

Yale Law Report

THE ALUMNI MAGAZINE OF YALE LAW SCHOOL
SUMMER 2022

Reappointment of
Dean Heather K. Gerken

Launching the Hurst Horizon
Scholarship Program

Commencement Ceremonies
for 2020, 2021, and 2022



**Can We Fix
What's Wrong
with
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Yale Law Report

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Yale Law School students cheer at the Old Campus commencement ceremony on May 23, 2022.

Photo by Mara Lavitt



Dean Heather K. Gerken poses with the Class of 2022 for a group photo on May 23, 2022, before Commencement ceremonies.

Dear Graduates and Friends of Yale Law School:

As I begin my second term as Dean, I feel honored to lead this extraordinary institution. In this issue, I had the chance to reflect on all that we have accomplished together over the past five years while looking ahead to the future.

I am immensely proud of our shared achievements. Two stand out at this moment because they were announced just this year. One is the Soledad '92 and Robert Hurst Horizon Scholarship Program, which will provide tuition-free scholarships beginning this autumn for students whose families fall below the federal poverty line. I cannot begin to describe how moving it was to deliver the news to our 1Ls and 2Ls this February, let alone the joy we've had in telling our new admits that they will attend YLS tuition-free. The scholarship builds on our best traditions. Yale Law School has always led in ensuring that financial aid goes to those students who need it the most. This program is also a pivotal step forward in transforming how legal education is funded, and I hope other law schools will be inspired to follow in our footsteps.

The announcement of the Hurst Horizon Scholarship Program comes on the heels of the launch of The Tsai Leadership Program last fall. This extraordinary program enables us to train our graduates for their last job, not just their first, and dream a curriculum for the next century into existence. The two programs will work in tandem to level the playing field for all students and exemplify what is so special about a Yale Law School education.

If there is a single lesson from the last five years, it is how much Yale Law School depends on the support of our devoted alumni. I cannot express how much it has meant to me to have your encouragement and ideas. Thank you for supporting me and this Law School every step of the way. We are forever in your debt, and I look forward to writing the next chapter of our history together with all of you.

Warmly,

Heather K. Gerken, Dean and Sol & Lillian Goldman Professor of Law
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OPENING STATEMENT



(top) Professor J.L. Pottenger Jr. '75, Susan Sturm '79, and Deputy Dean for Experiential Education Muneer Ahmad at a panel about clinical education in April 2022; (bottom) U.S. Supreme Court Justice Sonia Sotomayor '79 (center) joined a panel of alumni moderated by Professor Judith Resnik (second from left) to celebrate the 25th anniversary of the Liman Center and more than 50 years of the Jerome N. Frank Legal Services Organization and Yale Law School's clinical program.

A Celebration of Public Interest Lawyering

The Liman Colloquium honored the anniversaries of the Liman Center and the clinical program at Yale Law School

U.S. Supreme Court Justice Sonia Sotomayor '79 joined Yale Law School alumni from the Liman Center and the Law School's clinical program in a conversation to open the 25th Annual Liman Public Interest Colloquium on April 7.

This year's colloquium honored both the 25th anniversary of the Liman Center and more than 50 years of the Jerome N. Frank Legal Services Organization and Yale Law School's clinical program. Titled "An Intergenerational Community Committed to Public Service Education and Lawyering," the event celebrated the achievements of these interconnected programs at Yale Law School and reflected on the challenges of the current moment.

Dean Heather K. Gerken joined Muneer Ahmad, Deputy Dean for Experiential Education and Sol Goldman Clinical Professor of Law, and Judith Resnik, Arthur Liman Professor of Law and Founding Director of the Liman Center, who provided brief histories of these programs as part of their welcome of Justice Sotomayor, who in 2017 had come to Yale to launch the Liman Center's 20th anniversary colloquium.

In her opening remarks, Resnik recounted the origins of the Liman Center and its development over the last quarter century and noted what an honor it was to have Justice Sotomayor in attendance to celebrate the milestone.

"I have an amazing job, which is to teach here and to interact with a whole host of people who want to make the world a little bit better than it currently is, and from whom I learn a great deal," she said.

Other panel discussions explored the dynamics of public interest education and lawyering, innovation and entrepreneurialism in promoting equality, the role of protest in contemporary social movements, the interaction and interdependencies of public and private practice, and the roles of fellowships, clinical education, and law schools in contributing to communities and innovation in legal theory and practice.

"Gathering with so many of our alumni across the generations was a deeply moving experience," said Professor Fiona Doherty '99, Director of the Jerome N. Frank Legal Services Organization and Clinical Professor of Law. "Person after person described the clinics as their home away from home during law school: the place where they first experienced the sense of purpose and dedication that comes with fighting for a client's rights."

The event was a chance to reflect on the history of the clinics and the astonishing breadth of work that has been accomplished in the five decades since its establishment, which began when Yale Law School introduced a field-work seminar during the 1970-1971 academic year. The seminar was the first for which Yale Law School students received academic credit for legal work outside of the classroom. But, as told in a 1999 history by Laura G. Holland '00, the Law School's clinical program has much deeper roots.

Students began doing legal aid work in New Haven on a voluntary basis as early as the 1920s, Holland's history notes. In 1948, students opened a Legal Aid Bureau at the Law School, which soon boasted 117 members. In 1957, that organization was renamed the Jerome N. Frank Legal Aid Association. The student-led group later became the Jerome N. Frank Legal Services Organization (LSO).

Today, as an academic entity of the Law School, the LSO operates nine clinics that continue to focus on New Haven and communities in Connecticut, while also working regionally and nationally. In addition, the Law School features dozens of other clinics outside of LSO to provide students with a broad range of innovative, hands-on experiences that impact communities around the country and all over the world. Over the years, the clinics have expanded in scope, becoming more diverse in their offerings, Ahmad noted. LSO clinics represent people and organizations in the areas of criminal defense and criminal justice, incarceration, housing, immigration, labor, veterans' legal services, and community and economic development.

"Clinics today are a critical locus of teaching, learning, service, and scholarship," said Ahmad. "Students, faculty, and ideas move freely between the clinical and nonclinical parts of the law school."

Ahmad added that, for all the variety in subject matter, the Law School shares certain pedagogical commitments regarding the clinics.

"Our students are always out in front," he said. "Faculty provide intensive supervision. We value peer learning. We inculcate the highest values of the profession. We confound the conventional divisions between doctrine, theory, and practice. We pursue litigation as well as many other forms of legal advocacy. And we privilege service to and work alongside poor and marginalized individuals and communities."

SCHOOL NEWS



Daniel Markovits '00 teaching a class at the Law School.

Photo by Mara Lavitt

Exploring Private Law and Public Justice

Global discussions of private law enhance an annual seminar

“American legal thought has in recent decades seen an outpouring of creative and profound work that investigates the ways in which nominally private arrangements are deeply connected to some of the age’s central questions of public justice,” according to Daniel Markovits ’00, the Guido Calabresi Professor of Law and Director of the Yale Law School Center for Private Law.

Those interactions between private law and public justice, including intersections with issues like economic inequality and political subordination, formed the basis of this spring’s annual Seminar in Private Law, held in collaboration with NYU School of Law’s Contract Theory and Law Colloquium and Visiting Professor of Law Richard Brooks.

Each spring, the seminar brings speakers to the Law School to present papers addressing a common theme. Over 11 weeks, the seminar showcased experts from both academia and practice, while spanning law, economics, sociology, history, and philosophy. Some speakers for this year’s edition, titled “Private Orderings and Public Justice,” were champions of private law, and some were critics. Economist Thomas Piketty and political theorist Danielle Allen, widely known for her work on justice and citizenship in ancient Athens and modern America, gave the first presentation in February. Titled “A Brief History of Equality,” the discussion drew on themes from Piketty’s recent book *A Brief History of Equality*.

“I was very excited to see how questions about private law’s restricting and empowering capacities gave rise to fascinating conversations among a diverse group of outstanding scholars,” said Konstanze von Schütz, the center’s Private Law Fellow.

Speakers followed throughout the spring, with highlights including Gabriella Blum and John Goldberg on “the unable or unwilling doctrine”; Ariel Rubinstein on markets without prices; Rebecca J. Scott and Cynthia Estlund ’83 on labor, slavery, and the contemporary workplace; and Gordon Bradford Tweedy Professor Emeritus of Law and Organization Carol M. Rose and Cristina Bicchieri, who discussed social norms, customs, and private law.

01 Feb
Danielle Allen & Thomas Piketty
A Brief History of Equality

08 Feb
Ariel Rubinstein & John Goldberg
The Unable or Unwilling Doctrine:
A View from Private Law

15 Feb
Gordon Bradford Tweedy
Markets without Prices

22 Feb
Christopher Katz & Cristina Bicchieri
The Privatization of Public Functions

01 Mar
Rebecca J. Scott & Cynthia Estlund
Labor, Slavery, and the Contemporary Workplace

08 Mar
Neil Gansdale & Steven Watt
Inside and Outside the Firm

20 Mar
Konstanze von Schütz
The Law(s) of Capitalism

05 Apr
Carol M. Rose & Cristina Bicchieri
Social Norms, Customs, and Private Law

12 Apr
Danielle Allen
Private Law: Market Ordering or Creator of Injustice?

19 Apr
Neil Rubins & Jeremy Waldron
Property and Sovereignty

26 Apr
Neil Gansdale
Wrongful Life

For further information about the Seminar,
please visit www.law.yale.edu/private-law-seminar.
To attend and receive papers,
please contact private-law@yale.edu.
Support is generously provided by the Kirkland & Ellis Fund.

YALE LAW SCHOOL
CENTER FOR PRIVATE LAW

NYU LAW

Private Orderings & Public Justice

2022 Seminar in Private Law

Tuesdays
12:10 -
2:00 p.m.

“I was very excited to see how questions about private law’s restricting and empowering capacities gave rise to fascinating conversations among a diverse group of outstanding scholars.”

KONSTANZE VON SCHÜTZ, PRIVATE LAW FELLOW

Taken together, the scholars, students, and practicing lawyers come to the yearly seminar for serious and sustained intellectual engagements among groups who share interests but may not often interact.

“To have up to 150 audience members from across the globe virtually join the classrooms at Yale Law School and NYU speaks to the wide-ranging significance of this year’s topic,” von Schütz said.



James Forman Jr. '92 and Kayla Vinson

Newly Launched Law and Racial Justice Center Outlines Its Vision

A new Yale center at the Law School will be a home base for teaching, interdisciplinary research, and policy work focused on racial injustice. With a particular focus on New Haven, the center's work will bring New Haveners, students, staff, faculty, government officials, and local and national experts together to identify solutions that can be put into practice to transform public safety and create opportunities for marginalized communities. The center is directed by J. Skelly Wright Professor of Law James Forman Jr. '92 and executive director Kayla Vinson.

Read more at yale.us/3z5BoQ8.

HUMAN RIGHTS

Schell Center Report Presents Evidence of Crimes Against Humanity in Myanmar

“Nowhere Is Safe: The Myanmar Junta’s Crimes Against Humanity Following the Coup d’État,” a report released by the Schell Center for International Human Rights, details how the Myanmar junta murdered, imprisoned, tortured, disappeared, forcibly displaced, and persecuted civilians in acts that amount to crimes against humanity.

The human rights organization Fortify Rights co-authored the report, which makes new contributions to accountability and international justice efforts targeting the junta’s atrocities since its coup in Feb. 2021.

“This report provides the international community with a better understanding of the junta’s crimes, the individuals responsible, and its battalions’ locations in relation to attacks,” said Tom Andrews, U.N. Special Rapporteur on the situation of human rights in



Myanmar and Robina Senior Fellow at the Schell Center, as well as the author of the report’s foreword.

More than 120 testimonies are included in the report, along with leaked documents and information, in-depth legal analysis of new evidence, and interviews with survivors, eyewitnesses, protesters, medical professionals, members of armed resistances, and former military, police, and navy members.

The report also provides previously unknown details of the junta’s chain of command during the crackdown and makes 28 recommendations to the Myanmar military, the U.N. Security Council, U.N. member states, and others.

