

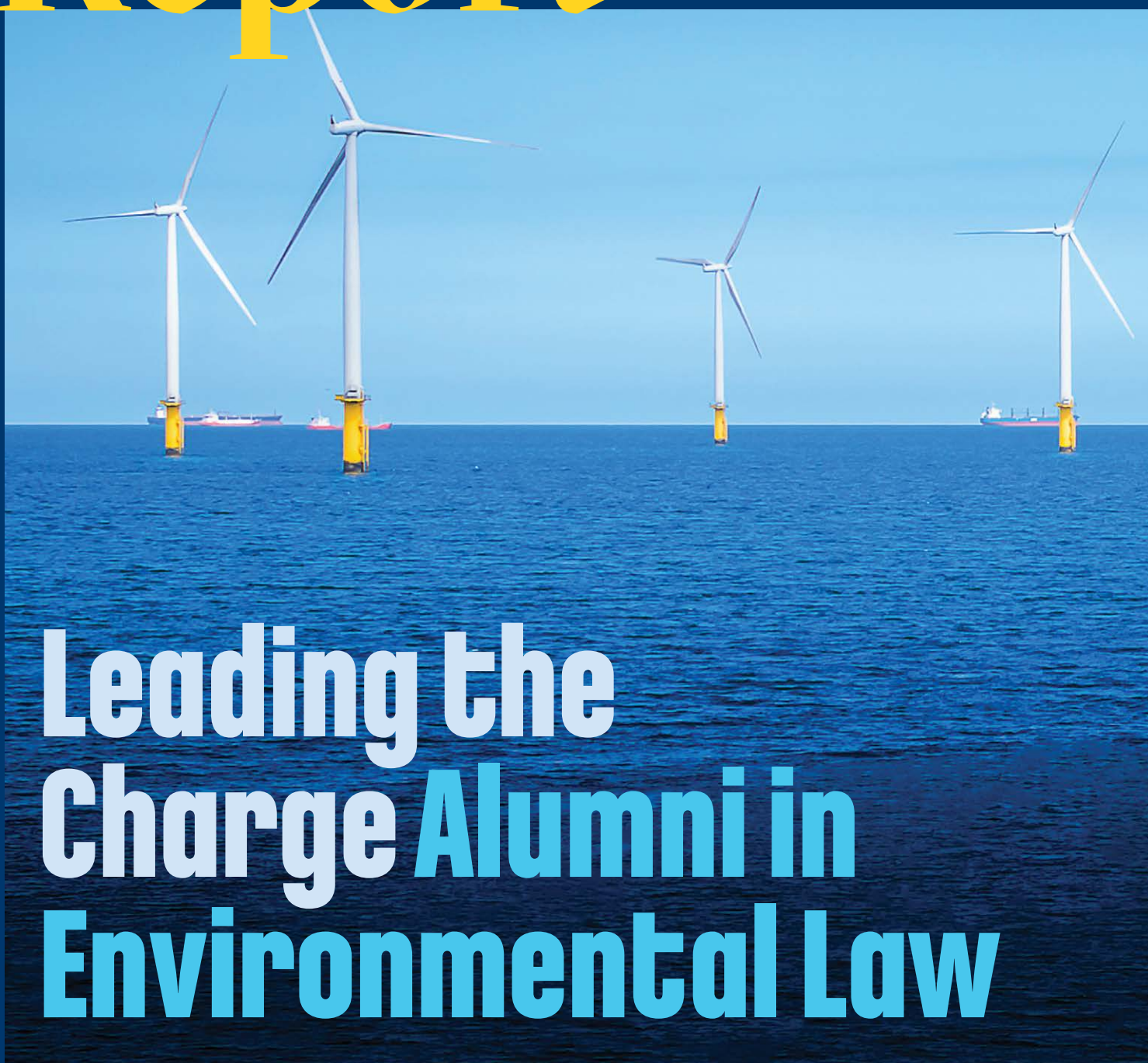
# Yale Law Report

THE ALUMNI MAGAZINE OF YALE LAW SCHOOL  
SUMMER 2019

Studying Criminal Justice from  
the Inside Out

Record Number of Public Interest  
Fellowships Awarded

Commencement 2019



Leading the  
Charge Alumni in  
Environmental Law

# Yale Law Report

SUMMER 2019

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Leading the Charge

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ON THE COVER: An offshore wind farm off the coast of England. Photo by Getty Images/iStockphoto.



The Mattatuck Drum band, the oldest fife and drum band in the United States, led graduates around the Law School and onto Cross Campus on Commencement Day.

Photo by Mara Lavitt



Some members of the Law School faculty gathered in April 2019

## Dear Graduates and Friends of Yale Law School:

Our annual dinner in D.C. reminded me of the impact our faculty are having on the most pressing issues of the day. We heard Professor James Forman Jr. '92 speak about his book, *Locking Up Our Own*, which recently won the Pulitzer Prize. James's book has helped shape the debate on the complex origins of mass incarceration, and he remains a steadfast voice in conversations about the future.

James is far from the only YLS scholar who is engaging with the issues of the day. Just a quick look through the opening pages of this *Law Report* will give you a sense of our faculty's work. A book by Anne Alstott '87 (*The Public Option*) offers suggestions on how government can coexist with the private sector to deliver important services. Yair Listokin '05 tells us how law can be used to prevent or manage the effects of a recession in *Law and Macroeconomics*. Doug Kysar explores the burgeoning field of animal law and how it overlaps with legal and policy issues. Dan Kahan is among a team of scholars working to improve the delivery and comprehension of science information to millennials. Amy Kapczynski '03 testified before the U.S. House of Representatives Ways and Means Health Subcommittee on drug pricing. Judith Resnik provided comments to the U.S. Commission on Civil Rights about women in prison.

It is inspiring to see field-shaping theoretical work have such a practical impact, from gun control to the opioid crisis, from electoral reform to Internet governance, from Chinese legal reform to climate change legislation.

I count myself fortunate to be part of this remarkable institution, and I thank all of you for being critical partners in this extraordinary journey of ours.

Wishing you a wonderful rest of the summer.

Warmly,

Heather Gerken, Dean and Sol & Lillian Goldman Professor of Law  
[heather.k.gerken@yale.edu](mailto:heather.k.gerken@yale.edu)

# OUR FACULTY



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# Executive Power and Immigration

Cristina Rodríguez '00 is the Leighton Homer Surbeck Professor of Law at Yale Law School.

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*In her research, Rodríguez has used immigration law and related areas as vehicles through which to explore how the allocation of power shapes the management and resolution of legal and political conflict. Her forthcoming book *The President and Immigration Law*, coauthored with Adam Cox, describes how presidents have influenced and changed immigration policy.*

## **Yale Law Report** How have presidential administrations shaped the course of U.S. immigration policy? Have recent administrations had unique influence?

**Cristina Rodríguez** The president's role in shaping immigration policy has become highly visible over the last two administrations. Presidents Barack Obama and Donald Trump have maximized their authority over the vast enforcement bureaucracy to offer competing visions of the role of immigrants in American life, with very real consequences for non-citizens and their communities. But as Adam Cox and I show in our forthcoming book on presidential power in immigration law, presidents have played the role of immigration policy-maker-in-chief since the 19th century, originally through their treaty-making power, and eventually by exploiting various tools of the administrative state. Presidential crisis management has played an important role in this story, but so has the ordinary executive obligation to enforce the law.

## **What role have the judicial and legislative branches played in enabling or limiting presidential power?**

The Immigration and Nationality Act, our immigration code, is famously vast and complex. Since its enactment in 1952, and in numerous amendments since then, Congress has set the parameters within which the executive operates. But a particular feature of the Code helps explain why the president nonetheless wields significant power over the system: the law makes deportable many more people than the government has the capacity to remove, necessitating that the administration exercise judgment over when the law applies.

This shadow system that Cox and I describe empowers the executive and accounts for perhaps the central immigration dilemma of our time. Millions of non-citizens who lack immigration status nonetheless have become embedded in the life of the nation, while remaining subject to the ongoing threat of enforce-

ment—a state of affairs that produces instability and oppression for non-citizens and erodes public perceptions of the system's legitimacy. Courts historically have had little role to play in overseeing this shadow system because of legal and political conventions that restrain them from second-guessing executive discretion and the immigration line drawing of Congress. But through the application of the Due Process Clause of the Fifth Amendment, courts for decades have provided limited but meaningful checks on the most abusive government treatment, particularly with respect to detention. This area of the law is now in significant flux, however, and has produced bitterly divided Supreme Court opinions in just the last two terms.

## **What does the national emergency over the border wall that Trump declared in February imply about the separation of powers in our system today?**

Several actions of the Trump administration have shined light on old statutes that contain sweeping delegations by Congress to the President—statutes that give the president broad power to address public safety threats but that can also be cynically employed. President Trump's declaration of a national emergency arguably conforms to the formal parameters of the National Emergencies Act of 1976. Some of the statutory powers unlocked by the declaration of emergency could provide sources of funding for a wall. But the administration's turn to this framework is best understood as a political gambit—a way around congressional resistance to the president's political goals.

Similarly, early in his administration, President Trump capitalized on section 212(f) of the Immigration and Nationality Act, which gives the president the power to suspend the entry of “all aliens or any class of aliens” he deems detrimental to the interests of the United States. The administration's executive orders and purported justifications for them fit within the statute's terms, but the exclusions the president put in place struck many lower courts and scholars, myself included, as fulfilling an animus-inspired campaign promise to check Muslim immigration.

Both of these episodes suggest that it is time for Congress to reconsider delegations that might make sense in theory but that enable misuse and abuse of power, though this sort of legislative reform is aspirational. As for the prospects for judicial review, the Supreme Court's 2018 decision in *page 4* →



**Doug Kysar** was a panelist at University of California-Irvine on February 9, 2019 on *Fire and Ice: The Shifting Narrative of Climate Change*.

RODRÍGUEZ

→ Executive Power and Immigration (from page 3)  
*Trump v. Hawaii* suggests that the Court is unlikely to police the exploitation of these dramatic delegations. The National Emergencies Act, in particular, contains no standards by which to judge the President’s declaration of an emergency, which makes judicial invalidation of the declaration itself unlikely.

The skirmish over the border wall does highlight that real immigration crises occur. But the construction of a border wall will not address the continuing arrival of people fleeing extreme violence in Central America. Neither the Obama nor the Trump administrations had the capacity to manage this problem humanely—the enforcement mentality thwarts that very objective, as does the ubiquitous problem of limited resources. Public attention to the President’s power over our immigration system can bring these structural limitations (and not just the President’s character) to light. The goal of such revelations, in turn, should be to make the system the President oversees more sensitive to the human toll of mass enforcement.

**Jim Whitman ’88** was a panelist at the United States Holocaust Memorial Museum on March 12, discussing Nazi Ideology and Racism in the Jim Crow South.



**Post Named to American Law Institute Torts Project**

**The American Law Institute** (ALI) announced on January 28, 2019, that Sterling Professor of Law Robert C. Post ’77 has been named a Co-Reporter for its ongoing Restatement (Third) of Torts: Defamation and Privacy.



Judge Barrington D. Parker ’69, Sterling Professor of Law Robert C. Post ’77, Chief Judge Robert A. Katzmann ’80.

**Post Delivers Inaugural Thurgood Marshall Lecture at the Second Circuit**

**Sterling Professor of Law** Robert C. Post ’77 delivered the inaugural Thurgood Marshall Lecture at the Second Circuit Court of Appeals in New York City on December 12, 2018.

Post’s lecture, titled “Marshall as a Judge” explored the contemporary significance of Marshall’s legacy and his time as a judge on the Second Circuit from 1961 to 1965.

Post delivered his remarks after a welcome by Chief Judge for the Second Circuit Robert A. Katzmann ’80 and an introduction by Judge Barrington D. Parker ’69. In the talk, Post spoke not only about Marshall’s career as a judge but about his accomplishments that led him to the bench and influenced him for the rest of his career.

DRIVER

**Professor Justin Driver Joins Yale Law School Faculty**

**Justin Driver** joined the Yale Law School faculty as Professor of Law on July 1, 2019.



**Justin Driver**

Driver was the Harry N. Wyatt Professor of Law at the University of Chicago Law School. A graduate of Brown, Oxford, and Harvard Law School, Driver clerked for Judge Merrick B. Garland, Justice Stephen Breyer, and Justice Sandra Day O’Connor.

Driver teaches and writes in the area of constitutional law and is the author of *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, which was published in 2018. A recipient of the American Society for Legal History’s William Nelson Cromwell Article Prize, Driver has a distinguished publication record in the nation’s leading law reviews. He has also written extensively for lay audiences, including pieces in *Slate*, *The Atlantic*, *The New York Times*, *The Washington Post*, and *The New Republic*, where he was a contributing editor.

## ON THE HILL AND IN THE COURTROOM

## Professor Resnik Speaks to U.S. Commission on Civil Rights on Women in Prison

**Arthur Liman Professor** of Law Judith Resnik was among the experts who spoke at a public briefing at the U.S. Commission on Civil Rights on February 22, 2019. Resnik, the founding director of The Arthur Liman Center for Public Interest Law, submitted a statement to the briefing titled, “Women in Prison: Disparate Treatment, Disparate Impact, and the Duty of Care.”



**Judith Resnik**

According to the Liman Center’s statement to the Commission, the number of women in state and federal prisons has increased dramatically during the past 40 years. “These women are underserved in prison, even as comparisons to men in prison are awkward, in that prison systems are not ‘good’ for anyone,” the Liman Center’s statement said. “Experiences are not binary; women and men of all colors, classes, and ages experience the problems of prison in different ways. Further, as media reports detail, transgender people face distinct and egregious harms when incarcerated.”

## Issa Kohler-Hausmann and ACLU Challenge State’s Parole System

**Associate Professor** of Law Issa Kohler-Hausmann ’08 is among a group of lawyers who worked with ACLU Wisconsin to file a federal class-action lawsuit to halt the state’s refusals to release parole-eligible people sentenced to life imprisonment for crimes they committed while they were children.



**Issa Kohler-Hausmann**

The United States Supreme Court has held that states must give most juveniles sentenced to life in prison a chance to earn parole release based on a standard of rehabilitation and reform. The suit maintains that the current parole system, which gives parole commissioners unfettered discretion to deny release, fails to provide a meaningful second chance for people who committed crimes as children.

“In the wake of recent Supreme Court rulings requiring states to give redeemable juvenile lifers a meaningful opportunity for parole release, states across the country have revisited their parole systems to bring them into compliance with constitutional requirements,” wrote Kohler-Hausmann and co-counsel

Avery Gilbert. “Wisconsin has not, and it must now recognize that it is out of step with national trends and the constitution.”

In addition to Kohler-Hausmann and Gilbert, the legal team included two Wisconsin law firms, Quarles & Brady and Foley & Lardner, which both provided pro bono assistance. Hillary Vedvig ’17, an associate with Foley & Lardner, was one of the firm’s lawyers on the case. Saul Ramirez ’19 also contributed research and assistance.

## Professor Kapczynski Testifies in D.C. on Drug Prices

**Professor Amy Kapczynski ’03** testified before the U.S. House of Representatives Ways and Means Health Subcommittee on March 7, 2019, in Washington, D.C. The hearing was titled “Promoting Competition to Lower Medicare Drug Prices.”



**Amy Kapczynski**

Kapczynski outlined how the drug pricing problem is at its core a monopoly problem, where originator drug companies can set high launch prices and increase those prices with few constraints.

“These rights are granted by the government, in the form of patents—which are 20-year rights to exclude others from making, using, importing, or selling covered inventions—and other forms of market exclusivity, such as the exclusivities offered to companies via the FDA,” explained Kapczynski. “Although the pharmaceutical industry has historically argued that exclusive rights and high prices are needed to compensate for research and development (R&D), there is growing recognition that prices are not set in relation to R&D. Rather, prices are set in relation to what the market can bear, and that turns not on R&D costs but on the amount of market power a company can exercise.”



**Carol Rose** presented “Is Property a Human Right?” at the American Association of Law Schools, Section on Property, Capitalism, and Structural Inequality, in New Orleans, LA, on January 4, 2019.



## Q+A Professor Zhang, Newly Tenured, Discusses His Writing and Scholarship

*Taisu Zhang '08 received tenure and was appointed Professor of Law at Yale Law School on July 1, 2019. He studies comparative legal history—specifically, economic institutions in modern China and early modern Western Europe—comparative law, property law, and contemporary Chinese Law. “Taisu is an extraordinary scholar and a true polymath,” said Dean Heather Gerken. “His deep expertise in Chinese law and legal history shines a light for us on the country’s growing global influence.” His first book, The Laws and Economics of Confucianism: Kinship and Property in Pre-Industrial China and England, was published by Cambridge University Press in 2017. It has been awarded the Presidents Book Award from the Social Science History Association and the Gaddis Smith International Book Prize from the MacMillan Center for International and Area Studies for the best first book by a Yale ladder faculty member. On the occasion of Zhang’s promotion, the Law Report asked him a few questions about his research and work at the Law School.*

### Yale Law Report How did Chinese and English pre-industrial economic development go down different paths?

**Taisu Zhang** I am about 1.7 books into a trilogy of books on this subject, so any answer I give now necessarily involves some conjecture and hypothesis. Nonetheless, my current opinion is that it had much to do with the relative cost of capital versus labor: China was a relatively labor-rich economy with relatively little capital accumulation, whereas England was the opposite. Given that most early industrial technologies required substantial economies of scale to be cost-efficient, they had a very difficult time taking off in China throughout the 19th and early 20th centuries, despite numerous attempts at kickstarting the industrialization process by the state. Now, previous scholarship has covered the labor cost side of this analysis in some detail, but this literature is logically

incomplete, as many have pointed out, without a comparable account of capital accumulation costs—which is where my books make (or will make) their contribution.

