

Winter 2022

Harvard Law

bulletin

Faith

**IN
THE
LAW**



Four programs
at HLS pursue
research and
address current
topics linked to
the intersection of
law and religion

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Cover illustration by Anthony Russo

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Looking to the Future

As we prepare (at this writing) to return to campus for the spring term, I think of what a joy it was for the Harvard Law School community to be together again in person last fall, to experience again those wonderful chance encounters with one another in the hallways, in the Hark, or in the Crossroads. Our community showed an exceptional spirit of collegiality, generosity, and goodwill, one that was truly special. And after a January term of online instruction to allow us to adapt to the challenges posed by the Omicron variant, I look forward with excitement to returning to HLS in person once again.

Many of our faculty and staff worked tirelessly, a number of them through a long-planned winter break, to move us online for J-term and to prepare for resumption of in-person instruction this spring. I am grateful to students, staff, and faculty for their adaptability, resilience, and hard work, and to you, our alumni, for your unflagging support as we have navigated this shape-shifting pandemic. Like so many around the world in this moment, people here at HLS are tired; we have pushed this boulder up the hill again and

again, with the hill a little different each time. And yet there has been something invigorating about the way our community has pulled together to fulfill our Law School's important mission, even in hard times.

It has been vital, throughout these challenging times, to keep a steady focus on the future and on the ways this Law School can best contribute, and best prepare our students to contribute, to a world that badly needs great lawyers to advance truth, law, and justice — the ideals that emblazon our new shield and inspire our work together.

A central value that ties our alma mater's past to the future is a commitment to innovation — to seeking, always, new and better ways of educating great lawyers and leaders. It is reflected in the school's trailblazing adoption, in the late 19th century, of inductive learning, the case method, and Socratic training. It is reflected in the founding, in 1913, of the Harvard Legal Aid Bureau, the nation's first student practice organization dedicated to providing legal services to the indigent and a model for modern clinical education. And it is reflected in the culture of perpetual, mindful, fact-based self-examination, learning, and curricular innovation that my predecessors and our faculty have established as our steady state.

Especially powerful are ongoing conversations with you, our alumni, and other lawyers in public interest, government, private practice, finance, entrepreneurship, nonprofits, and more. Nothing

could better inform the important work of examining how best to equip our students to meet the challenges and opportunities that lie ahead in a rapidly changing profession and world.

We build always on the great tradition of teaching the powerful analytical, problem-solving, question-asking skills long associated with “thinking like a lawyer.” We can and should also cultivate other skills and superpowers that superb lawyers and leaders must have, now more than ever. In a profession that serves people, great lawyers and leaders must have empathy and humility. They must not be afraid to make mistakes. They must listen generously, even and perhaps especially to those with whom they disagree. They must be alert to, and seek, unexpected alliances in aid of the clients and causes they serve. In a world so dependent on facts and data, lawyers must have the critical capacity to use, and to question, empirical and statistical data and the way it is collected and deployed, including through the powerful technologies driving artificial intelligence. And with many audiences to reach, great lawyers and leaders must know how to write clear, direct prose, free of legalese.

There is much to learn, and much we hope to contribute, as we help prepare the third century of Harvard lawyers to lead lives of purpose and meaning and to further the advancement of the rule of law, equal justice, due process, and constitutional democracy. Thank you for your past and future engagement and support as we work together to help shape the future of our alma mater and of legal education.

Building on a commitment to innovation



JESSICA SCRANTON

**A PRIVILEGE TO SERVE THE NATION
IN THEIR COMPANY**

Thank you for the fine story about my colleague Gregory Maggs '88 in the Summer issue ("Salute to Justice"). Greg is a superb example of the best the Law School produces, having excelled as academic, as soldier, and as judge. It is also good to see coverage of the military justice system in the Law School's publications. Of the 25 appointments made to our court [the U.S. Court of Appeals for the Armed Forces] in the 70 years of its existence, five have been alumni of the Law School — Robert E. Quinn '18, Robinson O. Everett '50, Andrew S. Effron '75, Judge Maggs, and myself. In the wake of my retirement from the court last summer, I reflect on the enormous privilege of having served the nation with excellent colleagues like Judges Maggs and Effron, in beautiful surroundings, at the highest level of intellectual stimulation. It is hard to imagine a better combination.

SCOTT W. STUCKY '73
Potomac, Maryland

BE CAREFUL WHAT YOU WISH FOR

I have several comments on Lincoln Caplan's article on whether the press can be held liable for publishing material obtained illegally ("The Pentagon Papers Case Today," Summer issue).

True, as Caplan points out, under current law, the press cannot be punished for publishing information that comes into its possession even if that information was obtained illegally by the person who transferred it to the publisher. Yet, if publishers take partisan positions in general and let it be known that they stand prepared to publish such information, the

line between merely receiving information passively and being an active participant in its theft could under certain circumstances become uncertain.

The First Amendment protects both speech generally and the press specifically. When anybody can disseminate information on

social media (except to the extent that social media suppress certain information, which is a developing issue in its own right), there is no basis to distinguish between newspapers/television/radio and anything that anybody might put out on the internet. The number and percentage of the population whom the latter can reach far outstrip those whom a traditional publisher could reach

at the time the Bill of Rights was ratified. And "the press" has no realistic claim that it and it alone puts out the truth, the whole truth, and nothing but the truth and therefore deserves special solicitude.

I expect that within the coming few years *New York Times Co. v. Sullivan* will be overturned or eviscerated, not so much because it was decided incorrectly in 1964 as because its test is no longer practical. A commercial publisher's relevance and profitability now depend on reflecting the 24/7 news cycle to consumers, and in order to stay current with breaking events and to compete with other sources, it may feel pressure to publish quickly before it has had a chance to do a proper investigation into truth or falsity, especially when material appears to be consistent with whatever "narrative" it is trying to promote that appeals to its constituents. That behavior would often meet the definition of "ac-

tual malice" — reckless disregard of whether a statement is true or false — unless the Supreme Court were to redefine "reckless" to exclude ipso facto any action taken to scoop others, which would be intolerable both politically and doctrinally.

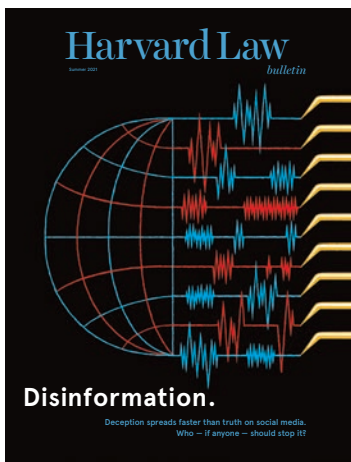
Finally, people should be careful about what they wish for. Anyone who wants to see *Citizens United* overturned, either by a constitutional amendment or by complaisant justices' winking and nodding, should understand that if corporations are not allowed to express political views, that includes corporations that publish newspapers and broadcasters. There is no basis to distinguish a corporation that claims to be in the business of disseminating information and opinions from one that claims to be doing other things but also disseminating information or propounding its political viewpoints.

ROBERT KANTOWITZ '79
Lawrence, New York

**TODAY'S QUACKERY MAY BECOME
TOMORROW'S ORTHODOXY**

This article ("Oh, What a Tangled Web We Weave — Deception spreads faster than truth on "social media," Summer issue) is certainly timely, comprehensive, and provocative, thereby serving the important purpose of prompting reasoned discussion of topics which are critical to the nature of our society. However, it is based upon several questionable, if not faulty, premises.

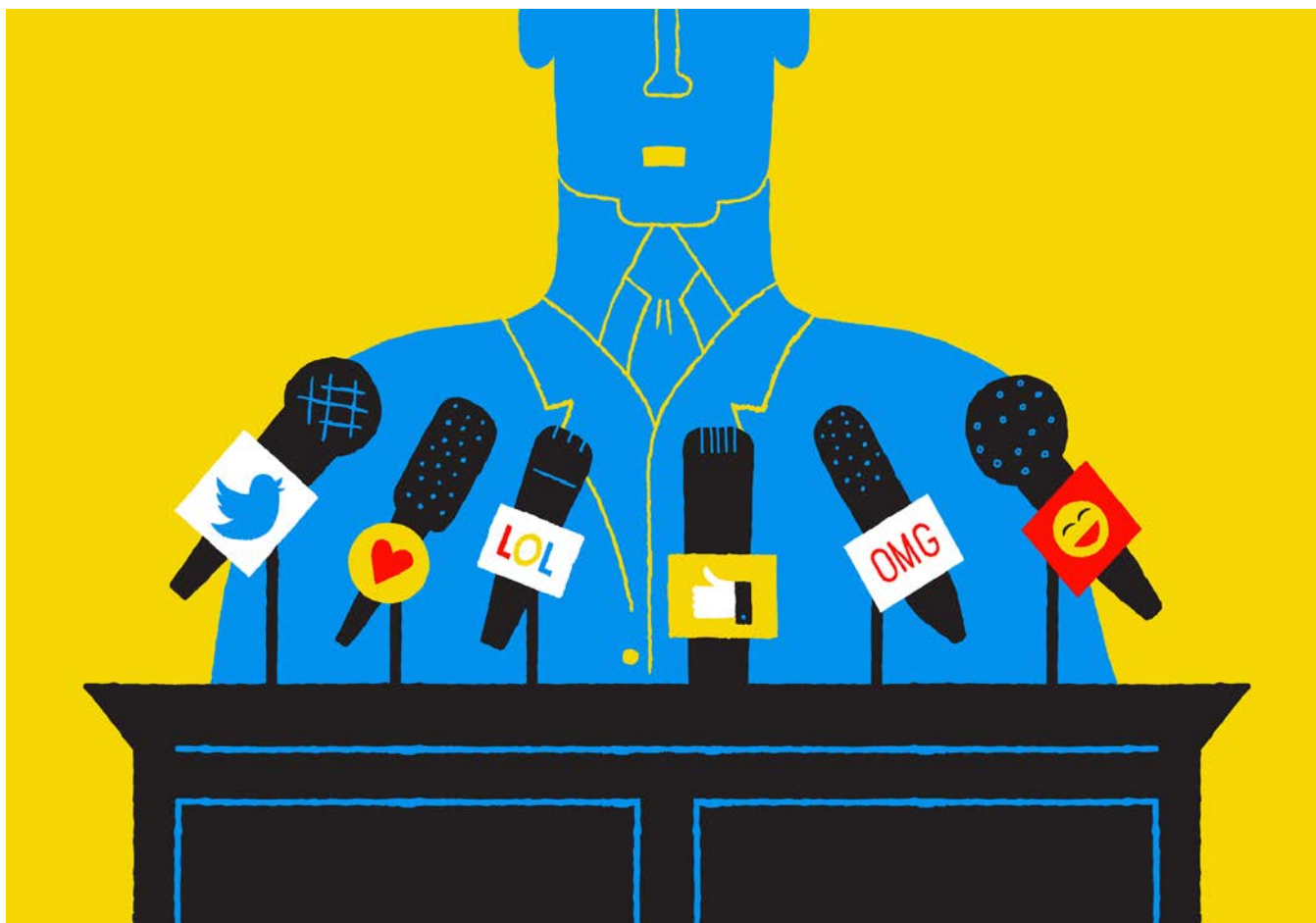
First, it refers to "disinformation" being problematic for society but does not clearly define the term. This seems to be a common fallacy in this context; the day I read this article in the Bulletin, I came upon an article on the NPR website discussing the views of U.S. Surgeon General Murthy that disinformation is the → PAGE 9



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may be edited for
length and clarity.

Bad News

Martha Minow contends that the current digital media environment is responsible for a crisis that should be addressed through government action / By Lewis Rice



Sixty years ago, the chair of the Federal Communications Commission gave a speech that became famous for his description of television as a “vast wasteland.” Someone who knows him well says that he always wished two other words in the speech had received as much attention: public interest.

“That, I think, is even more relevant today than it was then,” said Professor Martha Minow, “be-

With the rise of social media and the decline of traditional news outlets, especially local news, “constitutional democracy itself is in the balance,” writes Martha Minow in her new book.

cause it’s harder to even get people to take seriously that there is a public interest in the construction of a media environment.”

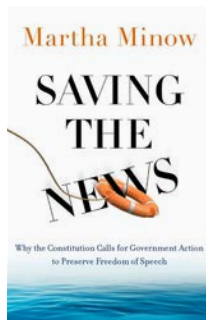
The FCC chair was Professor Minow’s father, Newton Minow, whose “vast wasteland” speech was actually titled “Television and the Public Interest.” In her new book, “Saving the News: Why the Constitution Calls for Government Action to Preserve Freedom

of Speech,” which includes a preface by her father, Martha Minow again takes up the question of media and the public interest, urging people to take seriously the dangers of the current media environment — and arguing that the government should take steps to ensure that the media will serve the public.

Minow notes in her book that the nation’s founders deemed the

press so crucial to its citizens that it was the only private enterprise mentioned in the Constitution, specifically in order to protect it. Of course, the founders could not have envisioned that “the press” would morph into the current digital information ecosystem, which she argues has led to changes that disserve the public interest, including disinvestment in newsgathering and an overwhelming volume of material replete with misinformation. Minow writes that powerful digital platforms like Facebook don’t create news but disseminate it widely, and they provide global forums for conspiracy theories and lies while being immune from liability. With the rise of social media and the decline of traditional news outlets, particularly local news, “constitutional democracy itself is in the balance.”

Government can and should play a role in strengthening the reliability and viability of newsgathering and distribution, she says, despite what she calls an aggressive libertarian reading of the First Amendment that is growing in the courts. Indeed, she argues, the government has historically influenced how the news industry operates. Minow cites precedents ranging from Congress’ creating a postal service in 1792 in order to facilitate the distribution of news, to government support for the development of the internet. She also cites regulatory efforts such as rules restricting concentrated ownership or prohibiting anti-competitive behavior by media companies. As she writes: “Government instigation, resources, oversight, and influence have been *indispensable* to the development of modern communications.”



Minow proposes a set of reforms that would both adhere to the First Amendment and benefit news consumers, she says, and would be focused on the “destructive effects” of internet companies, public interest regulation, and support for public interest news sources. They include requiring payments to news producers from internet companies and subjecting those companies to liability similar to traditional publishers; providing tax incentives for nonprofit journalism; and instituting a “fairness and awareness doctrine” that would expand consumer choice and balance of news sources.

If enacted, reforms such as these may not solve every problem, but “I think there would be a rather serious improvement for anyone who’s interested in getting news if there were more tools required by the internet providers for us to be able to see with transparency how our newsfeed is being curated and to actually choose to see more variety,” Minow said. “If there were much more sustained public investments in local news, for ex-

ample, we would have stories that we don’t currently have.”

Minow, a University Professor at Harvard who served as HLS dean from 2009 to 2017, was inspired to write on the topic after the 2016 election, which highlighted the problems of disinformation, misinformation, and information overload. As a constitutional law professor, she said: “I’m very aware of the ways in which the assumptions behind the Constitution are not always supported by the country that we’ve created. And one of those presuppositions is, of course, the existence and durability of a vital media news capacity.”

The book is also personal to Minow. She was a student journalist starting in middle school and during her time as an undergraduate at the University of Michigan during the Watergate era, when journalists were considered heroes, she said. She seriously considered journalism as a career but decided that she preferred taking action rather than reporting on others who do so. Her family influenced her thinking on the media as well, especially her father, and she grew up in a household in which discussions about the media were an everyday occurrence.

She believes that the thirst for quality investigative journalism is broader than the supply — and that common ground exists to make change, including mounting bipartisan concern over misinformation and immunity given to digital platform companies. But if nothing does change, she fears that the news as we know it will no longer serve the public interest.

“I don’t want to lose the democratization of the means of communication, but I do want to restore the trust and the creation of shared reality,” said Minow. “And it’s going to take a long, long road to get there.”



Martha Minow

Preserve, Protect, and Defend

In his new book, Noah Feldman reveals Lincoln's role in breaking — and remaking — the U.S. Constitution / By Julia Hanna

It's unclear when exactly Abraham Lincoln became “the Great Emancipator,” or who gave him that title, which, like so many familiar, shorthand references, glosses over a host of complexities. In “The Broken Constitution: Lincoln, Slavery, and the Refounding of America,” Harvard Law School Professor Noah Feldman delves into these issues through a close examination of Lincoln's evolving beliefs and political identity, creating a revealing portrait of a constitutional thinker deserving of another title, as Feldman sees

Noah Feldman's new book offers a fresh perspective on the decisions Abraham Lincoln made regarding the U.S. Constitution, many of which Feldman describes as legally indefensible.

it: “Rupturer in Chief.”

“Right now, we are gripped as a country by the question of whether the Constitution encodes racism in its DNA, or whether it can be read to contain the possibility of an aspirational equality,” says Feldman. “To answer that question, you have to look at the Civil War, because that's the moment of ultimate rupture in our system. And you have to look at Lincoln, because he led that effort of rupture, even if he presented himself many times as preserving the constitutional framework.”