“All individuals responsible for these crimes should be sanctioned and prosecuted,” said Matthew Smith, Chief Executive Officer at Fortify Rights and co-author of the report.

ANIMAL RIGHTS

LEAP Launches New Bird-Friendly Building Initiative with Yale

For billions of birds, windows are invisible killers. Scientists estimate that as many as one billion birds die by window collisions every year in the United States, making buildings one of the country's leading causes of wild bird mortality.

With the support of a seed grant from the Yale University Planetary Solutions Project, the Yale Bird-Friendly Building Initiative launched in May. The new initiative aims to accelerate the adoption of bird-friendly design on Yale's campus and beyond. The Initiative is co-led by the Law, Ethics & Animals Program (LEAP) at Yale Law School, the Yale Peabody Museum of Natural History, and the Yale Office of Sustainability. In 2022 and 2023, the Initiative will conduct two initial research projects in partnership with the American Bird Conservancy.

The first research project focuses on creating a data-driven action plan for how the university can significantly reduce bird-window collisions on campus. The research team will collect data and provide mitigating solutions for existing buildings and updated design standards for new and remodeled buildings.

The Initiative's second project focuses on researching the effectiveness of existing bird-friendly building design policies in the U.S., and developing new public



A blackpoll warbler killed by a window collision.

policy strategies that could accelerate the development and adoption of bird-friendly design, technologies, practices, and materials at both new and existing buildings.

"Bird-window collisions are often overlooked or dismissed as insignificant or inevitable," said Viveca Morris, Executive Director of LEAP. "But they are neither. The cumulative effects of window collisions for birds, and in turn for ecosystems and for humanity, are staggering. We have the tools and knowledge to fix this problem, both at Yale and beyond."

Read more at bird-friendly.yale.edu.

CRIMINAL JUSTICE

Liman Center and Coalition Lessen the Harm of Connecticut's Incarceration Lien Law



State Rep. Patrick Callahan, Liman Center Director Jenny Carroll, Ryanne Bamieh '23, and Mila Reed-Guevara '23 (pictured above) attended a meeting at the Connecticut State Capitol to discuss the repeal of Connecticut's incarceration lien, under which the state

can claim money from people who have served time in jail and prison. The Arthur Liman Center for Public Interest Law and partners helped pass a law that places limits on the lien. Under the new law, starting July 1, an incarcerated person's first \$50,000 of property is exempt from the lien. Any claim on this property must be brought within two years of the individual's death or release from custody. In addition, the lien will no longer apply to civil settlements. Changes to the law are a direct product of the hard work of students Reed-Guevara, Bamieh, Ann Sarnak '23, Danny Li '22, and the community coalition, Carroll said. Students conducted research, presented their research at a press conference, and helped prepare testimony for public hearings. They did this work in collaboration with legal academics, community members, advocacy groups, and students from Quinnipiac University and the University of Connecticut School of Law.

Tsai Leadership Program Hosts First Semester of Events and Workshops



Food for Thought

In March, with the Thurman Arnold Project at Yale and the Yale Sustainable Food Program, the Information Society Project hosted “Reforming America’s Food Retail Markets,” a conference on how antitrust enforcement and competition policy can improve food retail markets in America.



Dean Heather K. Gerken and Blackstone Group President and COO Jonathan Gray spoke at a Leadership Program event.

The Tsai Leadership Program, launched in November, marked the spring term with a spate of new skills workshops and events.

In April, The Tsai Leadership Program held two three-day workshops — on public speaking and negotiations — designed to equip students with crucial skills needed now and in their future endeavors.

In-person and virtual events offered students the opportunity to learn more about the Ludwig Program in Public Sector Leadership and the Chae Initiative in Private Sector Leadership, the two core pillars supporting The Tsai Leadership Program.

“Each workshop offered a wonderful blend of theory with practice and provided an eye-opening experience for students in furtherance of their leadership development,” said Mary Herrington, Executive Director for the Chae Initiative.

The Chae Initiative and Ludwig Program also hosted a series of events, workshops, and fireside chats. Its first in-person speaker event, “A Conversation on Leadership” with Dean Heather K. Gerken and Blackstone Group President and COO Jonathan Gray, spanned topics on leadership, risk-taking, global

challenges, and career opportunities in the investment world.

“This was a rare opportunity to see and hear from a leader who talked openly about taking risks, and about tackling seemingly insurmountable global reckonings,” said Herrington.

A virtual panel discussion co-hosted by the Ludwig Program and the Solomon Center for Health Law and Policy covered service on nonprofit boards. Panelists Ravi Gupta ’09, Vidya Satchit ’14, and Megan Wachpress ’15 reflected on how they first became board members, the responsibilities of serving, and the challenges and rewards inherent in board service.

“Serving on a nonprofit board can be an educational and fulfilling way to become engaged with an organization whose mission aligns with your values,” said Margie Adler, Executive Director of the Ludwig Program, who moderated the panel.

The Tsai Leadership Program also helped support new courses throughout the 2021–2022 academic year with innovative classes in financial accounting, corporate finance, probability and statistics, nonprofit leadership, and more.

VISITORS

Visiting Professorship Supports Intellectual Diversity

Yale Law School announced the creation of the Michael Doyle '62 and Bunny Winter Distinguished Visiting Professor of Law, made possible by a gift from Michael Doyle '62 and Bunny Winter. The visiting professorship brings in faculty from a wide range of perspectives for semester-long visits, all with an eye to enlarge our community's intellectual horizons.

"We are honored to have the Doyles' support to enhance the intellectual life of our School through the visiting professorship," said Dean Heather K. Gerken. "The chair perfectly captures their remarkable commitments while reinforcing values that are central to all academic institutions."

Edward J. Larson was the inaugural Michael Doyle '62 and Bunny Winter Distinguished Visiting Professor of Law during the fall 2021 term. He co-taught "George Washington and the Constitution" with Sterling Professor of Law Akhil Reed Amar '84. Larson visited Yale Law from Pepperdine University, where he is the Hugh and Hazel Darling Chair in Law and University Professor of History. He is the author of 13 books and numerous scholarly papers that span the subjects of law, history, science, and religion. Larson delivered the Michael A. Doyle '62 and Bunny Winter Distinguished Visiting Professor of Law Inaugural Lecture on March 14, titled "'What is an American?': A Revolutionary Era Question."

Watch the lecture: vimeo.com/693676641.



Edward J. Larson gave a lecture in March as the inaugural Michael Doyle '62 and Bunny Winter Distinguished Visiting Professor of Law.

Exhibit on Civil Rights Attorney Constance Baker Motley at Law Library



Constance Baker Motley (right) and civil rights lawyer Orzell Billingsley at the U.S. Supreme Court.

Images, news clippings, letters, and commendations from the life of New Haven native Constance Baker Motley were on exhibit at the Lillian Goldman Law Library this spring.

Motley began her legal career as the first female staff attorney at the NAACP Legal Defense Fund and built a career fighting for civil rights and social justice in transportation, public housing, and education. In 1966, she became the first Black woman to serve as a federal judge.

SCHOLARSHIP

ISP Launches Digital Public Sphere White Paper Series

A new series of white papers explores critical issues related to technology and the public sphere and the effects of digital platforms on democracy and information governance.

The Digital Public Sphere White Paper Series from the Law School's Information Society Project (ISP) launched in January with support from the Knight Foundation.

"This series is one part of our efforts at understanding the transformative effects of the digital public sphere," said Knight Professor of Constitutional Law and the First Amendment Jack M. Balkin, ISP's Director.

The first collection of papers, "Envisioning Equitable Online Governance," was published in collaboration with the *Yale Law Journal* Forum. The collection examines how inequality manifests on social media platforms and in the digital public sphere. Essays analyze how race, gender, and other facets of identity shape people's experience of and access to the digital public sphere and explore the harms minority groups suffer in these spaces.

If Students Can Hack This Course, They're Ready for Information Age Lawyering

To prepare future lawyers to shape cybersecurity policy, Scott R. Shapiro '90 doesn't focus on case law. Instead, the Charles F. Southmayd Professor of Law teaches students how to hack.

Hacking — the act of exploring ways to breach defenses and exploit weaknesses in a computer system or network — may not be part of the conventional law school curriculum. But when students in Shapiro's cybersecurity course learn how to crack passwords, they see firsthand what it means for devices and systems to be vulnerable to security breaches. With that technical understanding, Shapiro said, they are better qualified to address questions of digital policy, privacy, and national intelligence. And from there, they can make and test laws to protect data from theft and damage.

The outline for the course, co-taught by Shapiro and Visiting Lecturer in Law Sean O'Brien, lists topics more often covered in IT classes than in law classrooms. However, the course requires no tech skills beyond being able to use a web browser.

Shapiro said it's a mistake to assume that today's students — digital natives — automatically understand technology. Shapiro drew a parallel: few drivers understand the inner workings of their cars. The internet, he said, is no different.

"The paradox is, we live in an information society and yet we don't know how it works," Shapiro said. "The internet is so easy to use, why would you bother learning?"

One way the course differs from a typical law school class is that the final project is not a paper but a video

of three hacks. One student bought an inexpensive credit card reader and then demonstrated how to hack credit card numbers. Another compiled lists of dictionary words, which people often use in passwords. After putting together a combined list of words that numbered in the millions, the student tested them against a series of obscured passwords — and successfully cracked them.

"We grade not so much on technical sophistication, but on hustle," Shapiro said.

The class is taught as a lab, in which students learn hands-on. In one exercise, they use one computer to remotely enter another, albeit one that is intentionally buggy and configured for that purpose. Before these activities, students learn the difference between ethical or "white hat" hackers, who use open-source tools to improve and protect the cyber landscape, and people who hack to cause harm. O'Brien said it's important to distinguish the two.

"With an understanding of this duality, students will finish our curriculum with a respect for the vigilance it takes to protect systems and mitigate or defend against attacks and cybercrime," O'Brien said. "Our students need to know how computer networks and data can be breached, and how the humans behind them can be fooled, to truly appreciate the practice of cybersecurity."

Charlotte Blatt '22, who has a background in national security and foreign policy, came to the class with some sense of the cybersecurity threats facing businesses and governments today. But she said she

Liman Center Welcomes New Director

Jennifer Taylor '10 is the new Director of the Arthur Liman Center for Public Interest Law. While a YLS student, Taylor was a member of the Prison Legal Services and New Haven Legal Assistance clinics. In addition to representing incarcerated clients as a Senior Attorney at Equal Justice Initiative in Montgomery, Alabama, Taylor has researched, written, and spoken on the link between mass incarceration and American racial history.



Scott R. Shapiro '90 and Sean O'Brien teaching a cybersecurity course.

“Our students need to know how computer networks and data can be breached, and how the humans behind them can be fooled, to truly appreciate the practice of cybersecurity.”

SEAN O'BRIEN, VISITING LECTURER IN LAW

had little understanding of the issues from a technical standpoint. She wanted to learn more before starting a job after law school at a firm with a data strategy and security practice.

“This class is preparing me for that work because I will be able to better understand what clients are experiencing when they’ve been hacked,” Blatt said, adding that she’ll be able to communicate with clients “who are facing problems that I previously did not have the words or knowledge to describe accurately.”

Familiarity with principles of cybersecurity will be crucial for all future lawyers, not just those who will go into that field, Shapiro said. All knowledge workers —

of which lawyers are one example — need to protect sensitive information, Shapiro pointed out. For lawyers, that includes their clients’ data. In that sense, cybersecurity is an extension of what law schools have always taught.

“We think of ourselves training the next generation of leaders, and the next generation of leaders needs to know how the internet works. They need to understand how cybersecurity and hacking work, what the relationship is between hacking, national security law, criminal law, and international law,” Shapiro said. “It’s a vital service for our mission to educate the next generation of leaders for our information society.”