I believe there are institutional/legal explanations for the relative lack of capital accumulation in the Chinese economy, and also that there are deeper cultural and ideological explanations for the institutional/legal phenomena. Each book in the trilogy will cover one part of this argument: book one looks at property rights and their sociocultural foundations, book two looks at the ideological origins of tax policy and the fiscal state, while book three examines corporate institutions, and then pulls all of this into a unified thesis.



Taisu Zhang

### What are the implications we see today from these differences in development?

Given that a lack of capital accumulation was one of the primary culprits (both real and perceived) for China’s industrial underdevelopment prior to the creation of the People’s Republic in 1949, the new Communist state invested heavily in getting the economy over what you might call “the capital accumulation barrier.” As a result, it immediately began to confiscate land, centralize commercial assets, and spend heavily on infrastructure. To a large extent, these industrial policies laid the foundation for the state-centric mode of economic development that the contemporary Party-state continues to rely on even today. In that sense, the “China model” of development that we see today at least partially continues to be a response to the perceived weaknesses of the pre-1949 economy.

### What are some of your other research interests?

I’ve tried to maintain at least two strands of research on the side of my book projects, splitting time between them and the books roughly 30/70: I write occasionally on what one might call private law theory, with an emphasis on property; and also on the contemporary Chinese legal system and underlying currents in Chinese political and legal culture. The unifying theoretical theme behind these different strands of writing is a sustained interest in the interaction between “soft” factors like culture and ideology and “harder” phenomena like legal, institutional, and economic change. That kind of interdisciplinary theoretical inquiry is what has always drawn me to the intellectual life of the Yale Law School, which is about as perfect a true and serious interdisciplinary hub for the law-related social sciences and humanities as one could possibly imagine.

## The Washington Post

Samuel Moyn in “If the liberal world offered more economic security, maybe authoritarians would lose their appeal,” March 22, 2019:

“Not preaching the virtues of American freedom alone, but a broad and global program of economic fairness, will remain the best counter to authoritarianism here and elsewhere in the years to come.”

## wshu

### Public Radio

Judith Resnik in Criminal Justice Reform roundtable, April 30, 2019:

“At the moment, we’re seeing a national understanding that keeping millions in prison in the U.S. is not a way to keep the country safe or help the communities from which they came.”

“That kind of interdisciplinary theoretical inquiry is what has always drawn me to the intellectual life of the Yale Law School.” PROFESSOR TAISU ZHANG



## Yale Law Faculty Reflect on First Step Act

**In December 2018**, Congress passed the First Step, a rare piece of bipartisan legislation that takes initial steps to reform the criminal justice system and ease punitive prison sentences at the federal level.

The bill's biggest changes aim to reduce certain mandatory minimum sentences under federal law and ease the "three strikes rule" in which those with three or more convictions automatically get 25 years in prison.

"This is an important and bipartisan accomplishment," said Professor Kate Stith, who teaches criminal law and procedure and is a former federal prosecutor. "We should be pleased and give credit where credit is due. But there is much more to do, as the name of the legislation makes clear."

Professor Gideon Yaffe, who studies the philosophy of law, particularly criminal law, hailed the bill for making genuine progress and improving the prospects of federal prisoners in the United States. However, Yaffe noted that the modest improvements do not mean that policy makers should stop looking for other ways to improve the system.

"There needs to be action in line with what the report recommends," said Yaffe. "The Act does not actually expand medication-assisted opioid addiction treatment, or allocate money for the purpose, leaving

that to be done by later laws or administrative actions. Will such laws ever be produced, or will our legislators and our Bureau of Prisons administrators simply congratulate themselves on producing an impressive report? Only time will tell."

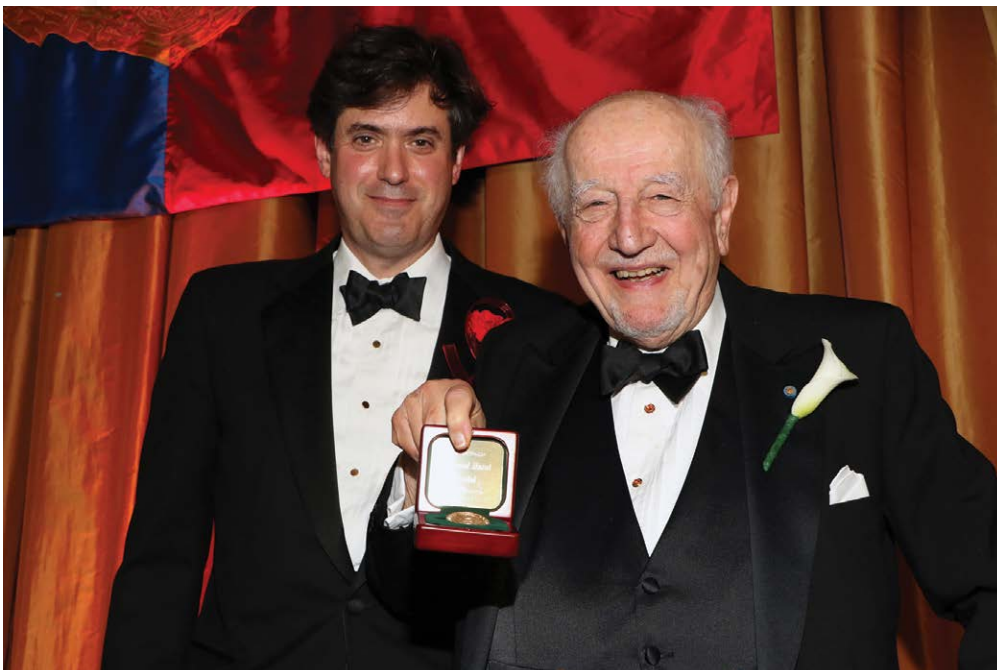
Clinical Associate Professor of Law Miram Gohara, who spent 16 years representing death-sentenced clients in post-conviction litigation, said it was encouraging to see a bill aimed at reducing incarceration rates and improving conditions at federal prisons for the first time in two generations.

Gohara noted that she was particularly pleased to see that the new legislation was making retroactive the 2010 Fair Sentencing Act's reduction in the disparity between crack and powder cocaine sentencing, which could make about 2,600 federal prisoners eligible for release earlier than their original end-of-sentence dates.

However, Gohara cautioned that, "the First Step Act's opportunity for prisoners to earn good-time credit off their sentences if they participate in vocational and rehabilitative programming will only be an effective one if programming is widely accessible, well-funded, and designed to provide meaningful educational programs, job training, and counseling to the men and women serving federal time."



**Abbe Gluck '00** took part in a panel discussion on the role of litigation settlements in supporting prevention, treatment, and recovery efforts to address the opioid epidemic at the Bipartisan Policy Center in May.



**Federal Bar Council** president-elect Jonathan Moses presented the Learned Hand Medal for Excellence in Federal Jurisprudence to Guido Calabresi '58, Sterling Professor Emeritus of Law, at the annual Law Day dinner on May 2, 2019.

SILK

## Professor James Silk '89 Receives Human Rights Award



Professor James Silk '89 accepts the M. Shanara Gilbert Human Rights Award from the Society of American Law Teachers (SALT).

**THE CONVERSATION**  
Academic rigor, journalistic flair

**Miriam Gohara** in “A prison program in Connecticut seeks to find out what happens when prisoners are treated as victims,” March 7, 2019:

“The German correctional model is built on the principle that prisons owe training, education, and therapy to the people in their custody.”



**James Silk**

**Binger Clinical Professor of Human Rights** and Director of the Orville H. Schell, Jr. Center for International Human Rights James J. Silk '89 was awarded the M. Shanara Gilbert Human Rights Award by the Society of American Law Teachers (SALT) on January 4, 2019, in New Orleans.

In his remarks, Silk explained that “our goals first are for our students to learn the knowledge and the skills they need to be effective advocates for human rights. We also want students to develop certain principles and practices that I believe are a crucial foundation for that kind of work.”

PETERS

## Jean Koh Peters Receives Bar Honor



**Jean Koh Peters**

**On the eve of her retirement**, Jean Koh Peters was honored by the Connecticut Bar Foundation for her decades of work representing vulnerable clients. The Legal Services Leadership Award honors a person or a group that has shown outstanding support of the foundation’s program that funds legal services to Connecticut residents with low incomes and the organizations that provide those services. Peters, the Sol Goldman Clinical Professor of Law, has centered her practice on children and refugees.

“I dedicate this award to my clients and students over the last 36 years, and to all legal services practitioners in Connecticut who rise every day to serve poor clients in our state,” said Peters.

## “Fireside Conversation” with Former National Security Advisors

**In the fall**, former national security advisors Stephen Hadley and Susan Rice participated in a “fireside conversation” at the Brookings Institution to discuss U.S.-China relations. The event, part of the first major collaboration between the Paul Tsai China Center at Yale Law School and the John L. Thornton Center at Brookings, and moderated by the Tsai Center’s Director, Professor Paul Gewirtz, showcased the current views about the U.S.-China relationship from two of the leading foreign policy figures in the Democratic and Republican parties. Their service in the most senior foreign policy positions in our government spanned the 16 years between 2001 and 2017, during the administrations of President George W. Bush and President Barack Obama.

They found common ground on current challenges and priorities. Both believe that the relationship with China has entered a new stage of significantly more competition and that the central challenge is to find effective ways to manage this more intense competition while also developing areas of cooperation. And they each enumerated a range of concrete steps to advance those goals in the time ahead.



Former National Security Advisors Stephen Hadley and Susan Rice discuss U.S.-China relations at the Brookings Institution. Professor Paul Gewirtz, Director of Yale Law School’s Paul Tsai China Center, moderated the discussion.

Jim Silk photo by Kyle Encar; James Forman Jr. photo by John Rossey

KAHAN

## Dan Kahan Project Wins National Science Foundation Grant

**Elizabeth K. Dollard** Professor of Law and Professor of Psychology Dan Kahan is among a team of scholars whose research initiative on engaging millennials in science media received a \$2.7 million grant award from the National Science Foundation.



**Dan Kahan**

Northern California public radio station KQED announced on April 16, 2019, that it had received the grant for its project *Cracking the Code: Influencing Millennial Science Engagement*. According to KQED's announcement, the project, which builds upon research Kahan conducted with Asheley Landrum of the Science Communication and Cognition Lab of Texas Tech University, aims to:

- Identify and analyze the interests, motivations, and behaviors of millennials and their media habits in relation to various types of science content;
- Test a range of public media science content including text, audio, graphics, and video using multiple media platforms, audience research, and engagement tactics to learn how to better meet millennials' needs around scientific news and information;
- Develop best practices for journalists and media companies to reach and engage millennials with science media by using the expertise of science media professionals and science communication academics.

MEARES AND BAZELON

## Tracey Meares and Emily Bazelon Elected to the American Academy of Arts and Sciences

**Included among** the more than 200 individuals newly elected to the American Academy of Arts and Sciences are Walton Hale Hamilton Professor of Law Tracey L. Meares and Senior Research Scholar in

Law and Truman Capote Fellow Emily Bazelon '00. The Academy announced

the election of its new members on April 17, 2019. The new class will be inducted at a ceremony in October 2019 in Cambridge, Massachusetts.



**Tracey Meares**



**Emily Bazelon**

FISS

## California Law Review Symposium Includes Essay by Owen Fiss

**The California Law Review** published a symposium in its December 2018 issue including an essay by Sterling Professor Emeritus of Law Owen Fiss. The essay, titled "The Accumulation of Disadvantages," focuses on the disparate impact principle of *Griggs v. Duke Power Co.* and the attempt of the legal system to counteract the dynamics responsible for the perpetuation of racial inequalities.

Fiss originally presented the talk at the annual Brennan Center Jorde Symposium at the University of California, Berkeley School of Law and the University of Chicago Law School.



**Owen Fiss**



**James Forman Jr. '92** gave the 2019 Murray Excellence in Scholarship Lecture on March 21 at Duquesne University School of Law.



Associate Professor of Law **Issa Kohler-Hausmann '08** has won several accolades for her book *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (Princeton University Press, 2018):

- Winner of the 2019 Herbert Jacob Book Prize from the Law and Society Association;
- Chosen as one of the best justice-related books of 2018 by the Vera Institute of Justice;
- Winner of the 2019 Mirra Komarovsky Book Award from the Eastern Sociological Society.



**Zachary Liscow '15** and **Quentin Karpilow '18** in "Green New Deal is good economics," February 12, 2019:

"While carbon pricing is the most cost effective way to reduce emissions today, government subsidies are the most cost effective way to advance clean technologies tomorrow."

# SCHOOL NEWS



Tara Melish '00, Ryan Thoreson '14, Meghan McCormack '14, Efrén Olivares '08, and Sharanya Kanikkannan '11 on a panel at the 2018 Bernstein Symposium. Four of the five are former Bernstein Fellows.



A panel at the 2019 Liman Colloquium included numerous Liman Fellows.

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# Record Number of Public Interest Fellowships Awarded

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**In May, Yale Law School** announced that 63 of its graduating students and recent alumni were awarded public interest post-graduate fellowships.

Of this number, 42 fellowships were awarded directly by the Law School, while 21 were awarded by external fellowship programs. The number of Yale Law School fellowships awarded and the number of external fellowships received, as well as the total number of fellowships, were the highest ever in an academic year.

These fellowships offered by the Law School and some outside organizations provide support for one or two years of work in the public interest, jumpstarting careers while serving the legal needs of underserved members of society.

The effects of these fellowships can be transformative. “Yale Law School has put its resources behind me at critical turning points in my career,” said Clinical Professor of Law Fiona Doherty ’99. “Shortly after graduation, the Law School gave me a fellowship that launched my earliest jobs in practice. Ten years later, a second law school fellowship helped me transition from practice to teaching.”

The Law School also awarded a 43rd public interest fellowship, the David Nierenberg ’78 International Refugee Assistance Project Fellowship, to an applicant from another law school.

Twenty-one fellows will pursue public interest work through fellowship programs funded by outside organizations, including six who received Equal Justice Works Fellowships, six Justice Catalyst Fellowships, and three Skadden Fellowships.

“Yale Law School’s support for public interest fellowships is unparalleled,” said Dean Heather Gerken. “These fellowships enable our students and graduates to embark on their careers in public interest law and make a real difference. After their fellowships, our graduates are often hired permanently by their fellowship organizations or go on to other career opportunities armed with crucial practice experience and a deep appreciation of the importance of service.”

This year’s recipients will be working for organizations including the MacArthur Justice Center, the U.S. Senate Committee on the Judiciary, the ACLU Women’s Rights Project, Bronx Defenders, Texas Civil Rights Project, the Legal Aid Society of New York, and Human Rights First.

Recipients will go on to have a widespread potential impact on underserved communities throughout the United States in states like Colorado, Hawaii, and Tennessee, and internationally in countries including Argentina, Germany, Iraq, and Switzerland.

## Fellowship programs include

Arthur Liman Public Interest Fellowship  
Gruber Fellowship in Global Justice and Women’s Rights  
Heyman Federal Public Service Fellowship  
Hillary Rodham Clinton Fellowship  
Mary A. McCarthy Public Interest Fellowship  
Robert L. Bernstein Fellowship in International Human Rights  
Robina Foundation Human Rights Fellowship  
San Francisco Affirmative Litigation Project Fellowship  
YLS International Court of Justice Fellowship  
YLS Permanent Court of Arbitration Fellowship  
YLS Public Interest Fellowship  
Yale Law Journal Fellowship



“*Yale Law School has put its resources behind me at critical turning points in my career. Shortly after graduation, the Law School gave me a fellowship that launched my earliest jobs in practice. Ten years later, a second law school fellowship helped me transition from practice to teaching.*”

CLINICAL PROFESSOR OF LAW FIONA DOHERTY ’99

## PORTRAITS AND PROGRAMS

## Portrait of Robert Post '77 Joins Historic Law School Collection

**Robert Post '77**, the 16th Dean of the Law School, had many experiences with portrait unveilings, which he usually lightened up with a joke.

But it was no joke when the Sterling Professor of Law found himself on the other side of the easel, having his portrait painted for permanent display in the Alumni Reading Room. Instead, Post told the audience gathered for the painting's reveal that it was "terrifying."

"In a portrait, you are studied and you are fixed," Post said. "And let me tell you: What it feels like is having your therapist frame her notes and nail them to the wall."

Post made these remarks at a ceremony on April 18, 2019, attended by friends, family, and colleagues to unveil his portrait and celebrate his career.

Post entrusted artist Burton Silverman, whose work has appeared on the cover of *The New Yorker*, in the National Portrait Gallery, and on the cover of a Jethro Tull album, with the task. Silverman portrayed Post seated; in his hand is a book, *Democratic Constitutionalism*, with Reva Siegel, the Nicholas deB. Katzenbach Professor of Law and Post's partner and collaborator, as the author. The book shares its title with an essay Post and Siegel cowrote.

"With peerless vision and exceptional leadership, Robert made Yale bigger, brighter, and bolder," Dean Heather Gerken said at the event. "A generation of students have left this place not only prepared for their careers, but empowered and inspired—thanks to Robert."