Feldman's book reminds us of the compromise upon which the Constitution and the government were founded — how slavery was embedded in the constitutional system by counting three-fifths of a state's enslaved population when determining government representation. It also included clauses addressing the return of fugitive enslaved people and the federal government's right to quell related rebellions. As Feldman describes, Lincoln initially emulated Henry Clay, the “Great Compromiser,” who helped establish boundaries



and a balance of slave-or-free status for territories acquired in the Mexican-American War through the Compromise of 1850. Early on, Lincoln was clear in his belief that slavery was a moral wrong, yet he subordinated that feeling to the greater good of binding slave and free states together through the compromise Constitution. But after months of war, Lincoln ultimately decided, as evidenced by the Emancipation Proclamation of 1862, that the compromise Constitution had been shattered and worked to replace it with a new charter founded on the idea of equality under the law.

While Lincoln's biography and his administration of the Civil War have been endlessly analyzed, "The Broken Constitution" offers a fresh, rich perspective on the decisions he made regarding the Constitution, many of which Feldman describes as legally indefensible.

One of the most flagrant instances was Lincoln's unilateral suspension of the writ of habeas corpus, an action he took without any constitutional authority and in direct opposition to an opinion by Supreme Court Chief Justice Roger Taney, who had also written the *Dred Scott* decision. "He used that suspension to effectively place a hold on the First Amendment and suppress the speech of political opponents, shut down scores of newspapers, and arrest thousands of people who were held as political prisoners for months, and sometimes years, all over the country," says Feldman. "It's by far the most extreme suspension of free expression in U.S. history." The Constitution had already been broken in the act of secession; Lincoln saw no issue with breaking it in other ways if it furthered the goal of winning the war and preserving the Union.

"In all of my books, I hope to expose the thought process by which

important constitutional decisions are made by actual people, in real time," Feldman says. "Law professors have a habit, which I don't think serves us so well, of acting as though the Constitution is a document whose meaning and application are the products of abstract social forces. I try to show that social forces always act through human beings."

Among the people Feldman highlights are relatively unknown figures who contributed to the public discourse.

"One of my favorite parts of writing this book was learning about brilliant people who aren't household names but had an impact," says Feldman. Most people know of Frederick Douglass, but other African American abolitionists spoke and wrote publicly about slavery as it related to the Constitution — and not all of them agreed with one another. William Howard Day argued that the Constitution was not inherently pro-slavery, and that one could and should choose to interpret it as protecting life, liberty, and justice for all people. In response, Hezekiah Ford Douglas wrote, "The gentleman may wrap the Stars & Stripes of his country around him forty times ... and may seat himself under the shadow of the frowning monument of Bunker Hill, and if the slave holder, under the Constitution, and with the 'Fugitive Bill,' don't find you, then there don't exist a Constitution."

"I'm trying, bit by bit, to write the history of the U.S. Constitution through the ideas of the people who played central roles in shaping it," says Feldman, whose



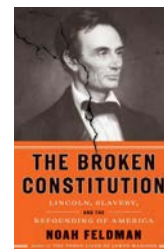
"I'm trying, bit by bit, to write the history of the U.S. Constitution through the ideas of the people who played central roles in shaping it," says Feldman.

2017 book, "The Three Lives of James Madison: Genius, Partisan, President," focuses on the Constitution's framing and on debates about its meaning through the early 1800s. His earlier work "Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices" follows four of the Court's most influential justices from the 1930s to the 1960s, tracing the origins of leading theories of constitutional interpretation still evident today.

With his new book, Feldman hopes readers will experience the drama of "how Lincoln had to break the Constitution as it was then understood in order to re-found America."

"The Constitution before the Civil War was not a higher law or a moral blueprint, even to its supporters," he says. "It was a pragmatic compromise that you either thought was moral or immoral, depending on your point of view. But the Constitution that emerged after Lincoln and after the 13th, 14th, and 15th Amendments is, at least in aspiration, a moral document proposing a form of equality we all believe ought to exist."

Looking ahead, the period of Reconstruction to 1920 could be the final chapter of Feldman's effort. "It's an important and fascinating story of betrayal and possibility — betrayal of the Equal Protection Clause through the outrage of separate but equal," he says, "but also simultaneously the birth of the idea that the Constitution protects individual liberties for everyone through the Due Process Clause." In chronicling the Constitution's evolution as a living document, Feldman holds a mirror to the story of a country and its people — one that continues to be debated, told, and retold.





“Consumer Genetic Technologies: Ethical and Legal Considerations,” edited by I. Glenn Cohen '03, Carmel Shachar '10, Nita A. Farahany, and Henry T. Greely (Cambridge University Press)

The editors, including Glenn Cohen, an HLS professor and faculty director of the school’s Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, and Carmel Shachar, the center’s executive director, present essays that examine the ethical, legal, and regulatory challenges posed by the rise of genetic testing for consumers. Contributors write on topics such as liability implications of consumer testing; ethical and policy implications of prenatal genome sequencing; genetic testing and Alzheimer’s disease; and ethical issues surrounding genetic counseling. It’s important to find appropriate regulatory tools to protect consumer privacy and safety, write the editors, “because of the substantial impact that consumer genetic technologies can have on our identities, families, and personal choices.”

“Accessible Technology and the Developing World,” edited by Michael Ashley Stein '88 and Jonathan Lazar (Oxford University Press)

Edited by Michael Stein, a visiting professor at HLS and co-founder and executive director of the Harvard Law School Project on Disability, and Jonathan Lazar, a professor in the College of Information Studies at the University of Maryland, the book features contributors from a diverse set of backgrounds who offer recommendations to increase access to technology for the 800 million people with disabilities who live in the developing world. The editors contend that digital accessibility “continues to be viewed through

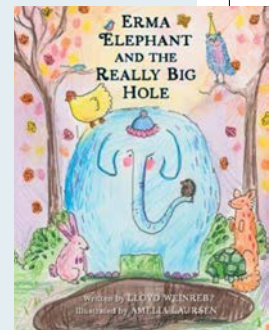
a stereotyping lens,” with misperceptions including that people in developing countries are not interested in information and consumer technology. Developing countries need their own solutions to improve access, they argue, and can also generate innovations that would benefit the Global North.

“Power to the People: Constitutionalism in the Age of Populism,” by Mark Tushnet and Bojan Bugarič (Oxford University Press)

Many observers see populism as incompatible with constitutionalism, but that may not always be the case, contend Mark Tushnet, professor *emeritus* at HLS, and Bojan Bugarič, professor at the University of Sheffield School of Law in the U.K. In the book, they offer case studies on populist regimes, such as those in Hungary and Poland, which have slid into authoritarianism, and those in Western Europe, which haven’t yet interfered with core constitutional institutions such as independent judiciaries. Concluding that they are “relatively sanguine about contemporary populism,” the authors detail mechanisms populists may use to empower the people, such as referendums to determine what a majority prefers.

THE LAW PROFESSOR AND THE ELEPHANT

Lloyd Weinreb '62, professor *emeritus* at HLS, who passed away in December (see Page 48), was the author of many important articles and books, several on legal and moral philosophy. They include the provocatively titled “Oedipus at Fenway Park: What Rights Are and Why There Are Any.” Recently, he wrote a different kind of book with an equally engaging title: “Erma Elephant and the Really Big Hole.” It’s a children’s book about an elephant who helps her animal friends (that’s where the hole comes in), and she comes to see that “big is beautiful, after all.” Charminglly illustrated, the project was a collaboration with Amelia Laursen, an artist and high school senior in North Carolina. In an interview in the fall, Weinreb said he was delighted with the illustrations: “I am sure she will be a great success.” And for him, working on the book was great fun. When asked if there was a connection between the story of Erma and moral and political philosophy, he said, “I suppose I would not have written it if I did not have the background I have, but I was not thinking about that at the time.” To order the book, write to pelicanpointpress@gmail.com. All funds from sales will go to the NAACP Legal Defense and Educational Fund and to Book Harvest.



major threat we face in the fight against COVID-19. It, too, failed to define the term, suggesting that it referred to information inconsistent with his favored approach.

Second and closely related to the first point above is the fact that in many fields, there is not and cannot be a static view of “high-quality information” in the words of Mr. Haidar appearing in your article. We have seen in recent years in many fields how today’s quackery becomes tomorrow’s orthodoxy as ideas are tested in what you believe to be the disfavored marketplace of ideas. Perhaps such a marketplace should not be disfavored?

Third, even assuming *arguendo* that a static view of information is in order, your article expressly advocates for some sort of board or tribunal to vet and categorize information and take steps to exclude from public (or all?) discourse that which is found wanting. Not being possessed of supernatural powers, I cannot imagine how any individual or group is intellectually or temporally capable of performing such a function in multiple fields. Perhaps good, old-fashioned dialogue is at least a more efficient approach.

The final express premise with which I take issue is that the internet has made more urgent the need for the oversight which you discuss. While the internet certainly increases the velocity of information, it did not introduce the concept of people communicating with each other, whether physically in a public square, over the telephone, through print media, or otherwise. Our First Amendment has withstood an increase in information velocity occasioned by new technologies and population growth and served us well, absent the harms which you posit. It should not be taken as given that increased information velocity is *per se* dangerous.

Your article appears to be a call for drastic deviations from our traditional First Amendment regime. Applying the customary approach of the Supreme Court in such situations, namely strict scrutiny, tells me that the case has not been made. On balance, whether we are dealing with wars, a pandemic, economic disruption, or other things, I’ll take unfettered debate as the best way of getting to the “right” public policy answer.

MARTIN B. ROBINS ’80
Barrington Hills, Illinois

‘WHAT DISTURBED ME WAS NOT SO MUCH WHAT HE SAID AS WHAT HE DIDN’T SAY’

As a Harvard Law School graduate and retired judge, I was appalled by the comments of HLS Professor Yochai Benkler as quoted in the Summer edition of the Harvard Law Bulletin (“Oh, What a Tangled Web We Weave”). What disturbed me was not so much what he said as what he didn’t say.

President Trump’s behavior after the 2020 election was awful and subject to the severest criticism. Nevertheless, the manner in which Professor Benkler expressed that criticism evidenced a complete lack of objectivity, unbecoming a Harvard Law School professor. Yes, President Trump and certain unnamed GOP politicians have often played fast and loose with the truth, but so have Speaker Pelosi, Governor Cuomo, Congressman Schiff, and other leaders of the Democratic Party.

Fox News has sometimes advanced inaccurate, tendentious narratives but so have MSNBC, CNN, The New York Times, The Washington Post, and other liberal outlets. Not to acknowledge this is to weaken the point Professor Benkler is trying to make. Not to acknowledge the guilt on both sides is simply to “preach to the choir.” His reference to “white

identity,” whatever that is, and “evangelical audiences” may reveal certain biases of his own.

At Harvard, I had the good fortune to be taught by Professors Archibald Cox and Paul Freund in Constitutional Law and Justice Breyer for Antitrust. These men were not averse to engaging in controversy. At the same time, they displayed absolute objectivity when justifying their positions. Professor Benkler would profit by their examples.

JOHN BARONE ’73
The Bronx, New York

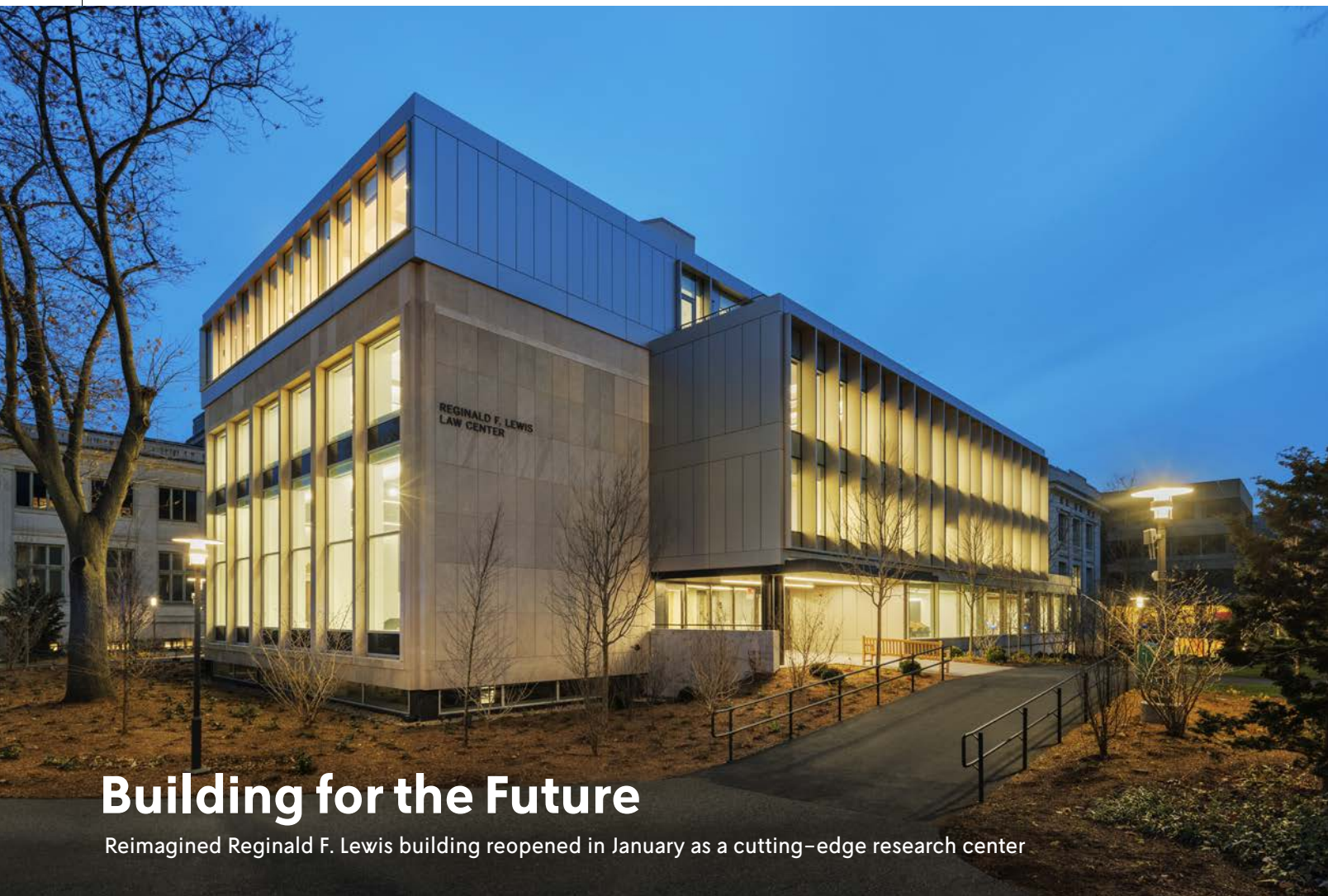
THE MISSING QUESTION

It is unfortunate that Elaine McArdle, in her cover article entitled “Oh, What a Tangled Web We Weave,” failed to ask the crucial question, “How do we determine what is ‘disinformation’?”

As a 1979 HLS graduate privileged to have learned constitutional law from Laurence Tribe ’66 alongside (now Chief Justice) John Roberts ’79, I cherish the First Amendment and its underlying premise that truth is to be discerned from a free and open exchange of ideas in the public forum. Not long ago, when the FDA did not consider cigarettes to be harmful and physicians were advertising cigarettes, anyone claiming they were dangerous to your health would have been deemed a spreader of “disinformation.” If unpopular viewpoints had been censored because they were “disinformation,” thalidomide, DDT, saccharine, and thimerosal in children’s vaccines would have injured and killed millions more than they did. Our fundamental principles are violated when unpopular views are suppressed because they are considered “wrong” by some physicians or the heads of social media companies.

ANDREW R. KISLIK ’79
Menlo Park, California

“I cherish the First Amendment and its underlying premise that truth is to be discerned from a free and open exchange of ideas.”



Building for the Future

Reimagined Reginald F. Lewis building reopened in January as a cutting-edge research center

The Reginald F. Lewis Law Center, a newly renovated space which will serve as a living laboratory for world-class research, learning, and innovation, opened its doors on Harvard Law School's campus this January.

With a focus on fostering collaboration and community, the modernist building — originally built in 1959 as a four-story structure to house nearly 300,000 international legal studies volumes — was transformed by Deborah Berke Partners into a five-story, 21st-century work environment.

The Berkman Klein Center for Internet & Society occupies the Reid Hoffman Innovation Pavilion on the fifth floor and shares the floor below with the Cyberlaw Clinic and the HLS Library's Innovation Lab. Berkman Klein's new home allows it to invite and host scholars and students from around the world; to convene complex, hybrid events and workshops; and

With a focus on fostering collaboration and community, the modernist building has been transformed into a 21st-century work environment.

to incubate new, experimental initiatives like the recently launched Institute for Rebooting Social Media.

The HLS Graduate Program occupies the first floor in a space designed to include a working lounge and study room spaces. Faculty offices and customizable meeting spaces are located throughout the building.

The renovation retained the building's midcentury architectural legacy in finish and detail but included a modernized entrance facing Massachusetts Avenue; replaced opaque walls with glass to bring natural light into the core of the building; added state-of-the-art audiovisual and IT infrastructure; and updated HVAC systems to exceed CDC health and safety guidelines.

