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Ian Ayres (left) and Barry Nalebuff, a professor at the Yale School of Management

IDEAS

Ian Ayres Asks “Why Not?” in *Forbes*

Yale professors generate ideas for government, business, and life

“WHY NOT?” It’s both a question and a challenge.

“Why Not?” is also the title of two concurrent writing projects undertaken by Ian Ayres ’86, the William K. Townsend Professor of Law at YLS, and Barry Nalebuff, the Milton Steinbach Professor of Manage-

ment at Yale School of Management. The first is a column in *Forbes* magazine and the second is a book due to be released in 2003 by the Harvard Business School Press. In both venues, Ayres and Nalebuff try to present ideas for which there is no rejoinder to “Why not?”

Though the two words encapsulate the spirit of many of their proposals, Ayres and Nalebuff started working on the project before they had a name for it. “We had examples of the idea before we had a theory of what we were about,” says Ayres. What primarily drove them forward was the sense that there was a “missing market” in thought pieces written for the popular press. “We actually did some empiricism on this,” adds Ayres. They found that fewer than five percent of op-eds in major newspapers approached their subject with a potential solution, rather than a complaint.

Why not write about solutions? Ayres wondered. “Why can’t I have an opinion about how to do things differently?” And that is the essence of a “Why Not?” idea. It’s an attempt to improve a common process. “They’re not based on technological breakthroughs but could have happened five years ago, if we’d just had the gumption to do it,” says Ayres.

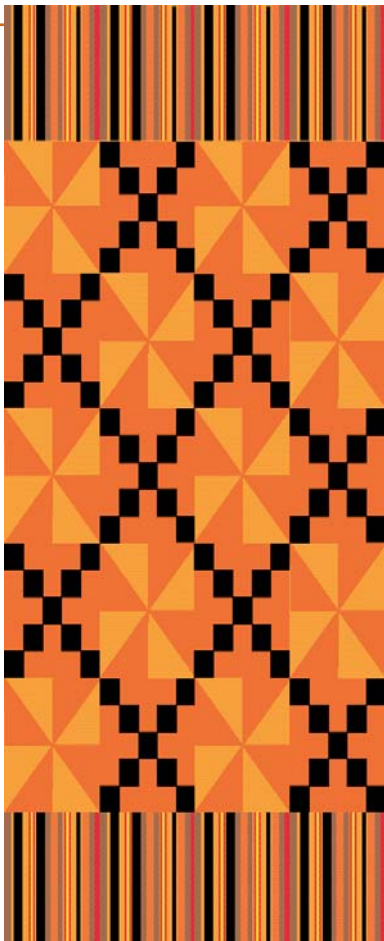
For instance, in their inaugural column for *Forbes* in March, Ayres and Nalebuff suggested that HMOs bundle term life insurance with their health insurance. “That way, the HMO would treat you as if your life really were worth a million dollars,” they wrote.

Another suggestion in that first column was for telemarketers to use reverse-900 numbers, meaning that they would pay you whenever they call.

While the *Forbes* column focuses on business ideas, the forthcoming book will cover government, law, and everyday life. It will also outline some tools for generating “Why not?” ideas.

Conference Explores Slavery

The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition and the Yale Law School together sponsored a major conference at Yale on September 26-28 entitled, “Yale, New Haven, and American Slavery.” The conference explored the ways in which American slavery shaped local experience in New Haven and how local institutions, such as Yale and its students, graduates, and faculty responded to developments in the nation at large. The conference also examined, in moral, legal, and religious terms, the contemporary implications of the institution of slavery, including the current debates on reparations.



APPOINTMENTS



Ayres describes one approach to idea creation, which he calls a “symmetry tool”: “You look at an accepted way of solving some problem. You then force yourself to describe that in simple, declarative sentences, and then you write it down. Then you do a stress test, like Robert Deniro in *Taxi Driver*. You stress different words. You start off by saying, ‘Are you looking at me? Are you looking at me?’...Stressing the different words forces you to focus on different aspects of the solution, and then you ask yourself how could you flip it around.”

Ayres produces his ideas in bunches, and so he has a list of “Why Nots?” built around

“I have the desire for this to be a good kind of a virus, where we reach out,” says Ayres. And so far, he has been impressed with the

quantity and quality of the ideas that have been submitted.

