denmark it was official policy—was the country in which more people survived than anyplace else. By and large, people in Italy wouldn’t play ball with the Nazis. So, they hid people. From the highest aristocrats, from the family of the man who became Paul VI—his brother hid some of my relatives—to peasants who did the most extraordinarily courageous things—they almost all refused to cooperate with the Nazis. And so no one in my family was taken. Everybody hid and was hidden.

My cousin continued, “And so we hid, with false papers. We went to the villa that belonged to my wife’s family,” (his wife was from an old, old Catholic family)

“outside another city, in Venetia rather than in the Ferrara region, with false papers.”

“Then the Germans took the villa over as a headquarters. And we were in the peculiar situation of being there and hiding with false papers, while the Germans were using the place as a headquarters. The German captain in charge was a perfectly horrible person. He would get drunk, steal things, and he tried to assault my wife’s sister so that we had to lock her door every night. He was a horrible, horrible person. It was an extraordinary situation.

One day, our son Marco, who was four, was in the courtyard playing, and, when the German captain called him by his false name, by his false last name, the little boy didn’t answer.

“The captain called him again by that same name, and the little boy still didn’t answer.

“The captain then came up to him and grabbed him by the shoulder and said, ‘That is not your name.’ And the little boy said, ‘No.’

“The Captain shouted, ‘It is not your name because you’re Jewish.’

“The little boy said, ‘Yes,’ broke away, ran off into the house, and crying, told us what happened.

“We all waited to be taken away... But nothing happened, nothing happened! The captain didn’t turn us in. This awful man risked his life to protect us. There were other soldiers around, and if any of them had heard that exchange and the Captain didn’t turn us in, he was dead! But somehow, this awful man, at the

possible cost of his own life, couldn't bring himself to do that.

“He actually treated me a little better because he had thought that I was a deserter and that was why I was there. Now that he knew the real reason I was in hiding, he treated me a little better. He'd still get drunk; he'd still try to steal things. But turning us in to die he could not do.”

My cousin continued, “I tried to find out if he had Jewish relatives or friends. No he had none; he just could not turn us in.” And then my cousin sighed and said, “That is the man who wrote the letter. That is the man who wrote the letter.” And, of course, that is why the letter was patronizing, because the once-captain, now small-time butcher shop owner, knew that he had saved their lives. It was also why there was that “awful smell” look. And it is why my cousin wrote to his son Marco, “Go call on him and give him our warmest regards.”

Now why do I tell you this story? Because, no matter how bad you are, you will be offered choices, not as dramatic perhaps as the one the captain faced, but still—transcendentally if you believe in that, in a human way if you don't believe in the transcendental—you will be offered choices that in some fundamental sense can redeem you. That captain, however bad he was, was given an opportunity to do the normal thing and obey orders, or to risk his life. And at that point—who knows why—he chose right.

No matter how good you are, no matter how good you are, beware of making bad choices. No matter how bad you feel about yourself, no matter how much life has given you blows, has put you in situations where you think that you really

stink—and that may happen, I hope that it doesn't, but it may happen—remember, if at some point you feel that low about yourself, remember and be aware that you will still have an opportunity, a non-choice perhaps, which will in some fundamental sense be redeeming.

That's the point of these stories. You go out from this place with enormous opportunities, with huge choices before you. The first kind of choice is to decide what you want to do with your life. And I hope you will choose, as I was lucky enough to choose, something to do with your life which is fun and useful. I've never done a day's work in my life. Oh, yeah, when I grade exams, that's work; that's scut work. But basically, I would pay to teach. I would pay because I love it. I love what I'm doing. You owe it to yourself first to choose a life's work you love.

And second, if you haven't already found somebody, you owe it to yourself to find someone to spend your life with, someone who fulfills you and whom you fulfill. Anne and I just had our fiftieth wedding anniversary, and I know how important that choice is.

Those are the first choices you will face. Make them right and you will be happy. But then, over your life, you will also be faced with any number of other situations, non-choices where you can move in one direction or another, or perhaps you will be given the chance to help others to make non-choices as my Dad did so fundamentally for me in 1963. Some of these choices, for good or for bad, will be dramatic, others may seem banal, but they will all matter. You will face these choices no matter how good you are or how bad you are, and you can make them

well or you can make badly.

I've taught many of you and loved you. I can't tell you what it meant to me that you asked me to talk at your commencement. I look forward to a fair number of years of watching you, as I've watched many of my former students, make choices which have made me patriotic in the true sense of the word – somebody who feels good about having been given the chance to touch and be touched by people who through their choices have made this world better.

Go forth. You're getting your degree today. Make good choices and bless you.  
Thank you.