Robert Post '77 and the artist Burton Silverman at the unveiling of Post's portrait on April 18, 2019

## Professor NeJaime Launches Coalition to Protect LGBT Parents and their Children

**Douglas NeJaime, Anne Urowsky** Professor of Law, announced the creation of the Connecticut Parentage Act Coalition on May 8, 2019, with the goal of modernizing state parentage law to apply equally to same-sex couples.

The Coalition plans to propose legislation in 2020 based on the Uniform Parentage Act (UPA) of 2017, a model law on which NeJaime worked.

**“Under current law, a non-biological parent may be treated as a legal stranger to her child, unable to make vital medical and educational decisions.”**

**DOUGLAS NEJAIME, ANNE UROWSKY  
PROFESSOR OF LAW**

"Connecticut does not currently provide equal recognition to same-sex parents and other parents not related to their children by blood," NeJaime said. "Under current law, a non-biological parent may be treated as a legal stranger to her child, unable to make vital medical and educational decisions. If the couple breaks up, the child's relationship with the non-biological parent may be forcibly severed, regardless of the trauma inflicted on the child."

The Coalition is composed of Yale Law School students and faculty, local stakeholders, and leading civil rights groups, including the GLBTQ Legal Advocates & Defenders (GLAD)—the organization that litigated Connecticut's landmark 2008 marriage equality case, *Kerrigan v. Commissioner of Public Health*. NeJaime and Law School students have coordinated their legislative efforts with members of the General Assembly, judges of the family and probate courts, state fertility clinics, child welfare groups, LGBT rights organizations, and the Connecticut Bar Association.

"Pursuant to *Obergefell* and *Kerrigan*, LGBT parents and their children must be treated with equal dignity and respect," said Matt Nguyen '19, a founding member of the Coalition. "At its core, our Coalition's advocacy aims to vindicate this constitutional principle for all families."



Doug Kysar and Jon Lovvorn teaching Environmental Law in spring 2019;  
(inset) A class discussion

## New Animal Law and Ethics Program to Launch

**A new initiative**, the Law, Ethics & Animals Program (LEAP) will launch during the 2019–2020 academic year as an interdisciplinary “think and do tank” at the Law School. The program is dedicated to drawing attention to the questions of conscience raised by human-animal relationships and developing new strategies to address industrialized animal cruelty.

The program will be led by two faculty directors, Joseph M. Field ’55 Professor of Law Doug Kysar and Senior Research Scholar & Lecturer in Law Jonathan Lovvorn, along with an executive director, Viveca Morris ’15 BA, ’18 MEM, ’19 MBA.

It is a critical time in history for the study of animals, according to Kysar. Each day brings news about issues like global wildlife decline, new discoveries about animal intelligence, and the harmful consequences of industrial animal farming. But, Kysar argues, the legal system has failed to keep up.

“Our laws regarding animals are often outdated, insufficient, or nonexistent,” said Kysar. “The past two centuries, and particularly the last two decades, have witnessed a massive transformation in human attitudes towards animals, underscored by fundamental shifts in scientific understanding of animals and ethical thought regarding our obligations to nonhuman creatures. At the same time, our power over animals has been amplified exponentially by industry and technology.”

Programming planned by LEAP in its first year will include an Animal Law survey course cotaught by Kysar and Lovvorn in the fall. In the spring, they will launch a new course titled “Climate, Animals, Food

and the Environment (CAFE) Law & Policy Lab.” The lab, perhaps the first of its kind, will explore and develop legal and policy strategies to address the uncounted costs of industrial animal agriculture, which are currently paid by animals, workers, communities, and the environment.

With its interdisciplinary approach, LEAP foresees collaborations with peer schools’ animal law and animal studies programs, as well as with other academic units at Yale.

“By engaging leaders from a broad array of disciplines, LEAP presents a unique opportunity to explore and develop new strategies to understand, respect, and protect animals, especially those who have been left behind by the current legal system,” said Lovvorn, who also serves as Chief Litigation Counsel for the Humane Society of the United States.

Current law, according to Lovvorn, reflects contradictory thinking about nonhuman animals, with certain animals like dogs and cats receiving almost human levels of protection, while billions of food and aquatic animals receiving virtually no consideration or protection at all. In its approach, LEAP aims to contemplate new, inclusive legal standards that reflect our evolving moral values and modern scientific understanding.

“Human-animal relationships raise profoundly important questions of power, conscience, and the consequences of human actions for all living beings,” Morris said. “The topic of animals and the law quickly reaches some of the deepest questions of what it means to be a good human.”

### LEAP activities

- Research and policy work
- Student fellows program
- Public lecture
- Speaker series
- When We Talk about Animals podcast



In conjunction with the **Bernstein Human Rights Symposium**, the Schell Center and the Lillian Goldman Law Library hosted an exhibit: “UNPACKED—Refugee Baggage,” created by Syrian-born artist and architect Mohamad Hafez and Iraqi-born writer and speaker Ahmed Badr. Hafez, who is based in New Haven, captures stories of refugees who have come to the U.S. in artwork that recreates the homes, buildings, and landscapes that the refugees had to flee during war and conflict.



Keynote speaker for this year’s Bernstein Human Rights Symposium novelist and poet Chris Abani

## Bernstein Symposium Focuses on Refugee and Migrant Rights

This year’s **Bernstein Human Rights Symposium** on April 4 and 5, 2019, convened lawyers, scholars, activists, journalists, and artists to take stock of the international refugee regime and analyze whether it should be reimaged.

More than 68 million people are forcibly displaced due to conflict, persecution, or violence. “At a time like this,” said Schell Center for International Human Rights Executive Director Hope Metcalf, “institutions like ours need to step up to support the people on the front lines of the struggle. One way we can do that is to bring them together to reflect and to inspire each other. And inspire us.”

Nigerian-American novelist and poet Chris Abani was the symposium’s keynote speaker. Abani was imprisoned several times for publishing novels and plays that contained controversial political material. Abani, along with commentator Sarah Stillman, the Project Director of the Global Migration Project at Columbia University and New Yorker writer, discussed who gets to tell refugees’s stories and how.



Robert L. Bernstein (center) with Harold Hongju Koh and James Silk '89 at the 2018 Bernstein Symposium

## Yale Law School Mourns the Loss of Robert Bernstein

**Robert L. Bernstein**, former publishing executive and Human Rights Watch chairman, died on May 27, 2019, at the age of 96. He devoted his life to the defense of freedom of expression and the protection of victims of injustice and abuse throughout the world. He was an influential force in American publishing and a leader in the development of the international human rights movement.

At Yale Law School, the Robert L. Bernstein Fellowship in International Human Rights, inaugurated in 1997, annually funds several recent Yale Law School graduates to pursue a year of fulltime human rights advocacy work. Started by Bernstein’s wife Helen and their three sons, Peter, Tom, and William, the fellowship is supported by his family, friends, and colleagues and administered by the Orville H. Schell, Jr. Center for International Human Rights. The Bernstein Human Rights Symposium, an annual event held by the Schell Center, is also named for him. In 2003, Bernstein received an honorary doctor of humane letters degree from Yale.

“I admired Bob for his wit, his passion, his kindness to everyone, his courage as an advocate and as a publisher, his determination,” said James Silk '89, Binger Clinical Professor of Human Rights and Director of the Schell Center. Bernstein was a fixture at the annual Bernstein

Symposiums and took a personal interest in the Bernstein Fellows.

Ahadi Bugg-Levine '98, Noah Novogrodsky '97, and Jeffrey Prescott '97, who were the first of those Fellows, wrote a tribute to Bernstein in which they described the impact of his support. “Bob took us under his wing at the earliest stage of our careers, at what was supposed to be the twilight of his own—a period that, for him, was anything but retirement,” they wrote. “One felt in the force of his embrace limitless support and the weight of expectations.”



## Liman Colloquium Focuses on Economic Injustice in Courts

In March, the Arthur Liman Center for Public Interest Law, joined by the Policy Advocacy Clinic at UC Berkeley and the Fines and Fees Justice Center, presented the 22nd annual Liman Center Colloquium, *Economic Injustice: Courts, Law Schools, and Institutionalizing Reforms*, and its companion publication, *Ability to Pay*. The Colloquium and publication aim to bring the economics of court services and the needs of courts and litigants into the mainstream of legal education. Today, new data are emerging about the poverty of people in courts, the individuals who are priced out of courts, the underfunding of the legal system, and the enormous burdens of court fees, fines, and bail.

Nine current and former Liman Fellows, joined by Professors Abbe Gluck '00, Judith Resnik, and Reva Siegel, opened the Colloquium with a panel entitled *Interrupting and Reforming Court-Imposed Debt through Individual and Collective Action*. Panelists discussed challenging the high fees imposed on individuals in the criminal justice system, creating “freedom funds” that post bail for low-risk defendants, and filing amicus briefs on behalf of law enforcement officials who support constitutional challenges to bail systems.

What can judges do? Answers came in part from Justice Sheryl Gordon McCloud, on the Supreme Court of Washington; Justice Andrew McDonald on the Supreme Court of Connecticut; Judge Holly Thomas '04, Liman Fellow 2005, and now on California's trial court; Jeremy Fogel, now at Berkeley and formerly a federal district judge and Director of the Federal Judicial Center; and Mary McQueen, the President of the National Center of State Courts. Colloquium participants discussed how courts do and could collect data on low-income people and the challenges of protecting privacy while gathering needed information to provide assistance.

The role of the media came into focus in a discussion with Emily Bazelon '00, Lincoln Caplan, Josie Duffy Rice, and Sarah Stillman. How law schools could help was the topic for deans of all three Connecticut law schools—Jennifer Gerarda Brown of Quinnipiac University School of Law, Timothy Fisher of the University of Connecticut School of Law, and Yale Law School Dean Heather Gerken, joined by Professors Tracey Meares, Andrea Marsh '01 at the University of Texas School of Law and a 2002 Liman Fellow, and McGregor Smyth '99, Executive Director at New York Lawyers for the Public Interest and a 2003 Liman Fellow.

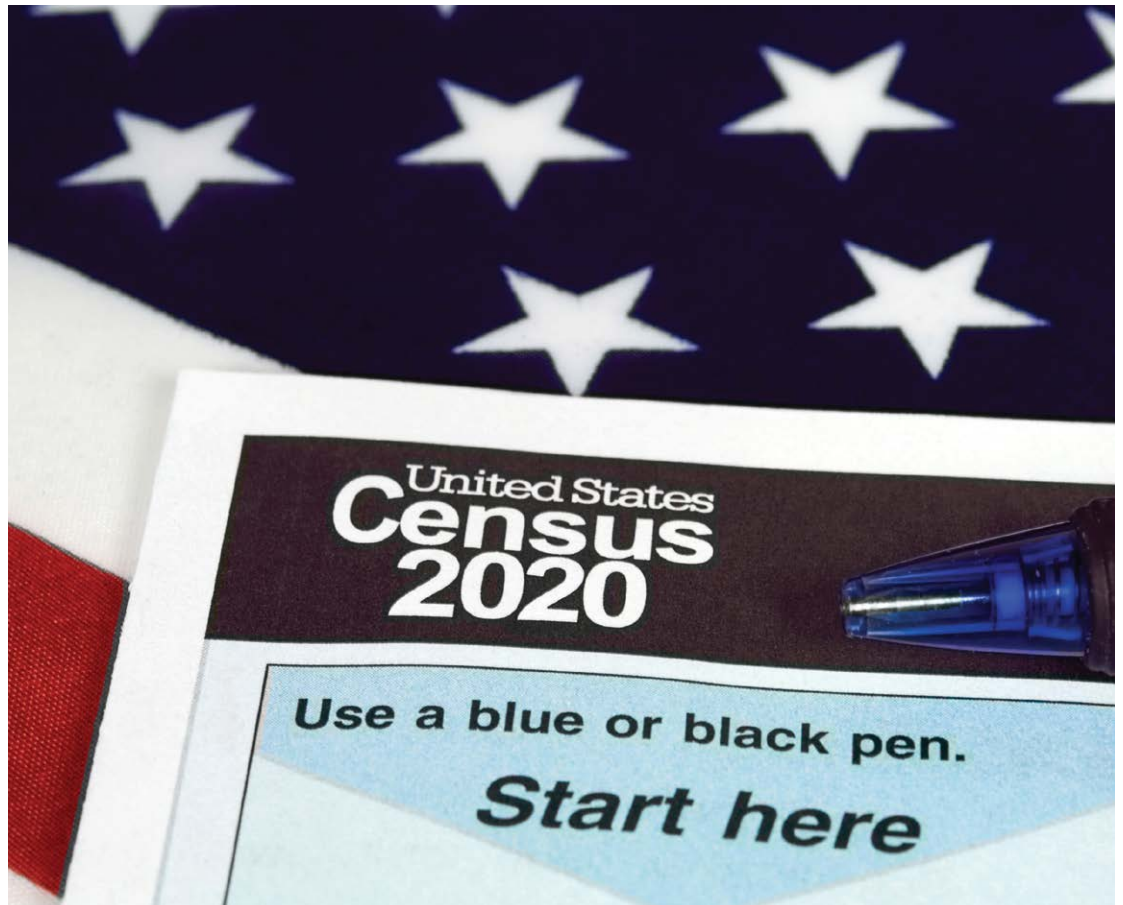
The book, *Ability to Pay*, is an edited volume of recent court rulings holding unconstitutional some court-imposed fees and bail systems; new legislation regulating fines and fees; recent studies documenting the impact of bail, fines, and fees; and a sampling of the work of law schools, foundations, and other organizations aiming to institute reforms.



Attendees at the 2019 Liman Colloquium

## Speakers at the 2019 Liman Center Colloquium

Skylar Albertson '18	Mary McQueen
Alicia Bannon '07	Tracey Meares
Emily Bazelon '00	Jamelia Morgan '13
Chesa Boudin '11	Jonathan Petkun '19
Olevia Boykin '17	Judith Resnik
Jennifer Gerarda Brown	Josie Duffy Rice
Brandon Buskey	Erika Rickard
Lincoln Caplan	Tanina Rostain '87
Katie Chamblee-Ryan '12	Caroline Sarnoff
Elizabeth Compa '11	Judith A.M. Scully
Fiona Doherty '99	Jeff Selbin
Gipsy Escobar	Colleen Shanahan
Timothy Fisher	Rachel Shur '17
Jeremy Fogel	Reva Siegel
Lisa Foster	David Siffert
Kellen Funk '12	McGregor Smyth '99
Heather Gerken	Sarah Stillman
Emily Gerrick '14	Lauren Sudeall
Abbe Gluck '00	Holly Thomas '04
Gloria Gong '14	Tom Tyler
Lucas Guttentag	David Udell
Brook Hopkins	Anna VanCleave
Julie James	Ivy Wang '13
Amy Kapczynski '03	Jonas Wang '16
Cynthia Lee	Seth Wayne '11
Andrea Marsh '01	Joanna Weiss
Sheryl Gordon McCloud	Margaret Williams
Andrew McDonald	



## Clinic Works to Ensure a Fair and Accurate 2020 Census

**The 2020 Census will** play a key role in determining political representation and how federal resources are allocated. In two ongoing cases, the Peter Gruber Rule of Law Clinic has been involved in federal litigation aimed at compelling the U.S. Census Bureau to prepare for and conduct a full and fair census, as the U.S. Constitution expressly requires.

Despite the constitutional requirement to count everyone, the census has historically undercounted African Americans and other people of color, diluting their political power and depriving them of economic resources, according to the Clinic.

In the first case, filed in October 2017, the Gruber Clinic sought to make the Commerce Department, of which the Census Bureau is a part, produce records it has withheld about preparations for the 2020 census through a Freedom of Information Act (FOIA) lawsuit.

In February 2019, the plaintiffs—the NAACP, the NAACP Connecticut State Conference, and the NAACP Boston Branch—reached an agreement, submitted to Senior U.S. District Judge Warren Eginton ’51, in a partial settlement with the government to release

the records related to planning and budgeting at the Census Bureau.

“The documents offer badly needed insights into how the Census Bureau plans to respond to the serious problems facing the 2020 Census,” Jeff Zalesin ’19, a law student intern in the Clinic, said in February.

The records include materials from meetings between the Census Bureau and Secretary of Commerce Wilbur Ross—documentation that shows how the Bureau estimated the cost of the 2020 Census. It also includes data about the Bureau’s planned advertising campaign to encourage census participation by people of color and other historically undercounted populations. The NAACP plans to make the documents available to the public.

“The civil rights community deserves to know about the Census Bureau’s plans, or lack of plans, to count people of color accurately,” said Bradford M. Berry ’88, General Counsel of the NAACP. “The NAACP should not have had to go to federal court for these records, but we’re pleased to have reached a deal that will bring us closer to full transparency around the 2020 Census.”



The Peter Gruber Rule of Law Clinic in Washington, D.C. in 2018 (left to right) Abigail Olson '19, Benjamin Alter '18, Brandon Levin '20, Professor Michael Wishnie '93, Brad Berry '88 (Chief Legal Counsel, NAACP), Charlotte Schwartz '19, Sameer Jaywant '18, Joseph Schottenfeld '19, Varun Char '19, Jeff Zalesin '19, and Erinma Kalu '19

## Rule of Law Clinic Renamed

**A gift from the Peter and Patricia Gruber Foundation** will support the work of the (newly renamed) Peter Gruber Rule of Law Clinic. Through the use of litigation, policy advocacy, and strategic planning, the funding will enable students and faculty to further their commitment to the rule of law and human rights in national security, antidiscrimination, climate change, and the promotion of democracy in the United States and abroad.

