

The Tuesday morning session of The American Law Institute convened in the Ritz-Carlton Ballroom, Washington, DC, and was called to order at 8:45 a.m. by President David F. Levi.

**President Levi:** Good morning. I hope everybody had a nice evening, and we're ready to go today.

We begin with the Early Career Scholars Medal. Justice Cuéllar and his group of merry Committee members have been working incredibly hard on this and have done just a superb job. And we're very grateful to them.

Justice Cuéllar?

**Justice Mariano-Florentino Cuéllar (CA):** Thank you, and good morning, everybody. How's everybody feeling today?

*(Response)*

**Justice Cuéllar:** All right. That sounded like we've got some work to do. *(Laughter)*

All right. At key moments throughout the year, the media and the general public wait with enormous interest for the announcement of certain honors that remind us what human talents, dedication, and ingenuity can accomplish in the world. Of all these recognitions, I'd wager perhaps only a few truly command much of the world's attention—the Nobel Peace Prize, the Oscar for best picture, and of course, the ALI Early Career Scholars Medal. Two out of three isn't bad.

Our dedicated Committee includes representation from across the Institute—lawyers, judges, professors. This year, the Committee has identified two award recipients that I am profoundly delighted to announce, and it's my great honor to do so as Chair of the Committee, David Pozen from Columbia and Michelle Wilde Anderson of Stanford. *(Applause)*

For me, it's an honor to announce these awardees not only because of how much I admire their work as scholars, but also because they both do their scholarship with that distinctive blend of practical relevance and scholarly depth we admire at ALI. And they speak with particular eloquence, both of them, to some of the most difficult and urgent issues facing our legal system, which means their articles are ones people actually read.

We'll recognize David Pozen's work next year, but today the legal scholarship Oscar goes to Stanford law professor Michelle Anderson. Michelle writes about the legal and human challenges uniting places like Detroit, Stockton, Western Oregon, and deindustrialized Pennsylvania. The Committee raved about her creative take on topics like shrinking cities, her vivid writing, her insights about local-government law, and her interdisciplinary and empirically oriented approach.

In fact, her work is helping redefine the fields in which she works, exploring how legal doctrines from bankruptcy to property combine with political economy and social practices to shape the communities struggling to navigate what can be an unforgiving continent-spanning economy.

As she explains the legal architectures and the historical arcs of the places that define so many of us, Michelle not only explains past choices of government, but also how different legal

arrangements can create different outcomes. Her insights arise from an uncommon eye for humanity, as much as from an uncommon ability to describe in detail and analyze the historical forces shaping jurisdictions. They leave the reader with a mix of consternation and hope, which is maybe appropriate for the times in which we live.

Her work deserves a movie deal, which will surely now be more in reach, given the award she's getting today. Please welcome Michelle Wilde Anderson. (*Applause*)

**Professor Michelle Wilde Anderson (CA):** Wow. Well, Justice Cuéllar and the members of the selection committee embody the highest ideals of our profession. I'm incredibly grateful to them, and I will do my best to live up to this award. That's a work in progress.

I know that all of you are actually here to hear the Consumer Contracts proceeding in the whole of the good seats in the front row, and so I am going to try to be quick. And this, what I'm about to tell you about, is entirely different.

Although I'm actually quite sure that some of the people in this room grew up in places like those I'm going to talk about, some of these communities may have been middle class in their past. Some of them have always been working class or poor. Some of them are rural. Some are suburban. Some are urban. Some vote red. Some vote blue. Some are nearly all white or nearly all black. Some are our most diverse communities in America.

The thing that unites them is that their governments are broke, and I want to tell you a few stories, from places like this, just to help ground us in common facts. I'll start in the timber and ranch lands of Oregon, where a man named Jimmy works for a local sausage producer in a low-income rural township. He's become a volunteer patroller there in an effort to stop the rising crime in his community.