CLINIC ROUNDUP

Lowenstein Clinic and CRR Submit Brief on Sexual Violence to Inter-American Court

The Allard K. Lowenstein International Human Rights Clinic and the Center for Reproductive Rights submitted an amicus brief to the Inter-American Court of Human Rights in April in a case alleging that Bolivia had failed to prevent, investigate, or punish someone who had repeatedly sexually abused a child. The brief set out states’ obligations to provide comprehensive sex education to children and adolescents and to enable them to recognize and report sexual violence.

The case, *Angulo Lozada v. Bolivia*, which was first brought before the Inter-American Commission on Human Rights in 2012, alleged that as a child, Brisa Liliana De Ángulo Lozada had been raped repeatedly by her cousin and that Bolivia had failed to meet its human rights obligation in connection with these crimes.

“Comprehensive sex ed, universal health care, robust social and economic assistance programs, and other, similar policies are crucial, not only for repairing harm done to individuals, but also for achieving the kind of transformative cultural change that will prevent sexual violence in the future,” said clinic student and co-author Jessica Tueller ’21.

The amicus brief was drafted by Tueller along with Alex Miskho ’22 and Megan Pearson ’21 under the supervision of Ryan Thoreson ’14, former Robert M. Cover–Allard K. Lowenstein Fellow in International Human Rights at Yale Law School.

CJAC Students Testify Against Rollbacks of Juvenile Justice

On March 14, a team of Yale Law School students from the Criminal Justice Advocacy Clinic (CJAC) submitted written testimony to the public meeting of the Connecticut General Assembly’s Judiciary Committee.

The testimony argued against a recent series of bills aimed at rolling back juvenile justice reforms in response to a recent increase in juvenile crime. The proposed reforms included amendments that would lower the minimum age for children charged with certain crimes to be transferred to adult courts and make it easier to detain children pretrial.

Under the supervision of Clinical Professor of Law Miriam Gohara, students Avi Feinsod ’24 and Rachel Ruderman ’24 wrote testimony arguing against these proposals. Their testimony highlights that the bills seek to rejuvenate “tough on crime” policies which have already been ruled unjust at the state and federal levels and which the data show to be ineffective or counterproductive; they also ignore the underlying social ills that drive juvenile crime.

Instead of increased detention and harsher punishments for children charged with serious crimes, the student team suggested Connecticut implement alternatives to incarceration that have been successful in other states.

MFIA Helps Overturn Texas Drone Photography Ban and More

In a victory for journalists, a federal court struck down a Texas law banning drone photography for newsgathering. The Media Freedom & Information Access Clinic represented the plaintiffs in one of several recent victories for the clinic and its work defending the rights of journalists and promoting government accountability.

The clinic first brought the case in 2019, together with co-counsel. Journalists, including the plaintiffs, had objected that the law was too broad and unconstitutionally restricted their ability to use drones to gather news.



from families, hiring state workers, and assigning children to public schools. However, the report found, the agencies are unable or unwilling to fully disclose how the algorithms work.

The report, co-authored with The Connecticut Foundation for Open Government and the Connecticut Council on Freedom of Information, came after a year of filing requests for information under the state's open records laws. The report concludes that the existing laws are not enough to achieve transparency about the use of algorithms, and that the state needs legislative remedies to hold agencies accountable.

In addition to its work on behalf of newsgatherers, the clinic succeeded in lifting speech restrictions imposed on a Yale cardiologist by the maker of a defective medical device. As an expert witness in a product liability case, the doctor had access to the company's nonpublic research on the device. He signed a non-disclosure act that barred him from sharing that information with anyone outside of the lawsuit, including federal regulators. MFIA negotiated a revised order, allowing the doctor to research, share, and report on the company's data.

The clinic also announced a third year of funding from Craig Newmark Philanthropies, the charitable entity of the founder of Craigslist.

"Our partnership with Craig Newmark Philanthropies has demonstrated the impact we can have together on safeguarding fact-based journalism in defense of democracy," said Floyd Abrams Clinical Lecturer in Law David Schulz '78, the Director of the MFIA clinic.

“Our partnership with Craig Newmark Philanthropies has demonstrated the impact we can have together on safeguarding fact-based journalism in defense of democracy.”

DAVID SCHULZ '78

In March, the court held that the law's broad restriction on using drones to capture images violated the First Amendment rights of journalists. A district judge overturned the law on the grounds that it improperly restricted drone use and found the law unconstitutionally vague. Sixteen clinic students have worked on the case since its inception.

Another win on behalf of local journalists represented by the clinic came in February, when a federal court dismissed a defamation suit against news site *The New Canaanite* and its editor. The plaintiff alleged racial discrimination by the town, which she also sued. The federal judge dismissed the latter two claims as matters of state law.

In its pursuit of government accountability, the clinic released a report showing gaps in public oversight of Connecticut's use of algorithms to make life-changing policy decisions. The report showed that three state agencies use these automated computer programs for decisions including removing children

VISITORS



Carmen Reinhart, Senior Vice President and Chief Economist of The World Bank Group, gave the John R. Raben/Sullivan & Cromwell Fellowship Lecture on Feb. 7, 2022, on "Central Banks and the Inflationary Aftermath of COVID-19."



Sir Paul Tucker, a Research Fellow of the Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School, former Deputy Governor at the Bank of England, and former Chair of the Systemic Risk Council, delivered the Judge Ralph K. Winter Lecture on April 18, 2022, on "Regulating for International Economic Resilience During Fractured Geopolitics."

CLINIC ROUNDUP

Vets Clinic Wins Nationwide Settlement, Continuing Streak

The **Veterans Legal Services Clinic** has continued its ongoing efforts to aid veterans who have unfairly received less-than-honorable discharges. On Feb. 15, the clinic, with co-counsel Jenner & Block LLP, won its latest victory when a federal court granted final approval of a settlement in the nationwide class action *Manker v. Del Toro*, brought by Iraq veteran Tyson Manker and the National Veterans Council for Legal Redress.

Pursuant to the settlement terms, the U.S. Navy will review the discharges of thousands of veterans affected by behavioral or mental health conditions, including post-traumatic stress disorder, traumatic brain injury, and experiences of military sexual trauma. The Navy will also implement administrative reforms for individuals who apply to have their discharge statuses upgraded in the future.

“This settlement is an important step towards more fully meeting the needs of Iraq- and Afghanistan-era veterans who came back with serious physical and mental injuries from their service,” said Alexander Fischer ’22, a law student intern in the clinic.

In another matter, the clinic represents U.S. Army veteran Mark Stevenson in a new suit challenging the

Army Board for Correction of Military Records’ refusal to recognize that substance abuse disorders are a mental health condition that entitle veterans to “liberal consideration” of their requests for discharge relief. Stevenson, who is now a certified substance abuse counselor living in Stratford, Connecticut, with his wife, alleges that the Board violates Department of Defense requirements, federal prohibitions against disability discrimination, and the Fifth Amendment of the U.S. Constitution.

“The Army’s decision to meet his service with discrimination is unconscionable and unlawful,” said clinic student Dena Shata ’24.

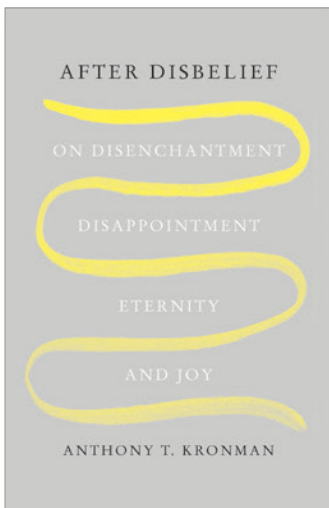
Taken together, the cases are the latest in a series of actions brought by the clinic against branches of the military on behalf of veterans. A federal court granted final approval of a settlement reached in a nationwide class action lawsuit against the U.S. Army in April 2021, and the clinic is also litigating a federal class action filed on behalf of thousands of Air Force veterans who were discharged less than honorably from the military.



Civil rights advocate and legal scholar **Chai Feldblum** delivered the James A. Thomas Lecture on April 11, 2022, titled “Transforming Employment for People with Significant Disabilities.”



Steven Levitsky, Professor of Government at Harvard University, gave the Brennan Center Jorde Symposium Lecture on Feb. 21, 2022, on “The Third Founding: The Rise of Multiracial Democracy and the Authoritarian Reaction Against It.”



Anthony T. Kronman
**After Disbelief:
 On Disenchantment,
 Disappointment,
 Eternity, and Joy**
 Yale University Press, 2022

Seeking Eternity in an Age of Disenchantment

Finding a middle road between religion and atheism



The latest book by Anthony T. Kronman '75 is evidence that his parents' plan to shield him from God did not entirely succeed.

"Children are attracted to dangerous things," the Sterling Professor of Law and former Dean writes in the opening of *After Disbelief: On Disenchantment, Disappointment, Eternity, and Joy*. "The more they are warned about them, the more curious they become. That is what happened with me and religion."

Kronman has previously explored the possibility of an alternative to atheism and religion in his book *Confessions of a Born-Again Pagan* (Yale University Press, 2016). In that book, he approached the topic from the top down, using Western philosophy as a guide. Philosophy — particularly Aristotle and Spinoza — is still at the core of his latest book. This time, however, he writes, "I wanted to convey in a more direct and less academic way some sense of the religious humanism that I would call my 'philosophy of life.'"

“Children are attracted to dangerous things... The more they are warned about them, the more curious they become. That is what happened with me and religion.” ANTHONY T. KRONMAN ’75

And so the son of two nonbelievers begins his inquiry with human experience — his own — and works his way up to larger themes. Kronman describes his upbringing by parents who “had an allergy to God.” Despite a nagging curiosity about religion, Kronman eventually adopted his mother’s existentialism. He studied philosophy, earning a B.A. from Williams College and a Ph.D. from Yale before starting his J.D. at Yale Law School. But he later became disenchanted with Camus and Sartre. In middle age, Kronman writes, he came to believe that God has a central, indeed necessary place in human life — though not God in the traditional sense of the word.

Kronman finds his God by means of reason alone. It is not the God of Abraham. Nor is it incompatible with science. “But it is a God nonetheless,” he writes. “It serves as the explanatory ground of everything that happens in time only because it is itself unconditioned by time.”

Kronman acknowledges that his “positive” if somewhat “eccentric” idea of God puts him at odds with most followers of conventional religions. His views are also likely to confound most of his academic peers for whom, Kronman says, “the only respectable view of God is that he doesn’t exist.”

According to the book, the Abrahamic religions, like the pagan philosophical traditions that came before them, promise to fulfill their followers’ spiritual longings — to close the gap between human beings and what Kronman calls the eternal and divine. Atheists, on the other hand, find poignancy and meaning in the fleeting experiences of life; they have no interest in a connection to the eternal and divine. Both worldviews have their limitations, according to Kronman. Atheism’s dismissal of the longing for eternity denies an essential part of the human condition. At the same time, this longing is one that can never be fulfilled so long as we continue to be human at all.

Kronman does not claim to prove the existence of his God. He says, though, that we need the idea of such a God to make sense of our own humanity. He concludes that his idea is “more humane” than the alternatives. Its elaboration, he says, is an ongoing project. “There is always more work to be done,” Kronman writes. “I find the prospect joyful.”

SPOTLIGHT

The Marriage of Psychology and Law

The history of the pedagogical pairing

In his book *Advanced Introduction to Law and Psychology*, Macklin Fleming Professor of Law Tom R. Tyler opens with a story about an experiment conducted by psychologist Hugo Münsterberg.

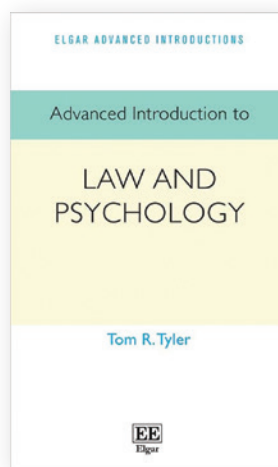


In Münsterberg’s book *On the Witness Stand* (1908), he describes a staged attack in his classroom and the errors his students made in recalling the event. The experiment demonstrated that eyewitnesses could make mistakes in what they see. This was the first experimental research done in the modern field of law and psychology, Tyler writes. That research was immediately critiqued by John Henry

Wigmore, a leading legal scholar and law school dean, beginning a century of at times cooperative, at other times contentious connection between the field of psychology and the legal academy.