The building, which in 1993 was named in honor of business executive and philanthropist Reginald F. Lewis '68, was the first major building at Harvard named in honor of an African American.



The Lewis Law Center now features meeting rooms, flexible conference areas, and collaborative spaces as well as study carrels, private offices, and client consultation rooms for more focused work.



The renovation replaced opaque walls with glass to bring natural light into the core of the building. The project is working to achieve LEED Gold certification.

The new fifth floor showcases large windows and campus views and the colorful furniture and updated lighting found throughout the building.



The Crypto of the Realm

HLS class explores possibilities for a central bank digital currency in the U.S. / By Rachel Reed

Mention digital money, and many people think immediately of Bitcoin or one of its innumerable cryptocurrency cousins — those anonymous, volatile, and, depending on your point of view, liberating or nefarious, tokens championed by celebrities, businesspeople, and celebrity businesspeople like Elon Musk.

But e-money may soon be going mainstream, as federal policymakers study whether a central bank digital currency (also known as CBDC) could be right for the United States. Already, governments in the Bahamas and several Caribbean nations have issued digital versions of their dollars, while dozens of other countries, including South Korea, Nigeria, and Sweden, are exploring the possibility of launching their own. And in the U.S., the Federal Reserve recently released a white paper detailing its initial research on an American CBDC.

This past fall, a Harvard Law School class called Designing a Central Bank Digital Currency for the United States, taught by Professor Howell E. Jackson J.D./M.B.A. '82, took a closer look at the legal and policy implications of just such a system. The reading group, which Jackson says received enormous interest, attracted HLS students from many different backgrounds and home countries, he adds.

“As digital natives, many of our students have personal experience with cryptocurrencies,” he says. “With the prospect for a U.S. central bank digital currency on the horizon, this reading group was a great opportunity to really dig into these issues.”

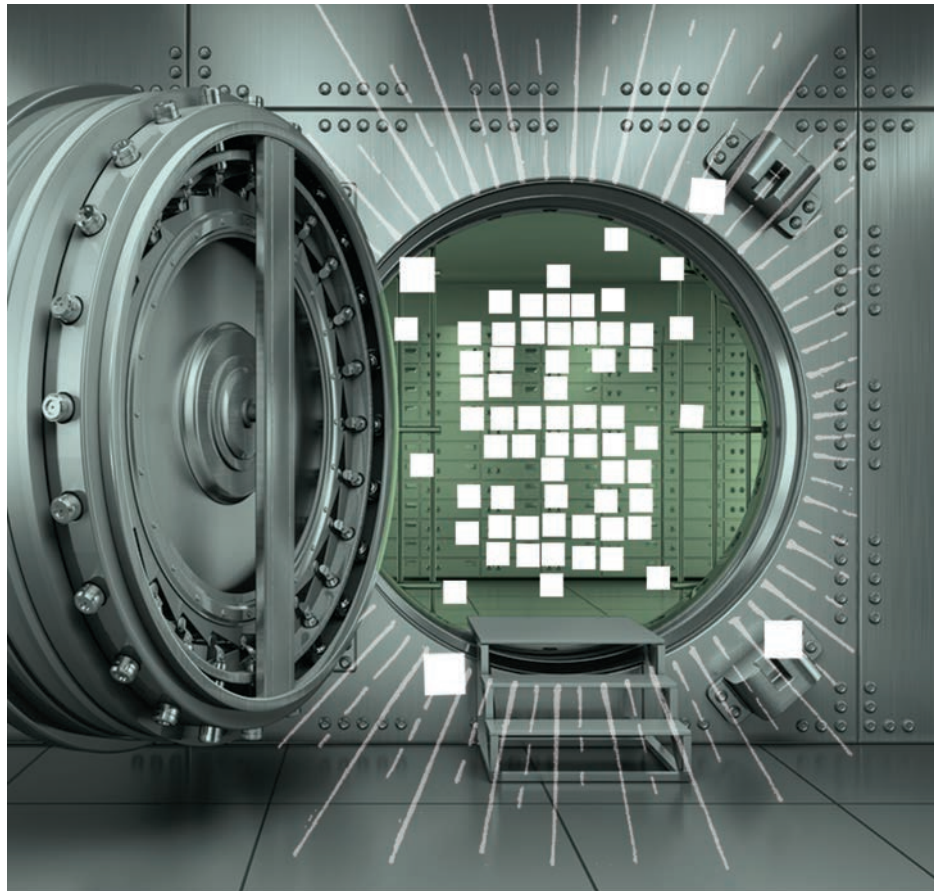
Xiao Ma S.J.D. '25 wanted to better understand an emerging technology that could have implications far beyond any one

A central bank digital currency would be sheltered from the wild fluctuations in value for which crypto is known.

nation’s monetary system. “China launched its pilot digital currency program last year, and it was really a very heated topic there,” she says. “I think this potentially could be one of the areas of future U.S.-China competition.”

Unlike cryptocurrencies such as Bitcoin, a central bank digital dollar would be considered “fiat” currency, backed directly by the U.S. government, says Jackson. Such a designation would make it interchangeable with cash and would shelter it from the wild fluctuations in value for which crypto has been known.

A CBDC could make payments faster, lower trans-



action costs across the global marketplace, and increase access to banking among the nation's poor and working class, proponents argue. But a digital currency also raises plenty of questions for regulators, with worries swirling about anonymity, money-laundering, and financing of terrorism — as well as broader concerns about its impact on financial stability and the monetary system itself.

ELIMINATING THE MIDDLEMAN

To the average consumer, digital currency might look and act much like money in a traditional bank account, with the federal government standing in for their banker. But Joe Lillie J.D./M.B.A. '22, another of Jackson's students, pointed out that big differences are behind the scenes. "It's like changing the inner workings and plumbing of the system, as opposed to one's experience as an end user," Lillie says, adding that many interactions between merchants, banks, and the Federal Reserve that occur regularly could "potentially be disintermediated." In practice, that might mean that settling payments — or moving funds from a payer's bank account to a recipient's — could be done much more efficiently and quickly, leading to lower transaction costs, he says.

Such a system could also be more inclusive. "There is a whole population of people that either are 'unbanked' in the sense that they don't have a bank account at all, or are 'underbanked,' in that they don't have a lot of services," says Lillie. "For those people, transaction costs for things like cashing a check or getting a money order can be very high." In a system where everyone has an account through the federal government, though, low-income Americans might access services for a low or no cost.

Yet despite the promise of a central bank digital currency, Jackson's course made clear that questions remain. Should policymakers design a CBDC where transactions are anonymous — like paying with cash — or are more like swiping a debit card? What types of rules would be necessary to protect account holders and prevent money-laundering and other criminal activity? And which federal agency, ultimately, would be responsible for maintaining accounts and interfacing with clients when issues inevitably arise?

In one class discussion, Jackson asked his students to consider the ramifications of a central bank digital currency on other national policy goals. "For the United States, there are some advantages to the

Howell Jackson and his students explored the prospect of regulating a central bank e-currency.



“Converting from paper cash into a digital currency is like having our economic lives reimaged.”

current system and the primacy of the dollar,” says Lillie. “That includes the ability to enforce sanctions,” which could be threatened if CBDCs were adopted across the world and the U.S. dollar was no longer needed as the global reserve currency.

Adding to the richness of the classroom discussions were Margaret Tahyar, an attorney at Davis Polk and expert in financial institutions and technology who has been a lecturer in law at HLS in the past, and Robert Bench, an assistant vice president of the Federal Reserve Bank of Boston and an active participant in developing the technical framework for a CBDC for the U.S. The two have been joining all of Jackson's classes via Zoom.

“It was wonderful to bring their firepower right into the classroom this semester,” says Jackson, adding that the unique setup of the class — Tahyar's and Bench's video feeds were projected at the front of the room — was a pandemic-era innovation that enabled his guests to participate despite busy careers of their own.

“Meg is one of the leading attorneys in the country on these issues, and Bob is playing a leading role in coordinating efforts of the Boston Fed to develop prototype CBDC software with computer scientists at MIT,” says Lillie. “To have their real-world perspectives, along with our academic and theoretical readings, was great. Whenever they or Professor Jackson shared their thoughts, I really perked up, because they are truly experts in this.”

Like Lillie, Ma says Jackson's course was an exciting opportunity to learn about and discuss ideas so groundbreaking that many of the course readings were only months — or even weeks — old.

And though the phrase “central bank digital currency” may still be an unknown concept to many people, Ma thinks that is likely to change soon. “Converting from paper cash into a digital currency is like having our economic lives reimaged,” she says. “I think it will be an innovation comparable to that of the internet.”

‘Life Can Change at the Snap of a Finger’

A second-year law student on second chances, building community, and trying to find his place in the grand scheme of things / By Julia Hanna



In a July 2020 video posted to YouTube, Rehan Staton '23 sits on a couch, flanked by his brother and cousin in his Bowie, Maryland, home, poised to open a letter of admittance (or rejection) from Harvard Law School. The good news that came next went viral in a way he never expected. In the midst of a pandemic, media outlets across

Rehan Staton '23 has become interested in a career in sports and the law.

the country were drawn to the feel-good success story of a young man from difficult circumstances who went from working as a sanitation worker to attending law school.

The quick-hit, dramatic nature of the story was real, as were the hard facts it contained, but now Staton can reflect on that moment with more perspective. It resulted

in movie offers (which he turned down) but ultimately served as a reminder of where he's come from and what brought him to law school in the first place.

Few of his grade school teachers would have thought him capable of attending law school, or even college. When Staton was 8 years old, his parents' marriage broke up and

his mother returned to her native Sri Lanka. His father struggled to keep him and his brother, Reggie, fed and warm, often working three jobs at a time. The house, which needed repairs, was drafty. Often the electricity had been turned off. Staton's grades suffered. "One night in seventh grade, I remember you could see your breath in my own house," he recalled. "I was wearing a jacket, but I didn't get a lot of sleep, and I was hungry." The next morning, he received a failing grade on a history test; in response, his teacher suggested he had a mental disability.

"I was so angry — I was hungry and freezing cold," Staton said. "Who would do well in those conditions?" He turned away from school, focusing his energy on taekwondo and boxing, winning numerous tournaments, and attracting attention from talent scouts. But when he was a senior

"It was poetic that the people at the bottom of the social hierarchy — ex-felons and sanitation workers — saw my potential."

in high school, a rotator cuff injury sidelined him. "I was only going to last in sports as long as my body allowed me to, because when something went wrong, we didn't have the health insurance and resources to fix it," he said. So, he applied to college — and with a 2.0 GPA, was rejected by every single school. With few options, Staton went to work at a local sanitation company, rising at 4 a.m. to clean dumpsters and ride on the trash truck alongside men who immediately asked the 18-year-old a life-changing question: What are you doing here?

One of his co-workers connected him to an administrator at Bowie

State University, where his application was reconsidered. He was admitted and given a scholarship for food. Staton earned a 4.0 GPA, even as he continued his job as a sanitation worker, and transferred after two years to the University of Maryland, where he would be selected as commencement speaker. "It was poetic that the people at the bottom of the social hierarchy — ex-felons and sanitation workers — saw my potential and gave me a second chance," he said. "I was always motivated, but the variables changed so that I could be more efficient and effective in school. That made me want to find a career where I can help give other people second chances. Law seemed like an avenue where I could do that."

But after graduating from college, Staton was sidetracked from that plan when he suffered an as-yet-undiagnosed health setback that saw him lose 30 pounds. For several months he lay on the couch, too weak to do much else, until his cousin Dominic laid it out: "He said, 'How about we go for a goal, just to keep your mind busy?' I started to think about law school again, simply to distract myself from how sick I was and the fact that we were in danger of losing our house to foreclosure," he said. Later, the same cousin would suggest the video that went viral.

In his first (remote) year of law school, Staton got to know his HLS classmates by playing *Among Us*, a team-oriented, multiplayer game. At the same time, he continued to deal with his own medical issues while also caring for his father, who had suffered severe health complications after surgery. "It was a difficult time," he said, but the support of his HLS classmates and professors like David Wilkins '80 helped, whether it was offering to share study guides or, in one instance, even finding a doctor for Staton's father. Staton also

connected with alumni Theodore Wells '76 and Kannon Shanmugam '98 during a summer internship at Paul, Weiss, Rifkind, Wharton & Garrison. "Whatever stereotypes you might have of a big law firm — my experience was the exact opposite," he said. "They reached out to provide assistance with my father and were also adamant about finding a doctor for my own health issues."

Enrolled in the Education Law Clinic this past fall, Staton represented students and parents attempting to negotiate learning accommodations and individualized education plans with Boston Public Schools — work he found particularly meaningful, given his own background. When he spoke to the *Bulletin* for this story, he had just met his first client. "We're working to expand his IEP due to a horrible medical mishap that occurred, but sometimes school administrators don't agree," he said. "We've been going back and forth; it's not always pretty."

Staton has also taken courses in employment and sports law and become interested in a related career, perhaps as an agent or a lawyer; he is doing an internship with the National Basketball Players Association. More generally, he's been adjusting to life in a new city, getting to the bottom of his health issue, and enjoying the ability to be in the same physical space as the people he met online last year. "It's an honor to be around my friends and my professors — being able to converse with them in person has meant a lot to me.

"Really, I just want to continue to build my community, be intentional, and try to figure out where I fit in the grand scheme of things," he continued. "I've learned that life can change at the snap of a finger — and I can't think of anything I've done that I achieved without the support of a community."

Reassessing Psychedelics

A new HLS initiative examines the legal and ethical aspects of therapeutic psychedelics / By Elaine McArdle



The state of mental health in the U.S. is alarming. The suicide rate increased by 35% between 1999 and 2018, according to the Centers for Disease Control and Prevention, and more than 40 million American adults a year experience an anxiety disorder. During the COVID-19 pandemic, the incidence of depression symptoms among U.S. adults has tripled, according to the Journal of the American Medical Association Network. Substance use disorders, including alcohol and opioid addictions, claim tens of thousands of lives a year and cost billions in health care expenses and productivity loss.

As mental illness skyrockets, the development of new medicines has been stagnant. Some believe that an answer may lie in a perhaps unexpected yet ancient treatment: psychedelics.

Over the last five years, interest in the medical potential of psychedelics — including MDMA, commonly known as Ecstasy, and psilocybin, the active ingredient in certain mushrooms — has increased dramatically. Numerous clinical trials have demonstrated that psychedelics, when administered in carefully prescribed doses and in a therapeutic setting, can be extraordinarily effective in treating depression, anxiety, and post-traumatic stress disorder. They also show promise for treating addictions to alcohol and cigarettes. Dozens of publicly traded companies, and private companies, too, are deep into research and development of psychedelics.

From that set of developments springs the Project on Psychedelics Law and Regulation, also known as POPLAR, launched in summer 2021 by the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School. Funded with a grant from the Saisei Foundation, POPLAR is a three-year initiative to advance evidence-based law, policy, and ethical inquiry related to psychedelics. The project will focus on promoting safety, innovation, and equity in psychedelics research, commerce, and therapeutics through academic conferences and research papers and by providing advisers and educators to lawmakers, courts, and the public.

“When it comes to the interface with the law, the time could not be better for examining psychedelics,” says HLS Professor I. Glenn Cohen ’03, faculty director of the Petrie-Flom Center, who is working on the project along with HLS Professor Jeannie Suk Gersen ’02 and Mason Marks, POPLAR’s project lead. “Right now,” Cohen adds, “there are three pathways that are

emerging to use in the U.S. — therapeutic, religious, and recreational — each of which involves very different players, areas of law, and, in some instances, competing interests.”

It is well known that the law often lags behind new technologies. But in the case of psychedelics, current laws may be stifling scientific progress of an ancient technology, says Marks, senior fellow at POPLAR who is both a medical doctor and a law professor at the University of New Hampshire. Psilocybin, peyote, and ayahuasca, he notes, have been used as healing and spiritual aids by Indigenous communities for hundreds of thousands of years.

Though the federal Drug Enforcement Administration has long classified psychedelics as Schedule I controlled substances — meaning that they have no therapeutic value and a high propensity for abuse — about 20 years ago, the drive for better mental-health treatments prompted a fresh look at psychedelics. Given that it is possible to have frightening or unpleasant experiences using them, it is essential they be administered in safe and comfortable environments, explains Marks. With approval from the Food and Drug Administration, a restricted level of clinical research resumed. It produced such exciting results that in 2017, the FDA designated MDMA as a “breakthrough therapy” for PTSD, and it identified psilocybin as a breakthrough for treatment-resistant depression in 2018. That year, the book by Michael Pollan (who is now a professor in the Harvard English Department) “How to Change Your Mind: What the New Science of Psychedelics Teaches Us About Consciousness, Dying, Addiction, Depression, and Transcendence” rose to No. 1 on The New York Times bestseller list, and in 2019, a documentary film, “Fantastic Fungi,” extolled the benefits of psychedelic mushrooms in treating a host of illnesses.

