

IS THE DEATH PENALTY A 'DEAD MAN WALKING'? / NEGOTIATING CLIMATE / REFLECTIONS FROM BLACK ALUMNI

Harvard Law

Fall
2016

bulletin

TRADE

**Should the U.S. join
the Trans-Pacific
Partnership?
Experts debate.**



Gina Clayton '10 founded
Essie Justice Group to
empower women whose
loved ones have been
incarcerated.

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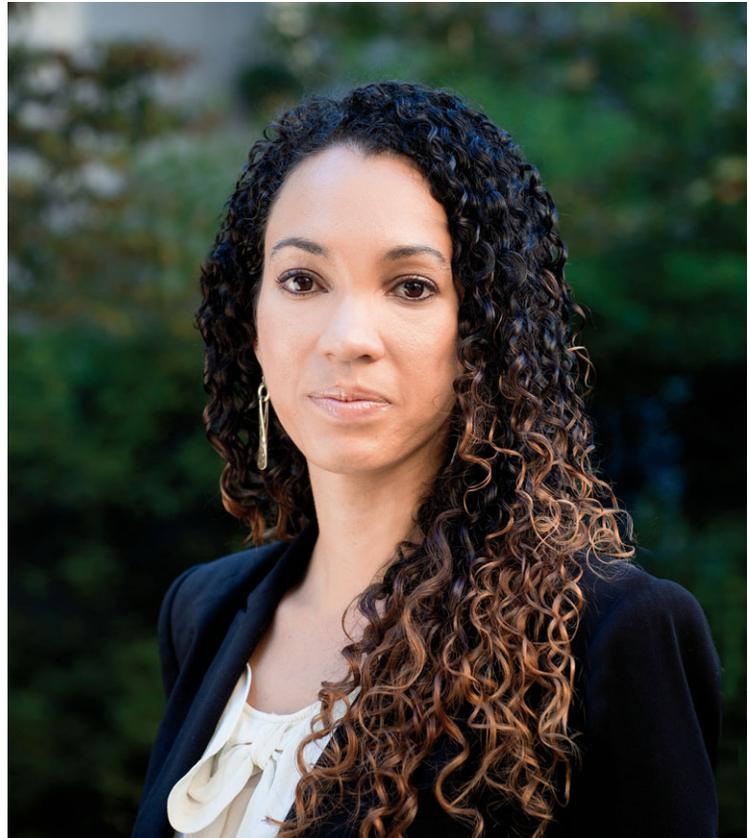
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Exploring the legal and regulatory implications of the blockchain



Primavera
De Filippi first
came to HLS
to research the
potential of the
blockchain: a new
technology that may
reshape financial
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JESSICA SCRANTON (2)

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Harvard Law Bulletin

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Professor Samuel Moyn '01 studies the history of human rights and wants to know why they have made “agonizingly little difference in world affairs.”



JESSICA SCRANTON (2)

Sylvester Turner '80 is mayor of Houston, the city in which he grew up and that he has committed his career to serving.

Each moment bridges past and future; moments at HLS invite reflections on the past and renewed focus for the future. In September, more than 800 African-American alumni and guests returned to campus for the fourth Celebration of Black Alumni at Harvard Law School. Few moments at HLS have been as powerfully moving or meaningful as CBA IV. Reflecting on times great and difficult, participants honored the extraordinary

leadership of our African-American graduates in the worlds of law practice, the judiciary, business, entertainment, politics, religion, the arts and education. Those gathered also brought imagination and energy to the crucial unfinished business of racial justice. Sharing insights with current students, reconnecting with old friends, and making new ones, returning alumni demonstrated how the extraordinary network of the hugely talented and accomplished black graduates of HLS can help build a more inclusive and just future. This issue offers reflections by CBA attendees, and there is more coverage online at bit.ly/HLSCBA16.

On the brink of 2017, we stand at a crossroads in the nation and in the world.

The past work of Todd Stern '77 offers a key to all of our futures, for he is a leading architect of the watershed achievement in the global effort to fight climate change.

His decades of work came to fruition last December, when, as the State Department's chief climate change negotiator, he helped secure the landmark Paris agreement by 195 countries pledging to curb greenhouse gas emissions and create a sustainable future.

Last spring, HLS hosted more than 175 officials, scholars, and lawyers from across the world to address the past and future of the World Trade Organization's Appellate Body. This issue offers the insights of alumni experts about the proposed Trans-Pacific Partnership. After years of global negotiations, TPP, if approved by Congress, would become the largest regional trade accord in history. It has also become a flash point and symbol of sharply contrasting visions of the future. We offer a variety of views along with a preview of the next generation of trade lawyers, currently students at HLS, where they learn from Assistant Professor Mark Wu and the tremendous opportunities he has created here.



The past and future of currency and finance—and their supporting legal frameworks—come into sharp relief through investigations at HLS of blockchain technology, best known through its connection to bitcoin. Providing new, online meth-

ods for streamlining and recording transactions, blockchain technology presents unprecedented legal and practical challenges to long-standing regulatory frameworks. Innovative work on this technology engages faculty, students, and researchers at our Berkman Klein Center for Internet & Society. Note it now bears the name of Michael R. Klein LL.M. '67, whose transformative gift will ensure the center's leadership in research, scholarship and policy related to the digital universe.

The past and future of criminal punishment have long occupied scholars and students at HLS; this moment marks a critical juncture. An important new book predicts that the death penalty is now "in a terminal decline." HLS Professor Carol Steiker '86 and her brother, Jordan Steiker '88, law professor at the University of Texas, have each devoted their careers to death penalty research and advocacy. They offer striking findings and pathbreaking arguments here in an interview.

As HLS remembers Professor Emeritus Victor Brudney, who passed away in April, we salute this towering and inspiring teacher and scholar with a panel discussion at the school on the future, inspired by his searching inquiry into fundamental issues of fairness, equality, and freedom in the worlds of corporate law and finance.

We stand at a crossroads in the nation and in the world. And we stand on the brink of 2017, when we will mark the 200th anniversary of our school's founding. In the upcoming bicentennial year, look for lively programs on campus, online, and at alumni gatherings around the world—opportunities for alumni, faculty, students, and staff to engage with critical challenges for legal education, for the profession, and for justice worldwide and to envision the next century of legal initiative and leadership. As Albert Einstein once said, imagination is "the preview of life's coming attractions." Let's imagine the future together!

Martha Minow

How will developing technologies affect human values?

ELAINE MCARDLE'S "THE New Age of Surveillance" describes how the Internet of Things (IoT) has created a hot legal debate over privacy versus security, highlighting the Berkman Center for Internet & Society's expert report and superb teamwork on this important issue.

But the silence is deafening with no mention of the human impact to be expected from this "tectonic shift" in technology—when sensors everywhere and data about our every movement/preference/habit (all cloud-connected) mean less face-to-face interaction and much-altered cultural norms about human interpersonal relations.

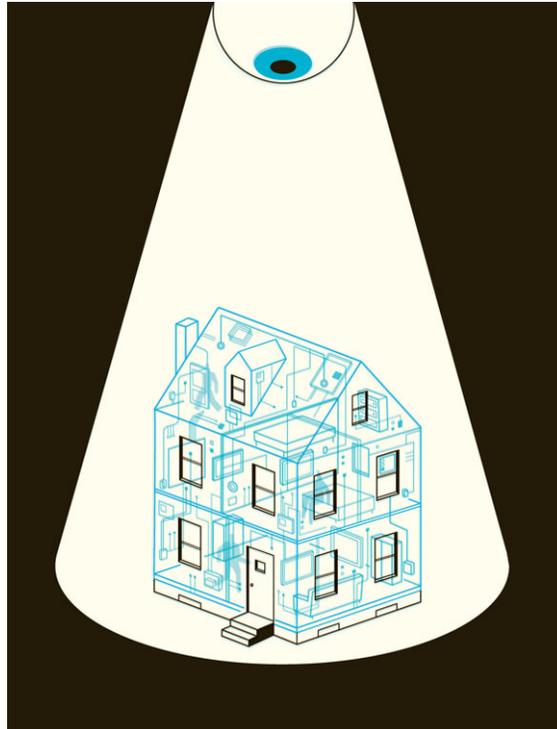
The younger generation's relaxed assumptions around texting private information (versus how my generation views such texts) is a case in point.

In anticipating how we'll feel about privacy-vs.-security in this new age, we must begin by anticipating how we'll *feel*—about ourselves and those around us. The legal debate is much less meaningful if it ignores the evolving human values being debated. The tectonic shift in technology both drives and is altered by the tectonic shift in our emotions and expectations.

James S. Berkman '82
Boston

How not to regulate the Internet of Things

I READ YOUR ARTICLE ON "The New Age of Surveillance" with great interest.



It correctly points out that the rise of the Internet of Things holds the promise of creating significant economic growth, and bringing innovative and very consumer-friendly products to the marketplace. But its potential consequences for privacy and human rights are stark only when the IoT enables devices to exchange personal information.

While this might be the case when done for household appliances as described in your article, the IoT will generate the bulk of its economic benefits in the industrial sector (think locomotives, gas turbines, and aircraft engines), where machines only very rarely process and transfer personal information. For instance, in the power sector, achieving just 1 percent of fuel savings thanks to data

analytics would generate a staggering US\$300 billion savings by 2030. So when thinking about how to prevent the IoT from becoming the "Wild West of the Internet," policymakers should avoid adopting legal instruments that are designed for consumer and personal data protection, and fail to clearly exclude industrial or B2B activity from their scope of application. Doing so would risk hampering the important economic benefits of the IoT. This is a risk that is, for instance, created by the recently adopted General Data Protection Regulation of the European Union that imposes "data protection by design and by default" requirements, which mandate how companies should build their products. U.S. legislators should be more careful and judicious, and

avoid creating a regulatory regime that would prevent the IoT from delivering on its promises.

Hendrik Bourgeois LL.M. '93
Brussels

Alter corporate law to make financial decision-makers accountable

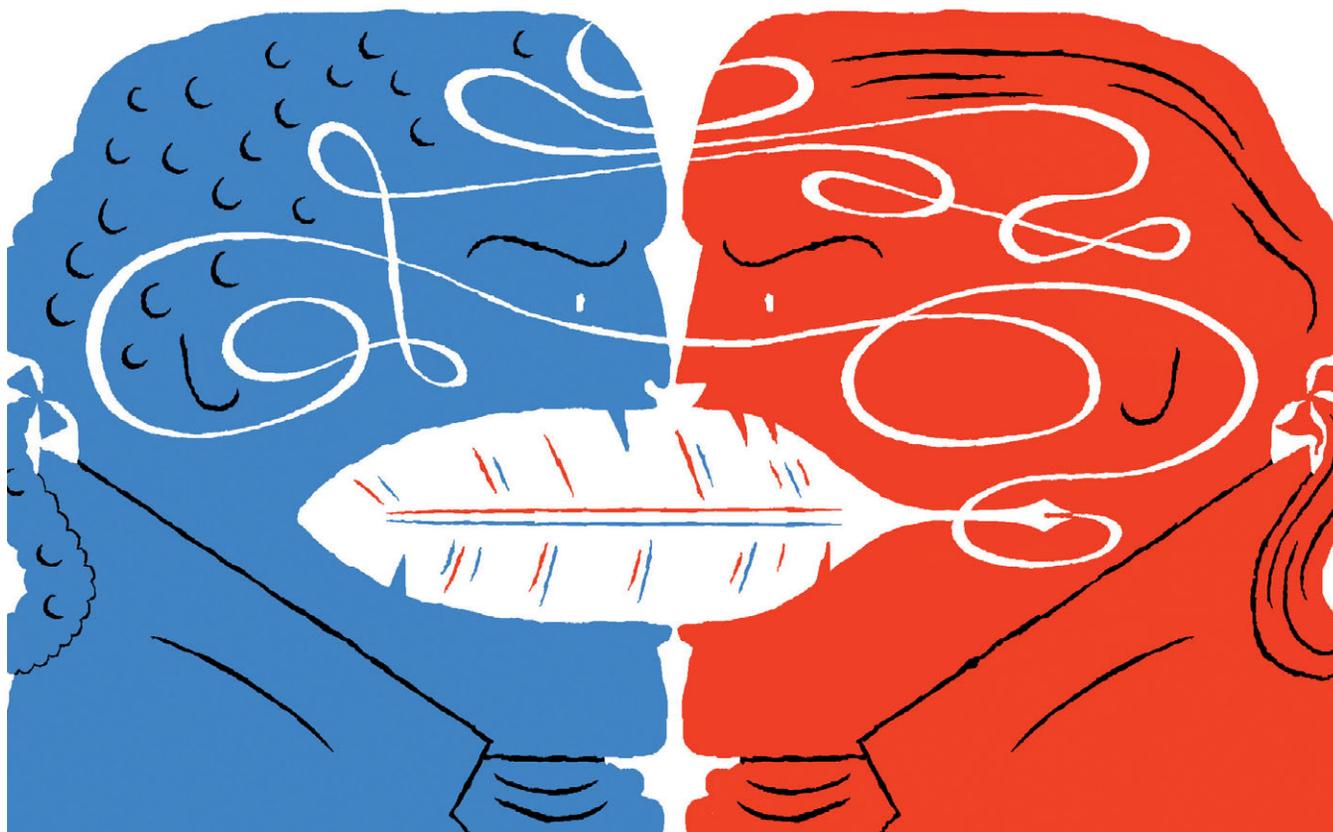
PROFESSOR SCOTT DOES ALL economic policymakers and analysts a major service with his explanation of the difference between connectedness and contagion and the significance of this distinction [Writ Large: Spring 2016]. In particular, by debunking the myth that our Fed erred in its 2008-2009 actions, he makes much less likely having a cyclical problem turn into economic catastrophe. However, it is also useful to address why such analysis is needed.

That is, what created the financial panic of 2008? Putting aside the politically charged dialogue involving alleged depredations of "Wall Street," it is clear that the ultimate cause was a cascade of bad decisions by both lenders and borrowers, which led to the creation of so much impaired debt and related securities. While no one and no policy can ever prevent all financial crises, and as Professor Scott demonstrates, we must have central banks with flexibility and the will to use it to mitigate such situations, it is also helpful to seek to avoid such situations where it is possible to do so.

Congress nominally sought in the Dodd-Frank Act to address such considerations with banker compensation restrictions deemed to → 65

The Constitution: An Origin Story

Klarman's book examines the messy and dramatic process that led to the country's founding document



PROFESSOR MICHAEL KLARMAN'S "THE FRAMERS' Coup: The Making of the United States Constitution" gathers for the first time in a single volume the tumultuous story of the 1787 creation of our nation's founding document, in the kind of rich detail earlier reserved for multivolume works.

This boldly themed and fast-paced book is both comprehensive and corrective: an 800-page vehicle for demythologizing a Constitution that was widely worshiped from the start, as if born under "the special influence of Heaven," wrote a contemporary Federalist.

Klarman, a constitutional scholar and winner of the prestigious Bancroft Prize for history, acknowledges America's veneration for the Constitution, but he deploys relentless detail to scrub away myths about how the document was made or who made it. Those men, observed Benjamin Franklin, were wise but also brought with them "all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views."

Some of them, in the author's central meta-

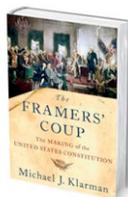
A revisionist history of our country's founding document, Michael Klarman's new book might also have been called "The Nation That Almost Never Was."

phor, pulled off a "coup," a soft-power uprising by America's earliest aristocrats. "They hijacked the process of constitution-making," said Klarman in an interview, "to create a document very different from what most Americans expected or desired."

The messy backstory of this venerable document will surprise many readers. "Because the Constitution has become so critical to the self-conception of Americans," Klarman writes, "it is difficult to accept the uncertainty and contingency of its adoption."

The "coup" was the result of a combination of luck, organization, better oratory and the zeal of Virginia's James Madison. He set the Constitutional Convention's agenda, framed its most powerful Federalist arguments, countered what Klarman called "the egalitarian ideology of the Revolutionary War," spearheaded ratification of the Constitution by the states, and drafted the Bill of Rights.

In years leading up to the Constitution, the new nation underwent crises that led many of its elite



citizens to crave a strong central government in a way that most of the country did not. Among other things, the “utterly inefficient” United States could not pay its debts, regulate commerce, raise taxes, or compel states to honor treaties or contribute to the federal treasury—all legacy weaknesses of the Articles of Confederation, whose “perpetual union” lasted from 1781 to 1789.

Economic downturns follow most wars, and by 1785, the American depression had deepened, prompting some states to print their own money to relieve debt. Increasingly, the new nation’s alternate fates seemed to be civil war or monarchy.

Then came Shays’ Rebellion (1786-1787), which to many Americans foreshadowed an anarchic future. When Massachusetts refused to capitulate to debtors’ demands, armed rebels joined in a populist uprising against this perceived economic injustice. The rebellion hurried growing calls for a new gathering of state delegates to replace the failing Articles. It also revealed, wrote Alexander Hamilton, “the amazing violence and turbulence of the democratic spirit.”

The Constitution arose uncertainly from a series of close calls. The Convention, held behind closed doors in Philadelphia from May to September of 1787, was fractious. Afterward, the Constitution was ratified by only the slimmest of margins. The book could have been titled “The Nation That Almost Never Was.”

In the first hundred pages, Klarman details the turmoil that preceded the Convention, including the near-debacle of ceding navigation rights on the Mississippi to Spain and Congress’s efforts to collect taxes from the states. One federal official said it was like “preaching to the dead.”

Within this uncertainty, the Convention seemed like “the sole point on which all future movements will turn,” observed James Monroe.

In Philadelphia, the largest questions were about power. Who would have it, and how much? That often revealed a North-South divide, including on the issue of slavery; many of those disputes were more about commerce than urgent moral questions.

“The founding wasn’t about disinterested political philosophizing,” said Klarman. “It was about bare-knuckled political battles over power and interests.”

Two worldviews clashed in Philadelphia: Madison’s Federalist ideal of a powerful central government and the limited government preferred by Antifederalists, who feared that without the right amendments, the Constitution would become an instrument of tyranny. They also feared federal taxes (“free access to our pockets,” wrote one), a corruptible Congress, weakened states that would be swallowed up “in the grand vortex of general empire,” and a standing army that in peacetime would be a “nursery of vice and the bane of liberty.”

The clash of worldviews made ratification by the states tenuous and tumultuous. The Constitution was approved by razor-thin margins. The “coup,” Klarman demonstrates, had succeeded.

The Bill of Rights helped soothe Antifederalist concerns and warded off a Federalist worry: that a second convention would unleash democracy in a way that the closed-door Convention had not.

The final chapter addresses what Klarman calls the Constitution’s “hostility toward democracy.” Elite Federalists “opposed populist influence on government,” he said, and tried to design a national government that would resist it.

On the other side, according to Klarman, Antifederalists “defended the ability of ordinary people to participate in governance, warned that the Constitution would create an aristocracy, and opposed shifting of power from the state to the federal level.”

The Federalist-Antifederalist debate still resonates, he said, as does the Federalist fear “that democratic majorities would be seduced by demagogues.” He added, “I think that is closer to happening in 2016 than ever before in our history.”

The book “ought to raise questions about whether it is wise to bind ourselves to the ‘originalist’ understanding of the Constitution,” said Klarman. “The framers made mistakes, they couldn’t foresee the future, and they were often involved in disputes that have little relevance today.”

Thomas Jefferson seemed to agree. He hoped and believed that the document would be altered by future generations in pursuit of their own happiness. The Constitution, he wrote, is not “like the ark of the covenant, too sacred to be touched.”

—CORYDON IRELAND

Michael Klarman’s previous books include “From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage.”





Regulated to Death

Carol and Jordan Steiker's latest collaboration details how the Supreme Court's efforts to regulate capital punishment have failed

FOR TWO DECADES, PROFESSOR Carol Steiker '86 and her brother, Jordan Steiker '88, a law professor at the University of Texas, have focused their careers on the death penalty, whether in the classroom or through scholarship, litigation, and law reform projects.

It is a passion they both absorbed in the chambers of Justice Thurgood Marshall, a fierce critic of capital punishment for whom they both clerked a couple of terms apart in the late 1980s.

In their latest collaboration, the Steikers have co-written a

new book, "Courting Death: The Supreme Court and Capital Punishment," in which they argue that the Court has failed in its efforts to regulate the death penalty since *Gregg v. Georgia*, its 1976 decision that allowed capital punishment to resume.

The Bulletin asked the Steikers what the future is likely to hold for capital punishment.

Q: You note in the book that just six states conducted executions in 2015 and only three had two or more. Do you expect that the footprint of the death

The authors of a new book on capital punishment suggest that the death penalty is "in a terminal decline." ▲

penalty will narrow any further?

