

# OUR FACULTY



Members of the delegation of Ukraine, including Professor Harold Hongju Koh (second from left), at the opening of the hearing at the International Court of Justice. (below) The skyline of Kyiv, Ukraine, at night.



# Faculty Offer Expertise on the War in Ukraine

Perspectives on international law, security, foreign policy, and human rights

**In a few short weeks this spring**, Russia's invasion of Ukraine changed the world. Soon, Sterling Professor of International Law Harold Hongju Koh found himself preparing to deliver the closing argument on behalf of Ukraine at the International Court of Justice (ICJ) in the Hague.

"The tragedy we are all watching in the streets of Kyiv, Kharkiv, Mariupol, Kherson, Volnovakha, and so many other Ukrainian cities is precisely what our modern international legal system was designed to prevent," Koh argued before the court on March 7.

On March 16, the ICJ delivered its landmark ruling — by a vote of 13-2, with only the Russian Federation and China dissenting — ordering the Russian Federation and its paramilitary forces to immediately suspend its military operations in the territory of Ukraine.

Koh said the ruling "should strengthen the resolve of every country, and every international institution, now to reinforce the Court's order, stop Russian aggression, sanction the perpetrators, and bring them to justice."

In addition to Koh's efforts at the World Court on behalf of Ukraine, Yale Law School faculty members responded to the war through analysis, op-eds, and interviews, providing their sought-after perspectives on international law, security, foreign policy, and human rights.

In a piece for *Just Security*, Gerard C. and Bernice Latrobe Smith Professor of International Law Oona Hathaway '97 and Charles F. Southmayd Professor of Law and Professor of Philosophy Scott Shapiro '90 addressed Russia's violations of the international legal order.

"The Russian invasion of Ukraine is a blow to the international legal order," Hathaway and Shapiro wrote. "But it will succeed in undermining the system

only if the rest of the world lets it. A healthy legal system responds aggressively and resolutely to assaults on it. If the response is comprehensive, strong, and sustained, then the modern legal order will not be weakened. It will be strengthened."

Writing in *The Washington Post*, Henry R. Luce Professor of Jurisprudence Samuel Moyn suggested systemic reforms for international institutions, including the U.N. Moyn highlighted proposals to reform the U.N. Security Council and eliminate the veto rule of members, expand the council itself, or transfer its authority to the General Assembly.

"These kinds of revisions would also make it possible to indict great power aggressors, like Russia today or China tomorrow, for illegal acts," Moyn wrote. "They would certainly lessen American power, as well... But this would be a price worth paying, since it would require American administrations to take greater care before engaging in intervention abroad."

Simeon E. Baldwin Professor of Law Emeritus Peter H. Schuck considered how Western allies could influence the war without committing their own troops but instead entice Russian troops to defect and offering them refuge in the West.

"Using the relative attractiveness of life in the NATO states to weaken Mr. Putin's ability to wage war would create a propaganda coup and a battlefield advantage," Schuck wrote in *The Wall Street Journal*.

The war has been a watershed moment for how society experiences conflict via social media, according to William Nelson Cromwell Professor of Law Stephen Carter '79.

"Ordinary people caught up in Russia's invasion of their country have become, with their cell phone cameras, what...Glenn Reynolds, much earlier in the inter-

page 20 →

***“A world that is worried about conflict between states is not one that will address climate change. It will not address global poverty or disease. It will, instead, invest in weapons and national defense. ... The 20th century was a terrible time. To be condemned to repeat it is a terrible loss for all of us.”*** PAUL KAHN '80

INTERNATIONAL LAW (CONTINUED)

→ War in Ukraine (from page 19)

net age, memorably labeled ‘An Army of Davids’: individual auteurs whose ability to document in real time the effects of Putin’s grand strategy might be the most effective weapon in uniting the West against him,” Carter wrote for Bloomberg.com.

Robert W. Winner Professor of Law and the Humanities Paul Kahn ’80 argued in *The Hill* that the impact of war has reaching consequences.

“A world that is worried about conflict between states is not one that will address climate change. It will not address global poverty or disease. It will, instead, invest in weapons and national defense. Governments will not advance human rights but will instead quash dissent. The 20th century was a terrible time. To be condemned to repeat it is a terrible loss for all of us.”



**Gideon Yaffe** in “The Norm Shift Theory of Punishment,” *Ethics*, Volume 132, Number 2, January 2022:

“[W]e need a theory of punishment-by-nature. It cannot be that the government must abide by the punitive restrictions only when it wants to.”

Read a Q&A with Gideon Yaffe on this topic at [ylaw.us/3MDh1v4](http://ylaw.us/3MDh1v4).



**Professor Driver Elected to American Academy of Arts & Sciences**

**Robert R. Slaughter Professor of Law Justin Driver** has been elected to the 2022 class of the American Academy of Arts & Sciences.

This year, the 261 members elected to the Academy include artists, scholars, scientists, and leaders in the public, nonprofit, and private sectors.