Describing psychology and law as an interdisciplinary marriage, Tyler uses relevant historical examples throughout the book to explore the opportunities and limitations of the two fields for students and scholars of law, psychology, and the social sciences.

Advanced Introduction to Law and Psychology outlines the main areas of research, their relevance to law and the way that psychological findings have shaped — or failed to shape — areas of law. Tyler focuses on the relevance of psychological theories to topics in law, emphasizes the institutional realities within which law functions, and discusses the problems of bringing research findings into the legal system. The book covers major topics in the field, including eyewitness identification; interrogation; forensic science; racism and sexism; criminal responsibility; sentencing; rehabilitation; risk assessment; civil justice; decision-making by judges, prosecutors, and juries; and managing subjective harm.

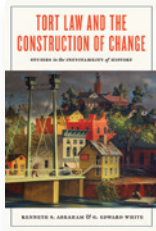


Tom R. Tyler
**Advanced
Introduction to Law
and Psychology**

Edward Elgar Publishing, 2022

SURVEY OF BOOKS

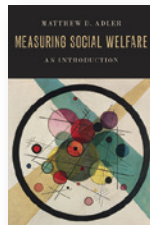
Here's just a sampling of the many other books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. Please contact us: lawreport@yale.edu.



Kenneth S. Abraham and
G. Edward White
**Tort Law and the
Construction of Change:
Studies in the
Inevitability of History**

University of Virginia Press, 2022

Abraham '71 and White document how social change and tort law influence one another. To bring tort law into focus, the co-authors employ two lenses: a traditional account, which considers how judges interpret precedent, and their novel approach, which situates legal doctrine within its social context. The book traces how distinct facets of tort law, such as liability for nonphysical harm, reflect an ever-changing social landscape.



Matthew D. Adler
**Measuring Social Welfare:
An Introduction**

Oxford University Press, 2019

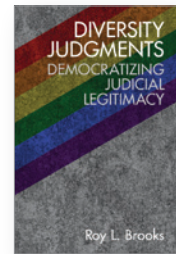
Adler '91 explains how the social welfare function framework, a tool from theoretical economics, can guide governmental policy-making. According to Adler, the framework is more unbiased than a cost-benefit analysis and allows policymakers to consider both efficiency and equity. By combining economic and philosophical scholarship, Adler illuminates the framework's three dimensions: a well-being measure, a rule for ranking outcomes, and an uncertainty module.



Michael J. Bean
**Melville's Mistake:
Essays in Defense
of the Natural World**

Texas A&M University Press, 2022

Melville's Mistake reprints seminal texts and includes unpublished writings from Bean '73, whose work underpins the field of wildlife law. Bean, formerly Principal Deputy Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior, gives an intimate history of the people, places, and events that have shaped wildlife law. Nearly 50 years after the Endangered Species Act became law, Bean recalls his career and takes stock of legal conservation efforts today.



Roy L. Brooks
**Diversity Judgments:
Democratizing
Judicial Legitimacy**

Cambridge University Press, 2022

Brooks '75 contends that the Supreme Court's decision-making process, designed to protect the interests of straight white male insiders, underpins its current legitimacy crisis. The traditional methods by which justices decide cases, Brooks writes, fail to uphold the democratic commitment that U.S. institutions have made to diversity and inclusion. The author proposes that the Court adopt "critical process," a judicial decision-making philosophy that includes so-called outsiders — particularly people of color, women, and the LGBTQ community.



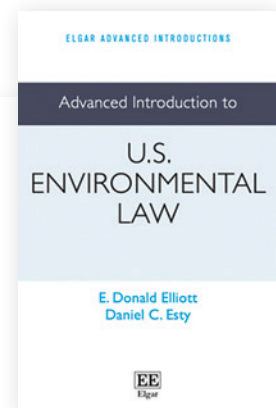
A Comprehensive Overview of Environmental Governance

The law of the globe from pole to pole

Two leading environmental law scholars — Hillhouse Professor at Yale University Daniel Esty '86 and E. Donald Elliott '74 — have published a textbook on how environmental law is made as well as a comprehensive overview of the current and developing state of environmental governance in the United States.

Advanced Introduction to U.S. Environmental Law explores how federal environmental law is established and how it interacts with state law, highlighting the important role that administrative agencies play in the creation, implementation, and enforcement of U.S. environmental law.

Geared toward environmental lawyers, business executives, NGO leaders, policymakers, and think tank analysts who work on environmental issues, the book covers major topics of environmental law including the Clean Air Act, climate change, the Safe Drinking Water Act, hazardous waste, chemical regulation, and occupational safety and health.



Daniel Esty and
E. Donald Elliott
**Advanced Introduction
to U.S. Environmental Law**

Edward Elgar Publishing, 2021



Scott Hershovitz
**Nasty, Brutish, and Short:
Adventures in Philosophy
with My Kids**

Penguin Press, 2022

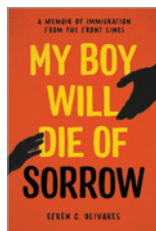
Hershovitz '04 joins his young sons, Rex and Hank, to ponder questions of philosophy, ranging from the lighthearted to the profound. According to Hershovitz, kids think philosophically all the time, and he suggests that parents take their sense of intellectual wonder seriously. *Nasty, Brutish, and Short* recounts how Hershovitz and his sons explore philosophy's fundamental concerns.



Gerard N. Magliocca
**Washington's Heir:
The Life of Justice
Bushrod Washington**

Oxford University Press, 2022

Magliocca '98 documents the life of Bushrod Washington, the often-overlooked Supreme Court Justice who inherited his uncle George Washington's estate. The first published biography of Bushrod Washington, *Washington's Heir* traces its subject's influence on constitutional jurisprudence while also centering his enslavement of hundreds of human beings. Magliocca follows Washington's rise alongside the nation's, considering how his landmark decisions — including *Corfield v. Coryell*, later a blueprint for the 14th Amendment — shaped the United States' earliest decades.



Efrén C. Olivares
**My Boy Will Die of Sorrow:
A Memoir of Immigration
from the Front Lines**

Hachette Books, 2022

Olivares '08 weaves his experiences representing immigrant families separated at the U.S. border together with his childhood — much of which he spent apart from his own father, who migrated to the U.S. to seek work. Olivares, who immigrated to the U.S. at 13, argues that to the extent America is composed of immigrants, so too does it persecute immigrants, denying their humanity in its perpetual construction of the “other.”



Kermit Roosevelt III
**The Nation That Never Was:
Reconstructing America's Story**

University of Chicago Press, 2022

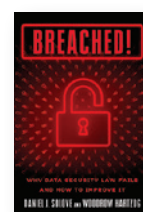
Roosevelt '97 argues that the conventional story of the United States, which credits the Founders for inaugurating the American project, is false. Equality, he contends, had no place in their vision. Rather, it was Reconstruction, which followed the Civil War and pursued the ideals of liberty and equality, that forged the nation Americans today inherit.



Peter M. Shane
**Democracy's Chief Executive:
Interpreting the
Constitution and Defining the
Future of the Presidency**

University of California Press, 2022

Shane '77 argues that an “originalist” conception of the presidency threatens American democracy. *Democracy's Chief Executive* tells how four decades of jurisprudence have exempted the nation's executive branch from accountability and compounded the risk of authoritarian rule. To counter the danger of “presidential entitlement,” Shane outlines a framework that prioritizes democratic principles and subjects the presidency to judicial oversight.



Daniel J. Solove
and Woodrow Hartzog
**Breached!
Why Data Security Law
Fails and How to Improve It**

Oxford University Press, 2022

To rectify shortcomings in data security law, Solove '97 and Hartzog argue that policymakers, software developers, and device manufacturers must heed the lessons that recent data breaches have revealed. By studying real-world examples, the co-authors conclude that privacy law, which concentrates on the breaches themselves, neglects the factors that fuel them. *Breached!* takes stock of the growing threat and lays out how private and public actors can respond.

ALSO OF NOTE

Matthew D. Adler '91 and
Ole F. Norheim, eds.
Prioritarianism in Practice
Cambridge University Press, 2022

Gourab Banerji, Promod Nair,
George Pothan Poothicote,
and Ashwita Ambast '14 LLM, eds.
**International Arbitration
and the Rule of Law: Essays in
Honour of Fali S. Nariman**
International Bureau of the Permanent
Court of Arbitration, 2022

Wei Cui '02
**The Administrative
Foundations of
the Chinese Fiscal State**
Cambridge University Press, 2022

David Klingsberg '57
**And You Shall Be Heard:
In the Courts
of Law and Beyond**
Mountrint, 2021

Bernie Lambek '88
An Intent to Commit
Rootstock Publishing, 2021

Robert J. Pekkanen and
Saadia M. Pekkanen '04 MSL, eds.
**The Oxford Handbook
of Japanese Politics**
Oxford University Press, 2021

John Witte Jr., Joel A. Nichols,
and Richard W. Garnett '95
**Religion and the American
Constitutional Experiment,
Fifth Edition**
Oxford University Press, 2022

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.



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



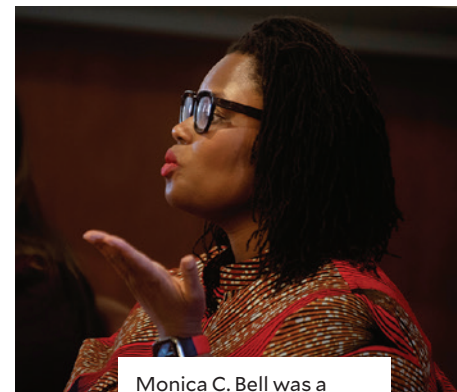
On Twitter

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



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.



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](#),

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

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.



Paul Kahn

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

Leading the

Dean Heather K. Gerken reflects on her first decanal term, a vision for legal education, and plans for the future.

Over the past five years, Dean Heather K. Gerken has strengthened Yale Law School's tradition of academic excellence, fortified support for the student body, and launched innovative new programming while navigating an unprecedented pandemic. On Jan. 19, 2022, Yale University President Peter Salovey reappointed Gerken to a second five-year term, noting her record of accomplishments and vision for the future.

"Members of the YLS community remarked on Dean Gerken's dedication to the mission of the School, her record of building new innovative programs, her advocacy for scholarly and clinical work, and the inspiring passion that she brings every day to her job," said Salovey.

"She has already accomplished an ambitious agenda in her first term, and I am confident that the Law School will continue to benefit tremendously from her vision, talent, and energy in the years ahead."

Gerken, the Sol & Lillian Goldman Professor of Law, is an acclaimed teacher and one of the country's leading experts on constitutional law and election law. She became Dean in 2017 and is the first woman to serve in the role. Her next five-year term began on July 1, 2022. The *Yale Law Report* asked Dean Gerken to reflect on her first term and look ahead to what comes next.

Law School



Photo by Harold Shapiro

Admitted the five most diverse classes in YLS history



In the class of 2024, 54% are students of color, 28% are first-generation professionals, and 17% are first-generation college students.

Yale Law Report As you look back on your first term, what accomplishments are the most meaningful to you? What were the greatest challenges?

Heather K. Gerken The Law School has a restless gene, and so do I. We never rest on our laurels. Instead, we are always pushing forward with new ideas, new initiatives, and new ways to live up to our values. That energy fuels my work as Dean and makes the job rewarding. The past five years have been a tremendous period of change at the Law School as we've built upon our best traditions while adapting for the future. I'm proud that we have admitted the five most diverse classes in our history during my first term, tripled the number of veterans enrolled at Yale Law School, and worked to ensure that all of our students have access to the remarkable educational opportunities the Law School offers. Through scholarly research, clinics, and centers, our faculty and students have generated groundbreaking ideas and made a tremendous difference in communities around the world.