Oregon became the first state to legalize the therapeutic use of psilocybin, in the fall of 2020, and at least eight cities, including Seattle, Denver, and Oakland, have taken similar steps. “The past two years have just been exponential in terms of shifting public norms,” Marks says. In 2020, he proposed that Petrie-Flom host an academic panel discussion on psychedelics. Held that October, it was one of the center’s best-attended panels, and the idea for POPLAR emerged.

“While we have seen a number of programs at prestigious medical schools focused on running clinical trials related to psychedelics, promising results will not be translated to therapy without overcoming several legal and ethical barriers,” says Cohen. “That is where our project comes in, the first of its kind in the world. It also allows us to examine the way legal choic-

As mental illness skyrockets and the development of new medicines stagnates, some look to an ancient treatment.

es will have huge social implications. For example, should we allow patents here and what will that do to access? How do we properly treat Indigenous traditions and ways of knowing that are at the heart of some of these practices?”

With FDA approval, a number of clinical trials and commercialization efforts are underway by several pharma companies for a variety of psychedelics, and the psychedelic drugs market is expected to reach nearly \$11 billion by 2027, according to Research and Markets. Psilocybin and MDMA are much further along in the FDA approval process than some others, Marks says, “but compared to 10 or 15 years ago, there’s just so much evidence of their value that it’s difficult to ignore.” Psilocybin, for example, has been tested by American and European drug companies in more people than some FDA-approved drugs, and its safety is impressive, he says. “People familiar with the data agree that psilocybin, specifically, has very, very low toxicity,” making it very difficult to overdose. A study in *The New England Journal of Medicine* found that compared with SSRIs, drugs that are widely used to treat depression and are taken on a daily basis, psilocybin was equally effective after just two doses.

“When it comes to the interface with the law, the time could not be better for examining psychedelics.”

Under existing laws, only well-capitalized private companies can fund research into psychedelics, says Mason Marks. POPLAR’s project lead, but related policy decisions should not be left to them, he believes.



However, the Drug Enforcement Administration continues to limit the amount of psilocybin and other psychedelics that can be produced each year, and because these drugs remain heavily stigmatized, federal funding for research isn’t easy to get. “Under existing laws, only well-capitalized private companies can fund this research,” Marks says. Yet growing evidence supporting the public health value of psychedelics, including their potential to alleviate the national overdose epidemic, means that policy decisions shouldn’t be left to private companies but should include physicians, scientists, and the public, he insists.

No one fully understands exactly how psychedelics work, although they appear to foster neurogenesis, the growth of new brain cells, and some postulate they affect a brain system called the default mode network, where self-critical thoughts can become stuck. But no one really understands how SSRIs and many other drugs work, either, he says.

POPLAR is examining the ethics and legality of administering these drugs and is currently partnering with the Oregon Psilocybin Advisory Board, appointed last March by Oregon Gov. Kate Brown, to develop a framework for the therapeutic use of psilocybin. Marks, who also serves on the board, says POPLAR’s work will help policymakers in Oregon and beyond evaluate questions related to the legality and social impact of psilocybin therapy.

U.S. Congressman Earl Blumenauer (D-Ore.) delivered opening remarks at POPLAR’s first conference, “Introducing POPLAR: The Future of Psychedelics Law and Regulation,” in early October. The project also hosted an event on ethics in psychedelic therapy and research in November and will hold another on trauma and psychedelics in late February. It has hired a new research fellow, David Angelatos, and has produced a number of research papers on a variety of subjects, from the IP law issues of psychedelics to ethics in research and therapy. Cohen and Marks wrote an article, “Psychedelic therapy: a roadmap for wider acceptance and utilization,” published Oct. 4 in *Nature Medicine*. And Marks, later that month, published an essay in *Scientific American* on the law and science of moving psilocybin from Schedule I to a less restricted category at the federal level. In February, the *Harvard Law Review Forum* will publish Marks and Cohen’s article on patenting psychedelics.

One issue that any jurisdiction that legalizes psychedelics will face is that manufacturers and service centers will find it “very, very expensive to enter the market,” says Marks. Treatment will also be expensive, he adds, and it’s essential to figure out how marginalized communities, which were devastated by the War on Drugs, can participate in the nascent



Professor I. Glenn Cohen says the HLS project's focus on the law and ethics of therapeutic psychedelics is unique.

industry. “It’s a big question we’re trying to figure out in Oregon,” says Marks, who notes that social-equity programs in the cannabis industry have “failed miserably.” Intellectual property is a huge issue, too, because many companies are already seeking and receiving patents, some for “inventions” that have been used by Indigenous people for millennia. “Many members of this community feel it is a form of bi-piracy to take that knowledge without compensation or acknowledgment,” he says. “How to address that through the legal system is a big question.”

Overall, Marks is excited about the possibilities for the future. “What psychedelics represent, for me, is the most meaningful and promising innovation to come along in decades, or maybe ever, and what’s so incredible about that is that they were here all along,” he says. “When you think about the burden on society of these conditions, you’re talking about literally hundreds of billions of dollars, and the disease burden is immeasurable. I don’t know that psychedelics are going to solve that problem, but if they can even take a sizable chunk out of it, that’s incredible progress.”

In 2020, Oregon became the first state to legalize the therapeutic use of psilocybin.



FAITH

In the fall of 2011, during his first year of law school, Elliot Schwab '14 attended a talk on the interplay between democracy and religion. Energized by the event, Schwab, along with a handful of other students, approached Professor Noah Feldman with the idea of creating a Jewish law reading group.

Feldman immediately saw the potential and was game. "The basic idea was that by looking at classical Jewish texts through the lens of contemporary legal theory, it was possible to deepen one's understanding of both," he says.

Feldman found a range of collaborators who were

IN

THE LAW

Four distinct programs pursue research and address current topics linked to the intersection of religion and law

BY ERIN PETERSON
ILLUSTRATIONS BY
ANTHONY RUSSO



happy to support the fledgling effort, but he acknowledges that it relied more on raw enthusiasm than on financial resources to keep itself afloat. “All we brought to the table was our bright-eyed, bushy-tailed selves,” he jokes.

That scrappy spirit eventually led to bigger things: In 2015, thanks to generous support from Mitchell Julis '81, Harvard Law School established the Julis-Rabinowitz Program on Jewish and Israeli Law.

Today, the program still includes the Jewish law reading group. It's also responsible for an array of even more ambitious events and activities, including a major annual conference that attracts experts and leaders from around the world. Last year's conference, “What is the Mishnah?,” included speakers from universities from several countries and attracted hundreds of attendees for many of the virtual sessions.

The Julis-Rabinowitz Program is just one of four programs focused on the intersection of law and religion at Harvard Law. The others are the Program on Biblical Law and Christian Legal Studies, the Program in Islamic Law, and the Program on Law and Society in the Muslim World.

These vibrant programs bring together scholars, researchers, and other experts to work on ideas and innovations within the fields of law and religion. They illuminate some of the foundational ways that religion and law have interacted over time. And they offer valuable perspectives on some of the most important events and trends currently shaping our world.

The programs also offer a way for many in the HLS community to explore the links between their personal identities and the legal profession. “When we think about what it means to be a person of integrity, part of that means integrating your personal values into your professional life,” says Natt Gantt '94, executive director of the Program on Biblical Law and Christian Legal Studies. “These programs can help students and others find that integration.”

ILLUMINATING ESSENTIAL PERSPECTIVES

A Pew study found that 84% of all people worldwide identify with a religious group, and for many, their faith is a core part of their identity. Historically, many legal institutions and concepts have some antecedents rooted in the history of religious institutions. For example, says Professor Ruth Okediji LL.M. '91 S.J.D. '96, faculty director of the Program on Biblical Law and Christian Legal Studies, “The common law of England was developed over centuries by judges, many of whom were formally trained in the Christian faith, and English canon law drew heavily from biblical law. Biblical law was important, among other things, in shaping English inheritance laws, in the creation of cities of refuge in criminal cases, and in the practice of debt cancellation. In addition to this historical influence, biblical

Program in Islamic Law

DIRECTOR: *Intisar Rabb*

NOTABLE PROJECTS: The SHARIAsource portal (<https://pil.law.harvard.edu/shariasource-portal/>) is a set of geographically and historically organized digitized texts and data science tools that enable researchers to study Islamic law's vast history; the Islamic Law Blog (<https://islamiclaw.blog/>) offers weekly roundups on topics including scholarship, COVID-19, and Islam and data science.

HIGHLIGHT: In September, the Program in Islamic Law announced a collaboration with the Library of Congress to focus on the legal analysis of the library's collections related to Islamic law.

IN HER WORDS: “AI and data science tools will never replace a researcher or a lawyer. But tools like the ones we're developing at the SHARIA-source Lab can help them navigate a vast and exciting array of history and texts as data. This can inform the research and conclusions that we're able to make about the making and interpretation of law, about values behind law, and about social history surrounding existing law and new legal developments.” –Intisar Rabb

LEARN MORE: <https://pil.law.harvard.edu/>



| Intisar Rabb

law remains relevant to pressing societal challenges today,” Okediji continues. “Modern anti-slavery and environmental stewardship campaigns, for example, draw significant moral power from biblical texts. The relevance and lasting purchase of biblical law are evident in many of our social practices and political commitments, such as the structure of the working week, equality under the law, the idea of rest (Sabbath), and constraints on political authority.” She notes that “law and theology are both concerned with questions of guilt, innocence, mercy, forgiveness, and judgment. To study biblical law is to study materials that illuminate the context and texture of our cultural and legal DNA, and that contribute to a deeper appreciation of how law develops over extended periods of time.”

While Christianity is the largest religion in the United States, the nation also has the second-largest Jewish population in the world (behind only Israel). Says Feldman: “Jewish law is one of the oldest, most significant, and most complex systems of law in the world. It is both religious and general, theoretical and practical.”

Moreover, Professor Intisar Rabb, director of the Program in Islamic Law, notes that nearly a fifth of the world’s population is Muslim. “The study of Islamic law is something of increasing consequence and importance for the study and understanding of law generally,” she says. “For Harvard, which has a global footprint, these programs are an essential part of the school.”

IT’S OPENING UP UNIQUE POSSIBILITIES

Among their many pursuits, these programs fuel innovation in their respective fields through creative projects, collaborations, and connections. From using the latest tech tools to mine sources from hundreds of years ago, to bringing people together in unexpected combinations to dream up new ideas, the programs provide participants with opportunities to think big about what is possible.

Take, for example, SHARIAsource, the flagship project of the Program in Islamic Law launched by Rabb in 2015. SHARIAsource leverages data science and artificial intelligence tools to make it easier to do contextual searches across some 1,400 years’ worth of Islamic law sources.

SHARIAsource can help streamline research that might take years — or allow scholars to ask questions that might otherwise have been too complex to analyze without it.

Rabb herself is a case in point. She did wide-ranging analysis on the principle of reasonable doubt in Islamic law as part of her Ph.D. research and a book project years ago, and she says the Courts&Canons tools on SHARIAsource — which include SEARCHstrata for better finding sources in the HLS Library catalog, the CnC Data-Entry tool for researchers, and

Program on Law and Society in the Muslim World

FACULTY DIRECTOR: *Kristen Stilt; Associate Director: Salma Waheedi*

NOTABLE PROJECTS: Stilt’s latest book project is “Halal Animals: Food, Faith, and the Future of Planetary Health.” Other scholars have focused on issues including gender and women’s rights, marriage and intimacy, and free speech and identity politics.

IN HER WORDS: “We think of this program as a space to incubate innovative research that has contemporary relevance and an impact in the world, and we complement our scholarship with events and convenings that engage our students and prepare them for careers in the field.” —Salma Waheedi

LEARN MORE: <https://pls.law.harvard.edu/>



| Kristen Stilt, Salma Waheedi

CnC-Qayyim for data visualization — would have transformed and significantly trimmed her research process. “It took me 10 years to absorb the principle across time and place,” she says. “Tools like the ones we are building on SHARIAsource would have made the work far less arduous.”

With the support of a global team of advisers, scholars, and editors, SHARIAsource continues to get more powerful. “AI and data science are relatively young fields,” says Rabb, “but it’s opening up unique possibilities for scholars.”

Program on Biblical Law and Christian Legal Studies

FACULTY DIRECTOR: *Ruth Okediji LL.M. '91 S.J.D. '96; Executive Director: Natt Gantt '94*

NOTABLE PROJECTS: Law and Faith Lecture Series, Ethical Formation for Lawyers, Theologian-in-Residence, Daniel Fellows, research and writing symposia on topics at the intersection of law and faith, as well as a range of speakers and events

IN HIS WORDS: “Law students need to develop an internal moral compass because lawyers are leaders who face difficult ethical decisions. Our program seeks to help students develop this internal grounding.” –Natt Gantt

LEARN MORE: <https://pblcls.law.harvard.edu/>



| Ruth Okediji



| Natt Gantt

In the Program on Law and Society in the Muslim World, led by Professor Kristen Stilt, innovation is fueled through its robust visiting fellow program and related programming, which attract both established and emerging scholars.

Topics that fellows and speakers have addressed in their work have included everything from LGBTQ issues and migrant rights to animal-related and environmental issues. “These are not conventional topics in Islamic legal studies,” says Stilt, “which is exactly why we think it is so important to foster them here. Our program supports innovative, cutting-edge ideas; provides a space where people feel comfortable taking intellectual risks and testing ideas; and brings together a cohort of fellows who encourage each other to do the best work possible.”

For Andrew Bush, a visiting fellow for the program in spring 2020 and spring 2021, it deeply influenced his research on the ways that Iraqi law, and earlier Ottoman law, adjudicate questions of marriage and divorce for Muslims. “PLS gave me the time and space to think patiently with others,” he says. “I engaged with scholars trained in anthropology, history, and law, as well as scholars working on Islamic literature. The office space we shared, and then even the virtual space we shared as the pandemic set in, allowed for extended engagement, sharing works-in-progress at various stages of development, and follow-up conversations over the long term.”

KEEPING ABREAST OF WHAT'S NEW

HLS's programs on law and religion can help their participants dig deep into the past — but they also have a lot to say about the current state of the world. Through speaker events and reading groups, blog posts and conferences, these students use the combination of religion and law to understand and respond to today's news.

The ongoing pandemic is one such topic. While it has opened up all sorts of seemingly novel legal questions, Feldman notes that many of them aren't so novel after all. For example, Jewish legal authorities have been addressing certain aspects of pandemics through the lens of the Talmud, the primary source of Jewish religious law, for hundreds of years — including during periods of history when pandemics and epidemics were far more common than they are today. “By exploring these sources, we are able to contextualize a set of questions, and use them to think about contemporary legal questions,” says Feldman. “What should the law do in the condition of pandemics? Should the law mandate that people stay home? What should the law do about people who want to attend religious services?” (It turns out, he says, that the legal arguments for and against lockdowns and service attendance were as varied then as they are today.)

The Program on Biblical Law and Christian Legal

Studies facilitates the study of biblical law within the broader context of legal pluralism. Many students at HLS are eager to understand and engage with competing accounts of the purpose, function, and limits of law. And for law students there is a clear parallel between reading biblical canon and understanding how lawyers handle doctrinal sources of law, even if different motivations compel the study of each. The program offers a unique opportunity to study a spiritual jurisprudence that still exerts tremendous influence in our public discourse. “Whether or not one is personally committed to the Bible, studying biblical law can be richly rewarding because it adds depth to one’s understanding of law more generally,” says Okediji. “[The Bible] is rich in wisdom, ethical insights, and practical tools that provide different lenses through which to view legal rules and the administration of justice. Students learn to examine ideas from the Bible that can enrich our pluralistic society. Students who attend public lectures, take classes, or join reading groups offered through the program are exposed to a broader understanding of law, the role of lawyers, and the ethical rules to which the profession is expected to adhere.”

Meanwhile, the Islamic Law Blog regularly covers disparate and timely topics such as COVID-19, data science, and finance. “It’s a way of having rich, ongoing conversations,” Rabb says. “It’s a great way for anyone — ranging from students to comparativists to members of the general public — to keep abreast of what’s new with respect to Islam and law.”

The blog is gaining notice: More than 100 different people have written posts on the site. More generally, the program’s collective online reach over time — through the blog, web-based events, and social media — has zoomed into the hundreds of thousands over the course of the pandemic.

FUELED BY PASSION

For many of the participants in the programs, their involvement is about more than fueling academic work or a career — it’s a deeply personal pursuit. As a recent Daniel Fellow for the Program on Biblical Law and Christian Legal Studies, Isaac Sommers ’21 helped organize an array of program activities, from guest lectures to events featuring public readings of Scripture.

Today, he continues to feel deeply grateful for the program as he plans for the kind of work he wants to pursue. More than just a network of friends and colleagues, he says it was a way for him to think deeply about bringing the values of his Christian identity into his work. He notes, for example, that he has sought out opportunities to promote the values of human life and human dignity, such as doing legal work defending people on death row.

Elliot Schwab, meanwhile, has been more than just an enthusiastic cheerleader as the Julis-Rabinowitz

Julis–Rabinowitz Program on Jewish and Israeli Law

DIRECTOR: *Noah Feldman*

NOTABLE PROJECTS: Recent conferences have included “Mizrahi Legal Studies” and “Progressive Halakhah.” The 2021 conference, “What is the Mishnah?,” drew up to 500 people per session over Zoom.