Members of the Academy are leaders in arts and sciences, business, philanthropy, and public affairs who explore challenges in today’s society and apply their expertise to provide solutions for the common good. The multidisciplinary work of the Academy’s independent research center provides solutions for complex challenges. The Academy’s projects and publications are focused on the arts and humanities, democracy and justice, education, energy and the environment, global affairs, and science and technology.



**Justin Driver**

AWARDS

**Professor Bell Receives AALS Derrick A. Bell Jr. Award**

**Professor of Law** and Associate Professor of Sociology Monica C. Bell ’09 received the 2022 Derrick A. Bell Jr. Award on Jan. 8. The award, given by the Section on Minority Groups of the Association of American Law Schools (AALS), honors a junior law school faculty member “who, through activism, mentoring, collegueship, teaching or scholarship, has made an extraordinary contribution to legal education, the legal system, or social justice.”

In 2021, Bell also received two awards for her scholarship. The Sociology of Law Section of the American Sociological Association (ASA) awarded her the Distinguished Article Award for her article “Located Institutions: Neighborhood Frames, Residential Preferences, and the Case of Policing,” published in the *American Journal of Sociology*.

For the same article, the Community and Urban Sociology Section of the ASA awarded Bell the Jane Addams Article Award. Recently, she published “Next-Generation Policing Research: Three Propositions” in the fall 2021 edition of the *Journal of Economic Perspectives*.

**Professor Rodríguez Elected to American Law Institute Council**

**The American Law Institute (ALI)** has elected Leighton Homer Surbeck Professor of Law Cristina Rodríguez ’00 to its Council, which identifies projects and activities to be accepted by the ALI and approves the work that represents the position of the Institute.

Rodríguez and three other newly elected members join a network of judges, lawyers, and law professors across the United States and abroad who are selected to membership on the basis of their professional achievement and interest in improving the law, according to an announcement from ALI.

The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law.



**Cristina Rodríguez**

## FACULTY TENURE

Yale Law School was proud to announce the promotion to tenure for three of its faculty members: **Monica C. Bell** and **Zachary Liscow** as of Jan. 1, 2022, and **Miriam Gohara** as of July 1, 2022. The *Yale Law Report* took the time to ask each of the professors about their scholarship and teaching.

## Q&A Professor Bell on Inequality, Sociology, and Legal Estrangement

*Monica C. Bell '09 received tenure as Professor of Law on Jan. 1, 2022. She is also Associate Professor of Sociology at Yale University. Her areas of expertise include criminal justice, welfare law, housing, race and the law, qualitative research methods, and law and sociology. Her award-winning scholarship has been published in The American Journal of Sociology, The Yale Law Journal, NYU Law Review, Harvard Civil Rights–Civil Liberties Law Review, and Law & Society Review, as well as popular outlets like The Washington Post and the Los Angeles Review of Books.*

*In this Q&A, Bell discussed race, inequality, and how sociology can be a valuable lens for law students.*

**Yale Law Report** **Much of your work has focused on policing, including an award-winning paper about how parents consider police presence when evaluating a neighborhood's suitability for raising children. More recently, you've begun to focus on housing and residential inequality as well as race-class inequality more broadly. How did one topic lead to the next?**

**Monica C. Bell** I've never been interested in policing per se. I began studying policing almost by accident—10 years ago, I was interviewing Black mothers in D.C. about their experiences with the state writ large, which included social services, schools, child welfare agencies, housing authorities, and more. One issue that came up in that research was the pervasiveness of policing as a thread running through all of those entanglements with the state. So, I've always been interested in policing as a window into larger structures that produce race, gender, and class subordination. Even the article on parents and police presence was part of a larger study on how parents make residential decisions more generally. I'm excited in this next chapter to be able to continue to work on these larger issues at the intersection of race, class, and gender inequality—at times writing about policing, but also following other, less obvious threads through which inequality and injustice are produced.

**In some of your work, you note that reformers often overlook how lawmakers in poor communities of color face the challenge of legal estrangement, which you've described as an intuition people have that the law and its creators and enforcers operate to exclude them from society. Why is this such an important concept? How does acknowledging legal estrangement change the conversation around reforming legal institutions?**

One of the challenges for people in lawmaking more generally is to assess how the effects of change might matter to people on the ground who are experiencing that change. There is often an assumption that if we just get the law right and the implementation right, we can expect quick returns on how people experience the law. However, my research suggests that when a group of people has faced legal exclusion at a structural and historical level, lawmaking has to take place at a deeper, more structural level and expect slower returns when it comes to civic engagement and social inclusion.