Patricia Gruber, President of the Peter and Patricia Gruber Foundation, made this gift to honor her late husband Peter Gruber (1929–2014), a businessman and philanthropist.

“This gift will deeply impact the lives of many of our students as they prepare to tackle the most life-affecting issues in the world,” commented Dean Heather Gerken. “I am profoundly grateful to Patricia and Peter for all their support and partnership over the years.”

In a second, separate lawsuit filed in March 2018 in the U.S. District Court for the District of Maryland, the Clinic represented the NAACP together with Prince George’s County, Maryland, the NAACP Prince George’s County Branch, and two county residents.

The complaint alleges that unless the Census Bureau significantly improves its plans for 2020, the upcoming census will drastically undercount African Americans and other people of color across the country. The resulting undercount would contribute to unequal political representation and reduced federal funding for communities of color, according to the lawsuit.

On January 29, 2019, the Clinic won a major court ruling allowing them to proceed with the lawsuit.

“[T]he Census must be conducted in a way that will not thwart the goal of equal representation,” wrote U.S. District Judge Paul Grimm, in a ruling allowing the case to proceed to discovery and potentially to trial.

In April, the plaintiffs filed an amended complaint in the case to add claims under the Administrative Procedure Act against the final version of the 2020 Census Operational Plan, which the Census Bureau published in February. According to the amended complaint, the Operational Plan is arbitrary, capricious, and contrary to the Constitution and could lead to a severe undercount, especially of people of color.

“The 2020 census is fast approaching, but there is still an opportunity to set the census on the right path,” said Daniel Ki ’21, a law student intern in the Clinic. “A court order...will go a long way toward promoting accuracy and equality.”

The amended complaint came at a critical time when the census cycle moved from the planning stage to the operational stage. The filing date of the amended complaint – April 1, 2019 – fell exactly one year before 2020 Census Day.

**“The documents offer badly needed insights into how the Census Bureau plans to respond to the serious problems facing the 2020 Census.”**

GRUBER CLINIC MEMBER JEFF ZALESIN '19



Members of the Ethics Bureau at Yale Law School at the Supreme Court for oral argument in *Garza v. Idaho*. (left to right) Valeria M. Pelet del Toro '19, Amir Ali (counsel for Mr. Garza), Darcy Covert '20, and Elizabeth Villarreal '19

## Ethics Bureau Celebrates SCOTUS Win in Ruling on Quality of Criminal Defense

The Ethics Bureau at Yale (EBaY) celebrated a win at the Supreme Court in February with a ruling that supported a criminal defendant's right to an effective defense—an outcome that, clinic members say, reminds defense attorneys of their professional responsibilities. The clinic wrote amicus briefs at the cert stage and the merits stage of the case, *Garza v. Idaho*.

The case involved Gilberto Garza, who in 2015 entered into two plea agreements with provisions stating that he waived his right to appeal. Afterward, he repeatedly informed his lawyer that he wanted to appeal his case. His lawyer did not file a notice of appeal. At issue in the case was whether the failure of Garza's lawyer to file a notice of appeal constitutes ineffective

assistance of counsel, and in particular, if a "presumption of prejudice" applies.

In a 6-3 decision, with Justice Sonia Sotomayor '79 writing for the majority, the Court held that a lawyer renders ineffective assistance when, over the objection of the client, the lawyer fails to file a notice of appeal simply because the client signed an appeal waiver as part of a guilty plea.

"Every criminal defendant is constitutionally entitled to a lawyer who will stand by his side and advocate zealously on his behalf," clinic member Darcy Covert '20 said. "Cases like Mr. Garza's illustrate the critical role that legal ethics can play in ensuring that the criminal legal system delivers on that guarantee."

The Bureau argued that under agency law and principles of legal ethics, the decision whether to file a notice of appeal belongs to the client, regardless of whether the client signed an appeal waiver. The cert-stage brief was written by Darcy Covert '20, Valeria M. Pelet del Toro '19, Heather Richard '18, and Jamie Durling '18. The merits-stage brief was written by Covert, Pelet del Toro, and Elizabeth Villarreal '19.

## Legislative Advocacy Clinic Presses Connecticut Legislature on Voting Rights Laws

Students in the Legislative Advocacy Clinic testified before the Connecticut General Assembly in February to support seven bills that would expand voting rights in the state.

Brennon Mendez '21 spoke and submitted testimony in support of bills with the shared goal of reintegrating formerly incarcerated people into civil society. Under these measures, the state would restore voting rights to ex-offenders in particular circumstances, as well as end prison gerrymandering, the practice in which incarcerated people are counted in the legislative district in which they are held, rather than their home districts, for the purposes of drawing district boundaries.

Sean C. Foley '21 addressed the same panel on a group of measures that would make it easier for Connecticut residents to vote. These bills would clarify and strengthen the state's same-day voter registration process, require polling places at colleges and universities of a certain size, and make Election Day a holiday for state employees.

"Together, these pro-democracy bills...would significantly strengthen Connecticut's democratic process by ensuring that all eligible residents who want to vote are able to do so," Foley said, speaking on behalf of public interest group Common Cause Connecticut.

## Federal Court Refuses to Delay Prison Gerrymandering Suit

The Rule of Law Clinic, representing the National Association for the Advancement of Colored People (NAACP) and others, won a ruling on May 8, 2019, that opens a path to a possible trial challenging the State of Connecticut's practice known as prison gerrymandering.

The lawsuit is the first in the nation to take on a statewide practice of counting incarcerated people as residents of the legislative districts where they are held, rather than in their home districts.

**"Every criminal defendant is constitutionally entitled to a lawyer who will stand by his side and advocate zealously on his behalf."**

ETHICS BUREAU MEMBER DARCY COVERT '20

## Reproductive Rights Clinic Wins Injunction

**Ruling on a suit** brought by the city of Baltimore with help from the Reproductive Rights and Justice Project, a federal judge granted a preliminary injunction that blocks Trump administration regulations that would restrict federally funded reproductive health services from going into effect in Maryland.

At issue is a 2018 Trump administration regulation that would ban health care providers receiving Title X funds from telling patients how to obtain abortions—a provision critics call a gag rule. Regulations would also require clinics to maintain separate facilities for all abortion-related services, including counseling. Title X, which funds reproductive health care to people with low incomes, makes it possible for health clinics in Baltimore to serve 16,000 people annually. Under the new regulations, Baltimore stands to lose \$1.4 million in funding. Without that funding, according to the city, clinics would close, leaving thousands of people without access to family planning, cancer screening and other preventive health services.

The ruling is the third such injunction nationwide as several Title X providers, including 20 states, challenge the regulations.

Project members Becca Steinberg '20, Sofea Dil '21, Melanie Sava '20, Rachel Kogan '19, Erica Turret '20, Alex Boudreau '21, Erica Chae '20, Becca Steele '21 and Lisa Hansmann '21 worked on the case under the supervision of instructors Faren Tang '18 and Priscilla Smith '91.

## Federal Court Rules Alabama Must Release Records of Execution Procedures

**The U.S. Court of Appeals** for the 11th Circuit ruled in a 3-0 decision that the state of Alabama must disclose its lethal injection protocol—a ruling significant not only for its implications for the death penalty, but also for the public's ability to understand what happens in judicial proceedings.

The Media Freedom and Information Access Clinic (MFIA) argued for the public's common-law right of access to judicial records of a court's decision that allowed the state of Alabama to carry out an execution attempt in early 2018. The incident became a national story after executioners spent nearly two and a half hours trying, and failing, to administer a lethal injection to death row inmate Doyle Lee Hamm. He ultimately survived and the State agreed not to attempt execution again.

Following the execution attempt, the Clinic intervened on behalf of The Associated Press, along with

two Alabama media outlets, the *Montgomery Advertiser* and Advance Local Media, in their quest for information. The clinic argued that the documents the court considered in reaching its decision were judicial records and should be made available to the public.

The Court of Appeals affirmed the District Court's 2018 ruling in favor of the Clinic and its clients. Catherine Martinez '19 conducted oral argument before the Eleventh Circuit.

Yale Law students Charlie Seidell '19, Michael Morse '19, and Delbert Tran '18 cowrote the district court briefs with Martinez. MFIA Clinic codirector David Schulz '78, staff attorney John Langford '14, clinical lecturer Charles Crain, and summer fellow Christine D'Alessandro prepared the briefing.

## Criminal Justice Clinic Supports Bill to Reform Parole Revocation

**Students in the Samuel Jacobs Criminal Justice Clinic** submitted testimony to the Connecticut General Assembly in March 2019 in support of a Senate Bill 880, which would reform the state's parole revocation process by establishing practices that complement reforms the Clinic has studied.

One component of the proposed law would establish a pilot program to provide counsel to all who cannot afford representation, which is significant because the vast majority of people on parole in Connecticut are unrepresented at revocation hearings. The clinic previously launched a pilot program in which students represented people who cannot afford to pay for lawyers at parole hearings.

Another provision of the bill would create data collection and reporting requirements for the parole revocation process.

"The bill's data collection and reporting requirements will also shine a much-needed light on the revocation process, helping everyone who works in the parole system identify areas that would benefit from reform," said Bina Peltz '19, who drafted the Clinic's testimony.

The Clinic has worked to reform the parole revocation process in Connecticut since being recruited by the former governor in 2015 to investigate the state's high rate of reincarceration. Parole revocation is a major driver of mass incarceration in the state.

The Parole Revocation Project is led by Clinical Professor of Law Fiona Doherty '99, Clinical Associate Professor of Law Miriam Gohara, and Clinical Associate Professor of Law Marisol Orihuela '08, as well as students Nicole Brambila '19, Alexandra Eynon '19, John Gonzalez '20, Kate Logue '19, Danielle Makarsky '19, Bina Peltz '19, Saúl Ramírez '19, and Samantha Smith '19.

## MFIA Files Amicus Brief on Behalf of 17 Major Media Outlets

**The Media Freedom and Information Access Clinic (MFIA)** filed an amicus brief on behalf of 17 major media organizations in a case defending a reporter's privilege to protect her source. The case, *Anonymous v. Anonymous*, concerns investigative journalist Teri Buhl, who was being sued in secrecy by a subject of one of her news stories to force her to divulge the identity of a confidential source.

In March 2019, the New York State Supreme Court ruled in Buhl's favor and the case records were unsealed in their entirety. The judge also acknowledged Buhl as a journalist, an important step for reporters without the backing of a news organization.

## SFALP Helps San Francisco File Climate Change Appeal in Ninth Circuit

**Clinic students** in the San Francisco Affirmative Litigation Project (SFALP) helped the City of San Francisco appeal to the U.S. Court of Appeals for the Ninth Circuit in its landmark climate change litigation.

## CRIT Releases Report on Medical Product Litigation

### The Yale Collaboration for Research Integrity and Transparency (CRIT)

released a conference report in March on protective orders and sealing orders in medical product litigation, titled Preventing the Use of Courts to Shield Essential Health Information: Rethinking Confidentiality in Medical Product Litigation.

“The public’s interest in access to critical health and safety information should outweigh a corporation’s interest in avoiding adverse publicity,” said Margaret McCarthy, CRIT Executive Director.



Bagram Air Base

## Lowenstein Clinic Defends Detainees Held by U.S. and Afghanistan

**The Lowenstein International** Human Rights Clinic is representing Tajik national Sa’id Jamaluddin and two other men detained by the U.S. government in the Afghanistan prison at the Bagram Air Base.

The United States never charged Sa’id with any terrorism-related crimes, but after years of detention, he has been forcibly sent back to Tajikistan, where he faces near-certain torture and possible death, according to the Clinic.

Sa’id’s brother, Abdul Fatah, and the third client, Musa Akhmadjanov, are also at risk of forcible rendition back to their home countries of Tajikistan and

Uzbekistan, where they would face similar dangers. The Clinic is unsure of Musa’s and Abdul’s whereabouts, but believes them to be in Afghanistan.

“In addition to violating international legal standards, prison officials also denied our clients access to counsel—one of the most basic protections for detainees’ human rights,” said Alissa Fromkin ’20, who leads the Clinic team working on the case.

After Bagram closed in 2014, all three men were transferred to Afghan custody and remained imprisoned. Afghan authorities convicted Sa’id and Abdul of membership in a terrorist organization and sentenced them to three years in prison, but the Afghan Supreme Court ruled that the men already served that time while in U.S. custody. As far as the Clinic knows, Musa was not convicted of any crime.

Even after the decision of the Afghan Supreme Court, none of the men were released. The Clinic’s clients were unwilling to go back to Tajikistan and Uzbekistan because of the dangers they faced. In 2015 and 2016, the Clinic worked with International Justice Network (IJN) to prepare petitions to the U.N. Working Group on Arbitrary Detention to advocate that the men be resettled in safe third countries.

However, the Clinic has not yet been able to get the men resettled, in part because of rising anti-immigrant sentiment and policies around the world.

Louise Willocx ’19 LLM, a Clinic student working on the case, said that the men’s situation reflects the U.S.’s unwillingness to take responsibility for the harms that its policy has caused. “Western states must stop the ‘out of sight, out of mind’ policy,” she said. “Our clients have been moved to jurisdictions where their human rights have been increasingly denied, to the point that we don’t even know anymore that they are alive.”



**Students recently** expressed a desire to have a piano available in the Ruttenberg Dining Hall. Thanks to the generosity of Fay Vincent ’63, who established the Alice Lynch Vincent Fund, this instrument became part of the Law School in January 2019.

## SFALP Helps Secure \$3.65M Settlement in Car Rental Hidden Fees Case

**Consumers who** rent cars anywhere in the country will save money on certain fees thanks to a \$3.65 million settlement the city of San Francisco reached with Hertz Corporation and its business partner with the aid of students from the San Francisco Affirmative Litigation Project (SFALP).

Over two years, the Clinic helped the San Francisco City Attorney sue Hertz and American Traffic Solutions (ATS) for charging hidden fees to unknowing rental car customers who crossed the Golden Gate Bridge. The suit alleged that the companies defrauded tens of thousands of consumers who were charged for a toll pass that gave drivers the option to bypass the bridge's cash toll lanes, even though cash tolling was discontinued on the bridge years ago. According to the suit, Hertz customers crossing the bridge incurred up to \$24.75 in fees on top of tolls: four times the actual toll cost. Hertz made it particularly difficult for customers to avoid these charges by misleading them about how to opt out of the toll pass.

Clinic students helped deputy city attorneys make the most of discovery, sharpen their legal theories, and strategize how to resolve the action.

The lawsuit compelled Hertz and ATS to halt their nationwide practice of charging toll pass service fees

for every day of a car rental, even days the service wasn't used. That change alone has saved customers millions of dollars since it took effect nationwide in February 2018. The \$3.65 million that Hertz and ATS have agreed to pay will fund future consumer protection enforcement.

## Progress for Veterans Exposed to Radiation

**Air Force veterans** who say they were exposed to radiation after cleaning up after hydrogen bombs more than 50 years ago—and subsequently denied disability benefits for related health issues for decades—had their case take a major step forward in February. That's when a military appeals court ruled that a benefits appeals board must consider the argument of an appellant represented by the Veterans Legal Services Clinic.

The potential class action involves some 1,600 veterans who were deployed in 1966 to clean up after an airplane collision dropped four hydrogen bombs over Palomares, Spain, an incident that has been called one of the worst nuclear accidents in history. The Veterans Legal Services Clinic represents lead appellant Victor Skaar, a retired Chief Master Sergeant in the Air Force.

In a 6-3 ruling, the U.S. Court of Appeals for Veterans Claims overruled more than two decades of case law and changed long-established procedural norms to reach its decision.



(left to right) Emily Villano '19, Megan Yan '20, Petey Menz '20, and Dana Bolger '19

## Clinic Helps Write Connecticut's First Guidelines on Pregnant Worker's Rights

**Connecticut issued** its first guidelines clarifying the rights of pregnant workers and the obligations of their employers in a document that students from the Worker & Immigrant Rights Advocacy Clinic (WIRAC) helped research and draft.

## Hannah Schoen '19 Argues DACA Case at the Second Circuit

**In January**, Hannah Schoen '19, a student in the Worker and Immigrant Rights Advocacy Clinic (WIRAC), argued before the U.S. Court of Appeals for the Second Circuit in a case challenging the Trump administration's termination of the Deferred Action for Childhood Arrivals policy (DACA).



## GHJP Calls on CDC to Use Its Patents for PrEP

The Yale Global Health Justice Partnership (GHJP) joined the PrEP4All Collaboration (PrEP4All) in March to call on the Centers for Disease Control and Prevention (CDC) to use its patents on HIV pre-exposure prophylaxis (PrEP) to promote universal access to the drug within the United States. GHJP and PrEP4All called on the CDC to stop letting its patents for PrEP, a public asset, go to waste.

According to the statement, HIV/AIDS remains a public health crisis and around the world. There is no cure or vaccine, but a pill combining two HIV drugs effectively prevents infection if taken once daily. Gilead Sciences, Inc. sells such a pill under the brand name Truvada. Yet fewer than 10% of at-risk individuals in the United States receive Truvada PrEP. GHJP argues that the primary barrier is price: Gilead charges over \$2,000 per month for pills that cost less than \$6 per month abroad.