IN HIS WORDS: “We have tremendous convening power through the combination of personnel and resources. We’ve been able to put on extraordinary conferences that bring scholars, experts, and public figures from all over the world.” –Noah Feldman

LEARN MORE: <https://pjil.law.harvard.edu/>



| Noah Feldman

Program on Jewish and Israeli Law has grown and thrived.

After helping nurture the early version of the program as a student, Schwab has gone on to become a leading voice on Jewish schools and secular education. In 2019, he returned to campus as a participant in a panel discussion hosted by the program about secular education in Orthodox yeshivas. “My perspective in this area was informed, and my engagement was inspired, by my experiences in the program,” he says.

In a way, it was a full-circle moment that represented exactly what these programs were designed to do: They bring together people with expertise and experience to explore the intersection of religion and legal thought. And they help individuals find their place within this context so they can flourish.

RELIGIOUS LIBERTY IN PRACTICE

The Religious Freedom Clinic gives students real-world experience representing clients on matters involving religious liberty and the First Amendment

Harvard Law School's Religious Freedom Clinic, launched in the fall of 2020, complements the school's four programs on law and religion and gives students direct insight into the ways the Constitution and laws more generally protect religious freedom. Students in this new clinic have had no shortage of meaningful cases.

In one, students represented a Muslim member of the U.S. armed forces who sought a religious exemption from a prohibition on growing a beard. In another, they represented a Messianic Jewish inmate who was denied kosher food. A third centered on a woman whose hiring was contingent on her signing a state-mandated loyalty oath that contradicted her beliefs as a Jehovah's Witness.

The range of cases that students take on is a testament to the important and sometimes unexpected ways the principles of religious freedom intersect with the law,

says Josh McDaniel, the clinic's director and visiting assistant clinical professor of law. "Religious liberty is at the center of so much that is going on in the Supreme Court and in society," he says. "It's also an issue that offers a lot of learning opportunities for students. They can grapple with complex areas of law with a lot of countervailing interests that are at stake and clients who come from a diverse group of backgrounds and experiences."

At the same time, through these cases, students learn to interview and counsel clients, develop effective case theories, and write and advocate for the people they represent. "Our goal," McDaniel says, "is to give students tools and hands-on experience that will be fully transferable to their future legal practice, whatever form that might take."

Though the clinic is still in its early days, it's already having an impact. For example, the students representing an inmate in an Oklahoma prison whose kosher diet had been revoked participated in a successful mediation with the state of Oklahoma. "We were able to broker a settlement that will result in policy changes for religious diets in prisons on a statewide basis in Oklahoma," says McDaniel.

And while he says direct client work is central to the clinic's portfolio, students also tackle a variety of other projects, including work on amicus briefs. This past semester, for instance, they filed three such briefs with the Supreme Court of the United States.

One was in *Ramirez v. Collier*, a case about whether a spiritual adviser could audibly pray for and touch an inmate in the execution chamber. As part of their work on the case, students Tyler Dobbs '22 and Kyle Eiswald '23 dug into the history of the roles played by ministers who were present during executions in the 17th and 18th centuries. (The ministers gave sermons, hugged the condemned, and even held their hands up until the final moments of the execution.) "[Their research] was discussed in the oral argument in the Supreme Court, which was a great experience for the students," says McDaniel.

McDaniel hopes that the clinic will help students understand the deeper issues about law and religion — the core principles that often unite more than they divide. "A lot of religious liberty [cases] are really about somebody seeking a simple accommodation in the workplace, or a prisoner seeking the ability to practice their religion while being incarcerated," he says. "And these are cases that everyone — right, left, and center — can rally around."



Josh McDaniel, director
of the HLS Religious
Freedom Clinic



Maverick in the Middle

By Lana Barnett '15

Photographs by Tony Luong

Randall Kennedy
seeks nuance in an
age of absolutism

When Harvard Law Professor Randall Kennedy was a boy, his father, Henry Kennedy, drove a truck for the U.S. Postal Service. As part of his duties, Henry carried a gun. One day, a police officer saw him and warned him that in that area, Black people weren't allowed to have guns. A tense standoff ensued, ending in Henry speeding away all the way to Washington, D.C. From there, he called Kennedy's mother and told her to pack up: They were moving.

"My family history has been profoundly influential on my views on race," said Kennedy, who noted in an interview with *The Harvard Gazette* that race was a constant topic of conversation in his household when he was growing up. "I was born in Columbia, South Carolina, but I grew up in Washington, D.C., because my parents were afraid for their future in South Carolina. I asked my father once why he moved. His response to me was, 'Because either a white man was going to kill me or I was going to kill a white man.'"

Kennedy was deeply impacted by his father, whom he calls in his seventh and latest book, a "racial pessimist through and through." "Say It Loud!: On Race, Law, History, and Culture" is a collection of almost 30 essays written over the last three decades, in which Kennedy grapples with how experiences — from his own family's racial persecution, to the election of the United States' first Black president, to the murder of George Floyd — shaped his views on the central racial issues of our times. The essays trace Kennedy's uneasy transformation from a confident optimist regarding America's progressing path toward racial justice, to someone who "evinces[] hopefulness largely out of habit and a forlorn yearning on behalf of [his] children" but who does not expect in his own lifetime "to glimpse, much less enjoy, a progressive racial promised land."

Born in the Jim Crow South in 1954, just four months after the Supreme Court decided *Brown v. Board of Education*, Kennedy witnessed the end of legal segregation. He spent his childhood summers in South Carolina, where he remembers he could not enter any public parks, because local officials had chosen to close them rather than obey orders to desegregate.

Transcending racism and segregation, Kennedy's parents raised three children who would each go on to graduate from Princeton University and then pursue legal careers. Kennedy flourished in his chosen field: After graduating from college, he studied at Oxford University on a Rhodes Scholarship, then earned a law degree from Yale. He clerked for Supreme Court Justice Thurgood Marshall, whose name had been a fixture in the Kennedy household. Henry Kennedy had often spoken about having watched Marshall argue a case in a district court. He'd been amazed to see a white judge call the lawyer "Mr. Marshall," a title never bestowed upon Black men in the Jim Crow South. In an interview for the *Bulletin*, Kennedy de-

scribed introducing his father to Marshall, on the penultimate day of his clerkship, as one of the most meaningful experiences of his life.

After completing his clerkship, Kennedy joined the HLS faculty in 1984, and he has remained there ever since. HLS Professor Martha Minow interviewed him for a faculty position. "I remember being dazzled," she said. "He was just so filled with ideas."

Reflecting on how much the world has changed since his childhood summers in South Carolina, Kennedy believes that though race remains a key and central issue in the United States, questions of race loom less large than they did in his youth. He cited one simple example: When he was growing up, if he wanted to sleep over at a friend's house, the race of the friend would inevitably come up and be a "big deal" in his house. For his three children, all born in the 1990s, none would think to mention the matter.

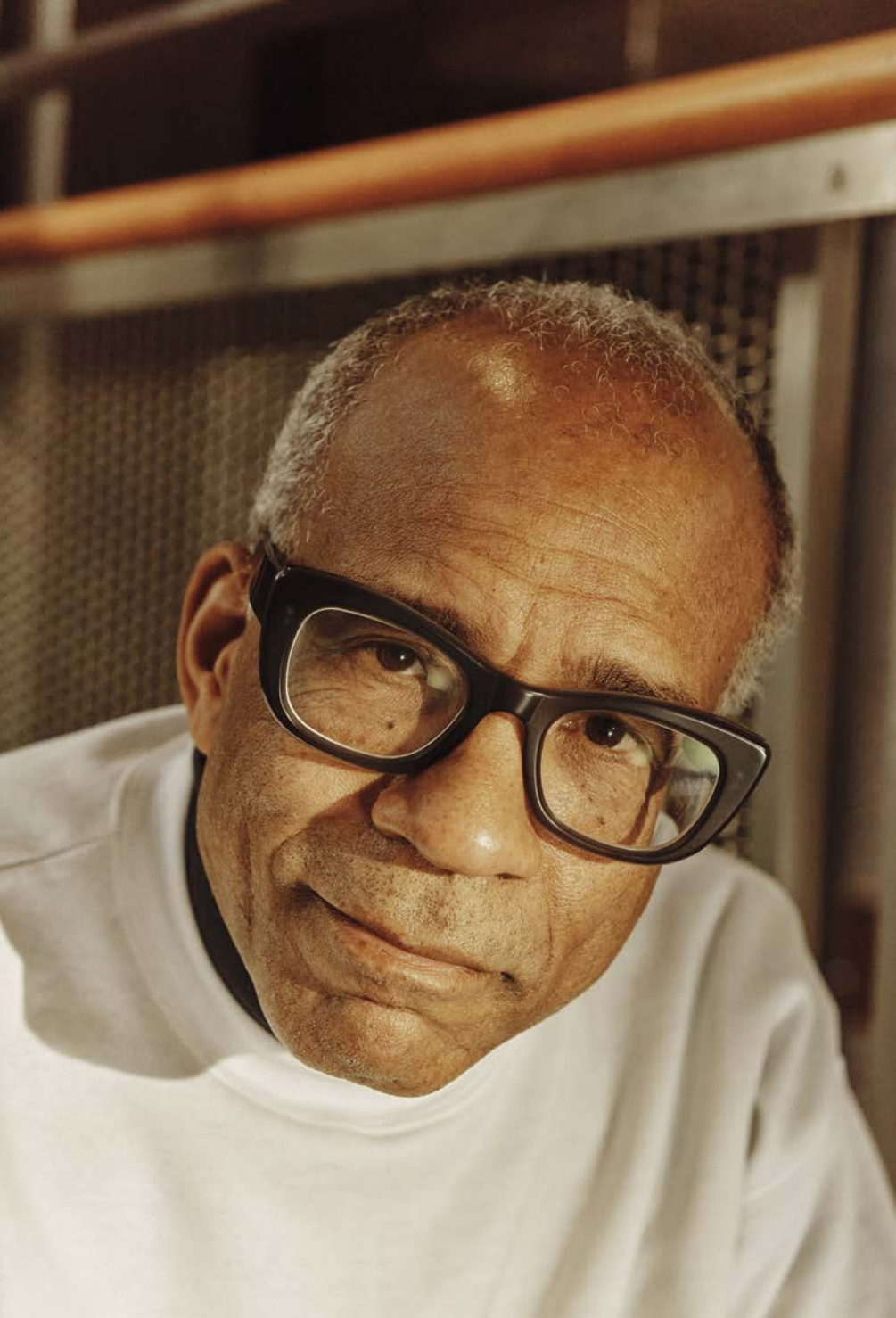
Such evolutions in his everyday, personal experiences, coupled with major public milestones such as the ascension of Black Americans to the upper echelons of government, academia, corporations, and the military, led Kennedy for some time to feel sanguine about his general outlook on American race relations. He was confidently optimistic that the United States would continue to become a more just and equal society, even while he remained sharply aware of the limits to racial progress. For Kennedy, the last few years have been deeply eye-opening.

In the collection's longest essay, Kennedy explores how his lifelong optimism stood in stark contrast to the pessimism embodied by former HLS Professor Derrick Bell, who joined Harvard Law School in 1969 and became the school's first tenured Black professor in 1971. Bell originated the Race, Racism, and American Law course at HLS, which Kennedy inherited when Bell left Harvard in protest over the law school's lack of faculty diversity at the time. As Kennedy notes in the unflinchingly honest and self-aware essay, Bell was deeply critical of how Kennedy later taught the course: He accused Kennedy of spending too much time challenging civil rights positions by delving into contrasting viewpoints rather than arming his students with winning arguments on favored policy positions.

Bell passed away in 2011, so he would never learn that in the end, Kennedy has had his core beliefs upended by recent events. Followers of Bell, Kennedy concedes, would have been far better prepared for the deep racial divides that swept into the foreground during the election and presidency of Donald Trump. "The last few years have been full of disappointment, full of trepidation, full of menace," Kennedy said. "I thought that there were certain things in American life that were securely in the past. Tragically, I was wrong."

"Say It Loud!" is a quieter book than its title might

"I don't mind changing my mind and I don't mind saying I was wrong."



suggest. Kennedy rarely seeks to convince his readers of self-evident truths or rally them into unwavering positions. His research cites historical writings and anecdotes, statistics, and contemporary divisions to explore why issues are hard, not why they are easy.

According to Minow, his longtime colleague, these writings embody what sets Kennedy's scholarship apart. "He is a public intellectual of the first order in the United States in a time of enormous division and polarization," she said. Minow has long been struck by Kennedy's "openness to different points of view, ability to put emotion aside and just talk through issues, his willingness to see the other side even when he has

Randall Kennedy once advocated what he called "mandatory optimism" — but not anymore.

a strong view, and his courage. Frankly, we could use a lot more of what he brings to the world."

Kennedy once advocated what he called "mandatory optimism," an obligation for those espousing progressive politics to display hopefulness in order to maintain morale. But recently, he has begun to abandon his former position, preferring a more direct approach that avoids predicting how others may react to his views. He wants to be free as an intellectual to say what he thinks "and actually be free of the burden of being really concerned about the consequences." His comfort with bucking trends has made him hard to pigeonhole, and his ideas have resonated, at different times, with people across a range of perspectives.

In an era when universities are quick to rename or rebrand buildings or symbols that honor bygone figures with problematic views, Kennedy questions whether such actions are always truly necessary, and where universities should draw a line. In one essay stemming from a 2019 *Nation* article, he argues that Supreme Court Justice Clarence Thomas turned his back on the Black community by using his position of power to take positions that undermine efforts that Kennedy believes would promote racial equality. In the book's very next essay, which draws on articles published in 2018 and 1997, Kennedy critically examines the song from which his book takes its title, James Brown's classic anthem of Black pride, contending that there is danger in seeking solidarity borne of traits that are inherited — such as race — rather than earned or acquired.

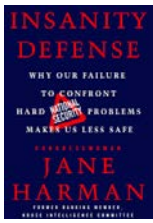
Kennedy recognizes, and at times seems to cherish, the tensions inherent in his sometimes conflicting and evolving views. "Social relations are complex and messy," he explains in the preface. And in Kennedy's view, carefully exploring tense and difficult issues is exactly what public intellectuals are supposed to do, even if that means refining or even rejecting their own prior positions. "People who have the great privilege of living their lives in an academic setting, where you're constantly reading, you should be thinking and rethinking," he said. "I don't mind changing my mind and I don't mind saying I was wrong. There's no sin there."

Recent Alumni Books



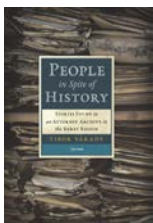
“The Zyprexa Papers,” by Jim Gottstein ’78 (*Samizdat Health*)

As an attorney in Alaska representing people diagnosed with serious mental illness, Jim Gottstein provided documents to *The New York Times* that became the basis for an exposé. It contended that Eli Lilly had suppressed information that its antipsychotic drug Zyprexa was linked to negative health outcomes including diabetes. The book chronicles his legal fight against Lilly, his advocacy for a psychiatric patient who was forced to take the drug, and the patients who helped ensure that information about the drug was available to the public. The founder of the Law Project for Psychiatric Rights, Gottstein also details his personal experience with the mental health system.



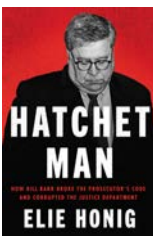
“Insanity Defense: Why Our Failure to Confront Hard National Security Problems Makes Us Less Safe,” by Jane Harman ’69 (*St. Martin’s Press*)

Former Congresswoman Jane Harman offers her analysis of policy missteps of presidential administrations and recommends changes to bolster national security. Problems began, she contends, when defense and intelligence spending was cut after the end of the Cold War without a strategy to face future threats, and then continued with the response to the 9/11 attacks, including the treatment of enemy combatants and the failure to prevent subsequent terror attacks. She calls for Congress to stop presidential overreach and for government officials “to do the right thing even when there is no great political benefit and when there is potentially a real political cost.”



“People in Spite of History: Stories Found in an Attorney Archive in the Banat Region,” by Tibor Várady S.J.D. ’70 (*Central European University Press*)

When Tibor Várady began looking through more than 100 years of files of his family’s law firm in a Serbian city in the Banat region of Eastern Europe, he found not only client information. He uncovered a history of the people of the region during world wars and under control of multiple states. The author recounts the prosecution of those who were accused of taking the “people’s property” during Communist rule, even of one man who slaughtered his own calf, and efforts to defend Jews, including sham divorces undertaken to protect the children of mixed marriages during World War II. The archives reveal what has been lost elsewhere, Várady writes: the everyday lives of those who struggled through events memorialized in history books.



“Hatchet Man: How Bill Barr Broke the Prosecutor’s Code and Corrupted the Justice Department,” by Elie Honig ’00 (*HarperCollins*)

When news broke that Bill Barr was nominated to be U.S. attorney general by President Donald Trump, Elie Honig commented on CNN that the nominee was qualified and respected. But Barr’s tenure as AG inspired Honig to re-

think his assessment in this book, drawing on Honig’s experience as a federal and state prosecutor. According to the author, Barr violated the prosecutor’s code, by lying to support the president, injecting partisanship into his work as AG, and imposing his own legal and philosophical views on the Justice Department. Honig offers reforms that he contends would restore the department’s independence.