**Tell us about one of the courses you teach, Law & Sociology. How can fundamental concepts of sociology offer insight for designing law and policy?**

Sociology is a discipline that is deeply concerned with structure, context, institutions, and lived experience. Often, law and legal theory are insufficiently focused upon those three aspects of the world. For example, “reasonableness” is assessed by judges whose social milieu is totally different from many of the individuals who are before them in court. We make assumptions and debate over law and policy in one area often with little meaningful understanding of how institutions operate together or are facing similar constraints. Many of the so-called “unanticipated consequences” of certain legal and policy interventions might have been anticipated with deeper sociological understandings of the context of lawmaking and policymaking. Sociology, in contrast, foregrounds many of these questions about institutional functions, group and social dynamics, and social structures. In Law & Sociology, I try to give students enough material to ask some of the questions that deeply concerned me in law school and encouraged me to seek a Ph.D. Most importantly, we ask ourselves what perspectives are missing in the top-down, detached ways we often engage in lawmaking and policymaking? What are some of the predictable drawbacks and pitfalls of well-meaning formal legal interventions?



**Monica C. Bell**



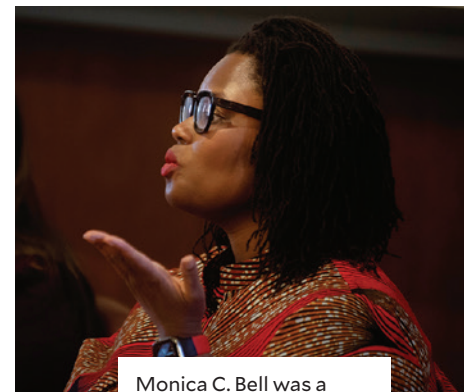
On Twitter

**Common Law**

@CommonLawUVA

March 17, 2022

What makes people view laws and the justice system as legitimate? @YaleLawSch's **Tom R. Tyler** joins hosts @RisaGoluboff and @UVALaw professor Gregory Mitchell to discuss procedural justice and policing.



Monica C. Bell was a panelist at the 30th annual Ira C. Rothgerber Conference at the University of Colorado in April.

## Q&A Professor Liscow on Taxation, Teaching, and a New Approach to Behavioral Economics

*Zachary Liscow '15 received tenure as Professor of Law on Jan. 1, 2022. His research seeks to understand policy levers that can address income inequality and the role that tax policy should play in combating inequality versus other legal rules.*

*His research on infrastructure costs with co-author Leah Brooks has been widely cited in outlets like Bloomberg, the Brookings Institution, The Week, and NPR. In this Q&A, Liscow discussed his research on tax policy, his collaboration with Daniel Markovits '00, Guido Calabresi Professor of Law, reassessing behavioral law and economics, and his approach to teaching his Federal Income Taxation course.*

### **Yale Law Report You have studied the realization rule, which requires property to be sold before gains are taxed. What can be done to increase the fairness and efficiency of this part of the tax system?**

**Zachary Liscow** Though the “realization rule” might sound technical, it is currently one of the key barriers to having a more just tax system. A recent ProPublica investigation of the tax returns of many of the U.S.’s billionaires showed that they pay very little in taxation. For example, between 2014 and 2018, Jeff Bezos got richer by \$99 billion, but paid less than 1% of that in taxes. The reason is that Bezos got richer because Amazon stock skyrocketed in value. But he sold little stock, so he wasn’t taxed on the gains.

This is all quite problematic for fairness because it means that many of the wealthiest Americans pay almost no tax when they get richer, while the vast majority of Americans pay considerable tax when they get richer, from wages in their jobs. This is also problematic for efficiency, in part because revenue will need to be raised elsewhere, likely in ways that discourage work and investment. Of course, taxing these gains among the superrich wouldn’t be costless; for example, some future entrepreneurship might be discouraged. But part of why taxing these gains won’t cause as much harm to efficiency is that current billionaire stockowners *already own* the stocks, so there’s not much they can do to reduce investment or work less to avoid the tax.

What can be done? My work found that the public finds taxing these gains as income deeply unintuitive. It seems like this is largely the case because people don’t consider the gains to even be “income” until they are sold.

So, the solution is a complex legal, economic, and political puzzle — and it is worth thinking creatively here. Achieving greater equity and efficiency for our economic and tax policy in the face of puzzles like this is a lot of what I work on. Here are some options:

- ⊙ **Tax wealth gains**, even if the gains are not sold, perhaps for very high-wealth individuals, notwithstanding some commonplace intuitions to the contrary. In fact, a senator developed such a plan in the fall. And the White House just released a similar plan.
- ⊙ **Tax wealth gains at death**. Currently, when someone dies with appreciated assets, those gains are not taxed as income to anyone. It would be much fairer — and raise considerable income from the well-off — to tax gains above a certain threshold (say, \$10 million) at death.
- ⊙ **Raise corporate taxes**, which would indirectly tax some of these gains.
- ⊙ Tax corporations themselves on *increases in the value of their stock*. That might be more politically feasible because the public tends to favor taxing businesses, especially large ones. But this would still indirectly tax those largely untaxed stock gains.
- ⊙ Mandate the *distribution of dividends* (perhaps as a share of profits), as Brazil currently does. Since dividends are taxed, this would also directly tax those gains.