Yet it was CDC, not Gilead, that first discovered the drug combination for PrEP. And the CDC owns patents on the method of preventing HIV in an HIV-negative individual with Truvada.

“The CDC was the one that ‘invented’ this means to prevent HIV infections, and the public is being deprived of the benefits of that investment. These patents give the CDC the power to bring prices down, because Gilead needs its permission to sell this drug,” said Amy Kapczynski ’03, Professor of Law at Yale Law School and Faculty Co-Director of GHJP.

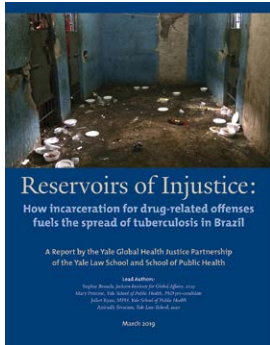
GHJP, in conjunction with attorneys from the Media Freedom and Information Access (MFIA) Clinic at the Law School, partnered with PrEP4All to evaluate the CDC’s patents for PrEP.

Perhaps in response to public pressure, Gilead announced in May that it will donate free doses of the drug through 2030 to 200,000 patients annually and announced that a generic version of Truvada will be launched in 2020, about a year earlier than the first generic competition was expected.

“While these steps are welcome, much more must be done by Gilead, CDC, and HHS to improve access to PrEP, to care for those with and at risk of HIV, and to lift the heavy burden that the high cost of Truvada currently places on our national health care system,” GHJP Fellow Christopher Morten said.

**“The CDC was the one that ‘invented’ this means to prevent HIV infections, and the public is being deprived of the benefits of that investment.”**

AMY KAPCZYNSKI ’03



## GHJP Finds Incarceration for Low-Level Drug Crimes Rapidly Spreading TB in Brazil

Increasing rates of drug-related incarcerations are perpetuating tuberculosis (TB) infection among Brazil’s general population, a new report, *Reservoirs of Injustice*, from the Yale Global Health Justice Partnership (GHJP) at Yale Law School and Yale School of Public Health, finds.

Prisoners are especially vulnerable to the bacterial disease, and in Brazil they are on average 23 times as likely to contract TB compared to members of the general population.



## Solomon Center Hosts Rep. DeLauro to Discuss Universal Health Care

In March, U.S. Representative Rosa DeLauro (D-CT) discussed her proposed Medicare for America (MFA) plan on a panel hosted by the Solomon Center for Health Law and Policy with Jacob Hacker, Stanley B. Resor Professor and Director of Institution for Social and Policy Studies at Yale University, and Allison Hoffman, Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow at Yale Law School.

## VISITING THE LAW SCHOOL



**Matthew Desmond**, Maurice P. During Professor of Sociology at Princeton University, gave the annual James A. Thomas Lecture on January 28, 2019, titled “Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets.”



**David Kennedy**, Manley O. Hudson Professor of Law and Faculty Director of the Institute for Global Law and Policy at Harvard Law School, gave the 2018–2019 Sherrill Lecture on April 2, 2019, titled “Law in Global Political Economy: Now You See It, Now You Don’t.”



## INTERNATIONAL LAW

## Linking the Law School and Latin America

Since the early 1990s, the Latin American Linkage Program has sponsored an informal exchange that sends Yale Law School students to Argentina or Chile in May and to Brazil in August, and then receives students from the partner schools in those countries for a three-week stay at the Law School in January–February.

In May 2018, Elsa Mota '20, Iva Velickovic '19, and Caleb McCracken '20 went to Argentina and Jasmine Stein '19, Kiki Manzur Martinez '20, Mary Ella Simmons '20, and Ram Sachs '19 went to Chile. In August 2018, Taonga Leslie '19 and Colson Lin '18 went to Brazil. They observed classes, visited courtrooms, and met with judges, government officials, and private

practice and public interest attorneys for a behind-the-scenes look at how legal education and the legal system overlap in the country visited.

In January 2019, 12 Latin American students from partner schools participated in the Yale Law School leg of the exchange. They were selected by their schools mainly on the basis of their academic performance and



Tomás Roquer, Pablo Jorquera, Ram Sachs '19, and Mary Ella Simmons '20, participants in the Linkages program, in Chile

proficiency in English, as well as maturity (law being an undergraduate program in South America) and the capacity to think deeply across disciplines.

Participants live with local students during the exchange. From witnessing study habits to taking part in social activities, the relationships that form during the exchange often last a lifetime.

Jeremy Robbins '06 (Linkages '04) said he is still in touch with his Linkages cohort. “Linkages continues to have a huge impact on my life. I was in Brazil [recently] with the family visiting a friend I met during my first Linkages trip. Celeste Braga (Linkages '04) flew over from Argentina to hang out with us for six days. Natalia Volosin '09 LLM, '18 JSD (Linkages '04) came to stay with me in Brooklyn last year for a week with her son Julian, and I've been emailing back and forth with Victoria Ruiz (Linkages '04) in the last couple weeks as well. And later this summer Laura Saldivia '06 LLM, '15 JSD (Linkages '03) and her family are coming to stay with us.”

## Solomon Center Scholars Edit CRISPR Journal Issue

Solomon Center Executive Director Katie Kraschel and Solomon Center Affiliated Scholar Natalie Kofler have coedited an interdisciplinary journal issue on CRISPR gene editing that features work by physicians, biologists, lawyers, industry leaders, and public health experts to describe the pressing issues in the field from multiple perspectives. Their work can be found in the December 2018 issue of *Seminars in Perinatology*, titled “Gene Editing (CRISPR).”



## Bookbindings Tell a Story at the Law Library

An exhibit at the Lillian Goldman Law Library, “Legally Binding: Fine and Historic Bindings from the Yale Law Library,” set out to purposefully judge books by their covers.

The exhibition is available online at [flickr.com/people/yalelawlibrary](https://www.flickr.com/people/yalelawlibrary)



**Jennifer A. Doudna**, Professor of Biochemistry & Molecular Biology at U.C. Berkeley, delivered the Arthur Allen Leff Fellowship Lecture on April 15, 2019, titled “Rewriting the Code of Life: The Future of Genome Editing.”



**Sundhya Pahuja**, Director of Melbourne Law School's Institute for International Law and the Humanities (IILAH), delivered the Judge Jon O. Newman Lectureship on February 25, 2019, titled “The Great Reversal: Corporate Property and Corporate Conduct in International Law.”



**Stacey Abrams '99 Receives  
Yale Law Women Alumni  
Achievement Award**

**On April 17, 2019**, the Yale Law Women (YLW) presented its Alumni Achievement Award to Stacey Abrams '99. Abrams is the first woman to lead either party in the Georgia General Assembly and the first African American to lead the Georgia House of Representatives. She is also the first Black woman in the United States to be a major party nominee for governor and the first Black woman to give the response to the State of the Union address. The event was cosponsored by the Black Law Students Association (BLSA) and Women of Color Collective (WoCC).

Photo by Harold Shapiro

## AROUND YALE LAW SCHOOL

## Center for Private Law Speakers Discuss Timely Topics

**Speakers at the Center** for Private Law this spring tackled how technology is reshaping the law and our lives in talks touching upon the media, big data, and privacy. Guests also addressed timeless issues affecting the marketplace and the workplace.

Lawrence Lessig '89, the Roy L. Furman Professor of Law and Leadership at Harvard Law School, discussed part of his forthcoming book *They Don't Represent Us*, in which he argued that news outlets in the post-broadcasting era are motivated by advertising dollars to offer polarizing content. According to Lessig, increasingly divisive content diminishes a shared understanding of the world, threatening the foundation of democracy.

Yochai Benkler, the Berkman Professor of Entrepreneurial Legal Studies at Harvard Law School, discussed the role of technology in political economy—a role that is evolving during a time of social, economic, and political upheaval.

Orly Lobel, the Don Weckstein Professor of Labor and Employment Law and Class of 1975 Endowed Professor at the University of San Diego School of Law, discussed a problem pervasive in today's tech world: companies using non-compete clauses and gentlemen's agreements to keep workers from switching jobs. Lobel argued that the talent pool must be protected from anti-competitive practices just like any other market. She proposed a potential solution: a new area of practice called "human capital law," which would draw from labor, antitrust, and contract law.

## Library Exhibit on Judge Inez Smith Reid '62

**The wide-ranging** career of Inez Smith Reid '62—judge, scholar, and presidential appointee—was on display at the Lillian Goldman Law Library this spring.

Judge Reid visited the display, which featured about two dozen items from the Library's collection as well as her own, in March. "How fortunate I was to be able

to do different things in life, all of which were very challenging. It brings back good memories," she said.

The exhibit was the second installment of "A Celebration of Women at Yale Law School," the Law Library's series of exhibits in advance of 50 Yale 150, a university-wide program set for next year to mark the anniversaries of women's enrollment in Yale College and the graduate schools.

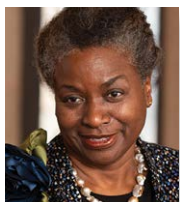
Born in New Orleans and raised in Washington, D.C., during segregation, Reid received an LL.B. from Yale Law School, where she and her twin brother, George Bundy Smith '62, were the lone African American students in their class.

After earning an M.A. in political science from UCLA and a Ph.D. from Columbia, Reid taught in the Democratic Republic of the Congo and later at several American universities, spending a decade in education before practicing law—happily, by her own account. At the urging of her brother, she accepted the first of her many public appointments, starting in New York state government. In 1979, she became the first Inspector General of the Environmental Protection Agency, appointed by President Jimmy Carter. In 1995, she was nominated by President Bill Clinton '73 as an associate judge on the D.C. Court of Appeals, and was sworn in by her brother.



Judge Inez Smith Reid '62 (right) with Shana Jackson, co-curator of an exhibit on Reid's life and career at the Lillian Goldman Law Library

## VISITING THE LAW SCHOOL



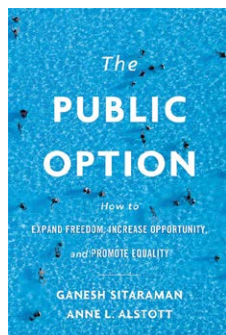
**Dr. Natalia Kanem**, Executive Director of the United Nations Population Fund (UNFPA), delivered the Gruber Distinguished Lecture in Women's Rights on March 4, 2019, titled, "Transforming our Future: Ensuring Sexual and Reproductive Health and Rights for All."



**Dr. Ezekiel Emanuel** spoke at the Solomon Center for Health Law and Policy on February 21, 2019, to discuss the past, present, and future of virtual medicine.



Public libraries, like the New Haven Free Public Library (pictured), which compete with bookstores, are examples of “public options.” Alstott argues that expanding this model could meet needs from childcare to broadband access.



Anne Alstott  
and Ganesh Sitaraman  
**The Public Option:  
How to Expand Freedom,  
Increase Opportunity, and  
Promote Equality**  
Harvard University Press, 2019

# What the Local Library Shows Us about Expanding Opportunity

A model solution for a host of challenges is as close as the nearest public library, school, or pool in this argument for the public option



Say “*the public option*,” and many Americans will immediately think of the proposal for government-supported health insurance that often comes up during health-care policy debates. Somehow, this never-enacted proposal is better known as a public option than some examples that Americans use every day—institutions like schools, libraries, the postal service, and Social Security. And yet, Jacquin D. Bierman Professor Anne Alstott ’87 and coauthor Ganesh Sitaraman argue in *The Public Option: How to Expand Freedom, Increase Opportunity, and Promote Equality* (Harvard University Press), these examples are models of how the government can deliver services that improve the lives of all Americans. What’s more, they assert, expanding this model could have transformative results.

Main library photo by Harold Shapiro

*The key is that a public option guarantees universal access to important goods at a reasonable price—without foreclosing the option to pursue additional, or alternative, goods through the private marketplace.*

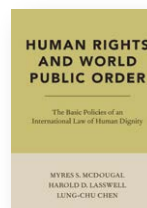
A government-provided resource is a public option, according to Alstott and Sitaraman’s definition, if it has two features: first, it makes a service available to everyone at a reasonable cost, and second, it coexists with private alternatives. The United States Postal Service, for example, competes with FedEx, and public libraries offer an alternative to bookstores. Even an ordinary neighborhood playground, they write, competes with swing sets in the backyards of private homes. The competitive aspect is key, and, they note, particularly American: “it leverages public resources without preempting private provision.”

Since the passage of the Affordable Care Act in 2010, the public option—at least in health care—has been part of the national conversation like never before. Why, then, hasn’t the concept taken off? Alstott and Sitaraman note that the libertarian view that government is corrupt and bloated has become standard. A related belief is that the free market can deliver services more efficiently—a popular sentiment until the financial crisis of 2008 gave Americans an equally dismal view of corporations. The result today, Alstott and Sitaraman write, is that Americans trust neither the government nor the free markets. The authors take a different approach, concluding that government can develop new public options to meet needs ranging from childcare to banking to retirement plans to broadband access. The key is that a public option guarantees universal access to important goods at a reasonable price—without foreclosing the option to pursue additional, or alternative, goods through the private marketplace.

Alstott and Sitaraman reach this conclusion by demonstrating how public options have worked historically. They then make the case for expansion by highlighting successes in areas such as public libraries and Social Security while acknowledging the uneven record of public options in other spheres, namely, K–12 education and housing. Even with some shortcomings (which, they argue, have often been exaggerated), the authors are resolute that public options can succeed where the marketplace alone has not. “Public options are evidence of our common civic faith;” they write, “restoring our confidence in them, and expanding their reach, will ensure that the 21st century is a time of security and prosperity for all.”

## SURVEY OF BOOKS

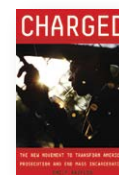
Here’s just a sampling of the many other books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. Please contact us: [lawreport@yale.edu](mailto:lawreport@yale.edu).



Myres S. McDougal ’31 JSD,  
Harold D. Lasswell and  
Lung-Chu Chen  
**Human Rights  
and World Public Order:  
The Basic Politics of an  
International Law  
of Human Dignity**

*Oxford University Press, 2019*

Chen ’62 LLM, ’64 JSD has rereleased *Human Rights and World Public Order* nearly four decades after its initial publication. As Chen writes in the new preface, among its many contributions, this book provides a formulation of world public order that privileged the “protection and fulfillment of human dignity for all people.”



Emily Bazelon  
**Charged: The New Movement  
to Transform American  
Prosecution and  
End Mass Incarceration**

*Random House, 2019*

District attorneys wield increasing power in shaping the contours of the justice system. Through a close examination of their work and the human costs of their decisions, Bazelon ’00 considers the importance of prosecutors, the extraordinary rise of prosecutorial power since 1980, and the recent nationwide efforts to elect more progressive prosecutors. In her closing chapter Bazelon provides 21 steps that prosecutors can take to curb mass incarceration and point toward a more just future.



Daniel C. Esty, ed.  
**The Labyrinth  
of Sustainability:  
Green Business Lessons  
from Latin American  
Corporate Leaders**

*Anthem Press, 2019*

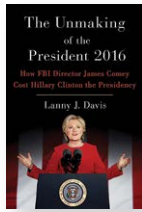
## Can Latin America Be Green?

Case studies on sustainability strategies of corporate Latin America

**Esty ’86 offers a collection of case studies** that focus on the sustainability strategies and initiatives of companies with business operations in Latin America, drawing out key themes and highlighting both successes and challenges. By exploring the growth of corporate sustainability in Latin America, Esty’s volume aims to provide actionable insights to business leaders, policymakers, NGOs, academics, and journalists.

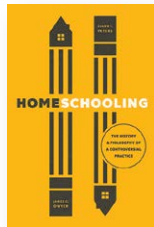


SURVEY OF BOOKS



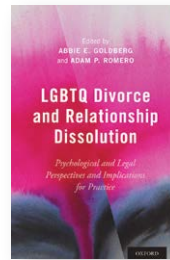
Lanny J. Davis  
**The Unmaking of the President 2016: How FBI Director James Comey Cost Hillary Clinton the Presidency**  
 Scribner, 2018

Davis '70, longtime Washington insider, argues that former FBI Director James Comey's letter to Congress — just 11 days before the election — swung a significant number of voters away from Hillary Clinton '73, winning Donald Trump an Electoral College victory and the presidency. Davis traces the beginnings of the Clinton email controversy to the days leading up to the election, providing a string of evidence to support his claim.



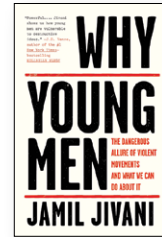
James Dwyer and Shawn Peters  
**Homeschooling: The History and Philosophy of a Controversial Practice**  
 University of Chicago Press, 2019

Dwyer '87 and Peters examine the controversial history of homeschooling, the various methods associated with it, and the fundamental questions that guide debates over state oversight and regulation. Through their evaluation of competing arguments for and against homeschooling, the authors generate policy prescriptions that carefully attend to the rights of parents, children, and the state.



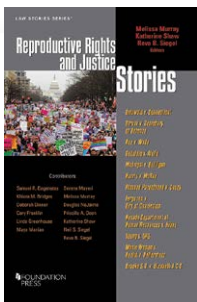
Abbie E. Goldberg and Adam P. Romero, eds.  
**LGBTQ Divorce and Relationship Dissolution**  
 Oxford University Press, 2019

Romero '07 and Goldberg tackle issues related to relationship dissolution and divorce among sexual and gendered minorities. The book brings together social science and legal perspectives to address the unique challenges that LGBTQ individuals face to provide an informed and comprehensive volume and to expand current knowledge on these important topics.