“Perilous Medicine: The Struggle to Protect Health Care from the Violence of War,” by Leonard Rubenstein ’75 (*Columbia University Press*)

Previously president of Physicians for Human Rights and currently director of the Program on Human Rights and Health in Conflict at Johns Hopkins, Leonard Rubenstein presents case studies of violence against health personnel and institutions during wartime, including the stories of health care workers he has encountered over the 25 years he has been investigating the issue. He examines the logic of the perpetrators in conflicts in places such as Syria, where the Assad regime arrested and tortured health workers who treated protesters, and Yemen, where Saudi Arabia bombed dozens of hospitals. “It is not the inevitability of massive assaults on health care that allows the violence to continue,” he writes, “but the abdication of responsibility by those in a position to prevent and end impunity for them.”

“Flux: 8 Superpowers for Thriving in Constant Change,” by April Rinne ’04 (*Berrett-Koehler*)

Change is a constant in life. Yet for many people it is also disorienting and makes life more difficult. In order to thrive in a world of ever-increasing change, we need to reshape our relationship to uncertainty, writes the author. April Rinne advises people to establish a “flux mindset” to enhance the ability to see opportunity in change. Each book chapter details a different “flux superpower,” ideas such as “run slower” to reduce stress and enhance discovery. Her own experience with profound and tragic change, the death of her parents from a car accident when she was 20, informed the lessons she imparts in the book.

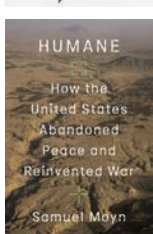
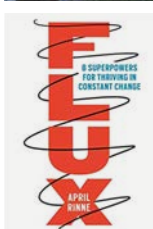
“Humane: How the United States Abandoned Peace and Reinvented War,” by Samuel Moyn ’01 (*Farrar, Straus and Giroux*)

The U.S. has made a moral choice to prioritize humane war rather than global peace, Samuel Moyn asserts. In his book, he examines the consequences of that choice and how the country shifted toward the seemingly contradictory idea of war that seeks to minimize violence. He chronicles efforts to abolish war arising from the mass casualties in 20th-century conflicts. The attacks of 9/11 spurred a focus on international law and limiting collateral damage, while the advent of technology such as drones “made belligerency more humane.” Even if this vision of war may cause less damage, we should not lose sight of its risks, he contends, including acceptance of too much war.

PERILOUS MEDICINE

The Struggle to Protect Health Care from the Violence of War

LEONARD RUBENSTEIN





A Position of Authority

The Supreme Court ‘must depend upon the public’s willingness to respect its decisions,’ writes Justice Stephen Breyer, based on trust that it is guided by legal principle, not politics

The chief justice of the Supreme Court of Ghana visited the Supreme Court of the United States several years ago and asked why the American public abides by the U.S. Court’s decisions. It’s an important question because any tribunal’s power depends on the public’s willingness to respect its decisions, writes Supreme Court Justice Stephen Breyer ’64 in his book “The Authority of the Court and the Peril of Politics.” Breyer (who announced his retirement, as of the end of the term, as the Bulletin went to press) also explores how the Court can continue to maintain its vital role as a check on the rest of the government and argues against structural changes like increasing the number of justices on the Court while defending the justices against charges that their opinions are driven by political ideology.

Adapted from the Scalia Lecture that the justice gave at Harvard Law School in April 2021, the book delves into historical decisions of the Court that he notes were not always followed, despite the fact that the *Marbury v. Madison* decision in 1803 embraced the norm of judicial review. For example, when the Court determined in 1832 that the Cherokee Indians had the legal right to control their territory in Georgia, the state simply ignored the ruling. The Court’s authority grew with the *Brown v. Board of Education* decision, as it provided

THE
*Authority of
 the Court
 and the Peril
 of Politics*
 STEPHEN
 BREYER

a catalyst for President Eisenhower to enforce integration with federal troops, and for civil rights leaders to fight for equality. Respect for the Court’s rulings became “virtually habitual,” he writes, exemplified by the acceptance — even by those who disagreed — of the controversial *Bush v. Gore* decision.

Yet the Court’s authority is now threatened, according to the justice, because of a growing public distrust of all government institutions and the increasingly common depiction of justices as “unelected political officials.” He counters that jurisprudential differences, not political ones, account for judicial disagreements. Judges as a whole “studiously try to avoid deciding cases on the basis of ideology rather than law,” he contends; instead, disagreements are based on emphasizing different interpretive tools, such as text and history or the consequences of a decision.

Justice Breyer concludes the book by offering ways those inside and outside the Court can preserve confidence in and respect for the institution. For justices, that includes not seeking popularity, offering clear explanations of opinions, and compromising when it is warranted. For the rest of us, he advocates civic education and participation, including meaningfully engaging with those with whom we disagree. “Trust in the Court, without which our system cannot function,” he writes, “requires knowledge, it requires understanding, it requires engagement — in a word, it requires work, work on the part of all citizens.”

Class Notes





For the Love of Jazz

A retired lawyer produces classic jazz radio program

"After practicing law for 50 years," **ALLAN BERLAND '63** writes, "I decided to retire in 2014 and devote my time to my love of jazz. At first, I wanted to open a cellar jazz nightclub, à la Village Vanguard, in the North Beach section of San Francisco. My wife dissuaded me from such an arduous undertaking at my age. I then discovered a radio station that invited the creation of jazz radio shows. That intrigued me, so I made a proposal for a program about the classic jazz of the 1950s and '60s. It was accepted. During the next five years, I did research, curated the music, and produced 40 one-hour programs. The show, called 'The Jazz Lounge,' started broadcasting just before I turned 80. Since not all of our listeners are knowledgeable about this art form, I endeavor to explain the music and the musician. I've now produced 50 shows and continue to produce new ones. They can be heard on the internet at radiosausalito.org on Friday nights, repeated on Mondays, 8-9 p.m., PST, until 2/21/22. I am looking for a new radio station for the show. Any ideas? Write to jazzlounge@earthlink.net."



JEREMY PORTJE/MEDIANEWS GROUP/MARIN INDEPENDENT JOURNAL VIA GETTY IMAGES

To Pittsburgh with Love

University president writes first novel



COURTESY OF DUQUESNE UNIVERSITY

KEN GORMLEY '80, president of Duquesne University and author of several nonfiction books, including a biography of **ARCHIBALD COX '37**, writes: "Now, after over 30 years of work, I've completed my first piece of fiction, 'The Heiress of Pittsburgh.' It's set in the little mill towns around Pittsburgh (with numerous flashbacks to Harvard Law School) in the late '50s and '70s, as seen by characters engaged in a courtroom battle over a multimillion-dollar estate in 2008. The novel's principal character is a Harvard Law School grad who relives key moments of his time at HLS as he questions whether he made the right choice in returning home to Pittsburgh to represent regular people in a small, unglamorous law firm. The book is intended to be a love story of sorts to Pittsburgh and a tribute to the qualities that existed in little working-class towns. It's also about the opportunities presented to someone admitted to HLS and the choices one must make along the way. There are elements of historical fiction in the book as well, so many of the scenes should evoke vivid memories for readers who lived through these times, including HLS grads." **SCOTT TUROW '78** has written that the novel "is a twisty, fulfilling legal thriller, in which the city of Pittsburgh takes center stage alongside a cast of memorable characters. The hold that the past has on the present, loves lost and found, the complex relationship between remembering and speaking the truth, are the themes that add power to a truly gripping story. Loved this book!" Gormley adds that he is donating all royalties from sales of the novel to a creative writing fund in the College of Arts at Duquesne. The former mayor of Forest Hills, Pennsylvania (a small community outside Pittsburgh), he lives there with his wife and family.

Sheryll Cashin's new book places geography at the heart of America's racial segregation and inequality

Race and Place

Caste is alive and well in the United States — and it starts with the very neighborhoods we call home. That's the uncomfortable truth **Sheryll Cashin '89**, professor of law at Georgetown University, asks us to confront in her new book, "White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality." And confront it we must, she says, to have any hope of dismantling it.

As a local government law scholar, Cashin has spent much of her career thinking about racial segregation and the law. "Residential segregation is another follow-on legacy of white supremacy," she says. "Each time this country seemed to put to bed a Black-subordinating institution, it created another one."

This is the origin of the high-poverty, low-opportunity areas to which many poor Black Americans are relegated, Cashin says.

But just as there is a direct line from slavery to segregation, there is a through line of resistance. This includes Cashin, born into a family of civil rights activists in Huntsville, Alabama. Her father, John Cashin, founded an independent party to enable Blacks to run for office and himself ran for governor against George Wallace in 1970. Cashin's mother was arrested during a sit-in with infant Sheryll in her arms, and Cashin herself, with her brothers, was a school integration pioneer. After graduating from Harvard Law School, Cashin served as a law clerk to U.S. Supreme Court Justice Thurgood Marshall and then as an adviser on urban and economic policy to President Bill Clinton, before joining the faculty at Georgetown.

"The most important value that my parents imparted was that you spend your waking hours doing things to uplift Black people who had a lot less than you did," says Cashin. "You can see that value system in my book. I wrote this out of love for the people I call descendants, African Americans trapped in high-poverty Black neighborhoods."

This geographic segregation, says Cashin, is not only a result of inequality, but also a producer of it — a space where many poor



"We have an opportunity to construct something new that is the opposite of residential caste," says Sheryll Cashin.

Black Americans are figuratively walled off from job opportunities, good schools, amenities like grocery stores and shops, and even, as in the recent case of Flint, Michigan, safe drinking water. She contrasts this systemic disadvantage with the mostly white, mostly wealthy areas where resources are abundant and jealously guarded.

Stark neighborhood inequality is no accident, argues Cashin. Overinvestment in white neighborhoods and underinvestment in Black ones have long been abetted by federal, state, and local governments; Baltimore, she writes, is a textbook example.

In the late 19th century, Black Baltimoreans could buy property and patronize stores freely, she says. But with the first wave of the Great Migration in the 1910s, the city institut-

ed racial zoning, followed by racially restrictive covenants on home sales. Later, Baltimore created segregated public housing, and city planning projects like urban renewal — which the author James Baldwin famously described as "Negro removal" — led to the displacement of families and communities. On a national level, New Deal programs aimed at supporting home ownership mostly did so to the exclusion of Black Americans, who suffered from practices like redlining — the systematic practice of denying mortgages in Black neighborhoods — and from racially restrictive covenants on new homes built with federal subsidies.

"To this day, the overwhelming majority of the neighborhoods unfairly marked by the government as 'hazardous' in the 1930s

are still marginalized,” says Cashin. And, she adds, once racism created and marked such neighborhoods, myths about the alleged pathologies of people who lived there justified additional policies — militarized policing, third-party surveillance — intended to keep them there.

Although Black Americans are most acutely burdened by geographic segregation, Cashin says that nearly everyone — aside from elites — loses out when opportunity is so unevenly distributed.

“Only a small percentage of the population can afford to buy their way into what I call ‘gold-standard neighborhoods,’ which have the best of everything,” she says. “People in concentrated-poverty, Black neighborhoods get the worst deal. But everyone who is excluded from high-opportunity neighborhoods, including working-class whites, is subsidizing those wealthy areas. Their golden infrastructure is largely paid for by taxpayers who are excluded.”

For Cashin, the point is to challenge readers to understand how something as seemingly innocuous as the street on which we were raised can dictate the course of our lives, particularly for Black Americans. Then, she says, comes the hard work of abolition and repair — words she uses to invoke the idea of transformative, ongoing change.

“Today we have an opportunity to construct something new, something that is the opposite of residential caste,” she says. “Seeking inclusion in neighborhoods and schools rather than exclusion, seeking racial equity in investment rather than opportunity hoarding. My hope is that we create a lot more places that promote social mobility for poor people, particularly poor Black and Latinx people. And that we finally change the lens in which we see poor Black Americans, from presumed thug to presumed citizen. Seeing them as three-dimensional human beings that are capable, that are assets — assets and agents in their own liberation.” —RACHEL REED

Gabriel Swiney was thousands of feet above the earth when he drafted rules to regulate future flights to the moon and Mars

To Infinity and Beyond

"I was heading back from Tokyo with a friend from NASA where we'd been negotiating this Gateway agreement for the creation of a space station that will orbit the moon," said **Gabriel Swiney '05**. But on the trip home they realized they needed a set of rules regulating the eventual return to the lunar surface. "We just started brainstorming on the 12-hour flight, exploring the kinds of questions we wanted to answer and some potential answers," said Swiney of the Artemis Accords, a set of rules designed to help govern the responsible exploration and use of the moon, planets, comets, and asteroids for peaceful purposes. "I wrote the first draft over the Arctic Circle, and when we landed, we emailed it to the White House."

The legal framework, which has been signed by 14 nations (as of this story's writing) since it became official in 2020, embraces a set of principles for the future of space travel, discovery, and research. The accords are grounded in a universal commitment to transparency and international cooperation, said Swiney, an international space lawyer for the U.S. Department of State, and expand in important ways on the values outlined in the Outer Space Treaty of 1967.

The earlier agreement, crafted just two years before the Apollo 11 flight first landed a person on the moon, is written "in very general terms," he said, and doesn't account for scientific advances in the intervening years that have provided more nations with the technical know-how needed to blast rockets into the galaxy. In the not-too-distant future, questions around mining rights on the moon, or what happens when two countries want to explore the same area of the lunar surface, or an asteroid, or Mars, will need to be addressed.

"We realized there was this whole set of issues that just didn't have answers," said Swiney. "And we saw that as a challenge, but also an opportunity to demonstrate American leadership in terms of setting the rules."

Those rules will help govern what nations,

and the private sector, can do in outer space. In recent years, companies such as SpaceX and Virgin Galactic have been working hard to ensure commercial shuttles to the edge of space and beyond will be available, and more affordable, in the years ahead. Swiney sees regulating such ventures without hampering their ability to innovate as a key part of his work.

"We want to come up with not only rules that respond to these early actors, but ones that are durable and that can scale and spread to other parts of the world," he said. "But we are also trying not to create so many rules in advance that we end up strangling these new industries."

But just how exactly does one get involved in developing a legal framework for the cosmos? It helps to have a longtime interest in the law, to have a passion for science, and to have attended Space Camp as a kid. For two summers Swiney spent a week surrounded by other young space enthusiasts at a NASA-run program. They passed their days listening to lectures by retired astronauts, scientists, and engineers; reading instruction manuals for the space shuttle; and taking part in simulated missions. "It was just the most fun thing ever," said Swiney, "and it really gave you a taste of what it would actually be like to work in the space sector."

With a trial attorney and judge for a father and his own strong mock trial record in high school and college, Swiney was well versed in the role of courtroom prosecutor by the time he arrived in Cambridge. But at HLS he gravitated toward international law.

"I realized that international law is so much less well defined than domestic law. There's so much ambiguity, so many gaps, so much work

Gabriel Swiney (center), an international space lawyer for the U.S. State Department



to be done to build the rules, not just apply them," said Swiney.

But HLS inspired more than just an interest in international legal theory. It also inspired romance. When classmates from his Section 6 dropped out of a camping trip in the early days of their first year, Swiney and his future wife, Chrystie Flournoy, went anyway.

"We didn't know each other that well when we started, but because it was just the two of us hiking and camping, we had two days of nonstop talking, and we completely fell in love," he said.

Since 2007, Swiney has served in the State Department's Office of the Legal Adviser, where he has worked on a range of topics, including peace treaties, environmental law, and the use of force in Iraq. His work in space law, he says, has allowed him to merge his experience and his passion to help future generations chart a safer, fairer path to the stars.

—COLLEEN WALSH

A World of Choices

Anna Spain Bradley writes on the process of decision-making in international law

Casting a skeptical eye on the “near-universal assumption that law and emotion must be kept apart,” **ANNA SPAIN BRADLEY ’04** explores how personal choice has influenced important decisions about international peace and security in her new book “Human Choice in International Law” (Cambridge University Press). The book explores research on neuroscience and cognitive science to help readers understand the judgments of people who create and shape international law. For example, she writes on how decision-makers on the U.N. Security Council were influenced by their values and beliefs when authorizing the use of force in Libya. Spain Bradley, now the vice chancellor for equity, diversity, and inclusion as well as a professor of law at UCLA, previously practiced international law as an attorney-adviser at the U.S. Department of State Office of the Legal Adviser, where she represented the U.S. before the Iran-U.S. Claims Tribunal in The Hague and as a delegate to the United Nations Compensation Commission in Geneva. She was inspired to write the book after she encountered an international judge whose court decided not to hear a genocide case based on complex legal grounds. The judge expressed to her that any emotions the judges on the court had about the case were inconsequential. But she argues that the science of the brain reveals that we cannot simply choose to ignore our emotions.