### **Behavioral law and economics have influenced policy decisions in areas from consumer protection to public health to policing. Why do you think it is time for a new approach, which you and Professor Daniel Markovits term “democratic law and economics”?**

We argue that behavioral economics — which studies systematic mistakes that economists think people make and recommends policies to address those mistakes — risks allowing experts to impose their own preferences on the public.

Traditionally, economic experts have, to a large extent, avoided this problem because they were merely helping people pursue the behavior that the people themselves would undertake. But, the whole point of behavioral economics is that such behavior is often not in people’s interest. Behavioral economics has nevertheless continued to technocratically make policy recommendations, risking the imposition of the expert’s opinions. This is particularly problematic if economic experts do not look or think like the rest of the population. They are deeply unrepresentative demographically and have quite different policy views.



On Twitter

**Zachary Liscow**

@ZLiscow

March 10, 2022

Very excited that “Infrastructure Costs” with Leah Brooks — on the rapidly rising costs of building U.S. infrastructure — is now forthcoming in AEJ: Applied. Latest version available here: [ssrn.com/abstract=3428675](https://ssrn.com/abstract=3428675)



**Zachary Liscow**

**“Of course, taxing these gains among the superrich wouldn’t be costless; for example, some future entrepreneurship might be discouraged. But part of why taxing these gains won’t cause as much harm to efficiency is that current billionaire stockowners already own the stocks, so there’s not much they can do to reduce investment or work less to avoid the tax.”**

ZACHARY LISCOW ’15

We propose a different approach, which we call democratic law and economics. Rather than dictating what the right policy or action is, behavioral economists could instead inform representative samples of ordinary people about the evidence, including specifically about their own behavioral biases, and let them decide for themselves. Those decisions, rather than experts’ opinions alone, then inform policymakers, who could still incorporate other things, including expert advice. Our approach harnesses the insights of behavioral economics, but in a way that lets the people themselves, rather than the behavioral expert, be the arbiter of the good life.

**During the spring term, you taught Federal Income Taxation. What are some of the topics covered and what do you hope your students will take away from the course?**

I cover the fundamentals of income taxation and link this to issues for both lawyers and policymakers today. For example, we cover the fundamentals of the “realization rule” and link this to contemporary policy debates.

Throughout, we focus on the traditional tax policy criteria of efficiency, equity, and simplicity.

I teach good lawyerly skills like reading a statute, since the course is focused on statutes as much as, if not more than, any other course in law school. The Internal Revenue Code is long and complicated, and often the answer is in there. One just needs to figure out how the pieces fit together!

But, in linking the course back to contemporary policy debates, I also emphasize how central taxation is to our society for achieving whatever social goal that you want — economic justice, economic growth, environmental protection, etc. Taxation is central to all of these things. Indeed, while taxation can be very technical (see the “realization rule”), at the same time, taxation is also core to our democratic politics. Consider, for example, the Boston Tea Party and, more recently, the TEA (“taxed enough already”) Party and protests over how little some large corporations pay in tax. I want students to think about the tax system as citizens, which is all the more valuable now that they understand more of the hidden technical details of taxation.



**Michael Wishnie '93** was interviewed on CBS about the work of the Veterans Legal Services Clinic in February.



## Professor Moyn Delivers Carlyle Lectures at Oxford

**Henry R. Luce Professor of Jurisprudence** Samuel Moyn delivered six talks at the University of Oxford as part of its annual Carlyle Lectures in the History of Political Thought series.

Moyn’s lecture series, titled “The Cold War and the Canon of Liberalism” ran from January to March 2022.

“It has been a wonderful privilege to spend a term meeting colleagues at the University of Oxford to deliver these lectures, especially since so many of the prior contributions to the series have led to books I know and treasure,” Moyn said.

Moyn’s areas of interest in legal scholarship include international law, human rights, the law of war, and legal thought, in both historical and current perspective. In intellectual history, he has worked on a diverse range of subjects, especially 20th-century European moral and political theory.

Past scholars invited to deliver the Carlyle Lectures include Quentin Skinner, Melissa Lane, Annabel Brett, and Mark Goldie.

Recordings are available from the University of Oxford website at [law.yale.edu/Moyn-Carlyle](http://law.yale.edu/Moyn-Carlyle).



**Samuel Moyn**

## Q&A Professor Gohara on Reforms in Sentencing and Parole

*Clinical Professor of Law Miriam Gohara received tenure on July 1, 2022. For 16 years, she represented death-sentenced clients in post-conviction litigation, first at the NAACP Legal Defense Fund and then as a specially designated federal public defender with the Federal Capital Habeas Project. At the Law School, she leads the Challenging Mass Incarceration Clinic (CMIC) and the Criminal Justice Advocacy Clinic (CJAC). Gohara described the work of her clinics and her research on the historical and social forces implicated in culpability and punishment.*

**Yale Law Report** In just the past year, the efforts of you, the CMIC, and the CJAC have included representing individual clients, conducting research, testifying before the state legislature, and advocating publicly for reform. What policies and reforms do you see as being most important to the CMIC's and CJAC's work in the months and years ahead?