This last year has been particularly inspiring. Despite being stalled by the pandemic, we are moving forward on two remarkable new initiatives. We just expanded a financial aid model that was already best-in-class, announcing full-tuition scholarships for our

highest-need students in February. A few months earlier, we launched The Tsai Leadership Program, which is aimed at building a curriculum for the next century. I've been overwhelmed by the level of alumni support for these programs. Our graduates understand in their bones the importance of training the next generation to lead us forward, and they want to ensure this cherished intellectual experience is accessible to all.

Like all institutions, we've also faced challenges over the last few years. The hardest has been navigating the ever-changing conditions from COVID-19. The virus turned our entire way of life on its head. Still, it has been incredible to watch this community come together to preserve our intellectual life and reinvent our time-honored traditions. If anything, this experience has made us value our core model — living and learning under one roof — even more than before.

We've also dealt with hard and complicated questions that every academic institution in the country is facing — those centered on free speech, equality, and the brutally divisive forces of polarization. Because this is a storied institution that looms large in the public imagination, when tough issues arise we often find ourselves working through them under a bright spotlight. It is all too easy to be buffeted and lose focus on the core mission. My job as Dean,

Tripled the number of veterans enrolled

Dean Gerken with student veterans in November 2021



Launched The Tsai Leadership Program

Dean Gerken celebrated the launch of The Tsai Leadership Program with a gala event in April 2022.



however, is straightforward — to listen to members of the community, to reflect on whether course corrections are needed, and to ensure we hew to our values. We teach and learn through intimate, iterative conversations within our community. Those vital discussions have been happening and continue to take place here, and we will be the better for it. As painful as they are, these difficult moments are opportunities for us to learn and grow; I certainly do. What always centers me during tough moments is the simplicity and deep magic of our mission — teaching, research, and service.

The Law School recently launched The Tsai Leadership Program and The Hurst Horizon Scholarship Program. How significant are these programs, and how do they fit together?

These programs are so significant that I would have felt lucky to serve as Dean when just one of them was launched, let alone to launch both in a single year. I am eternally grateful to our alumni, who have helped these programs move from a twinkle in our eye to reality in a remarkably short time.

The Tsai Leadership Program grew from the simple act of listening — listening to our alumni talk about why Yale Law School mattered to them and what they wish they'd learned outside of a traditional legal education. The YLS degree has always been a thinking degree, training extraordinarily bright students to question everything and to build their conceptual and analytic skills. This program enables us to design a new curriculum for the future, offer professional training outside of the curriculum, and bring in mentors-in-residence to advise students on the many paths available to them. As part of the program, students can also engage with two specialized centers — the Chae Initiative in Private Sector Leadership and the Ludwig Program in Public Sector Leadership. While every student will have access to all of the offerings made available by The Tsai Leadership Program, I suspect that the Chae Initiative and Ludwig Program will be especially attractive to those I call our “lawyers writ large,” the students who use their Yale Law School degree to pursue a nontraditional path in the business, policy, or nonprofit

world. I also view the program as critical infrastructure for our first-geners, providing students with tailored career advice and access to the Law School’s powerful networks. I hope our alumni will help light up the career paths they carved and reach out their hands to pull our students into their professional worlds.

The Hurst Horizon Scholarship also came from listening — listening to the increasingly diverse group of students in our midst. We have a premier financial aid program, one that provides the lowest debt load among our peers, extraordinary support for public interest work, and loan forgiveness for those who need it, all the while supporting a remarkable 77% of our student body. But when we listened to our students with the highest financial need — especially the many students who come from families below the poverty line — we learned that the loans that are part of need-based financial aid packages at every law school weighed heavily on them and their families.

Launched the Hurst Horizon Scholarship Program

Yale Law School to Cover Full Tuition and Fees for Lowest-Income Students

Dean Heather Gerken urges other law schools to direct more of their financial aid to need-based scholarships



Yale Law's new Hurst Horizon Scholarship will go to students whose families live below the federal poverty line.

By [Melissa Korn](#) [Follow](#) and [Sara Randazzo](#) [Follow](#) / Photographs by [Tim Tai](#) for *The Wall Street Journal*
Feb. 21, 2022 1:35 pm ET

Dean Gerken was interviewed by *The Wall Street Journal* about the Soledad '92 and Robert Hurst Horizon Scholarship Program in February. Learn more about the program on page 36 and the founding donors on page 38.

Established the Safety Net Fund and bolstered need-based financial aid



During the pandemic, Dean Gerken continued her custom of calling each new admitted student and meeting with each small group. She also established the Joy Fund to sponsor events for students and staff to foster community: from food trucks to book groups. One of Dean Gerken's fundraising priorities has been for student support, including establishing a Safety Net Fund and bolstering financial aid.

That is why we partnered with our alumni to create the Hurst Horizon Scholarship Program, which erases tuition for our J.D. students with the highest need, freeing them from financial worry during law school and ensuring they can live out their dreams. The day that we let these 1Ls and 2Ls know that their tuition would be on us next year was extraordinarily moving. I cannot tell you what it has meant to hear about the impact this program will have on the lives of our students who will be among the first cohort of recipients.

It's my hope that these new scholarships will inspire a shift in legal education so that more law schools invest in need-based scholarships instead of merit-based support, putting financial aid in the hands of those who need it most. The launch of The Tsai Leadership Program and the Hurst Horizon Scholarship Program create an extraordinary moment for us to lead legal education while cementing our commitment to innovation, access, and equity — values that sit at the heart of this institution.

Increased faculty diversity



Miriam Gohara, who received tenure in July, teaches one of her clinics in March 2022. A core priority for Dean Gerken has been diversifying the faculty. Since the beginning of 2017, the Law School has hired seven new tenure or tenure-track academic and clinical faculty. Of these seven, five come from backgrounds that are underrepresented on the faculty, including women, people of color, LGBTQ individuals, and first-generation professionals.



What are the most interesting trends you have seen in legal education, and what do you hope to see more of in the future?

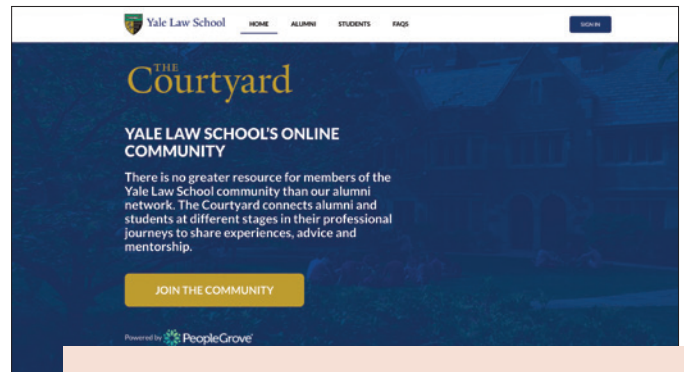
Yale Law School has always led the way forward in legal education, and I hope that has been true during my deanship as well. Diversifying our student body and faculty has been a top priority for me, and I am glad to see so many other law schools following our lead in recent years. What's important is that we haven't just ushered in the five most diverse classes in our history; we've built out the educational infrastructure that they need to thrive. A large number of our students come from families whose incomes fall below the poverty line or are the first in their family to go to college or professional/graduate school. These are some of the most entrepreneurial students on the planet. But they come to us without networks and with a different set of financial needs than their peers. It is my hope that law schools around the country will do more to invest in students so that the next generations of lawyers and leaders reflect the remarkable diversity of the world around us.

I've also spoken frequently about how law schools can navigate the so-called "theory/practice divide." As I outlined in a 2019 *Harvard Law Review* article, there has long been a debate about how best to educate law students. Many people think there is a giant gap between academic work and lawyering. But our faculty have always resisted this divide. An extraordinary number of our nonclinical faculty run clinics or do work out in the world. So, too, our clinicians take part in the intellectual life of the school. For instance, our most recently tenured clinician is working on a research project with an analytic philosopher. Where else does that happen? We have always been — and will always be — the premier theory school in the country, a place inhabited by scholarly giants and a place for our students to luxuriate in ideas. It's wonderful to see that we have become just as ambitious on the practice side. It's this unique model that makes this place incredibly special.

What is your vision for your next term?

When I began as Dean, I wrote to President Salovey that I had eight goals in mind but would be happy to achieve just two or three of

them over the course of my deanship. At the end of my first five years, I'm proud to say that we've achieved seven of those goals and are hard at work on the eighth. That doesn't mean the mission is complete, however—far from it. Coming back from COVID-19 doesn't simply mean teaching without masks. Like every academic institution, we must rebuild our academic community, learn from the last two years, and repair ties that have been frayed. We are still in the early stages of building The Tsai Leadership Program, and it will require attention and care to ensure the program lives up to the best traditions of this institution. I also cannot wait to expand the Hurst Horizon Scholarship Program. There are many students here whose families come from just above the poverty line, and I hope with the support of our alumni we can increase the number of students who will benefit from these life-changing scholarships going forward. I also am focused on hiring new faculty who will continue to enrich our intellectual environment and offer new perspectives across a range of subjects. This is a moment to rejuvenate our faculty and hire the next generation of great scholars. This School's potential is limitless, especially with our alumni in our corner. It's an honor to serve in this role for a second term, and I am excited to see what we do together in the years ahead. 🌱



Strengthened alumni engagement and mentorship with the launch of an online platform

The launch of the online community The Courtyard gave alumni a new way to connect with each other and mentor students, which became keenly important during the pandemic. More than 3,500 alumni are now members.

“We never rest on our laurels. Instead, we are always pushing forward with new ideas, new initiatives, and new ways to live up to our values.”

DEAN HEATHER K. GERKEN

Championed bridging the theory/practice divide

Gerken is one of the only law school deans who continues to lead a clinic during her tenure. She gathered with the members of her San Francisco Affirmative Litigation Project in April 2022.





The Most to Gain, the Most to Give

The Hurst Horizon Scholarship Program will eliminate tuition for students with the highest need.

In February, the Law School reached a significant moment in its history when Dean Heather K. Gerken announced the establishment of **the Soledad '92 and Robert Hurst Horizon Scholarship Program**, which erases tuition for students whose families fall below the federal poverty line.

The transformational program enhances the Law School's already robust financial aid offerings with a first-of-its-kind scholarship that seeks to level the playing field for students with significant financial need, enabling them to pursue their dreams. Starting next month, approximately 45 to 50 current students, including incoming 1Ls and current 2 and 3Ls, will benefit from the tuition-free scholarship.

"The Hurst Horizon Scholarship Program will free students with the greatest need from financial worry during law school and open up a world of possibilities so that they can be a powerful force for change in society," said Gerken, who made establishing this program one of the core priorities of her first term as Dean.

Initially, Gerken said, she expected it would take several more years to reach this goal, but the Law School committed funds to launch immediately, and the program has been bolstered and endowed thanks to the incredible generosity of the founding donors — Soledad '92 and Robert Hurst, David '78 and Patricia Nierenberg, and Gene '73 and Carol Ludwig. As a result, the scholarship program will not only help students in New Haven now, it will continue on for generations. The Law School continues to fundraise as part of an ongoing campaign, seeking to expand the threshold and open the door for even more students in the future.

"We are committed to opening our doors to those students who have the most to gain from this School and the most to give to the world, regardless of their means."

DEAN HEATHER K. GERKEN

The impact of these new scholarships is already being felt keenly by the first cohort of recipients. "Students with the greatest needs face many pressures that may not be apparent to others," said a rising 3L recipient of the scholarship. "I've noticed that many come into law school with the hope of going into public interest to assist people like themselves, yet end up realizing that even this top education and the opportunities it provides cannot truly free them. The Hurst Horizon Scholarship Program will allow students with the greatest need to feel the reward of getting into an institution like YLS by having a freer choice in choosing their career."

Yale Law School has always led the way in financial aid and is, to this day, one of only two law schools in the U.S. to provide aid based exclusively on financial need. Yale Law School graduates have one of the lowest debt loads among its peers. But as an institution that has, according to Dean Gerken, "a restless gene," there was a call to do even more.

"The Hurst Horizon Scholarship Program cements our commitment to equity and access, and I hope it will lead to a sea change across the legal education landscape to ensure those with the greatest need receive the most aid," said Gerken.