GLENN ASAKAWA/UNIVERSITY OF COLORADO

Jonathan Papik becomes the youngest justice in the history of the state where he grew up

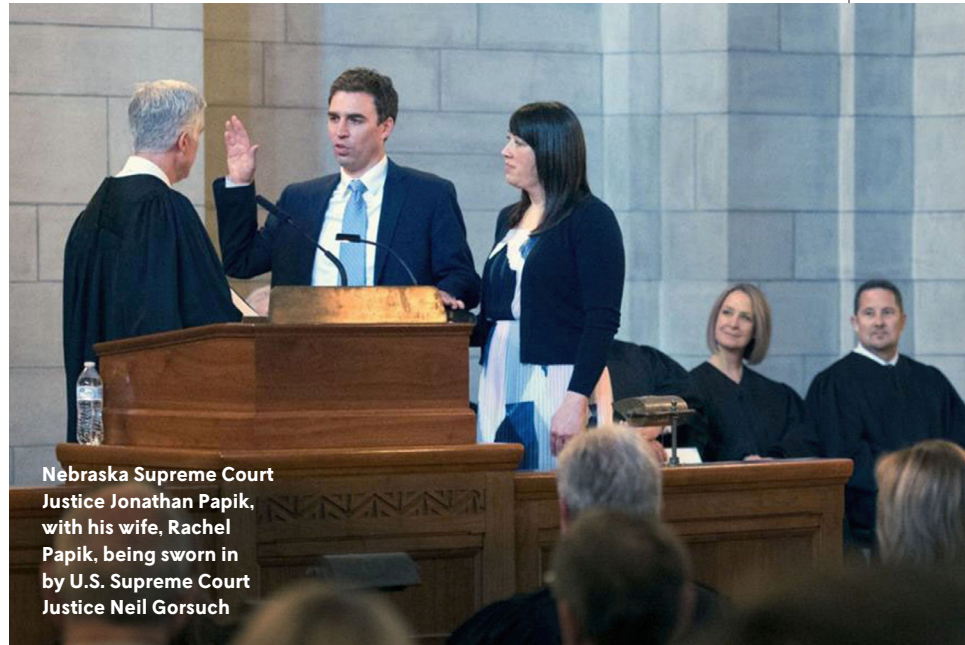
Home Court

As an attorney at Cline Williams Wright Johnson & Oldfather in Omaha, Nebraska, **Jonathan Papik '08** argued several times before the Nebraska Supreme Court, most recently in December 2017. The case was decided in his favor the next spring. Shortly afterward, he found out that it would most likely be his final argument before that court. His work was not done with the court, however. In fact, it had only just begun — from the other side of the bench.

In May 2018, Papik was sworn in as a justice on the highest court of his home state by U.S. Supreme Court Justice Neil Gorsuch '91, for whom he'd served as a clerk when Gorsuch was on the U.S. Court of Appeals for the 10th Circuit. Appointed by Nebraska Gov. Pete Ricketts, Papik became, at age 36, the youngest justice in the history of the Nebraska Supreme Court. At the investiture ceremony, Gorsuch outlined the essential qualities of a judge according to the Greek philosopher Socrates. He noted that some people take many years to achieve the Socratic standard and others just have it. "I am pleased to report," he said, "that Jonathan Papik just has it."

Papik considered whether he should apply for the position (in Nebraska, people apply for open state court seats to a judicial nominating commission, which recommends finalists to the governor) at a relatively early stage of his career and after he became partner at his firm. He was swayed by the knowledge that seats on the court, which in Nebraska are assigned by geographic districts, aren't often available, and by his feeling that he had something he wanted to contribute to the job.

His colleagues on the court helped ease his transition into the position and greeted him as an equal, he says, despite his lack of judicial experience. (The only time he's aware of being the youngest judge on the court, he jokes, is when a fellow judge occasionally has to explain an older movie or musical reference to him.) He enjoys the independence of the judicial role as well as learning about areas of the law that he hadn't worked on before in his legal practice.



Nebraska Supreme Court Justice Jonathan Papik, with his wife, Rachel Papik, being sworn in by U.S. Supreme Court Justice Neil Gorsuch

"I love legal analysis," he said. "I've been fascinated with it since law school, and there aren't a lot of jobs where your only job is to figure out what the law is and apply it to the facts without anybody from the outside pressuring you to take a certain position or view it in a certain way."

Papik became interested in serving as an appellate judge because of his experiences clerking for Gorsuch and U.S. Court of Appeals Judge Laurence Silberman '61. He admired their devotion to every case and their commitment to apply the law regardless of their personal opinions. "The law is something that is outside of my own personal feelings on what social policy should be or what the outcome of a particular case should be," Papik said. "It's not what I think the Constitution ought to be, but what did the people adopt." His interest in the work of the Supreme Court — along with the example of his father, who still practices as an attorney in

Papik's hometown of Stromsburg, Nebraska — inspired him to go to law school. He appreciated the diverse backgrounds of the student body at HLS and praised the faculty for "being engaging and introducing you to the law but also how to think about the law." Although he considered job opportunities in the larger legal markets that many of his classmates went to, he ultimately decided to return to his home state. Papik and his wife, Rachel, who is from Minnesota, had the first of their three children when he was clerking for Silberman, and they wanted to be nearer to family. There's a benefit to practicing law close to home, he says, including a familiarity with local culture and customs and businesses. Plus, he expected that a smaller market might give him more opportunities for meaningful work sooner than if he went elsewhere. As it turned out, he was sworn in as a justice on his home state's highest court almost exactly 10 years after he graduated from Harvard Law School. —LEWIS RICE

Philip B. Heymann: 1932 – 2021

For more than half a century, Heymann served the nation – and Harvard Law School – with distinction

When asked what he wanted to be remembered for, longtime Harvard Law Professor and former Watergate prosecutor Philip B. Heymann '60 replied: "Speaking truth to power."

For Heymann, who died Nov. 30, at age 89, that principle would define a life of teaching, scholarship, and public service at high levels during several presidential administrations.

In a New York Times obituary, his daughter, Dr. Jody Heymann, said: "He believed in government service. And even though he held positions of consequence, he saw himself as a civil servant. He believed that we all contribute to our government."

HLS Dean John F. Manning '85 said Heymann brought energy, honesty, integrity, and common sense to all he did. "Phil led a highly consequential life of teaching, writing, research, and service. His research and teaching, like his public service, focused on solving problems, using the law as a way to make our society and our polity work better."

After clerking for U.S. Supreme Court Justice John Marshall Harlan II, Heymann began his career in the solicitor general's office, serving under Archibald Cox '37. When in 1973 Cox accepted the appointment as special prosecutor in the Watergate scandal with the goal of restoring "confidence, honor, and integrity in government," among his first steps was naming his former student, Heymann, as chief assistant of the special prosecution team.

As assistant attorney general during the Carter administration, Heymann oversaw the Department of Justice's Criminal Division, where he supervised the investigation of the Jonestown Massacre and helped direct Abscam, a bribery sting operation which led to the convictions of seven members of Congress.

"Phil was widely admired, inside and outside the government, for his tough-mindedness, good judgment, and adherence to principle. And he was frequently consulted by administrations in which he was not serving — Democratic and Republican alike — on thorny issues that he had an uncanny ability to sort out," said HLS Professor Jack Goldsmith, a former assistant attorney general in the Office of Legal Counsel. "He believed in government's potential goodness but worried a lot about its foibles and abuses."

Heymann began teaching criminal law and procedure at HLS as a lecturer on law in 1969 and was named a professor in 1971. Drawing on his own expe-



Philip Heymann joined the HLS faculty in 1971.

rience, in 1987 he wrote "The Politics of Public Management," which explored how political appointees cope with the powerful political forces that surround them.

In 1993, Heymann returned to public service when President Clinton nominated him deputy attorney general under Attorney General Janet Reno '63. After seven months on the job, he resigned, citing differences in management style.

In a press conference the day after his resignation,

Heymann, who had operated as one of the administration's most senior criminal justice policymakers, criticized its multibillion-dollar crime bill and its provisions to impose mandatory minimum sentences for low-level drug offenders and lock up repeat offenders for life without parole.

After returning to HLS in 1994, he wrote and edited seven books and numerous articles on crime and terrorism. Among his most highly acclaimed contributions are his works concentrating on good policy responses to terrorism.

Heymann wrote "Terrorism and America: A Commonsense Strategy for a Democratic Society" (1998) and "Terrorism, Freedom, and Security" (2003), which argue that we must preserve our civil liberties and democratic values while fighting terrorism.

With Juliette Kayyem '95, senior lecturer at Harvard Kennedy School and former assistant secretary in the U.S. Department of Homeland Security, he directed a project to review some of the most difficult legal issues posed by America's security, convening experts across the political spectrum to devise clear rules to guide government action in a "war on terror."

They also co-wrote "Protecting Liberty in an Age of Terror" (2005). "Phil wasn't just an exceptional scholar and public servant. He was unapologetically optimistic, believed in the power of ideas, was energetic in all things, and loved a good laugh," said Kayyem. "For so many students and colleagues, he was the person who never doubted them," she added. "We are all lucky to have been in his orbit."

Lloyd L. Weinreb: 1936 – 2021

A leading authority on criminal and copyright law and legal philosophy, he improved the minds and lives of HLS students and colleagues

Lloyd L. Weinreb '62 is “one of the great figures in the history of our law school,” said HLS Dean John F. Manning '85 in a message to the community. During his half-century tenure at HLS, Weinreb was known nationwide as a leading authority on criminal and copyright law — and on campus as an HLS treasure, a professor whose classes were not to be missed and a wise and generous colleague. Weinreb passed away on Dec. 15, at the age of 85.

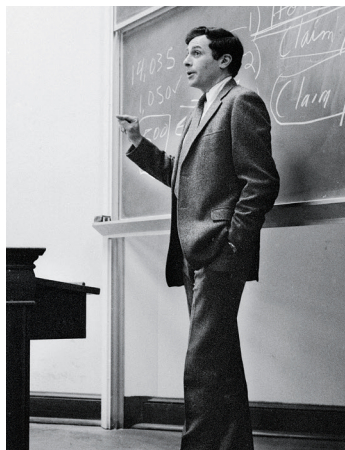
“He was a thoughtful scholar who deepened our understanding not only of the criminal justice system but also of the philosophical foundations of law,” Manning said. “And he was a great institutional citizen, taking on important and sometimes difficult tasks with care and integrity.” Manning also recalled studying with Weinreb: “He loved the law and all its complexity. He also loved learning along with his students.”

Another former student, current White House Chief of Staff Ron Klain '87, described Weinreb as “an incredible teacher and scholar who shaped generations of minds at Harvard Law School — and well beyond.”

“Lloyd Weinreb was a prince,” said Supreme Court Justice and former HLS Dean Elena Kagan '86. “As a student, I took his criminal justice class and found what countless others before and after me did: He was a simply superb teacher, for all the right reasons. He wanted students to think deeply about the hardest questions, and he made the classroom a place for doing just that. He was probing and thoughtful; somehow both profound and funny; demanding but encouraging too. When I began to teach, I thought of him often — mostly to wonder how he did it. And when I became dean of HLS, I learned to value him for still other qualities. I’m not sure he realized it, but he was the kind of person who holds an institution together. In so many matters, he was wise beyond measure, and a model of decency, civility, and grace.”

Born in 1936, Weinreb received a B.A. from Dartmouth College in 1957 and a B.A. in philosophy, politics, and economics from the University of Oxford in 1959 before earning his LL.B. from HLS in 1962. He clerked for U.S. Supreme Court Justice John Marshall Harlan II.

“Lloyd was not only an outstanding teacher and scholar but also, and more importantly, an exemplarily human being,” said HLS Professor Richard Fallon.



Lloyd Weinreb joined the HLS faculty in 1965.

“Within a year or two of my joining the faculty in 1982, he had become a mentor — the older brother that I never had — in virtually every aspect of my life. Lloyd was an inspiration to me in his meticulous attention to his students, his devotion to his family, his warm outreach to friends across many generations, and his breadth of interests. For the past 40 years, whenever I put down a book that I liked, I have invariably thought to myself that I must talk to Lloyd

about it, because talking to him about books and ideas was always great, great fun. He was also stunningly generous with his time and wise advice. Having the opportunity to be Lloyd’s friend was one of the great gifts of my life.”

Weinreb joined the HLS faculty in 1965, teaching Criminal Law, Criminal Procedure, Intellectual Property, Political and Legal Philosophy, and Jurisprudence. In the 1990s, he began teaching Copyright, and he published a much-discussed article on the subject in the *Harvard Law Review*.

In a *Bulletin* tribute on the occasion of Weinreb’s retirement in 2014, Fallon called attention to Weinreb’s rich intellectual life outside of the law. He spent most mornings studying classical Greek and was also a theater enthusiast, serving as president of the Abbey Theatre Foundation of America; he also wrote a few unpublished plays. “Although spectator sports hold no interest for Lloyd, it has sometimes seemed to me that nearly everything else does,” Fallon wrote.

Weinreb’s wide-ranging interests are reflected in his scholarship, including the magisterial “Natural Law and Justice” (1987), which traces the evolution of the natural law tradition through ancient Greece, to the age of Thomas Aquinas, to the present. A more recent work of legal philosophy, “Oedipus at Fenway Park” (1994), examines the concept of rights through the ages, from Greek mythology to modern disputes over gay rights and handicapped access. Weinreb also recently wrote a children’s book, “Erma Elephant and the Really Big Hole” (see Page 8).

Lani Guinier: 1950 – 2022

The first tenured African American woman at HLS, she devoted her life to justice, equality, empowerment, and democracy

During a celebratory event for Lani Guinier at Harvard Law School in February 2018, Columbia Law School Professor Susan Sturm invoked a phrase that was familiar to all of Guinier's family, friends, students, and colleagues in attendance. It was a line that Guinier often used when prodding her students into pushing harder and thinking deeper: "My problem is, if you stop there ..."

Guinier's work was underlined by that sort of determination, both nationally and at Harvard, and she was renowned for her scholarship, including the books "Lift Every Voice," "Becoming Gentlemen," "The Tyranny of the Meritocracy," and "The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy" (co-written with Gerald Torres). Guinier joined the HLS faculty in 1998, becoming the first woman of color to be a tenured professor at the school. Following a lengthy struggle with Alzheimer's disease, she died on Jan. 7, at age 71.

"Lani Guinier was a giant — a historic figure in American law and in the life of our law school. Her scholarship changed our understanding of democracy — of why and how the voices of the historically underrepresented must be heard and what it takes to have a meaningful right to vote," said Dean John F. Manning '85.

"Lani Guinier spent her career thinking about, and working for, the proposition that people, particularly those without power, should be able to participate meaningfully in the institutions that affected their lives," said HLS Professor Kenneth Mack '91. "Her work on voting and democracy — the work that would bring so much controversy — was all about the fragility of democratic systems. African American communities and their continuing struggles to participate were the 'miner's canary,' to use a term she later coined with Gerald Torres — evidence of largely unseen problems with the ability of many groups to engage with the democratic process." As a colleague and friend, Mack said Guinier modeled meaningful participation for others. "She'd ask questions of you that no one else would ask, and would always push you, sometimes in uncomfortable ways, to think more deeply about what you were doing and why you were doing it."



Lani Guinier joined the HLS faculty in 1998.

Guinier was born in New York City, the daughter of civil rights activist Eugenia Paprin and Ewart Guinier, a lawyer and union organizer of Jamaican descent. Her father attended Harvard College in 1929, the only Black student, and later taught at Harvard, serving as the first chair of the Department of Afro-American Studies.

Guinier earned a B.A. from Radcliffe College in 1971 and a

J.D. from Yale Law School in 1974. She clerked for Damon Keith, then chief judge of the U.S. District Court, Eastern District, Michigan. She went on to serve in the Civil Rights Division of the Justice Department in the Carter administration and to lead the NAACP Legal Defense Fund's Voting Rights Project.

In 1989, Guinier joined the University of Pennsylvania Law School, and she was one of its most highly regarded teachers.

She was also beloved by her HLS students, who conferred upon her the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence in 2002. Last year, her son, HLS Assistant Professor Nikolas Bowie '14, also received that honor.

Commenting on her teaching style, Guinier said: "Part of the challenge is not to be rigid, either rigidly collaborative or rigidly Socratic. I always have an ear cocked for a better way."

The most painful, and perhaps most public, incident of Guinier's career occurred in 1993 when President Bill Clinton withdrew his nomination of her as assistant attorney general for civil rights following what was widely perceived to be a politically motivated media campaign. "The irony is that it never occurred to me I would be walking into a public controversy when Clinton offered me the nomination," she told the Harvard Law Bulletin. "After that grueling experience, I was less worried about how I would fare if I were at the center of a public controversy."

University Professor and former HLS Dean Martha Minow cited this experience as an example of Guinier's exceptional ability to turn "negative and even potentially devastating experiences into occasions for deeper learning."

Jerome Rappaport: 1927 – 2021

A philanthropist who promoted civil discourse at Harvard Law School for more than 70 years

Jerome “Jerry” Rappaport ’49, who as a 19-year-old Harvard Law student helped to launch the HLS Forum, a storied speaker series, and who more than seven decades later was the impetus behind the creation of another HLS initiative to promote rigorous discussion of government and social issues on campus, died on Dec. 6. He was 94.