Moving from the question of “Why not?” to “Will it actually work?,” Ayres says that the test will be whether any of the ideas have been put into practice five years from now. But the process of actualization has already begun—he has contracts to help companies develop two of the ideas into working businesses.

But Ayres says that he has fun with the process, whatever the result. “In some ways, I just think that it is pleasurable to

“It might actually be better if raising your hand meant you didn’t want to answer a question.”

this symmetry tool. For example, Ayres notes, “Right now, raising your hand means that you want to answer a question in class....It might actually be better if raising your hand meant you didn’t want to answer a question. Wouldn’t that be pedagogically stronger, to embarrass the people that don’t want to talk to you? Would it be easier for shy people to participate?”

Or, instead of having more explicit director’s cuts on the DVD release of a movie, why not offer tamer, child-friendly versions?

If you talk with Ayres for long enough, he will ask, “By the way, do you have any ‘Why not?’ ideas?” He gathers new ideas from acquaintances, and the online version of the *Forbes* column includes a forum for readers to submit their own ideas.

roll your mind over some of these ‘Why not?’ ideas. You know, why not have adjustable-term mortgages?”

Ayres emphasizes that the “Why not?” project is only a sideline to his academic writing. But there is some interplay between the two modes; for instance, he wrote a 100-page article on the reverse-900 number idea. “Forcing myself to write the op-ed version or the column version...actually is a catalyst for getting me to go forward and write the more serious academic piece.”

To read a series of articles about YLS faculty who write for both the academic and popular press, as well as other news from the School, visit @YLS on the Law School’s website: www.law.yale.edu.



Vicki Schultz Assumes Ford Foundation Chair

Vicki Schultz was appointed the Ford Foundation Professor of

Law and the Social Sciences by the Yale Corporation in fall 2002. Schultz, who specializes in the areas of employment law, feminist theory, and the sociologies of work and gender, and who has lectured and written extensively on the subject of sexual harassment, came to Yale Law School as a visiting associate professor in 1992. She joined the faculty as a full professor in 1993.

After graduating from the University of Texas, Austin, Schultz earned her JD from Harvard Law School and was law clerk to U.S. District Judge Robert E. Keeton and to Senior U.S. District Judge Charles E. Wyzanski, Jr., both of the District of Massachusetts.

In the fall of 2001, Schultz taught as a visiting professor at Harvard Law School. There, she was the Evelyn Green Davis Fellow at the Radcliffe Institute for Advanced Study during the 2000-2001 academic year.

Schultz currently serves on the board of advisers for the *Journal of Law and Psychology* and the *Yale Journal of Law and Feminism*.

Henry E. Smith and Oona Hathaway Join Yale Law School Faculty

Henry E. Smith ’96 was appointed professor of law in 2002. He was previously a visiting professor at YLS in 2001-02 and was on the faculty at Northwestern University School of Law, where he started teaching in 1997. Smith graduated from YLS in 1996 and clerked for Judge Ralph K. Winter on the U.S. Court of Appeals,

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MEMORIAL

Lillian Goldman, Longtime Friend and Benefactor, Dies

The dean, faculty, and students of Yale Law School mourned the loss of longtime friend and benefactor Lillian Goldman, who passed away in August. Goldman was the major contributor to the renovation of the Law School's library, donating \$20 million to the project. The library was subsequently renamed the Lillian Goldman Law Library in Memory of Sol Goldman.

Goldman's interest in the Law School stemmed from her friendship with Judge Guido Calabresi, her attention to women's education, and her notice of Yale Law School's decision to admit women and minorities to the institution before most other schools. Her generous gift to YLS was also used to endow a day-care center at the Law School and to establish scholarships for underprivileged students.

Of Goldman, Dean Anthony Kronman '75 said, "She will be warmly remembered for her devotion to Yale Law School and her support of its students through scholarships and through the revitalization of our magnificent law library, which now bears her name. It stands as a testament to her love of knowledge and learning." 

AWARDS

YLS Receives Three Awards at ABA Meeting

YLS Lawyering Ethics Clinic Wins Award for Professionalism

The Lawyering Ethics Clinic at Yale Law School received the American Bar Association's 2002 E. Smythe Gambrell Professionalism Award in August 2002. The award recognizes programs at law schools, bar associations, and other organizations that increase the understanding of professionalism in the legal community, and is given to two programs each year. The clinic was cited for its "excellence and obvious commitment" to professionalism.