CAROL: It has shrunk so much that it's hard to imagine it can shrink much more without disappearing. I don't think it will expand, given the incredibly high cost of capital prosecutions, the left-right coalition questioning the practice, and the difficulty of obtaining lethal injection drugs. Given all of these dynamics, which are showing no signs of shifting, I think we should expect either continued shrinkage or continued marginalization of the practice even in states that authorize it.

JORDAN: The decline in death sentencing is not only more dramatic but more telling than the decline in executions. It suggests fewer executions going forward and much less political commitment to the process.

You suggest it might be possible for the states that still have the death penalty to make improvements to how it is administered—by limiting the number of aggravating factors, for instance. Or is that a nonstarter politically?

CAROL: It's possible that could happen in a few states, but only in states that are on the road to abolition rather than states that are committed to the practice. History has shown over time that there's inexorable pressure to expand the list of aggravating factors. Criminal justice administration is driven by anecdote: Something terrible happens, and lawmakers pass the equivalent of a Megan's Law. One of my students took a picture with his phone while working in New Orleans, where he noticed a sign in a taxi that said it's a capital crime to kill a taxicab driver in Louisiana. You see that dynamic constantly. Courts say the death penalty should be reserved for the worst of the worst, but the opposite has happened in the 40 years since *Gregg*.

You predict a trajectory heading toward a "categorical constitutional abolition." Is that a matter of years or decades away?

CAROL: In the book we predict abolition within two decades, assuming that the Court either remains where it was politically before Justice Scalia's death or moves further to the left.

JORDAN: Around the world, one common path to abolition has been first to abolish the death penalty for ordinary crimes and then later to abolish it for treason or other crimes against the state, which in the contemporary world is terrorism. In the United States, the federal death penalty is so anemic, such a small part of American death penalty practice, that we might bypass this two-step process.

What might be some of the consequences of abolishing the death penalty for the broader criminal justice system?

CAROL: The death penalty tends to shine a spotlight on the inadequacies of the criminal justice system. If a case is not capital, it is hard to get as much attention, even where there is an egregious miscarriage of justice.

JORDAN: On the other hand, the end of the death penalty

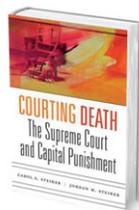
might contribute to further reflection on the extraordinary punitiveness of our criminal justice system more broadly, and open the door to political and legal challenges to other prevailing practices.

The popularity and prevalence of the death penalty ebbed and flowed in the last century. Could you foresee renewed calls for its return post-abolition if there is a similar surge in violent crime in the future?

CAROL: We view the death penalty as in a terminal decline. In the 1960s and 1970s, when crime was rising, the Court had not yet attempted to regulate the death penalty and fix its many shortcomings, whether racial discrimination, wrongful convictions, or arbitrariness throughout the process. Now, we've had 40 years of "mend it, don't end it" that have been spectacularly unsuccessful. So even were we to face rising crime rates, there wouldn't be the same naive optimism that we can make the death penalty work for us, because we've had all these years of it not working well at all.

JORDAN: So many times throughout our history, the death penalty appeared to be moving in one direction, and then it shifted or transformed. One notable lesson of the history of the American death penalty is the sheer unpredictability of those movements. But for all the reasons Carol said, we believe the death penalty is in a terminal decline and there are many institutional conditions that make its revival very unlikely. But who would have predicted this election cycle and the shifting political climate we're living in now compared with just a year ago? So it's best to remember the wisdom of Yogi Berra about the difficulty of making predictions, "especially about the future."

—SETH STERN '01



Carol Steiker and her brother, Jordan Steiker, have focused their careers on the death penalty—through teaching, litigation and scholarship. ▼



In Brief



“Diversity in Practice: Race, Gender, and Class in Legal and Professional Careers,” EDITED BY PROFESSOR DAVID B. WILKINS '80, SPENCER HEADWORTH, ROBERT L. NELSON AND RONIT DINOVTZER (Cambridge)

Wilkins, director of the school’s Center on the Legal Profession, serves as co-editor and also co-writes an essay in this volume, which contrasts the rhetoric that widely embraces the goal of diversity in the legal and other professions with the reality of continued barriers to full inclusion. The book includes contributions on diversity in corporate boards, race and class in the U.K. legal profession, the significance of network ties, and the job transitions women make.

“Law’s Abnegation: From Law’s Empire to the Administrative State,” BY PROFESSOR ADRIAN VERMEULE '93 (Harvard)

Vermeule’s thesis is that law has steadily turned to a position of deference to the administrative state: “Law has abnegated its authority, relegating itself to the margins of government arrangements.” The result is that administrators increasingly set policy and even in some cases determine their own jurisdiction. He focuses on judicial review of administrative action and argues that the long-term trend of the law to cede power in this regard will be impossible to reverse.

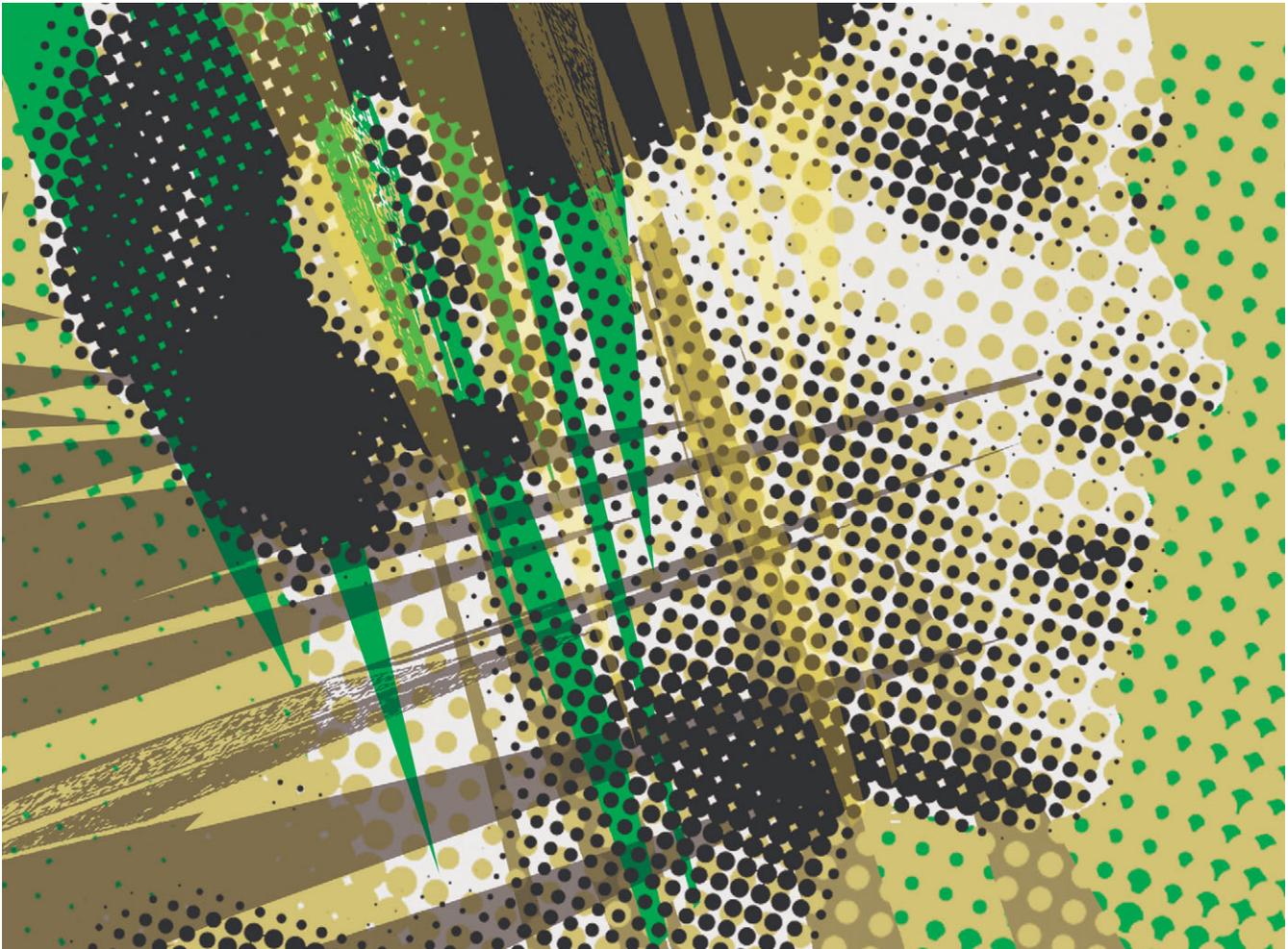
“The Ethics of Influence: Government in the Age of Behavioral Science,” BY PROFESSOR CASS R. SUNSTEIN '78 (Cambridge)

A prolific writer on behavioral science topics, in his latest book, Sunstein turns to government efforts to influence people’s actions, which should, he writes, “preserve freedom of choice, but ... also steer people in directions that promote human welfare, dignity, and self-government.” He explores government policies designed to nudge desired behavior in areas such as consumer and environmental protection—and also when nudges turn into ethically impermissible manipulation. These government actions face a burden of justification; at the same time, he contends, some nudges, when they promote autonomy, are actually required on ethical grounds.

“Law and Order in Ancient Athens,” BY PROFESSOR ADRIAAN LANNI (Cambridge)

A historian and law professor, Lanni presents and seeks to explain a seeming paradox about ancient Athens: It was a peaceful and well-ordered society yet did not have a “rule of law,” such as a police force or court system that consistently enforced statutes, which in the modern era is considered a prerequisite for a society to flourish. Legal institutions did, however, help maintain order, she contends, by facilitating “the operation of informal social control” along with enforcement of law in selected instances.





FROM THE CLINICS

Invisible Wounds of War

Helping veterans recover from sexual trauma

THE CHALLENGE CAME TWO years ago: A U.S. Marine Corps veteran needed help. She'd been sexually assaulted by another Marine in the late 1960s. Decades later, she told VA officials, who didn't believe her story and denied her disability compensation to help treat her post-traumatic stress. Could Harvard Law School's Legal Services Center help?

Since then, students and staff at the center's Veterans Legal Clinic have rallied behind her

Military sexual trauma—rape or sexual harassment during military service—is a fast-emerging issue in the nation's care for veterans and one focus of an HLS clinic.

case and scored a key victory on her behalf. It's part of a growing area of practice for the 4-year-old clinic. Military sexual trauma—rape or sexual harassment during military service—is a fast-emerging issue in the nation's care for veterans.

"It's exactly the kind of case you want to work on," says Harvard Law student Maile Yeats-Rowe '17, an Army veteran who served in Afghanistan and Kuwait. "It's a case where we can make a real difference, and

maybe move the needle on how the VA sees this."

The Veterans Legal Clinic was founded to deal with the special problems of low-income veterans and to help bridge the nation's military-civilian divide.

"Before long, we started to get some cases involving veterans whose military careers were cut short by military sexual trauma and who kept on hitting barriers as they tried to get the help they needed," says Dan Nagin, faculty director of the Veterans Legal

Clinic and the Legal Services Center.

The veterans clinic took its first case involving military sexual trauma two years ago. Now it's an issue in about 10 percent of its cases. That surge reflects the effects of the Iraq and Afghanistan wars, the growing number of women in the military, and a greater awareness of the once-hidden problem.

Often, the clinic helps victims of military sexual assault or harassment who've been diagnosed with PTSD apply for disability compensation. In other cases, the clinic petitions to change a veteran's discharge status to address the ways military sexual trauma hurt his or her service career. Though women make up a smaller percentage of the armed services, they are disproportionately more likely to be sexually assaulted or harassed. In the military, there are significant numbers of both male and female victims, says Senior Clinical Fellow Dana Montalto.

Montalto is representing a male veteran who was sexually assaulted and persistently harassed by a fellow service member. She says her client began drinking heavily to cope with memories of the trauma and was sent to alcohol rehab. "After not being able to complete the rehabilitation program, and getting into some drinking-related misconduct, he was separated with an other-than-honorable discharge," Montalto says. "We have been trying to get that changed, now that he is getting more treatment and support, and is more able to talk about it." The veteran's application is pending before a discharge review board.

Often, the clinic faces legal battles over a client's credibility. "In some ways, working on these cases is like working in the criminal justice system,



Senior Clinical Fellow Dana Montalto, faculty director Dan Nagin, Maile Yeats-Rowe '17, Liz Petow '17, and Clinical Instructor Betsy Gwin

→ Often the clinic faces legal battles over a client's credibility.

trying to prove a sexual assault occurred," says Nagin. In other ways, it's even tougher. Yeats-Rowe says the VA has "a tremendous amount of discretion" in deciding whether a veteran alleging sexual assault is credible. Reviewing officers sometimes review evidence that would be barred in civilian courts, such as a veteran's medical or sexual history.

Yet the clinic also has a recent legal precedent on its side in military sexual trauma cases. In 2013, a federal appeals court ruled that the absence of an official record of a military sexual assault can't be treated as evidence that the assault didn't occur. That helps in cases where a client wasn't ready to come forward at first, or did report the assault soon after but was not taken seriously. "Our students are really skilled in marshaling that case to maximum effect," Nagin says.

The precedent helps the female Marine Corps veteran from the 1960s. She reported the sexual assault to her supervisor at the time, according to Nagin, but the supervisor ignored her complaint and made no record of it.

Two teams of law students have worked on her case. Last fall, the clinic filed a brief on her

behalf with a federal court for veterans' claims, arguing the VA erred when it found the client not credible. In response, a VA attorney agreed to remand the case to a VA appeals board for reconsideration—a major victory for the veteran and the clinic.

Yeats-Rowe and her partner on the case, Liz Petow '17, say the case has helped them hone several skills they'll need as lawyers, from writing a persuasive brief to finding experts whose research supports their case. They've also learned about navigating client relationships. At the female Marine Corps veteran's rehearing, they'll be able to introduce new evidence. So in the spring, they spoke with her several times by phone about the assault and its aftermath—a story she hasn't shared with many people.

"That's a whole new aspect of what it is to be a lawyer," says Yeats-Rowe, "how to engage with a client in a way that's sensitive and caring, but also gets out the information you need to help support the case."

Both students have returned to the clinic this fall for a third semester.

"We wanted to come back and help her see the case through," Petow says.

—ERICK TRICKEY

ASK THE PROFESSOR

A Work in Progress

Moyn researches the history of human rights while considering their limitations

Harvard Law Professor Samuel Moyn '01, who is also professor of history at Harvard University, is one of the world's leading scholars in the emerging field of the history of human rights. In an interview for the Bulletin, Moyn discussed the potential and the limitations of the human rights movement when it comes to creating just societies.

What does history tell us about when the struggle for human rights can hinder progress toward a just society?

I am a fan of human rights, but I want to know why humanity came so late to them, and why they have made agonizingly little difference in world affairs so far. They have improved moral consciousness on a number of fronts. Next to no one will say they accept torture today even when they conduct it in secret. But human rights movements as we know them haven't done well in redefining opinion when it comes to every area. For example, our international economic life has remained much more immune to serious moral criticism. And when it comes to some problems, like domestic economic inequality, human rights may not offer the right framework for deciding whether it's wrong and for mobilizing to change things if it is. In sum, I'm interested in how human rights have so far emerged as a relatively weak tool—good for some jobs but not others.

You have written about how the focus on human rights in the second half of the 20th century coincided with a lack of emphasis on duty. What is the effect of emphasizing rights over duties?

The United Nations canonized human rights in a universal declaration in 1948, establishing a template for a new 20th-century ideal of social citizenship. And when we look back, it turns out that people in the aftermath of World War II cared much more about duties to their fellow citizens than basic rights for people abroad—about encouraging people to do their bit for the common good, including by organizing the economy for collective purposes, establishing legal regimes from anti-trust to workmen's compensation in that spirit, and setting (and paying) high taxes. The 1940s,



Samuel Moyn wants to know why human rights have made “agonizingly little difference in world affairs.”

after all, were the age of the construction of new welfare states. Yet human rights have only become world-famous since the 1970s—the very era when the welfarist agenda entered crisis. The possibility emerges that human rights symbolize our commitment to global solidarity, but in a form that is weak and cheap, while welfare states enacted solidarity that, although local, was strong and expensive. I worry that if we celebrate human rights uncritically, we might miss how they have been linked to the globalization but also to the weakening of solidarity—not only the expansion but also the withering of duties.

What role does international law play now and what role could it play in moving people or nations back toward duties?

We are just at the beginning of exploring different ways that international law might serve to correct wrongs. The initial steps that the human rights movement has taken to civilize the globe in the last 40 years are simply the first indications of a worldwide regulatory scheme. The trouble is that the rise of that movement has coincided with the creation of legal structures largely focused, both at home and abroad, on institutionalizing market freedom, rather than imposing local or global obligations to match our well-deserved rights. Instead of adopting a default libertarianism, our welfare state ancestors embraced the need for more coercive governmental intervention, and their thinking remains a valuable fund for the future of international law. The same remains true in the domain of war and peace, where international law's potential is barely exploited today.

Your most recent book, “Christian Human Rights,” grew out of your book “The Last Utopia: Human Rights in History.” In what direction is your scholarship moving now?

My current project is to write the sequel to “The Last Utopia”—among other things, taking the history of human rights through the present, by concentrating on social rights and distributive justice: how human rights transformed from an ideology of the welfare state to one addressing global destitution. Beyond this, I am toying with some work on the history of the attempt to regulate war, focused on how international law moved from the aspiration to control force among states to the aspiration to keep it humane in counterterrorism. I see this as an ambiguous development, as I have recently explored in a piece in The New York Times on America's so-called “forever war.” Morality rightly demands more humane war, but it is easier for humane war to become normalized.

What are the benefits for today's law students in studying the history of human rights?

The use of history is to show how our current assumptions required argument and struggle, and so are open to change in the future. Students can learn to put their own desire for reform in context—not to give it up, but to learn where it came from. And also how it might change: A space had to be opened for human rights activism and law, and there is space to transform them now.

—MICHELLE BATES DEAKIN

BLOG SPOT

Sharing Ideas for Shareholders—and Others

An HLS blog becomes the go-to forum on corporate governance

FOR THE PAST 10 YEARS, ONE HARVARD LAW School blog has been serving as a forum for exchange of ideas and debate among lawyers, executives, institutional investors, academics and regulators. Each month, the Harvard Law School Forum on Corporate Governance and Financial Regulation features over 60 posts on a wide range of issues in these fields—from Brexit to mergers and acquisitions. Since its founding, the forum has attracted posts from more than 3,500 individuals, including such prominent contributors as SEC Chairs Mary Jo White and Mary Schapiro, Circuit Court Judge Richard Posner '62, and Goldman Sachs CEO Lloyd Blankfein '78.

Run by Harvard Law School's Program on Corporate Governance, the forum was founded in 2006 by the program's director, Professor Lucian Bebchuk LL.M. '80 S.J.D. '84. It caught fire quickly. In the blog's second year, its two co-editors were named to Directorship magazine's list of 100 most influential people in corporate governance in the media category, alongside prominent reporters such as The New York Times' Andrew Ross Sorkin. Since then the blog has grown steadily, and today it attracts more than 70,000 unique visitors a month. Posts on the blog have been cited in more than 300 law review articles, noted in SEC speeches, and referenced in congressional testimony.

Reading the forum has become an integral part of the daily schedule of many. “[I]t is amazing to see the [forum] become required reading among the intelligentsia, such as it is, of corporate governance,” observes Leo Strine, chief justice of the Delaware Supreme Court and a lecturer on law at HLS. The blog is “the place to go,” comments

→ The blog is “required reading among the intelligentsia ... of corporate governance.”

THE HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION is currently edited by Scott Hirst LL.M. '01 S.J.D. '16, Kobi Kastiel LL.M. '08 S.J.D. '16, Greg Shill '08, Chris Small and Aluma Zernik LL.M. '16.



Rodman Ward Jr. '59, who was a key supporter of the forum at its founding.

While the blog enables Harvard Law faculty to write about their research, that is not its primary mission. “The goal in establishing the forum was not to communicate the views of the program’s members but rather to advance discourse in the fields by providing a central place for the exchange of views and the discussion of developments and new research,” says Bebchuk.

Initially, editors solicited posts from experts in the field. As the forum became the repository for conversations on corporate governance and financial regulation, contributions started flowing in. The forum has also attracted its share of heated debate along the way.