In church one day, Jimmy heard a Harley roar past outside. "I've been doing patrol a long time," Jimmy said, "and so you know the sound of the vehicles. He's the guy who drops the drugs. When he comes through town, the whole place lights up with meth and heroin."

Jimmy excused himself from church to try to get an ID on the man or take his license. It seemed like the engine had slowed in the woods behind the church, and Jimmy knew who slept there. Her name was Sonia. She was a woman with bipolar disorder with a fixation on collecting things, and she was living in a little camp in the woods in a pool of clothes she'd gathered, with a couch.

The man on the bike was a local predator, who had turned Sonia into a prostitute after he got her hooked on drugs. When vehicles pulled up, it was never a good thing. Soon, Jimmy heard another car head toward the woods, and this time he rushed out, saying to himself, "I'm not going to let this one go."

He saw a pickup truck parked near Sonia's camp, and Jimmy approached to ask what the guy was doing. The man told Jimmy that Sonia was the mother of the baby in his back seat. "It was the most beautiful baby ever," Jimmy said, going quiet for a moment. The man had a restraining order against Sonia, but he wanted to check on her.

Jimmy lives in a rural area with law-enforcement resources cut so far back that even if he had gotten the Harley's license plate, there's no way it would have been followed up on. At that time, which is just a few years ago, the sheriff's department had downsized so much that they had virtually no investigative capacity, no daytime dispatch for nonviolent crimes, and no 911 dispatch

at all on nights and weekends. The state police had picked up some of the slack, but they were overloaded with cases from Jimmy's region.

Limited emergency services like this in law enforcement would be very familiar to Eva, who lives far south in California's rural interior. She and her husband built their fixed mobile home about 42 years ago, cobbling together salvaged building materials. Their neighborhood is filled with workers in the region's canneries, slaughterhouses, and farm fields.

It lacks paving and sidewalks. So it feels like a rural place, except that the houses are so close together, it's actually a suburb. Their neighborhood has no public sewage or wastewater disposal lines. So Eva's family has improvised substitutes. Their lot is too small for a new septic system, so they pump their sewage into a long-expired one, and they pump their household gray water from sinks into rock-filtered pits in their backyard.

After so many years of this kind of improvised system all across their neighborhood, all across neighborhoods just like theirs across the San Joaquin Valley, the soil gets oversaturated. So backflows are part of daily life.

There is no storm-water system either, and this region is a floodplain. So homes are periodically inundated with a couple of inches of contaminated water.

Meanwhile, their tap water, which is drawn from a small community well, is tainted with fertilizers and pesticides. Eva bought dogs for the front and back of her house to make them feel more safe in their neighborhood, but there is very little they can do about their contaminated water other than DIY dosing of chlorine bleach to feel more safe.

Eva's community had no streetlights either, which would be very familiar to Shannon, a 20-something who was growing up in Detroit. As an African American male coming up through Detroit public schools, he already had to defy odds and expectations every single day.

He also had to run to school in the middle of the street. His mom made him do that because she couldn't take him to school and make him safe from whatever might lurk in the overgrown grasses along the sidewalks. So all through the Midwestern winters when nights were long, he ran in the darkness, passing hundreds of blacked-out streetlights and sweating through his shirts. He and his mom were less afraid of cars or road ice than what could happen if he walked on the sidewalks in the dark.

Detroit is only one of hundreds, hundreds of postindustrial cities and declining rural townships that have unlit, unmaintained, and underutilized land that drives their public-safety problems. Vacant lots and blighted buildings, of course, but also blighted parks, decommissioned rail lines, overgrown riverfronts, dark back alleys.

That means two things. It means dumping and drugs. Tires, mattresses, busted appliances, rusted barrels of God knows what, snowdrifts, and (*inaudible*). Hidden spots get used for prostitution and drug injections, overdoses, and runaways.

In a postindustrial city in Massachusetts, a man named Juan captured how he felt as a kid when you grow up around all these sullied places, all the trash everywhere, all the danger. Like all the other kids he knew, he felt like, "This place is a dump. There's nothing good here. No one else cares, so why should I care?"