“Jerry personified and supported the values that are necessary for great academic institutions to be places of learning and growth,” said HLS Dean John F. Manning ’85. “A wise adviser to multiple deans, he will be sorely missed.”

In addition to supporting HLS, Rappaport was also an important benefactor of Harvard University, which included establishing the Rappaport Institute for Greater Boston. He also supported the Harvard Kennedy School, where he received an M.P.A. in 1963.

Rappaport, who began his career as a political activist and attorney and became a real estate developer and Boston philanthropist, co-founded the Phyllis & Jerome Lyle Rappaport Foundation, which supports the speaker series launched at HLS in 2020 that bears his name. The series has held discussions on topics ranging from “When is Speech Violence?” to “Reform of the Supreme Court?” to “Should Congress Enact H.R. 1?” to, most recently, on Dec. 2, “Stare Decisis and *Roe v. Wade*.”

He was still a student when he first advocated for Harvard Law School as a venue for engaged civil discourse on the most compelling topics of the day. He arrived at the school in 1945 at age 18, having already completed three years at Harvard College, and then began his legal studies as part of an experimental combined-degree program. As described in a Harvard Law Bulletin feature, “World War II had just ended, and there was a sense of urgency and idealism in the air. While he had not fought in the war, he and many of the veterans who made up Harvard Law School’s incoming class felt a strong sense of shared responsibility to ensure that a global conflict of such magnitude would never happen again.”

Rappaport approached HLS Dean James Landis ’24 with the proposal that the school sponsor a speaker series on issues that would shape the postwar world. In a piece he wrote on his founding of the forum, Rappaport described it this way: “My concern, which I discussed with Dean Landis, was that lawyers ended up in public policy positions after receiving legal



Jerome Rappaport started the HLS Forum as a 1L and continued to promote civil discourse at HLS through the speaker series that bears his name.

training in a virtual public policy vacuum. ... I thought it would be wonderful if Harvard Law School could sponsor a series of programs on the issues that were going to shape the world.”

Landis agreed. And by the spring of 1946, in the midst of the Nuremberg Trials, the Harvard Law School Forum hosted its inaugural meeting titled “War Crimes: Revolution in Legal Theory or Law Enforcement?” Rappaport designed and executed that

program and others that spring and presided over them as student host.

He would serve as the forum’s president for two years. Its roster of speakers over time has included John F. Kennedy, Dr. Martin Luther King Jr., Eleanor Roosevelt, Thurgood Marshall, Fidel Castro, Cesar Chavez, Geraldine Ferraro, Billy Graham, Caspar Weinberger ’41, Whoopi Goldberg, and Jesse Jackson.

After graduating in 1949, Rappaport entered the Boston political scene, working on John Hynes’ successful campaign to defeat four-term Mayor James Michael Curley — who would later debate Rappaport during an HLS Forum event titled “The Political Machine: Use and Abuse” in 1953. “He didn’t talk about the topic at all,” Rappaport said. “Just his pro-McCarthy views, which I was strongly against.” But after the event, Curley sent for Rappaport and told him he had done a good job. “Beyond the political opposition, you didn’t have to be personal enemies,” Rappaport recalled.

Decades later, he said, the media and political landscapes were completely different: “We’ve lost any sense of national dialogue, of discussion and debate as a means for deepening our understanding and pursuit of the truth.”

That reality motivated the launch of the Harvard Law School Rappaport Forum. “We want to build on the forum’s original approach of supporting the discussion of public affairs and the importance of the Socratic method to the legal process and to achieving truth,” said Rappaport. “It’s an effort to model a process that is core to our democracy and to our nation.”

1940-1949

LLOYD P. LOCHRIDGE JR. '41
April 13, 2021

DUANE B. BEESON '48
July 3, 2021

RICHARD L. HARRINGTON '48
Dec. 17, 2020

FRANK D. PADGETT '48
July 11, 2021

JOHN R. HOFMANN JR. '49
April 3, 2021

FELIX H. KENT '49
July 15, 2021

WARREN C. LANE JR. '49
July 14, 2021

RALPH NEIBART '49
Dec. 21, 2021

JEROME RAPPAPORT '49
Dec. 6, 2021

MARTIN TUCKER '49
June 22, 2021

1950-1959

MARTIN BLACKMAN '50
April 25, 2021

HERSHEL B. SARBIN '50
Oct. 12, 2021

HORACE R. BAKER JR. '51
Sept. 13, 2021

CORYDON B. DUNHAM '51
May 26, 2021

ROBERT E. SCHNEIDER '51
Jan. 9, 2020

G. EDWARD BROOKING JR. '52
Aug. 29, 2021

DAVID H. GAMBRELL '52
May 6, 2021

GEORGE H. MEYER '52
July 3, 2021

MARVIN W. WEINSTEIN '52
Feb. 13, 2021

JOSEPH D. BECKER '53
Aug. 1, 2021

FREDERICA S. BRENNEMAN '53
March 15, 2021

DONALD F. CLARKE '53
May 31, 2021

JOHN R. MENDENHALL '53
Aug. 4, 2021

LESTER NELSON '53
July 5, 2021

ROBERT A. COHEN '54
March 9, 2019

JOHN B. CONLAN JR. '54
June 18, 2021

DENNIS H. GREENWALD '54
April 10, 2021

CHESTER M. HOWE '54
Sept. 19, 2021

JOHN G. KILPATRICK JR. '54
June 10, 2021

CLARKE C. ROBINSON '54
March 29, 2021

GEORGE ZEIDENSTEIN '54
Aug. 21, 2021

JOHN P. BANKSON JR. '55
June 25, 2021

ALVIN H. BAUM JR. '55
March 28, 2021

ROBERT J. BIRNBAUM '55
July 30, 2021

SAMUEL A. BRODNAX JR. '55
Nov. 29, 2020

PAUL D. CARRINGTON '55
Aug. 24, 2021

JAMES F. DOWNEY '55
June 18, 2021

PAUL MATZKO '55
July 13, 2020

J. PARKER REID '55
June 12, 2021

JEROME M. RUBENSTEIN '55
March 10, 2021

NORMAN L. STONE '55
Sept. 13, 2021

ARNOLD J. GOLDMAN '56
March 17, 2021

ANDREJS J. GROTS '56
April 26, 2021

RALPH J. MAFFEI '56
March 3, 2021

JOHN R. O'BRIEN '56
March 26, 2021

HOWARD A. SHAPIRO '56
May 17, 2021

WALLACE R. BARNES '57
May 3, 2021

GLENN M. FEIT SR. '57
March 6, 2021

JEROME KASOFF '57
Feb. 8, 2019

CHARLES J. KEEVER '57
Sept. 2, 2021

WILLIAM H. KING '57
June 18, 2021

JOHN B. LOWRY JR. '57
June 10, 2021

DANIEL J. SWEENEY '57
June 26, 2021

JULIAN W. "JOE"
ATWATER '58
July 30, 2021

LARRY A. BROSSMAN '58
April 16, 2021

EUGENE T. HERBERT '58
Feb. 28, 2020

EDWARD R. HUDSON JR. '58
June 23, 2021

R. TENNEY JOHNSON '58
March 27, 2021

THOMAS B. LEARY '58
May 21, 2021

RICHARD J. MEDALIE '58
Nov. 5, 2021

CHARLES F. "JERRY"
RAIKES '58
Dec. 13, 2020

PAUL H. TOBIAS '58
March 22, 2021

THOMAS A. YOUNG '58
April 25, 2021

EUGENE M. FRESE '59
June 9, 2021

JOHN F. FRITTS '59
May 3, 2021

EFRAIN GONZALEZ TEJERA
LL.M. '59 S.J.D. '69
Dec. 30, 2014

RICHARD R. G. HOBSON '59
May 23, 2021

CARL M. LEVIN '59
July 29, 2021

LEONARD S. LEVINE '59
Oct. 16, 2020

JOHN B. NEWHALL '59
June 23, 2021

LIONEL SAVADOVE '59
March 2, 2021

JAMES M. SMITH '59
March 17, 2021

STEPHEN VAN R. ULMAN '59
July 23, 2021

1960-1969

BRIAN P. BURNS '60
Aug. 12, 2021

WILLIAM J. HANLON '60
Aug. 11, 2021

PHILIP B. HEYMANN '60
Nov. 30, 2021

ALAN ILLIG '60
March 1, 2021

RONALD H. MARCKS '60
March 22, 2021

MATTHEW B. WEINBERG '60
June 26, 2021

W. B. MARTIN GROSS '61
May 12, 2021

WILLIAM I. JACK '61
May 29, 2021

MAURICE H. KATZ '61
June 5, 2021

ALBERT D. LEAHY JR. '61
April 19, 2021

TUOMO K. J. LEHTONEN
LL.M. '61
2020

BLAISE G. PASZTORY '61
Aug. 10, 2021

RONALD G. RUSSELL '61
Aug. 21, 2020

EVAN R. BERLACK '62
July 10, 2021

ERIC A. JONAS SR. '62
June 17, 2021

JOHN C. KING '62
June 22, 2021

CLAY C. LONG '62
May 29, 2021

ELLEN R. (DONOVAN) MALIZIA
'62
Aug. 19, 2021

WILLARD G. "BUD" MARTIN
JR. '62
April 5, 2021

M. FINLEY MAXSON '62
Sept. 13, 2021

CHRISTOPHER J. MORAN '62
April 22, 2021

REUBEN M. SCHNEIDER LL.M.
'62
April 24, 2021

LLOYD L. WEINREB '62
Dec. 15, 2021

DANIEL L. AXELROD '63
March 24, 2021

CHARLES A. CROCCO JR. '63
May 30, 2021

HERBERT ODELL LL.M. '63
July 18, 2021

WILLIAM WHIPPLE III '63
March 22, 2021

MICHAEL ABBELL '64
Nov. 20, 2018

DAVID C. HAWKINS '64
Aug. 27, 2021

G. MALCOLM HOLDERNESS
'64
Aug. 13, 2021

HAROLD J. "HANK" KEOHANE
'64
Aug. 3, 2021

ARNOLD H. LOEWY LL.M. '64
July 5, 2021

ERIC D. ROSENFELD '64
Aug. 24, 2021

MARK F. CLARK '65
Aug. 11, 2021

KAREN FERGUSON '65
Dec. 23, 2021

WALTER W. MILLER JR. LL.M.
'65
Aug. 8, 2021

PAUL C. WEILER LL.M. '65
July 7, 2021

WILLIAM J. GILBRETH '66
May 23, 2021

WILLIAM R. HARRIS '66
April 21, 2021

ROBERT M. THOMAS JR. '66
March 28, 2021

JEFFREY H. PASS '67
April 30, 2021

EUGENE B. "GENE"
STRASSBURGER III '67
May 17, 2021

JAMES S. DAVIS '69
May 15, 2021

THOMAS E. GALLAGHER '69
July 15, 2021

DAVID F. KLEEMAN '69
May 6, 2021

MELVILLE D. "DE" MILLER
JR. '69
March 3, 2021

WILLIAM A. NITZE '69
July 30, 2021

VICTOR H. SPARROW III '69
Aug. 2, 2021

1970-1979

JOHN C. BARRETT '70
March 24, 2021

RICHARD P. LARM '70
Aug. 5, 2021

MICHAEL E. SMITH '70
May 31, 2021

WILLIAM J. BIRTLES LL.M. '71
Jan. 13, 2020

JOEL T. JOHNSON '71
Feb. 14, 2021

RICHARD B. PARKER '71
Aug. 13, 2021

JOSEPH M. CAVANAGH '72
April 15, 2021

ROBERT B. HAAS '72
Sept. 28, 2021

WILLIAM C. HAAS '72
March 31, 2021

STEPHEN D. HOUCK '72
April 12, 2021

SCOTT C. MORIEARTY '72
June 27, 2021

ROBERT D. SLOAN '72
June 19, 2020

PHILLIP J. BROOKINS '74
March 3, 2021

EDWARD M. POSNER '74
Feb. 19, 2021

ANDREW D. WEISSMAN '74
Sept. 5, 2021

KENNEY F. HEGLAND LL.M. '75
May 30, 2020

RUDOLF DOLZER LL.M. '76
S.J.D. '78
April 3, 2020

MURRAY L. SACKMAN '77
March 12, 2021

1980-1989

ESA TAPIO AALTO LL.M. '81
April 17, 2019

GARY RICE '82
March 28, 2021

PETER J. COMODECA '84
April 4, 2021

JEFFREY H. MAY '86
Nov. 1, 2021

TERESA A. MILLER '86
Aug. 6, 2021

MICHAEL J. BARTA '88
March 31, 2021

1990-1999

PETER J. WIED '98
June 2021

2000-2009

GWENDOLYN J. GORDON '06
Dec. 26, 2021

2010-2019

COLIN F. FIFE LL.M. '11
Aug. 28, 2019

MICHAEL J. MULLAN LL.M.
'17
Nov. 23, 2020

Portraits in Leadership

From the late 1800s to today, artists have created portraits of Harvard Law School's deans



1870 – 1895
*Christopher Columbus
Langdell LL.B. 1853*
✍ FREDERIC P. VINTON



1895 – 1910
*James Barr Ames
LL.B. 1872*
✍ WILTON LOCKWOOD



1910 – 1915
Ezra Ripley Thayer LL.B. 1891
✍ IGNAZ MARCEL
GAUGENGIGL



1916 – 1936
*Roscoe
Pound*
✍ PATRICIA MARSHALL TATE



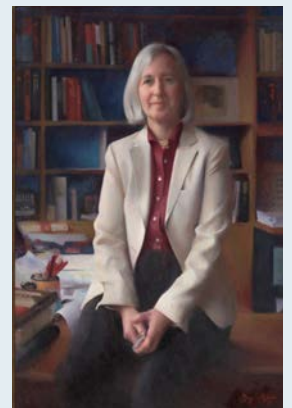
1981 – 1989
*James
Vorenberg '51*
✍ PAUL INGRETSON



1989 – 2003
*Robert
Clark '72*
✍ ROSS R. ROSSIN



2003 – 2009
Elena Kagan '86
✍ BURTON
SILVERMAN



2009 – 2017
*Martha
Minow*
✍ MARY MINIFIE

*Becoming dean is not about oneself.
“It’s about the opportunity to serve.”
—MARTHA MINOW*



1937 – 1946
James McCauley
Landis '24
✍ GRACE DAHL



1946 – 1967
Erwin Griswold
'28 S.J.D. '29
✍ ELMER WESLEY GREENE



1968 – 1971
Derek
Bok '54
✍ JASON BOULDIN



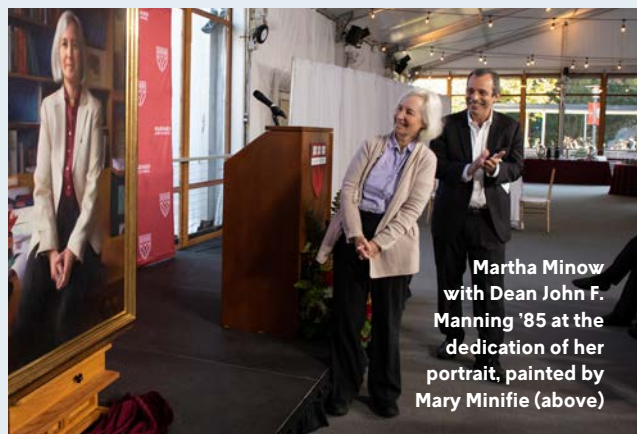
1971 – 1981
Albert Martin
Sacks '48
✍ GARDNER COX

In October, Harvard Law School unveiled the official portrait of University Professor Martha Minow, dean of the school from 2009 to 2017. It's the latest in a series of paintings of Harvard Law School's past leaders, from Minow's predecessor, Supreme Court Justice Elena Kagan '86, the first woman to become dean of the school, all the way back to Christopher Columbus Langdell LL.B. 1853, who revolutionized legal education. On these pages are the portraits of the 12 past deans of Harvard Law School.

Minow's remarks at the end of the portrait

dedication ceremony evoke a picture of leadership that goes beyond these 12 images. "The only regret that I have is that the portrait is just of me, rather than all the people who really deserve to be there" because they were "there every step of the way," said Minow, in front of an audience of colleagues, former students, family, and friends.

Becoming dean is not about oneself, Minow said. "It's about the opportunity to serve, to collaborate. It would not be possible without constant teamwork, and discussion, and more discussion, and connections across every possible relationship imaginable."



Martha Minow
with Dean John F.
Manning '85 at the
dedication of her
portrait, painted by
Mary Minifie (above)

MARTHA STEWART (2)

Harvard Law Bulletin

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“I believe that the simple, elegant, and beautiful design of this shield captures the complexity, the diversity, the limitlessness, the transformative power, the strength, and the energy that the HLS community, in Cambridge and throughout the world, sees in Harvard Law School. I am also moved by the idea that, by combining the words *lex et iustitia* with our shared motto, *veritas*, we make explicit that Harvard Law School stands for truth, law, and justice.”

—DEAN JOHN F. MANNING '85, *in a message to the HLS community about the new HLS shield*



TONY RINALDO