Hedge fund activism and shareholder rights, for example, are subjects that attract posts with strongly opposing views. Regular contributions by Martin Lipton, founding partner of Wachtell, Lipton, Rosen & Katz, have criticized Bebchuk’s work in support of strengthening shareholder rights and reducing the insulation of boards from

Posts on the blog have been cited in more than 300 law review articles, noted in SEC speeches, and referenced in congressional testimony.

shareholders. Recently, the forum has published a series of posts by Lipton that took issue with a study co-written by Bebchuk on hedge fund activism and its impact on shareholders. Being willing to take one on the chin so publicly may be part of the mission for Bebchuk and his team. The forum makes a substantial effort to be broad and diverse, and to be open to different views—even if they might be critical of work by Harvard faculty.

Edited by fellows of the Program on Corporate Governance—typically graduate students or postdoctoral fellows at HLS—the blog has been a learning tool for its co-editors. “[Editing the forum] gave me exposure to a broad community of practitioners, academics, and policymakers seeking a place for cutting-edge conversations about corporate law and finance—an experience that convinced me that legal academia was the place for me,” says Robert Jackson ’05, the forum’s first fellow editor and today a professor at Columbia Law School. “Ten years later, I still draw on those relationships and insights in my teaching and scholarship.” —JULIE H. CASE

FACULTY FOCUS

Taking on a New Cause

Diagnosed with Alzheimer's, Ogletree vows to fight it

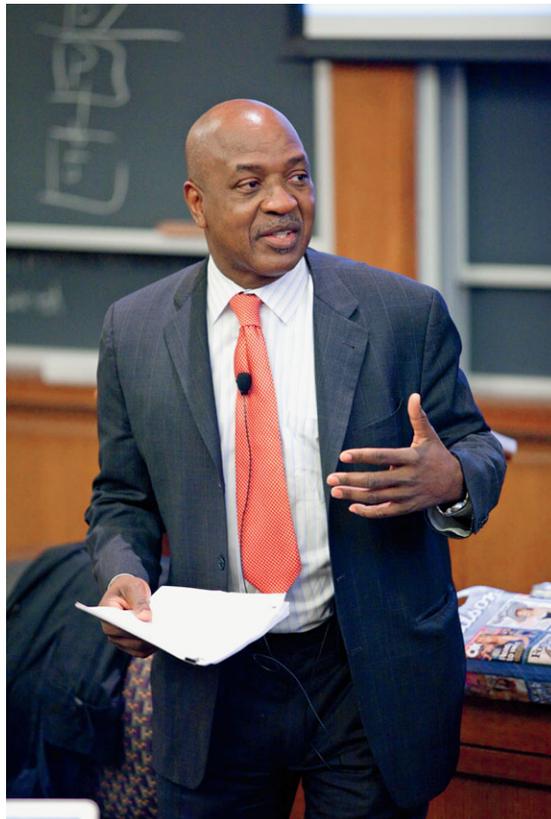
HLS PROFESSOR CHARLES OGLETREE '78, executive director of the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School, announced this summer that he has been diagnosed with Alzheimer's disease. Ogletree, who is 64, said he will work to raise awareness of the disease and its disproportionate effect on African-Americans.

In a statement, he said: "Recently, I was diagnosed with early-stage Alzheimer's. It was something I had not anticipated and, at first, I did not know how to respond to it.

"Should I allow myself to become despondent amid this challenge? No—today, just as I have fought and advocated for civil rights and justice for America's communities of color over the course of decades, I will join the efforts of others raising awareness about the illness and fighting for a cure."

In sharing the news with the HLS faculty, Dean Martha Minow said: "I know you join me in sending strength, support, and love to Tree, Pam, and their children. I am so glad that he will continue to speak, write and be a vital member of our community as long as he is able."

Like many of Ogletree's students, President Barack Obama '91 calls him a mentor and an inspiration. In a statement to *The Boston Globe*, Obama said: "Professor Charles Ogletree has been a dear friend and mentor to Michelle and me since we met him as law students more than two decades ago. But we are just two of the many people he has helped, supported, taught, ad-



"I've made up my mind to be thankful for what I have rather than focus on what I may lose." ▲

vised and encouraged throughout his life. We were saddened to hear of his recent diagnosis, but we were also so inspired by Charles' courageous response. In sharing his story and putting a spotlight on this disease, he is continuing his lifelong efforts to help others. Michelle and I are honored to know Charles, and wish him, Pamela, and their children the very best."

Said Ogletree: "I am grateful for the support of my family, friends, and colleagues, and especially grateful for my wife, Pamela, in joining me in the steps I have already taken and the journey that lies ahead—one that has led me to take a stand and ally myself with the fight for

a cure for Alzheimer's.

"While the causes of Alzheimer's are currently not well-understood, it is my sincere hope that Alzheimer's disease will continue to be part of a national conversation on health care.

"At this very moment, research is being carried out across the country and around the world to better understand and treat Alzheimer's disease. The scientific community, including the community of medical researchers here at Harvard University, continues to make gains. These advances allow for better treatment of Alzheimer's and have improved the lives of millions. However, these gains cannot come quickly enough.

"I've learned that Alzheimer's is the sixth leading cause of death in the U.S. and more than 5 million people are living with the disease. That number is growing as our population ages and grays.

"Like many illnesses, Alzheimer's has a greater impact on the black community. Studies show that African-Americans are almost twice as likely as whites to develop the disease.

"I have hope despite this. I've made up my mind to be thankful for what I have rather than focus on what I may lose. I've made up my mind not to complain about the illness, but to find purpose in it. The grace of God and my faith in God enable me to respond this way.

"I will not give up in the face of this challenge. I plan to remain a member of the Harvard Law School faculty and continue to speak and write for as long as I am able."

Short takes
from
faculty op-eds

ELIMINATE LAWS THAT CAUSE HEALTHY FOOD TO GO TO WASTE

THE NEW YORK TIMES

SEPT. 21, 2016

→ Assistant Clinical Professor
Emily Broad Leib '08

"MULTIPLE POLICIES COULD BE implemented to address food waste and its impacts on the environment, food security, and our climate. In particular, we should eliminate laws that cause healthy food to go to waste, incentivize food donation and, when needed, enact penalties for senseless food waste. Let's start with consumer confusion, and the misguided laws regarding food date labels. Eighty four percent of consumers report they frequently throw food away after the sell-by date has passed, despite date labels being indicators of freshness, not safety. What's more, in the absence of federal law on date labels, no two states have the same date label rules. Several states even restrict or ban the sale or donation of past-date foods. Federal legislation is needed to eliminate state laws that require past-date—but still safe—foods to be wasted, and to standardize date labels so they are clearer to consumers."



ILLUSTRATIONS BY REBECCA CLARKE

WHY PRESIDENT OBAMA WON'T, AND SHOULDN'T, PARDON SNOWDEN

ARS TECHNICA

SEPT. 17, 2016

→ Professor Jack Goldsmith

"A 'pardon Snowden' campaign was launched Wednesday [Sept. 14] in conjunction with the Snowden film. ... I remain unconvinced. ... [T]o say that the intelligence community benefited from the Snowden leaks is not to say that the president should pardon Snowden, for the price of the benefits was enormously high in terms of lost intelligence and lost investments in intelligence mechanisms and operations, among other things. Many Snowden supporters pretend that these costs are zero because the government, understandably, has not documented them. But it is naïve or disingenuous to think that the damage to US intelligence operations was anything but enormous."



ALL IMMIGRANTS DESERVE A COURT HEARING. PERIOD.

BLOOMBERG VIEW

AUG. 31, 2016

→ Professor Noah Feldman



"Do undocumented mothers and children who are caught just after they've entered the country illegally deserve judicial review

after immigration officials have decided they don't qualify for asylum? If you're a foreigner denied access to the U.S., you have no right to a court hearing. If you've been in the country for a while, even illegally, you're entitled to face a federal judge before being deported. But there's a constitutional gray area that applies to undocumented immigrants who are caught within two weeks of entering the country or within 100 miles of the border. Federal law grants them a hearing before an immigration judge, but denies further review before a federal district court. ... [A]n appeals court has held that this denial doesn't amount to an unconstitutional suspension of the writ of habeas corpus. ... The decision is wrong, and the U.S. Supreme Court should review it."

THE FED'S STRESS TESTS NEED TO BE TRANSPARENT

THE WALL STREET JOURNAL

SEPT. 16, 2016

→ Professor Hal Scott and John Gulliver

"THE STRESS TESTS THAT BIG AMERICAN banks face each year are about to get more stressful. The Fed is planning to substantially increase—by an average of 57%, we calculate—the regulatory capital that the eight largest banks in the U.S. need to pass the annual tests. Had these expected higher capital levels been in effect this year, it is likely that the country's four largest banks (J.P. Morgan Chase, Bank of America, Wells Fargo and Citigroup) all would have failed the test. ... The higher capital requirements will diminish these banks' ability to lend, potentially affecting economic growth. That isn't all: The Fed's secretive process for designing stress tests might well be illegal. It likely violates the Administrative Procedure Act of 1946, requiring government agencies to be transparent and publicly accountable."



PARTICIPANTS IN THE CELEBRATION OF
BLACK ALUMNI REFLECT ON
ACCOMPLISHMENTS, ASPIRATIONS

BY LEWIS I. RICE
PHOTOGRAPHS BY JESSICA SCRANTON

A TIME FOR ACTION

HLS hosted the fourth Celebration of Black Alumni in September, featuring the theme “Turning Vision into Action.” The actions of alumni who attended have resonated in courtrooms and classrooms, in elected office and the corner office, in communities and in the culture. The Bulletin spoke with five CBA participants about where their vision has led them and where they hope to yet go.



Gina Clayton '10

Gina Clayton '10 has been fighting for social justice her entire adult life, starting when she was a youth organizer for the NAACP as an undergraduate student at the University of Southern California. Now she is running her own nonprofit, Essie Justice Group in Oakland, California. Started with the help of a 2014 HLS Public Service Venture Fund seed grant, the organization seeks to empower women whose loved ones are incarcerated and to end mass incarceration.

Gina Clayton is the founder of Essie Justice Group.

On the significance of the Celebration of Black Alumni:

I didn't know anybody that looked like me that went to a school like Harvard. That was just not a reality for me. That's the importance of convening events like this. It's to remind us and others who are just as exceptional from communities

that are often left out, that this is possible.

She grew up in Los Angeles, the child of a mother from Holland and an African-American father:

The spark for civil rights and social justice really came from the deeply personal experience of growing up in worlds that are different and trying to navigate both worlds. My entire life navigating the intersections of race, ethnicity, nationality, and

“I imagine women outside of jails, courthouses, state-houses demanding change.”

culture has meant that I’ve seen inequality in such a stark way from a very early age and also have been disturbed by it. I think all those things gave me a passion since I was very young for wanting to make things fairer for people.

Her interest in mass incarceration is political and personal:

When I got to Harvard, my very first year there, someone I love was sentenced to 20 years in prison. This was an eye-opening, transformative, really deeply painful experience that caused me to apply a laser focus on what mass incarceration is doing to families, to communities, and to this country today.

On the Essie website is this statistic: Nearly 1 in 2 black women has a family member in prison:

I began by asking the question: What is mass incarceration doing to women in the country when the numbers are so high? We know there’s an emotional and mental health toll; we know there’s an economic consequence. Surely this is creating all kinds of gender inequality in the

United States. No one else was doing it, in terms of organizing this particular group of people. That made it clear. We needed to start our own shop.

The organization offers a nine-week program to women who have incarcerated loved ones:

By the end of the nine weeks, we see that not only do women break through their isolation but their mental well-being improves, their access to resources

increases, and really importantly, they become civically active.

Women come to us as leaders already because they’re leading families, they’re navigating

complex systems. We are redirecting and funneling that incredible expertise and energy where we as a society need it most, and that is in building solutions in our criminal justice system.

She plans to build a network of women across California and the country:

I imagine women outside of jails and courthouses and governors’ mansions and statehouses together arm in arm demanding change. And I imagine women as leaders of their communities to facilitate the healing we all need in the wake of 40 years of bad, inhumane policy.

I see myself as a builder, an organizer of communities, as a gender justice advocate. What I love about the work that I get to do every day is that it captures completely what my theory of change is. Real sustained change that really shifts reality for millions of people in a positive way happens when communities are uplifted, are given access to decision-making, are listened to. That kind of small “d” democracy is what I believe in.

Rory Verrett ’95

During his career, Rory Verrett ’95 has worked in policy, public affairs, and talent, including with the National Football League and an executive search firm. He is now a principal at The Raben Group in Washington, D.C., leading the firm’s sports practice, which seeks to promote fairness, equity and integrity within sports. He also hosts the Protégé career advice podcast.

The Celebration of Black Alumni is his favorite school event:

They are wonderful homecomings for some of my closest friends who happen to be some of the most accomplished people in law in America. I think the journey of African-American Harvard Law grads is somewhat unique. Just being able to check in at different stages of your career with people who are walking the same journey can be very uplifting, can help you see things with clarity in your own career.

He appeared on a CBA panel as an expert on career fulfillment. On his own career fulfillment:

What I’ve found is, if I can be in an influencer role with a positive outcome in an organization with a highly ethical and engaging culture, that’s when I’m at my most joyous, most engaging, most impactful state as a professional.

How he influences organizations:

A lot of the work that I do is in helping organizations understand the importance of diversity and inclusion and how it can impact what they do from a bottom-line perspective. And a lot of companies look at that as a legal and compliance issue: “Help me stay out of trouble.” Whereas I always approach it as, Here are markets, here are audiences, here are talented executives that you may or may not be accessing because you don’t have the competency and the capability to bring those influencers into your organization.

On athletes taking a public stand on social issues:

I know a lot of players can be a little nervous about speaking out on social issues, but I think the rewards far outweigh the risks. Whether they accept it or not—and I think most of them do—they are role models for millions of



people in America and around the world, particularly black and brown children, who will know who their favorite athlete is before they can recognize who the president is.

HLS Professor Charles Ogletree's book "The Presumption of Guilt" included Verrett's story about being mistaken for a car thief while in his own car. Another time, police officers threw him against a hood

Rory Verrett is a principal at The Raben Group and host of the Protégé podcast.

of a car while he was walking near his home wearing a Harvard Law sweatshirt:

I asked why they stopped me. "We're looking for someone who stabbed a pizza guy two blocks away." And I was wondering the whole time: Was he wearing a Harvard Law sweatshirt? But that stuff happens all the time. It's happened to every black man I know multiple times. So it just reminded me that no matter

your station in life, this could be an unfortunate reality of living in America.

The advice he'd give to someone who just graduated from HLS:

A Harvard Law degree is a very powerfully flexible credential. It can be an admission ticket to the legal establishment in America and around the world. Or it can be an insurance policy for you to take a risk in your career.



Debra Lee '80

The chair and CEO of BET Networks, which provides entertainment for a primarily African-American audience, Debra Lee J.D./M.P.P. '80 has worked for the organization for 30 years, rising from general counsel and COO. Over the years, the network has evolved but her mission to serve her audience remains unaltered.

Debra Lee is the chair and CEO of BET Networks.

Her perspective of her time as a student at HLS:

I think it was still hard during the late '70s to be an African-American at Harvard Law School and to be a woman at Harvard Law School. There weren't a lot of professors then who really thought a lot or cared a lot about issues that were important to me as a black

“My father said, ‘You’re doing what?!’ But in hindsight, [taking a job at BET] was the best decision I could have ever made.”

female. I have to admit it was a difficult time to go to Harvard, and you may remember it was a difficult time to be black and to be in Boston. Boston was going through the school desegregation cases, and we were told as black law students that there were certain parts of Boston that you couldn’t go to. So even though I’m from the South, that was very alarming to me. It was a tense time, but we had a cohesive group of students and nice support groups to help you manage through the environment.

I’ve heard it’s changed a lot over the years.

She took a job at BET in 1986, a few years after its launch, leaving the law firm Steptoe & Johnson:

It was very risky. I felt like for the first time I was stepping off the fast track. I’d gone to Harvard Law, I’d done a clerkship, I was working for a corporate law firm and now all of a sudden I was going to work for a small, black-owned company that not many people had heard of. I was so excited about what BET did—the fact that they provided programming for the African-American community, the fact that I had grown up on great brands like Ebony and Motown and Essence. I decided that it was worth taking the risk and hoped that it worked out. My father said, “You’re doing what?!” But in hindsight, it was the best decision I could have ever made.

She said she brings a different voice to the job of CEO as a woman, including an emphasis on strong female characters in programming:

I realized early on I’m in this position for a reason. Because of who I am. And I shouldn’t run away from that. I shouldn’t try to manage like a man or how I

think a man would do it. I have to be myself. And either I will be successful doing that or I will fail, but I have to be true to myself and what’s important to me.

She is one of few women or minorities serving as leader of a large company:

We’ve been talking about diversity for 30 years, and we’ve been talking about getting more minorities and women in upper-level positions, and it just hasn’t happened. And I find that distressing. And I think people in these positions, the CEOs and the COOs, just really have to commit to bringing someone along with them. In some companies that just doesn’t happen because all the executives look the same, usually white males. I’m really proud of what we’ve done at BET in terms of training minority executives and female executives and giving them opportunities that they may not have had at other places. But that old boy system is really hard to break.

Television now features far more diversity in its programming than it did when BET began, but the network still carves out its own niche:

We know our audience better than anyone else. So our goal is to produce programming that is the highest quality that competes with anyone else out there, that can be an authentic voice for our audience. We try to stick to what we do and compete. I remember someone once told me that competition helps make the leader stronger. And I think that’s happening in our case. We are definitely still the leader. It’s a little more competitive right now. That’s good. We’re up to the challenge.

Vision Enacted

Over 800 alumni and guests returned to Harvard Law School Sept. 16-18 for the fourth Celebration of Black Alumni.



The weekend featured a wide range of speakers, including U.S. Attorney General Loretta Lynch '84, who was interviewed by Dean Martha Minow.



A participant looks at an exhibit on the former HLS shield and the school's ties to slavery in the 18th century. See it at bit.ly/HLSshield.



MARTHA STEWART (3)

In Celebration of Inspiration

Sixteen years ago, HLS Professor David Wilkins '80 organized the first Celebration of Black Alumni.



At this fall's event, Wilkins himself was celebrated with the HLSA Award, presented by HLSA Vice President James E. Bowers '70 and Dean Martha Minow.



CBA Reunion Co-chairs Benjamin F. Wilson '76, Kim K.W. Rucker '93 and Ron McCray '83 helped to make this year's celebration happen.

Ted Wells '76

A partner and co-chair of the litigation department at Paul Weiss, Ted Wells J.D./M.B.A. '76 has successfully defended corporations in multibillion-dollar cases and public officials against high-profile charges. He also has done significant public service work, including with the NAACP Legal Defense and Educational Fund, and he was awarded the Charles Hamilton Houston Medal of Freedom at CBA.