Jamil Jivani  
**Why Young Men: The Dangerous Allure of Violent Movements and What We Can Do About It**  
 All Points Books, 2019

Jivani '13 explores how race, minority experiences, failed integration of newcomers, and identity politics are weaponized by violent movements to recruit young men, promote resentment, and encourage conflict. Jivani warns of the destruction made possible when we don't understand this weaponization and why it is so effective.



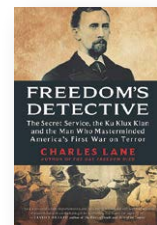
Melissa Murray, Katherine Shaw, and Reva B. Siegel, eds.  
**Reproductive Rights and Justice Stories**  
 Foundation Press, 2019

## The History of the Reproductive Legal Landscape

The movement and cases that shaped the current state of reproductive rights

In *Reproductive Rights and Justice Stories*, editors and contributors Melissa Murray '02, Katherine Shaw, and Nicholas deB. Katzenbach Professor of Law Reva Siegel highlight a set of essays that tell the movement and litigation stories behind reproductive rights and justice cases, situating them in the social and political contexts in which they were developed and decided. The stories focus on the individuals behind the litigation: the judges, advocates, and parties whose struggles changed the reproductive legal landscape.

Through these cases, *Reproductive Rights and Justice Stories* employs a wide-lens perspective that illuminates the complex ways law is debated and forged — in social movements, in representative government, and in courts. Some chapters shed new light on cases that are very much part of the constitutional law canon, others introduce the reader to new cases from state and lower federal courts.



Charles Lane  
**Freedom's Detective: The Secret Service, the Ku Klux Klan, and the Man Who Masterminded America's First War on Terror**  
 Hanover Square Press, 2019

Lane '97 MSL tells the story of Hiram Whitley, the little-known head of the Secret Service who helped break the growth of the Ku Klux Klan in the Reconstruction era. Whitley and his agents led a covert war against the KKK and in the process created strategies of undercover work still deployed in cases of terrorism.

## SPOTLIGHT

## Is the Constitution the Problem?

Two scholars debate the way forward

**Democracy and Dysfunction** features a series of exchanges about our current political predicament between two prominent scholars of American constitutional law, Knight Professor of Constitutional Law and the First Amendment Jack M. Balkin and University of Texas Professor Sanford Levinson. In a series of letters written between October 2015 and early 2018, the authors debate whether we are in the middle of a constitutional crisis, and whether the Constitution itself is behind our current political troubles.

Levinson argues that the U.S. Constitution is the root cause of our difficulties. It is undemocratic and ineffective. It has made political polarization worse. The Executive branch has grown so powerful and unaccountable that it verges on “presidential dictatorship.” We need a series of new constitutional amendments, or even a new constitutional convention. If we do not act soon, the country may fall apart.

Balkin argues that we are experiencing dysfunction because the Reagan regime that has dominated American politics for almost 40 years is slowly grinding to an end; Donald Trump’s “corrupt” presidency represents its final unraveling. We are not in a constitutional

crisis, but we are experiencing “constitutional rot:” a decay in the norms and practices that maintain our system as a democracy and a republic. Political polarization and economic inequality are both causes and symptoms of this rot; our system of government has become an oligarchy controlled by its wealthiest members. The end of the Reagan era marks a crucial turning point. Things look bad now, but if people mobilize for change, our current quandary offers the possibility for political renewal.

Balkin and Levinson discuss possible fixes for our political institutions. Levinson argues that a new constitutional convention is necessary. Balkin lists eight reforms that could improve our democracy without requiring a constitutional amendment. Although the authors differ about the causes and the cures of our dysfunction, they agree that an obsessive concern with Supreme Court doctrines is a distraction. Americans must focus on deeper institutional reforms, as they have before at important moments in our nation’s history.



Sanford Levinson and  
Jack M. Balkin  
**Democracy and  
Dysfunction**  
University of Chicago  
Press, 2019

## Can Law Cure a Recession?

Using law as a tool in economic crises

In his new book, *Law and Macroeconomics: Legal Remedies to Recessions*, Shibley Family Fund Professor of Law Yair Listokin ’05 argues that the law has the potential to substantially ease the effects of the next economic crisis.

The Great Recession of the late 2000s continues to cast its shadow across the economic world, but from this legacy economists and policy makers can, and must, learn important lessons, Listokin argues.

Listokin recounts that policy makers had two tools at hand to harness the effects of the Great Recession: monetary and fiscal policy. The central bank’s monetary policy, which leveraged interest rates to stimulate “aggregate demand,” might have prevented the recession from causing further damage, but it raised fears that financial market bubbles would emerge.

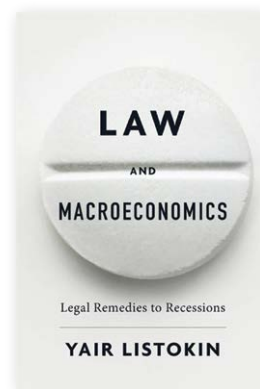
Additionally, many raised questions about whether the central bank evaded democratic accountability. Fiscal policy, the second tool, remained dormant as policymakers largely abandoned it after initial discretionary stimulus attempts.

Despite having survived the worst of the damage, Listokin claims “officials still lack the tools to reverse such a downturn

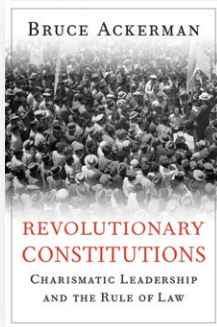
when it occurs next.” Without any changes to macroeconomic policy, he worries, the central bank’s actions in future recessions may further erode democratic legitimacy.

Listokin proposes an alternative, underutilized macroeconomic tool for preventing and managing the effects of recessions: the law. The government has used the law as a macroeconomic tool in the past (e.g., the New Deal, Bretton Woods post-World War II, and the inflation of the 1970s). Listokin argues that, under certain conditions, the law offers a vital alternative to fiscal and monetary policy tools. He builds his argument by recalling positive and caution-

ary examples from the New Deal to the Keystone Pipeline, including the constitutionally fraught bond-buying program unveiled by the European Central Bank at the nadir of the Eurozone crisis, the ongoing Greek crisis, and the U.S. price controls in the 1970s. New and existing legal instruments can offer a means to stimulate aggregate demand when monetary policy proves ineffective, Listokin suggests. Moreover, whereas monetary policy can press the legitimacy of central banks to their breaking point, law can ease this tension.



Yair Listokin  
**Law and Macroeconomics:  
Legal Remedies to Recessions**  
Harvard University Press, 2019



Bruce Ackerman '67  
**Revolutionary  
Constitutions:  
Charismatic Leadership  
and the Rule of Law**  
*Harvard University  
Press, 2019*

## A Defense of Democratic Populism

“Populism” is a principal engine of constitutional democracy

In his most recent book, *Revolutionary Constitutions*, Sterling Professor of Law and Political Science Bruce Ackerman '67 argues that the indiscriminate condemnation of “populism” is a big mistake. Though it has become a term of derision, he argues that many of the greatest constitutional achievements of the modern era owe their success precisely to mass

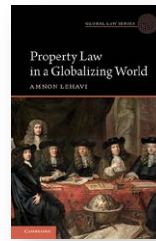
popular mobilizations that succeed in repudiating illegitimate power structures imposed by the old regime.

Ackerman outlines the four stages of this revolutionary dynamic: mobilized insurgency, triumphant constitutionalization of principles committing We the People to a revolutionary new beginning, managing a succession crisis as the revolutionary generation dies off, and consolidating the founding legacy in ways that creatively confront the challenges of succeeding generations.

According to Ackerman, each stage presents formidable difficulties for populist movements. The first half of the book presents four cases in which revolutionary systems have succeeded in moving through the life cycle: India, South Africa, post-war France, and Italy. Next, the book considers the ways in which other revolutionary cases — from the Gaullist Fifth Republic to Polish Solidarity, from the Zionist struggle for an independent Israel to the Iranian struggle for an Islamic Republic to Myanmar's current efforts to overthrow its military dictatorship — complicate the analysis.

In the final chapter, Ackerman turns to the United States and considers how these worldwide constitutional revolutions permit a new perspective on the 20th-century American experience. He invites readers to reflect on the achievements and mistakes of other countries as they confront the 21st-century challenges of sustaining a constitutional democracy in the name of We the People of the United States.

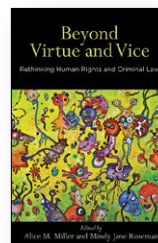
In succeeding volumes in this series, Ackerman considers countries that have travelled non-revolutionary paths to constitutional democracy and demonstrates that these nations confront very different predicaments as they seek to sustain their traditions of liberal democracy for future generations.



Amnon Lehavi  
**Property Law in  
a Globalizing World**

*Cambridge University Press, 2019*

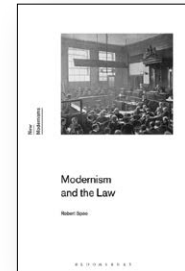
Lehavi '00 LL.M., '03 J.S.D. identifies the challenges that globalization poses for the study and practice of property law. Through an analysis of prominent legal scenarios, Lehavi details the legal strategies used to decrease the gap between the cross-border nature of markets and the domestic tenets of property law and how these rely upon cross-border property norms and institutions.



Alice M. Miller and  
Mindy Jane Roseman, eds.  
**Beyond Virtue and Vice:  
Rethinking Human Rights  
and Criminal Law**

*UPenn Press, 2019*

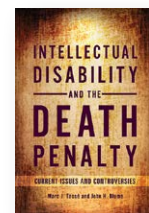
Miller is an Associate Professor (Adjunct) of Law; Roseman is the Director of International Programs and Director of the Gruber Program at Yale Law School. Each chapter considers the extent to which human rights law proves compatible with criminal law, giving special attention to scholarship regarding sexuality, gender, and reproduction, to create a dialogue about how to move beyond state practices that compromise human rights.



Robert Spoo  
**Modernism and the Law**

*Bloomsbury, 2018*

Spoo '00 explores the legal contexts of transatlantic Anglo-American modernist culture. Spoo excavates the submerged relations between law and literature through modernist texts from Oscar Wilde to Ezra Pound. Examining the interplay between legal regulation and literary text's negotiations with their legal contexts, this book explores critical legal issues and cases of the period.

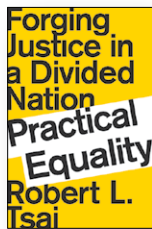


Marc J. Tasse and John H. Blume  
**Intellectual Disability  
and the Death Penalty:  
Current Issues  
and Controversies**

*Praeger, 2018*

Blume '84 and Tasse consider the aftermath of *Atkins v. Virginia*, in which the Supreme Court struck down the death penalty for people with intellectual disabilities. Because some states deviate from a recognized professional consensus for determining intellectual disability, the authors review the major clinical and legal issues surrounding intellectual disability to provide a resource to professionals.





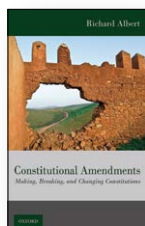
Robert Tsai  
**Practical Equality:  
 Forging Justice  
 in a Divided Nation**  
*W.W. Norton, 2019*

Tsai '97 revisits the history of justice in the U.S. to develop what he calls “practical egalitarianism” as a means to overcome injustice and inequality. Lessons learned from the oppression of emancipated slaves after the Civil War, the internment of Japanese Americans during World War II, and President Trump’s ban on Muslim travelers, he argues, can help shed light on the possibilities for justice on other pressing contemporary issues.



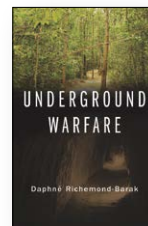
Patrick Radden Keefe  
**Say Nothing: A True Story  
 of Murder and Memory in  
 Northern Ireland**  
*Doubleday, 2019*

Keefe '05 weaves an intricate narrative about a well-known killing in Northern Ireland and its extensive repercussions. Beginning with the abduction of Jean McConville in 1972, one of the most notorious episodes during the conflict in Northern Ireland, Keefe explores the tale of a society wracked by a violent guerrilla war whose consequences have never been adequately addressed.



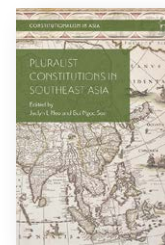
Richard Albert  
**Constitutional Amendments:  
 Making, Breaking,  
 and Changing Constitutions**  
*Oxford University Press, 2019*

Albert '03 offers a framework to understand constitutional amendments and a blueprint for navigating future constitutional change. Starting from a comparative perspective, Albert seeks to answer two important questions: What is an amendment and how should constitutional designers structure the procedures of constitutional change?



Daphne Richmond-Barak  
**Underground Warfare**  
*Oxford University Press, 2018*

Richmond-Barak '02 LLM examines the global reemergence of underground warfare and the challenges this type of warfare present for democracies that seek to act in accordance with the law. She brings traditional concepts from the law of war to bear upon the practices of underground warfare, identifies the unique issues it raises, and provides long-term strategies and a legal framework to address this growing threat.



Ngoc Son Bui and  
 Jaclyn L. Neo, eds.  
**Pluralist Constitutions  
 in Southeast Asia**  
*Hart Publishing, 2019*

Neo '08 LLM, '14 JSD and her co-editor curate a group of essays that interrogates the presence of ethnic, religious, political, and ideological pluralities in Southeast Asian societies and how constitutions respond to these pluralities.

#### ALSO OF NOTE

Stacey Abrams '99  
**Lead From the Outside:  
 How to Build Your Future and  
 Make Real Change**  
*Picador, 2019*

Mary Adkins '10  
**When You Read This**  
*Harper, 2019*

Joseph Amiel '62  
**Death Can Delight:  
 A Trio of Mysteries**  
*Lambent Publishing LLC, 2019*

Peter Clark '73  
**Alpha One Sixteen: A Combat  
 Infantryman's Year in Vietnam**  
*Casemate, 2018*

Don Furtado '66  
**The Narrows**  
*Chapel Hill Press, Inc., 2019*

Jo Watson Hackl '88  
**Smack Dab in  
 the Middle of Maybe**  
*Random House, 2018*

Vincent Johnson '79 LLM  
**Mastering Torts: A Student's  
 Guide to the Law of Torts  
 (Sixth Edition)**  
*Carolina Academic Press, 2018*

Vincent Johnson '79 LLM  
 and Chenglin Liu  
**Studies in American Tort Law  
 (Sixth Edition)**  
*Carolina Academic Press, 2018*

Walter Lamp '58  
**The Melting Pot**  
*RunningLight Publishing  
 Company, 2019*

C. Gwendolyn Landolt,  
 Patrick Redmond,  
 Douglas A. Alderson '93 LLM  
**From Democracy to  
 Judicial Dictatorship in Canada:  
 The Untold Story  
 of the Charter of Right**  
*The Interim Publishing  
 Company, 2019*

James Anderson O'Neal '78  
**Riley and  
 the Roaring Twenties**  
*Three Ocean Press, 2018*

Gretchen Rubin '94  
**Outer Order, Inner Calm:  
 Declutter and Organize  
 to Make More Room  
 for Happiness**  
*Harmony Books, 2019*

Reshma Saujani '02  
**Brave Not Perfect: Fear Less,  
 Fail More, and Live Bolder**  
*Currency, 2019*

Sonia Taitz '81  
**Great With Child**  
*McWitty Press, 2017*

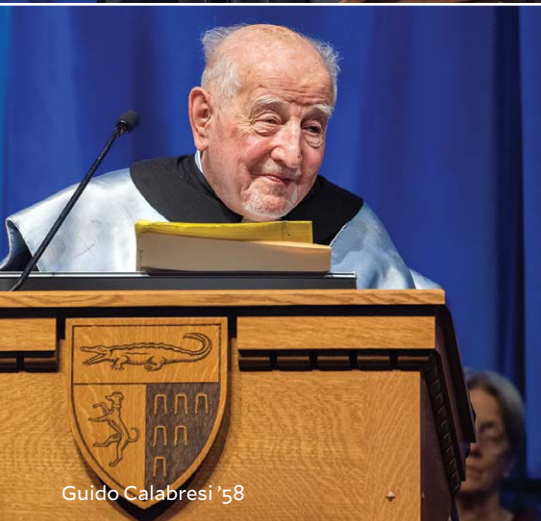
Rolf Margenau '62  
**Longevity: Should We Prolong  
 Human Life By 30 Years?**  
*Frogworks Publishing, 2019*

*Building Community,  
Forging Friendships,  
AND  
Sustaining One Another*

PHOTOS BY HAROLD SHAPIRO AND MARA LAVITT



Neal Katyal '95



Guido Calabresi '58

*To see more photos and  
a video of the ceremony, visit  
[law.yale.edu/commencement](http://law.yale.edu/commencement).*



**During Commencement ceremonies on May 20, 2019,** more than 200 graduates of Yale Law School were urged to build community and find a fulfilling balance between career aspirations and family when they head out into the world.

The day began with a lively processional headed by the Mattatuck Drum Band, the oldest fife and drum band in the United States, which led graduates around the outside of the Law School and onto Yale's Cross Campus. This new tradition made for a striking entrance as the students joined with the rest of the Yale community for the university-wide ceremony.

That afternoon, at Yale's Lanman Center, Dean Heather Gerken's remarks to the Class of 2019 referred to the power of working together and for one another: "The daily rhythms of law school and the legal profession can easily make us forget that our individual achievements—remarkable as they are—depend on other people," she said.