Through the clinic, law students represent individuals bringing ethics claims against Connecticut attorneys before the Statewide Grievance Committee. The clinic, founded in fall 2000 by Dennis Curtis '66, clinical professor of law, and Mary Clark, then the director of the Liman Program, has been taught for the last year by Curtis and Deborah Cantrell, director of the Arthur Liman Program and of projects on the profession.

Guido Calabresi Receives Lifetime Achievement Award for Legal Writing



When Guido Calabresi '58, former Dean, Sterling Professor Emeritus of Law, Professorial Lecturer in Law, and a judge on the U.S. Court of Appeals, Second Circuit, was informed that Scribes, the American Society of Writers on Legal Subjects, would bestow its Lifetime Achievement Award for Writing on him, he says that one of the first thoughts he had was that he was being recognized for quantity alone: he has written more than 100 articles, nearly 800 opinions of varying lengths, and four books during his career.

But Calabresi's writing has been as influential as it has been prolific. Among Calabresi's classic works of legal writing are a 1961 article, "Some Thoughts on Risk Distribution and the Law of Torts," and a 1970 book, *The Cost of Accidents: A Legal and Economic Analysis*, both seminal to the field of law and economics—and later works on a breadth of subjects, such as *A Common Law for the Age of Statutes*, and *Ideals, Beliefs, Attitudes and the Law*.

Dan Esty Receives Award for Achievement in Environmental Law and Policy

The American Bar Association bestowed its 2002 Award for Distinguished Achievement in Environmental Law and Policy on Daniel C. Esty '86, Clinical Professor of Environmental Law and Policy at Yale Law School and Professor of Environmental Law and Policy at the School of Forestry and Environmental Studies, at a ceremony on August 12, 2002.

Though Esty has been active in environmental policy throughout his career, the ABA made particular note of his work in developing the Environmental Sustainability Index, which attempts to measure and rank the relative environmental health of nations, based on their performance in sixty-eight variables, grouped in twenty categories.

Esty said that the ABA award, as well as media and government attention, are signs that the esi's approach is gaining traction. "We think there is a real potential here for a more empirical foundation for environmental decision making and environmental protection efforts."

GLOBAL CONSTITUTIONALISM SEMINAR



Participants in this year's Global Constitutionalism Seminar, held at the Law School in September, discussed three topics over the course of their four-day visit: Privacy, Proportionality, and Terrorism and Civil Liberties.

(bottom row: left to right) Professor Drew S. Days, III '66; seminar director Paul Gewirtz '70; Justice Delia Revoredo Marsano of the Constitutional Court of Peru; Professor Judith Resnik.

(second row) Justice Stephen G. Breyer of the Supreme Court of the United States; Justice Aharon Barak, President of the Supreme Court of Israel; Justice Unity Dow of the High Court of Botswana; Justice Ruma Pal of the Supreme Court of India.

(third row) Justice Frank Iacobucci of the Supreme Court of Canada; Justice Lech Garlicki of the European Court of Human Rights; seminar assistant director Jacob Katz Cogan '99.

(fourth row) Justice Luzius Wildhaber '65 LL.M., '68 J.S.D., President of the European Court of Human Rights; Justice Michael Kirby of the High Court of Australia.

(fifth row) Professor Dieter Grimm of the Institute for Advanced Studies in Berlin (and former Justice of the Constitutional Court of Germany); Chief Justice Andrew Li of the Court of Final Appeal in Hong Kong; Justice Ewa Letowska of the Constitutional Court of Poland; Professor Stefano Rodotà of the University of Rome (and Data Protection Commissioner of Italy).

(sixth row) Justice Hiroshi Fukuda '62 LL.M. of the Supreme Court of Japan; Professor Paul Kahn '80; Professor Spiros Simitis of the Johann Wolfgang Goethe-Universität.

(top row) Professor Robert Post '77, Boalt Hall School of Law; Lord Harry Woolf, Lord Chief Justice of England and Wales, Royal Courts of Justice.

APPOINTMENTS

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Second Circuit. Smith also holds a PhD in linguistics from Stanford University and taught Germanic linguistics as a visiting assistant professor at Indiana University. He is a recent recipient of the Berlin Prize Fellowship at the American Academy in Berlin.

In the fall term, Smith taught Patent Law and a seminar in Natural Resources.