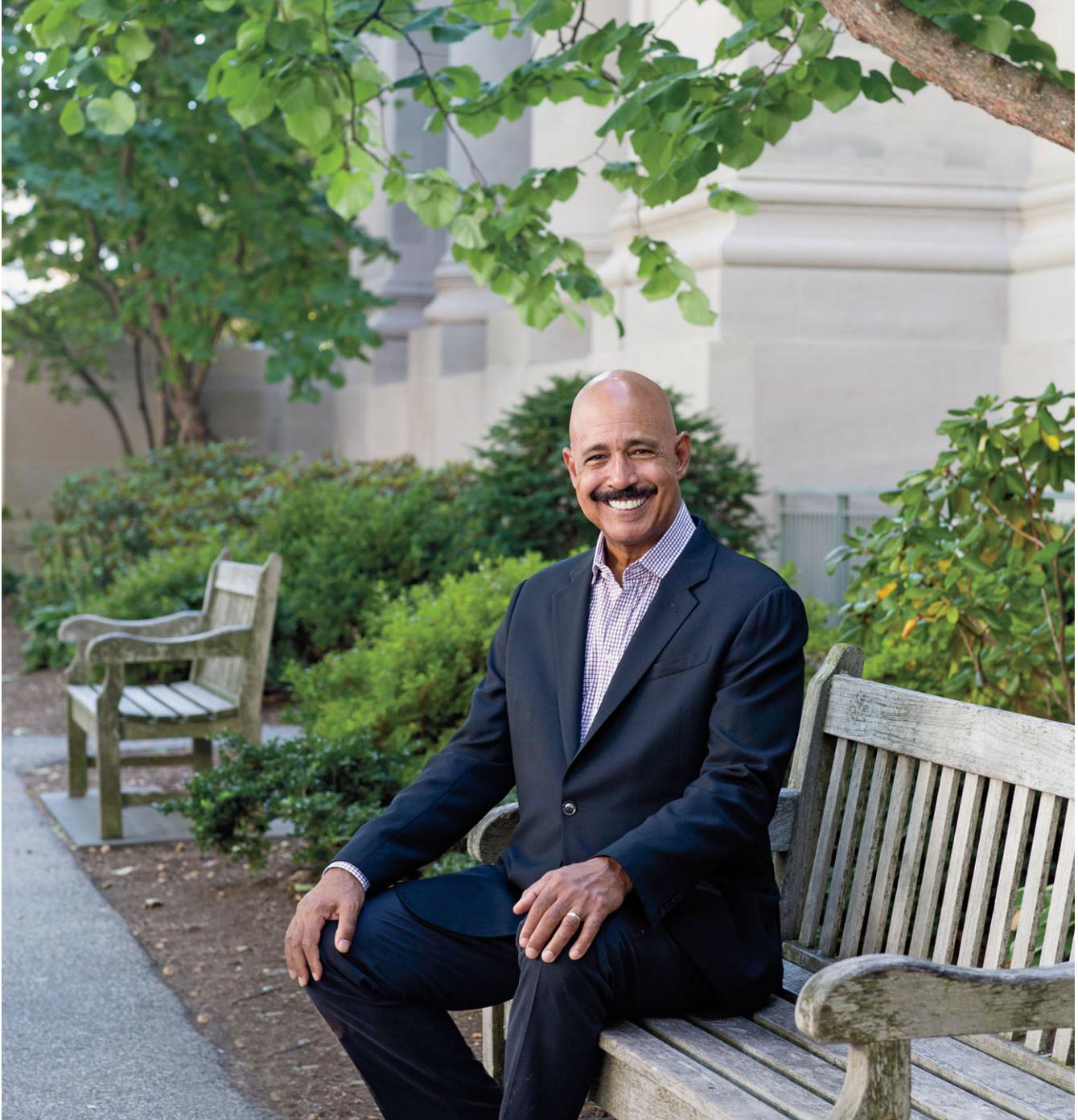
He has attended every Celebration of Black Alumni: So many of us see ourselves as part of a long line of black lawyers who were educated at Harvard and went on to participate in social justice causes. Many of us don't see ourselves as having gone to Harvard Law for strictly personal gain, but rather to join a much larger legacy of trying to make America better, trying to racially integrate America, trying to work for social justice and equality.

He became close with Professor Derrick Bell, who taught him at HLS: Professor Derrick Bell used to tell us that if we were going to work for corporate America, we should not get lost in corporate America. He said we had an obligation on the one hand to try to integrate corporate America and be participants in every part of the economy, but on the other hand we also had an obligation to play an active part in the African-American community. Part of his vision is that we would have people with social justice sensitivity who would sit on major corporate boards, who would be partners in major law firms, who would support our civil rights organizations.

African-Americans have made gains since the time he graduated, Wells says. And yet: The truth of the matter is that things have changed to a modest degree: Most major law firms now have one or two black partners. But the percentages are still extraordinarily low and increasing at only a glacial pace. So it's not like we've had a big breakthrough that created a critical mass of black partners at big firms. It's an ongoing struggle and hopefully at some point we won't have to talk about such things. But that will probably be a long way from now.

His first multibillion-dollar defense was on behalf of Citibank:

MARTHA STEWART (2)



It's scary to stand in front of a jury and talk about the possibility of a jury returning a verdict against your client in the billions of dollars. It's emotionally draining. I remember thinking that the whole Citigroup board is following my trial and that they had put their faith in me that I'd win the case. And I did.

If you win enough cases, people will find your telephone number and hire you for more cases.

On appealing to a jury when defending corporations:

It's my job to strip away stereo-

types about my clients so that by the end of a trial the jurors realize that whatever happened involves real people who have lives like anyone else and who should be judged based on the facts and not on their status as executives of major corporations. Corporations can't do anything except through their people. So you're always trying to humanize your clients.

He received a lot of attention for his investigation into what has been dubbed Deflategate, an alleged scheme by the New England Patriots to deflate footballs:

Ted Wells is a partner and co-chair of the litigation department at Paul Weiss. At CBA, he was awarded the Charles Hamilton Houston Medal of Freedom.

No comment on Deflategate.

He is at an age when many people retire. He is not retiring:

I like being a lawyer. I'm involved in the most interesting and complex cases in the country. I get up every morning excited about my cases and trying to find good solutions for my clients. I'm truly blessed. People talk all the time about trying to find a job that you love and that you're passionate about. I have found a practice that I'm passionate about, and I appreciate how rare and fortunate that is.



Sylvester Turner '80

Inaugurated as mayor of Houston at the beginning of the year, Sylvester Turner '80 leads the fourth largest city in the nation, with challenges including city finances, pensions and infrastructure. A native of Houston, he previously served as a state representative and founded a law firm there.

Sylvester Turner is mayor of Houston.

In his inaugural address, he said that he doesn't want two separate cities, of haves and have-nots. His initiatives include a program to assist the chronically unemployed: Houston is a thriving, developing, dynamic city. But in the shadows of that economic prosperity, there are still many communities that are operating in the margins. We're working to reduce that income inequality.

We have to help people increase their skill set so they can take advantage of the job opportunities available in the city. Communities that have been overlooked and under-resourced for a long period of time we now have to give special attention to.

He is from one of those communities, the Acres Homes community—and he still lives there:

I think it's important for kids in the same circumstances in which I grew up to see firsthand that you can be born and reared in that neighborhood, or neighborhoods that are similar, and still be successful, still rise up the economic ladder and still end up being the mayor of Houston. And I think I can demonstrate that more by example than just by rhetoric.

In a time of increased scrutiny of police relations with the African-American community, he is focused on building trust:

The community needs law enforcement, and law enforcement needs the community. We're all on the same team working together and not at odds with one another. It's important for the police department to be diverse from top to bottom. It's important that we provide training on de-escalation, when police are confronting people out on the streets in the communities. I'm a very strong advocate of neighborhood community policing so that police can know people in the community and the community can know the police in their areas.

If at some point in time there's an incident involving the police that people believe is unwarranted or unjustified, I think it's important to speak very candidly, to be very transparent, to be upfront. But also it's more important for people to see that you are in the neighborhood,

that you are approachable, accessible and responsive, before those incidents occur.

His mother was a maid; his father died of cancer when he was 13. They raised nine children in a two-bedroom home:

They said that if we needed something and they didn't have it, they would tell you they were sorry they didn't have it. But tomorrow will be better than today. Just keep working at it. Education was the key to getting us a better future. And they were right.

My mom's message was, We may not have lived in the biggest home, the high-priced home across town, but the neighborhood contained all the essential ingredients to make you successful.

He was part of the first wave of school integration, when African-American students from his neighborhood were bused to a white high school:

They were seeing us for the first time, and we were seeing them for the first time. It was like two universes—hot air and cold air—meeting at the same time, and that created a lot of friction, a lot of fights in the hallway. It was not good. But what we discovered is that once the parents got out of the way and allowed the kids to get to know one another, then over the next few years things started to settle down. We got to know them, and the white students got to know us, and we discovered that we had more things in common than otherwise. And as a result, by the time I was in the 12th grade, I was chosen president of the student body. From a rocky start, it turned out to be an excellent ending.

Lewis I. Rice is a Boston-area writer and editor.

Just Connect

As part of the celebration, the Harvard Black Law Students Association organized mentoring sessions between students and alumni.



The Harvard chapter of BLSA was founded in 1967. Fifty years later, many of the original members returned to campus and were honored by generations of alumni who have followed.



Professor Charles J. Ogletree Jr. '78 is presented the Celebration of Black Alumni Award by Dean Martha Minow, as keynote speaker Bryan Stevenson '85 looks on. The award recognized Ogletree as "a pioneer for social justice." Last spring, Ogletree received the HLSA Award.



MARTHA STEWART (3)

TRADE

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PLUSES

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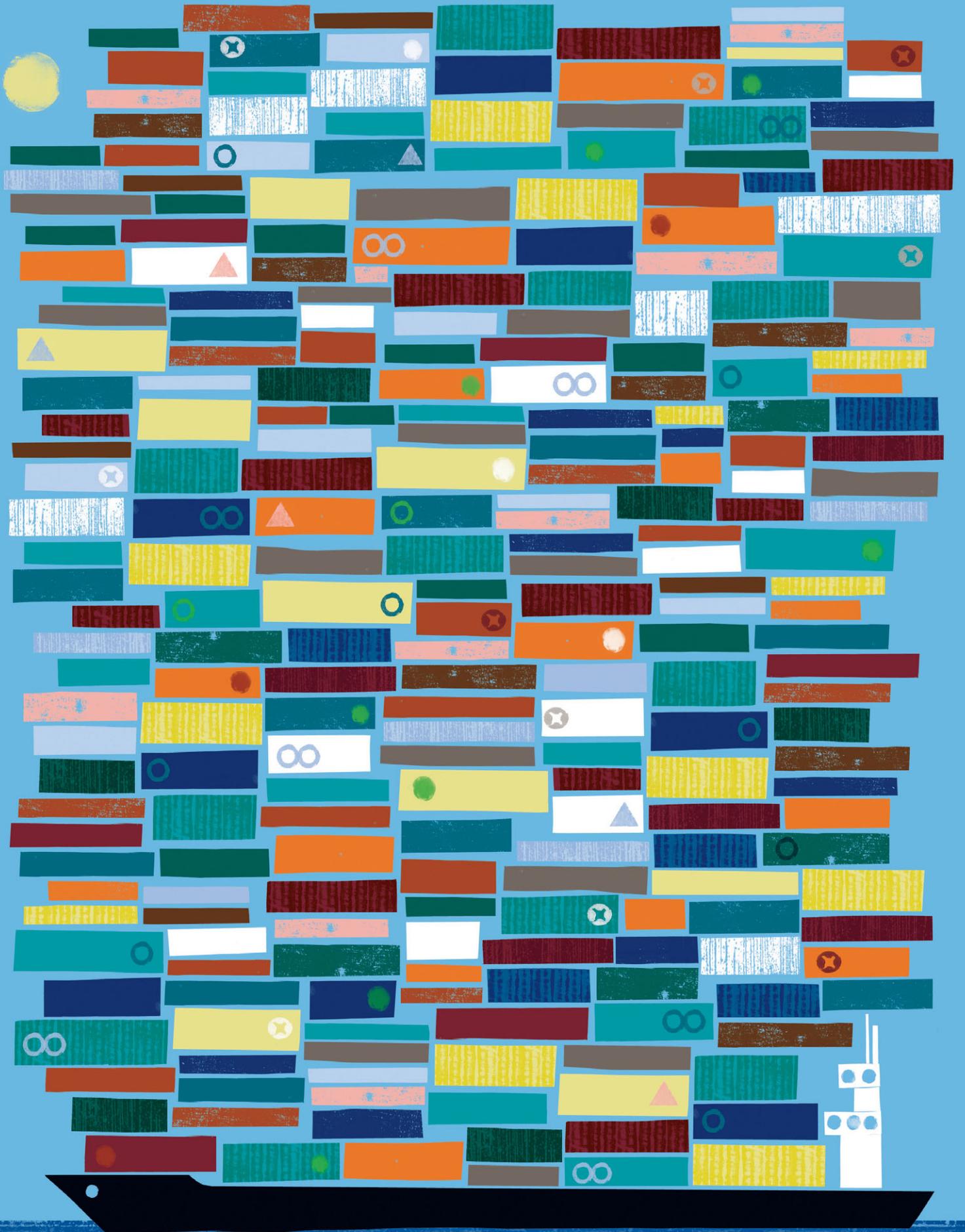
PITFALLS

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**Trade experts
weigh whether
the U.S.
should join the
Trans-Pacific
Partnership**

BY ELAINE McARDLE

ILLUSTRATION BY MELINDA BECK



Of all the issues engendering voter passion in the 2016 U.S. presidential race—immigration, terrorism, Supreme Court appointments—perhaps none has been more surprising than global trade, especially the highly controversial Trans-Pacific Partnership.

“I knew it would be a big election issue, but even I was surprised by the number of ‘No TPP!’ signs at the Democratic National Convention,” says Mark Wu, an assistant professor at HLS, where he teaches international trade and international economic law.

Trade has changed tremendously over the past 20 years, Wu notes: Goods are increasingly manufactured through global supply chains, services play a growing role in economies worldwide, and automation and the digital revolution are upending economic production. With negotiations at the World Trade Organization at an impasse, countries are turning to mega-regional trade agreements like TPP.

The TPP would eliminate tariffs between the U.S. and 11 other nations in the Asia-Pacific region that together make up 40 percent of the world’s economy. President Barack Obama ’91 and Michael Froman ’91, whom the president appointed as U.S. trade representative in 2013, say it will strongly benefit the U.S. by opening new markets and creating high-paying jobs while protecting national security. Although the TPP has minimal Democratic support in Congress, Obama has indicated that he sees TPP as his legacy issue. He has promised to get the agreement passed during the lame-duck session after the November election, using a special “fast track” authority granted by Congress last year.

It may be TPP’s only chance. Both Hillary Clinton (who once supported it) and Donald Trump have made opposition to TPP a campaign issue, as did Bernie Sanders. An unusually broad base stands with them, including labor unions, environmental groups, faith groups, internet freedom groups, farming communities and many in the LGBT community. They say it will increase outsourcing of American jobs and lead to lower wages. U.S. Sen. Elizabeth Warren, a former HLS professor, is among those who especially object to TPP’s Investor-State Dispute Settlement system, which allows corporations to challenge American laws and adjudicate complaints not in American courts but before an international tribunal of three arbitrators.

For insight on the complex issues of the TPP, the Bulletin interviewed HLS alumni who are at the center of the debate.

Michael Froman ’91



What would passing the TPP mean to the U.S.?

MICHAEL FROMAN ’91, U.S.

trade representative:

TPP delivers both significant economic and strategic benefits for the U.S. On the economic side, TPP levels the playing field for American workers, cuts more than 18,000 taxes various countries put on made-in-America products, and puts in place historic labor, environmental, and intellectual property standards that ensure that our trading partners play by our rules and values—not China’s. These benefits are particularly important because the U.S. is an open economy. Our average applied tariff is only 1.5 percent, and we don’t put up other barriers to imports. So whether we move forward with TPP or not, imports will continue

to come across our borders because our consumers demand them. But through TPP we get the chance to help level the playing field for our businesses and workers in some of the fastest-growing markets in the world. The nonpartisan Peterson Institute for International Economics found that TPP is estimated to increase exports by over \$350 billion each year

by 2030 and is estimated to create over \$130 billion in additional real income each year by 2030, with more than half of the gains going to workers in the form of higher wages.

On the strategic side, TPP is the highest-standard trade agreement in history, and it will establish rules of the road to ensure that tomorrow’s global trading system is consistent with American values and American interests.

TPP presents a choice, but it’s not between the status quo and TPP. It’s between TPP and a more statist, mercantilist approach. In fact, right now China is racing ahead to complete RCEP [the Regional Comprehensive Economic Partnership], its mega-regional agreement that covers 16 markets, from India to Japan. It would carve up these markets at our expense and, unlike TPP, it doesn’t protect worker rights or enhance environmental standards. It doesn’t have strong intellectual property rights enforcement. It doesn’t put disciplines on state-owned enterprises or ensure a free and open internet.

LORI WALLACH '90, *director of Global Trade Watch at Public Citizen:*

The dirty secret about TPP is that it's branded as a trade agreement but only six of the 30 chapters have anything to do with trade. It was negotiated behind closed doors for seven years with 500 official U.S. trade advisers who represent corporate interests, and with the press, the public, and Congress locked out.

The reason economists including Robert Reich and Joseph Stiglitz, who supported NAFTA and other past pacts, are against TPP is because there are no trade gains to be had! It involves 11 other countries, six of which we already have zero tariffs with because we already have trade deals with them. ... With Japan, their average weighted tariff is less than 2 percent, and of the remaining countries, such as tiny Brunei or New Zealand, there's just not a lot there as far as new markets for the U.S.

So what's hiding in there that's not about trade? Stuff that would make the free-trade philosophers like Adam Smith and David Ricardo roll in their graves: patent extensions to create monopolies, stop competition, and keep prices high for medicine and technologies; extensions of copyrights that make textbooks more expensive; limits on internet freedom—things that those industries tried to get done in Congress and failed.

Do you believe President Obama can get the TPP passed during the lame-duck session?

FROMAN:

The TPP can absolutely pass Congress this year, and the president is far from being alone in his commitment to seeing that it does. There is a large and diverse coalition of support—including mayors, governors, farmers, ranchers, small-business owners, tech companies, military officials and many more—who believe TPP must pass this year. They're interested in things like how TPP cuts tariffs as high as 38.5 percent on beef exports for the cattlemen in their districts, or how it cuts tariffs as high as 70 percent on made-in-America auto exports. They're interested in how it renegotiates NAFTA with stron-

“Through TPP we get the chance to help level the playing field for our businesses and workers.”

ger labor and environment commitments, and how it ensures that the U.S. and not China is writing the rules of trade for the Asia-Pacific region.

WALLACH:

It's 50/50 because the president won't use fast track to submit legislation unless he has the votes, and right now [September] he does not in the House. So he's working super hard to get them. They do not want public debate on the TPP because half of the public is unaware of it—after seven years of secret negotiations—but all the polls show

that once the public knows about it, they become opponents. So they are dispatching Cabinet secretaries and CEOs to congressional districts to target House members they think they can get to vote for the TPP so they can do this in the lame-duck session under the radar. Do I think they will have the votes in the end? I think they won't.

Critics say trade agreements exacerbate income inequality in the U.S.—that corporations gain from them but the working class bears the brunt of job losses. Your thoughts?



Lori Wallach '90

FROMAN:

As part of the bipartisan Trade Promotion Authority legislation passed in 2015, Congress commissioned a study from the independent U.S. International Trade Commission to look at exactly this. First, the commission looked at TPP and found that it would deliver an estimated \$43 billion in real GDP gains each year by 2032, with two-thirds of that income going to workers in the form of higher wages and additional job opportunities. The ITC report also estimated about \$14 billion a year by 2032 of additional purchasing power above and beyond the wage increases, some of which were due to reduced U.S. tariffs on imported goods. The Peterson Institute also has projected that TPP will deliver higher wages, which is consistent with the fact that export jobs pay, on average, 18 percent higher wages than nonexport jobs.

The second congressionally mandated study that the ITC did looked at all modern trade



James Mendenhall '92

agreements together to see how they have impacted the economy and American workers. What they found was that trade agreements have increased U.S. employment and increased wages. They also found that trade agreements resulted in billions in tariff savings and that a significant part of that savings benefits low- and middle-income

consumers. The report also found evidence that trade agreements can serve to reduce offshoring, as U.S. businesses are incentivized to locate production and manufacturing in the U.S.

There is no doubt that forces like globalization and automation have created challenges and economic anxiety. The choice we face is what we do about those forces. We can either yell at the tide as it comes in, or we can proactively shape globalization. High-standard trade agreements, like TPP, are how we shape globalization to make it work for American workers.

REP. SANDER LEVIN '57
(Democrat-Michigan, 9th District):

Trade is not the only factor that has exacerbated income inequality, but it is one of them. I urged the In-

ternational Trade Commission to go beyond its traditional analysis and assess the impact of competition between very different economic structures, including that on income inequality. Their report essentially failed to do so. It determined that TPP could bring about a quite inconsequential growth in U.S. GDP of about one half of 1 percent over many years; at the same time, it came up very short in assessing the impact on growth in jobs, specifically in vital sectors of the

American economy, as well as in the growing income inequality in the U.S.

Donald Trump opposes the TPP; Hillary Clinton initially supported it. Now Clinton and Trump say they will seek a better deal than the one that the Obama administration secured on the TPP. If Clinton wins, do you think this will



Sander Levin '57

Robert Zoellick '81



entail making tweaks and then reversing her opposition, as Bill Clinton did on NAFTA?

JAMES MENDENHALL '92, partner at Sidley Austin in the international trade and dispute resolution group, and former general counsel of the USTR:

If Clinton wins, I think she will have to bring home some changes to the agreement. Given what she has said during the campaign, I see no other realistic way forward for her. However, the magnitude of those changes—and how they will be implemented—is unclear. Maybe there will be side agreements, a different type of informal understanding, or something else. The U.S. and its trading partners need to be creative. This will not be easy for our trading partners. They believe they have cut a deal, and that the bargains and compromises have been struck. They may feel that it is unfair to be asked to change the agreement, or that they cannot agree to changes without appearing weak. Frankly, those are all legitimate concerns. How would the U.S. feel if all of its TPP partners turned around and now demanded changes? So, creativity will be needed to meet all of these conflicting demands. But I believe the parties will find a way forward. [These are Mendenhall's personal opinions and not those of his firm.]