Since 2016, the Law School has admitted the six most diverse classes in its history. In the Class of 2024, more than a quarter of students are the first in their family to attend graduate or professional school and approximately one in six students are the first in their family to graduate from college. With these changes, the financial difference between those with and without a family safety net has become more pronounced. "Even with significant need-based financial aid awards and our loan repayment program, the financial burden can weigh heavily, and many students fear debt knowing that they are responsible for their families' financial well-being as well as their own," said Miriam Ingber '04, Associate Dean of Admissions and Financial Aid.

Students who qualify for the Hurst Horizon Scholarship Program will be awarded more than \$70,000 per year to cover the cost of tuition, fees, and health insurance, significantly lowering their debt load and financial burden. Those who meet the criteria will automatically receive the scholarship.

Rakim Brooks '16, co-founder of the student group First Generation Professionals, commended Dean Gerken for establishing the scholarships and said he would have been empowered to make different choices if he had a full-tuition scholarship: "I would've taken more chances in law school had the debt not been present," said Brooks. "I would have opted for certain internships during the summer and broadened my horizons. I would've learned more about the legal profession while I was at Yale Law School had the debt or the specter of debt not been present."

For the first cohort of Hurst Horizon Scholars, the scholarship has brought a sense of relief, joy, and hope that its impact will extend well beyond their own experiences. "It is wonderful that such a program now exists, which makes my own future in law feel less burdensome and more open," said a rising 3L recipient of the scholarship. "But beyond how grateful I am for this support, I am even more excited for future classes of applicants now able to pursue a path that may have previously seemed out of reach." 🌟

Read about the generous founding donors on the next page.



Removing Barriers to the Full Yale Law Experience The Soledad '92 and Robert Hurst Horizon Scholarship Program

One of the pillars of Yale Law School's "For Humanity" campaign is student support. From need-based financial aid to the Career Options Assistance Program, the Law School wants its students to have the best experience during their three years here and into their careers. We've expanded those tools now to include the Hurst Horizon Scholarship Program.

The Soledad '92 and Robert Hurst Horizon Scholarship Program, which was announced in February 2022, provides full-tuition scholarships for students who come from economically disadvantaged families. Scholarships enable recipients to fully participate in all Yale Law experiences and build the careers they choose. Accepted students who meet the financial requirements will automatically receive the scholarship, beginning in the 2022-23 academic year.

Dean Heather K. Gerken is intensely grateful to the founding donors of the program: Soledad and Robert Hurst, David '75 BA, '78 JD and Patricia Nierenberg, and Gene '73 and Carol Ludwig. "These extraordinary leaders have made an investment that will change the lives of generations of students. I am humbled by their commitment to this School and our students," said Gerken. "I look forward to working with our community to grow this important program in the years to come. This is only the beginning." 🌟



Soledad '92 and Robert Hurst Taking Nothing for Granted

"Meeting me today, you would have no idea of my background," said Soledad Hurst '92. She and her husband, Robert (Bob), both led very successful careers and are now dedicated philanthropists living in Aspen. Yet the couple's gift to establish the Soledad '92 and Robert Hurst Horizon



Soledad Hurst

Scholarship Program arose in part from Soledad's direct experience growing up in a climate of financial hardship — including the stress of acquiring a law degree with no financial safety net.

She and Bob are deeply honored to be able to establish the Hurst Horizon Scholarship Program: by funding full Yale Law School tuition for students with family incomes below

the national poverty line, the Program allows these students to take advantage of all the opportunities a Yale Law School education offers.

"These students' experiences are completely different," noted Soledad. "There are some incredibly bright people out there, who given the chance, can do great things for this world. And they don't take the opportunity for granted." Her own experience across worlds — rich and poor; growing up in a multiracial household in Springfield, Oregon; watching everyone in her family fight the odds to gain an education — has made her a firm believer in the empathy, drive, and perspective these students bring.

After graduating from Yale Law School, Soledad started her career at the international law firm Davis Polk & Wardwell. She then worked as an investment banker at Allen & Company and later worked on-air for Bloomberg Television — a career she admits she might have begun earlier had she the financial freedom to explore it.

Bob Hurst also made his way to success despite modest origins. He spent three decades at Goldman Sachs, and for 10 of those years was the head or co-head of the Investment Banking Division, Vice Chairman, and a member of its board of directors. In 2001, he took a leave of absence to become founding CEO of the 9/11 United Services Group, which coordinated 13 agencies, including the Red Cross, involved in disaster relief. Currently, he is Vice Chairman of Crestview Partners, a private equity firm.

Between them, the Hursts are squarely focused on both nonprofit leadership and helping at the community level, with untiring energy and great empathy. With this gift, they hope to enable brilliant students to unleash their full power.

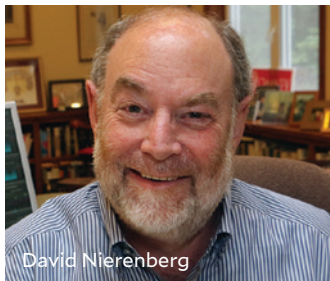
David '75 BA, '78 JD and Patricia Nierenberg One Life at a Time

"I'm at a point in my life where I can't think of many better ways to change the world than one life at a time," said David Nierenberg '75 BA, '78 JD. He and his wife, Patricia, gave the first ever gift to the Hurst Horizon Scholarship Program early in its development — a gift that is already having a major ripple effect.

For David and Patricia Nierenberg, that ripple effect is far more important than wealth or property.

"I make the gifts I'm making, as does my wife, out of gratitude for people who have done wonderful things for us in our lives," said David. For him, that gratitude encompasses many people connected with Yale Law as well as the institution itself.

David started his career at the management consulting company Bain & Co. in 1978, a career in which he was championed and mentored by Mitt Romney. The two remain



David Nierenberg

close to this day, and Nierenberg served as one of the national financial chairs for Romney's 2012 presidential campaign. After leaving Bain in 1985, Nierenberg became a venture capitalist, a career that has seen everything from

public-private partnerships to a drawn-out but eventually victorious Supreme Court case. He is now Founder and President of Nierenberg Investment Management Company and a noted philanthropist.

David recently served on the board of Whitman College, where he co-led efforts to assist economically disadvantaged students. He saw firsthand the struggles of students who had to figure out financial aid on their own, refrain from participating in certain classes due to the extra expenditures required, or miss the joy of celebrating when their families couldn't attend their graduations. Before the school intervened, "All of these micro-insults caused a great deal of unhappiness and stress," he noted.

After that experience, "I was predisposed to be helpful when Dean Gerken told me about the Hurst Horizon Scholarship Program and asked for my involvement. For a person who comes without resources, the stress of getting into Yale Law School, staying in Yale Law School, and doing well can be tremendous. I'd like to think that what I'm doing is paying it forward for the benefit of future generations whose national service, stepping into the shoes of many other Yale Law School graduates over two centuries, can make the country and the world a better place."

Gene '73 and Carol Ludwig Focusing on the Fair Shake



Gene and Carol Ludwig

"The law itself is about giving everybody a fair shake," said Gene Ludwig '73. "If that is what we think we're teaching at law school — that everyone should be treated equally before the law — we must treat students equally by making sure each one can get the finest legal education."

Today, Gene and his wife Carol, a neurologist, are building on their longstanding generosity to Yale Law School by establishing The Carol and Gene Ludwig Family Foundation

Horizon Scholarship Fund, part of the new Hurst Horizon Scholarship Program. This gift follows others from the Ludwigs including funding both the Ludwig Center for Community and Economic Development and the Carol and Gene Ludwig Program in Public Sector Leadership.

Gene, the Founder of the Promontory family of companies and Co-managing Partner of Canapi Ventures, has long been focused on giving people a fair shake. As U.S. Comptroller of the Currency from 1993 to 1998, Gene served as the Clinton administration's point person on the policy response to the credit crunch of the early 1990s. Under his purview, lending to low- and moderate-income Americans increased tenfold, as did national bank investments in community development corporations. He brought 27 fair-lending cases, resulting in tens of millions of dollars in fines against violators. In 2019, he founded The Ludwig Institute for Shared Economic Prosperity, which is dedicated to improving the economic well-being of middle- and lower-income Americans. Gene's book, *The Vanishing American Dream: A Frank Look at the Economic Realities Facing Middle- and Lower-Income Americans*, shares insights garnered from a bipartisan group of the nation's foremost economic thinkers.

Carol is President of the Carol and Gene Ludwig Family Foundation, which supports medical research and educational opportunities for low- and moderate-income students. She also serves on the Board of KIPP-DC and on the Council of Medical Advisors for the Columbia University Irvine Medical Center, where she is part of the Neurology Advisory and Medical Education Committees and the Precision Medicine Council.

"Opportunity for education shouldn't be about how much money you have in your pocket," said Gene. "Merit, energy, and enthusiasm should drive access; otherwise you are denying your school the opportunity to have some of the most talented people."



Can We Fix What's Wrong with Social Media?

Yale Law School alumni, faculty, and students are grappling with some of the most difficult questions in the online environment.





By **Rebecca Beyer**

Summer 2022



As the daughter of immigrants from Pakistan, Nabiha Syed '10 had been awed — and disturbed — by the power of mainstream media outlets to craft narratives about Muslim Americans in the wake of the terrorist attacks of Sept. 11, 2001. At Yale Law School, one of her final papers was about the “liberating effects” of blogs, which allow people to speak for themselves by sharing their perspectives directly with the world.

She doubled down on those ideas at the University of Oxford, writing her thesis on a relatively new website called WikiLeaks and even interviewing its now infamous founder, Julian Assange, in the process. She was intrigued by the internet’s ability to negate the need for “gatekeepers,” like journalists.

“I was excited,” she recalled. “When truth is filtered through traditional institutions, some kinds of truths never make it.”

But she became wary of the WikiLeaks strategy of indiscriminately releasing information it obtained.

“I thought, ‘Who’s verifying this? Who’s doing the work of context-building that you rely on journalists to do?’” she said. “It was my first moment thinking, ‘None of this is going to work in the way we think it will.’”

She was right.

The internet changed everything; then, social media changed the internet. Aspirational ideas about free speech and democratic access to information and power are wavering in the online environment. The digital world has opened up space for communities of all shapes and sizes to bond and build connections; it has also proven susceptible to misinformation, disinformation, hate speech, and a host of other problems.

“No part of the First Amendment classes I took in law school captured this,” said Syed, President of *The Markup*, a nonprofit news outlet that conducts data-driven investigations of new technologies. “Which prompts the question: Did we build the right theories for the people we are, under the technologies we use? It feels like the answer is *not yet*.”



10

200 Likes

Like

Comment

Share



Nabiha Syed '10

Looking for Governance Models

Questions about how social media companies should handle potentially harmful content — how they should govern themselves and be governed — are now ubiquitous, with calls for reform coming from Congress and around the globe. That debate is also playing out within the companies themselves.

Part of *The Markup*'s job is to examine such efforts. Last year, for example, it published a series of stories about Google's attempts to prevent advertisers from linking to hate speech on YouTube. Reporters found that many of the terms on the list — including "white power" — were not actually blocked. Meanwhile, the company's blocklist did prevent advertisers from using social and racial justice terms such as "Black Lives Matter," "Black Power," "sex work," and "American Muslim."

"It's not our job to ascribe intent" but to "surface" inconsistencies, Syed explained. "I don't know why you can't get things for Black Lives Matter, but someone should have to answer for that."

So far, one of the highest profile efforts at balancing speech and governance has been Facebook's Oversight Board, which launched in 2020. The stated purpose of the board is to "promote free expression" by making decisions about whether Facebook and Instagram content can stay up or must come down. Sterling Professor of Law and former Dean Robert C. Post '77 was an early advisor on the project and now serves as a trustee.

Post, who specializes in constitutional law with an emphasis on the First Amendment, said the Oversight Board appealed to him because it represented a "third way" of approaching online content regulation, distinct from the view of platforms as an extension of the government, in which regulation would "be virtually precluded"; but also from one that leaves everything up to "the entirely arbitrary control of profit-making corporations."