"I hope that you'll remember that your greatest accomplishments have been the things you have done together. I don't just mean the fancy achievements that I know we like to tout, like the nationwide injunctions and class actions, or the new issues of prestigious journals. I also mean the quieter but no less impressive work of building community, forging friendships, and sustaining one another."



Dean Heather Gerken

*“I hope that you’ll remember that your greatest accomplishments have been the things you have done together.”*

**DEAN HEATHER GERKEN**

Judge Guido Calabresi ’58, Sterling Professor Emeritus of Law and Senior Circuit Judge of the United States Court of Appeals for the Second Circuit, was the faculty speaker elected by the graduating class. Calabresi reminded graduates that no matter their background, after law school they are entering the world as leaders:

“Remember who you are and where you came from. Never forget that. But remember also that now you bear the burden of making decisions,” he said.

Neal Katyal ’95, former Acting Solicitor General of the United States, spoke about the recent loss of a close friend and the twists and turns one’s career can take in the pursuit of happiness.

“I can’t give you the recipe to legal success, but I can give you the recipe to a happy life,” he said. “Doing what you love, family, empathy, humility, and friendship. That’s what makes this place so special. Take a moment, look around. Some of these people are going to be with you your whole life—when you get married, have children, when your parents die. These aren’t your competitors or marking sticks. These are your supporters and allies for the rest of your lives.”

Katyal currently serves as the Paul and Patricia Saunders Professor of National Security Law at Georgetown Law, and is a Litigation Partner at Hogan Lovells.

More than 200 degree candidates were honored at the ceremonies Monday, including 212 J.D., 28 LL.M., and 2 J.S.D. 🌟

*Yale Law School 2019 Commencement*

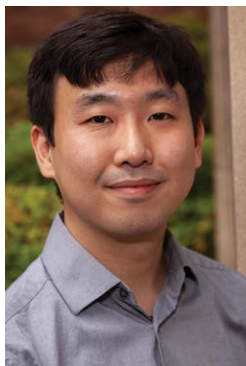


*“Remember who you are and where you came from. Never forget that. But remember also that now you bear the burden of making decisions.”* GUIDO CALABRESI '58





The *Yale Law Report* asked some 2019 graduates what issue they were passionate about pursuing. See below for their answers, which we predict will both touch and impress.



### Adam Pan '19

While cutting-edge research has many benefits, it also has the potential for harm. I want to help bridge the gap between researchers and lawyers to find ways in which law and technology can work in concert to improve public health.



### Louise Willocx '19 LLM

I find the challenges that are polarizing my society frightening and fascinating at the same time. I devoted much of my time at YLS to understanding them from all angles of the philosophical spectrum. I can't wait to share these insights via teaching or writing to help the different strands of my society find each other again.



### Carolyn O'Connor '19

I am passionate about changing the way that governments across the world discriminate against people who flee from persecution, conflict, and disaster. In the next year, I will work to stop the anti-immigrant policies that fall most heavily on low-income communities and people of color at the U.S.-Mexico border.



### Gabriella Capone '19

Ambitious efforts in the U.S. and abroad suggest that citizen engagement can help governments to improve data collection, decision-making, and service delivery. New technologies can help with engagement, potentially transforming how communities govern. I want to promote promising technology and methods to make use of community expertise, thereby improving governance quality.



### Taonga Leslie '19

I plan to use the lessons I've learned here to empower social movements and mentor and teach the next generation.

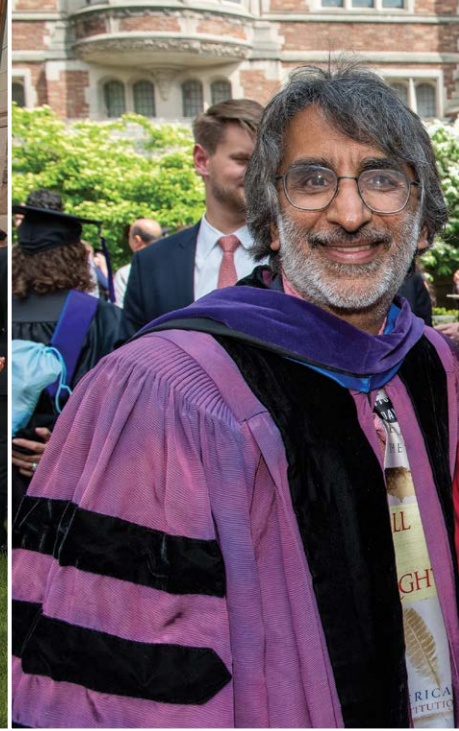


### Sanjayan Rajasingham '19 LLM

YLS has made me passionate about answering the question: "What is the distinctive role of a legal academic in the Global South – in research, pedagogy or public engagement?" I think Yale has given me a foil to think about the answers. Some things will be similar to how Yale does them, some things will be adaptations, and some will be completely different.



*Yale Law School 2019 Commencement*







### Diana Lee '19

My experiences at YLS have inspired me to pursue a career at the intersection of law, technology, and civil liberties, particularly by helping to strengthen and defend the rights to privacy and free speech online.



### Dylan Kolhoff '19

I am passionate about supporting and strengthening the institutions underpinning the liberal international order. Through them, I hope to help solve international issues and mediate shifts in global balances of power. I am also passionate about resolving the shortage of board game bars in D.C.



### Amber Qureshi '19

During my time at YLS, it has been a privilege to work on behalf of immigrants; Muslim, Arab, and South Asian community members; and those, like me, who lie at the intersection of these identities. As someone personally affected by the Islamophobic laws and policies in this country, I want to be on the frontlines in the fight to dismantle them.

*“Doing what you love,  
family, empathy,  
humility, and friendship.  
That’s what makes this  
place so special.”*

NEAL KATYAL '95





A new state law in Massachusetts requires utilities to buy a certain amount of wind energy. Mark A. Barnett '04 calls the law a great way "to create opportunities to get this industry off the ground."

Photo from Getty Images/iStockphotos



# Leading the Charge

**Working in the public and private sectors, Yale Law School graduates keep the faith in the fight against climate change.** By Rebecca Beyer

**After five years studying and soliciting comments on how to** eliminate more than five tons of mercury discharged annually by dental offices into public waterways, the U.S. Environmental Protection Agency (EPA) issued a final rule regulating the toxin's disposal on Dec. 15, 2016.

The American Dental Association called the new rule a "fair and reasonable approach." Even tiny amounts of mercury can cause irreversible damage to developing brains. According to the Natural Resources Defense Council (NRDC), which submitted public comments in support of the rule, a single gram of the metal can make fish in a 20-acre lake unsafe to eat.

Nevertheless, on Jan. 23, 2017, the day before the rule was scheduled for publication in the Office of the Federal Register, the EPA withdrew it as part of a major deregulatory push initiated by the White House.

NRDC sued the Trump administration over the decision on Feb. 1, arguing that repeal of the regulation required notice and public comment, just as enactment of the rule had in the first place.

By June 2017, the rule had been reinstated and the lawsuit had been voluntarily dismissed. As Margaret Hsieh '11, NRDC's lead attorney on the matter, had argued in her motion for summary judgment, EPA's withdrawal of the rule was difficult to square with legal

authority, including a 1977 memorandum opinion from the Department of Justice's Office of Legal Counsel pronouncing the finality of rules of a similar status.

"The new Administration tried to claw back everything it could from the prior administration, and, in the course of doing so, it was very hasty and ignored a lot of procedural requirements," Hsieh says.

## Success through Litigation

If the world is—however belatedly—waging a war on climate change and environmental degradation, it seems hard not to conclude that the U.S.'s public position has been one of retreat. Retreat from the 2015 Paris Agreement on climate change. Retreat from—and indeed an attack on—some of the very science necessary to win the war. And retreat from rules like the one Hsieh and NRDC fought to keep in place.

Citing NRDC statistics showing that the organization has engaged in more than 85 cases challenging deregulatory actions taken by the Trump administration, Hsieh says she and her colleagues so far have been successful in 31 out of 38 that have been resolved either preliminarily or with a final judgment.



Malini Mehra, CEO of GLOBE International, and Daniel C. Esty '86 at COP21 in 2015.

**"We need a strategy that emphasizes action by all of the players who have something to contribute. It turns out that presidents and prime ministers don't have their hands on many of the levers that determine the carbon footprint of a society." — Daniel C. Esty**

And Hsieh is just one of many Yale Law School graduates stepping up in the fight against climate change from the public, private, and nonprofit sectors. And her method—litigation—is just one of many strategies being used to push for progress. Other graduates are implementing climate mitigation and resiliency plans at the level of local government, helping green energy companies grow their business by acting as outside advisors, and working with countries and companies to highlight environmental policies that produce results.

According to Yale Law School Professor Daniel C. Esty '86, director of the Center for Environmental Law and Policy, all those talents and more will be needed to move the world in a more sustainable direction, no matter who is in the White House.

"The 21st century is going to require new strategies, including a new emphasis on bottom-up efforts" from state and local governments, corporate leaders, and non-governmental organizations, Esty says, adding that over-reliance on national governments to create standards has resulted in regulatory rigidities and, in many cases, has been ineffective.

He speaks from experience.

## Changing Policy From the Bottom up

After graduating from Yale Law School, Esty devoted his billable hours at a firm to trade and business issues but spent much of his pro bono work litigating on behalf of environmental groups and efforts, including the "save the whales" campaign. Next, he went to the EPA under President George H.W. Bush. (In meetings, he used to shock people who made assumptions about him as a Bush appointee by saying, "When I was a lawyer for Greenpeace...") When the first United Nations treaty on climate change was adopted in 1992, Esty was one of the U.S. negotiators.

But he's since come to believe change has to bubble up, not trickle down.

"It turns out that the 1992 Framework Convention relied too heavily on national governments setting targets and timetables and not enough on having real strategies and policies that changed behavior and paid attention to the incentives for shifting toward a sustainable future," he says.

Over the past two decades, Esty has tried to build momentum for the bottom-up approach he now believes is crucial. At the Yale Center for Environmental Law and Policy, which Esty founded when he joined Yale Law School in 1994, the focus is on regulatory reform, corporate sustainability, environmental performance measurement, global climate governance, sustainable finance, and trade/climate change interface. In the runup to the 2015 Paris Climate Agreement, for instance, the center convened a group of thought leaders from around the world who gathered to develop and discuss private sector and sub-national government solutions to climate change adaptation and environmental protection, some of which were included in the final agreement.

Esty says the Trump administration's focus on economic impacts and who "bears the burden of environmental protection" could have produced useful reforms. But, he continues, "there is so little seriousness of purpose about doing environmental protection at all, that its raising of some of these other issues can't be taken seriously."

For that reason, Esty says, the need for a decentralized approach to climate change adaptation strategies is even more necessary now.

A rendering of the East Side Coastal Resiliency Project in New York City, part of a flood protection system planned after Hurricane Sandy. Hilary Meltzer '92 says the city has been at the forefront of municipal climate mitigation and resiliency efforts.





Students of Mark N. Templeton '99 from the Abrams Environmental Law Clinic at the University of Chicago Law School visited Bubbly Creek. The Clinic has been working on legal and policy actions to improve the water quality of the creek on behalf of its client, Recovery on Water.

**“I believe that it is important for students to visit the sites and to see the actual or potential harms faced by our clients so that the students can advocate effectively for improvements.” — Mark N. Templeton**



But he says it's important to spread responsibility across all sectors of society no matter who is in power at any given moment.

"We need a strategy that emphasizes action by all of the players who have something to contribute," he says. "It turns out that presidents and prime ministers don't have their hands on many of the levers that determine the carbon footprint of a society."

## Leading at the State and Local Level

Everyone agrees that for real progress to occur, all parties have to work together. In 2016, Massachusetts passed a state law requiring utilities to buy a certain amount of wind energy, setting the stage for Vineyard Wind to develop an 800-megawatt offshore plant, the first such project in the nation. The company estimates its wind turbines will power more than 400,000 homes and reduce carbon emissions by nearly two million tons per year.

"That's a tremendous amount of energy," says Mark A. Barnett '04, co-chair of the energy and cleantech practice and head of the firm's renewable energy project finance and development practice at Foley Hoag, which represents Vineyard Wind. "Massachusetts passed a really good law to try to create opportunities to get this industry off the ground."

Likewise, New York City is moving ahead with a number of resiliency projects to protect the city and its residents from the impacts of climate change, including two pilot projects to manage extreme rainfall events near public housing complexes, designed in partnership with the city of Copenhagen. New York is also working with the U.S. Army Corps of Engineers to construct a 5.3-mile seawall to protect communities on Staten Island.

Hilary Meltzer '92, chief of the New York City Law Department's Environmental Law Division, says the city has been at the forefront of municipal climate mitigation and resiliency efforts since Mayor Bloomberg was in office and that it takes that responsibility even more seriously under Trump.

"We want to be a leader," she says. "Cities are inherently efficient in terms of per capita greenhouse gas emissions, but they also have an opportunity to do more. We should be concerned about sustainability under any administration, but it becomes all the more important to be the drivers when they're not getting support from the federal government."

In January, the city joined several states, including New York, in petitioning the U.S. Court of Appeals for the D.C. Circuit to review an EPA decision finding that 20 "upwind" states do not have to take additional measures to reduce their pollution, which affects "downwind" states' air quality. The decision, made under the Trump administration, reversed an earlier decision under Obama.

## A Multiplicity of Strategies

Stepping in when regulators are unable or unwilling to enforce even existing laws is a fundamental part of environmental advocacy, says Mark N. Templeton '99, director of the Abrams Environmental Law Clinic at the University of Chicago Law School.

"I want to affirm the idea that we need a multiplicity of strategies," Templeton says. "Policy proposals. Rulemaking. Collaborative approaches. I support all of those. But sometimes you need to carry a big stick."

Enforcement agencies such as the EPA don't have the resources to bring every case that needs to be brought, even when they have the best intentions, he says, and environmental laws, including the Clean Air Act and the Clean Water Act, were designed to allow citizens to sue.

"Congress recognized that sometimes enforcement agencies may not always do their job," he says. "We have made a lot of progress on some of the most obvious and most egregious environmental issues. We pretty much don't have rivers catching on fire anymore. But we've gotten hung up on the problems that are more complicated to solve."

Data makes those problems easier to see, he says. When watchdog groups in the Chicago area looked at information on the Illinois EPA website, for instance, they noticed that the Trump International Hotel and Tower had been drawing water from the Chicago River to cool its facility without conducting the proper impact studies. The clinic gave notice to the Trump Organization that it was out of compliance. The state intervened to sue, and now one of Templeton's students is helping to handle settlement negotiations in the case.

"The agencies vomit up this information," Templeton says. "You have to go find it, figure it out, and act on it."

Esty agrees that data will be transformative in the fight against climate change. Students in his center are incorporating data analysis into the center's biennial Environmental Performance Index, now in its 10th iteration, which ranks countries' performance on environmental policy goals, and are trying to use data to identify a path for sustainable finance.

"Investors are saying, 'I want better alignment between my values and my portfolio,'" he says. "We have a series of projects going on through the new Yale Initiative on Sustainable Finance to try to help those investors get the information they need and want to bring that alignment to bear, which we think over time will flow capital toward companies doing better on sustainability."

Each of these graduates, working in different ways and in different industries to help address the same global problem, credits Yale Law School with preparing them for the hard work of tackling so complex an issue.

The work is challenging, but Hsieh says she is "excited to go to work every day."

"It's frustrating," she says. "There is definitely so much happening that's discouraging. But I feel 100 times better that my job allows me to fight back on a daily basis, versus sitting on the sidelines and wringing my hands."

It's also nice to know people care about what she does. When Hsieh was challenging the mercury rule withdrawal, she received an anonymous letter in the mail.


Inside the hand-printed envelope, was a copy of the 1977 Office of Legal Counsel (OLC) memorandum opinion she had already found and cited in her motion for summary judgment.

"It looked like a ransom note," she laughs. "Someone had sent me that OLC opinion—someone in Maryland or Virginia, probably someone from the EPA or DOJ who was in the know. It felt very encouraging to know that there were people out there—including within the government itself—who were interested in and supported our work." 🗨️



(Above and on page 49) Students in Forman's Inside Out class at Danbury Correctional in spring 2019.





# Studying Criminal Justice from

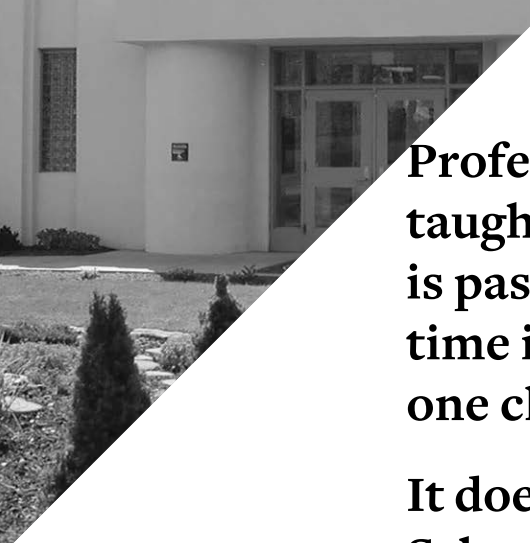
*By Debra Kroszner*

## the

# Inside Out

**Students get a deeply personal and powerful look at the criminal justice system by learning side-by-side with classmates inside a prison**

Photo courtesy of Danbury Correctional.