ROBERT ZOELICK J.D./M.P.P. '81, U.S. trade representative, 2001-2005; former president of the World Bank; and former deputy secretary of state:

The statements of Secretary Clinton and her campaign have become increasingly hostile to TPP. I suspect she will not be able to reverse course for years, until events and messages from the region drive home the economic, political, and security implications of failure. The U.S. government could address some TPP issues through side understandings with other countries without changing the agreement. The Obama administration is working on some of these issues now.

The largest and most controversial issue that might change congressional minds relates to the "manipulation" of exchange rates. The GATT/WTO and IMF articles recognize that currency and exchange rate policies can nullify the benefits of lower trade barriers, but neither institution has been able to address the problem. Some worry whether rules about "manipulation" could be triggered by monetary policies. Fred Bergsten at the Peterson Institute for International Economics has worked on proposals that would

establish standards for determining a “manipulator” and has suggested possible remedies, including counter currency intervention. Finance ministers (and central bankers) will not want to deal with exchange rate issues through trade agreements. If a workable set of standards is accepted, however, countries might agree to “norms” of behavior, as G-7 finance ministers have done in the past. Based on the experience of the past 70 years, such a “fix” of a systemic problem has usually first required a combination of U.S. unilateral action and diplomacy.

What are the geostrategic implications of the TPP?

ZOELLICK:

TPP is seen across Asia as a signal that America’s growing economic interests will be aligned with its security alliances and interests. At a time that many Americans recognize that the application of U.S. military force, however critical at times, cannot solve all international problems, it is a great mistake for the U.S. to retreat from economic diplomacy.

WALLACH:

The argument of last resort for every trade agreement, when the economic argument fails, is a national security scare tactic. The foreign policy scare tactic is used to displace the public’s attention from what the trade agreement is really doing for our country: empowering thousands of multinational corporations to sue the U.S. government in front of three corporate lawyers to collect unlimited sums of taxpayer money if they don’t like our laws; making it easier to offshore more U.S. jobs by proving special investor protections; undermining the regulations needed to ensure the stability of our financial system; flooding us with unsafe foods. If you don’t want people looking at that, holler, “China!”

Even worse, TPP could actually harm our national security interests. TPP eliminates language in past trade pacts that authorized the U.S. to protect its own national security interests even if they violated trade pact rules, and to do so without facing trade sanctions. Inexplicably, unlike other TPP signatory nations, the

U.S. did not take a national security exception to TPP rules that allow foreign investors new rights to acquire land, firms, natural resources, infrastructure, and other investments in the U.S. and operate them. So if the Committee on Foreign Investment in the U.S. has national security concerns about a foreign company making a U.S. acquisition, that company can drag the U.S. into an extrajudicial investor-state tribunal [the ISDS] that’s empowered to second-guess the U.S. government on what constitutes an essential national security interest and order compensation if that prospective investment is halted.

KELLY WELSH ’78, U.S. general counsel, U.S. Department of Commerce:

I don’t think the geopolitical concern is overblown. ... It’s fair to say that leaders from other TPP countries—and other Asia-Pacific countries hoping to join the TPP in the future—view TPP as a test of U.S. leadership and of its commitment to the Asia-Pacific region. President Obama throughout his administration has emphasized the importance of the U.S. relationship with Asia to our country’s future. Rejecting TPP would seriously undercut that relationship, and cede influence to other countries in the region.



Kelly
Welsh '78

LEVIN:

There are always potential geostrategic aspects related to a trade agreement. But as I have urged regarding all of them, beginning with NAFTA, trade agreements need to stand essentially on their own merits. Congress created the USTR

over 50 years ago because it didn’t like how the State Department was allowing foreign policy to influence our trade negotiations. Moreover, in the world today more than ever, I don’t see how a trade agreement can be lastingly in our national security interest if it isn’t in our economic interest. The primary issue must be, what will be TPP’s impact on Main Street (not on the South China Sea)?

Elaine McArdle is a writer based in Portland, Oregon, and a regular contributor to the Bulletin.

“The primary issue must be, what will be TPP’s impact on Main Street (not on the South China Sea)?”

TRADE

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SURPLUS

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**New
opportunities
at HLS for
students
interested in
the field**

Assistant
Professor Mark
Wu specializes
in international
economics and
trade law.

This past spring, World Trade Organization Appellate Body Chair Thomas Graham '68 and HLS Assistant Professor Mark Wu, an expert in international trade, convened more than 175 scholars, government officials, and lawyers from around the world to discuss the future of the Appellate Body of the WTO, the intergovernmental organization that governs world trade. The conference, which included more than 50 Harvard Law School alumni, aired views from different sides on whether the WTO dispute-settlement system is working well and how to improve it.

"Harvard alumni have always played an important role in shaping trade rules, litigating trade cases and monitoring trade's impact on the public interest," says Wu, whose extensive experience includes serving previously as the director for intellectual property in the Office of the U.S. Trade Representative and now as a principal liaison to the Trade and Environment Policy Advisory Committee, organized by the USTR and the Environmental Protection Agency. "Since joining the faculty, I've wanted to make sure that our students have opportunities to connect with these alumni and understand our rich leadership tradition in this field."

International trade traditionally has been a Harvard Law School strength, but since Wu's arrival at HLS in 2011, educational opportunities in the field have exploded. Wu teaches a first-year class on law and the international economy and an upper-level class on international trade law. Last year, his international trade law seminar focused on contentious issues in the Trans-Pacific Partnership negotiations and ongoing WTO cases. Students discussed their views with Matthew Yeo '94, an advocate before the WTO. They also worked in teams to perform a moot argument in front of Professor Seung Wha Chang LL.M. '92 S.J.D. '94, a member of the WTO Appellate Body. In recent years, Graham, along with former WTO Appellate Body member Jennifer Hillman '83, as well as Brazil's secretary of foreign trade, and the European Union's and China's trade litigators, have spoken at HLS. Several alumni have mentored students doing



MARTHA STEWART

internships and working on research papers.

"Being prepared to engage with trade law and policy in the 21st century requires understanding the diverse array of perspectives of your counterparts from around the world," says Wu.

This fall, he is teaching a seminar that examines the role and limits of law in resolving contentious trade issues between the U.S. and China. Students in a course at China's Tsinghua University School of Law are also looking at those issues. Through videoconferences, the two groups of students are exchanging views and discussing ideas with one another.

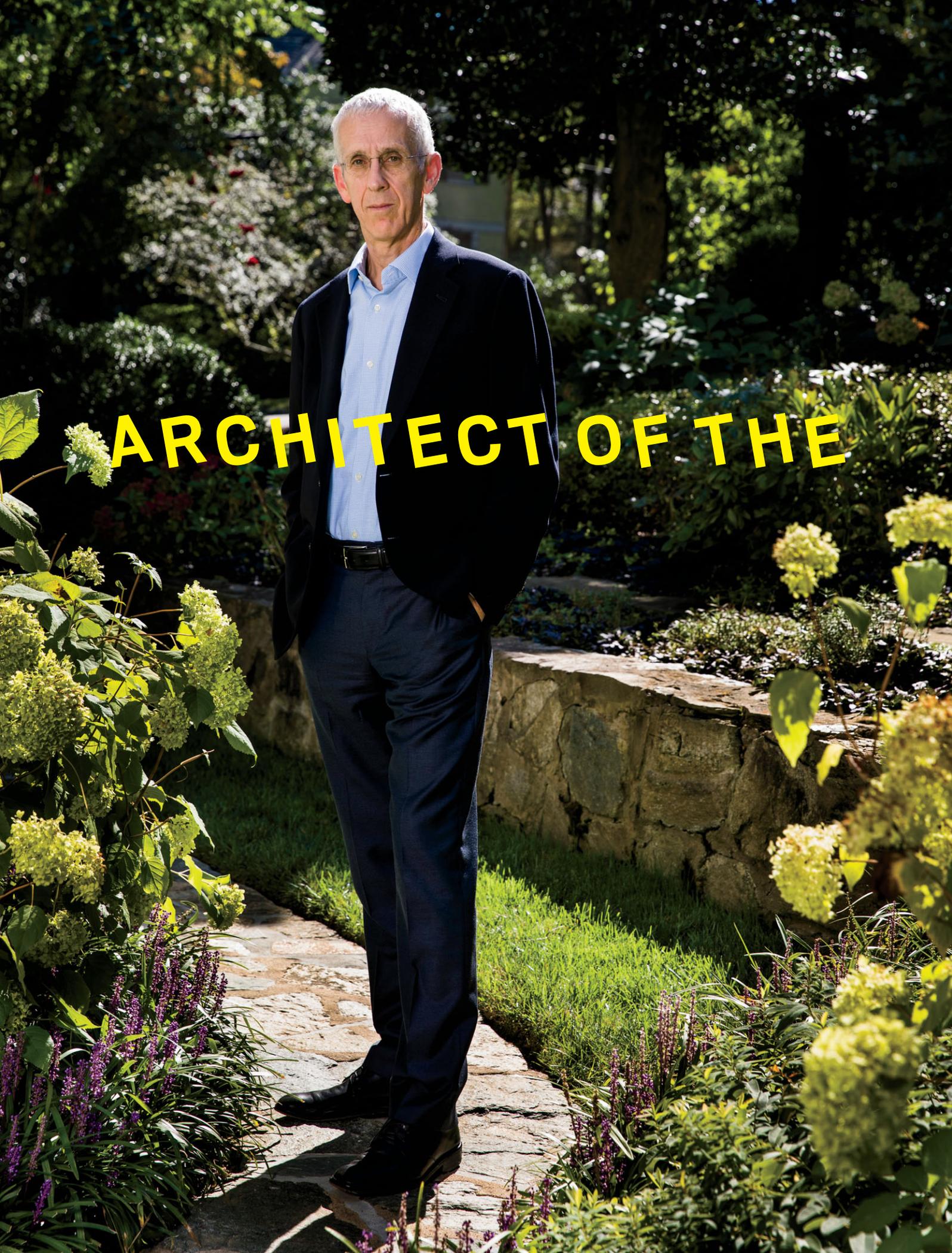
In the clinical arena, Katrin Kuhlmann '96 takes students to Africa through the New Markets Lab, the nonprofit, she founded to pioneer an inclusive approach to economic legal and regulatory reform in developing markets.

"I think it is wonderful that HLS is putting a focus on international trade law," says Bill Busis '87, deputy assistant U.S. trade representative for monitoring and enforcement in the Office of General Counsel at USTR. "This area of international law is arguably the most dynamic and meaningful in the entire field."

In 2011, students in Wu's international trade law class launched a WTO moot court team, for which he serves as faculty adviser. The team won the North American regionals in its first four years, placing second and third in the global finals. Students also started a Foreign Direct Investment moot court team, and the 2013 team placed first in the Foreign Direct Investment International Arbitration Moot competition in Germany.

Just last year a new student organization that focuses on international arbitration was formed at Harvard Law School. It joins the Harvard International Law Journal, the Harvard Asia Law Society, the HLS China Law Association, and the Harvard Law and International Development Society, which all organize talks and panel discussions related to trade, investment, and development. —E.M.

Trade plays a central role in Mark Wu's class on U.S.-China economic relations.



ARCHITECT OF THE



BREAKTHROUGH

Todd Stern '77 caps
two decades of
work to curb
climate change with
the landmark
Paris accord



By
Seth
Stern '01



Photograph by
Brooks Kraft



T

WO DECADES OF WORK by Todd Stern '77 to combat climate change was about to come to fruition last December in suburban Paris, where 195 countries had reached a landmark agreement to curb greenhouse gas emissions.

Then Stern, at the time the State Department's chief climate change negotiator, started reading the final agreement text and noticed something was wrong. A key passage said developed nations "shall" reduce emissions rather than "should," as in previous drafts. The change threatened to unravel a deal that hinged on each country deciding for itself how deep to cut emissions.

On the 13th day of what was intended to be 12 days of negotiations, Stern finally thought to himself: "Oh my God, we're going to get this done. After all these years, this is actually happening."

For 90 minutes, Stern—along with his boss, Secretary of State John Kerry, and other top U.S. officials—huddled with key foreign counterparts, successfully preventing a single word from derailing the agreement.

The error proved to be the last obstacle among so many in the 18 years since Stern joined a Clinton administration team preparing for an earlier round of talks in Kyoto, Japan.

In the intervening years, Stern played a pivotal role in developing the U.S. approach and ultimately quarterbacked the efforts of President Barack Obama '91

to reach a climate deal.

"Todd has been creative, flexible and steady as a rock," said HLS Professor Jody Freeman LL.M. '91 S.J.D. '95, who served as Obama's top climate change adviser in 2009-2010. "He deserves a lot of credit."

Environmental law and international diplomacy didn't figure early in Stern's career. He started out as a legal aid attorney and then shifted to corporate law at Paul Weiss before realizing he "had an itch for more public-minded and political" work.

He worked on the presidential campaigns of Michael Dukakis '60 and Bill

Clinton and then as White House Staff Secretary John Podesta's deputy before replacing him in 1995. It was in that role, Stern says, that he cut his teeth on climate change, when he was asked to work with a group preparing for the Kyoto conference.

"I learned that the multilateral climate process was very acrimonious, with a sharp divide between developed and developing countries, and that it was really difficult to have calm and reasoned exchange of ideas in the setting of the big year-end conferences, which are fairly chaotic and cacophonous, with literally thousands of players," Stern said of his experience in Kyoto and the following year in Buenos Aires, Argentina.

The Kyoto agreement adopted in December 1997 mandated binding reductions in carbon emissions for developed countries, but it included no mandatory standards for developing countries. The Senate never ratified the treaty, and President George W. Bush withdrew from the accord entirely soon after taking office.

Stern thought a lot about what went wrong both substantively and politically with the Kyoto agreement during the Bush administration, while a partner at WilmerHale and a senior fellow at the Center for American Progress.

"What is enshrined in Kyoto is a quite stark division between developed and developing countries with everything targeted at developed countries, and developing countries weren't asked to do any-

Under the Paris accord, for the first time, nearly every country, both developed and developing, committed to lowering greenhouse gas emissions in an effort to curb climate change.



Secretary of State John Kerry, at the U.N., holding his granddaughter as he signs the landmark climate accord, negotiated in France last December



thing,” Stern said. “From a substantive point of view that can’t work, and from a political point of view there just wasn’t support for an arrangement in which China and other big players were not being asked to do anything.”

Stern had an opportunity to apply those lessons when Secretary of State Hillary Clinton named him her chief climate change envoy in January 2009.

He got his first sense of how much global counterparts welcomed the Obama administration’s engagement at a conference in Bonn, Germany, in March 2009, when hundreds of attendees gave him a standing ovation.

“I told him, ‘Enjoy it. That’s the last standing ovation you’re going to get. Now you have to deliver the goods,’” said Alden Meyer, director of strategy and policy at the Union of Concerned Scientists.

The initial euphoria had worn off by the time 115 world leaders gathered in Copenhagen, Denmark, nine months later. The talks ended without any agreement to reduce emissions, but they helped lay the groundwork for later success in Paris, Stern said.

Still, Copenhagen represented a low point for the Obama administration’s efforts to reach a deal, particularly when it came to relations with China, which felt unfairly blamed for the outcome. (A Chinese negotiator called the U.S. a “preening pig” at one subsequent bilateral session.)

Stern said he wanted to make sure the two nations were “more synced up next

time” and set out to develop a stronger relationship with his Chinese counterpart, Xie Zhenhua, during dozens of formal meetings and more informal interactions.

He traveled to Xie’s hometown in China, took him to a Cubs game in Chicago, and hosted a dinner at his home with his wife and sons.

“I don’t want to overdo it: Countries act based on interests, not because their guy likes our guy,” Stern said. “On the other hand, it’s also true that if you build trust between two people who are dealing with each other and build some affection on top of that trust, you’re going to have a better chance of finding common ground.”

Stern’s outreach and months of quiet negotiations helped lead to a joint agreement in November 2014 between the U.S. and China to curb carbon emissions, a step—along with multiple layers of other bilateral and multilateral negotiations—that helped pave the way to the Paris deal.

“Todd was the day-to-day quarterback calling the plays and giving the signals,” Meyer said. “People in the administration gave a lot of deference to Todd on negotiating dynamics, where other countries’ redlines were, where their sweet spots were, and how to get to yes.”

Roger Ballentine ’88, president of Green Strategies, who succeeded Stern as the Clinton administration’s climate change coordinator, recalled another hallmark of Stern’s success that he witnessed during an earlier round of hostile talks

with China’s negotiators in the 1990s.

“Todd was just steady. He wouldn’t let them leave the room. He wouldn’t get emotional. He just kept driving through that meeting with patience, perseverance, and a relentless but polite way that ultimately led to a very long and productive meeting because of his refusal to let the meeting go south,” Ballentine said. “That kind of patience and determination served him very well when he ultimately did the Paris negotiations.”

Stern said it wasn’t at all certain that a deal was going to happen in Paris until the 13th day of what was intended to be 12 days of negotiations. “I remember sitting in my seat, thinking, Oh my God, we’re going to get this done,” Stern said. “After all these years, this is actually happening.”

Under the Paris accord, nearly every country—both developed and developing—agreed to lower greenhouse gas emissions, with each country determining its own targets. But countries will be legally required to monitor emission levels and report publicly on a regular basis on the progress of their efforts and on whether cuts meet their targets.

“We accomplished a great deal and indeed, honestly, more than we even expected,” Stern said at a Brookings Institution event in December soon after returning from Paris. “It’s

the first universal lasting climate regime that is really applicable to all parties.”

Much remains to be done in implementing the accord to ensure the pledges made by countries are met, and hopefully, exceeded, said Bern Johnson ’87, executive director of the Eugene, Oregon-based Environmental Law Alliance Worldwide.

But Johnson said Stern and his Obama administration colleagues deserve credit for what they have already accomplished.

“The Paris agreement is a huge step in the right direction, and the Obama administration should be applauded for meeting that extremely difficult challenge,” Johnson said. “You always hope they do more, but on balance the Paris agreement looks awfully good.”

Stern left the State Department in the spring, shortly before a United Nations ceremony where dozens of countries signed the climate deal.

He said he’s happy to have more time at home with his wife and three sons after spending three to four months a year on the road.

He’s co-teaching a course on climate negotiations and climate change at Yale Law School this fall and has no plans to join the new administration should Hillary Clinton be elected.

But don’t expect him to stay away altogether.

“He’s got too much skin in the game to sit on the sidelines and not be a player,” Meyer said.

Seth Stern ’01 (no relation to the subject of this story) is an editor at Bloomberg BNA.

NEW
TECHNOLOGY ON
THE

BL O CK

*Exploring the legal and
regulatory implications
of the blockchain*

BY MICHAEL FITZGERALD
ILLUSTRATION BY MICHAEL WARAKSA



In a global

economy with increasingly far-flung workforces, companies often need to pay contract workers in other countries. They can do it the conventional way, involving processing an invoice and either cutting a check or collecting and managing direct-deposit data. Along the way, currency has to be converted, meaning a middleman is paid a percentage to make the exchange. Or companies can pay in bitcoin. The payment with the digital currency is immediate, and if the worker lives in a country such as India that has a bitcoin exchange, there are minimal fees to convert. Compared with conventional banking, it is simpler, cheaper and faster.

By now, many people are familiar with bitcoin. What's less well known is the currency's technological underpinning, the blockchain, an emergent technology that could reshape financial and property markets, and the legal frameworks that support them.

They certainly are familiar with the term at HLS's Berkman Klein Center for Internet & Society. In fact, Primavera De Filippi came to

Harvard Law School in 2013 as a research fellow at the center specifically to pursue research on the blockchain. She is particularly interested in new technologies that operate without centralized control,

THE BLOCK-CHAIN'S POTENTIAL USES ARE MUCH BROADER THAN JUST BITCOIN.

Prima De Filippi is particularly interested in technologies such as the blockchain that operate without centralized control. She first came to the HLS Berkman Klein Center to study the blockchain in 2013.





While at HLS, Christopher Crawford '16 worked as a student fellow with Prima De Filippi at Berkman Klein. He was also involved in a class at MIT, where he and other students launched a blockchain startup.



and the blockchain is such a technology. It is not a stand-alone platform, like an operating system, but an essential component of digital transaction software. The blockchain provides a new way of recording transactions, through a shared, trustworthy ledger, open to all and controlled by no one person or entity. Though it was an obscure technology when she started studying it, De Filippi was fascinated by its potential. “Lots of technologies don’t add anything, or they add micro incremental innovation,” she says. “The blockchain is highly innovative.” That’s why she first came to Berkman Klein, after finding little interest in the topic among colleagues in France.