The Oversight Board, Post said, "held the potential to infuse private social media platforms with public law values."

"This seemed to me an experiment worth trying," he said.

One of the Oversight Board's first cases — referred from Facebook — was a review of the company's decision to indefinitely suspend former President Donald Trump for two posts he made during the attack on the U.S. Capitol on Jan. 6, 2021. The first was a 161-word video, saying, among other things, "I know your pain. I know you're hurt. We had an election that was stolen from us...but you have to go home now..."

Facebook removed that post for violating its Community Standards on Dangerous Individuals and Organizations, which states, "We do not allow organizations or individuals that proclaim a violent mission or are engaged in violence to have a presence on Facebook."

Later, Trump posted: "These are the things and events that happen when a sacred landslide election victory is so unceremoniously viciously stripped away from great patriots who have been badly unfairly treated for so long. Go home with love in peace. Remember this day forever!"

That post was up for eight minutes before Facebook removed it for violating the same standard.

After reviewing the case, the board upheld the decision to restrict Trump's access but found that the penalty's indefinite length was inappropriate. In response, Facebook announced new enforcement protocols and amended the suspension to two years.

The case drew enormous attention around the world, highlighting a problem that was years in the making: how to manage the power of social media



Robert Post '77



to amplify harmful messages. And Facebook acknowledged as much, writing in its response that the matter “confirms our view that Facebook shouldn’t be making so many decisions about content by ourselves.”

Jennifer Broxmeyer ’09 leads Facebook’s work on the Oversight Board as Director of Governance at Facebook’s parent company, Meta.

“There was just a real recognition around that time that we needed a new system of governance,” she recalled. “It’s sort of an accident that these private companies ended up responsible for the speech of billions of people. The models we have just don’t work. It can’t be right that a couple of people in China or Menlo Park or Mountain View should be making decisions [about content] on behalf of the world.”

Broxmeyer said the Oversight Board, which consists of 20 global experts and civic leaders, will continue to evolve. Originally, for instance, it was analogized as a sort of Supreme Court for Facebook, designed to weigh individual expressions of speech against any potential harms. But in practice, it has also played the role of a pseudo-regulatory agency, weighing in — sometimes at Facebook’s request — on policy matters such as the sharing of private residential information and cross-check, one of the company’s systems for deciding when to remove content.

“The board gives us wide-ranging recommendations on changes to our policies, products, and processes, many of which overlap with proposed regulations,” Broxmeyer explained, adding that Facebook has also been thinking internally about how the board can “weigh in on product decisions,” such as how to rebuild Facebook’s penalties system.

“There was just a real recognition around that time that we needed a new system of governance. It’s sort of an accident that these private companies ended up responsible for the speech of billions of people.”

JENNIFER BROXMEYER ’09
DIRECTOR OF GOVERNANCE, META

Broxmeyer said the mere existence of the board — and Facebook’s commitment to it, including in the form of a \$130 million irrevocable trust to ensure its independence — is “incredible.” And even some of the company’s fiercest critics agree.

“I do think it’s an innovation...it’s hard to say that the board is just a PR campaign and isn’t having some systemic impact on Facebook,” prominent online speech expert Evelyn Douek told Broxmeyer during an episode of *The Lawfare Podcast* in August 2021. “Do I think it could be more, do I think that it should be more, and that the remit should be expanded?...Absolutely, and I will keep being grouchy about it, but I do think it’s also fair to say that no other company has stepped up.”

With its community standards and the new Oversight Board, Broxmeyer said, Facebook is “basically creating new paradigms for governance of online speech.”

“How do you set rules about what is and isn’t allowed online, given the vast differences between ‘real-world’ speech and online speech, which can be amplified or viewed by billions of people around the world?” she asked.



Jennifer
Broxmeyer '09





The company isn't pretending it can come up with answers on its own. When she started in her role with the board, Broxmeyer had only a couple of staffers borrowed from other departments. Today, she has around 50 people working for her, including an entire team responsible for keeping track of scholarship about best practices for handling speech and other issues on Meta's platforms.

"We need government participation, we need civil society, we need academics," Broxmeyer said. The problem is "too hard — and frankly too important — to solve on our own."

Fresh Thinking about Behavior Online

At Yale Law School, questions about social media governance are being explored in a variety of ways, including through the Social Media Governance Initiative (SMGI) at Yale Law School's Justice Collaboratory. Founded in 2015, the Justice Collaboratory seeks to advance public policies that are based on scientific evidence to build strong and safe communities, including those that promote positive behaviors rather than punish negative ones.

SMGI applies that same framework to online communities, starting from the premise that social media is generally good for society rather than generally bad. Its research is based on evidence that most people follow the rules, not because anyone tells them to or because they'll be punished if they don't, but because they believe it's the right thing to do.

Many social media governance models don't take that reality into account. Instead, they focus on finding and punishing the bad actors.

"We want to promote desirable behaviors," said Macklin Fleming Professor of Law and Professor of Psychology Tom R. Tyler, founding co-director of the Justice Collaboratory. "Part of that is traditional regulation — the stopping of bad things. But we're also very interested in promoting good things."

SMGI faculty and students have conducted studies on Facebook, Twitter, and Nextdoor, among other companies. The initiative also offers feedback to platforms. When Facebook was collecting input on its Oversight Board, for instance, SMGI argued for more user involvement in its content moderation efforts.

"We were lobbying Mark Zuckerberg in a different direction than he went," Tyler said.

This spring, Tyler and SMGI Director Matt Katsaros taught a new SMGI lab in which students wrote policy papers based on their interviews with people working at social media platforms. The students looked at what's wrong with content moderation currently and what models might be better. The topics included how different companies address gendered harassment, how platforms communicate their rules to users, and technology ethics.

"We are on the cutting edge of efforts to think more systematically about getting ahead of these problems," Tyler said.

Confronting the Business Model

Part of what is problematic about internet content is the business model that supports most of it: Many social media platforms are free, but users pay for that access with their privacy. Platforms make money by selling user data to advertisers who then target their marketing campaigns to the most relevant people.

Syed has examined this model in her research. In 2017, she wrote "Real Talk about Fake News: Towards a Better Theory for Platform Governance,"



Tom Tyler



Matt Katsaros

a piece for the *Yale Law Journal* juxtaposing the realities of online speech with traditional First Amendment theories, including the so-called marketplace of ideas model, which maintains that a pro-speech environment will eventually produce the truth. That theory isn't helpful, she argues, in a world driven by algorithms in which the most provocative content pays, and prevails — whether it's true or not.

In her article, Syed cited the work of Knight Professor of Constitutional Law and the First Amendment Jack M. Balkin, among others.

**“If you want to reform social media,
you have to reform the basic business practices these companies have developed over the years.”**

JACK BALKIN

KNIGHT PROFESSOR OF CONSTITUTIONAL LAW AND THE FIRST AMENDMENT

Balkin founded and directs Yale Law School's Information Society Project (ISP), an interdisciplinary center that explores issues at the intersection of law and technology. ISP is also home to the Abrams Institute's Media Freedom and Information Access Clinic, which filed a lawsuit last year against an outlet that repeatedly published false stories. Balkin has written extensively about ways to effectively regulate social media, including by encouraging and facilitating new competitors in the digital sphere and through new antitrust, privacy, and consumer protection laws.

“If you want to reform social media, you have to reform the basic business practices these companies have developed over the years,” Balkin said.

There's no “silver bullet” for the challenges that come from providing access to the largest speech platforms in human history while also protecting people's safety and the integrity of democratic processes, Balkin added. For instance, he said Facebook's Oversight Board is “nice” but ultimately inadequate for the scale of the problem.

“Imagine an enormous, hideous beast,” he said. “And atop this beast is a tiny gorgeous hat with a beautiful flower. What's wrong with the hat? Nothing. The hat is lovely — the flower is beautiful — but it's sitting on top of this huge beast.”

Syed agreed, calling the Oversight Board “a wonderful experiment.”

“It's not going to be the solution,” she said. “I don't think they think it's the solution, but it is a show of good-faith effort internally to try to move toward a solution.”

Indeed, there are no obvious answers to questions about online content governance, even though the questions are coming from the very highest levels.

After she wrote her 2017 *Yale Law Journal* article, Syed had the chance to brief former President Barack Obama on her argument that existing free speech models have failed to account for the social media era.

“It was terrifying and very exciting,” she recalled of the experience.

Then Obama asked her what a better model would be.

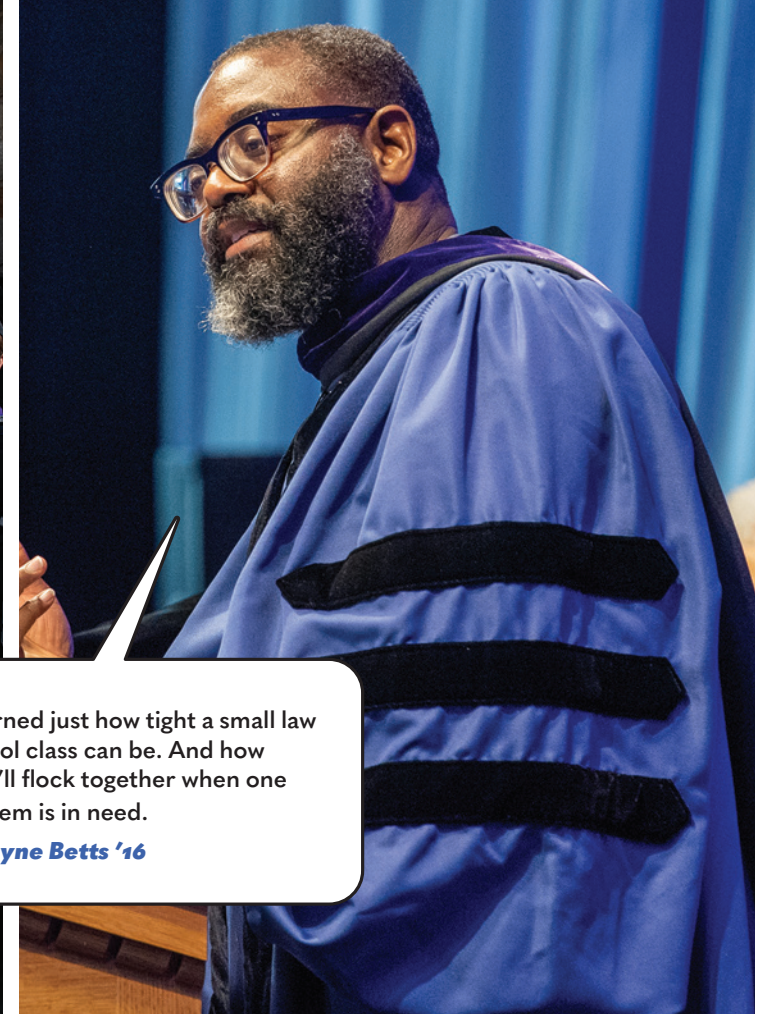
Syed didn't have an answer for him. But she hopes to, eventually.

“For my next act, I want to return to something more scholarly,” she said. “We need to constrain the technology — or at least interrogate it — then craft theories that strike the balance of what we're seeing.” 🗣️



Jack Balkin





I learned just how tight a small law school class can be. And how they'll flock together when one of them is in need.

Dwayne Betts '16

James Silk '89





JOYOUS CELEBRATIONS

Two ceremonies in May brought the community and guests together to mark the accomplishments of the classes of 2020, 2021, and 2022.

PHOTOS BY MARA LAVITT

Three graduating classes had their day in the sun — for some, a long-delayed chance to celebrate with family and friends — as treasured commencement traditions returned to Yale Law School this spring.

On May 14, the Law School welcomed back recent alumni for whom the pandemic interrupted the usual graduation rites. An Alumni Ceremony for the Classes of 2020 and 2021 was the highlight of a day with all of the hallmarks of Commencement. Scenes from the festivities — a drum corps leading a procession, graduates walking across a blue-and-white-draped stage, friends and family making toasts in the Courtyard — were repeated on May 23, when the Class of 2022 held its Commencement.