**Professor James Forman Jr. has taught many classes that he is passionate about throughout his time in academia. But there is one class that clearly stands out.**

**It doesn't take place at Yale Law School. In fact, it doesn't even meet on a college campus.**

## **This class meets inside a prison.**

After receiving training through the international Inside-Out Prison Exchange Program at Temple University, Forman began teaching this criminal justice course in 2017, alternating between the Federal Corrections Institution in Danbury and the Carl Robinson Correctional Institution in Enfield.

"I had been thinking for a long time about how I could make more of a direct contribution to improving the quality of education that people who are incarcerated get because we have never had good education programming in prisons," said Forman, who has always had an interest in education. In 1997, Forman founded the Maya Angelou Public Charter School in Washington, D.C., an alternative school for school dropouts and youth who have previously been arrested.

In the 1990s, Forman explained how prisons became "education deserts." Congress eliminated access to Pell grants for incarcerated people, leading state and community colleges to abandon programming in prisons. It created a dire situation.

"I knew that I wanted to do something to respond to that, and I also knew that it would have tremendous benefits to law students to be able to study criminal justice alongside people who have had direct experiences with the system itself."

Forman's class consists of 10 "outside" students from Yale Law School and 10 "inside" students from the prison who meet weekly for engaging, interactive discussions with one another. The class alternates between a men's and women's prison each semester and inside students span a range of ages and backgrounds.

"Inside students and outside students is the language we use and that is to avoid labeling people as prisoners or inmates," explained Forman.

Lori Pompa, Founder and Executive Director of the Inside-Out Prison Exchange Program at Temple University, said Forman is one of only a handful of other professors teaching a law class in prison as part of their program.

"This started with people teaching courses about criminal justice, but it now spans the social sciences and humanities and indeed to law courses," said Pompa. "We want to expand the law school piece further and have Inside-Out courses in law schools around the country."

Pompa started the program more than 20 years ago, inspired by visits with her own students to a prison in Pennsylvania. Seeing the power of the conversations that took place, Pompa formalized the program over time, developed specific methodology and trainings, and watched as it grew quickly and organically across the country and even to other countries.

"Literally as we speak right now, there are Inside-Out classes happening all over the country and the world," said Pompa. The program has trained nearly 1,000 people to teach courses at more than 150 correctional institutions, reaching as many as 40,000 students.

"Because this class is very much engaged learning and dialogue-based, the conversation goes to some very deep places," explained Pompa. "I can't quite explain it, but people bring their whole selves to this learning experience."

That is what Forman has experienced too with each of the classes he has held over the past two years.

During his classes, he often breaks up the group of 20 into smaller groups of five to have individualized conversations on a topic that they bring back to the group. The syllabus explores why people commit crime, victims and victimization, prosecutors and public defenders, how the prison system works, restorative justice, and overcoming adversity. Students also write weekly reflection papers.

The core goal of the course is to broaden and deepen students' understanding of how the criminal justice system was created and what can be done to reform and improve it. It also seeks to develop bonds and break down barriers that society has set up which separates people who are incarcerated from people who are not.



“You can study all of those things in the classroom, and we do,” said Forman. “But there is something deeper here with an opportunity to study these issues alongside people who have actually seen it in their day-to-day operation. Those are precisely the things that can get lost when studying legal text.”

Warden William Murphy, who works at the Enfield prison, said the benefits are considerable for the “inside” students too.

“The Inside-Out program offered at the Carl Robinson Correctional Institution quickly generated interest amongst the offender population,” said Murphy. “The research has shown us that educational opportunities reduce recidivism. When we have the ability to partner with Yale University, offer college level courses, work toward our goal of reducing recidivism, and witness a significant level of interest and excitement, we call this a win-win scenario.”

Michael Linden ’19 said the Inside-Out class appealed to him because it presented the opportunity to engage directly with those who have been impacted by the criminal justice system.

“The class was one of the most rewarding in my law school career,” said Linden. “Getting insight into academic issues from students who are living the curriculum is an unparalleled learning experience. I feel incredibly lucky to have been given this unusual opportunity, and to have met such resourceful, motivated students.”

Isabella Uría ’19 said the unique course taught her a great number of lessons about our criminal justice system and the many injustices that are endemic to it.

“The topics we covered were fascinating but most impactful was the discussion and debate engendered by our readings within the classroom,” said Uría. “We sat within the library of Carl Robinson Correctional Facility, always seated in a circle around the room, next to our inside classmates, who challenged us to think critically and compassionately in a way that would not necessarily occur in a removed Yale Law classroom. When examining the law, it is imperative that we not remove ourselves from those upon whom the law is imposed.”

Perhaps the biggest lessons from the course, however, did not

come from the syllabus, but instead from unscripted moments created with students sharing a “thing of beauty” at the start of each class—a tradition Forman learned from Professor Jean Koh Peters. Whether it’s a photo, poem, story, or inspirational quote, sharing this sentiment enables students to get a glimpse into each other’s lives and backgrounds.

“One of the things that I find so amazing about the class is each week you see the students get more personal and intense in what they share,” said Forman.

“A Yale student will share a story of overcoming adversity the likes of which the inside students never thought about,” Forman said. “They never knew that a Yale student could have lost a family member to violence or have been arrested or incarcerated or suffered from depression.”

And the Yale students are often stunned by the intellectual depth of many of the inside students as they speak profoundly about the adversity they have faced and reflect on their experiences in the prison system, Forman noted.

“By the end of the class, there are a lot of tears,” Forman said.

These enlightening and often emotional lessons about the true toll of the criminal justice system are what stick with the students long after the class ends.

“I learned resiliency, and the power of community and trust in a place where those features are often lacking,” said Linden. “It was amazing to see how the classroom vibe developed over time, as students became more comfortable with one another and began to share their life stories. I learned that it’s impossible to capture the lived experience of incarcerated people with words...while it’s easy to see incarcerated people as a monolith, they aren’t. We do a disservice to their experience by assuming otherwise.”

“The shared things of beauty provided insight into each of our individual worlds, our values, our joys, and our pain,” added Uría. “These pockets of beauty and humanity were revealed in a stark, gray, and at times oppressive institution of a prison. There is no way, in my mind, that one could experience this course without being fundamentally changed and without a sense of urgency that profound reform is needed.”



*“When examining the law, it is imperative that we not remove ourselves from those upon whom the law is imposed.”*

Isabella Uría ’19



James Forman Jr. '92

## Professor Forman Shares Reflections on Criminal Justice Reform at Annual Dinner

The Yale Law School Association of Washington, D.C., held its annual dinner on June 13 at the National Press Club. Dean Heather Gerken gave an update on the Law School. Professor **James Forman Jr. '92** gave a keynote address in which he reminisced about his experience as a public defender and discussed the power of restorative justice. He also mentioned his “Inside Out” class as one of the highlights of his teaching. (See more on page 46.)



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. Event details are posted on our website [law.yale.edu/alumni](http://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](mailto:alumni.law@yale.edu).



(above) Dean Heather Gerken, Jeff Bartos '90, Sushma Soni '90, and James Forman Jr. '92; (right) Dean Gerken with incoming students



D.C.

Washington Event Shows Appreciation for Donors

On March 14, nearly 200 Yale Law School donors and friends in the D.C. area enjoyed a reception hosted by Dean Gerken at Sequoia on the Georgetown waterfront. The event was a celebration of donors and all that they make possible at the Law School. In her comments Gerken underscored the tremendous impact of donor support: "By investing in Yale Law School, you invest in our students, the work they do, and the paths they lead. I cannot imagine a better bet." Two alumni from the class of 2016, Michael Clemente and Conchita Cruz, also shared their stories of how financial support from YLS donors had impacted their lives.

Conchita Cruz '16 addresses the guests



Michael Clemente '16



Mallory Duncan '75, Carl Horton '72, Pat Horton, Yvonne Porter, and R.H. Porter '72

Photos on opposite page and top by Lindsey King; photos on bottom by Rachel Lincoln



## Harold Hongju Koh Talk and Book Signing

About 110 alumni and their guests enjoyed a reception and talk on February 6, at the home of **Jackie Carter Klaber '12** and Andrew Klaber. Harold Hongju Koh, Sterling Professor of International Law, gave a talk titled "From 9/11 to 11/9: The Yale Law School Clinics and the Rule of Law in the Age of Trump," followed by a book signing.



## Corporate Law Alumni Breakfast

The Yale Law School Center for the Study of Corporate Law convened a Craig Wasserman '86/Wachtell, Lipton, Rosen & Katz Alumni Breakfast in New York on "The Current Landscape in Delaware M&A" on May 15. The program was held at The Century Association. The panel included Delaware Chancery Court Vice Chancellor Travis Laster, Friedlander & Gorris partner Joel Friedlander, Professor **Jonathan Macey '82**, and Wachtell, Lipton, Rosen & Katz partner William Savitt. Professor **Roberta Romano '80** served as moderator.



Nabiha Syed '10 and Ken Ebie '06

## Young Alumni Reception

Alumni from the Classes of 2004–2018 gathered at The Raben Group in New York City on May 23 to hear remarks by **Nabiha Syed '10**, General Counsel at The Markup and former Vice President and Associate General Counsel of BuzzFeed. Special thanks to **Ken Ebie '06** for his help in organizing the event.

## Supreme Court Watchers

At the end of June, alumni gathered to hear YLS's annual review of the Supreme Court Term with moderator **Linda Greenhouse '78 MSJ**, Knight Distinguished Journalist-in-Residence and Joseph Goldstein Lecturer in Law, Yale Law School. At Covington's D.C. office, attendees heard from panelists **Beth S. Brinkmann '85**, **Martin Lederman '88**, Andrew J. Pincus, and **Paul M. Smith '79**. At Skadden's NYC office, panelists **Boris Bershteyn '04**, **Melissa Murray '02**, Pincus, and Smith contributed to the discussion.



## NEW HAVEN

**Executive Committee Meeting**

The Yale Law School Association Executive Committee convened in New Haven on April 4–5, 2019, offering opportunities for members to engage with the Law School. On Thursday evening, committee members and current YLS students gathered at the Quinnipiack Club for Dinner Connections, an alumni-student mentoring program. Some alumni also attended classes. The Friday business luncheon featured an executive session with Dean Heather Gerken followed by ad hoc working groups on some of the Dean's top initiatives. After faculty mini-lectures and tours of Baker Hall led by current students, members enjoyed a reception and dinner in the Hurst Student Center at Baker Hall.

## MIAMI

**Reception and Talk on Immigration Work**

On March 13, 25 alumni and their guests gathered at White & Case for a reception and dinner program delivered by Dean Gerken on “The Future of Immigration Work at Yale Law School.”



## CHICAGO

**Miriam Gohara on Advocating for Victims**

The Yale Law School Association of Illinois invited alumni and students to a reception and presentation, “In Defense of the Injured: How Advocating for Victims Can Keep People Out of Prison,” by Miriam Gohara, Clinical Associate Professor of Law. The event on May 21 was held at Mayer Brown LLP in Chicago.

## BAY AREA

**Reception and Remarks by Cecillia Wang '95**

The Yale Law School Association of the Bay Area held a reception on June 4 at Covington & Burling LLP. **Cecillia Wang '95**, Deputy Legal Director of the ACLU, gave remarks. Special thanks to **Gretchen Hoff Varner '06** and **Erica Villaneuva '04** for help in organizing the event.



## SOUTHERN CALIFORNIA

**SoCal Annual Summer Event**

Alumni of Southern California gathered at the home of **Christine Adams '94** and Jim Asperger in Pasadena on June 1. **Carmela Castellano-Garcia '91**, President and CEO of the California Primary Care Association, gave a talk titled “Health4All: California dreaming?”



# YLS ALUMNI LEADERSHIP

FUND BOARD 2018–2019

THANK YOU TO THE OUTGOING MEMBERS OF THE FUND BOARD FOR THEIR SERVICE.

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12–14 Michael A. Varet '65\*  
14–16 Glenn M. Reiter '76  
16–18 Helen Heineman Haje '83

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Yahannes Cleary '09  
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Nancy Marder '87  
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 Paul Kim '02  
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 Erica Villanueva '04

**TERM MEMBERS (Three-year Term)**

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 Carlos Barrezueta '06 (NJ)  
 Raj Borsellino '13 (NY)  
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 Addisu S. Demissie '08 (CA)  
 Anna M. Durbin '76 (PA)  
 Kenneth N. Ebie '06 (NY)  
 Joseph M. Field '55 (PA)  
 Amy Glickman '88 (NY)  
 Peter E. Harrell '08 (GA)  
 Joshua Hill, Jr. '02 (CA)  
 Christine E. Kwon '17 (CT)  
 Monica M. Márquez '97 (CO)  
 Ricardo Martinez-Cid '00 (FL)  
 Arthur J. Ochoa '95 (CA)  
 Mary Hutchings Reed '76 (IL)  
 David B. Rigney '69 (NY)  
 Maile Tavepholjalern '11 (AK)  
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**Class of 2021**

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 Kaitlin Ainsworth Caruso '10 (NY)  
 Oluwaseun Ajayi '04 (VA)  
 Cornell Brooks '90 (VA)  
 Yasmin Cader '92 (CA)  
 Peter Chen '13 (NJ)  
 Rufus Cormier '73 (TX)  
 Deborah Freedman '92 (PA)  
 Jimmy Golen '99 MSL (MA)  
 Stephen Graham '76 (WA)  
 Steven Kargman '86 (NY)  
 Lara Kayayan '05 (CA)  
 Julie Kelley '92 (CA)  
 Elaine Kim '05 (CA)  
 Amber Koonce '17 (NC)  
 Regan Ralph '91 (VA)  
 Lori Schechter '87 (CA)  
 Nancy Smith '81 (CA)

Sam Valverde '07 (DC)  
 Alda Yuan '18 (IL)

**Class of 2022**

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 Mark Barnes '84 (MA)  
 Jacqueline Becerra '94 (FL)  
 Dana Bennett '03 (DC)  
 Tessa Bialek '13 (CT)  
 Jorge Camacho '10 (NY)  
 Elisabeth Centeno Lopez '11 (MD)  
 Colleen Culbertson '19 (CA)  
 John Ericson '97 (NY)  
 Peter Fisch '89 (NY)  
 Eric Fleisig-Greene '04 (CA)  
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 Diane Gujarati '95 (NY)  
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 Robert L. Weinberg '58 (VA)

**To 2021**

Rakim Brooks '16 (NY)  
 Reyna Gentin '91 (NY)  
 Janet Levit '94 (OK)  
 Meng Jia Yang '15 (DC)

**To 2022**

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 Callie Wilson '18 (CA)  
 Jason Wolff '94 (CA)

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 Cynthia H. Cwik '87 (CA)  
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 Harold Hongju Koh (CT)  
 Gloria R. McHugh (CT)

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**Arkansas:** Chad Doellinger '01 (2023)  
**Colorado:** Mishele Kieffer '10 (2021)  
**Connecticut:** David Wilkinson '06 (2020)  
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 Catherine Livingston '91 (2021), Eva Rigamonti '12 (2022), Bryan Tramont '93 (2022)  
**Florida:** Lauren Morse '10 (2021)  
**Georgia:** Peter Canfield '79 (2021)  
**Illinois:** Lisa Bohl '14 (2020), Lilly Farahnakian '99 (2021), Matthew Hinerfeld '92 (2021), Shruti Jayaraman '07 (2020)  
**Indiana:** Richard Garnett '95 (2022)  
**Massachusetts:** Steven Hansen '76 (2020), Brent Henry '72 (2021), David Peloquin '11 (2021), Aisha Saad '18 (2022), Yael Shavit '13 (2021), Laurence Winer '77 (2020)  
**New York:** Marcie Cleary '10 (2020), Jordana Confino '15 (2021), Jaime El Koury '78 (2020), Yuan Ji '11 (2020), Harrison Marks '15 (2021), Daniel Reich '02 (2021), Justin Zaremby '10 (2021)  
**Northern CA:** Benjamin Au '03 (2021, dual region), Lee Hsu '95 (2020), Richard Keenan '77 (2021)  
**Oklahoma:** Katheleen Guzman '92 LL.M. (2020)  
**Pennsylvania:** Michael Reed '72 (2021)  
**Southern CA:** Benjamin Au '03 (2021, dual region) Asli Bali '99 (2020), Katherine Eskovitz '95 (2021), Holly Thomas '04 (2020)  
**Texas:** Christian Garza '01 (2021), James Mccarthy '82 (2020), Janice Ta '10 (2020)  
**Washington:** David Perez '10 (2020)

**Total Membership:** 200



# Alumni Weekend 2019 October 18-20

The Law School welcomes alumni back to New Haven for Alumni Weekend 2019. Class years ending in -9 and -4 will enjoy special programming throughout the weekend as they celebrate their 5th through 60th reunions.

Highlights of the weekend include:

- Panel discussions
- Class activities and dinners
- State of the School address
- Alumni-student breakfast connections
- APALSA, BLSA, LLSA, MENALSA, NALSA, SALSA, Outlaws, and FGP gatherings
- “Women at Yale” event with Dean Heather Gerken and the Honorable Sonia Sotomayor '79
- Award of Merit presentation to Ben Heineman '71 and Linda Rottenberg '93



Photos by Mara Lavitt and Harold Shapiro

Find more information at [law.yale.edu/aw](http://law.yale.edu/aw).

# Yale Law Report

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