**Miriam Gohara** CMIC's core principle is that just punishment should account for people's individual contexts, vulnerabilities, and frailties as well as for their capacity for and record of rehabilitation. All the work the clinic students do is oriented toward advancing this principle. They do so by representing clients who are incarcerated or facing incarceration to persuade parole boards, prosecutors, and judges to reduce their sentences, or to sentence them to programs that will provide the treatment and support they need outside of prison. CJAC students do related policy advocacy. The clinics will litigate and advocate for sentencing reforms that invest in people's health and well-being as the best path towards meaningful and lasting public safety. That starts with putting resources into trauma-informed mental health and substance use treatment programs in the communities most impacted by crime as well as in prisons and jails to help people heal before they return to their homes and neighborhoods.

**You have argued that commutation applications allow Connecticut's Board of Pardons and Parole to consider the track record of time spent in prison. Why should the Board take post-conviction factors into consideration?**

When judges sentence people to long prison terms, they obviously have no way to know whether the people they sentence have the capacities to live law-abiding lives, serve others, and improve themselves years into their incarceration. Parole, commutation, and sentencing modification permit parole boards and judges to take a second look at people serving long prison terms to see whether they have demonstrated records of rehabilitation that warrant reducing their prison terms and giving them a chance to

live safely in their communities. Time and again, our clinic work has shown that people who are sentenced to long prison terms, including life without parole, become remarkable students, teachers, mentors, and legal advocates while they are incarcerated. They often create their own opportunities and support each other in meeting educational and personal goals. Giving these people second chances to live outside of prison both recognizes their positive track records and gives them a chance to give back to their communities by using their lived experiences to help others at risk of breaking the law and ending up in prison. In that way, second chance sentencings offer a powerful means of breaking cycles of harm and incarceration.

**Your practice and research touch on the relationship between victimization and incarceration and racial disparities in both. What draws you to the intersection of those areas of interest?**

Over more than two decades representing people convicted of serious crimes, I have learned that, invariably, each of them has been a victim, usually of violence, well before they hurt anyone else. My interest in the relationship between surviving crime and then later being punished for crime arises from that experience. My current research project examines how and why the politically dominant victims' rights movement

## The Washington Post

**Issa Kohler-Hausmann '08** and **Avery Gilbert** in "Maryland must go further on parole reform," on March 4, 2022:

"If Maryland is serious about reforming parole, it should revisit its parole release statute to ensure that the parole commissioners make decisions based on rehabilitation and maturity, not on their own subjective assessments of the seriousness of the crime, and then it should train parole board members to competently make public safety decisions."



**Miriam Gohara**

**“ Giving these people second chances to live outside of prison both recognizes their positive track records and gives them a chance to give back to their communities by using their lived experiences to help others at risk of breaking the law and ending up in prison.”** MIRIAM GOHARA

ignored the activism of African American survivors of crime, whose service in their own communities points to social investment instead of overreliance on punishment as the path to lasting public safety for all. At the same time that the politically dominant victims' rights movement coalesced and made policy gains nationally in the 1980s and 1990s, Black-led organizations serving survivors of crime were modeling self-help, mutual-aid, and non-law-enforcement public safety interventions. These organizations modeled their work on previous work by African American civil rights leaders such as Ida B. Wells' anti-lynching campaigns in the late 19th and early 20th centuries, the Urban League's efforts at meeting the needs of African Americans migrating to Northern cities from the South

in the early 20th century, and the Black Panther Party for Self-Defense's community protection work in the mid-20th century. Organizations such as Crime Survivors for Safety and Justice, Mothers in Charge, and The Movement for Black Lives carry on this work today. Had the dominant victims' rights movement adopted the goals of the Black-led survivors' organizations, the range of options available to all crime victims would have included anti-poverty social investments that would have ameliorated the conditions well-documented to proliferate crime, rather than the law-enforcement-centered procedural entitlements and small-bore financial compensation that the dominant movement lobbied for and that official victims' rights bureaucracies offer survivors of crime today.

## SCOTUS Echoes Faculty Paper: Badly Chosen Funds May Fail Duty to Retirement Investors

**Retirement plan sponsors** who don't weed out overpriced investment options risk failing in their duty to protect their members' interests, the U.S. Supreme Court unanimously ruled in January.

For Ian Ayres '86 and Quinn Curtis '09, the case highlights the problem of high-fee investments in retirement plans, the subject of their 2015 article in *The Yale Law Journal*. That article documented how many retirement plan menus are full of redundant investment options with high fees that erode investors' retirement savings.

Ayres, the Oscar M. Ruebhausen Professor of Law at the Law School, and Curtis, an Associate Professor of Law at the University of Virginia School of Law, were among 25 investment scholars who signed an amicus brief in support of employees who sued Northwestern University and the administrators of its retirement plan. Ayres, who used to teach at Northwestern, is also a member of the plan.