On both days, speakers acknowledged the challenging circumstances under which the graduates completed their law school years. They noted the resilience the graduates developed and the relationships they sustained during trying times.

Dean Heather K. Gerken, in remarks to the Class of 2022, described what the graduates accomplished.

“Let me tell you that the work you did here — to uplift one another while simultaneously managing to win injunctions and produce pathbreaking scholarship and become leaders in all manner of fields — it’s nothing short of amazing,” she said. “If you did not already believe that you could accomplish absolutely anything, let there now be no doubt.”

I hope you know that idealism versus realism is a false choice. And I hope you continue to refuse to accept that unacceptable things must remain as they are.

Chimamanda Ngozi Adichie

If we've learned nothing else in the last two years, we know that so much of what we assume is durable could slip away at any moment. But what we will always have — and be proud of — is the time and energy we invest in building loving relationships of many kinds with the people around us.

Monica C. Bell '09



[I am grateful for] my friends, who have been a loyal source of support and who have shown me that I can learn things, and also the clinics, which are an incredible source of learning and lawyering that I will always remember for the rest of my life.

Shariful Khan '22 will be a Skadden Fellow through Public Justice's Students' Civil Rights Project. In this role, he will be representing students in their civil rights claims against school districts and cities.

In each of the ceremonies, Gerken spoke about how the graduates supported each other and maintained a sense of community. "You showed that this community endures, regardless of distance or difficulty," she told the Classes of 2020 and 2021. "These examples continue today, with your class already out in the world doing remarkable things and facing challenges head on with grit and determination."

Sustaining a community was a recurring theme of both the Alumni Ceremony and Commencement.

Professor of Law Monica C. Bell '09, chosen by the classes of 2020 and 2021 as the faculty speaker, spoke about the transformative power of friendship.

"If we've learned nothing else in the last two years, we know that so much of what we assume is durable could slip away at any moment," she said. "But what we will always have — and be proud of — is the time and energy we invest in building loving relationships of many kinds with the people around us."

Visiting Clinical Lecturer in Law Dwayne Betts '16, the Alumni Ceremony's guest speaker, described how the community rallied around him when the Connecticut Bar Examining Committee mailed him a letter questioning his character and fitness because of his felony convictions at the age of 16.

"In getting in a bind, I learned just how tight a small law school class can be," said Betts, the Founding Director of Freedom Reads, which establishes libraries in prisons to bring literature to incarcerated people. "And how they'll flock together when one of them is in need."



Yale Law School is very supportive of people who want to go into academia and the Moot Camp [a workshop in which candidates moot their job talks] was particularly helpful.

Maily Fidler '20 will start as an Assistant Professor in the fall at the University of Nebraska College of Law, where she will be teaching criminal law.



I'm looking forward to seeing what the next stage has in store for me. The classes that I've taken have definitely prepared me and the clinical work I've done has given me training as well.

Spurthi Jonnalagadda '22 will join the white collar practice of Skadden, Arps, Slate, Meagher & Flom LLP in New York. At YLS, she was involved with the Entrepreneurship and Innovation Clinic, Free Exercise Clinic, and Gender Violence Clinic.



I've made the strongest friendships I've ever had in my life at Yale Law School. There are so many people who have fundamentally made my perspective on the world broader and have helped me stay true to my principles.

Emily Jo Coady '22 is heading to Oakland, California, where she be working for a union-side labor firm on workers' rights issues.



This is a reunion with regalia. I am awestruck by how attached I am to a place I was only in for a year and how happy I am to see everybody.

Harley Etienne '20 MSL, now an Associate Professor at Ohio State University's Knowlton School and Moritz College of Law, on being back for the Alumni Ceremony.





It's wonderful to be here today. I have loved being able to see all of my peers again and catch up with them.

Esther Araya '20 is a Skadden Fellow at Kids in Need of Defense, where she represents children seeking asylum.



I took every single tax course at Yale Law School. It's an exciting field because of the mix of policy and real world application.

Ya Sheng Lin '22 will join the firm of Davis Polk in New York as a tax lawyer.



As lawyers and prospective lawyers, we are uniquely situated to do good in the world and to work for the public interest — whether that be immigrant rights; prosecuting war crimes in Syria, Libya, Ukraine; or defending indigent people pro bono in evictions.

Max Labunsky '22 will be clerking on the U.S. Court of Federal Claims.





Currently I'm working as legal adviser to the Iran-U.S. claims tribunal in the Hague. It's interesting work helping to resolve disputes between the U.S. and Iran.
Michael Beechert '21



I'm spending as much time, energy, and thinking as I can on the abolition of youth prisons, school desegregation, and youth voting rights. It won't be change that I'll see in my lifetime, but I think it's worth planting the seeds.
Sarah Camiscoli '21



Judge Myron Thompson '72



Speakers also described the principles that graduates will carry throughout their careers.

Binger Clinical Professor of Human Rights James Silk '89 was selected to address the 2022 graduates as faculty speaker. He touched on two themes — humility and solidarity — that guide his work.

To achieve justice, he said, lawyers must “listen to those resisting unjust power and ... help them wield the language of rights and the language of law to make their demands.”

Award-winning novelist and essayist Chimamanda Ngozi Adichie, Commencement guest speaker, urged the Class of 2022 to hold close to the ideals and goals they first entered law school with.

“I hope you know that idealism versus realism is a false choice,” she said. “And I hope you continue to refuse to accept that unacceptable things must remain as they are.”

The 2022 Commencement included recognition of an honorand, federal Judge Myron Thompson '72, whom Gerken called “a civil rights champion,” and who received an honorary Doctor of Laws degree from Yale University earlier in the day.

The Alumni Ceremony honored 466 graduates. The classes of 2020 and 2021 comprise 422 J.D., 28 LL.M., two M.S.L., 14 J.S.D. degree recipients. Commencement honored 270 degree candidates, comprising 217 J.D., 40 LL.M., three M.S.L., and 10 J.S.D.s from the class of 2022. 📍

YLS ALUMNI LEADERSHIP

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Thank you to the outgoing members of the Fund Board for their service.

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Total Membership: 156

ALUMNI NEWS

Dear Friends,

Since joining Yale Law School in October 2021, I have been reminded many times of what a profound privilege it is to be a part of this community. Yale Law School alumni are some of the most insightful and dedicated graduates I've ever met,



and your collective commitment to this institution is remarkable. Most recently, our generous graduates have made us national leaders in meeting the full cost of a legal education for students with demonstrated need, thanks to the **Soledad '92 and Robert Hurst Horizon Scholarship Program**. This foundational effort was also supported by David '75 BA, '78 JD and Patricia Nierenberg and Gene '73 and Carol Ludwig, and I know that the impact of this fund will only grow as more alumni contribute to it in the days, months, and years

to come. The recently launched **Joseph C. Tsai Leadership Program** promises that whatever paths our graduates pursue, they will be ready to find innovative ways to use their legal education to create a better future for all. Both of its specialized programs — the **Carol and Gene Ludwig Program in Public Sector Leadership** and the **Michael S. and Alexa B. Chae Initiative in Private Sector Leadership** — speak to the extraordinary ways that the School has for generations prepared leaders in all fields. These initiatives illustrate the tireless drive of our dean, faculty, and graduates to imagine an ever-brighter tomorrow for our community and the world.

Yale Law School continues to thrive thanks to its loyal alumni leaders who have provided guidance and support for generations. Simply put, your hard work and generosity matter. Whether you serve as a member of your reunion committee, the Fund Board, or the YLSA Executive Committee, partner with our admissions team to aid in the recruitment of talented applicants, make a gift, or register for The Courtyard and become a mentor to our students, your partnership with us is the lifeblood of the YLS community, and we are deeply grateful.

I am particularly excited to share our plans with you for the inaugural Yale Law School **All-Volunteer Summit** this coming September. The Summit will be a new opportunity to celebrate our alumni partners, and it will provide our loyal ambassadors, advocates, and donors with an opportunity to hear from Dean Gerken, YLS administrators, and students, and to participate in learning sessions focused on philanthropic advocacy and communicating the School's most pressing priorities.

There is a rich constellation of ways to connect with Yale Law School and I hope you will reach out to us if you are interested in joining the ever-growing ranks of alumni volunteers and donors. In the meantime, thank you again for welcoming me into your remarkable community. I very much look forward to the exciting journey ahead!

Warmly,

Kristen B. Rozansky

Associate Dean, Alumni Engagement and Development



HOUSTON

Houston Reception

On May 10, 2022, the YLSA of Houston hosted a reception at the home of **Keith Ellison '74** and Kathleen Ellison. Houston-area alumni connected with each other and Dean Heather Gerken.



(far left) Leslie Bacon, Dimitri Millas '08, Michael Tayag '21, Lisa Muloma, and host Kathleen Ellison; (near left) Heath LaPray, Travis Torrence '05, Maryann Lio Grahmann '09, and Craig Grahmann

Throughout the year and in cities across the country, alumni gather for events organized by Yale Law School's Office of Alumni Engagement and Development. Here is a sampling of the events that have taken place over the past six months. Events details are posted on our website law.yale.edu/alumni. Please contact the Office of Alumni Engagement and Development if you want to update your contact information, by phone at (203) 432-1690 or by email at alumni.law@yale.edu.

NEW YORK

Reception Held to Launch The Tsai Leadership Program

More than 300 guests attended a reception to celebrate the public launch of The Tsai Leadership Program held on April 5 at the Mandarin Oriental Hotel in New York City. The event, hosted by YLSA, included Yale Law School alumni and Alumni Advisory Council members of The Tsai Leadership Program. Dean Heather Gerken welcomed guests to the first major in-person alumni event since the beginning of the pandemic. She shared the purpose of The Tsai Leadership Program and the benefits it provides to students, thanked the staff and faculty who helped launch the program, and introduced guests to the program's founding donors — **Joe '90** and **Clare Tsai**, **Michael '97** and **Alexa Chae**, and **Gene '73** and **Carol Ludwig**. She also shared details of the Hurst Horizon Scholarship Program that will provide full tuition to students whose families come from below the poverty line.



(above left) Jack Weiner '59, Tom Baer '60, Jim Harbison '59, and Steve Mann '60; (above right) Minh Vo '03, Shirley Emehelu '03, Janet Wong '87, and Pearl Yuan-Garg '03; (left) Matthew Anderson, Elina Tetelbaum '10, Basha Rubin '10, Sipoura Barzideh '09, and Aaron Delaney

MIAMI



The South Florida Lawyer

The YLSA of Miami held a discussion and reception on March 23, 2022, hosted by Podhurst Orseck. Two dozen Yale Law School alumni came to network and hear panelists **Roy K. Altman '07**, **Jacqueline Becerra '94**, and **Shaniek M. Maynard '01** discuss "The South Florida Lawyer: Insights from the Bench," with moderator **Rudolph Aragon '79**.

SAN FRANCISCO & D.C.

Diversity Receptions

Two diversity receptions, bringing together alumni and student members of the APALSA, BLSA, LLSA, MENALSA, NALSA, OutLaws, and SALSA affinity groups, were held this spring. On May 31 in San Francisco, the community gathered at Palette and heard remarks from **Goodwin Liu '98**. On June 7, Yale Law School community members in the D.C. area gathered for a reception at 12 Stories; Dean Heather Gerken and Professor **William N. Eskridge Jr. '78** gave remarks to the group.

Executive Committee and Fund Board Meeting

The YLSA Executive Committee and Fund Board held their spring meetings in New York City on April 4 and 5. Sixty members attended the April 4 welcome dinner. On April 5, alumni volunteers engaged with Dean Heather Gerken and then participated in their subcommittee meetings and focus groups. Pictured are members of the Executive Committee and Fund Board with Associate Dean Mike Thompson.



Reshma Saujani '02 was the Yale University Class Day speaker on May 22 on Old Campus. Saujani is the founder of Girls Who Code and Marshall Plan for Moms.

“I give you permission to be selfish, to ask more from others, especially those who have more to give. To build systems around care rather than capital. To tend to your own brilliant flame before sharing your light with the rest of us.”



Yale Law Report

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