They are more interested now as the blockchain, and its potential for more efficient transactions, gain visibility. The U.S. government recently awarded \$600,000 in blockchain-related development grants and has suggested that the technology could even be used for secure health care record-keeping. Meanwhile, in August, the United Kingdom approved a blockchain platform

for use by government agencies across the country.

**THE
BLOCKCHAIN
PROVIDES
A NEW
WAY OF
RECORDING
TRANSACTIONS.**

The blockchain raises fascinating legal questions, about both transactions and property, says Patrick Murck, a fellow at the Berkman Klein Center,

who previously was co-founder of the Bitcoin Foundation (it paid him entirely in bitcoin, which worked fine until his kids started going to day care, he quipped). “Bitcoin is interesting not because it’s digital money but because it’s digital property,” says Murck, noting that bitcoins are actually tokens generated and validated by computer, and property rights can be tied to those tokens. While the blockchain is most closely associated with bitcoin—the two were released together in 2009—its use is not limited to currency. Music companies are experimenting with using it for tracking online transactions, and an open source group called Ethereum has built a blockchain-based platform for managing contracts that also includes a digital currency, or token, called Ether.

What it doesn’t have is much of a legal framework. De Filippi and, separately, Murck convened a series of meetings over the last few years to address that. De Filippi’s initially involved mostly Boston-area participants from the Berkman Klein Center and the HLS community and MIT

(for example: bit.ly/coalaworkshop), before she broadened the gatherings' scope. Murck brought together members of the bitcoin community with financial companies, technology firms, lawyers and regulators for a series of meetings called Shared Ledgers Roundtables. All of the meetings were designed to explore the legal framework needed for the blockchain to work safely, and to prevent fraud.

What is the blockchain?

The blockchain might sound like a good name for a band, but the name comes from its function. A bitcoin, for instance, is a block of code. That block includes data about when it was made, and when it is used for a transaction. Every time a transaction is made with a block, it is recorded, like a page in a ledger. Each time the block is

**IT'S A
SHARED,
TRUST-
WORTHY
LEDGER,
CONTROLLED
BY NO ONE
PERSON.**

used for a new transaction, it results in a new block, which also includes the records of its past blocks—in other words, a chain of blocks.

That ability to show a record of all of the blockchain's trans-

actions actually involves two distinct technologies, says HLS Professor Jonathan Zittrain '95, director and faculty chair of the Berkman Klein Center. The first creates a public ledger, where transactions are recorded in a transparent way on all of the computers that are in the network. The second technology allows the ledger to work, even though it is "unowned" by a company or a government institution; instead, a community of people validate each transaction, weighing in on whether it is counterfeit.

Zittrain says that users of bitcoin (the most prevalent blockchain technology) and "miners"—technically savvy individuals who use their computers to release and verify new bitcoins—validate the ledger but don't control it. He calls this intriguing, in part because there is no trusted central institution such as a bank or government agency involved. But it is also unsettling, he adds, in that it was created because of a distrust of traditional financial systems and a desire to conduct transactions outside of them. "A world with no trust of even mature financial institutions and systems is a troubled world indeed," Zittrain says.



The blockchain raises fascinating legal questions about both transactions and property, says Patrick Murck, a fellow at the Berkman Klein Center. He and Prima De Filippi have each convened a series of conferences to address these issues.





The blockchain's regulation is a fast-emerging area of legal focus, says Travis West '16, who recently joined Steptoe & Johnson. In August, the firm opened a blockchain practice.



It also works only as long as no single entity controls more than 51 percent of the computing power used to maintain the ledger, which would in theory corner the market. Each bitcoin transaction is accepted or denied by a majority of miners, and if one entity wields more than half of all bitcoin power, it could dictate which transactions are verified or denied. There are safeguards to ensure this doesn't happen, and they've held up so far, but they aren't fail-safe, Zittrain says.

In a blockchain-based transaction, property exchanges take place without intermediaries.

**\$600,000 IN
BLOCKCHAIN-
RELATED
GRANTS
HAS BEEN
AWARDED BY
THE U.S.
GOVERNMENT.**

That means you wouldn't have to wait three days for a trade to clear, or longer to resolve a mortgage. By comparison, the existing system of financial institutions is not efficiently networked, and that slows many

kinds of transactions. But the transactions can be verified and certified (as in the passing of a car's title, for example). In the blockchain world, basic questions still exist about how proof of ownership of property would be transferred from one person to another in a transaction conducted in bitcoin.

In the traditional financial system, governments provide backstops—for example, courts for enforcing property rights, or deposit insurance and bailouts for covering losses. In the blockchain environment, government gatekeepers and backstops don't exist.

The market value of the blockchain

Still, its efficiencies have drawn the interest of large companies. A recent report projected that blockchain usage could save \$6 billion a year globally in transaction settlement costs for the securities industry alone, and potential applications are much broader than for that industry. HLS Professor Howell Jackson '82, a specialist in financial regulation, notes, for example, that when people make purchases with credit cards, retailers give a percentage of the sale to the credit card provider. Blockchain transactions could eliminate such fees, improving speed and reducing the cost of buying things.

The broader potential savings are big enough that "it's worth trying to fiddle with financial

regulatory structure,” Jackson says. In his course introducing students to regulation of financial institutions, he uses the blockchain to get them thinking about how financial systems work and how they could be changed. But he warns that poor execution of a blockchain environment could put trillions of dollars’ worth of monetary value at risk of being corrupted or hacked.

Such events have already occurred on a smaller scale. In 2014, some \$460 million worth of bitcoin was stolen from Mt. Gox, a now-defunct bitcoin exchange. In June, the fledgling venture capital investment network DAO was fleeced out of \$50 million in Ether, or one-third of its value.

Regulating something created from nothing

But how to regulate a financial platform meant to exist without government? It is not even entirely clear who developed the blockchain. Its originator is said to be named Satoshi Nakamoto, but this has long been thought to be a pseudonym, and the real creator’s identity remains a subject of speculation, despite claims earlier this year by an Australian technologist named Craig Steven Wright that he is Nakamoto.

The blockchain’s regulation is a fast-emerging area of legal practice, says Travis West ’16, who was Murck’s research assistant last year. This fall, West joined Steptoe & Johnson’s offices in Washington, D.C. In August, the firm launched a blockchain practice to help it advise clients on this murky area of the law. “It’s a very hot legal area,” he says. “Two years ago nobody but Patrick was talking about it. Now it comes up at almost every law-related financial conference.”

Convening arms

The meetings that HLS convened on the blockchain covered transaction settlements, blockchain patents and their potential impact, product licensing rights under bitcoin, and financial crimes in the blockchain environment.

“We see lots of conversations going on out there about the technical architecture of the blockchain,” says Clinical Professor Chris Bavitz, managing director of the HLS Cyberlaw Clinic at Berkman Klein. It’s important, he says, to also focus on law and policy.

One conference focused on how product licensing rights would be affected by blockchain transactions. The blockchain could mean that people can possess tokens for things like digital music or digital books and give those tokens to someone else. That transfer of property and its terms would be executed and documented in the blockchain, effectively removing the need for

THERE ARE NOW FEW PROTECTIONS IN PLACE IN THE BLOCKCHAIN ENVIRONMENT.

intermediaries like Amazon or Apple. “I have no idea what people will establish in terms of new forms of property and property rights. It’ll be kind of wild,” says Murck.

Some of the ideas discussed in these conferences have been pursued further. Murck, who is a fellow at Berkman Klein for

a second year, has embarked on a project, the Digital Finance Initiative, to define a database of blockchain technology that can be used to challenge claims of patents on bitcoin, and a separate database of all the regulations and laws pertaining to the blockchain.

If the blockchain continues to grow, the law will have to change dramatically, says Christopher Crawford ’16. A former student fellow at Berkman Klein, where he worked with De Filippi, he also studied with Howell Jackson, who encouraged him to take a FinTech Ventures class at MIT. Through that class, Crawford and his team launched a blockchain startup that makes international transactions easier for small and medium-sized businesses in international trade. Crawford has now left the startup to focus on a clerkship, but the venture, which they called Eximchain, has won several startup competitions. “The law intersects with the blockchain in many, many different ways,” says Crawford. Money and asset transfer are obvious areas for the application of law to the blockchain. But he also cites contract and deed registry as examples of innovative uses of the platform. All of these potential applications raise interesting new regulatory questions.

Harvard Law will continue to be engaged in answering them, says De Filippi, a permanent researcher at the National Center for Scientific Research in Paris and an associate at Berkman Klein, who now splits her time between the two organizations. In addition to the seven conferences she has organized around the world, including one that will take place in Kenya in December, she’s co-founded COALA, the Coalition of Automated Legal Applications, which brings together lawyers, engineers and entrepreneurs to work with regulators to resolve blockchain questions. Harvard has given credibility to her work, she says, and its network and convening power have made it easier to bring disparate groups together.

Murck says next steps for him are convening a conference on the blockchain and intellectual property and putting together publications in response to ideas that came out of the earlier gatherings. For now, he’s excited to be at the very beginnings of a new field of law.

Michael Fitzgerald, who has written extensively about technology and innovation, is now articles editor at The Boston Globe Magazine.

A CITIZEN'S CONSTITUTION

Khizr Khan reminds a nation of its founding principles

On the stage of the Democratic National Convention, one Gold Star father invoked the words of the Founding Fathers, and just like that, a Pakistani-born Muslim American lawyer inspired more Americans to buy pocket U.S. Constitutions from Amazon than ever before. His life has not been the same since.

"Pre-DNC was a very peaceful, private, quiet life, and I still enjoy that every time I get back to Charlottesville, but this mission is so important," said **Khizr Khan LL.M. '86**, whose son Capt. Humayun Khan was killed in Iraq in 2004.

Khan and his wife, Ghazala, were initially asked to pay tribute to their son and appear on stage briefly to be honored on his behalf, as is customary for parents of a fallen soldier. Later, they were asked to share a few words, and Khan, responding to Donald Trump's proposal to ban Muslims from entering the United States, wrote a lengthy piece that Ghazala whittled down to a mere 287 words.

At the DNC, the Khans stepped out from behind the curtain of private pain and into the public spotlight, attracting worldwide attention.

"Donald Trump, you are asking Americans to trust you with our future," he said from the podium in Philadelphia. "Let me ask you: Have you even read the U.S. Constitution?"

Khan had, and he often carried his copy with him. Only a few hours before they took the stage, Khan was fumbling through his suit jacket when he felt it: his worn pocket Constitution. In the cab on the way to the DNC, he



At the Democratic National Convention, Khizr and Ghazala Khan stepped out from behind the curtain of private pain and into the public spotlight.

asked Ghazala, "Why don't I say, 'I will lend you my copy,' and just pull it out?" He demonstrated by plucking it from his pocket. She approved, and in a few hours, the two would become emblems of the American rule of law.

Khan's speech propelled his family into the exhausting 24-hour news cycle and attracted a flood of email and voicemail messages—some of them hateful, and many others heartwarming.

"If one scared heart is strengthened by all of this," said Khan, "it is worth it."

He noted that his late son would be proud.

"To him, one person mattered more than his own safety, more than his own value, anything. The same thing is with me. I get encouragement from his grace."

Khan, 66, the eldest of 10, was born and raised in Punjab, an agrarian area of Pakistan, where his parents farmed poultry. "We're modest people, hardworking, always believed in education. I wanted to study law from childhood," Khan said.

In 1973, he actualized his dream, getting an LL.B. from Punjab University Law College, where he met Ghazala. The Khans then moved to Dubai, where their first two sons, Shaharyar and Humayun, were born. Their son Omer would be born later in the United States, after the family immigrated in 1980.

From his HLS days, Khan fondly recalls David N. Smith '61, then a lecturer on law and vice dean. The two spent hours discussing Smith's book on negotiating con-

tracts in Africa, and forged a friendship.

Smith, now a professor of law at Singapore Management University, said Khan stood out.

"I think it was because of a remarkable combination of qualities: maturity, wisdom, modesty and generosity of spirit," Smith said. "In life we sometimes meet people who teach others a lot just by being, and Khizr is one of those people."

Of his experience at Harvard Law School, Khan said: "It gave me the confidence in myself and showed me how little I know and that I should continue to make an effort to know more. That is what I carry with me every day."

Khan has found a new calling in uniting people across axes of identity and amplifying the voices of Muslims who have been "misdefined," encouraging them to participate in politics.

"I'm an ordinary Muslim. ... I am a protector of the United States. ... My son ... sacrificed his life in protection of the United States and its soldiers," Khan continued. "Islam has taught me to be caring, to be kind. My religion is to live peacefully with all other religions and all other peoples."

In Arlington National Cemetery, the Khans often visit Capt. Humayun Khan's gravestone, carved with the crescent and star of Islam and encircled by tributes, a wreath of bright red, white, and blue blossoms and a star-spangled flag. — NADIA FARJOOD '18

WILL POWER

A 19th-century document leads Terry Franklin on a journey of self-discovery

Terry Franklin '89, a trusts and estates litigator, knows the importance of wills to those left behind. Recently he has focused on a will executed 170 years ago with enormous bearing on his ancestors' survival and his own existence.

Franklin family lore tells of Grannie Lucie, the "property" of a white man named John Sutton. They were Franklin's great-great-great-grandparents. Franklin had seen an abstract of Sutton's will, which stipulated that his "mulatto slave Lucie" and her eight children and six grandchildren were to be freed after his death. What Franklin did not know, and what gnawed at him, was whether Sutton also had a white wife and children.

He traced the will to Duval County, Florida, and asked a clerk to send him images of the full document—handwritten pages marked with an "X" by Sutton, who died in 1846.

When he read the will, he saw it listed the livestock to be sold off to fund the journey of Lucie and the children to a state or foreign country "where they and their children could live free forever." There was no mention of a wife.

Franklin is well aware of the perversity and enduring evil of slavery, but he wanted to believe that what developed between Lucie and Sutton was a relationship.

It became clear to him that it was a story he wanted to tell. He published several related articles, including in the ABA's *Probate & Property* magazine. He also began writing a novel. "People always say, 'Write what you know,'" Franklin says. Contested wills



Terry Franklin is a partner and trusts and estates litigator at Sacks Glazier Franklin & Lodise in Los Angeles.

come up a lot in his work, so in the novel, he invented a brother for Sutton named Eustis, who challenges the will.

As Franklin imagined this story, he wanted to hold the actual document in his hands. During a business trip, he took a long detour to Duval County. When the clerk handed him the folder, he saw that in addition to the will, it contained other handwritten pages. He soon realized he was reading a trial transcript. As it turns out, there *had* been a will contest brought by one of John Sutton's brothers, Shadrack.

The transcript also provided

clues about Lucie and Sutton's relationship. Franklin learned that Sutton had lived in Georgia, and before writing the will, he had moved his household to Florida, thinking it was a state that would allow him to emancipate Lucie and her children. But once he arrived, he learned this wasn't so.

Franklin was also struck by the lawyer's testimony that when he came to make the will with Sutton, "his family" invited him to eat. "He described them as family," says Franklin, "not slaveholder and slaves." It was one thing to have children with a slave. It was another to set up a household

with her, which is what Franklin believes Sutton did.

Toward the end of his life, Sutton took all the precautions he could to protect the woman he loved, says Franklin. Soon after his death, Lucie and her children made their way to freedom—from Florida to Illinois, where Franklin grew up.

Franklin has now spoken about his discoveries to audiences from children in his daughters' school to lawyers at conferences.

With lawyers, he shares details such as a provision that if the will were for any reason found invalid, ownership of Lucie and the children would be transferred to the executor, William Adams, who Franklin suspects was Lucie's white half-brother, who would have freed them.

Beyond the ties of ancestry, Franklin makes another connection between this story and his own. He fell in love with and married a classmate at HLS, and together they have two daughters. But when he came out as a gay man six years ago and they split up, he realized that for much of his life he had forced himself to be something he wasn't. Franklin sees a connection between the social strictures, laws, and expectations that oppressed Sutton and Lucie's relationship, and those that had constrained his own world.

In addition to his legal practice, Franklin continues to work on the novel and a related screenplay and to speak at conferences about his ancestors' story. People seem to relate to it on a deep level. For Franklin, it has "breathed new life into everything."

—EMILY NEWBURGER

GAINING GROUND IN GHANA

Raymond Atuguba is driving legal and social reforms in his home country

During a recent interview, **Raymond Atuguba S.J.D. '04** gives his phone a quick glance. It's a text confirming the president of Ghana's launch of Atuguba's latest policy recommendation: 64 new community-based health care centers and a commitment to building a total of 6,500 such compounds to serve rural populations.

That's just one of the ways he's helping his home country, drawing on lessons from his service on a U.N. High Level Task Force on the right to development and his work consulting for the World Bank and USAID. Harvard Law School has also been integral to his work, not only helping him as a teacher (he's on the faculty of law at the University of Ghana), but also involved directly in his efforts to improve the country.

As a child, Atuguba was regularly confronted by the harsh realities of poverty. His father, a civil servant posted to rural areas, owned the only car for miles around. "Every emergency was brought to our door. If the car was not functioning, people died—on a daily basis—because they could not get to the hospital," recalls Atuguba. "When I grew up, I said, 'No, this has to change.'"

In 1997, Atuguba co-founded a legal aid clinic in Ghana, the Legal Resources Centre, to provide legal relief to poor communities. But he sought systemic, permanent change. "I wanted to reform the text of the law to make it more progressive and responsive to the needs of poor people," he says. With that agenda, Atuguba arrived at HLS in 1999. Over the next several years, his graduate studies and work in the human



"There is no point at which you can stop working for the type of world that you want to live in," says Raymond Atuguba.

rights and development fields took him back and forth between the U.S. and Ghana. Many of those trips were with HLS Professor Lucie White '81 and students from her then newly created clinical class, The Ghana Project, which, in collaboration with the Legal Resources Centre and other organizations, offers students firsthand experience in social rights and global health issues.

Among the group's projects was fieldwork researching the "cash and carry" public health insurance system. Interviewing residents, including in the remotest areas of Ghana, they found widespread system failure—the country's poorest citizens couldn't pay the fees and were going without basic care.

The group's reports helped shape the first national health insurance system in 2003 and a law mandating coverage in 2004—one of the very first attempts at universal health

coverage in sub-Saharan Africa.

By 2006, fractures in the system were showing. Atuguba's team at the Law and Development Associates, the new organization he had founded, gathered more evidence and suggested revisions, the majority of which were incorporated into the 2012 National Health Insurance Act.

In 2010, Atuguba applied the same evidence-based methodology as principal researcher on the commission evaluating the country's 1992 constitution. His team traveled throughout Ghana asking, "How does this constitution work for you?"

They received 83,161 answers: text messages, emails, letters, an entire book. "We wanted *everyone's* view," he says. "It was an opportunity for everyone to say what they wanted about the government, about their lives," he recalls. "It was an instrument for accountability." In 2011, they submitted a 1,000-page

report—including the thousands of responses—to the president.

A draft bill was sent to Parliament in 2014, only to be stalled by a lawsuit charging an illegal revision process. In 2015, Ghana's Supreme Court ruled that the reforms could continue. Now, says Atuguba, the challenge is to rev up momentum again.

Atuguba is also developing policies to ensure that his country's most vulnerable communities can withstand, and benefit from, the extraction of Ghana's natural resources—oil, gas and gold. He's enlisted the help of S.J.D. candidate Kwabena Oteng Acheampong LL.M. '13 as well as White and her students.

Shaking his head about the process of reform, Atuguba laughs. "If you want to get it right, it takes time. It really takes time," he says. "There is no point at which you can stop working for the type of world that you want to live in." —SHONA SIMKIN

THE WORDSMITH

Sarah Hurwitz has quietly helped craft some of the first lady's most memorable speeches

Sarah Hurwitz '04 found herself “pretty lost” in her third year at Harvard Law School and missing her previous life as a political speechwriter.

So when a classmate asked in the fall of 2003 whether she might like to write for Wesley Clark's presidential campaign, she said yes—eventually. Her first job on Capitol Hill, when she was just a year out of Harvard College, hadn't gone very well since she couldn't quite capture her boss's voice. And the prospect of missing classes during her final year of law school shuttling back and forth to Arkansas terrified her.

“But I sat back and really started to think about it and realized that if ... my real passion was government and politics, then I'd better do this,” Hurwitz said during a panel discussion at Harvard Law School's Celebration 60 in 2013.

Clark left the race early, but her work on the campaign set Hurwitz on a course to work as Hillary Clinton's chief speechwriter during the 2008 presidential race and then serve in the same role for first lady Michelle Obama '88.

It was on the Clark campaign, Hurwitz said, that she learned how to be a good speechwriter while working alongside Josh Gottheimer '04. That job led to another for Hurwitz with Democratic nominee John Kerry. She worked as an associate at WilmerHale before returning to the campaign trail in February 2007 with the Clinton campaign.