Some of you will hear of unmet needs like this and ascribe them to government mismanagement rather than lack of funding. There are four theories in particular that may come

to mind. The first is suspicion of self-dealing, both legal and illegal, by politicians. Another is perhaps bad priorities, the idea that the problem should be solved by taking money from some other expenditure.

Many of us also hope for heroic alternatives, great leaders who can come up with something other than new revenues to meet their community's needs. And the most common theory of all these days is the perception that government staff are lazy, dishonest, or incompetent.

In any given city, rich and poor alike, there are examples of mismanagement and even corruption. I'll be the first to admit that progress for most local governments requires reform, not just money. But this is not just an issue of mismanagement. These places lack for basic services because their local governments can't afford to pay for them.

Starting about 45 years ago, the United States began a long process of shifting local-government finance to a pay-for-what-you-get model. To this day, all local governments get money from their states, but the share of their budgets that they can draw from larger federal and state pools of taxpayers has been shrinking.

In part, this is because of the tax revolutions that swept one state after another, starting in the 1970s, setting strict controls on what state or local governments can take in. But this is also accelerating because too many states now have places that cannot find a toehold in the modern economy. We are now in the era of superstar cities in which the vast majority of American states have just one or two metro areas that drive the entire state's economy.

To give just one example, Chicago's GDP surpasses all of Illinois. It drives the whole state's economy. But it's also bigger than the entire GDP of the state of Ohio.

What is the future for the desperately poor towns beyond the few big metros in the Midwest? Not to mention Pennsylvania, Kentucky, California, Texas, Maine, the Carolinas, Arkansas, and on. That puts more pressure on states to redistribute tax revenues from these few big metros to huge other areas of their states, even as poverty is bad in the metros, too.

Decades into these changes, the results have been dramatic in jurisdictions of border-to-border poverty, which is what I work on. That is, places where pretty much the whole tax base is weak or shrinking. A lot of blame gets put on pensions for underfunding, but in my communities, pensions are a symptom, not a disease.

When you can't keep the most rudimentary services running, every expense that can be deferred gets deferred. That's pensions, but that's also things like infrastructure, the rehabilitation of old school buildings, modernization of EMS equipment, and on.

Every program or expense that can possibly be canceled gets canceled. That's bus routes, programs for child literacy, summer and after-school programs for kids. Every public facility that an official can still close, they close—libraries, basketball gyms, swimming pools, and senior centers. Even fire protection is often sold on a subscription basis now by private vendors across America. You either pay the steep annual bills, or you don't.

In 2010, a rural county in Tennessee resorted to subscription-based fire protection like this and rose to infamy when they let a nonsubscriber's mobile home burn to the ground—dogs, cat, and all. But since then, more counties in the West and South have switched over to this kind of expensive and privatized system.

Every hard-nosed triage decision that people can think of gets made, too. That means that

in American towns from the rural West to Baltimore, crimes like burglary and drug dealing are effectively noncrimes, because there are no public resources to intervene or try to stop them.

This does not represent progress for the decriminalization movement of the left, because there's too little money to do anything other than police either. The result is that people live with crime, people are broken by crime, and people are driven from their homes by crime.

In local-government law, as you probably know, there's really only one thing you can't eliminate entirely, and that's K-to-12 education, the one affirmative right to government we hold as a matter of constitutional and statutory law. But research has long demonstrated that schools cannot be the only barrier to the intergenerational transmission of poverty.

An elementary school doesn't receive kids until they're five years old, and releases them every day of the limited school year by late afternoon. Neighborhoods shape kids every day of every year. Lead exposure and peeling paint and tap water does, too.

Shuttering the public sector in this way would be one thing in places where the private sector can step into its place. That's philanthropy, nonprofits, mercy-working churches, and volunteers.