In *Hughes v. Northwestern University*, petitioners alleged that Northwestern violated the Employee Retirement Income Security Act of 1974, known as ERISA. Specifically, employees alleged that the retirement plan offered investments with excessive fees and simply had too

many options — more than 400 in all. Some high-fee funds in the plan had identical investments as products with lower fees and the sheer number of choices caused confusion and led to bad investment decisions, the petitioners argued.

Signers of the brief argued that careful assembly of the plan menu is "perhaps the most important" obligation of plan administrators.

"Put simply, not every investment option is suitable for inclusion in the menu of a retirement plan, and one responsibility of the plan fiduciary is to ensure that unsuitable options are excluded or weeded out," the brief's authors wrote.

Courts at first disagreed, siding with Northwestern. A district court dismissed the case in 2017. In 2020, an appeals court affirmed that dismissal. Those rulings essentially meant that the employees had no cause to complain about the high-fee options if more reasonable choices were also available, Curtis said.

In the most recent decision, however, the Supreme Court sided with the employees. The court cited the decision in the 2017 case *Tibble v. Edison International*, which said that plan administrators can breach fiduciary duty by "failing to properly monitor investments and remove imprudent ones."



**Sudhir Venkatesh, Matt Katsaros, and Tracey Meares** in "Spotify must be more transparent about its rules of the road," TechCrunch, Feb. 17, 2022:

"Spotify, and every other platform with user-generated content, is learning the hard way that they can't stay out of the way and rely on users to post appropriate content that doesn't flout company policies or social norms. Platforms are finding that they must become legitimate, active authority figures, not passive publishers."



**Ian Ayres**



On Oct. 29 and 30, 2021, a two-day conference was held at Columbia Law School to celebrate the 25th anniversary of the publication *The Ownership of Enterprise* (Harvard University Press, 1996) by **Henry Hansmann '74**.



## LGBTQ+ RIGHTS

## Report Refutes Flawed Science of Texas and Alabama Transgender Legal Actions

A major report by legal and medical experts including Jacquin D. Bierman Professor Anne Alstott '87 and co-authors from the Yale School of Medicine's Child Study Center and Departments of Psychiatry and Pediatrics and the University of Texas Southwestern analyzes in depth the misleading scientific claims that informed recent actions by Texas and Alabama to criminalize medical treatment for transgender youth.



**Anne Alstott**

The report represents the first comprehensive examination of the Texas Attorney General opinion and Alabama legislation targeting gender-affirming medical care for transgender children and adolescents. It also refutes misguided scientific claims that inform the measures in both states and contends that authorities omitted important evidence demonstrating the benefits of treatment for gender dysphoria and exaggerated potential harms, painting "a warped picture" of the scientific evidence.

"These are not close calls or areas of reasonable disagreement," the authors write. "The AG Opinion and the Alabama Law's findings ignore established medical authorities and repeat discredited, outdated, and poor-quality information. The AG Opinion also mischaracterizes reputable sources and repeatedly cites a fringe group whose listed advisors have limited (or no) scientific and medical credentials."

*"The scientific errors and omissions are so extensive that the conclusion is clear: these laws are motivated by bias and crafted to achieve a preordained goal: to deny gender-affirming care to transgender youth."* ANNE ALSTOTT '87

The report comes at a time when anti-LGBTQ legislation is on the rise across the country. According to the American Civil Liberties Union, bills restricting health care for transgender youth have been proposed in at least 19 states in 2022.

"The Texas AG opinion and the Alabama Law do not represent good-faith efforts with a few mistakes," Alstott said. "The scientific errors and omissions are so extensive that the conclusion is clear: these laws are motivated by bias and crafted to achieve a preordained goal: to deny gender-affirming care to transgender youth."

Henry Robinson '24, who helped Alstott as a research assistant, said there is a coordinated effort in statehouses around the country to "deny trans children access to healthcare, shut them out of public life, and cut them off from loving and supportive families." Robinson noted that the efforts rely on sources with little or no scientific credibility.

"This effort relies on misinformed and often outright disingenuous expressions of concern about the supposed harms of gender-affirming healthcare to children," explained Robinson.

The authors hope that by marshaling the reputable scientific evidence, the report will serve as a vital resource to journalists, the general public, and litigators challenging such laws and will help ensure other states do not rely on the legal authority of the Texas opinion to enact similar laws around the country.

By presenting the science in a dispassionate manner, the authors hope to combat misinformation about gender-affirming care that can be quick to take hold in the public's mind.

"We need to call for fact-based checks on legal opinions and legislation," said Dr. Meredith McNamara, a co-author. "There must be a penalty for writing fake science into law. Trans and nonbinary youth are facing the fight of their lives to simply exist and we can't let them stand alone. This is a matter of life and death."



**J.L. Pottenger Jr., Nathan Baker Clinical Professor of Law**, was awarded the Tapping Reeve Legal Educator Award on April 20 by the Connecticut Bar Association. (left to right) Margaret I. Castinada, J.L. Pottenger Jr., Cecil J. Thomas, Cherie Phoenix-Sharpe, and Daniel J. Horgan.