After helping draft Clinton's concession speech, Hurwitz received an email from Sen. Barack Obama's chief speechwriter, Jon Favreau, who followed up a

few days later with a phone call offering her a job. Obama called to thank her after she wrote her first speech for him and welcomed her to the campaign.

Hurwitz began working with Michelle Obama on her speech to the 2008 Democratic convention in Denver. After writing speeches for President Obama, she would go on to work with the first lady almost exclusively for nearly six years.

“The defining truth about working with the first lady is this: She always knows what she wants to say—period,” Hurwitz told the Bulletin. “She has an unwavering sense of who she is and exactly what points she wants to make.”

Hurwitz has worked largely out of the public eye at the White House. There were occasional exceptions, such as a TV documentary that aired on cable networks including MTV and Nickelodeon in which she described how her public

school education in Wayland, Massachusetts, paved the way for her career.

Her public profile grew considerably in July, when Melania Trump borrowed several lines from Michelle Obama's 2008 convention speech, which Hurwitz helped write.

Hurwitz has not commented publicly about the incident, but the irony was not lost on her former colleague Favreau, who noted in a tweet that Hurwitz had previously worked for Clinton. “So the Trump campaign plagiarized from a Hillary speechwriter,” Favreau wrote.

Hurwitz said she “loved working with Mrs. Obama on her three convention speeches” but also described as favorites some lesser-known speeches the first lady has delivered, including this year's commencement speeches at the Santa Fe Indian School and the City College of New York.

“For me, speechwriting is about telling the stories that too often just don't get told,” Hurwitz

said. “There's a lot of quiet daily heroism in this country—people who get up every day and build lives driven by love, courage, and self-sacrifice.”

Accompanying the first lady to the New York commencement made Hurwitz think of her great-great-grandmother who'd wanted her daughters to attend “one of the great public universities in New York City.” “That didn't happen, but it was pretty moving all these years later to walk onto the campus of one of these schools with the first lady of the United States,” Hurwitz said.

Hurwitz, among the few White House staffers to have served through Obama's entire two terms, declined to say whether she would have any interest in staying on should her former boss win in November.

“I'm not sure what comes next,” she said. “For now, I'm just trying to enjoy every minute of this once-in-a-lifetime experience.”

—SETH STERN '01



“The defining truth about working with the first lady is this,” says Sarah Hurwitz. “She always knows what she wants to say—period.”

HARVESTING PROGRESS

Carol Wang co-founds a spice company designed to boost Afghanistan's fledgling economy

Carol Wang '13 spent two years before law school crisscrossing Afghanistan helping nascent small businesses.

Now, she and three military veterans who served there are building their own small business designed to boost the nation's long-troubled economy.

Their key ingredient: saffron.

Rumi Spice, the company Wang co-founded in 2014, aims to connect Afghan saffron farmers with U.S. restaurants and convince consumers that the world's most expensive spice is worth its price.

Wang's interest in Afghanistan dates back to her first job out of Princeton working at one of the university's institutes, where she met the Afghan ambassador to the U.N.

She went on to serve for a year as a speechwriter at the U.N. mission before moving to Kabul. She traveled from province to province assisting small businesses, from jewelry makers to almond and potato farmers.

The experience, Wang said, gave her a sense of just how fleeting development aid can be. When she was leaving to start law school, U.S. troops and international attention were dwindling, she recalled, and with them the aid money was diminishing. "There was a real fear among Afghans that all the gains would be lost," she said. "That fear was something that I couldn't forget."

Wang returned to Afghanistan during the summer between her first and second years of law school, helping to draft a village council law for the national government in Kabul. She later wrote a student note on developing the



Carol Wang (holding the red purse) says her earlier work in Afghanistan helped her to understand the constraints facing Afghan small businesses seeking to enter international markets.

rule of law in Afghanistan for the Harvard International Law Journal.

She'd moved to San Francisco after HLS and started work as a tax attorney when a friend connected her with Kimberly Jung, who had served as an Army platoon leader in Afghanistan before enrolling in Harvard Business School.

Jung and her business school classmate Emily Miller, who had also deployed to Afghanistan with the Army, were looking to make a social impact with their business degrees, and their thoughts turned to the country where they'd both served. (A fourth co-founder, Keith Alaniz, who serves as the company's president, also served in Afghanistan.)

They seized upon the idea of helping connect Afghanistan's saffron farmers with the U.S. market. The spice can generate seven times the income for Afghan farmers as the nation's major cash crop—opium.

"When she told me about this

idea she had of bringing Afghan saffron to the U.S., I just immediately saw the potential and the power," Wang said.

Wang has done legal work for Rumi Spice, from issuing stock to taking out loans and reviewing contracts.

"It's been really, really helpful," Jung said. "She's been very much a part of the business and helped out immensely."

Wang's work has also taken her back to Afghanistan, where she's helping make sure that the company follows local laws and that its processing facilities comply with international food and safety standards.

"This is not a project, it's a company with real people involved, so we have to operate with the utmost care," Wang said.

Rumi Spice has made headlines in *The New York Times* and *Chicago Tribune* and is on pace to generate \$500,000 in revenue this year with a customer list including such famous restaurants

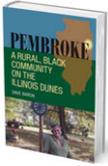
as *The French Laundry* and *Daniel Boulud's Daniel*. Hundreds more consumers purchase saffron via the company's website, where one ounce sells for \$140.

"We're trying to target high-end consumers who will pay more for the quality because Afghan saffron is truly the best in the world," Wang said.

Most important, she said, is the impact in Afghanistan. From 2015 to 2016, Rumi Spice's farmer corps jumped from 34 to 90 and the number of women working in its processing centers went from 75 to more than 300.

The company already accounts for 5 percent of both Afghanistan's total saffron production and saffron exports, and it aims to increase the share of Afghan saffron sold abroad to 50 percent.

"The more we sell, the more we have to pay our farmers and develop new training programs," Wang said. "We really see them as partners." —SETH STERN '01



A father's fight for justice, a modern-day Beowulf, an American heiress



“Pembroke: A Rural, Black Community on the Illinois Dunes,” by **DAVE BARON '09** (*Southern Illinois University*)

Based on most outsiders’ standards, Pembroke is an anomaly, Baron notes: rural and Midwestern yet also black and poor. The author, a litigator for the city of Chicago, affectionately portrays a place he visited with a teen church group from his hometown less than 20 miles away and where he later immersed himself for three months to research its people and history. Pembroke, where many black Southerners traveled during the Great Migration as an alternative to the big city of Chicago, has faced poverty, isolation, poor infrastructure, poor soil quality and racial prejudice. But despite those obstacles, Baron writes, “Where one might expect a ghost town, Pembroke endures.”

“My Father and Atticus Finch: A Lawyer’s Fight for Justice in 1930s Alabama,” by **JOSEPH MADISON BECK '68** (*Norton*)

When Harper Lee was 12 years old in Alabama, a highly publicized trial took place in the state involving a white lawyer defending a black man accused of raping a young white woman. Of course, the parallels to Lee’s beloved novel, “To Kill a Mockingbird,” are unmistakable. The lawyer was Foster Beck, who is the subject of his son Joseph’s new book. Although Lee wrote to Joseph that she didn’t recall the trial, his true story of his father’s struggle to seek justice against all odds shares similar themes and insights into the racial tenor of the times. Beck, who drew upon his father’s recollections and transcripts of a trial that occurred five years before he was born, depicts a case featuring a doctor who testified that the alleged rape victim was a virgin, a defiant defendant who insisted on testifying on his

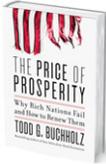
own behalf against his lawyer’s wishes, and an all-white jury that delivered a swift verdict of death. In addition to detailing the legal maneuverings, including an unsuccessful appeal, Beck paints a portrait of the pre-civil-rights-era South and of his family, including his grandfather, who tried to talk Foster out of taking the case. His father, Beck writes, was a man of courage and conviction, just like the fictional Atticus Finch.

“Empire of the Fund: The Way We Save Now,” by **WILLIAM A. BIRDTHISTLE '99** (*Oxford*)

When today’s retirees were young, their retiring elders typically enjoyed the benefits of a pension with a guaranteed return until death. Now retirees live in a very different financial world in which they’ll rely on personal investment accounts. Birdthistle, a professor at Chicago-Kent College of Law, delves into the ramifications of this change, including the dangers of the most common retirement investment, mutual funds, such as high fees that drag down savings. He offers advice on how to safeguard retirement savings and touts a less expensive option that pools assets.

“The Ugly,” by **ALEXANDER BOLDIZAR '99** (*Brooklyn Arts Press*)

In the tradition of novels such as “The Paper Chase,” this story is set at Harvard Law School—at least parts of it are. Where it breaks the mold is when it comes to its protagonist, a 300-pound mountain man from Siberia whose tribal homeland is stolen by an American lawyer and who, in order to restore his people’s land and honor, must travel to HLS to “learn how to throw words instead of boulders.” HLS Professor Alan Stone writes: “Boldizar has opened a door into the parallel universe of myth. Out of it has stepped a modern day Beowulf.”



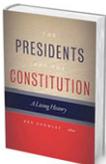
“The Price of Prosperity: Why Rich Nations Fail and How to Renew Them,” by **TODD G. BUCHHOLZ '86** (*Harper*)

It’s a common and dangerous mistake, according to Buchholz, to believe that rich nations are invulnerable to collapse. Indeed, he details historical examples that show the failure of great powers from the Ming dynasty to the Ottoman Empire. The author, a former White House director of economic policy, points to five forces that can derail rich nations: falling birthrates, globalized trade, rising debt loads, an eroding work ethic and a lack of patriotism. To prevent decline, he proposes a “Patriotist Manifesto” centered around building character and creating community.



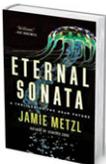
“The Purse and the Sword: The Trials of Israel’s Legal Revolution,” by **DANIEL FRIEDMANN LL.M. '71** (*Oxford*)

When Israel became an independent nation in 1948, law played a “modest, if not marginal, role,” writes the author. Today, the legal system has grown so powerful in the country that “it threatens to take over the other branches of government.” Friedmann, a professor of law at Tel Aviv University who served as minister of justice of Israel, offers a comprehensive look at the evolution of the country’s legal regime, including the increasingly powerful Supreme Court, as well as how political events and conflicts have influenced legal developments.



“The Presidents and the Constitution: A Living History,” edited by **KEN GORMLEY '80** (*New York University*)

Gormley notes that the Constitution is surprisingly vague about the powers of the U.S. presidency; “the executive branch,” he writes, “was left intentionally incomplete.” Therefore, presidents themselves and historical circumstances have shaped the powers of the office. The chapters in the volume, written by scholars, journalists, and judges, explore how each U.S. president



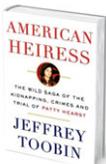
has interfaced with the Constitution and subsequently shaped future presidential power. Gormley, president of Duquesne University and former dean and law professor there, draws connections from different presidencies and eras on such issues as impeachment, executive privilege, and foreign affairs to show both the commonalities and the continuing evolution of the office.

“Eternal Sonata: A Thriller of the Near Future,” by **JAMIE METZL '97** (*Arcade*)

In his new novel, Metzl imagines a quest for the ultimate scientific breakthrough: immortality. The race for eternal life is marked by the murders of scientists, which are investigated by a reporter who is himself threatened. HLS Professor Emeritus Alan Dershowitz praises the book for its “brilliant insights on science, philosophy, politics, and human relations.” The author is a senior fellow of the Atlantic Council who has served in the U.S. National Security Council and the State Department.

“American Heiress: The Wild Saga of the Kidnapping, Crimes and Trial of Patty Hearst,” by **JEFFREY TOOBIN '86** (*Doubleday*)

New Yorker magazine writer and best-selling author Toobin presents a comprehensive portrait of Hearst’s 1974 kidnapping by the Symbionese Liberation Army and her later apparent complicity in its criminal activities—as well as the wider story of how her experience reflected and shaped the culture. The author, who conducted more than 100 interviews and drew on myriad legal and investigative files (Hearst herself did not cooperate with him), offers surprising details on the well-known case, including how her conviction turned on a Mexican monkey charm and how the 1978 Jim Jones cult murders influenced her early release. Ultimately, he writes, Hearst, just like her grandfather William Randolph Hearst, was able to “shape the perception of reality.”



The End of the Story

Joshua Rubenstein, a major gifts officer at HLS, details the final months of Stalin’s life

Joseph Stalin lay dying in March 1953, his body decimated by the effects of a stroke. But as **Joshua Rubenstein** demonstrates in his new book, “The Last Days of Stalin” (Yale), the Soviet leader remained a fearsome power in the time immediately before his death and influenced the nation for decades beyond it. The book includes information about Stalin’s death that differs from official accounts, his widening campaign against Soviet Jewry and his plans to challenge the new administration of President Dwight Eisenhower. Stalin’s death led to some softening in the Soviet regime. But Rubenstein, a Harvard Law School staff member who has a separate career as an author of books on the Soviet era, notes that the ideology the dictator so brutally enforced remained in place for decades.



IN MEMORIAM

1930-1939

CARL A. AUERBACH '38
April 6, 2016
 BENNETT BOSKEY '39
May 11, 2016

1940-1949

LESTER C. MIGDAL '41
May 31, 2016
 TIMOTHY J. MAHONEY JR. '44
March 18, 2016
 ROBERT B. VON MEHREN '46
May 5, 2016
 DANIEL C. BLOM '48
July 29, 2016
 GENE EMERY '48
April 14, 2016
 C. RICHARD GRIESER '48
July 29, 2016
 AVIGDOR V. LEVONTIN LL.M.
 '48
Jan. 5, 2016
 ROBERT MACCRATE '48
April 6, 2016
 LAWRENCE S. MUNSON '48
March 2016
 LEE ROMANOW '48
July 23, 2016
 ROBERT RUBINGER '48
April 20, 2015
 EDMUND B. SPAETH JR. '48
March 31, 2016
 WILLIAM C. BREWER JR. '49
July 25, 2016
 E. LAURENCE GAY '49
June 5, 2016
 CARL O. HOEPPNER '49
May 24, 2016
 BERNARD M. HOLLANDER '49
April 3, 2016
 RICHARD H. MARKOWITZ '49
Aug. 14, 2016
 LAUCLIN H. MCLEAN '49
July 22, 2016
 KENNETH SIMON '49
June 14, 2016
 C. CLIFTON YOUNG '49
April 3, 2016
 WILLIAM A. ZIEGLER '49
Aug. 17, 2016

1950-1959

WILLIAM K. CONDRELL '50
Aug. 15, 2016
 JOHN R. HAIRE '50
Oct. 8, 2015
 JOHN J. LAYDEN '50
June 7, 2016
 DAVID ORLIN '50
May 8, 2015
 ALEXANDER P. "SANDY" REED
 JR. '50
May 2016
 FRED B. UGAST '50
April 6, 2016
 ROBERT L. BAST '51
July 9, 2016
 BENJAMIN C. FISHER '51
April 14, 2016
 HERTZ N. "HANK" HENKOFF
 '51
Sept. 17, 2015
 ROBERTS B. OWEN '51
March 10, 2016

GEORGE VETTER '51
Dec. 24, 2015
 ROBERT G. BLEAKNEY JR. '52
June 23, 2016
 ROBERT CARSWELL '52
July 22, 2016
 FREDERICK H. CLARK '52
May 7, 2016
 LOUIS A. COX '52
July 6, 2016
 CHARLES D. DIXON '52
July 5, 2016
 LEWIS P. FICKETT JR. '52
May 17, 2016
 ROBERT B. FRASER '52 LL.M.
 '55
June 23, 2016
 MURRAY S. FREEMAN '52
 2016
 JOHN E. LARSON '52
May 8, 2016
 EDMUND V. LUDWIG '52
May 17, 2016
 STANLEY A. MARKS '52
May 25, 2016
 MARTIN I. MONDLICK '52
Aug. 8, 2016
 HAROLD PARRITZ '52
June 2, 2015
 ROBERT C. PORTER JR. '52
Aug. 9, 2015
 ALFRED R. SCHNEIDER '52
June 17, 2016
 NOEL M. SEEBURG JR. '52
April 9, 2016
 ROBERT B. SIMON '52
Jan. 21, 2016
 EDWARD M. SULLIVAN '52
July 14, 2016
 MELVIN J. ZALEL '52
 2016
 M. BERNARD AIDINOFF '53
Aug. 8, 2016
 JOSEPH F. BRODLEY LL.M. '53
Jan. 28, 2016
 RALPH H. CAKE JR. '53
Dec. 1, 2015
 JAMES A. P. HOMANS '53
June 16, 2016
 EDWARD H. HUNVALD JR. '53
June 27, 2015
 ALAN B. IVES '53
May 17, 2016
 ROBERT P. LAYTON '53
Aug. 1, 2016
 THOMAS E. LEGGAT '53
April 9, 2016
 RUTH MARSHALL PAVEN
 '50-'52
March 21, 2016
 ROY F. PERKINS JR. '53
Aug. 10, 2016
 PHILIP E. BENNET '54
July 3, 2016
 GEORGE K. FENN JR. '54
March 31, 2016
 MAXWELL E. "ROBIN" FOSTER
 JR. '54
May 23, 2016
 JAMES T. HARRIS '54
July 27, 2016
 GARETH H. JONES LL.M. '54
April 2, 2016
 JOHN A. BALLARD '55
Oct. 25, 2014

LORNE O. CLARKE, Q.C. LL.M.
 '55
May 21, 2016
 ROBERT B. DONOVAN '55
June 13, 2016
 RICHARD M. EDELMAN '55
May 25, 2016
 WILLIAM J. GIBBONS '55
June 9, 2016
 WILLIAM J. MCGOLDRICK '55
May 29, 2016
 STEPHEN A. MOORE '55
July 28, 2016
 HERBERT F. ROTH '55 ('56)
April 4, 2016
 PRESTON H. "SANDY"
 SAUNDERS '55
July 20, 2016
 FREDRIC WEISS '55
Oct. 20, 2015
 JOSEPH F. ABELY JR. '56
May 31, 2016
 L. NEIL LEROY '56
April 24, 2016
 DEWITT K. "KEN"
 MACDONALD JR. '56
June 4, 2016
 ROBERT ROSENMAN '56
June 29, 2016
 EDMUND N. WISE '56
June 22, 2016
 THOMAS E. WITHCYCOMBE '56
March 31, 2016
 G. WELLS ANDERSON '57
May 26, 2016
 ALFRED E. LAWSON '57
July 4, 2016
 ERNESTO M. MACEDA LL.M.
 '57
June 20, 2016
 JOHN G. MOTT '57
April 4, 2016
 DAVID L. WELTMAN '57
April 4, 2016
 A. WALKER BINGHAM III '58
April 1, 2016
 ROBERT F. MOONEY '58
April 4, 2016
 H. DAVID POTTER '58
July 14, 2016
 ALLEN M. SINGER LL.M. '58
May 10, 2016
 STANFORD S. "PAT" HUNN '59
Jan. 31, 2016
 JAMES B. HURLOCK '59
April 27, 2016
 PETER J. LIACOURAS LL.M. '59
May 12, 2016
 WILLIAM G. MARTIN '59
May 22, 2016
 PETER M. MATTOON '59
March 29, 2016
 WILLIAM T. QUILLEN '59
Aug. 19, 2016

1960-1969

PETER G. BANTA '60
July 12, 2016
 CHARLES S. BLANKSTEIN '60
April 30, 2016
 PETER A. DONAHOE '60
March 8, 2016
 ROY A. HAMMER '60
April 26, 2016