Oona Hathaway '97 comes to YLS as an associate professor, after teaching for two years at Boston University School of Law. She graduated from the Law School in 1997 and then clerked for Judge Patricia Wald of the U.S. Court of Appeals, D.C. Circuit, and for U.S. Supreme Court Justice Sandra Day O'Connor. She then spent two years as a fellow at the Harvard University Center for Ethics and the Profession and the Harvard University Carr Center for Human Rights Policy.

This year at YLS, Hathaway is teaching Procedure, and seminars on Ideas, Culture and Rationality in International Law and Politics, and International Law and State Behavior.

Megan Barnett and Ian Solomon Return to YLS as Associate Deans

Megan Barnett '97 has returned to Yale Law School as the Associate Dean for Admissions and Financial Aid. Prior to her return, she was an associate with Gibson, Dunn & Crutcher, LLP in Washington, D.C., where her practice focused on intellectual property. She also coordinated the Washington, D.C., office Summer Associate Program and earned awards for her pro bono work.

A 1993 *summa cum laude* graduate of the University of Virginia, Barnett was a Coker Fellow, co-chair of Yale Law Women, and senior editor of *The Yale Law Journal* while a student at YLS. Upon her graduation, Barnett was a judicial clerk for the Honorable R. Lanier Anderson III of the Eleventh Circuit Court of Appeals in Macon, Georgia.

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COMMUNITY

Samuel and Anna Jacobs Foundation Funds Nonprofit Organizations Clinic

THE LAW SCHOOL received an endowment gift from the Samuel and Anna Jacobs Foundation that will provide permanent support for the school's Nonprofit Organizations Clinic, the first law school clinic in America devoted to meeting the needs of charitable and educational organizations.

Established in 1989, the clinic each year assists approximately forty nonprofit groups to organize, incorporate, obtain tax exemption, meet regulatory requirements, and take other steps to become operational. The assisted groups work in many areas: youth development and schooling, microenterprise, family law reform, visual

and performing arts, health, mental illness, religious activity, rural development, environmental protection, domestic violence, prison services, animal protection, magazine and newspaper publishing, and programs for street people. While many of these groups are based in the New Haven area or at other Connecticut sites, the clinic has served organizations located in seven other states, as well as groups operating in approximately thirty foreign countries on all continents. Several of these groups, since their early days at the clinic, have grown into major organizations and have received national or international recognition.

Twenty to thirty students take part in the clinic each year, guided by three or four student directors and three faculty supervising attorneys: Professor John Simon '53 (the clinic's founder) and two clinical lecturers, Barbara Lindsay and Lisa Davis '90.

The clinic will be named The Samuel Jacobs Nonprofit Organizations Clinic in memory of Jacobs, who founded the Samuel and Anna Jacobs Foundation in 1964. Jacobs, who died in November 2001 at the age of 95, lived in New Haven shortly after his marriage and before moving to New York City. He had great respect and a special fondness for the Law School. The trustees of the Foundation are Ernest Rubenstein '53 (son-in-law of Samuel Jacobs), William S. Rubenstein (grandson of Samuel Jacobs), and Stuart Robinowitz '53 (a close family friend). The trustees noted that Jacobs was deeply devoted to providing help for "people in need"—and they view the clinic as an especially valuable vehicle for achieving his compassionate goals.

In accepting the Jacobs Foundation gift on behalf of the Law School, Dean Anthony Kronman '75 stated: "We are immensely grateful to the Samuel and Anna Jacobs Foundation and its trustees for recognizing, through this splendid gift, one of the notable ways in which the Law School has pioneered in clinical legal education—and one of the several avenues through which Yale law students engage in public service that advances the common good at home and abroad." 🌊

PROTEST



Yale Law School students protested the Law School's decision to temporarily suspend its policy of requiring non-discrimination certification for military recruiters so that members of the armed services could participate in the School's off-campus fall interview program. The students, members of the **Student/Faculty Alliance for Military Equality (SAME)** wore camouflage gags to symbolize the silencing effect of "Don't ask; don't tell." At a rally on the steps of Yale Law School, the student protesters and their supporters were addressed by SAME coordinators and by Dean Kronman, who noted that all opportunities provided by and at the Law School should be open to all. He also said that Yale University planned to pursue a definitive determination of Yale Law School's compliance with the Solomon Amendment.

Correction

In the Summer 2002 issue of the *Yale Law Report*, we incorrectly stated Professor Harold Hongju Koh's endowed title on page 13. He is the Gerard C. and Bernice Latrobe Smith Professor of International Law.