There are devoted donors and volunteers, to be sure. Indeed, I can think of dozens of people in these places that deserve this award much more than I do, and knowing them, the truth is I feel like an impostor standing here right now.

But in places of border-to-border poverty, private dollars and volunteer hours cannot match the scale of need. By definition, these towns have lost their base of businesses and paychecks with money to spare on charity. Except for a few major Rust Belt cities, these communities are virtually invisible to philanthropy.

The private sector can help. It can even lead, but it cannot provide the scale that is needed to replace local government entirely.

The fix is actually not as hard as it looks. It starts with just two words. Those words are "political will." We have to decide that it's worth it to care about these places. That means celebrating the good work there so it's worth doing, and sending in reinforcements of money and talent.

It means investing in their infrastructure, their community colleges, and their youth. Instead of writing eulogies for so-called dying places, we need to focus on the millions of people who live there.

Massachusetts calls its old mill towns "gateway cities," and I love that term. Historically, these are the cities that let poor families and new immigrants make a modest home and climb a ladder out of poverty. We need to restore a commitment to creating gateway cities again.

The people I mentioned earlier have all picked up a laboring oar in their towns. They're out there, along with countless others, piloting strategies to soften the hardest edges of poverty and reinvent their local governments. Their goal is not to keep everyone trapped in town. Their goal is to turn their town into less of a trap.

They are working to make the town safe and decent for as long as its residents call it home. The point is actually to give kids and adults the skills and stability they will need to make a living, whether they stay or go. The private sector cannot rebuild gateway cities alone.

In Jimmy's rural Oregon town, locals recently cleared a steep constitutional hurdle, put in place in the 1990s, to approve a modest new tax levy for their sheriff's office. Their state rep, a Tea Party Republican who has lived in the county for 50 years, reflected back across the road they have traveled.

"In about 2008," he said, "we really hit bottom and have been bouncing on the bottom ever since. Our services were barely adequate. No," he said, "they were just barely."

He believes people in his county have had enough of living without government. He said, "We've seen something. We've lived it, and we're never going back."

But that levy was just a small start. The next move belongs with the entire Oregon electorate.

**Justice Mariano-Florentino Cuéllar (CA):** Thank you, Michelle. (*Applause*)

So I'm delighted that we have about eight or nine minutes for questions. So if you want to ask a question, line up at one of the mikes. And while you decide whether you want to ask a question, I will ask Michelle a question, which is just to reflect on how there is an understated, quiet rage and frustration reflected in the work.

And I wanted to just get you to reflect a little bit on how if an economist were looking at this in the way many economists might think about the problems you're describing, one trope would be, well, people are in a particular location. They can move to another location, and part of what the problem is, really, is a lack of mobility.

But that doesn't seem to really be where you're headed, and I will just note that it feels to me like you have a conception of the challenge here that isn't just about people. It's about places, almost as if they were living separately.

So reflect a little bit on that.

**Professor Anderson:** Oh, thank you. That's too thoughtful a question to do it justice.

But it's interesting, the "rage" word, because I do. I feel lots of—I experience a lot in this research. Rage is one thing, and so is just sorrow. But I actually experience a lot of envy, too, because the people that I'm working with and writing about are mission-driven people who know their neighbors and have a version, live a version of American life that is unlike the kind of constant materialism in our superstar cities.

But with respect to lack of mobility, I think of this like the suitcases solution. We can conceive of it as a kind of idea that the thing these places need most is suitcases, and to that, I think there's a lot to say about it. But I'll just make two remarks.

One is that we don't have the money or the serious commitment to actually buy people out of these towns. And we have made no efforts, very limited efforts, to open the doors to our superstar cities through the alleviation of density controls that drive up the cost of housing there.

So until we take on both of those problems at the first tier, we're leaving behind places where suitcases will not be a meaningful answer. And so it becomes just the same war of attrition that we've been running since the 1960s, since the industrialization problem has been with us for decades, and these places are not dead yet.