PERSONAL HISTORY

## Meares Honored with Overdue Valedictorian Title



Tracey Meares (in white) received a medal designating her as valedictorian of the Springfield High School class of 1984.

In April, Professor Tracey Meares was honored with a certificate and medal designating her as valedictorian of the Springfield (Illinois) High School class of 1984, a title denied her at the time. A documentary directed by Maria Ansley, *No Title for Tracey*, brought attention to the fact that Meares, despite grades that placed her at the top of her class, was not given that honor at graduation. Her parents believed that racism was behind the act of naming Meares and a white peer the “top students” of the class instead. On [cnn.com](http://cnn.com),

Meares commented: “The resonance that the film has had with so many people is also incredibly powerful... Gestures of reconciliation are important and necessary.” Inspired by this story, the Southern Illinois University Institute for Plastic Surgery has established the Tracey Meares Representation Matters Scholarship to give students from backgrounds underrepresented in medicine an opportunity to experience firsthand what it would be like to be a plastic surgery resident during a four-week rotation.



Owen M. Fiss was a panelist in Chile in May, discussing “Indigenous Rights and Chile’s Constitutional Convention.”

## Conference Highlights Professor Kahn’s Work



Paul Kahn

The work and jurisprudence of Professor Paul Kahn ’80 were discussed in a two-day workshop titled “Law and Political Imagination” on April 7 and 8 that was co-organized by the Edinburgh Law School Centre for Legal Theory.

Kahn is the Robert W. Winner Professor of Law and the Humanities and Director of the Schell Center for International Human Rights. Four panels of scholars from diverse countries discussed his work.

“Paul Kahn’s innovative and highly distinctive writings over more than 30 years on the deep cultural meaning of constitutional texts and practices have influenced more than one generation of scholars in the United States and beyond,” said Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations for Edinburgh Law School, one of the workshop’s co-organizers. “This workshop is an occasion to give rounded consideration to one of the most important bodies of contemporary legal scholarship.”

The two-day workshop included panel discussions titled “Political Theology,” “Constitutional Identity and Case Law Between Interpretation and Narrative,” “The Cultural Study of Law,” and “System and Project.” Each panel included discussion by scholars followed by a reply from Kahn.

“The workshop does not only celebrate Kahn’s impressive work, but it also aims at exploring applications of Kahn’s major ideas to different legal fields,” said Marco Goldoni, Senior Lecturer at University of Glasgow School of Law, another co-organizer of the workshop.

On April 11, Kahn presented a separate lecture, “America’s New Civil War,” at Edinburgh Law School, sponsored by the Edinburgh Centre for Legal Theory.

## Yale Law School Mourns the Loss of Professor Emeritus John G. Simon

John G. Simon '53 LLB, the Augustus E. Lines Professor Emeritus of Law at Yale Law School, died on Feb. 14, 2022, at the age of 93 in Hamden, Connecticut.

**“John Simon was a beloved teacher,** colleague, and friend,” said Dean Heather K. Gerken. “His devotion to the School was unparalleled, he pioneered the study of nonprofits and philanthropy, and he shaped the careers of generations of students. We have lost a giant, and we mourn his loss throughout our community.”

Born Sept. 19, 1928, Simon graduated from Harvard College, where he was the President of *The Harvard Crimson*, before earning his law degree from Yale Law School in 1953. After law school, Simon served in both military and civilian capacities in the Office of General Counsel, Office of the Secretary of the Army, and practiced law in New York with the firm of Paul, Weiss, Rifkind, Wharton & Garrison from 1958 to 1962.

Simon joined the Yale Law School faculty in 1962, specializing in teaching and research related to the nonprofit sector and philanthropy, as well as elementary and secondary school education. He also taught courses in contracts, aging and the law, and family law. Simon served as Deputy Dean from 1985 to 1990, and Acting Dean in 1991.

In 1977, he founded the Yale Program on Nonprofit Organizations, one of the first university-based nonprofit research centers, which considered the past, present, and potential roles of nonprofits, along with issues surrounding their control, governance, and financing. In 1989, Simon received an honorary doctor of laws degree from Indiana University for his contributions to scholarship in philanthropy.

“As a scholar he created a whole new field of law. As a teacher he was utterly beloved (especially by those lucky enough to be in his first term small group in Contracts). As an administrator, his kindness and wisdom made the School run smoothly and with an unparalleled curriculum during the six years that he was Deputy Dean,” said

Sterling Professor Emeritus of Law and former Dean Guido Calabresi '58 LLB.

In the late 1990s, Simon sponsored a series of student workshops that led in 1999 to the establishment — by Yale Law School graduates — of a widely acclaimed inner-city charter school. In addition, he helped launch China’s first Nonprofit Organizations Legal Clinic with Jamie Horsley in 2007.

In addition to numerous journal articles, his publications include *The Ethical Investor: Universities and Corporate Responsibility* (Yale University Press, 1972), co-authored with Jon P. Gunnemann and Charles W. Powers, which explored the question of how to balance the demands of institutional morality with the demand for institutional neutrality. Universities including Yale and Stanford adopted the book’s guidelines to reconcile the problems of academic freedom with those of fiscal responsibility.