APPOINTMENTS

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Ian Solomon '02 also returned to the Law School in the fall as Associate Dean for Financial Affairs. Solomon worked as an engagement manager for McKinsey & Company, Inc., following his graduation from Yale. He had also spent time at McKinsey prior to matriculating at YLS.

While a student at YLS, Solomon was a student supervisor for the Law Clinic, a member of the Black Law Students Association, host and producer of Legal Talk Radio, and a member of the Court Jesters. Solomon also conducted independent writing projects on legal specialization and worked as an economic development intern for the City of New Haven. He is a 1995 graduate, *magna cum laude*, of Harvard College.

Judith Resnik Elected To The American Philosophical Society

Judith Resnik, Arthur Liman Professor of Law, was welcomed into the American Philosophical Society in April 2002 at the group's annual general meeting. Professor Resnik was elected as a Resident Member in the Arts, Professions, Public and Private Affairs class. The Society, founded in 1743 in Philadelphia, Pennsylvania, is the U.S.'s first learned society. Its aim is to promote useful knowledge in the sciences and humanities through excellence in scholarly research, professional meetings, publications, library resources, and community outreach. There are currently more than 700 members throughout the world.

In addition to her recent election to the APS, Professor Resnik has been honored with the Florence K. Murray Service Award from the National Association of Women Judges; and the Margaret Brent Award from the Commission on Women of the American Bar Association. She is also a past recipient of the USC Associates Award for Creativity in Research and the Teaching Award from the Alumni Association of the NYU Law School. In 2001, Professor Resnik was elected a member of the American Academy of Arts and Sciences.

Ruth Wedgwood Named to U.N. Human Rights Committee

On September 9, 2002, Professor of Law Ruth Wedgwood '76 was elected by 143 state members of the International Covenant on Civil and Political Rights to serve on the United Nations Human Rights Committee, which was established to monitor the implementation of the ICCPR. The committee meets three times a year, in New York and Geneva, to review reports submitted by nations about their enforcement of the provisions of the ICCPR, and also adjudicates disputes between member states. Wedgwood began a four-year term on the eighteen-person committee on January 1, 2003.

Wedgwood joined candidates from India, Japan, Switzerland, France, Tunisia, Argentina, Poland, and Panama who were elected to serve on the committee. The election took place in New York in an ad hoc meeting of states who are parties to the covenant.

Robert Solomon Appointed Director of Clinical Studies; LSO Opens Outreach Office

Robert Solomon, clinical professor of law, was appointed director of clinical studies in September 2002. He succeeds Jay Pottenger '75, the Nathan Baker Clinical Professor of Law, who served in that post for eleven years.

Solomon looks forward to focusing both on the administrative details of how the YLS clinics run and on the broader question of the role of clinical legal education. On the administrative side, he wants to upgrade the computer software they use for case management. "As we expand into different areas and do very complex work, I think we've fallen behind a little in that area," says Solomon.

He also says, "We have to examine the question of to what extent are we a law office.... And then there's the constant tension in clinical services over providing services and teaching.... It is a very vibrant

tension, and I think these questions become grist for teaching."

In one new project this year, the Community Legal Services Clinic, taught by Solomon and Stephen Wizner, the William O. Douglas Clinical Professor, has opened an outreach office in the Fair Haven neighborhood of New Haven. Currently, six students are spending a total of six hours a week in Fair Haven, conducting a general practice. "It's very exciting work," says Solomon. "And it allows us to reflect on what our mission is.... We can redefine ourselves in a way to look at what needs there are in the community." ☞



YLS Administrator is Court TV's 'Anchor for a Day'

Kelly Voight, Director of Private Sector Counseling and Programs in the YLS Career Development Office, was selected as the winner of Court TV's "Anchor for a Day" contest in May 2002. The contest, which was co-sponsored by *The National Law Journal*, solicited two-minute, on-camera "audition tapes" from contestants across the country. Ten finalists were selected from among all contest entrants, and Voight was selected the ultimate winner by an online vote on www.courtstv.com, with numerous votes coming from YLS students, faculty, and staff. Voight made her on-camera debut in August, during Court TV's live daytime trial coverage. Proving herself a TV "natural," Court TV signed her to a contract, and she has made several subsequent on-air appearances, while at the same time juggling the day-to-day demands of her work in CDO. ☞