JAMES D. MONTEITH '60
July 27, 2016
 L. MANNING MUNTZING '60
March 28, 2016
 BROWNSON MURRAY '60
Feb. 6, 2016
 ALLAN W. DRACHMAN '61
Feb. 13, 2016
 DAVID J. FINKELSTEIN '61
Dec. 24, 2015
 ROBERT D. OUCHTERLONEY
 '61
July 4, 2016
 ANCIL N. PAYNE JR. '61
Aug. 11, 2014
 ALFRED L. PURRINGTON III
 '61
April 29, 2016
 DAVID M. BORDEN '62
Aug. 7, 2016
 RONALD A. CHRISTENSEN '62
Aug. 12, 2016
 JEREMY T. HARRISON LL.M.
 '62
April 16, 2016
 MICHAEL S. HORNE '62
Jan. 15, 2016
 JACK LEE KARP '62
July 22, 2016
 D. JACK SMITH '62
July 18, 2016
 RICHARD E. BLUMSACK '63
April 19, 2016
 LYNDA K. PIERCE HARRISON
 '63
Nov. 16, 2015
 RICHARD M. MOSK '63
April 17, 2016
 M. VANCE MUNRO '63
July 5, 2016
 STEPHEN B. ROHRBAUGH '63
June 1, 2016
 JOSEPH RUBIN '63
Sept. 1, 2014
 MORRIS CHESTON JR. '64
June 5, 2016
 DAVID MARGOLIS '64
July 12, 2016
 HOWARD J. KASHNER '65
Jan. 4, 2016
 J. EUGENE MARANS '65
April 6, 2016
 FREDERICK LAWRENCE
 MOREFIELD '65
May 22, 2016
 GEORGE W. MILLER '66
June 27, 2016
 ARTHUR M. SUSSMAN '66
Aug. 10, 2016
 WILLIAM E. JOHNS '67
March 24, 2016
 JAMES C. WORKMAN '67
April 25, 2016
 L. DAVID CLARK JR. '68
April 27, 2016
 JAMES A. MCPHERSON '68
July 27, 2016
 HAROLD L. QUADRES '68
Aug. 8, 2016
 LOUIS H. "BUDDY" WATSON
 '68
Aug. 8, 2016

1970-1979

PATRICK F. BRADY '70
Aug. 10, 2016
 PHIL BAKES '71
Aug. 3, 2016
 JEAN H. LAWTON '71
July 8, 2016
 NORMAN M. BONNER JR. '72
Oct. 13, 2002
 DAVID CLAYTON CARRAD '72
April 11, 2016
 FRED C. KING '72
May 11, 2016
 ROBERT D. O'CONNELL '72
May 7, 2016
 W. PAAATH OFOSU-AMAAH
 LL.M. '72
April 13, 2016
 OGDEN N. "DENNY" LEWIS '73
June 25, 2016
 RAMÓN J. JIMÉNEZ '74
May 10, 2016
 ROBERT S. "STAN" PIERINGER
 '74
June 10, 2016
 ALAN N. RESNICK LL.M. '74
July 28, 2016
 WILLIAM L. RICHEY '74
Aug. 22, 2016
 SYDELLE PITTAS '75
April 10, 2016
 EDWIN M. "RIP" SMITH '76
Aug. 2, 2016
 WILLIAM A. SCHROEDER
 LL.M. '77
Aug. 28, 2016
 EVERETT JACKSON BOWMAN
 '79
June 12, 2016
 MICHAEL G. MEISSNER '79
May 15, 2016

1980-1989

ELIJAH W. LEGWAILA LL.M.
 '80
July 27, 2016
 RENATO C. CORONA LL.M. '82
April 29, 2016
 GEORGE A. RILEY '83
June 8, 2016
 LAURENCE W. PARADIS '85
July 28, 2016
 MARK L. MATHIE '86
March 29, 2016
 EDWARD J. DAVIS '87
June 27, 2016
 VERONICA M. DOUGHERTY '87
Jan. 9, 2016
 MARY ANN BERGER '88
July 10, 2016

1990-1999

CASSANDRA Q. BUTTS '91
May 25, 2016
 JOANNE R. CARLSON '92
April 14, 2015
 SCOTT N. AUBY '93
June 14, 2016
 JUSTIN W. LEEVY '99
April 2, 2016

Visit the In Memoriam section
 online at bit.ly/inmemfall2016 for
 links to available obituaries.

→ Continued from page 3

be efforts to improve corporate governance, but this author suggests that a full treatment requires addressing our system of corporate law to introduce direct responsibility for the outcome of decisions. Today, the so-called “business judgment rule” largely insulates decision-makers from such responsibility so long as they followed appropriate process.

This author, a longtime corporate practitioner and law teacher, suggests in a 2011 article in the *University of California, Davis, Business Law Journal*, that it is time to revisit such provision of corporate law and make over our system of corporate governance for systematically important institutions to reduce the incentive for such bad decisions, whether or not they result from the use of “good process.” While Professor Scott makes the essential point as to the need for central bank latitude to deal with financial crises, we are better still if we consider how best to avoid them in the first place.

Martin B. Robins '80
Barrington Falls, Illinois

Abolishing the HLS shield was an empty gesture

IF THERE WERE AN AWARD FOR THE most useless symbolic gesture, Harvard would win it hands down for its recent action abolishing the HLS shield. No living person ever associated that shield with slavery until the school itself set out to make the association. I find it significant that Harvard did not offer to give away the tainted Royall family bequest, which with two hundred years’ worth of interest would be a tidy sum indeed. Feel-good gestures are fine, but keeping the coffers full is apparently more important. If Harvard really wanted to do something for social justice in America, it might consider granting full scholarships or forgiving student loans for all HLS graduates who sign on to a career in public interest, civil rights or poverty law. Then they might not have to go to work for corporate America to

pay their student debt. That would be HLS “walking the walk.” Now it’s just “talking the talk”—and rather silly talk at that.

Bruce G. Merritt '72
Glendale, California

EDITOR’S NOTE:

The school’s Low Income Protection Plan offers loan-repayment assistance to HLS J.D.s who take low-income jobs after graduation.

Stranger and stranger

THIS MAGAZINE GROWS STRANGER AND stranger. After the previous issue’s hagiographic review of Chief Justice Roberts’ tenure, with neither a peep nor a whimper about the Roberts Court’s evisceration of stare decisis and “judicial restraint,” now comes the current issue with a full page devoted to the efforts of Geoff Shepard ’69—to exonerate Richard Nixon, 42 years after he resigned in shame and accepted a presidential pardon.

Will next month’s issue feature the efforts of HLS grads to represent The Flat Earth Society, Conspiracy Theorists, or the Area 51 UFO-spotters? To paraphrase the late Joseph Welch (HLS 1917) in his takedown of Sen. Joe McCarthy, At long last, [Harvard Law Bulletin], have you no sense of decency, no sense of shame?

Marc Lackritz '73
Bethesda, Maryland

Portrayal of Justice Scalia so false as to be comical

I WAS FORTUNATE ENOUGH TO TAKE several courses from Archibald Cox when he had just returned to Harvard from a stint as solicitor general. He spoke on a number of occasions, not about the results in groundbreaking cases he had won but about a philosophy of the law, of how a court should break new ground or overrule precedent in a way that preserved respect for the law and the courts. An overruling decision, he said, should not simply say, I have five votes, get over it. Prior precedent may have been shown

wrong by the passage of time or slowly evolving recognition of basic rights; it was not something to be ridiculed. If you ridicule the prior authority, how can your decision, or any other decision of a court, ask for respect from someone who disagrees with it?

The late Justice Scalia’s opinions stood for everything Professor Cox said was wrong. Mr. Justice Scalia departed from standards of civility among lawyers and judges and embraced name-calling to a degree hardly to be imagined before his time. One is tempted to say he was the Donald Trump of the judiciary, but that would be wrong. Rather, Trump is the Antonin Scalia of politicians.

In the spirit of Professor Cox, I would say I was saddened to see the back page of the Spring 2016 Bulletin devoted to Justice Scalia. But, given your admiration for his approach, I fear that to make myself clear I must put it this way: Your portrayal of Scalia’s work and worth is so false as to be comical and cannot be taken seriously. Indeed, it vandalizes the tradition of our law school and of Professor Cox. If I had joined in your editorial judgment, I would hide my head in a bag.

Ken Letzler '68
McLean, Virginia

Portrayal of Justice Scalia damned with faint praise

I READ YOUR “TRIBUTE” TO JUSTICE Scalia. It evoked the phrase “damning with faint praise.” A few of the individual statements were downright condescending. Shame on you.

I offer for your consideration my attempt at a tribute to Nino: [http://www.ireallymissreagan.com issues 1 and 2](http://www.ireallymissreagan.com/issues/1and2), which can be accessed by clicking on ARCHIVE.

I authorize you to publish either issue 1 or issue 2 or both in full. You are not authorized to edit them.

I hope you will do so. My belief is that you will not.

Richard M. Coleman '60
Malibu, California

*What's
happening
in
your
HLSA?*

Sparking Engagement

New HLSA President

Peter C. Krause '74 aims to galvanize international alumni and younger graduates—and build the franchise

AS THE NEW HARVARD LAW SCHOOL ASSOCIATION president, Peter C. Krause '74 has set a goal to engage international alumni across the globe.

It's even better when they are so engaged that they call him.

So he was particularly pleased when his phone rang recently and on the line was an alumnus from China who wanted to consult with him about organizing an event for HLS graduates in Beijing.

Krause says the HLSA must continue to encourage its domestic clubs and shared interest groups to conduct more panels and programs for alumni. "That's our strength and our franchise," he says. However, he also emphasizes spending more time and effort trying to get clubs and shared interest groups and special events organized outside the United States. "The HLSA is already well-estab-

lished in Western Europe," he says, and there are tremendous opportunities for growth in Eastern Europe, the Middle East, Asia, Africa, and South America.

Krause's international focus for the HLSA mirrors what he accomplished in his career, helping the domestic firms he was part of—the law firm Cleary Gottlieb Steen & Hamilton, the financial services firm Morgan Stanley, and most recently the merchant bank Greenhill & Co.—to expand internationally.

He became a student at HLS after serving in the Army, with the goal of practicing real estate and corporate law. His experience included running the Lodging and Leisure Group at Morgan Stanley and chairing Greenhill & Co.'s Barrow Street Real Estate Funds.

Krause says that his HLS degree has propelled him in his career as well as his community and charitable endeavors. Now retired, he has been devoted to Harvard for many years, including serving on the HLS Dean's Advisory Board for 15 years under three deans—Robert Clark '72, Elena Kagan '86 and Martha Minow—and as chair of the Harvard Law School Annual Fund.

Krause has also served as national co-chair of the Harvard College Parents Fund for 10 years with his wife, Alice. Their three children and two sons-in-law all hold degrees from Harvard College. Two children are also HLS graduates: Christina Henderson '09 and Peter C. Krause Jr. '12. So it's not surprising that Krause is committed to inspiring young alumni to become more active in the association—even before they graduate.

"We definitely want to do more to get the current students feeling they're members of the HLSA from day one as 1Ls," he says. "We want young members bringing their energy and enthusiasm to the HLSA."

To help spark that enthusiasm, Krause will continue to increase HLSA's social media presence and also revitalize clubs and shared interest groups and encourage the start of new ones.

Krause acknowledges that the success of the HLSA is based on the efforts of its 38,000 members and its prior leaders. He says his predecessor Salvo Arena LL.M. '00 "brought tremendous vision and drive to the position." Managing partner of the New York City office of the Italian firm Chiomenti Studio Legale, Arena is now chair of the HLSA International Committee.

That is just the type of dynamic involvement Krause hopes to foster in the next generation of graduates. And as the school's 2017 bicentennial approaches, he sees wonderful opportunities for alumni engagement.



For the latest HLSA events, visit the new alumni portal: <http://www.alumni.law.harvard.edu/>. Check out how easy it is to view the global calendar of events or find a club or shared interest group. Log in today to create a profile and start connecting!

Peter C. Krause



Furman honored



ROY L. FURMAN '63 RECEIVED THE HLSA AWARD, the highest honor given by the association, at Spring Reunions. Furman, vice chair of Jefferies & Company and chair of Jefferies Capital Partners, was recognized as an “investment virtuoso and as a Tony Award-winning producer and impresario,” as well as for his exceptional philanthropy and inspiring leadership at HLS, where he has been a long-serving member of the Dean’s Advisory Board, HLS Fund chair and campaign volunteer. The award was presented by Salvo Arena LL.M. '00, then president of the HLSA.



Stream lectures from Harvard Law faculty through a new online series. Find out more at bit.ly/HLX-archives.



Don't miss the Celebration of Latino Alumni, “Latino Leadership: Embracing the Challenge,” March 2-5, 2017. For more information, go to bit.ly/Latinoalumni2016.

A new online faculty lecture series for HLS alumni

IN SEPTEMBER, ALUMNI WERE treated to a lecture by HLS Professor David Wilkins '80, “Globalization, Lawyers, and Emerging Economies: Implications for Legal Education and Legal Careers.” It was part of a new monthly online initiative, the Harvard Law School Open Lecture Series (HLX), which enables HLS alumni around the world to hear streamed talks by HLS faculty members. Wilkins, who is vice dean for global initiatives on the legal profession, also spoke about the work being done at the Center on the Legal Profession, which he directs. An archive of past talks can be found at: bit.ly/HLXarchives.



David Wilkins

Upcoming highlights

HLSA Harvard Yale Tailgate

NOV. 19, 2016

Cheer on Harvard at the 133rd playing of the game at Harvard Stadium. Go, Crimson! The event will include tickets.

Spring Reunions Weekend

APRIL 7-9, 2017

Classes of 1987, 1992, 1997, 2002, 2007 and 2012

Fall Reunions Weekend

OCT. 27-29, 2017

Classes of 1957, 1962, 1967, 1972, 1977, 1982 and Emeritus Club

Registration for the 2017 SCOTUS Bar

Swearing-In Ceremony

The event is scheduled for June 12. Registration is now open at bit.ly/SCOTUSregistration.



Broadway lights

IN JULY, THE HLSA OF NEW YORK CITY HOSTED A panel of prominent theater alumni, including producers, investors and authors, who have been involved in productions from “The Book of Mormon” to “Legally Blonde” to “Spider-Man” to “Fun Home.” From left: John F. Breglio '71, Dale Cendali '84, Andrew Klaber '10 and Roy L. Furman '63. Also on the panel were Nell Benjamin (Harvard '93), Laurence O'Keefe (Harvard '91) and H. Rodgin Cohen '68.

A panel of prominent theater alumni spoke to a full house at the HLSA of New York City's event.





Tim Kaine, William Weld, and the pursuit of the vice presidency | By Seth Stern '01

Harvard Law School has produced plenty of senators, Supreme Court justices and two presidents, but no graduate has ever served as vice president.

This election has presented the first opportunity in decades to end that drought with both Democrat Tim Kaine '83 and Libertarian William Weld '70 on the ballot as vice presidential candidates.

The last Harvard Law School alumnus nominated to be vice president—Thomas Eagleton '53—was forced to withdraw as George McGovern's running mate in 1972 after just 18 days, when his prior treatment for acute depression was publicized.

The job has evolved significantly in the decades since, said Joel Goldstein '81, a Saint Louis University law professor and author of "The White House Vice Presidency: The Path to Significance, Mondale to Biden."

William Weld and Gary Johnson (below) have described a plan to run a co-presidency.

A friend from law school recently said of Tim Kaine (right), "He's the same guy. He's just surrounded by 25 Secret Service agents."

Originally narrowly conceived as a legislative job presiding over the Senate, the vice president became more of a participant in the executive branch when Richard Nixon held the post in the 1950s, Goldstein said.

But it wasn't until Walter Mondale served under President Jimmy Carter that the vice president moved into the White House and became part of the president's inner circle. "For the last 40 years, across six administrations, it has really been an important institution of the presidency," said Goldstein.

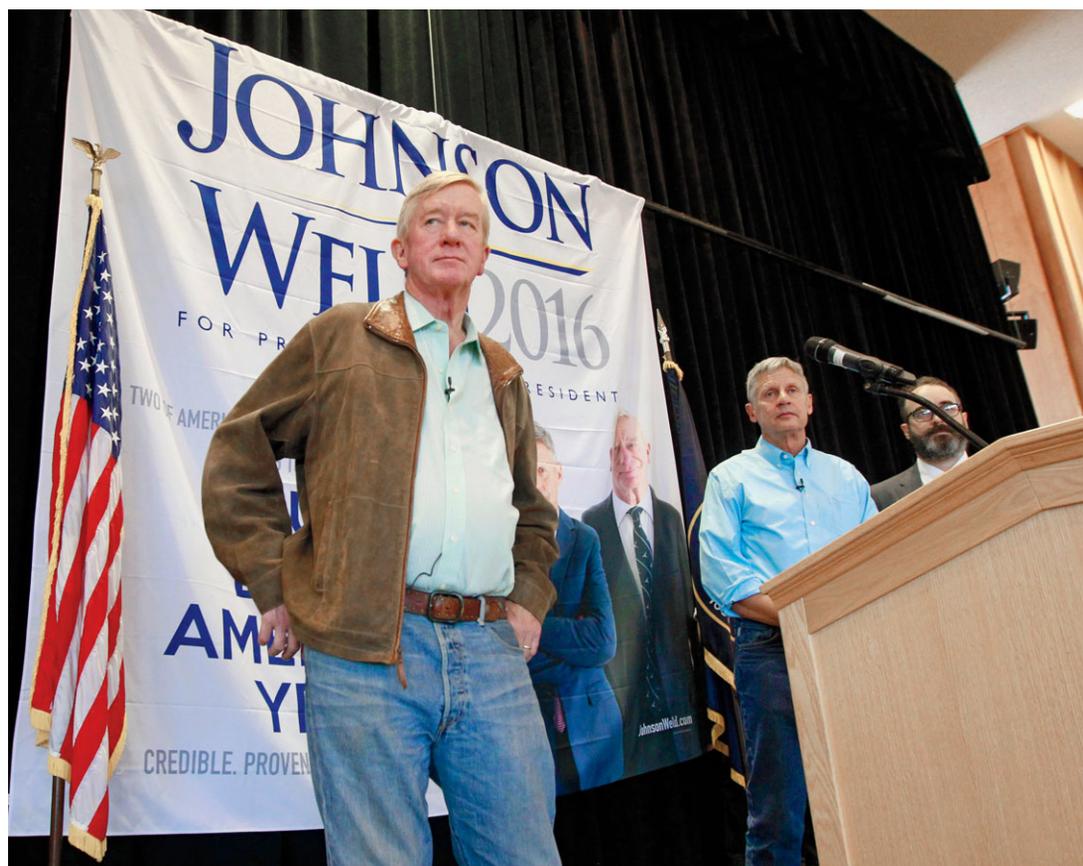
Even in the modern era of the vice presidency, Kaine stands out for the diversity of his experience, said Goldstein. Kaine

served as a city councilor, mayor of Richmond and then lieutenant governor and governor of Virginia before being elected the state's junior senator in 2012 alongside Mark Warner '80.

Weld is also a former governor, who led Massachusetts from 1991 to 1997 after serving as the U.S. attorney and head of the Justice Department's Criminal Division under President Reagan.

Having been a popular Republican governor in a largely Democratic state, Weld attempted to win a seat in the U.S. Senate and narrowly lost to John Kerry.

Weld was no stranger to the Harvard campus, having graduated from Harvard College,





where his ancestors were among the original benefactors. In law school, he was a member of the Voluntary Defenders, whose members helped inmates and poor defendants prepare appeals. When asked about his membership, Weld quipped, “I should have been in the young prosecutors club,” according to a 1996 Boston Globe profile.

He worked for a Boston law firm briefly after graduation before becoming one of the first staff members for the U.S. House Judiciary Committee’s Watergate investigation along with a recent Yale Law School graduate named Hillary Rodham, he recalled in a 2011 interview for the Nixon Presidential Library and Museum.

Kaine had never visited the HLS campus before showing up for the start of school in 1979, after finishing college at the University of Missouri in three years. He soon rethought the



Weld and Johnson both previously served as Republican governors, Weld of Massachusetts and Johnson of New Mexico.

Kaine has described his wife and HLS classmate, Anne Holton (right), as his “political partner.”



wisdom of moving so quickly.

“I remember thinking, why am I rushing? And also, I don’t really know what I want to do with my life,” Kaine said in an interview with C-SPAN in June.

He decided to take a year off after his 1L year and served as a Catholic missionary in Honduras. “It was a transformative experience,” said Brian Wolfman ’84, who met Kaine the following school year when both worked for the Harvard Prison Legal Assistance Project (PLAP).

Kaine recalled rejoining PLAP after his year away thanks in part to the recruiting efforts of Anne Holton ’83. They started dating midway through the school year and married after graduating.

Their work together representing prisoners before disciplinary and parole hearings exemplified a common commitment to social justice they’ve shown ever since, said Leto Copeley ’83, who met them both in law school and now practices law in North Carolina.

After HLS, Kaine followed Holton back to Richmond, Virginia, where her father had served as governor. He spent a decade as a civil rights litigator and law professor before running for city council in 1994. Holton worked as a legal aid attorney and a juvenile court judge before being appointed the commonwealth’s education secretary in 2014.

Copeley has stayed in touch with Kaine and Holton, attending Kaine’s gubernatorial inauguration with other law school friends and, more recently, a campaign fundraiser in Chapel Hill after his nomination. She said they’re the same down-to-earth, friendly people she first met in law school.

“He’s the same guy. He’s just surrounded by 25 Secret Service agents,” Copeley said.

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