But secondly, I would just say that over the 50-year run, maybe even the 20-year horizon,

the suitcases idea moves people from being owner occupants in the major surface-water regions of the country that are most insulated from climate-change impacts toward climate change. The idea that you should move a Pennsylvania homeowner to a Houston floodplain or a coastal town in Florida really under—it ignores the tax systems in Texas and Florida that make that move so foolish in the long run, not to mention the exposure and the cost of adaptation in those places.

So, again, when people talk so much about the unfunded liability of pensions, I say that's absolutely true. We have the unfunded liability of climate change, too, which is a tremendous management blunder. It is amazing that Florida has no income tax because we can all see it coming.

And so saving Puerto Rico by moving it to Florida, saving Pennsylvania by moving it to the South is just not going to get us where we want to go.

**Justice Cuéllar:** Thank you.

**Justice Goodwin Liu (CA):** Congratulations, Michelle. Terrific presentation. Forgive the onslaught by the California Supreme Court here. (*Laughter*)

**Professor Anderson:** I'm so proud of you two.

**Justice Liu:** I want to ask you about a matter that's close to our home, which is high-speed rail. So no doubt you have some familiarity with the general idea, but for those of you here who don't, high-speed rail is an idea that's in part hatched to promote connectivity between the isolated and poor cities of the Central Valley of California to the major metropolises, namely Los Angeles and the Bay Area, although it has gone through a lot of different iterations and plans.

I have two questions about it in particular, and I'd love to get your views. One is that I'm very curious about your views on environmental law and how environmental law has been deployed in some of these kinds of projects as essentially roadblocks to needed infrastructure that would reduce the isolation of these places that you're talking about. And those laws have been wielded by people who have the means to wield those laws, and so despite the kind of friendly patina of them being called environmental laws, they have definitely a double or triple edge.

The second question is about the fundamental premise of something like high-speed rail, which is, I think it's fair to say, that the directionality of the movement of people and goods is not really that the people of the Bay Area are dying to get to Fresno, it's the other way around. And do you view that as objectionable? Do you view that as flawed as a premise? That really, what needs to happen is the building up of the cities in the interior rather than the shipment of those people to the jobs and the higher-paying opportunities in the superstar cities?

**Professor Anderson:** Thank you. That is a very hard question politically and legally. So I hesitate to make a broader comment on the California Environmental Quality Act, which is the sort of legal tool that you're describing that's been used to block some of these projects. It can be used for good and ill, and there's a lot to say about it.

But I do want to comment on the sort of vision of so many of these cities as bedroom communities, as opposed to freestanding economies on their own, in which jobs and housing are in the same location. And that, too, is a problem that has eluded economists. It has eluded policymakers. It has been incredibly hard of how you actually return jobs to the cities of the sort of—the non-superstar cities, let's just say.

And for those of you who watched as the HQ2 competition raged on in America for Amazon's second headquarters, you know that many, many cities around the country, including

Fresno and others in California's interior, really posited their future as tech hubs in the same—you know, as competitive for jobs like Amazon. And that's just not the way the tech industry has sorted out, and Amazon, I think, was somewhat disingenuous to suggest that they would put their hub anywhere other than the kind of workforce concentration and tech that you would get in existing superstar cities.

So there's a real mismatch here, and I think that's why in the short term, there will have to be some level of redistribution of basic revenues to support the rebuilding of these communities inside in order to potentially enable suitcases, in order to potentially enable bedroom commute-type systems in which people are actually being exported out of their city for jobs elsewhere.

We're going to need a package of sort of short- and long-term investments. And transportation infrastructure is one of the most woefully underfunded parts of our system. I sometimes put daydreams in the hyperloop and high-speed rail and other types of technological change. But yes, we are going to have to, as part of the project of political will, allow those projects to actually be built.

**Justice Cuéllar:** Please join me in thanking Michelle Anderson for her work and presentation. (*Applause*)