“John Simon was a great scholar,” said John A. Garver Professor of Jurisprudence William Eskridge '78. “He founded an area of legal scholarship and pedagogy

and then starred in the field he created. Inspired by his classes and his ideas, hundreds of Yale graduates worked in that field of law. In his prime, which lasted for decades, he supervised more student Supervised Analytic Writing projects than anyone else on the faculty, and he carried this heavy load cheerfully and helpfully. He carried the same good will and good sense into faculty meetings and mentorship of his younger colleagues.”

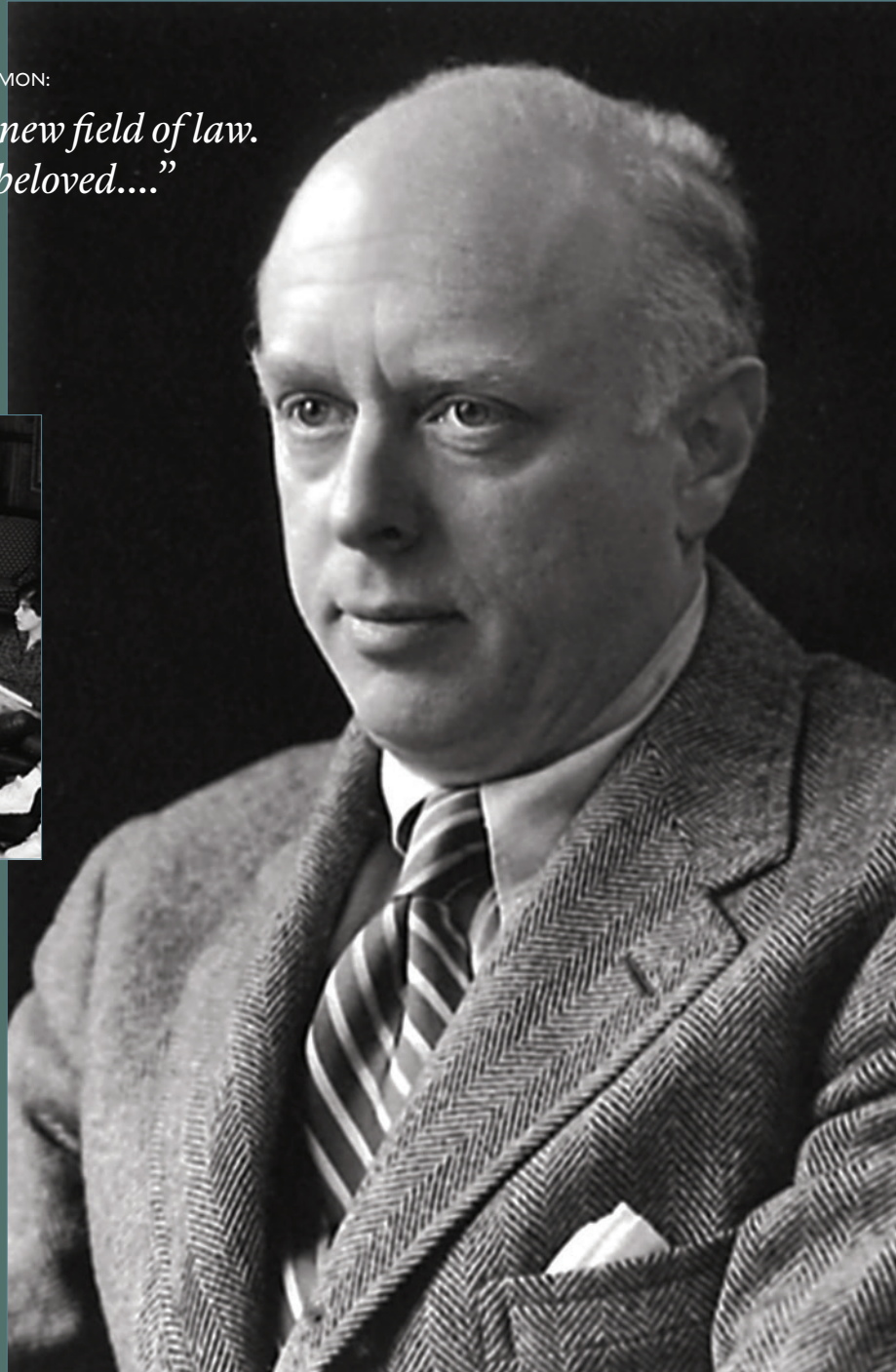
In 2008, Simon received the Award of Merit from the Yale Law School Association, the alumni organization of Yale Law School, in recognition of his public service and contributions to the legal profession.

Simon is survived by his wife Claire. 🍷



GUIDO CALABRESI ON JOHN SIMON:

*“As a scholar he created a whole new field of law.  
As a teacher he was utterly beloved....”*



(above) John G. Simon with the  
Nonprofit Organizations Clinic, c. 2000